

M E M O R A N D U M

TO: Charter Review Committee [REDACTED]
FROM: Jerry F. King, City Attorney [REDACTED]
DATE: May 9, 1994
RE: BRIEF AND INFORMAL HISTORY OF THE PRESENT VANCOUVER CITY CHARTER

This is to provide a brief history of the Vancouver City Charter. I hope it will be helpful to the Committee as it proceeds to make the "five year review" of the City Charter required by Charter Section 11.17.

1. I should mention first that the Washington State Constitution as adopted in 1889 allows first class cities to establish charters for their self-governance. See Article 11 Section 10 and Amendment 40. Per such constitutional provisions the Legislature has enacted statutes which provide methods by which charters are adopted and amended. RCW 35.22.010-.190.

One thing to bear in mind is that City Charters in Washington always are "subject to" state law. If a City Charter and a state statute conflict, the statute always controls. This is different from the law in many other states where it depends upon the subject matter of the statute as to which will control.

Still, a City Charter is very important because the rule of law is that whenever possible the state law and Charter are construed so as to be consistent with each other, and in most cases the statutes allow good flexibility.

2. The City of Vancouver was incorporated in 1857, more than thirty years before Washington became a state. From 1857 until 1942, we operated under the Mayor/Council form of government. In 1942, the voters approved a proposal for the City to have the Commission form a government, pursuant to state statute, with three elected commissioners to administer all departments. In 1952, the voters elected fifteen "freeholders" who then drafted the present City Charter. The Charter was proposed to the voters on February 11, 1952 and was adopted by them by a vote of 4,514 to 1,925. The Charter of course provides for the Council/Manager form of City government.

3. It is important to remember that the only way a Charter can be adopted is by vote of the people. Of course, this also is the only way a Charter can be repealed or amended.

There are two ways by which a Charter can be amended. One, the voters by a petition signed by a number equal to 15% of the votes cast at the last City election (RCW 35.22.120) can require a vote on a certain amendment or by a petition signed by 25% (RCW 35.22.140) can require a vote on a proposal to repeal the whole Charter. Two, the City Council (RCW 35.22.140) can refer amendments to the people for their approval or disapproval.

Your Charter Review Committee, of course, was appointed pursuant to this second method and is to report to Council as to any amendments which Council might thus propose to the people.

As I will show in the next few pages, the Vancouver City Charter has been amended many times in the past 42 years, although only a few of the amendments should be regarded as "major" ones.

The Charter presently contains 86 sections. Of these, 24 sections have been amended at least once, and in addition 15 sections formerly in the Charter have been repealed.

4. If any more amendments are found by the Committee by majority vote to be necessary or desirable, the Committee would have to agree on the language of the proposed amendments. It would then send these to the Mayor and City Council for their consideration. Council and Mayor would meet with the Committee and later would hold a public hearing on any proposed Charter amendments. The Committee recommendations are purely advisory, and Council always can decide not to present a proposed amendment to the voters. However, if the Council did decide to submit any Charter amendments, it would adopt resolutions to cause the County Auditor to put them on the September-November ballot.

5. The present City Charter was adopted in 1952 and I believe it wasn't formally "reviewed" until 1967. That year, Mayor Angelo named a Charter Review Advisory Committee. The Committee recommended changes to Sections 2.13, 2.14 and 2.15. These sections had required the entire text of each proposed ordinance to be "read in full" on both first and second readings. This had been found to be terribly time wasteful and so the voters approved amendments to the three sections so that they now require only the title to be read. Also, until 1967 these sections had required that each proposed ordinance be advertised a week prior to adoption. The sections were amended further in 1967 to provide that a proposed ordinance has to be published only three days before the public hearing.

6. A part of the 1967 Review Committee had wanted the Charter to be amended to provide for a directly elected Mayor. Section 2.02 of the Charter at that time provided that the only elected officials would be the "seven councilmembers." Each two years Council would elect one of its members to serve as Mayor. A minority of the Review Committee wanted the people to directly

elect the Mayor. The majority of the committee refused to agree.

A citizens committee then organized a petition drive under state law and got enough signatures to put it on the 1969 ballot. The proposed amendment passed by quite a large margin, as I recall it, although I don't have the figure of the vote. It amended Section 2.02 so that it now provides for six councilmembers, each elected by the people to a four year term, and for a Mayor, elected by the people to a two year term.

7. The next thing to happy in "Charter history" also was quite interesting. In the early Spring of 1973, two gentlemen who were angry with the then City Manager (about something; I still don't know what it was) began soliciting signatures on a petition to call a freeholder election under state law. Their petition had been prepared simply to repeal the present City Charter and to elect a Board of Freeholders to write a new one. They got signatures equal to 25% of the votes cast at the last preceding election and so it automatically went to the people at a special election on June 5, 1973. The sponsors said "the idea" was to get rid of the Council/Manager system, and it was regarded rather as a referendum on that issue. The way it was presented the voters voted yes or no on the proposition, but also voted for 15 freeholders, who would write a new Charter only if the "yes" votes prevailed. There were 72 candidates for the 15 freeholder positions. (It was quite an exciting campaign.) The voters on June 5, 1973 finally rejected the proposal to repeal the Charter. The vote was 2,454 to 1,725.

8. However, Mayor Stromgren a few days before the election announced that if the voters turned down the proposition he still would appoint the "top fifteen candidates", but to be an advisory Charter Review Committee. He then did this, of course; incidentally, the two men who'd started the whole thing came in 15th and 16th in the voting for freeholder (out of the 72 candidates).

9. The advisory Committee thus was composed of the 15 people who'd got the most votes at the June election. During the Summer of 1973 it met and finally recommended several rather minor amendments. These were submitted to Council which presented them to the voters at that year's November election: Section 2.05 was amended to add its present last sentence: that at least once a year Council is to hear a report from each department head. Section 3.04 was amended to add its present last sentence: to clarify that while Councilmembers can't give orders to City employees, they can discuss matters with them in Council meetings. Section 6.10 had required calls for bids on Public Works contracts involving more than \$2,500; this was increased to \$5,000. It was also at this 1973 election that the voters added Section 11.17, to provide that there should be a Charter Review by a citizens panel. "In January of every sixth year, beginning in January, 1979." This

is the section you're working under although, as we will see, it later was amended to slightly change its provisions.

This 1973 Committee also recommended two amendments which the voters turned down. It had proposed to amend Section 2.16 to provide that only the title rather than the entire text of a newly enacted ordinance would need to be published. This was defeated. (I don't have the vote.) The Committee also had recommended amendments to Section 7.02 to provide that the Fire Chief and Police Chief should be selected by the Manager from the top three candidates who had passed the Civil Service Exam. This proposed amendment would have replaced provision that the Manager had to select the top such candidate. This also was defeated, but the whole issue of Fire and Police Chief selection has been changed since then by state legislation and by subsequent amendment to this section (in 1987), as I'll discuss below.

10. The next Charter review was in 1978 even though Ch. Sec. 11.17 as then written wouldn't have required it until 1979.

This 1978 Committee eventually submitted proposed amendments as follows: (1) As above mentioned, Charter Sections 6.09 and 6.10 had been amended at the 1973 election to increase to \$5,000 the size of contracts for which bids had to be called for. In 1978, the Committee recommended more basic amendments to Sections 6.09 and 6.10, so that such minimums would be set by ordinance. This was approved by the voters and the ordinance (VMC 3.04) now sets these minimums, consistent with the state laws on the subject. (2) The Committee also recommended amending Section 8.04 to increase membership of the Parks and Recreation Commission from five to seven members; this was approved. (3) It also recommended changing Section 11.17 (under which you're presently operating) to provide for a review "every five years after the most recent review", and this also was approved.

The 1978 Committee also recommended amendments to Section 3.03 and 3.05. These sections had set forth duties of "City Clerk" and provided for the Manager's appointment of the City Clerk to be subject to Council confirmation. These were defeated by the people at the 1979 election.

11. Recall that in 1978 the voters had amended Section 11.17 to require an automatic review only "five years after the most recent one." However, this of course doesn't prevent more frequent reviews, and in 1979 Mayor Justin and City Council chose to appoint another review Committee. It worked through the Summer of 1979 and then recommended several Charter changes.

One was a purely technical amendment to Section 2.04 to remove language about Council election of the Mayor, the same having become obsolete by the 1969 amendment to Section 2.01 for the directly elected Mayor. (2) Section 2.08 was amended to

provide that if a Council vacancy was filled by appointment the appointment would only be until the "next election" rather than until the "next municipal election." (3) Section 7.10, which prohibits discrimination in City employment based on race, religion, etc., was amended to also prohibit sex discrimination in City employment. (4) Section 9.01 was amended to provide for City elections to be held "as provided by state law." (The 1952 Charter had referred to municipal elections to be held in even numbered years; state law had been changed to have them in odd numbered years; this amendment only removed such technical conflict.)

12. It's interesting that at this 1979 election the voters also approved amendments about the office of City Clerk; the history of this perhaps deserves special mention, even though by itself it's not at all important.

The 1952 Charter provides (Section 3.03) that all appointments to City employment are to be made by the City Manager, except that in the fire and police uniformed services the appointments are subject to civil service laws. However, the Charter provided that in cases of appointment of City Clerk and City Attorney, the Manager's appointments (and removals) would be subject to City Council confirmation.

The position of City Clerk in fact was a purely administrative one and it seemed (in principle) that such confirmation shouldn't be required. Thus, the 1978 Committee had recommended amendments to Charter Sections 3.03 and 3.05. The voters rejected these.

In 1979, the Committee again so recommended, and this time the voters approved. Apparently the difference was in the way we phrased the ballot proposition. In 1978 we'd asked, "Shall Section 3.03 of the City Charter be amended to delete required Council confirmation of City Clerk?" That was rejected. In 1979 we asked, "Shall Section 3.03 be amended to provide for appointment of City Clerk?" This was approved.

It just goes to show how important that exact wording may be of any proposed amendment. Under State law (RCW 29.27.060) it's the responsibility of the City Attorney to select such wording. I take it to be my job always to present the proposal in a completely objective manner; however, the ballot title has to be short and so sometimes this is hard to do. (Since 1985, the state law has provided for the County Auditors to issue a voters information pamphlet, and this can be very helpful for voter understanding.)

13. The next Charter review was in 1984. The 1984 Committee recommended several changes, approved by the voters at the 1984 election: (1) To Section 1.04, listing "powers of the City", to add the last sentence: "City shall provide for police, fire, and public safety services and for public works and

improvements." (Formerly these responsibilities had been implied.) (2) To Section 2.03 to delete obsolete references to Council salaries; the 1952 Charter had set these at \$40.00 per month, but provided they could be increased by ordinance. By 1984, they'd increased to \$300.00 per month, but the obsolete language about \$40.00 a month was still set forth in the Charter. This amendment deleted those references. (3) Article VI of the Charter had a long list of duties of the Director of Finance. The Committee thought these should be fixed by ordinance and so it recommended enactment of the present Section 6.00 and repeal of the detailed lists of duties in old sections 6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 6.07, 6.08, 6.11 and 6.12. (4) It did the same thing in Article VII, relating to Department of Personnel, enacting a new Section 7.00 and repealing detailed Sections 7.01, 7.05, 7.06 and 7.07. (5) The Committee recommended and voters approved amendment to Section 11.07 to delete the prohibition against Councilmembers doing more than \$100 of private business with the City in any month and provided such amount should be as set by state law (presently \$750.00 a month); (6) Amendment was made to Section 11.12 to delete requirement that tort claims against City be filed within 60 days of an accident; such limitations had recently been held unconstitutional by the courts; (7) It added a new Section 11.18 to provide for all references to "he" and "him" and "his" in the Charter be replaced with gender neutral language. As above mentioned, all of these were approved by the voters at the 1984.

14. Between 1984 and 1989 we had two more amendments to the City Charter. These were proposed directly by City Council and approved by the voters:

(1) In 1986, the voters amended Sections 10.01, 10.02 and 10.04 to provide that only registered voters can sign referendum and initiative petitions. This conforms to state laws, which allow only registered voters to sign petitions to the Legislature. Our Charter had said "qualified voters" could sign local initiative and referendum petitions. Certain old court cases say that anyone who has lived in the City for 30 days and is over 18 is a "qualified" voter even if not a "registered" voter. This language of the Charter had made it almost impossible to check signatures on petitions (as illustrated in the gambling initiatives). The 1986 amendments solved that problem.

(2) In 1987, the voters approved amendment to Section 7.02 which until then had simply "incorporated" state civil service laws. These state laws had been quite restrictive and more recent court cases had allowed cities to have civil service ordinances for police and fire which would "substantially accomplish" the purposes of the statutes, even if not exactly following them. This amendment allowed Council in 1988 to adopt a more modern civil service ordinance and also to provide by ordinance that chiefs of the departments are to be appointed on basis of merit, but not to be covered by civil service.

15. I should mention also that the 1984 Charter Review Committee had recommended two other amendments, which City Council after public hearing decided not to present to the voters.

One was a proposed amendment to Section 2.01. This section provides for all City council members to be elected "at large." (That is, of course, the entire City votes on each Council position at both the primary and general elections.) The 1984 Committee recommended that the City be divided into three districts. Two person would be nominated by voters of each district at each primary election, and then one of these would be elected at the following general City-wide election.

Whether there should be "districts", under the above plan or some other plan, obviously is profoundly a policy question. One thing to bear in mind about districts, however, is that they need to be almost identical in populations. A variation of as much as 1% or 2% would be fatal to the whole plan.

The 1984 Committee also recommended that the two-year term of the office of Mayor be changed to a four-year term, and Council decided not to proceed with that one either.

16. The 1989 Review Commission made another very thorough review of the Charter and debated several of the items discussed above. It finally recommended only three amendments. The City Council placed these on the ballot with the following results:

(1) The voters approved amendment to Charter Section 2.16 to allow for publication of summaries of ordinances after enactment. This replaced the former requirement of publication of the entire text of each such ordinance, and has saved several thousands of dollars per year.

(2) The voters approved amendment to Charter Section 4.01 to allow there to be a two year budget for City government; this conformed to the then new state law.

(3) However, the voters rejected another proposition which would have added a certain preamble to the Charter. The vote to reject was quite decisive. I will furnish the Commission with a copy of the rejected preamble, and I think you may agree with the voters that it didn't really "say much", although probably it was in fact harmless.

There does seem to be a lot of interest again in a Charter review. I understand that many more people applied this year to participate than had been the case ever before. I will happen to be retiring from this job (after twenty-nine years) on May 31st, and so I will be with you only on the first part of your inquiry. However, I will be at the first meeting along with some

excellently qualified attorneys from this office who will be glad to keep working with you on this important and interesting assignment.

17. The only "summary" I'd attempt is that I've found the City Charter to be a very good instrument to work with. I think it provides a good form and some practical means to accomplish results. However, I'm sure it might be improved, and I'm glad to work with the Committee again on this.

c: Honorable Mayor and Members of City Council
John F. Fischbach, City Manager
Kent Shorthill, City Clerk

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