

CITY OF YUMA
2019 CHARTER REVIEW COMMITTEE
MONDAY, NOVEMBER 12, 2019

MINUTES

Meeting called to order at 5:03 p.m.

Committee members present: Russ Clark, John Courtis (5:09 pm), Barbara Hengl, Doug Jennings (5:28 pm), Russell McCloud, Art Morales, Jeff Polston, Bill Regenhardt (5:20 pm) and Jennifer Tobin

Committee members absent: Gel Lemmon

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

I. **Approval of Meeting Minutes**

A motion was made by Russell McCloud, with a second by Art Morales to approve the October 21, 2019 meeting minutes. The motion was approved by a 6-0 vote. (John Courtis, Doug Jennings, Gel Lemmon and Bill Regenhardt either absent or not yet in attendance)

II. **Follow-Up From Previous Meeting:**

Chairman Clark opened up the follow-up from the previous meeting.

McCloud stated he has read and agrees with the document provided by **Short** and made a motion to accept all the changes presented by legal staff.

Chairman Clark stated he would like to wait and discuss them individually but called for a second on **McCloud's** motion. The motion failed due to lack of a second.

Article III, Section 3, Money and Bonds.

Short reported that Jennings and Courtis asked that this section be brought back for further discussion. In the absence of Jennings and Courtis, and there being no further discussion from the committee, this section was accepted.

Article III, Section 14, Elections; Article IV, Section 4, Time of Holding Primary and General Elections; Article IV, Section 6, Nomination for Primary Election and Article IV, Section 7, Special Elections:

Short stated that Article III, Section 14, Elections, was brought back as it coincides with Article IV Sections 4 and 6 which are next on the agenda for discussion.

Short reported that legal counsel was asked to take a look at some of the election related sections and compare them to HB2604, now codified in A.R.S. §§ 16-204.01

and 16-204.02 to see which sections of the Charter would be in conflict with state law. **Short** stated the legislature has mandated that the election should move to even numbered years unless there could be a showing that there was less than a 25% drop off from the last election of the Governor. **Chairman Clark** advised that the Committee has the option to ignore the legislature and potentially pay a hefty price which he personally is not in favor of. **Short** stated the legislature was rather clever and they are now controlling the purse strings of counties such as Yuma County who run the City of Yuma elections. **Short** continued that the consensus amongst City staff, elected officials, and rural counties is how much do you really want to have odd year elections and what do you really get if you do. **Chairman Clark** advised that we weren't looking for any changes on Article III, Section 14 Elections in as much as it relates to Article IV, Sections 4 and 6.

McCloud made a motion to accept the amendments to the Charter as recommended by the legal team. **Chairman Clark** asked if the motion included Article VI, Section 2 and **McCloud** confirmed that was correct.

Short reviewed the changes as follows:

Article IV, Section 4. Time of holding primary and general elections

There shall be a primary and general election held in the City of Yuma in every odd-numbered year. The **City of Yuma** primary and general elections shall **hold all primary and general elections** ~~be held~~ in accordance with state law.

Article IV, Section 6. Nomination for primary election

The City Council, by ordinance, shall direct the City Clerk to make available to all candidates for any City office a petition form for nomination at a primary election. The nomination form must contain the signatures of qualified electors of the City aggregating not less than three percent (3%) nor more than five percent (5%) of the total number of valid ballots cast at the last preceding general municipal election. The petitions **shall** ~~may~~ be presented to the City Clerk **in accordance with state law** ~~not earlier than one hundred twenty (120) days nor later than ninety (90) days before the date set for the primary election~~. The City Clerk shall certify the petition indicating that the required number of signatures of qualified electors has been obtained and such certification shall cause the candidate's name to be printed on the ballot.

Short stated that the state law referred to in in this particular case is found in Title 16. On the nomination for primary election the state legislature shortened the time for the primary. Under our Charter, candidates had a longer time in which to submit their petitions. The state shortened it from 120 days to 90 days

Morales asked if it would be a good idea to put an asterisk at the bottom of these sections showing the state law that is being referenced. **Short** pointed out an existing section with a cross-reference and stated this section would most likely also have a cross-reference.

The previous motion by **McCloud** failed due to lack of a second.

Motion: (McCloud/Hengl): to accept the recommendations on Article IV, Section 4 and Article IV, Section 6 as presented by the City Attorney. Voice vote: 7-0 (Jennings,

Lemmon and Regenhardt either absent or not yet in attendance).

Article IV, Section 7, Special Elections.

In regards to publishing notices of election, a copy of a page out of the newspaper was provided pursuant to a question by **Courtis**. **Courtis** clarified that these notices are available both online and in print.

Article V, Section 1(a) Initiative, referendum and recall.

Short stated this section was held over to discuss whether there was a legal difference between ballots cast for Mayor (used to compute initiative or referendum numbers) and ballots cast for all candidates (used to compute recall numbers). **Short** stated that there is not a recommended legal change.

Discussion:

- There is an opportunity to clarify the inconsistency to avoid legal issues in the future. (Courtis)
- Settling on either ballots cast for Mayor or ballots cast for all candidates for both initiative and referendum and recall is the suggestion. (Clark/Courtis)
- The difference is initiative and referendum go back to the Mayoral election but recall is based on the last election and the numbers are reset after each election. (Short)
- Using ballots cast for Mayor to determine recall numbers could potentially make it more difficult to get the required number of signatures and therefore harder to recall an elected official. (Clark/Short/McCloud)
- There were changes in Title 19 the past two years to make the initiative and referendum process a little more difficult but it did not extend to recall. (Tobin/Short)
- Bringing this agenda item back regardless of the vote is necessary for legal review. (Short)
- Initiative, Referendum and Recall are important concepts in the Arizona Constitution and should be taken seriously. (Tobin)

Motion: (Courtis/Polston) to change the language to read that the required number of signatures of qualified electors required for initiative or referendum or recall of elected officials shall be computed on the basis of total number of ballots cast at the last general election. 4-4-1 (Morales abstained from voting). Short will review the statutes one more time, as he believed the statutes provide insight as to why the initiatives and referendums were grouped together and recalls were different. His initial belief is that the Charter provisions followed the statutes and Arizona Constitution.

Gender Neutral pronouns

Short reported that there is not a way to make one motion to have every portion of the Charter changed to be gender neutral. Each section would have to be changed individually. The Committee agreed not to make individual changes to the Charter.

III. **Review of Yuma City Charter, Articles VI-XI:**

Article VI City Officials

Section 1 Term, election of mayor, councilmembers

Short explained that powers of the Mayor will be discussed later in the Charter.

Section 2 When mayor, councilmember elected

Motion: McCloud/Courtis - to amend Article VI, Section 2 as presented by the legal team.

Short stated the amendment is based on changes pursuant to A.R.S. § 16-204.01 and .02 and read the amendment into the record:

Article VI, Section 2 When mayor, councilmembers elected:

Elections for mayor and councilmembers shall be held in **accordance with state law** ~~odd numbered years~~. A mayor and three councilmembers shall be elected, commencing with the elections held in **2022** ~~1973~~, and three councilmembers shall be elected two years thereafter.

The motion was approved by a 9-0 vote.

Section 3 Appointive officers

- (a) *City administrator*. There was no discussion or questions by the Committee.
- (b) *City clerk*. There was no discussion or questions by the Committee.
- (c) *City attorney*.

Discussion:

- Three-quarters of Arizona cities have the City Attorney answering to the Mayor and Council instead of the City Administrator. (Polston/Short/Clark)
- Attorney's must follow Ethical Rule 1.7 which states attorneys are duty bound to clients. In the Charter, the City Attorney is the legal advisor to the City Council and to the City Administrator. This ethical rule trumps all others regardless of who the Charter states the City Attorney answers to. (Short)
- Because of the ethical rules, the City Attorney does not have a preference to whom provides direction and sets salary. The City Attorney has unfettered access to each City Councilmember and vice versa. There is a belief that the salaries of the City Attorney's Office are artificially low because of the Charter provision, but there is another belief that directly reporting to City Administrator provides stability and relief from political disputes. But City Attorneys are careful to counsel clients that the attorneys are not political swords against one-another (Short)
- There is an opportunity to address in our Charter why three-quarters of the Cities are set up where their City Attorney is directed and hired and fired by Mayor and Council. (McCloud/Short/Clark)
- Appointment and compensation as well as serving at the pleasure of the City Administrator should both be changed to Mayor and Council. (Clark/McCloud)

Motion: McCloud/Morales the following motion:

(c) *City attorney*. ~~From on and after January 1, 1971, there shall be a city attorney who shall be appointed and his compensation fixed by the mayor and city council administrator, with the approval of the city council.~~ The city attorney shall serve as the chief legal advisor to the city council, the city administrator, and all city departments, offices and agencies. ~~He~~ **They** shall represent the City in all legal proceedings, and shall perform any other duties prescribed by this charter, law or

ordinance. The city council shall have control of all litigation of the city, and may employ other attorneys to take charge of any litigation or to assist the city attorney therein, and may provide for the payment for such additional legal services and all proper service or work done on behalf of the city in connection with its legal matters. The city attorney shall serve at the pleasure of the ~~city administrator~~ **mayor and city council**.

Voice vote: 9-0

(d) *Finance Director*. There was no discussion or questions by the Committee.

Section 4 Bond – Prerequisite of office

There was no discussion or questions by the Committee.

Section 5 Bonds or Insurance

Short explained that this language is old but that there are notaries in the City that are required to get bonds.

Sections 6 through 9

Short explained Sections 6 through 9 were bonds and sureties and were from the original charter. The placeholder has probably been left and will be left so as to not overburden the voters.

Section 10 Oath

There was no discussion or questions by the Committee.

Section 11. Vacancy in elective office – Filing

Short confirmed that a vacancy in an elective office is filled by the City Council for the remainder of that term.

Section 12 Same -- Determining vacancy

Short clarified that being *adjudicated an incapacitated person* means being determined incapacitated or incompetent by a jurisdictional court, most likely Superior Court.

Section 13 Residency

Clark clarified that the residency requirement refers to elective offices in the City of Yuma.

Section 14 Compensation

Discussion:

- General discussion that Mayor and Council's salary were extremely low for the job requirements and general consensus was that it is time to provide salary commensurate with job requirements.
- The suggested salary for Mayor and Council can be a percentage of the Board of Supervisors salary or a set dollar amount. (Polston/Short)
- The Board of Supervisors currently make \$63,800 which is set by the Arizona State Legislature in A.R.S. §11-419.
- Tying Mayor and Council salaries to a percentage of the Board of Supervisors salaries would automatically give City Council any raises the legislature gives to the Board of Supervisors. (Clark/Poston)
- Using a percentage versus a dollar figure may confuse the voters because the voters will not know what the salary is of the County Board of Supervisors.

(Regenhardt)

- Putting in a dollar figure has not worked in the past. (Polston)
- The last election where the Mayor and Council salary increase failed was in 2011. (Morales/Short)
- Discussion that Mayor and Council did not even make minimum wage.
- Another suggestion would be to have the citizens vote on a citizen panel/committee that would set the wages for Mayor and Council. (McCloud)
Short noted that Tucson created citizen panel for this purpose.
- Choosing a dollar amount would require going back to the voters each time to get it increased.

Motion: Regenhardt/McCloud - to put in the charter an increase in pay for Mayor and City Council based on a percentage of what the Yuma County Supervisors are being paid and that pay would be 75% to the Mayor and 50% to Council. The motion FAILED by a 0-9 vote.

Discussion

- That percentage is too high. (Hengl/Polston)
- The Mayor's percentage should reflect the additional duties that position holds. (Clark)
- 35% Council; 65% Mayor (Hengl)
- 60% Mayor; 30% Council (Courtis)

Motion: Regenhardt/None - for a 60/30 salary increase based on the amount that County Supervisors currently make. FAILED due to lack of a second.

Discussion

- Do not want to use the word "increase" in the motion. (McCloud/Polston)
- Using language tying the Mayor and Council salaries to those of the Board of Supervisors salary would automatically bump the salaries whenever the legislature makes an increase. (McCloud/Hengl)
- Other officers referred to in this section refer to employees. (Hengl/Short)

Motion: Regenhardt/Polston – The Mayor shall receive compensation equal to 60% of the compensation provided to the Yuma County Supervisors and each Councilmember shall receive compensation equal to 30% of the compensation provided to the Yuma County Supervisors. 8-1 (Jennings Nay). This item will come back for discussion on the commencement date at the next meeting.

Discussion

- In regards to employee status, Federal Law trumps anything that is put into the Charter.
- **Short** opined that Mayor and Council are considered employees under federal guidelines.
- Putting language in the Charter that Mayor and Council are entitled to benefits would be duplicative as federal law and state law already contain these provisions. (Polston/Short)
- The money for the increase in Mayor and Council positions would come from the City's budget. (Jennings/Clark)
- **Jennings** would rather the money go towards Police and Fire.

Section 15 Creation, discontinuance of offices, boards and commissions.

There was no discussion or questions by the committee.

Section 16 Multiple compensation to councilmembers prohibited

Discussion

- There have been no challenges regarding this section. (Regenhardt/Short)
- Municipal Government refers to the City not the County. (Polston/Short)
- This section prohibits someone from being on Council and also drawing a salary from the City of Yuma. (Short)

Section 17 Conflict of Interest

Jennings questioned what A.R.S. § 38-503 referenced. **Short** explained they define conflict of interest as pecuniary or remote. It applies to both elected officials and employees and determines whether a conflict of interest exists. Those with a conflict of interest must file a conflict of interest form, a template of which was provided earlier. **Short** confirmed the Conflict of Interest extends to family members.

IV. **Absences of Committee Members**

There was no discussion regarding this item.

V. **Next Meeting Date/Time**

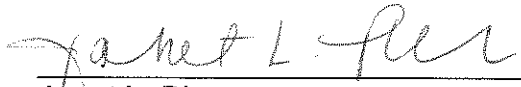
The next meeting of the Charter Review Committee is scheduled for November 26, 2019 at 5:00 p.m.

VI. **Future Agenda Items/Additional Information:**

The committee agreed to bring back Article III, Section 3, Money and Bonds for discussion.

There being no further business, **Chairman Clark** adjourned the meeting at 6:54 p.m.

Approved:



Janet L. Pierson
Deputy City Clerk



Russ Clark
Chairman of the Board