



CITY OF YUMA
2019 CHARTER REVIEW COMMITTEE
MONDAY, OCTOBER 21, 2019

MINUTES

Meeting called to order at 5:06 p.m.

Committee members present: Russ Clark, John Courtis, Doug Jennings, Russell McCloud (5:44 pm), Art Morales, Jeff Polston, Bill Regenhardt and Jennifer Tobin (5:20 pm)

Committee members absent: Barbara Hengl and Gel Lemmon

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

I. **Approval of Meeting Minutes**

A motion was made by Bill Regenhardt, with a second by Doug Jennings to approve the October 8, 2019 meeting minutes. The motion was approved by a 6-0 vote. (Russell McCloud, Jennifer Tobin, Barbara Hengl and Gel Lemmon either absent or not yet in attendance)

II. **Review of the Yuma City Charter, Articles I-VI:**

Chairman Clark asked staff for a listing of the sections from Articles I-III that the Committee had requested additional information on:

Article III, Section 3 Money and Bonds and Article III, Section 4 Tax

Courtis explained that Arizona Revised Statutes § 35-455 says bonds go to the voters and that the statutes do not differentiate between General Obligation Bonds and Revenue Bonds.

Short explained that the law does differentiate and cited to a series of judicial decisions starting with City of Phoenix v. Phoenix Civic Auditorium & Convention Center which carve out the legal distinction between Revenue Bonds and General Obligation Bonds. General Obligation Bonds are referenced in the statutes and are presented to the voters. The Arizona Supreme Court has made a distinction on Revenue Bonds as the money generated is used for a specific purpose and Revenue Bonds are not legally required to be presented to voters.

Jennings asked if the Charter should be amended since there currently is no distinction between General Obligation Bonds and Revenue Bonds. **Short** replied there is no need to make a change to the Charter the distinction is in the statewide law.

Short stated there are currently three Charter cities that differentiate the bonds and

have different reasons for doing so. Those Charter cities have different political appetites than the City of Yuma. However, with the exception of the introductory clause, the City of Yuma's charter language and the City of Phoenix's charter language regarding bond authority are identical.

Article III, Section 16 Special Sales Tax

Morales asked whether it was necessary to revisit the expiration of the Special sales tax that expires on June 30, 2024. **Short** replied that there is an opportunity to look at it here or it could be looked at in the future. The power to review and make a recommendation now, or instead pass on the issue, rests with the Charter Committee.

Courtis stated that the next Charter Review Committee would probably be beyond that sunset date. **Short** replied that it could be passed by a special election, as was done in 2009, or this committee could make a recommendation to Council to extend it. Either way prior to June 30, 2024, there would have to be an action by the voters to extend it past that date.

Regenhard opined that it should be left up to City Council to bring this back to the voters.

Polston stated there was also some discussion in Section 16 about the wording for the allocations and how once those minimums were met then it is up to the City Administrator or City Council to distribute the balance of those funds. **Simonton** concurred stating it was through the budget process that the distribution of the excess 2% funds takes place, and it is there that it is identified and for what purpose and is approved.

Polston asked if there were any suggestions to changing any of the distribution amounts listed. **Simonton** replied the funding was currently working and in few years the voters can vote on the distribution language presented at that time.

Article III, Section 13 Intergovernmental agreements

Short stated the question was how other charter cities handled intergovernmental agreements (IGAs) and whether they all go to Council. The answer is yes, IGAs are presented to City Council and most charter cities do it nearly identical to the City of Yuma. The statutes, along with fundamental government policy, dictate how you are allowed to enter into intergovernmental agreements which, when followed, offer immunities for the City. **Courtis** asked if stating that IGA's are *done by a vote of Council* needs to be in the Charter. **Short** replied that the language is in the statutes and if the statutes ever change we would then have to amend the Charter so leaving it as it is written is best.

Regenhardt asked if it was necessary to add the language *except as prohibited by the Constitution of the State or restricted by this Charter*. **Short** replied that he could not see anything else being added that would give the City more protection.

Polston asked about IGA's with entities in other states. **Short** replied that following the laws of the State of Arizona gives a good opportunity for a lawyer in Arizona to make that argument that Arizona law and the protections follow the IGA.

Chairman Clark asked if there were any more questions on Articles I, II or III.

Jennings stated he was not ready to bring up his question regarding loans at this time as he is still researching other charters and how they handle loans but wanted to bring that question up at the next meeting.

Courtis stated he agreed with Jennings and would also like to leave it open. **Chairman Clark** stated Article III, Section 3 *Money and Bonds* will be left open for discussion at the next meeting.

Chairman Clark recessed the meeting for the purpose of attending the Special City Council meeting regarding the announcement of the new City Administrator. The meeting recessed at 5:24 p.m.

Chairman Clark resumed the Charter Review Committee meeting at 5:45 p.m. All members and staff previously listed were in attendance.

A motion was made by **Morales**, seconded by **Courtis** to close Articles I and II with no changes. The motion carried by a unanimous vote of all present.

Moving on to Article IV, **Chairman Clark** stated that House Bill 2604 could potentially change some things.

Article IV Elections

Section 1 Permitted types of elections

Short stated that Section 1 is not affected by HB 2604. There was no discussion or questions by the committee.

Section 2 Qualifications of electors; registration

Short stated that Section 2 is not affected by HB 2604. There was no discussion or questions by the committee.

Section 3 Arrangement of names not to reveal source of candidacy or support of candidates

Short stated that Section 3 is not affected by HB 2604. There was no discussion or questions by the committee.

Section 4 Time of holding primary and general elections

Short, citing City of Tucson v. State, stated the courts have ruled that Charter cities are allowed to hold their elections in odd-numbered years. However, the legislature, through HB2604, has now added parameters which:

- Finds that low voter turnout constitutes sufficient factual support for requiring candidate and other elections to be held on certain specific consolidated dates.
- Determines political subdivisions shall hold elections on a statewide election date if its previous elections on a non-statewide election date resulted in a significant decrease in voter turnout in that political subdivision.
- Takes money away from counties so the City covers the entire cost of the election.

McCloud stated that his understanding of the bill is that the parameters are such that it is unlikely the required voter turnout percentage would be received and recommended that the verbiage be changed to state: "in every even numbered year".

Courtis added that a start date would have to be identified and City Council would have to add an extra year to their terms.

Short explained that ARS §16-204.02 extends the terms to the next even year.

Discussion

- Striking the first sentence and leaving the second sentence accomplishes what is needed. (Short)
- It may be necessary to also include a commencement date. (Courtis)
- Subsidizing an election would be expensive. (Short/McCloud/Courtis)
- There may be additional penalties for voter suppression. (Clark/Short)
- Other sections of the Charter will also be affected by this law. (Short)
- This new law is currently in effect and was done during the 53rd legislature in 2018. (Polston/Short)
- Voter turnout in this 2019 election is what sets the parameters for this new legislation. (Polston/Short)
- The legislature, by design, made it very difficult to achieve the parameters in the legislation. (Short)
- Holding a 2021 City election would put the City in violation of this legislation. (McCloud/Short)
- A councilmembers term cannot be reduced by a year but you can statutorily add a year to their term. (Courtis/Short/Clark)

Polston moved to table Article IV, Section 4 to allow Counsel to provide proposed language.

Section 5 Majority to elect in primary election

Short stated that Section 5 is not affected by HB 2604. **Jennings** asked if we could change the language to clarify the 50% plus 1 vote. **Chairman Clark** stated there was no reason to change it since it has been working.

McCloud questioned whether there is a way, with a single motion, to replace all pronouns with a gender neutral title. **Short** will do some research and get back to the committee. **Morales** questioned if then all City documents would need review for gender neutral language and Short replied he would also review unintended consequences.

Tobin stated there are places that have revised decades old codes and statutes to remove gender bias and the information is on the internet.

Section 6 Nomination for primary election

Short stated that the nomination period for primary elections has been shorted by 30-days. **Short** would like to bring proposed language back to the committee at the next meeting.

Section 7 Special Elections

Short stated that Section 1 is not affected by HB 2604.

Tobin asked if there was a need to update the language: “. . . publication in an official newspaper . . .” **Short** responded that this language is in accordance with state law.

Courtis asked if this notice was advertised as a display ad or a legal notice because legal notices are published on the newspaper’s website but display ads are not. **Short** will bring that information back at the next meeting.

Section 8 Early Voting

Polston asked if any voting issues that arise should be directed to the Yuma County Recorder.

Courtis replied and **Short** confirmed that we are protected by the laws of the State of Arizona.

Section 9 Canvassing returns and declaring of election results

There was no discussion or questions by the committee.

Section 10 Ballots for ordinances and charter amendments

Regenhardt asked for clarification, due to voter fatigue, how ballot measures and charter amendments are numbered on the ballot. **Short** replied that there is evidence of voter fatigue, but voting issues are in hierarchical order and local matters are at the end.

Section 11 Mechanical voting

There was no discussion or questions by the committee.

Section 12 Conduct of elections

There was no discussion or questions by the committee.

Section 13 Registration lists; cooperation with county

Courtis asked whether the word “may” should be replaced with “will”. **Short** replied no.

Chairman Clark stated that review of Article IV was concluded with the exception of revisiting Section 4 and Section 6.

Article V

Section 1 Initiative, Referendum and Recall of Elected Officials

Discussion on (a) *Initiative, referendum and recall*

- It is not necessary to wordsmith this language as it has been working.

(McCloud/Short)

- The required number of signatures is based on the total number of ballots cast versus votes cast. (Courtis/Short)

Courtis was concerned with the language used to calculate the number of required signatures for recall of elected officials and thought it could be left up to interpretation and could cause the City a lawsuit in the future. **Short** will take a look at the language and bring information back for discussion by the Committee.

Polston asked if the City pays the entire bill for recall elections. **Short** replied yes.

Chairman Clark asked the board if they wanted to continue on to Section VI and asked Short if we were on schedule. **Short** replied the committee was ahead of schedule when comparing to the last Charter Review Committee.

Polston and **Simonton** recommended we start with Section VI at the next charter review committee meeting due to its length and content.

III. **Next Meeting Date/Time**

The next meeting of the Charter Review Committee is scheduled for November 12, 2019 at 5:00 p.m.

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

McCloud questioned whether it would be a better use of everyone's time to forego the reading of each section. Further, **McCloud** questioned why we were limiting ourselves to the review of particular articles. **Morales** responded that as a novice to the Charter Review Committee he appreciates the reading and discussion of each section so he can properly represent the community. **Chairman Clark** stated that previous committees have done the same thing.

Short advised the Committee that they are not limited to reviewing three Articles at a time. **Short** suggested listing Articles VI-XI on the next agenda.

Courtis requested that a topic that addressed absences by a committee member on the next meeting agenda.

There being no further business, **Chairman Clark** adjourned the meeting at 6:38 p.m.

Approved:

Janet L. Pierson
Deputy City Clerk

Russ Clark
Chairman of the Board