

CITY OF YUMA
2019 CHARTER REVIEW COMMITTEE
TUESDAY, JANUARY 14, 2020

MINUTES

Meeting called to order at 5:07 p.m.

Committee members present: Russ Clark, John Courtis, Doug Jennings, Russell McCloud, Art Morales (5:13 p.m.), Jeff Polston and Jennifer Tobin

Committee members absent: Barbara Hengl and Bill Regenhardt

Staff members present: Deputy City Attorney, Rodney Short
Deputy City Clerk, Janet L. Pierson
Deputy City Administrator Jay Simonton

I. **APPROVAL OF MEETING MINUTES**

A motion was made by **McCloud**, with a second by **Courtis** to approve the December 10, 2019 meeting minutes. The motion was approved by a 6-0 vote (Morales not yet in attendance).

II. **OVERVIEW OF MOTIONS/RECOMMENDATIONS OF CHARTER REVIEW COMMITTEE TO DATE:**

Discussion, deliberation and possible action by the Committee to recommendations on Article IV, Sections 4 and 6; Article VI, Sections 2, 3, and 14; and Article VIII, Section 2.

Short stated that the overview was in response to the Committee's request for a status of recommendations made to date. By this item being on the agenda the Committee would be able to review the progress so far and make additional changes or clean-up to the language, if necessary. The goal is to continue to add the recommendations and keep this document on the agenda.

Motion (McCloud/Courtis): to accept agenda item II. Voice Vote: approved 6-0 (Morales not yet in attendance).

III. **REVIEW OF YUMA CITY CHARTER, ARTICLE VIII, SECTION 3 THROUGH ARTICLE XVII:**

Discussion, deliberation and possible action by the Committee regarding Article VIII, Section 3 through Article XVII.

Chairman Clark opened up continued review of the City Charter where it was left off at the last meeting.

Article VIII
City Administrator

Section 3, Acting City Administrator

Discussion

- Each year City Council approves a document which lists those persons who can perform the duties of city administrator during his absence. (McCloud/Simonton)
- It is not recommended to add that a super majority vote of city council is required to revoke the designation and appointment of another officer to serve as acting City Administrator as currently the removal of the City Administrator can be done with a majority vote of City Council. (Courtis/Simonton)

Article VIII, Section 4, Responsibilities and duties of the city administrator

Discussion

- (a) It is not recommended that *Administrative officer* be defined as all employees work under the City Administrator. (Courtis/Short)
- (c) The City Administrator can be excluded from Executive Sessions when the discussion is about the City Administrator. Executive Sessions are statutory. (Polston/Short)
- (e) It is not recommended to state in the Charter a date by when the budget must be submitted to City Council. City Council can direct their employee as to when they want the budget submitted. (Courtis/Short)
- (f) The City Administrator reports to the City Council concerning the affairs of the City and it is City Council's responsibility to be sure nothing is missed. (Jennings/McCloud/Clark)

There was much discussion on Article VIII, Section 4(i) which reads as follows:

- (i) *He or the Acting City Administrator shall execute, attested by the City Clerk all contracts for amounts exceeding \$25,000 and such other documents as may be authorized by the City Council, and not prohibited by law. The Purchasing Agent may authorize contracts of \$25,000 or less in accord with this Charter and the purchasing ordinance of the City on the terms set forth in such ordinance.*
- (i) Assuming 1999 is the last time the \$25,000 threshold for the Purchasing Agent was changed this may be an opportunity to increase the Purchasing Agent's authority from \$25,000 to \$40,000 or to today's equivalent. (Polston)
 - (i) The public is going to think \$40,000 is a lot of money. (McCloud)
 - (i) There has been no issue where there are too many items going before City Council due to this provision of the Charter. (Clark/Short)
 - (i) This provision deals with procurement issues only and the Purchasing Agent really would not have involvement in employment issues. (Short)
 - (i) Procurement is highly regulated by the A.R.S. and the Charter is read in harmony with the A.R.S. The formal bidding statutory limit is \$100,000. Informal bidding is below. (Courtis/Short/McCloud)
 - (i) There is a legal issue and that is who can bind the City and how they bind it. The City Administrator is the only authority to bind the City for purchases \$25,000 and over, whether formal bid or informal bid. (Short)
 - (i) The legal issue is not really the amount of procurement, but the type of contract that would be expected with what is being purchased. Procurements greater than \$25,000 often are made by contract and contain performance requirements and milestones as well as amount of payment. (Short)
 - (i) These contracts also contain many potential pitfalls like choice of law forums, like one requiring the City to bring any action for breach in the Mariana Islands. Courts like the 9th Circuit have held up choice of law forums even though the location and type of law is absurd. (Short)

- (i) Contracts also often contain insurance and indemnity provisions that could bind the City and the type of request could run afoul of Arizona law or public policy. (Short)
- (i) Taxpayers can only insure and indemnify if there is a quid pro quo, otherwise it is a violation of the gift and loan clause. (Short)
- (i) It is not recommended to add the word "procurement" before the word "contract" in this section. (Courtis)
- (i) Increasing the \$25,000 threshold would give the Purchasing Agent a little more power and the business community could get business with the City done quicker, but streamlined purchases may cause unintended consequences. (Short)

Polston asked that (i) be put on hold so that legal counsel and the Deputy City Administrator can speak with the City Administrator and the Purchasing Manager and see what amount other cities of similar size are doing.

Article IX Boards and Commissions

Section 1, Boards and commissions

Discussion

- (c) Board and Commission members may serve multiple terms. (Morales/Short)
- (c) It is not recommended to change the 5-year term to 3 years. (Courtis/Short)
- There is no set schedule for when the Charter is reviewed but rather it could be triggered by legislation or some other reason. (Jennings/Clark/Short)
- The Committee could suggest to City Council that a more frequent review of the Charter could be handled by policy rather than a Charter amendment to the voters. (McCloud/Short)

Motion (Polston/Courtis): To approve Article IX with no changes. Aye: 7-0.

Article X Personnel System

Section 1 Merit system

Discussion

- **Short** stated this comes out of Title 38 of the A.R.S.

Motion (McCloud/Courtis): To approve Article X with no changes. Aye: 7-0.

Article XI Municipal Court

Section 1 Name

There was no discussion or questions by the committee

Section 2 Jurisdiction

There was no discussion or questions by the committee

Section 3 Municipal judge

Short recommended the following change (in bold) to Article XI, Section 3(a), to be in compliance with consolidated elections.

(a) There shall be a Municipal Judge who shall be elected from the City at large **in accordance with state law**. Commencing with the elections held in 1973, and at the biennial elections held every four (4) years, thereafter, a Municipal Judge shall be elected who shall serve a term of four (4) years. On and after January 1, 1995, at such time as City Council shall deem necessary, other Municipal Judges shall be elected, at staggered elections, for a term of four years. The Municipal Judges shall receive at stated times, a compensation to be fixed by ordinance by the City Council, which compensation shall not be increased or diminished after their election or during their term of office.

Discussion on whether this would extend the judicial terms, **Short** confirmed yes, as set forth in A.R.S. § 16-204 statutes. The Presiding Municipal Judge and the other Judge would now be extended to the next consolidated election.

Motion (McCloud/Jennings): to accept legal counsel's suggested change to Article XI, Section 3(a). Aye: 7-0.

Discussion

- Currently only the Presiding Municipal Judge is required to be an attorney. The Presiding Municipal Judge asked the City Attorney's Office to tell the committee that the provisions work now and requested no changes.

Section 3.1 Powers and duties of municipal judge

There was no discussion or questions by the committee

Section 4 Operation

Discussion:

- Translators in the municipal court are contracted through the State and the City of Yuma pays its share to the State. (Courtis/Short)

Section 5 Court order

There was no discussion or questions by the committee

Section 6 Writs and process

There was no discussion or questions by the committee

Motion (Jennings/McCloud): to approve Article XI with no changes with the exception of Article XI, Section 3(a) (election of judges). Aye: 7-0.

Article XII

Contracts and Competitive Bidding

Section 1 Competitive bidding

(a) *Informal bidding.*

- Anything over five percent of the state amount, which is \$100,000, must be through an informal bidding process as stated in this section. (Courtis/Simonton/Short)

(b) *Formal bidding.*

- Bids are listed on a City Council meeting agenda and state the award is to the *lowest responsible/responsive bidder.* (Courtis/Short)

(c) *Acceptance of bids*

There was no discussion or questions by the committee

(d)-(e)

There was no discussion or questions by the committee

Section 2 Local preference

Discussion

- Local preference has been a hot topic in our community and additional research is needed prior to any voting. (Morales)
- Care is needed in regards to local preference. (Simonton/Short)
- Including the language *so long as such preferences are not inconsistent with the Constitution or statutes of the State* is the only reason this section was approved by the Attorney General.
- Local preference gets tricky with construction of public projects and under the Title 34 procurement statutes.
- Clint Harrington, a member of the audience with concerns about local preference, was asked to put his thoughts in written form and submit them to the Committee to be made part of the record. (McCloud/Short)
- Short will also be prepared to present further at the next meeting.
- The Supreme Court struck down local preference especially in Title 34 procurement. (Courtis/Short/McCloud)

Motion (McCloud/Courtis): to set aside Article XII for a future meeting. Aye: 7-0

IV. **NEXT MEETING DATE/TIME:**

The next meeting is scheduled for January 28, 2020 at 5:00 p.m.

V. **FUTURE AGENDA ITEMS/ADDITIONAL INFORMATION:**

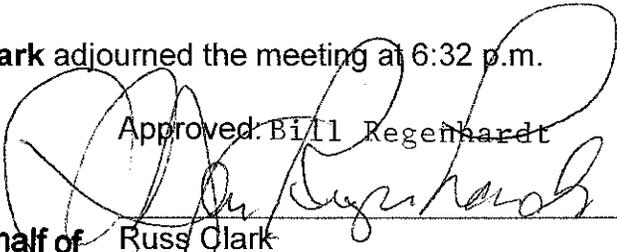
McCloud requested that the overview continue to be included with the minutes and agenda. **Short** stated that the agenda item called *Overview of Motions/Recommendations of Charter Review Committee to Date* will remain on all future agendas. **Polston** asked if the committee would have an opportunity at the end to trim down some of the approved changes and **Tobin** questioned if approved sections could be reopened for discussion. **Short** stated those sections would need to be placed on an agenda to allow discussion. **McCloud** suggested that at the final meeting all charter sections be opened for discussion.

There being no further business, **Chairman Clark** adjourned the meeting at 6:32 p.m.


Janet L. Pierson
Deputy City Clerk

On Behalf of

Approved: Bill Regenhardt


Russ Clark
Chairman of the Board