



CITY OF YUMA
2019 CHARTER REVIEW COMMITTEE
MONDAY, DECEMBER 10, 2019

MINUTES

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

Committee members present: Russ Clark, John Courtis, Barbara Hengl, Doug Jennings, Russell McCloud, Art Morales (left meeting at 5:44 pm), Jeff Polston and Jennifer Tobin

Committee members absent: Gel Lemmon and Bill Regenhardt

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

I. **Approval of Meeting Minutes**

A motion was made by **McCloud**, with a second by **Hengl** to approve the November 12, 2019 meeting minutes. The motion was approved by an 8-0 vote.

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

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

Article III, Section 3, Money and Bonds

Courtis stated he felt the language in Article III, Section 3 needed to be reworded to state that all bonds need to go to the voters based on a publication from the League of Arizona Cities and Towns regarding bonding.

Short responded that he was familiar with the publication and stated that the League's publication also differentiates between General Obligation Bonds, which are referenced in the statutes and go to qualified property holders, and Revenue Bonds, those whose payment must be paid from the revenue that is created, and are not legally required to be presented to the voters.

Discussion

- General Obligation bonds are referenced in the Arizona constitution and statutes and are presented to qualified property holders. (Short)
- Revenue Bonds are paid from the revenue that is created. (Short)
- It is not necessary to specify the difference between the two bonds types in the Charter, the law has already classified the differences. (Courtis/Short)
- There is no ambiguity in the charter language that states: ". . .the general laws of the Constitution and statutes of the State of Arizona in force at the time of such proceedings are taken shall be observed and followed." (McCloud)
- It is important to limit what is taken to the voters in the Charter review. (McCloud)
- There is nothing more important than exercising the right as a citizen to not be indebted without the express vote of the citizens. (Courtis)

- Without the verbiage in the Charter one would think they do not have to go to the voters. (Courtis)
- Bond companies would not bond without the proper statutory requirements being met for General Obligation bonds or for Revenue Bonds. (Short)
- The City of Yuma's Charter language in this regard is almost identical to the City of Phoenix's bond language. (Short)
- General Obligation bonds are presented to qualified property owners by statute and by the Arizona Constitution. (Short)

Jennings also reported an issue with the language in Article III, Section 3, specifically the wording: *"the City of Yuma shall possess the power to borrow money for any of the purposes which the City is authorized to provide, and for carrying out any of the powers which the City is authorized to enjoy and exercise, and to issue bonds therefor; . . ."*

Jennings differentiated his issue from Courtis as being about borrowing money versus it being about bonds.

Discussion

- There is a confine or a limitation by statute regarding the borrowing of money. (Clark)
- The words "borrowing" and "bonds" are intertwined in this section. (Short)
- For the purposes of the Charter borrowing money means bonds. (Short)

Motion (Courtis/Jennings): to approve the changes for Article III of the City Charter.
Voice Vote: **approved** 8-0.

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

Courtis reported that he had issues with the distinction between ballots cast for Mayor (used to compute the required number of signatures for initiative or referendum) and ballots cast for all candidates (used to compute the required number of signatures for recall) and how the distinction could skew the numbers and open the City to legal challenges. However, **Courtis** stated he was now comfortable with the current language with the Charter Review Committee's recommendation to change City elections to even numbered year elections in 2022.

Short clarified there is a distinction in the statutes with referendum and initiative grouped together under A.R.S. §19-141 et seq. and recall in A.R.S. §19-201 et seq. The Charter language matches the statutory mandates and constitutional provisions and from a legal position should even the playing field because the Mayor and some council seats will be elected in the same election as the Governor and the rest being elected in the same election as the President. Both elections should have similar turnout.

Motion (Jennings/Hengl): to accept the changes for Article V and we can close it out.

McCloud questioned what changes were made.

Short stated there were changes to Article IV but there were no changes to Article V.

Amended Motion (Jennings/Hengl): to close Article V. Voice vote: **approved** 8-0

McCloud then questioned what changes were made in Article III. **Short** replied that there were no changes noted in Article III.

Polston asked if there would be an opportunity at the end to review all of the recommended changes. **Short** replied that a spreadsheet is being kept with all the changes and under Section VI the group will be asked if they want that added as an agenda item in the future.

Amended Motion (McCloud/Polston): to close Article III without changes. Voice vote: **approved** 8-0.

Article VI, Section 3(c), City Attorney

Short stated the questions were whether or not any legal issues were created by having the City Attorney working at the pleasure of the Mayor and City Council instead of the City Administrator and whether a date certain needed to be included. **Short** reported that he and City Attorney Richard Files have looked it over and find no legal issues with the wording and that no date needs to be included because it is valid 30 days after it is approved by the voters. **Short** read the section with the changes as follows:

(c) *City attorney.* ~~From on and after January 1, 1971, t~~There shall be a city attorney who shall be appointed and ~~his~~ **their** 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** ~~The city attorney~~ 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**.

Tobin questioned the word “they” in the third sentence as it is plural and does not seem to fit with the rest of the paragraph. **Short** responded that that was the way the Committee previously passed it but stated it was on tonight’s agenda and is open to wordsmith if the committee wanted to make a change.

Motion (Jennings/Tobin): to change the word “they” to “The city attorney”. Voice vote: **approved** 8-0.

Article VI, Section 14(a), (Mayor/Council compensation)

McCloud asked staff to read what was previously passed and **Short** read the following:

~~From and after January 1, 1998, t~~The Mayor shall receive compensation of \$12,000 a year **equal to 60% of the compensation provided to the Yuma County Supervisors** and each Councilmember shall receive compensation of ~~\$3,600 a year~~ **equal to 30% of the compensation provided to the Yuma County Supervisors.**

Short stated the open legal question was how do you affix someone's compensation change when there are staggered terms. **Short** reported that the Arizona Constitution, Article 4, Part 2, §17 allows salary increases for positions with staggered terms as well as Attorney General opinion I90-094 which confirms that the Arizona constitutional provision was adopted "for the express purpose of insuring that all members of a court, board, or commission composed of more than one person, who were doing in substance, the same work, should at all times receive the same salaries." **Short** also cited case law that that would require any salary increases for Mayor and Council to be implemented after the next general election.

Motion (McCloud/Courtis): to close Article VI. Voice vote: **approved** 8-0

III. **Review of Yuma City Charter, Articles VII-XII:**

Article VII The City Council

Section 1. Powers of the city council.

There was no discussion or questions by the committee.

Section 2. The mayor.

- (a) There was no discussion or questions by the committee.
- (b) There was no discussion or questions by the committee.
- (c) **Jennings** stated he had an issue with this section and the wording ". . .and recommend for its consideration such matters as he may deem expedient." "He" referring to the mayor. **Jennings** continued stating that what the mayor might think is important or not important might be different for somebody else and that reference should be removed.

Discussion

- The Mayor is the leader/president and should provide direction. The Mayor is different from the rest of the City Council and there is a distinction. (McCloud)
- The Mayor should report on all things not just what he feels is important that way everyone is on the same page. (Jennings)
- The Mayor, as the executive of the City, should be able to move on issues and the language is fine. (Courtis)
- The Mayor annually provides a State of the City Address as well as may occasionally request that items be placed on the agenda. There is a section on the City Council agenda where City Council can also request items be placed on a future City Council agenda. (Clark/Short)
- Some cities vote for City Council and then elect a Mayor from within those ranks. In the City of Yuma, we get to democratically vote for someone to represent us in that position and if you don't like what that person is doing you have the opportunity to vote them out. (Polston)
- You have to trust in that executive that they are going to do what is right and if they don't you vote them out. (Polston)
- The intention is to only do housekeeping with gender neutral pronouns in areas that the committee has voted to make a change to. (Tobin/Clark/Polston)

Morales left the meeting at 5:44 p.m.

- (d) There was no discussion or questions by the committee.
- (e) **Polston** questioned whether, during normal times, the City Administrator is over the Chief of Police to which **Short** replied yes. **Short** clarified that this section is almost verbatim with A.R.S. § 26-311 which, in times of great danger, gives the Mayor the power by proclamation to take command of the police and govern the city. The Mayor triggered this section during the border crises when the federal government began releasing immigrants into Yuma.

Section 3. Meetings

There was no discussion or questions by the committee

Section 4. Quorum

Polston questioned whether majority implied simple majority. **Short** replied that is correct and that later in the Charter as well as in the statutes there will be times when a super majority is required for certain actions. **Short** stated if there is no qualifier as a super majority then it is a majority of the City Council. **McCloud** asked if a super majority is 5 and Short responded it is now with recent changes to other parts of the Arizona Revised Statutes. Before those changes, it was rounded up to 6 members of City Council.

Section 5 Rules

There was no discussion or questions by the committee

Section 6 City Council action

There was no discussion or questions by the committee on Section 6 (a)-(e) and (g).

(f)

Polston questioned whether “five days” needed to be clarified to state business days and whether or not it includes holidays. **Short** replied it was not necessary to make a change and clarified that ordinances are not effective generally until 30 days after adoption.

The meeting recessed at 5:59 p.m. to attend the Special City Council meeting.

The meeting resumed at 6:36 p.m. with the above-noted in attendance.

Jennings requested clarification on Section 6(g). **Short** stated that what that section is saying is there are certain statutes out there that say you must do these actions by ordinance but the Charter says even if these aren’t required by statute you will still do these actions by ordinance. **Short** explained that almost all of the actions listed are required by statute to be adopted by ordinance anyway.

Courtis questioned whether the \$5,000 figure in section 6(g)(10) needed adjustment. **Short** stated that it could be left at \$5,000 and further stated that that figure is still in the statewide procurement statutes which govern the way the City must purchase and will be discussed in a future Article.

Tobin requested clarification on Section 6(i). **Short** stated that it means that if you have an ordinance and you need to amend that ordinance that you can only do it by another ordinance.

Clark questioned and **Pierson** explained in Section 6(j) that the paper copy of Ordinances and Resolutions are permanent records but that they are also microfilmed. **McCloud** questioned what was the cause for the change in 1987 and **Short** replied that he was not sure but there are indications that it had something to do with the cable franchise. There is nothing definitive in the record.

There was no discussion or questions by the committee on Section 6 (h) and (k).

Section 7 Claims or demands against the city.

There was no discussion or questions by the committee.

Section 8 Codification

There was no discussion or questions by the committee.

Section 9 City council, councilmembers not to dictate removal, appointment of city administrators appointees.

Polston questioned whether or not this section needed to be changed since the Committee is recommending the City Attorney answer to the Mayor and City Council instead of to the City Administrator. **Short** stated it did not and that the recommendation would remove the City Administrator's power.

Section 10 City council power to investigate.

There was no discussion or questions by the committee.

Section 11 City employees managed through City administration.

Jennings questioned whether this was also affected by the suggestion that the City Attorney answer to the Mayor and Council instead of the City Administrator and **Short** replied he believes it is, but it would not need to be changed for the same reasons above.

Motion (Polston/Courtis): to accept Article VII as fully reviewed. Voice vote: **approved**
7-0 (Morales absent)

Article VIII City Administrator

Section 1 Appointments; qualifications and compensation

Jennings stated he had an issue with the wording "indefinite term". **Short** explained that it says *indefinite term* because you don't automatically lose your job and have to get rehired.

Section 2 Removal of City Administrator

McCloud stated he felt the language is archaic and there should be more latitude. **McCloud** felt the two months of severance pay could potentially deter an outstanding candidate due to the risk along with the expenses associated with accepting a job that would require a move. **Short** responded that 6-months to one year is industry standard.

Motion (McCloud/Jennings): On Article VIII, Section 2, to change the word “two” to “six” (months) and the word “his” to “the City Administrator’s” (removal). Voice vote: **approved** 7-0. (Morales absent)

Short read the new language for the record:

The City Administrator or Acting City Administrator may be removed with or without cause at any regular or special meeting by a vote of four or more members of the city council. In the event of his **the City Administrators** removal, the city council may at its discretion pay the city administrator any sum not exceeding ~~two~~ **six** months salary as severance pay.

Discussion:

- **Short** recommends leaving in the second paragraph where it talks about the *action of the city council shall be final and conclusive, and not subject to review by any court or agency.* (Clark/Courtis/Short)
- The term with or without cause simply means Arizona is a right to work state and employees can be terminated with cause (easier from a legal standpoint) or without cause. (Tobin/Clark/Short)

Motion (McCloud/Jennings): to consider adjourning for the day. The motion was withdrawn to continue with rest of the agenda.

Chairman Clark stated the Committee will start with Article VIII, Section 3 at the next Charter Review Committee meeting.

IV. **Absences of Committee Members:**

Short explained that City Council appointed 11 citizens to the Charter Review Committee. Prior to the first meeting of the Committee one member moved and one other member has not been able to participate. Instead of replacing, this late in the game, the member that has not been able to participate, **Short** is recommending to Mayor, Council and the City Administrator that the membership be kept at nine members with a quorum of six. This action will go before City Council at the December 18, 2019 Regular City Council meeting. There were no questions or concerns by the committee to this suggested Council action.

V. **Next Meeting Date/Time:**

The next meeting is scheduled for Tuesday, December 24th. The Committee agreed to cancel that meeting and continue with meeting on the second and fourth Tuesday of each month. The second Tuesday in January is the 14th and the committee agreed to meet next on January 14, 2020 at 5:00 p.m.

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

The Committee agreed to place on the next agenda Article VIII, Section 3 through Article XVII.

Short recommended, and the committee agreed, placing on future agendas an overview of the motions made to date.

There being no further business, **Chairman Clark** adjourned the meeting at 7:09 p.m.

Approved:

Janet L. Pierson
Deputy City Clerk

Russ Clark
Chairman of the Board