

CITY OF YUMA
2019 CHARTER REVIEW COMMITTEE
TUESDAY, JANUARY 28, 2020

MINUTES

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

Committee members present: John Courtis, Barbara Hengl, Doug Jennings, Russell McCloud, Jeff Polston and Bill Regenhardt

Committee members absent: Russ Clark, Art Morales and Jennifer Tobin

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

Bill Regenhardt was appointed Vice-Chair in the absence of Chairman Russ Clark.

I. **APPROVAL OF MEETING MINUTES**

A motion was made by **Courtis**, with a second by **Polston** to approve the January 14, 2020 meeting minutes. The motion was approved by a 6-0 vote.

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; Article VIII, Section 2 and Article XI, Section 3.

There was no discussion or questions by the committee.

III. **FOLLOW-UP FROM PREVIOUS MEETING:** Discussion, deliberation and possible action by the Committee.

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

Short stated that the Committee had asked for more information on what dollar amount other cities assign to the procurement officer. **Simonton** reported that he found that most cities, with the exception of a few smaller cities, do not list limits in their Charter but rather they defer to the limits set by state law. **Simonton** also noted that Councils, through ordinance, policies or other means, set the limits that the City Manager follows as far as contracts go. No other charter had any similar limits to what the City of Yuma has in their Charter.

Discussion

- **McCloud** recommended no changes to this section for the following reasons:
 - The County Administrator limit is \$20,000

- There are no issues with the current limit of \$25,000 which would be considered a lot of money to most people
- The Committee is already recommending seven charter changes which includes several changes required by the state legislature (McCloud/Polston)
- It is not recommended to add the word “procurement” prior to the word “contracts” as the only other contracts are employment contracts for the City Administrator and City Attorney. Also, it was noted that a dollar amendment is comfortable from a legal standpoint because contracts over \$25,000 often contain other terms besides just the purchase. The terms could be performance terms and, as stated last time, jurisdictional terms which would require the City to adjudicate breaches in foreign states under a foreign state law. As a matter of course, contracts over \$25,000 and signed by the City Administrator prompts legal review. (Courtis/Short)
- Other Charters do not include this language in the section listing the responsibilities of the City Administrator but rather the procurement contract section and again this section defers to the limits set by state law. (Simonton)
- A future Charter Review group may choose to eliminate Article VIII, Section 4(i) or state that purchases *shall be made in accordance with state law* and the limits set forth by their City Council. (Polston/Short)
- Bisbee, AZ and Winslow, AZ both have \$5,000 limits. (Short/Simonton)

Motion (McCloud/Jennings): To close Article VIII with only the previously recommended change to Article VIII, Section 2. Voice vote: **Approved** 6-0.

Article XII, Contracts and Competitive Bidding

Short provided a handout with the requested background and legal analysis explaining why it is best to keep this Charter section intact, without any amendments.

Section 1 Competitive bidding:

- Found in Title 34-602, *project delivery methods for design and construction services*
- The only four methods in which you can have procurement in the state of Arizona per statute are:
 - Traditional Design-Bid-Build
 - Design-Build
 - Construction Manager at Risk (CMAR)
 - Job Order Contracting (JOC)

Section 2 Local, preference:

- Found in Title 34-241, *Eligibility of contractors on public works; preferred contractors; eligibility of subcontractor; definitions* and 34-242, *Preference for locally manufactured materials in awarding contracts for furnishing materials*
- Enhanced by the 1990 Arizona Supreme Court case: *Big D Const. v. Court of Appeals* – the building of the Arizona Cardinal practice facility in Tempe. The ability to put local preference under 34-241 and any charter provisions flowing from it for public procurement for construction projects was struck down but the ability to have local preference on widgets was left open.

Discussion

- The lowest responsive, responsible bidder is awarded a bid. (Courtis/Short)
- It is not recommended to address bids that include travel and hotel in the Charter

as that dialogue is being had between the construction companies and the Mayor and City Council and the City Administrator. (Courtis/Short/Simonton)

- There is a standardized grading process with a team of professionals that grade the bids. (McCloud/Short)
- The law prohibits taking advantage of a contractor who makes a mistake in their bid (coming in short) in the public sector. (Short/McCloud)

Motion (McCloud/Hengl): to close Article XII with no changes. Voice vote: **approved**
5-1 (Courtis voting nay)

IV. REVIEW OF YUMA CITY CHARTER, ARTICLE XIII THROUGH ARTICLE XVII: Discussion, deliberation and possible action by the Committee regarding Article XIII through Article XVII

**Article XIII
Revenue, Taxation and Finance**

Section 1, Fiscal powers

There was no discussion or questions by the committee.

Section 2, Fiscal year

There was no discussion or questions by the committee.

Section 3, Administrators estimate – Preparation

Discussion

- The deadline for presentation of the budget to City Council is on or before the first Monday in May of each year but it is usually presented earlier. (Courtis/Simonton)

Section 4, Same – Submission to city council

There was no discussion or questions by the committee

Section 5, Budget

There was no discussion or questions by the committee

Section 6, Adopting tax rate

There was no discussion or questions by the committee

Section 7, Taxes

(a) Transaction privilege tax

Discussion

- City Council can levy a sales tax up to 1% but anything above 1% must be approved by a majority of the qualified electors at a general or special election. City's sales tax is 1.7%, which is on the lower scale statewide. (Courtis/Simonton)
- The City of Yuma's current sales tax is above 1% so any additional sales tax must be approved as described above. (Jennings/Simonton)

(b) Income tax

- Property tax is discussed in *Section 6, adopting tax rate*. (Jennings/Short)
- This item was tabled so that legal counsel can review and see if the term *property of the City* as stated in Section 6 means real property owned by the City versus real property owned by citizens in the City of Yuma. (Jennings/Short)

Section 8, Claims or demands against the city

Discussion

- Deemed a matter of Statewide concern, Arizona Revised Statutes §12-821.01 as well as Rules of Civil Procedure 4.1 state that any lawsuits or claims must be served on the City Clerk or they will be dismissed. (Short)

Section 9, Special funds and reserve accounts

There was no discussion or questions by the committee

Section 10, Capital improvement program

Discussion

- The Capital Improvement Program is developed concurrent with the budget. (Courtis/Simonton)

Section 11, City council action on capital improvement program

There was no discussion or questions by the committee

Section 12, Independent annual audit

Discussion

- The City complies with the statutes regarding this section. (Polston/Courtis/Short)

Section 13, Ordinances and resolutions on budget

There was no discussion or questions by the committee

Section 14, Deposit of city moneys, investments

Discussion

- Simonton will verify what "sufficient security" means.

Section 15, Transfer of appropriations

Discussion

- City Council must approve any request by the City Administrator to transfer money. (Regenhardt/Courtis/Simonton/Short)
- The vote would be a simple majority vote since the money is already appropriated. (Courtis/Short)

Section 16, Permission to exceed the budget

Discussion

- It is not recommended to change the Arizona Tax Commission to the Arizona Department of Revenue. There is a provision in the law that allows you to go to the agency which it has been renamed. (McCloud/Short)

Motion (McCloud/Courtis): to close Article XIII with the exception of Section 6 with no changes. Voice vote: **approved** 6-0.

Article XIV Franchise and Public Utilities

Section 1, Franchises

Discussion

- A franchise is a company that is authorized by the State as franchise. The State incentivizes local governments so constituents can have that technology in their town. Examples include Arizona Public Service, cable and gas. (Jennings/Short)
- When one of these franchises has to relocate their infrastructure the entity responsible for payment of that relocation is dependent on prior rights. (McCloud/Short)
- FCC regulations are usually beneficial, but often usurp local or state control and commandeer city or county property without input and for much lower than market-rate, almost free. (Short)

Section 2, Establishment of municipally owned and operated utilities

Discussion

- As a Charter city we can buy and sell property for the city. (Jennings/Short)
- The City provides sewer services for Winterhaven, the Quechan Indian Tribe and the Marine Corps Air Station under an agreement with federal government for federal funding many years ago. (Polston/Simonton)

Section 3, Establishment of classifications and regulations of rates of public utilities

There was no discussion or questions by the committee

Section 4, Revocable temporary permits, licenses

- These permits are ordinary everyday permits needed to conduct business. (Simonton)

Motion (Jennings/Hengl): to close Article XIV with no changes. Voice vote: **approved** 6-0.

Article XV Transitional Powers

Section 1, Rights of officers and employees preserved

There was no discussion or questions by the committee

Section 2, Continuance of present officers

There was no discussion or questions by the committee

Section 3, Continuance of present offices, departments and agencies

There was no discussion or questions by the committee

Section 4, Continuance of appointive board and commission

There was no discussion or questions by the committee

Section 5, Transfer of records and property

There was no discussion or questions by the committee

Section 6, Pending matters

There was no discussion or questions by the committee

Section 7, Conformity of charter with state law

Discussion

- It is still necessary to make the changes we made to previous sections to conform with state law because they had specific dates. (McCloud/Short)
- This section can be relied on if anything were to be missed. (Short)

Section 8, Inauguration of government under this charter

Discussion

- The City Council is the sole authority that can submit the recommended Charter amendments to the voters. (Jennings/Short). Final product still goes to Governor for approval after the vote and would get reviewed by Arizona Attorney General. (Short)

Motion (Polston/McCloud): to close Article XV with no changes. Voice vote: **approved**
6-0

**Article XVI
Amendments**

Section 1, Amendments

There was no discussion or questions by the committee

Motion (McCloud/Jennings): to close Article XVI with no changes. Voice vote:
approved 6-0

**Article XVII
Gender**

Section 1, Gender

There was no discussion or questions by the committee

Motion (Courtis/Jennings): to close Article XVII with no changes. Voice vote: **approved**
6-0

V. NEXT MEETING DATE/TIME:

The next meeting date was changed to Monday, February 10, 2020 at 5:30 p.m.

VI. FUTURE AGENDA ITEMS/ADDITIONAL INFORMATION:

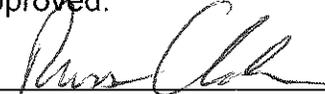
There was no discussion or questions by the committee. For any final requests, please send to Janet for distribution to CRC before the next meeting. Next meeting may be the final meeting.

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

Approved:



Janet L. Pierson
Deputy City Clerk



Russ Clark
Chairman of the Board