

HOME RULE CHARTER
OF THE CITY OF READING

as amended through April 24, 2012 Primary Election

Update in Progress

ANNOTATED

as of September 26, 2013

Containing the following:

Advisory Opinions 1 to 33

&

Investigations Nos. 1 to 31

AMENDMENT I

ENFORCEMENT of CHARTER

Section 1. Supremacy of Charter

a.) Governing law of the City. This Charter is the governing law of the City of Reading. No action or inaction by City Council, the Administration, or any other body created by this Charter shall be taken contrary to it,¹ whether individually or collectively, by ordinance, resolution, practice, executive order or decision, or any other means.²

The wording of the Charter, and acts pursuant to it, shall in all cases be strictly construed so as to effectuate its clear intent.

b.) Required orientation for elected officials. Every elected City official, at the commencement of his or her initial full term of office, shall be required to satisfactorily complete a basic orientation on Home Rule Law, the Charter, the Administrative Code, and the Ethics Code. Such course shall be directed and administered by the Charter Board, with assistance from the Pennsylvania DCED, the Bar Association, the Ethics Board, and any other resources the Charter Board deems appropriate. City Council shall provide sufficient funds to ensure a thorough and professional orientation.

¹ The Administrative Code may not waive, supersede, or modify Charter Provisions. *In re Purchasing Policy* (Adv. Op. 30, Nov. 14, 2012) at 2.

² City Council may not do indirectly what it cannot do directly. *In re Position of Community Development Director* (Adv. Op. 1, April 12, 2006) at 5.

[I]f a conflict were to be found [between a citizens' right to place an item on the agenda as found in the Charter, City Council President's prerogative to be consulted on the agenda, and City Council's power to amend the agenda, as found in the Administrative Code], it is clear that the citizens' right, as embodied in the Charter, would prevail over a provision of the Administrative Code. *In re Citizens' Petition to Place Item on City Council Agenda* (Adv. Op. 10, Aug. 22, 2008) at 2-3.

Bypassing the Charter's provision for citizen participation in placing items on City Council's agenda by ignoring or failing to give due consideration to the citizens' agenda item clearly would be a violation of the Charter. *In re Citizens' Petition to Place Item on City Council Agenda* (Adv. Op. 10, Aug. 22, 2008) at 3,4.

Any policy created which must be enforced by a person holding a City employment position that is not Charter or Administrative Code compliant, nor approved by ordinance, such policies, including the Media Policy, would be unenforceable. *In re Communications Director and Media and Communications Policy* (Adv. Op. 28, Feb. 22, 2012) at 6.

City Council may not pass an ordinance that conflicts with the Charter, or which impinges on the right of citizens of Reading from 'exercising the right of initiative, referendum and recall of elected officials as provided in [the] Charter.' *In re Local Regulations for Initiative and Referendum Process* (Adv. Op. 3, Nov. 22, 2006) at 5.

Any elected official who, in the determination of the Charter Board, completes this course within four months of the commencement of their initial full term will receive a bonus of \$250.00.

Section 2. Charter Board

a.) Composition. Within 3 months of the effective date of this Amendment City Council, by ordinance, shall establish an independent Charter Board consisting of 5 members who shall be City residents. Members shall be appointed by the Mayor with the consent of Council and shall hold 5 year terms, with the exception of 4 of the 5 original appointees who shall hold terms of 1, 2, 3, and 4 years respectively. No member of the Board may hold elective or appointed office under the City or any other government, any compensated position for the City, or hold any political office. Members may be removed for cause by a vote of a majority plus one of the total membership of Council.

b.) Jurisdiction. The Charter Board shall hear and decide all cases alleging violations³ of the Charter or Administrative Code, except that its jurisdiction shall not extend to any case arising under the Ethics Code or the Personnel Code. Insofar as permitted by state law the Board shall issue binding⁴ opinions, impose penalties and administrative fines, refer cases for prosecution, and conduct investigations⁵ on its own initiative⁶ and on referral or complaint. City Council shall appropriate sufficient funds to enable the Board to perform the duties assigned to it, including expenses for independent counsel and other necessary staff.

The Charter Board shall, in addition, be responsible on an ongoing basis for educating the public and members of City government as to their rights, duties, and obligations under the Charter and Administrative Code.

c.) Process. Within 12 months of the effective date of this Amendment City Council shall, by ordinance, adopt regulations implementing this Section. Such ordinance shall provide penalties and other enforcement mechanisms, as well as procedures by which the Charter Board shall operate in accordance with Local Agency and other applicable law.

³ The remedy, for a violation of retrospective matters that have already substantially occurred, is the filing of a Charter Board Complaint, not an advisory opinion. *In re Transfer of City Trash and Recycling Billing to Reading Area Water Authority* (Adv. Op. 32, Apr. 19, 2013) at 3.

⁴ The Charter Board must yield to, and abide and be bound by, the decisions of Pennsylvania's appellate courts or the final, unappealed orders of the courts of common pleas. *In re Investigation of Reading City Council* (Inv. No. 2-5, Jun. 15, 2007) at 3.

⁵ The Charter Board does not investigate Charter Board complaints. The Charter Board's Investigative Officer investigates and collects evidence regarding the complaint and may be contacted as needed by Councilors and others. *In re Purchasing Policy* (Adv. Op. 30, Nov. 14, 2013) at 4.

⁶ The Board may initiate a preliminary investigation as to the qualifications of office of any Councilmember and failure by City Council to enforce § 202 and § 206 of the Charter. *In re Investigation of Councilman Angel F. Figueroa* (Inv. No. 1, Feb. 25, 2006) at 8.

Any taxpayer, or any aggrieved person, may file a complaint with the Charter Board alleging a violation of the Charter or Administrative Code. The Board shall commence proceedings⁷ within 30 days of receipt of a complaint, but shall first attempt informal resolution either through the Administration or Council, as may be appropriate to the case.⁸ The Board shall issue a final decision no later than 8 months from receipt of a complaint.

From the time of its appointment until the first Monday of January, 2004 the Charter Board shall, with the assistance of the Transition Committee, draft its implementing ordinance and educate itself and others as to the Charter and Administrative Code, but it shall not receive, hear, or decide any cases within its jurisdiction.

Section 3. Costs of Charter Enforcement

Any person who prevails in any legal action against the City, its officers, or agents to enforce this Charter or the Administrative and Ethics Codes pursuant to it, shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

Section 4. Transition Committee and Effective Date

a.) Transition Committee. No later than the first Monday of January, 2003 there shall be established a Transition Committee of 11 members, 3 of who shall be appointed by the current Mayor, 3 by the current City Council, and 5 by the chairman of the Charter Review Commission from among its members. City Council shall provide appropriations for the reasonable expenses of the Transition Committee.

The Transition Committee shall: (1) educate the public and members of City government as to the changes required by this Amendment, (2) together with the Charter Board, prepare for the initial educational course for elected officials to be conducted in the beginning of year 2004, and (3) together with the Charter Board, draft the implementing ordinances required by Section 2 of this Amendment.

If Amendment II, entitled "Mayor and City Manager", is approved at the same time as this Amendment, the Transition Committees established by both Amendments shall be the same body.

b.) Effective date. The effective date of this Amendment shall be the first Monday of January, 2003, except for the provisions of this Section which shall become effective upon adoption.

⁷ The sole decision of an Investigative Officer to dismiss a Charter complaint at the preliminary investigation state, without a hearing, final order, or adjudication does not bar all future complaints against the same person regarding the same alleged Charter violation. *In re Investigation of Jatinder S. Khokhar* (Inv. No. 18 & 21, Jul. 21, 2008) at 8.

⁸ The investigative officer is limited to conducting investigations at the Charter Board's request and issuing findings of fact. The investigator does not have the authority to make conclusions of the law. *Reading City Counsel v. City of Reading Charter Board*, No. 11-14382 (Berks Co. CCP, Feb. 17, 2012) at 6.

PREAMBLE

We, the people of Reading, Berks County, in order to secure the fullest measure of city home rule and responsive, effective, and economical local self-government under the Constitution and laws of the Commonwealth of Pennsylvania, do hereby adopt this Charter as our instrument of government.

ARTICLE I

POWERS OF THE CITY

Section 101. The City.

The City shall be a municipality of the Commonwealth of Pennsylvania known as the City of Reading. Its boundaries shall remain as they are on the effective date of this Charter unless otherwise changed by law. The City shall be governed pursuant to this Charter.

Section 102. Grant of Power.

The City shall have the power to exercise any power or to perform any function not denied by the Constitution of the United States, by the Constitution of Pennsylvania, by act of the General Assembly of Pennsylvania, or by this Charter.

Section 103. Exercise of Power.

All powers of the City shall be exercised as provided by this Charter, or if the Charter makes no provision, as provided by ordinances or resolutions of the City Council.⁹

Section 104. Preservation of Powers of the People.

Powers reserved to the people by the Constitution of the United States and the Commonwealth of Pennsylvania shall be inviolate.

Section 105. Construction.

(a) Powers. The powers of the City under this Charter shall be construed liberally in favor of the City, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power granted in this Article.

(b) Severability. If any provision of this Charter shall be judged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Charter, but shall be limited in its effect and operation to the particular provision involved.

(c) Titles. In the interpretation of this Charter, the titles shall be used to explain and understand the purposes of any given Chapter or Section.

(d) Residency. All references to residency in this Charter shall mean legal residence or domicile (*Amendment approved by referendum at the November 2007 Municipal Election*).

⁹ [T]he Charter is limited by Pennsylvania law [e.g. 53 Pa.C.S. § 2926] as to what matters may and may not be legislated by the City. *In re City Residency Requirement for Union Employees* (Adv. Op. 2, May 25, 2006) at 2.

ARTICLE II

COUNCIL – THE LEGISLATIVE BRANCH

Section 201. Composition.

There shall be seven (7) members of council.¹⁰ Six (6) shall be nominated and elected by district and one (1), the president of council shall be nominated and elected at large by the qualified voters of the city.

Section 202. Eligibility.

Only qualified voters of the City who have resided continuously in the City one year prior to the date of the primary election for that office shall be eligible to hold the office of president of council. Only qualified voters¹¹ of the City who have resided in the district which they are to represent continuously one year prior to the date of the primary election for that office shall be eligible to hold the office of council member.¹²

The president of council must retain residency in the City during his or her term of office. District council members must retain residence in the district of the City from which they were elected, during their term of office.

Section 203. Election and Terms.

The regular election of council members shall be held on the General Municipal Election Day as established by the laws of the Commonwealth of Pennsylvania. The terms of Council Members shall begin at noon on the first Monday of January next following the municipal election and when the transition from the old to the new form of government is completed shall be for four (4) years.

In the year the Mayor is elected three (3) district council persons shall be elected. In the next municipal election the president of council and three (3) district council persons shall be elected.

¹⁰ The Charter does not define the role of City Council members as part-time or full-time. Nevertheless, there are indications (e.g. § 204, regarding nominal salaries) that City Council is not a full-time position. *In re Whether City Council is a part-time body?* (Adv. Op. 17, Nov. 5, 2009) at 1.

¹¹ A qualified voter can be nothing more or less than the constitutional mandate of PA Const. Art. 7, § 1. *In re Filling the Vacancy of Office of City Council President* (Adv. Op. 26 & 27, Dec. 29, 2011) at 6.

¹² Simply owning real estate in a voting district does not meet the residency requirement for eligibility for City Councilmember where the Councilmember actually resides outside of the voting district from which he was elected; Council members must continue to reside in the district from which they were elected during their term in office. *In re Investigation of Councilman Angel F. Figueroa* (Inv. No. 1, Nov. 28, 2005) at 3, 5.

Section 204. Compensation.

Each Council Member elected at the first election under this Charter shall receive a nominal annual salary in the amount of \$5,000.00. The president of council shall receive \$5,500.00. Council members shall receive no other benefits with the exception of reimbursement for legitimate expenses related to the office of council. Council may raise by ordinance the salary of council, but such ordinance will not take effect until the date of the commencement of the terms of council members elected at the next regular municipal election, provided that such election follows the adoption of such ordinance by at least six (6) months.

Section 205. Vacancies.

The office of Council Member shall become vacant upon death of the Member, resignation, removal from office in any manner authorized by law or forfeiture of office.

Section 206. Forfeiture of Office.

A Member of Council shall forfeit office if the Member:

- (a) Lacks at any time during the term of office any qualification for the office prescribed by this Charter or by law;
- (b) Violates any express prohibition of this Charter;¹³
- (c) Fails to attend three (3) consecutive regular meetings of the Council without being excused by Council; or
- (d) Is convicted of any crime classified as a misdemeanor of the second class or higher, under the laws of the Commonwealth of Pennsylvania or the United States, or be convicted of any comparable crime under the laws of any other state in the United States.

In all cases of forfeiture, the Member shall be entitled to notice and a hearing before Council in accordance with administrative procedures to be established by Council.

Section 207. Filling of Vacancies.

A vacancy¹⁴ in the Council shall be filled by a majority vote of the remaining members of Council.¹⁵ If the Council fails to act within thirty (30) days following the occurrence

¹³ Council must commence forfeiture proceedings against any Councilmember who fails to maintain eligibility for office, or who otherwise forfeits. *In re Investigation of Councilman Angel F. Figueroa* (Inv. No. 1, Feb. 25, 2006) at 7.

¹⁴ This section together with Charter § 202 provides that all persons who are qualified residents of the City are eligible to apply to fill a vacancy in the office of Council President. *In re Filling the Vacancy of Office of City Council President* (Adv. Op. 26 & 27, Dec. 29, 2011) at 6.

of the vacancy the Court of Common Pleas of Berks County shall, upon petition of three (3) members of Councilor ten (10) qualified voters of the City, fill the vacancy in such office by the appointment of a qualified resident of the City. In the case of a vacated district seat the person appointed to fill that seat either by Council itself or the Court of Common Pleas must be a resident of the district. The individual appointed will remain in office until the first Monday in January following the next municipal election. At such municipal election a qualified person shall be elected to serve from the first Monday of January following the election for the remainder of the term of the person originally elected to such office or, if such term would otherwise expire on the first Monday following for a new full term.

Section 208. General Powers and Duties.

All powers of the City not otherwise provided for in this Charter shall be exercised in a manner to be determined by Council. Council shall provide for the exercise and performance of any such other powers and duties in a manner consistent with the terms of this Charter.

Section 209. Prohibitions.

(a) No Council Member shall hold any compensated appointive City office or City employment during the term for which the Member was elected to Council.

(b) No Council Member shall serve as an elected official in any other office in the Commonwealth of Pennsylvania or political subdivision thereof.

(c) No Council Member shall hold any compensated appointive City office or City employment until one year after the expiration of the term for which the Member was elected to the Council.

(d) Except for the purpose of inquiry, the Council and its Members shall deal with the all departmental and bureau employees through the Mayor or the Managing Director.

(e) Neither the Council nor any of its Members shall in any manner dictate the appointment or removal of any City administrative offices or employees whom the Mayor or subordinates of the Mayor are empowered to appoint except as otherwise provided in this Charter.

(f) No Council Member shall serve as an employee of any municipal authority which is created solely or jointly by the City with one or more political subdivisions until one year after the expiration of the term for which the member was elected to Council.

¹⁵ There is no limitation placed on the phrase “remaining members of Council,” and without such limitation, it clearly means all remaining members of Council may vote to fill the vacancy for the office of Council President, even those members seeking to fill the vacancy. *In re Filling the Vacancy of Office of City Council President* (Adv. Op. 26 & 27, Dec. 29, 2011) at 6.

(g) Any Council Member who has a financial interest, direct or indirect, or by reason of ownership of stock in any corporation in any sale of land with the City or in any contract with the City, shall immediately make publicly known their interest and shall refrain from voting upon, or otherwise participating in the sale of such land or making of such contract. A statement of "Such interest shall be filled with the City Clerk."

Any Council Member who willfully conceals such interests shall be guilty of malfeasance in office.

Violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the City.

Section 210. Investigations.

Council shall have the power, by ordinance, to make or cause to be made, investigations, audits, or studies of the City and the conduct of any City department, office or agency, and for this purpose may retain professional and technical assistance, subpoena witnesses, administer oaths, take testimony, require the production of evidence, and provide funds for such investigation, audit, or study.

The subjects of such investigations, audit, or study shall be specifically stated in the authorizing ordinance.

Section 211. Removal Powers.

(a) Council shall have the power to remove from office for cause set forth in this section any person appointed to the office by Council. Malfeasance, committing a fraud upon the City or commission of any corrupt act or practice shall constitute grounds for removal.

(b) Council may at its discretion remove the City Solicitor if five (5) members of the City Council vote in favor of a motion to do so.

(c) Council shall have the power to remove any elected official or appointed Department Head from office if the Council finds such person guilty of malfeasance in office.

Section 212. Procedures.

(a) Rules. The Council shall determine its own rules and Order of Business.

(b) Meetings. Council shall hold a regular meeting at least twice each month in the evening on a day and place as the Council may prescribe by rule.

(c) Special Meetings. Special Meetings may be held on the call of the President of Councilor at least four (4) Members of Council at such time and place and under such conditions as the Council may prescribe by rule.

(d) Meetings Open to the Public. All meetings shall be open to the public, except executive sessions as authorized by law.¹⁶ The chambers shall be arranged in such a way as to have all Members of Council facing the public.

(e) Voting.¹⁷ All action shall be at a public session; shall require a majority full vote of Council, except in the case of a vote to override a veto which shall require an affirmative vote of five (5) members and in the case of passage of an ordinance which shall require a majority vote of Council as a whole unless otherwise specified in this charter; voting shall be by Roll Call vote, and the vote of each Member of the Council shall be entered in the Minutes of the Meeting.

(f) The Council shall provide for keeping of a Journal of its proceedings. The Journal shall be a public record, and shall be maintained in City Hall and a copy in the Reading Public Library and the Berks County Law Library.

Section 213. Citizens' Right to be Heard.

The Council must provide reasonable opportunity for interested Citizens and taxpayers to address the Council on matters of general or special concern. Citizens' right to be heard shall be the first order of business at all public meetings and before a vote on any Council business. The public shall be granted the opportunity to comment at Council meetings without time limitations, except when Council by a majority plus one (1) of the members present imposes a reasonable time limitation deemed necessary.

Section 214. Quorum.

A Quorum of Council shall consist of four (4) Council members.

¹⁶ The President of City Council has the sole authority and responsibility to call an executive session, and if necessary, on the advice of the City Solicitor. *In re Investigation of Vaughn Spencer, City Council President* (Inv. No. 29, Feb. 8, 2011) at 13.

As the Charter requires City Council to conduct executive sessions only "as authorized by law," i.e. in accordance with the Sunshine Act, City Council President's unauthorized calling and holding of an executive session that did not comply with the Sunshine Act, 65 Pa.C.S. § 701 *et seq.*, was a violation of Charter § 212(d). *In re Investigation of Vaughn Spencer, City Council President* (Inv. No. 29, Aug. 16, 2010) at 8-9, 13.

City of Reading Solicitor's advising of City Council President to call and hold an executive session that was not in compliance with the Sunshine Act's notice requirements was, itself, a violation of Charter § 212(d). Action and inaction may violate the Charter. *In re Investigation of Charles D. Younger, Esquire, Solicitor of the City of Reading* (Inv. No. 30, Aug. 16, 2010) at 8, 14

¹⁷ The City Council must take a valid vote as a body in order to act, and may only act as provided by the Charter, or other superseding laws or constitutions. *In re Transfer of City Trash and Recycling Billing to Reading Area Water Authority* (Adv. Op. 33, Apr. 19, 2013) at 2.

Section 215. Ordinances in General.

Council may legislate by passage of an ordinance.¹⁸ All ordinances introduced shall be kept in a place accessible to the public at all reasonable times. Final action on all ordinances shall take place during public meetings.

Section 216. Form of Ordinance.

Every ordinance shall have a title clearly expressing its subject and every ordinance shall contain only one subject.

Section 217. Procedures.

(a) The first reading of an ordinance may be introduced by any Member at any regular or special meeting of the Council without vote.

(b) After the first reading, the City Clerk shall distribute a copy of the proposed ordinance to each Council Member and to the Mayor and shall file and make available a reasonable number of copies in the office of the City Clerk.

Section 218. Final Passage of Ordinance Resolutions.

A minimum of fourteen (14) days must intervene between introduction and passage of an ordinance unless Council finds and declares a public emergency posing a sudden, clear and present danger of life or property.

Section 219. Effective Date of Legislation.

Every adopted ordinance except emergency legislation shall become effective at the expiration of thirty (30) days after passage by Council and approval by the Mayor, or repassage by Council over the Mayor's veto, or at a date specified therein, but not less than ten (10) days after adoption.

Section 220. Emergency Ordinance.

An emergency ordinance may be adopted to meet a public emergency posing a sudden, clear and present danger to life or property. An emergency ordinance shall be introduced in the form and manner prescribed for ordinance generally, except that it shall be plainly designated as an emergency ordinance and shall describe in clear and specific terms the nature of the emergency. Every emergency ordinance shall automatically stand repealed as of the 91st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance if the emergency still exists.

¹⁸ The City Council must approve an Option Agreement by a City ordinance. *In re Investigation of Reading City Council* (Inv. No. 2-5, Jun. 15, 2007) at 5.

Section 221. Submission to Mayor and Veto Power.

Before any ordinance takes effect it must first be submitted to the Mayor for approval. The Mayor shall sign the ordinance within ten (10) days if approved, but if not, shall return it to Council stating objections. Council shall at its next meeting, reconsider the ordinance and may pass it over the Mayor's veto by the affirmative vote of five (5) Members of City Council.

If the Mayor fails within ten (10) days after any ordinance is submitted to him to sign the ordinance and/or return it to Council, such ordinance shall be considered adopted at the expiration of the ten (10) days period.

The veto power of the Mayor shall not apply to ordinances adopted by initiative or referendum.

Section 222. Recording of Ordinances.

All ordinances shall be contained in permanent separate record books. The ordinance book and all other actions taken by Council at a public meeting shall be open and available for public inspection at normal business hours in the office of the City Clerk, and a copy in the Reading Public Library.

Section 223. Codification of Ordinances.

Within three (3) years after the effective date of this Charter, the Council shall provide for a codification with an index of ordinances of the City. No later than three (3) months after the close of each year, Council, with the assistance of the City's legal department, shall classify ordinances according to the division and subdivision of the Code for insertion in the Code during said year.

Section 224. Action by Resolution or Motion.

Nothing in the Article is intended to preclude Council from taking appropriate action by resolution or motion.

Section 225. City Clerk.

Within thirty (30) days of taking office, City Council shall appoint an officer of the City who shall have the title of City Clerk. The City Clerk¹⁹ shall give notice of Council meetings to its members and the public, take the minutes of all City Council meetings, keep the journal of its proceedings, shall have the power of a notary public, shall serve as secretary to the

¹⁹ The role of the City Clerk is strictly ministerial, non-discretionary, and limited to making facial examination of initiative and referendum petitions pursuant to § 1104. The City Clerk must always support the exercise of citizens' rights. *In re Investigation of Reading City Council* (Inv. No. 31, Apr. 25, 2011) at 12-14; *aff'd by Reading City Council v. City of Reading Charter Board*, No. 11-14382 (Berks Ct. Com. Pl. Feb. 17, 2012); *aff'd by Reading City Council v. City of Reading Charter Board*, No. 29 C.D. 2012 (Pa. Commw. Ct. Oct. 23, 2012).

Council and perform such other duties as are assigned by the administrative code, the Council, or state law.²⁰ The term of City Clerk shall be two (2) years with option to be re-appointed for successive terms. The City Clerk shall serve at the pleasure of Council.

²⁰ The City Clerk's role is ministerial in nature. "Ministerial" is defined as 'relating to or being an act done after ascertaining the existence of a specified state of facts in obedience to legal and especially statutory mandate without exercise of personal judgment or discretion.' *In re Proposed Ordinance for Initiative and Referendum Process* (Adv. Op. 5, March 6, 2007) at 4.

The City Clerk's review and certification of a citizen's petition to place item on City Council's agenda is not discretionary and must be strictly in accordance with the requirements for such a petition as stated in the Charter, [§ 1111]. *In re Citizens' Petition to Place Item on City Council Agenda* (Adv. Op. 10, Aug. 22, 2008) at 3.

ARTICLE III

EXECUTIVE BRANCH

Section 301. The Mayor.

The executive, administrative, and law enforcement powers of the City shall be vested in the Mayor. The Mayor shall control and be accountable for the executive branch of City government, as provided by this Charter.

Section 302. Election and Terms.

The election of the Mayor shall be held in municipal elections in the manner provided by law. The term of office of the Mayor shall be four years commencing the first Monday in January after the election.

Section 303. Eligibility.

The candidate for Mayor shall be a registered voter of the City who shall have resided in the City continuously for at least one year immediately preceding the primary election in which the Mayor seeks office. The Mayor shall continue to reside in the City throughout the term of office.

Section 304. Vacancy.

(a) If the office of the Mayor becomes vacant for any reason, Council shall appoint an interim Mayor who shall serve until the next Municipal Election.

(b) A vacancy in the office of Mayor shall be filled at the next Municipal Election, in the manner provided by law. The person elected shall hold the qualifications for the office of the Mayor and shall serve the remaining portion of the vacated term.

Section 305. Forfeiture of Office.

The Mayor shall forfeit that office if the Mayor:

(a) lacks at any time during term of office for which elected any qualification for the office prescribed by this Charter or by law;

(b) violates any express prohibition of the Charter; or

(c) is convicted of any crime classified as a misdemeanor of the second class or higher, under the laws of the Commonwealth of Pennsylvania or the United States, or be convicted of any comparable crime under the laws of any other state in the United States.

In all cases of forfeiture, the Mayor shall be entitled to notice and a hearing in accordance with the administrative procedures to be established by Council.

Section 306. Prohibitions.

- (a) The Mayor shall not hold any compensated appointive City office or City employment during the term of office for which the Mayor was elected.
- (b) The Mayor shall not serve as an elected official in any other office in the Commonwealth of Pennsylvania or political subdivision thereof.
- (c) The Mayor shall not hold any compensated appointed City office or City employment until one year after the expiration of the term for which the Mayor was elected.
- (d) The Mayor shall not serve as an employee of a municipal authority which is created solely or jointly by the City with one or more political subdivisions until one year after the expiration of the term for which the Mayor was elected.
- (e) If during his or her first term in office the Mayor wishes to run for another political office, he or she must resign his or her position as Mayor. After one complete term, the Mayor may run for another office without relinquishing his or her position as Mayor.
- (f) A Mayor who has a financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of land, shall immediately make known that interest to Council. A Mayor who willfully conceals any such interest shall be guilty of malfeasance in office. Violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the City.

Section 307. Compensation.

- (a) The Mayor shall receive an annual salary in the amount of \$55,000.00 until such amount is changed by City Council.
- (b) City Council may determine the annual salary of the Mayor by ordinance, but no ordinance changing such salary shall become effective until the date of commencement of the term of the Mayor elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six (6) months.

Section 308. Powers and Duties of the Mayor.

The Mayor shall have the following powers and duties:

- (a) Execute, enforce, and obey the ordinances of the City and laws of the Commonwealth of Pennsylvania and the United States of America.
- (b) Prepare and present a budget to City Council in accordance with the provisions of this Charter.

- (c) Inform City Council and the public each January of the financial and general condition of the City.
- (d) Provide Council with all information concerning finances and general conditions of the City as may be requested by Council.
- (e) Introduce proposed legislation to Council and make recommendations to City Council concerning the affairs of the City.
- (f) Be responsible for the hiring, with the approval of Council, of the City Managing Director.
- (g) Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by the Charter or by law.
- (h) Ensure that all laws, provisions of this Charter and acts of City Council, subject to enforcement by the Managing Director, are faithfully executed by the Managing Director.
- (i) Be responsible for the establishment and development of administrative policy to be implemented by the Managing Director.
- (j) Be present or represented at all public council meetings. The Mayor may participate in all public discussions but shall have no vote.
- (k) Execute all bonds, notes, contracts, and written obligations of the City.
- (l) Issue subpoenas and compulsory processes, under the official seal of the Mayor, for the attendance of such persons and the production of such books and records as deemed necessary by the Mayor, and seek enforcement of such subpoenas by the Court of Common Pleas of Berks County.
- (m) Unless otherwise provided, be responsible for the employment of personnel necessary for the effective operation of City Government.
- (n) Perform such other duties and exercise such other powers as stated in this Charter, by law, or ordinance.

Section 309. Appointment by the Mayor.

The Mayor shall appoint:

- (a) One City Solicitor. Any person so appointed shall hold offices unless removed during the term for which the Mayor is elected and until a successor is appointed and qualified. Four affirmative votes of Council shall be necessary for confirmation.

(b) All members of Boards, Authorities and Commissions, over which he has the power to appoint. Four affirmative votes of Council shall be necessary for confirmation.²¹

Section 310. Removals by Mayor.

The Mayor may remove from office anyone appointed pursuant to § 309(b), unless otherwise provided by law.

Section 311. Managing Director.

The Mayor pursuant to the provisions of this Charter shall appoint a full-time officer of the City who shall have the title of Managing Director and who shall receive compensation comparable to that received by a person in a position of similar responsibilities.

Section 312. Deputy Mayor.

In the event of the Mayor's temporary absence from the City, or temporary disability, the Managing Director shall act as Deputy Mayor. The Deputy Mayor shall exercise all the duties of the Mayor, except the power of appointment or removal from office.

²¹ City Council is without power to remove the Director of Community Development from his position, as such power rests only with the Mayor. *In re Position of Community Development Director* (Adv. Op. 1, April 12, 2006) at 7.

ARTICLE IV

MANAGING DIRECTOR

Section 401. Appointment; Qualification; Compensation.

(a) Within ninety (90) days of taking office, the Mayor, with the approval of City Council, shall appoint a Managing Director for an indefinite term,²² subject to at least a biennial review, and fix the Managing Director's compensation. The Managing Director need not be a resident of the City at the time of appointment, but after appointment shall reside in the City. The Managing Director shall establish such City residency within twelve (12) months of being appointed.

(b) Any candidate for Managing Director shall:

(1) have a Master's degree in public administration, business administration, or its equivalent and have at least three (3) years experience at an executive or administrative level; or

(2) have a Bachelors [*sic*] degree in public administration, or its equivalent, and have at least five (5) years of experience at an executive or administrative level.

(c) City Council may, by ordinance, establish additional qualifications for the position of Managing Director, prior to advertisement for the hiring of the Managing Director.

(d) In the event that the position of Managing Director cannot be filled by the Mayor, the Mayor may appoint²³ a Temporary Managing Director²⁴ for a period of time not to exceed ninety (90) days. During this period of time, the Mayor shall continue to use all available means to fill the position.²⁵

(e) In the event that Mayor has not filled the position of Managing Director within one hundred eighty (180) days of taking office, City Council shall, within ninety (90)

²² [T]he indefinite term contemplated by Section 401(a) does not apply to a Temporary Managing Director. *In re Charter Art. IV, Relating to the Managing Director* (Adv. Op. 22, Nov. 18, 2010) at 5.

²³ City Council approval is not needed for the Mayor to appoint a Temporary Managing Director. *In re Charter Art. IV, Relating to the Managing Director* (Adv. Op. 22, Nov. 18, 2010) at 5.

²⁴ The appointment of a Temporary Managing Director does not constitute "filling the position" of Managing Director. *In re Charter Art. IV, Relating to the Managing Director* (Adv. Op. 22, Nov. 18, 2010) at 5.

²⁵ Under Charter § 401(a) and (d), the total period of time in which the Mayor has to hire a Managing Director is 180 days, and in the situation where the Mayor is filling a vacancy of that position, the 180 day period begins on the date the vacancy arises. *In re Charter Art. IV, Concerning the Timing of the Appointment of Managing Director Upon Vacancy* (Adv. Op. 21, Nov 9, 2010) at 3.

days thereafter, hire a Managing Director.²⁶ Any person hired by City Council shall hold the qualifications for said position prescribed by this Charter. The Mayor shall not have the power of veto over any candidate hired by City Council in accordance with the provisions of this Charter.²⁷

Section 402. Approval by Council.

(a) City Council approval²⁸ shall be necessary for the hiring of the Managing Director appointed by the Mayor. Such approval shall be made within thirty (30) days from the date of the appointment. If no action is taken by City Council within such period, the approval of the hiring of the candidate shall be automatic.

Section 403. Vacancy.

(a) If the position of Managing Director becomes vacant at any time, the provisions of Section 401 shall apply to the hiring of a replacement.²⁹

Section 404. Removal.

(a) The Managing Director may be removed from office by the Mayor at any time, without cause.

(b) At least fifteen (15) days prior to the removal from office, the Mayor shall notify the Managing Director and City Council in writing of such removal.

(c) Council may, by ordinance, remove the Managing Director from office for failure to hold the qualifications set forth in Section 401 or for violation of any of the prohibitions set forth in Section 405.

²⁶ After the 180 day period calculated under Charter § 401(a) and (d) expires, City Council shall, within 90 days thereafter, hire a Managing Director, including in the situation where there exists a vacancy of the position of Managing Director. *In re Charter Art. IV, Concerning the Timing of the Appointment of Managing Director Upon Vacancy* (Adv. Op. 21, Nov. 9, 2010) at 3.

City Council is not precluded from proceeding under Section 401(e) to hire a Managing Director, even when a Temporary Managing Director is appointed. *In re Charter Art. IV, Relating to the Managing Director* (Adv. Op. 22, Nov. 18, 2010) at 5.

²⁷ [T]here is no Charter provision allowing the authority to appoint the Managing Director to revert from City Council to the Mayor after the 270 day in period has expired without appointment by City Council. *In re Charter Art. IV, Relating to the Managing Director* (Adv. Op. 22, Nov. 18, 2010) at 6.

²⁸ City Council approval is not needed for the Mayor to appoint a Temporary Managing Director appointed in accordance with Article IV of the Charter, specifically, Section 401(d). *In re Charter Art. IV, Relating to the Managing Director* (Adv. Op. 22, Nov. 18, 2010) at 5.

²⁹ [W]here a vacancy in the position of Managing Director exists, the 90 day limitation on the term of a Temporary Managing Director stated in Section 401(d) continues to apply under Section 403. The maximum period of the appointment of a Temporary Managing Director is 90 days. *In re Charter Art. IV, Relating to the Managing Director* (Adv. Op. 22, Nov. 18, 2010) at 2-4, 7.

Section 405. Prohibitions.

(a) The Managing Director shall devote full time to the office; shall hold no elective public office; shall hold no other City office or City employment for which any compensation is paid or received; and shall hold no office in any political party or organization.

(b) A Managing Director who has a financial interest, direct or indirect, or by reason of ownership of stock, in any corporation in any sale of land with the City or, in any contract with the City, shall immediately make known that interest to Council. A Managing Director who willfully conceals such an interest shall be guilty of malfeasance in office. Violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the City.

(c) The Managing Director shall refrain from participating in the debate and discussion of policy by City Council unless authorized by the Mayor, but may respond to inquiries on any matter under consideration.

Section 406. Powers and Duties.

The Managing Director shall be the chief administrative officer of the City, responsible to the Mayor for the administration of all City affairs placed in the Managing Director's charge pursuant to this Charter. In addition to other powers and duties prescribed by this Charter, the Managing Director shall:

- (1) Execute and enforce the provisions of this Charter and all ordinances, resolutions, and motions of City Council;
- (2) Direct and supervise the administration of all departments, offices, and agencies of the City, except as otherwise provided by this Charter or by law;
- (3) Appoint, suspend, or remove any City employee, except as otherwise provided by this Charter or by law;
- (4) Prepare and submit to the Mayor on an annual basis a five-year financial plan and a budget.³⁰
- (5) Supervise and direct the negotiation and administration of any collective bargaining agreements with City employees;
- (6) Submit to the Mayor a complete report of the finances and administrative activities of the City within 30 days of the end of each fiscal year;

³⁰ Although Charter § 406(4) states that the five year financial plan is to be submitted directly to the Mayor, the contents of the plan certainly are public records and must be available to the citizens of the City. *In re Investigation of Ryan Hottenstein* (Inv. No. 26, Nov. 10, 2009) at 4.

(7) Assure that the laws of the Commonwealth relating to the affairs and government of the City are faithfully executed and enforced;

(8) Present to the Mayor from time to time such information concerning the business and affairs of the City³¹ as the Managing Director may deem necessary, or as City Council by motion may request; and recommend such measures for legislative action as are believed to be in the best interests of the City; and

(9) Perform such other duties as are specified in this Charter or may be required by the Mayor or City Council.

³¹ Only the Managing Director may waive the RFP process in retention of professional services for the City. *In Re Purchasing Policy* (Adv. Op. 30, Nov. 14, 2012) at 3.

ARTICLE V
CITY AUDITOR

Section 501. Election and Terms.

The election of the City Auditor shall be held in municipal elections in the manner provided by law. The term of office of the City Auditor shall be four years commencing the first Monday in January after the election.

Section 502. Eligibility.

The candidate for City Auditor shall be a registered voter of the City who shall have resided in the City continuously for at least one year immediately preceding the primary election in which the City Auditor seeks office. The City Auditor shall continue to reside in the City throughout the term of office. In addition, the City Auditor must have a Bachelors Degree in Business Administration, Municipal Government, Accounting, Management or a related field **and be a CPA with a minimum of five (5) years experience in business administration, accounting, management or municipal government.** (*Approved by referendum at the April 24, 2012 Primary Election*). The City Auditor elected at the first election under this Charter shall receive an annual salary of \$40,000.00. ~~All future increases in the salary of the City Auditor shall be related to the salary of the Mayor; when the Mayor's salary is increased the salary of the City Auditor shall automatically be increased by the same amount.~~ (*The link between the Mayor and Auditor salary was eliminated via approval of the referendum question at the November 2008 General Election*)

Section 503. Responsibilities.

The City Auditor shall:

- (a) Have financial oversight of City finances, independent of the Executive and Legislative branches and shall review all expenditures of the Mayor, City Council, and City Boards, Commissions and Agencies;
- (b) Review the Annual Budget before approval by City Council, and make nonbinding recommendations to City Council for consideration;
- (c) Be present or represented at all Council meetings;
- (d) Perform specific audits of City finances from time to time as determined by the City Auditor or City Council;
- (e) Report to Council on the progress of the implementation of any recommendations as found in the Annual Audit and Management Letter;
- (f) Assist in all audits conducted by independent auditors;

- (g) Assure the accurate and timely completion and submittal of audit reports along with appropriate follow-up recommendations;
- (h) Furnish to City Council, the Mayor, the Managing Director, and others, as appropriate, periodic reports of audits conducted;
- (i) Interpret and communicate audit policies and procedures to all City management and staff;
- (j) Direct internal financial security and loss investigation activities;
- (k) Prepare an annual budget for the office of City Auditor and operate the office of City Auditor within approved budget limitations; and
- (l) Issue and subpoenas in order to fulfill the duties and responsibilities of the office of City Auditor.

Section 504. Forfeiture.

The City Auditor shall forfeiture that office if the City Auditor:

- (a) lacks at any time during term of office for which elected any qualification for the office prescribed by this Charter or by law;
- (b) violates any express prohibition of the Charter; or
- (c) is convicted of any crime classified as a misdemeanor of the second class or higher, under the laws of the Commonwealth of Pennsylvania or the United States, or be convicted of any comparable crime under the laws of any other state in the United States. In all cases of forfeiture, the City Auditor shall be entitled to notice and a hearing in accordance with the administrative procedures to be established by Council.

Section 505. Vacancy.

- (a) If the office of the City Auditor becomes vacant for any reason, Council shall appoint and interim City Auditor who shall serve until the next Municipal Election.
- (b) A vacancy in the office of City Auditor shall be filled at the next Municipal Election, in the manner provided by law. The person elected shall hold the qualifications for the office of the City Auditor and shall serve the remaining portion of the vacated term.

Section 506. Prohibitions.

(a) The City Auditor shall not hold any compensated appointive City office or City employment during the term of office for which the City Auditor was elected.

(b) The City Auditor shall not serve as an elected official in any other office in the Commonwealth of Pennsylvania or political subdivision thereof.

(c) The City Auditor shall not hold any compensated appointed City office or City employment until one year after the expiration of the term for which the City Auditor was elected.

(d) The City Auditor shall not serve as an employee of a municipal authority which is created solely or jointly by the City with one or more political subdivisions until one year after the expiration of the term for which the City Auditor was elected.

(e) A City Auditor who has a financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any sale of land with the City or in any contract with the City, shall immediately make known that interest to Council. A City Auditor who willfully conceals any such interest shall be guilty of malfeasance in office. Violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the City.

ARTICLE VI

ADMINISTRATION

Section 601. Administrative Code.

As a part of the codified ordinances, City Council shall enact and from time to time may amend an Administrative Code which shall set forth in detail the organization and administrative structure and procedures of the City, including:

- (1) a specific enumeration of departments, offices, and agencies and the division of powers and responsibilities among them;
- (2) the internal procedures for the operation of the departments, offices, and agencies; and
- (3) any other rules, regulations, and procedures reasonably appropriate for efficient administration.

Section 602. Common Administrative Procedures.

City Council shall have the power by resolution to adopt uniform administrative procedures, regulations, and forms to be followed by all elected officials, departments, offices, and agencies.

Section 603. Heads of Departments, Offices, and Agencies.

(a) Appointment. Except as otherwise provided by this Charter, the Mayor shall appoint and remove the head of any department, office and agency.³² An appointment shall not be effective unless City Council by resolution confirms it or fails to reject it within 60 days after the appointment. The appointee shall serve unless rejected by City Council until removal from office, whichever is sooner.

(b) Removal. The Mayor shall have the power at any time to remove the head of any department, office or agency immediately under the Managing Director's direction and supervision, but the Mayor shall within 14 days notify in writing City Council of the removal and the reason for it.

³² Broad terms like "department, office, or agency" are not formal directive titles, but descriptive terms that illustrate grouping of Reading's Administration. "Heads" of "departments, offices, or agencies" must comply with the residency requirement of Charter § 706. *In re Investigation of Jatinder S. Khokhar* (Inv. No. 18 & 21, Jul. 21, 2008) at 10; *Khokhar v. The Charter Board of the City of Reading*, No. 08-11100 (Berks Ct. Com. Pl., Sept. 9, 2009); *Khokhar v. The Charter Board of the City of Reading*, No. 1398 C.D. 2009 (Pa. Commw. Ct. Feb. 8, 2010).

The Chief of Police is [the head of a department, office and agency] and a conversion to Civil Service status during the term of service as Chief would cripple the Mayor's Charter mandated powers of appointment and removal, if not totally impede them. *In re Chief of Police and Civil Service Status*, (Adv. Op. 29, July 17, 2012) at 3.

Section 604. Qualifications.

The heads of departments, offices, and agencies shall be selected solely on the basis of education, training, experience; and professional, executive, and administrative abilities; and such other qualifications as may be set forth in this Charter. (See § 706).

Section 605. Prohibitions.

(a) The Department Head shall devote full time to the office; shall hold no elective public office; shall hold no other City office or City employment for which any compensation is paid or received; shall hold no office in any political party or organization.

(b) A Department Head who has a financial interest, direct or indirect, or by reason of ownership of stock in any corporation in any sale of land with the City or, in any contract with the City, shall immediately make known that interest to Council. A Department Head who willfully conceals such an interest shall be guilty of malfeasance in office. Violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the City.

(c) The Department Head shall refrain from participating in the debate and discussion of policy by City Council unless authorized by the Mayor, but may respond to inquiries on any matter under consideration.

Section 606. Department of Public Works/City Engineer.

(a) The Department of Public Works is mandated by this Charter. The Mayor shall appoint and fix the compensation of the head of the Department of Public Works/City Engineer. He shall be a professional civil engineer registered in Pennsylvania, and shall perform the duties required through the Administrative Code or other action, or an may be required of a City Engineer by general law.

(b) The Department of Public Works shall include an environmentalist who shall be appointed by the head of the Department of Public Works whose duties shall include education, lobbying, research, and public liaison. The environmentalist shall have sufficient technical qualifications for a position of this type.

Section 607. Department of Administrative Services.

There shall be a Department of Administrative Services. A Director of Administrative Services shall be appointed by the Mayor and approved by the City Council (as per Section 603). As a minimum requirement, the Director of Administrative Services shall have a Bachelor's degree in public administration, finance, economics, political science or other related field and a minimum of eight (8) years related experience. The Director of Administrative Services shall be responsible for the administration of the City of Reading personnel and finance departments and their functions as set forth in the Administrative Code. *Approved by referendum to combine the Departments of Finance and Human Resources on May 2010.*

ARTICLE VII
PERSONNEL SYSTEM

Section 701. Job Discrimination.

No individual shall be discriminated against with respect to any position or office because of age, gender, race, creed, handicap, color, religion, ancestry, veterans status, national origin, sexual orientation, political opinions or affiliations, or lawful activity in any employee organization. The City shall adopt adequate and reasonable affirmative action policies in accordance with Pennsylvania law.

Section 702. Personnel System and Personnel Code.

Each elected official, officer, and employee of the City shall be a member of either the career or exempt service.

- (a) The exempt service shall consist of:³³
 - (i) All elected officials;
 - (ii) The Managing Director and City Solicitor;
 - (iii) The heads of departments, offices, and agencies immediately under the direction and supervision of the Managing Director;³⁴
 - (iv) One clerk or secretary for each of the full-time elected City officials and the heads of each City department;³⁵
 - (v) The City Clerk;
 - (vi) The members of authorities, boards, and commissions;
 - (vii) Temporary, part-time, or seasonal employees;
- (b) All other officers and employees shall be members of the career service.³⁶

³³ Charter § 702(a) merely defines which City personnel are part of the exempt service and does not require that those personnel or positions exist. *In re Application of Charter Section 702(a)(4) to City Auditor* (Adv. Op. 19, Nov. 20, 2009) at 2-3.

³⁴ The Charter places the Chief of Police, by definition, in the exempt category. *In re Chief of Police and Civil Service Status*, (Adv. Op. 29, July 17, 2012) at 3.

³⁵ Charter § 702(a)(4) does not require the budgeting for, staffing, or funding of one clerk or secretary for use by the City Auditor. *In re Application of Charter Section 702(a)(4) to City Auditor* (Adv. Op. 19, Nov. 20, 2009) at 3.

(c) Merit Personnel System. There shall be a merit personnel system, the purpose of which shall be to require that all personnel decisions be made solely on the basis of merit and qualifications, applicable to all employees. Any appointment, promotion, transfer, demotion, suspension, dismissal, or disciplinary action shall be carried out in accordance with the merit personnel system.

Section 703. Personnel Code.

Within six (6) months of the effective date of this Charter and as a part of the Reading City Code, City Council shall enact and from time to time may amend a Personnel Code for all City employees. It shall be the goal of the Personnel Code to provide for merit selection for all applicable positions; establish well-defined job descriptions with salaries to be reviewed on a regular basis; provide for fair and objective annual employee evaluations; provide equal access to employee training; promotion from within the career service; and ensure payment on an equal worth basis. The Personnel Code shall include, but not be limited to, the following:

- (a) Classification of all City positions based on the duties, authority and responsibility of each position with adequate provisions for reclassification of any position when needed;
- (b) Well-defined job descriptions for all City positions;
- (c) Well-defined provisions for salary, fringe benefits such as sick and vacation leave, holidays, overtime and salary administration, including a uniform pay plan for all City positions;
- (d) Procedures concerning the substance, procedure, and enforcement of a merit personnel system, including fair and objective annual employee evaluations;
- (e) Procedures for the recruitment, selection, training, and development of personnel, based solely on merit and qualifications;
- (f) Procedures for advancement based on merit and qualifications with emphasis on promotion from within the career service;
- (g) Procedures concerning the discipline and discharge of personnel, including reduction in force;
- (h) Procedures providing for in-house training programs for personnel;
- (i) Procedures for those holding provisional appointments;

³⁶ The proposed position of Economic Development Manager, if not considered a mere change of title and the equivalent of the Director of Community Development, subject to the same requirements and qualifications, is a career service position under Section 702 of the Charter and is subject to the provisions of the Personnel Code. *In re Position of Community Development Director* (Adv. Op. 1, April 12, 2006) at 6.

(j) Procedures establishing grievances procedures, with final hearings on such grievance to be held by the Mayor or Managing Director;

(k) Procedures governing relationship with employee organizations;
and

(l) Any other procedures necessary for the administration of personnel.

Section 704. Collective Bargaining Agreements.

No personnel procedures or policies established under the provisions of this Charter shall conflict with acts of the General Assembly providing for collective bargaining and labor agreement administration.³⁷ Nothing in this Charter or any ordinances passed by City Council shall interfere with any lawful collective bargaining agreement entered into between the City and representatives of its employees.³⁸

Section 705. Compensation of Heads of Departments, Offices and Agencies.³⁹

The compensation of all heads of departments, offices and agencies under the direction of the Mayor shall be proposed by the Mayor and approved by ordinance. Compensation of all other employees shall be set in accordance with the uniform pay plan established by City Council in the Personnel Code. All such heads of departments, offices and agencies⁴⁰ need not be residents of the City at the time of appointment, but after appointment

³⁷ Title 43 P.S. § 217.1, or otherwise known as Act 111, applies to every political subdivision in Pennsylvania, regardless of the adoption of a home rule charter by that political subdivision. *In re City Residency Requirement For Union Employees* (Adv. Op. 2, May 25, 2006) at 2.

³⁸ The Board interprets the pertinent part of [the language of Section 704] to mean that the Charter and City ordinances as it pertains to residency within the City may not interfere with any existing collective bargaining agreement. Thus, Section 1-207 of the Personnel Code must be reviewed and interpreted to determine if it is in compliance with the Charter's mandate of Section 704. Neither the Charter nor the Personnel Code, Section 1-207, interfere with any lawful collective bargaining agreement, in as much as the residency requirement of the Personnel Code is, correctly, treated as secondary to the right of police, fire and other unionized public employees to bargain the issue of residency within the City of Reading. *In re City Residency Requirement For Union Employees* (Adv. Op. 2, May 25, 2006) at 2-3 & 6.

³⁹ Renumbered from Section 706 to Section 705 by referendum approved May 2010. Herein, reference shall be to the numbered section in effect at the time of citation.

⁴⁰ The RRA is not a department, office or agency of the City of Reading. *In re Application of Charter Section 706 to the Heads of City Authorities* (Adv. Op. 9, April 3, 2008) at 5.

The Charter has no application to the RRA and it is not a City department, office or agency. If the RRA's executive director is a true employee of the RRA and not merely the employee, agent or liaison of the City, then the residency requirement of Charter Section 706 would have no application to the executive director. *In re Application of Charter Section 706 to the Heads of City Authorities* (Adv. Op. 9, April 3, 2008) at 4, 5.

shall reside in the City.⁴¹ City residency shall be required within twelve (12) months of being appointed.⁴²

⁴¹ The Charter's residency requirement only governs the heads of departments, offices and agencies under the direction of the Mayor, *In re City Residency Requirement For Union Employees* (Adv. Op. 2, May 25, 2006) at 2.

⁴² The provisions of Charter § 706 respecting residency cannot be suspended, or extended, by the Board and may be changed only by amending the Charter. *In re Suspension of Charter § 706 respecting residency* (Adv. Op. 16, Nov. 5, 2009) at 4.

The residency rule in Section 706 of the Charter concerning heads of departments, offices and agencies applies to a proposed position of Economic Development Manager, if the position encompasses the same responsibilities as Director of Community Development because merely modifying the title of an individual does not do away with the residency requirement for the position held by that individual. Under the Charter, 'residency' is not required merely due to a specific title, but rather the requirement of residency is placed upon the person charged with responsibility for a particular department, regardless of the precise title. *In re Position of Community Development Director* (Adv. Op. 1, April 12, 2006) at 1-2 & 4.

Change in job title from Director of Community and Economic Development to "Economic Development Manager" by virtue of two ordinances did not rise to a demotion or change in the nature of the job such that the Director could no longer be said to be a department head and that the residency requirements of Charter § 706 were no longer obligatory. *In re Investigation of Director of Community and Economic Development Adam Mukerji* (Inv. No. 6, Jan. 6, 2006) at 4-7.

Even 'acting directors,' after six months, are then considered Department Directors, and would be subject to the Charter's residency requirement. *In re Position of Community Development Director* (Adv. Op. 1, April 12, 2006) at 5.

Immunity from Section 706 is not had merely because a person is not specifically titled as the "head" of a "department, office or agency." If a person's position with the City has all of the indicia and trappings of the head of a department, office or agency, such as appropriate staff, salary, responsibilities, and reporting requirements, making that person effectively the head of a department, office or agency, regardless of title, then residency under Section 706 will apply. *In re Application of Charter Section 706 to Organizational Chart per Ordinance 63-2006* (Adv. Op. 8, April 3, 2008) at 2-3.

The mere title of an office holder is not the only indicator of whether or not that person is subject to the residency requirement of Charter Section 706. *Mukerji v. City of Reading Charter Review Board*, 941 A.2d 102, 105 (Pa. Commw. Ct. 2008).

The analysis employed by the Board and the Commonwealth Court in *Mukerji* is the analysis to be applied to all exempt employees serving as the functional equivalent of a head of a department, office or agency of the City on the question of applicability of residency under Charter Section 706. *In re Application of Charter Section 706 to Organizational Chart per Ordinance 63-2006* (Adv. Op. 8, April 3, 2008) at 4.

The compensation and residency requirements of Charter § 706 apply to the highest tier of the administrative service in the executive branch of City government. *In re Investigation of Jatinder S. Khokhar* (Inv. No. 18 & 21, Nov. 8 & Dec. 7, 2007) at 8.

The terms "department, office, or agency" in Charter § 706 are descriptive terms, not intended to be formal directive titles, and the Section is not applicable only to those formally titled groupings; rather, the administrative function and hierarchy must be examined. Mere alteration of supervisory or departmental title does not vary the effect and applicability of the Charter to such positions. *In re Investigation of Jatinder S. Khokhar* (Inv. No. 18 & 21, Nov. 8

Section 706. Political Activity.

All employees are prohibited from engaging in any form of political activity during regular work hours and are prohibited from using city facilities or property for any political activity. Violation of this section will warrant discharge or other discipline under the provisions of the Personnel Code.

& Dec. 7, 2007) at 10-11; *Khokhar v. The Charter Board of the City of Reading*, No. 08-11100 (Berks Ct. Com. Pl., Sept. 9, 2009); *Khokhar v. The Charter Board of the City of Reading*, No. 1398 C.D. 2009 (Pa. Commw. Ct. Feb. 8, 2010).

ARTICLE VIII
CITY SOLICITOR

Section 801. Qualifications and Responsibilities.

(a) The Mayor shall appoint, with the approval of Council, a Solicitor who shall be a member of the Bar of the Supreme Court of Pennsylvania and experienced in municipal law. The Solicitor, as Head of the Legal Department, shall serve as chief legal advisor⁴³ to the Mayor, the Council, and all City departments and agencies;⁴⁴ and shall represent the City in all legal proceedings and shall perform such other duties prescribed by law, by this Charter, by the City Administrative Code or action of Council. It is the intent of this Charter that only one person shall be the legal advisor of the City except as may be otherwise required by law.

(b) The Mayor, with the approval of Council, shall have the power, if needed, to engage other temporary Solicitors to represent the City as the need may be.⁴⁵ Such appointments shall be temporary and shall be for the purpose of representing the City in specific individual legal matters. Such representation shall be secured by Requests for Proposal.

⁴³ Reliance upon legal advice of counsel does not excuse a violation of the Charter or Administrative Code. If advice of counsel is used to circumvent the Charter or Administrative Code, and thereafter, a violation is found, reliance on such advice will not be a mitigating factor when considering the penalty for the violation. *In re Investigation of Reading City Council* (Inv. No. 2-5, Jun. 15, 2007) at 4.

⁴⁴ The City Solicitor's advice to the Mayor, Council, and all City departments and agencies must be compliant with the Charter and Administration Code. *In re Investigation of Charles D. Younger, Esquire, Solicitor of the City of Reading* (Inv. No. 30, Mar. 4, 2011) at 18.

⁴⁵ There are three instances where the Mayor, with the approval of City Council, may retain counsel other than the City Solicitor at the City's expense: (1) When temporary special counsel is needed to represent the City (as opposed to a particular official or employee) in specific individual legal matters (2) when a conflict exists between the Mayor and City Council; and (3) when legal action is brought against an employee. *In re Retention of Counsel* (Adv. Op. 31, Apr. 8, 2013) at 5-6.

ARTICLE IX

FINANCIAL PROCEDURES

Section 901. Fiscal Year.

The fiscal year of the City shall be the calendar year. If not prohibited by law, the Council may, by ordinance, adopt a different fiscal year, specifying an orderly procedure for financial and budgetary controls in making such transition.

Section 902. Submission of Balanced Budget & Capital Program.

On or before ninety (90) days prior to the ensuing fiscal year the Department Heads will submit Proposed Budget and Capital Program to the Managing Director. On or before ninety (90) days prior to the ensuing fiscal year the Mayor will submit to the City Council a balanced budget, Capital Program, and an accompanying message. The Proposed Balanced Budget and Capital Program shall be in such form as the Mayor deems desirable, unless otherwise required by Council. (*Amendment approved by referendum at the November 2007 Municipal Election*).

Section 903. Budget Message.

The Budget shall be accompanied by a message which shall include:

- (a) An explanation of the expenditures and revenues in the proposed budget, indicating and explaining major changes from the current year and the prior year.
- (b) An outline of proposed programs and an explanation of new, expanded, or abolished programs or functions.
- (c) A summary of the City's debt position.
- (d) Such other material that will inform the Council and the public of municipal goals.

Section 904. Budget.

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year in accordance with all Generally Accepted Accounting Principles and, except as required by this charter, shall be in such form as the Mayor deems desirable or the Council may require. In organizing the budget, the Mayor shall utilize the most feasible

combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. The budget shall contain, among other things, the following:⁴⁶

- (a) It shall begin with a general summary of its contents.
- (b) It shall show in detail all estimated income, indicating the existing and proposed tax levies, as well as other assessments, fees and charges.
- (c) It shall show all proposed expenditures, including debt service, for the ensuing fiscal year.
- (d) It shall show the number of proposed employees in every job classification.⁴⁷
- (e) It shall be so arranged as to show comparative figures for actual and estimated income and expenditures for the current fiscal year and actual income and expenditures of the preceding four (4) fiscal years.
- (f) It shall indicate proposed expenditures during the ensuing fiscal year, detailed by offices, departments and agencies, in terms of their respective work programs and the methods of financing such expenditures.
- (g) It shall indicate proposed capital expenditures during the ensuing fiscal year, detailed by office, departments and agencies when practicable, and the proposed method of financing each such capital expenditure. The Mayor will include this separate Capital Program section in the annual Budget and submit to Council with appropriate supporting information as to the necessity for such programs.
- (h) It shall indicate anticipated net surplus or deficit for the ensuing fiscal year of each utility owned or operated by the City and the proposed method of its disposition; subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached as appendices to the budget.

The total proposed expenditures shall not exceed the total of estimated income.

Section 905. City Council Action on Budget.

- (a) **Notice and Hearing.** Council shall publish in one (1) or more newspapers of general circulation in the municipality the general summary of the budget with a notice stating:

⁴⁶ Charter § 904 requires that every City department and every position within the City must be accounted for in the budget year. *In re Communications Director and Media and Communications Policy* (Adv. Op. 28, Feb. 22, 2012) at 2.

⁴⁷ Charter § 904(d) mandates that all positions in City government must be listed on the Annual Position Ordinance. *In re Investigation of Ryan Hottenstein* (Inv. No. 26, Nov. 10, 2009) at 5-6.

(1) The times and places where copies of the budget message and budget document are available for inspection by the public.

(2) The time, place, and date, not less than fifteen (15) days or more than thirty (30) days after such publication, for a public hearing on the budget. The public hearing shall not be on the date of a regular Council meeting.

(3) The proposed budget shall be available for public inspection at City Hall and copies shall be available for the public at a reasonable fee to be set by the Council.

(b) **Amendment Before Adoption.** After the public hearing, the City Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income and thereby allowing for line item changes by the City Council.

If the amended Budget increases, decreases, or readjusting funding requirements by more than five (5) percent, or adds or deletes a program, the Budget shall be returned to the Mayor immediately for comment and resubmission to the Council within three (3) normal City work days.

Council shall provide for another public hearing to be held within five (5) days after the Mayor has resubmitted the Budget.

(c) **Adoption.** Council must adopt an annual budget by no later than December 15th of the Fiscal year currently ending. If Council fails to adopt a Budget by December 15th then the Mayor's original proposed balanced Budget shall become the official budget of the City for the ensuing fiscal year.

Section 906. Revised Budget.

Notwithstanding any other provisions of this Article, when the fiscal year of the City is the calendar year, in any year following a municipal election year the Council may, within forty-five (45) days after the start of the fiscal year, revise the budget and tax levies adopted by the previous Council. The procedures for adopting a revised budget shall be in accordance with Section 905, Section 906, with the time periods adjusted to forty-five (45) days after the start of the fiscal year. Ordinances adopting a revised budget shall be effective as of the start of the fiscal year and shall rescind and replace the budget ordinance of the previous Council. It is the intent of this Charter that a new Council, in the year following a municipal election, shall have the power to revise the budget and tax levies adopted by the previous Council.

Section 907. Appropriation & Revenue Ordinance.

For 1996, this Charter shall provide for collection of income from real estate taxes which, in total amount, does not exceed one hundred five (105) percent of the real estate tax income actually collected by the City during 1995. For those years following 1996, it shall provide for collection of income from real estate taxes which, in total amount, does not exceed one hundred five (105) percent of the real estate tax income actually collected in the previous year.⁴⁸ Any collection of income from the real estate tax by the City in excess of the amounts allowed by this section shall not be expended but shall be retained for use in the subsequent year and be used in the next year subsequent to reduce the amount of income needed by the City in said subsequent year. With the approval of the Court of Common Pleas, upon good cause shown, or by Referendum or Charter review, the City may increase the amount of income collected, notwithstanding the provisions of this section.

Section 908. Amendments After Adoption.

(a) Emergency appropriations may be made by the Council to meet a public emergency posing a sudden, clear and present danger to life or property. Such appropriations may be made by emergency ordinance in accordance with the provisions of Section 220 of this Charter.

(b) Supplemental appropriations may be made by the Council by ordinance upon certification by the Mayor that there are available for appropriation revenues in excess of those estimated in the Budget.

(c) Transfer of appropriations may be made in accordance with provision of the Administrative Code.

Section 909. Lapse of Appropriation.

Every appropriation, except an appropriation for a Capital expenditure, shall lapse at the close of the Fiscal Year to the extent that it has not been expended or encumbered.

Section 910. Administration of the Budget and Capital Program.

The Mayor shall be responsible for and with the assistance of the Managing Director shall supervise the administration of the Annual and Capital Budgets.

Section 911. Capital Program.

(a) **Submission to City Council.** The Mayor shall prepare and submit to the City Council a five (5) year capital program no later than the final date for submission of the budget.

⁴⁸ Charter Section 907 is invalid and is superseded by 53 Pa.C.S. § 2962(b) to the extent that it purportedly limits City Council's ability to impose a real estate tax rate above "105% of the real estate tax income actually collected in the previous year." *In re Charter § 907* (Adv. Op. 20, April 28, 2010) at 3.

(b) **Contents of Capital Program.** The capital program shall include:

- (1) A clear general summary of its contents;
- (2) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity for each;
- (3) Cost estimates and recommended time schedules for each improvement of other capital expenditure;
- (4) Method of financing, upon which each capital expenditure is to be reliant;
- (5) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired; and
- (6) All Capital Projects must be included in the Capital Program Budget.

The above shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

(c) **Financing Capital Projects.** Bonds required for Financing Capital Projects shall be secured by Competitive Bidding.

(d) **Capital Projects Approved.** Proposed Capital Projects in the Capital Programs must be considered on their own individual merits by the Finance Manager, the City Auditor, and the Proposer of the project. The procedures to approve the individual Capital Projects are:

(1) Preliminary Feasibility Study

The Capital Project preliminary feasibility study shall include:

- (i) A clear general summary of its purpose and justification.
- (ii) The cost estimates and time schedule for the capital Project including the cost of the Post Project Completion Audit.
- (iii) The method of financing and sources upon which this Capital Project is reliant.
- (iv) The annual cost of operating and maintaining the project to be constructed or acquired.

The Council approval of Capital Projects in this preliminary feasibility study will require a simple majority vote in order to move on to a formal approval and funding acceptance.

(2) Final Proposal and Financing

The Final Capital Project proposal and financing shall include:

- (i) A clear general summary of its purpose and justification.
- (ii) The cost estimates and time schedule for the Capital Project including the cost of the Post Project Completion Audit.
- (iii) The method of financing and sources upon which this Capital Project is reliant.
- (iv) The annual cost of operating and maintaining the Project to be constructed or acquired.
- (v) This final Capital Project Proposal will be published and made available for the public to review (Use Notice & Hearing Notice – Section 912). Capital Project replaces Capital Program. The final Council approval of Capital Projects will require five (5) votes to approve.

(3) Capital Project Reporting

- (a) Current Projects. All Capital Projects in process must be reported on a quarterly basis and provide an update on cost, completion date, and estimated revised operating costs. This information is to be supplied by the Finance Manager and the Project Manager to the City Council in such a form that it is available to the public.
- (b) Extended Projects. If commencement of a Capital Project does not begin by end of the fiscal year following the year in which final approval is obtained the project must go through Section 911(c)(1) & (2).

(4) Post Project Completion Audit. Following Completion of the Capital Project a complete and detailed audit must be published and made available to the public. This Post Audit is to be completed by an independent auditor appointed by the Council. The purpose of the Post Audit is to confirm the estimates of costs and explain any deviation between actual and estimated costs.

Section 912. City Council Action on Capital Program.

(a) **Notice and Hearing.** Council shall publish in one (1) or more newspapers of general circulation in the municipality the general summary of the Capital Program with a notice stating:

(1) The times and places where copies of the Capital Program message and Capital Program document are available for inspection by the public.

(2) The time, place, and date, not less than fifteen (15) days or more than thirty (30) days after such publication, for a public hearing on the Capital Program. The public hearing shall not be on the date of a regular Council meeting or on hearing date of the operating Budget.

(3) The proposed Capital Program shall be available for public inspection at City Hall and copies shall be available for the public at a reasonable fee to be set by the Council.

(b) **Adoption.** Council must adopt an annual Capital Program by no later than December 15th of the fiscal year currently ending. If Council fails to adopt a Capital Program by December 15th then the Mayor's original Capital Program shall become the official Capital Program of the City for the ensuing fiscal year.

Section 913. Public Records.

Copies of the budget, capital program and appropriation and revenue ordinances shall be public records and shall be made available to the public at suitable places in the City.

Section 914. Independent Audit.

The Council shall provide for an annual independent audit to be completed and submitted to the Mayor within one hundred eighty (180) days of the close of the fiscal year. It shall include City receipts, expenditures, accounts and reports by a Pennsylvania Certified Public Accountant or a Certified Public Accounting firm, experienced in municipal finance, having no personal interest, direct or indirect, in the fiscal affairs of the City or any of its elected or appointed personnel. The Council may provide for more frequent audits at its discretion. Within thirty (30) days of completion, the Mayor shall present to the Council the results of the annual audit and a financial statement of the fiscal affairs of the City, with the results of the independent auditor's survey of internal control and any recommendations thereon. The evaluation of the internal control shall take the form of a Management Letter. This Management Letter shall be submitted to the City Council after every audit. A summary of the annual audit of the independent auditor shall be published at least once in one or more newspapers of general circulation in the City within thirty (30) days after submission to the Mayor. The annual audit shall be conducted in accordance with generally accepted auditing standards. The financial report shall be prepared in accordance with generally accepted accounting principles, and shall include a balance sheet for each fund, and on a consolidated fund basis reflecting all current assets, current liabilities and fund balances. The Council shall designate such accountant or firm annually or form a period not exceeding three (3) years.

Section 915. Bidding Process.⁴⁹

(a) Whenever the estimated cost of any construction, erection, installation, completion, alteration, repair of, or addition to, any project subject to the control of the City shall exceed Ten Thousand Dollars (\$10,000.000), it shall be the duty of the City to have such work performed pursuant to a contract awarded to the lowest responsible bidder (subject to subsection (2)(d)), after advertisement for bids. Every such contract shall contain a provision obligating the contractor to the prompt payment of all material furnished, labor supplied or performed, rental for equipment employed, and services rendered by public utilities in or in connection with the prosecution of the work, whether or not the said material, labor, equipment or service enter into and become component parts of the work or improvement contemplated. Such provision shall be deemed to be included for the benefit of every person, copartnership, association or corporation who, as subcontractor or otherwise, has furnished material, supplied or performed labor, rented equipment or services in or in connection with the prosecution of the work as aforesaid, and the inclusion thereof in any contract shall preclude the filing by any such person, copartnership, association or corporation of any mechanics' lien claim for such material, labor or rental of equipment.

(b) Whenever the estimated costs of any purchase of supplies, materials or equipment or the rental of any equipment, whether or not the same is to be used in connection with the construction, erection, installation, completion, alteration, repair of, or addition to, and project subject to the control of the City, shall exceed Ten Thousand Dollars (\$10,000.00), it shall be the duty of the City to have such purchase or rental made pursuant to a contract awarded to the lowest responsible bidder (subject to subsection (2)(d)), after advertisement for bids, such advertisement to be inserted in a newspaper of general circulation in Berks County.

(1) The City shall not evade the provisions of subsection (a) or (b) as to advertising for bids by purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under Ten Thousand Dollars (\$10,000.00) upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than Ten Thousand Dollars (\$10,000.00). This provision is intended to make unlawful the practice of evading advertising requirements by making a series of purchases or contracts, each for less than the advertising requirement price, or by making several simultaneous purchases or contracts, each below said price, when, in either case, the transactions involved should have been made as one transaction for one price.

(2) Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for all contracts that exceed Four Thousand Dollars (\$4,000.00) but are less than the amount requiring advertisement and competitive bidding or in lieu of price quotations, a memorandum shall be kept on file showing that fewer

⁴⁹ [T]he purchasing requirements of the Charter and Administrative Code, including those concerning the purchasing of professional services, do apply to all subordinate departments, boards and commissions of the City. However, [t]he Charter and the Administrative Code are not applicable to municipal authorities created pursuant to statewide legislation. *In re Purchasing Requirements of Boards, Authorities and Commission* (Adv. Op. 4, Dec. 4, 2006) at 3-4.

than three qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of telephonic price quotations shall be made and shall contain at least the date of the quotation, the name of the contractor and the contractor's representative, the construction, reconstruction, repair, maintenance or work which was the subject of the quotation and the price. Written price quotations and written records of telephonic price quotations and memoranda shall be retained for a period of three years.

(c) The City shall require as a condition of the award of any contract, pursuant to subsection (a) or (b) of this section, that the contractor give to the City any bond or Letter of Credit (including bonds for the performance of the contract, and for the prompt payment by the contractor for material, supplies, labor, services and equipment, which are prescribed by law for contracts awarded by cities of the third class.

(d) Notwithstanding anything to the contrary contained in this section, City Council may, in those cases where an individual or company with headquarters in the City submits a bid which is within ten (10) percent of the lowest bid, award the contract to said individual or company. In acting pursuant to this provision, City Council shall find that such an award will be in the best interests of the citizens of the City. The City Council must show just cause for the awarding of such contracts to locally owned companies who provide local labor, materials or produced goods.

(e) All contracts shall be on file in the office of the City Auditor and shall be available for public inspection during normal business hours.

ARTICLE X

BOARDS AND COMMISSIONS

Section 1001. Establishment.

(a) **By Ordinance.**

(i) City Council shall encourage the participation of citizens⁵⁰ in their government through the establishment of boards, and commissions⁵¹ to carry out city business. Such boards, and commissions shall be established by ordinance including a clear statement of whether they shall be advisory in nature or they shall have power and authority under city ordinance or state or federal code.

(ii) City Council may not change the power or authority of any board or commission except by ordinance.

(iii) City Council may by ordinance abolish any board or commission not established by state or federal mandate or by this Charter.

⁵⁰ The encouragement by the City of broad participation of citizens in such boards and commissions is mandatory. *In re Application of Charter Art. X to Reading Local Redevelopment Authority* (Adv. Op. 14, May 12, 2009) at 5.

⁵¹ Article X of the Charter pertains to boards and commissions, and authorities, established by ordinance of City Council for the purpose of administering City business, and comprised of non-elected citizens who are not employees of the City. *In re Application of Charter Art. X to Reading Local Redevelopment Authority* (Adv. Op. 14, May 12, 2009) at 5.

Boards and commissions under Article X have the following defining characteristics: i) they are citizen entities, ii) they are established by ordinance, iii) they are established to carry out a specific aspect of City government, and iv) they are established entities that have an ongoing existence until such time as they are abolished or dissolved by ordinance. *In re Application of Charter Art. X to Reading Local Redevelopment Authority* (Adv. Op. 14, May 12, 2009) at 5-6.

The Recreation Commission is not a board or commission governed by the Charter. *In re Recreation Commission* (Adv. Op. 25, June 20, 2011) at 3.

The Intergovernmental Cooperation Act . . . is the governing law of the Recreation Commission, and the Charter restrictions of Article X, as to that commission's membership or composition, are inapplicable. *In re Recreation Commission* (Adv. Op. 25, June 20, 2011) at 2.

The Mayor's chief of staff serving on the Reading School Board is not prohibited by the Charter or Administrative Code as it is not a Charter Article X board. *In re Certain Appointments to Boards and Commissions* (Adv. Op. 24, April 13, 2011) at 4.

Section 1002. Membership.

(a) **Appointments.** City Council shall approve all appointments⁵² for each board and commission.⁵³ Broad citizen participation⁵⁴ shall be encouraged in recruiting appointees and making appointments. No appointee of any board or commission shall hold any other elected⁵⁵ public office or any compensated position for the City.⁵⁶

(b) **Vacancies.** Any vacancy caused by death or resignation shall be filled promptly pursuant to the procedure set forth in § 309(b). The person so appointed shall serve for the unexpired term of the person vacating such position.

(c) **Qualifications.** As a general rule, members of boards and commissions shall be residents of the City.⁵⁷ At the discretion⁵⁸ of Council, persons not residents of the City, but who have a significant property or business interest in the City, may be selected to serve. No person may concurrently serve on more than one authority, board, or commission.

⁵² The Mayor's appointment of his chief of staff's spouse to the Stadium Commission, or any other Article X Board or Commission, does not violate the Charter so long as all other qualifications stated under Charter § 1002 are met. *In re Certain Appointments to Boards and Commissions* (Adv. Op. 24, April 13, 2011) at 4.

The City Council as a body, not individual members of Council, shall make seven appointments to the Charter Review Commission. The appointment of the Charter Review Commission by City Council is an "official action" and requires a majority vote by that body. *In Re Necessity of a vote by Council to make appointments to Charter Review Commission* (Adv. Op. 33, May 9, 2013) at 3-4.

⁵³ Since the RLRA is not an Article X board or commission, the membership restrictions of Charter, § 1002, do not apply to it. *In re Application of Charter Art. X to Reading Local Redevelopment Authority* (Adv. Op. 14, May 12, 2009) at 7.

⁵⁴ The encouragement by the City of broad participation of citizens in such boards and commissions is mandatory. *In re Application of Charter Art. X to Reading Local Redevelopment Authority* (Adv. Op. 14, May 12, 2009) at 5.

⁵⁵ Charter §§ 1002(a) and 1201(c) prohibit a member of the Ethics Board from serving as judge of elections or majority or minority inspector. *In re Prohibition on holding elective or party office, Charter §§ 1002(a) and 1201(c)* (Adv. Op. 15, May 27, 2009) at 3.

⁵⁶ A part-time, paid City employee may not be appointed to a Charter Article X Board or Commission. *In re Certain Appointments to Boards and Commissions* (Adv. Op. 24, April 13, 2011) at 2.

⁵⁷ [T]he supply of qualified citizens of the City should be exhausted or fully engaged before non-City residents are appointed. [Thus, a]bsent a legitimate reason, in limited circumstances, City Council should not deviate from the general rule of appointing City residents to boards and commissions. *In re Application of Charter Section 1002(c) to the Police and Fire Diversity Boards* (Adv. Op. 7, Jan. 16, 2008) at 3.

⁵⁸ The discretion of City Council to appoint non-City residents to City boards and commissions is qualified by the "broad citizen participation" requirement of Section 1002(a) and the general rule of Section 1002(c). *In re Application of Charter Section 1002(c) to the Police and Fire Diversity Boards* (Adv. Op. 7, Jan. 16, 2008) at 3.

ARTICLE XI

CITIZEN'S RIGHTS AND PARTICIPATION

Section 1101. General Provisions.

The Council shall protect and promote the right of the citizens of the City of Reading to participate in a positive and constructive manner in the government of the City.⁵⁹ Any citizen of the City may participate in the government of the City by:

- (a) Seeking elective office of the City as prescribed by this Charter and voting for candidates for elective office;
- (b) Serving on boards, commissions, authorities or other agencies of the City government when requested by the appropriate officials;
- (c) Attending and being heard at public meetings of the Council and other boards, commissions, authorities and agencies of the City government;
- (d) Addressing suggestions to the Council and others to provide guidance for their actions;
- (e) Exercising the right of initiative, referendum, and recall of elected officials as provided in this Charter or as otherwise may be provided by law.

Section 1102. Initiative and Referendum.

- (a) Initiative. The qualified voters of the City shall have the power to propose ordinances to the Council. If the Council fails to adopt such an ordinance, the initiative process may be commenced giving the qualified voters of the City the opportunity to adopt or reject said ordinance at a City election.⁶⁰
- (b) Referendum. The qualified voters of the City shall have the power to require reconsideration by the Council of any adopted ordinance. If the Council fails to repeal an

⁵⁹ Article XI of the Charter [regarding citizens' rights and participation] does not apply to City Council, [but] only to the citizens of Reading. *In re Limitations on the Placement of Initiative and Referenda Placed on a Ballot by City Council* (Adv. Op. 6, Aug. 27, 2007) at 2.

⁶⁰ There is no inconsistency between the Charter and the Election Code with respect to the conduct of the initiative and referendum process. The Election Code is applicable in all parts of the Commonwealth and its provisions concerning special elections govern initiative and referendum elections, to the extent to which the special election provisions are applicable. The Election Code provides statewide guidance for initiative and referendum ordinances, Charter provisions, and statutes which are silent on, or omit, important substantive or procedural safeguards or requirements of the Election Code. *In re Local Regulations for Initiative and Referendum Process* (Adv. Op. 3, Nov. 22, 2006) at 2-4.

ordinance so reconsidered, the Referendum process may be commenced giving the qualified voters of the City the opportunity to approve or reject said ordinance at a City election.

Section 1103. Initiative and Referendum; Commencement of Proceedings; Petitioners Committee; Affidavit.

(a) Any five (5) qualified voters of the City may commence initiative or referendum proceedings by filing with the City Clerk⁶¹ an affidavit stating they will constitute the Petitioners Committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. In case of Referendum, such an affidavit must be filed within ten (10) days of the adoption of the ordinance. Within five (5) days after affidavit of the Petitioners Committee is filed and validated, the City Clerk shall issue the appropriate petition blanks to the petitioners.

Section 1104. Initiative and Referendum; Petitions.

(a) Number of Signatures. Initiative and referendum petitions must be signed by 2000 qualified voters⁶² of the City.

(b) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall include the address of the person signing and the date signed. Petitioners shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

(c) Affidavit of Circulator. Each paper of a petition shall have attached to it when filing a notarized affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in the circulator's presence, and believes them to be valid and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(d) Time for Filing Referendum Petitions. Referendum petitions must be filed within thirty-five days after the filing of the affidavit of the Petitioner's Committee.

⁶¹ Ordinance giving City Clerk discretion in the initiative and referendum process above and beyond the limited role of the City Clerk provided for in the Charter was in violation of the Charter. *In re Investigation of Reading City Council* (Inv. No. 31, April 25, 2011) at 7; *aff'd by Reading City Council v. City of Reading Charter Board*, No. 11-14382 (Berks Ct. Com. Pl. Feb. 17, 2012); *aff'd by Reading City Council v. City of Reading Charter Board*, No. 29 C.D. 2012 (Pa. Commw. Ct. Oct. 23, 2012).

⁶² [T]he definition of a qualified voter of the City should be consistent with the Pennsylvania Constitution Art. 7, § 1. *In re Proposed Ordinance for Initiative and Referendum Process* (Adv. Op. 5, March 6, 2007) at 6.

(e) Time for Circulation and Filing Initiative Petitions. Initiative petitions must be circulated and signed within a period of sixty-five (65) days from the date of the filing of the Affidavit of Petitions Committee with the City Clerk.

Section 1105. Initiative and Referendum; Procedure after filing.

(a) Certificate of Clerk; Amendment. Within twenty (20) days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the Petitioners' Committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the Petitioners' Committee files a notice of intention to amend it with the City Clerk within two (2) days after receiving the copy of the certificate and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsection (b) and (c) of Section 1103, and within five (5) days after it is filed, the City Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the Petitioners' Committee by registered mail as in the case of an original petition. If a petition or amended petition is certified insufficient and the Petitioners' Committee does not elect to amend or request council review under subsection (b) of this section within the time required, the City Clerk shall promptly present their certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

(b) Council Review. If a petition has been certified insufficient and the Petitioners' Committee does not file notice of intention to amend it, or if an amended petition has been certified insufficient, the Committee may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition.

(c) Court Review; New Petition. A final determination as to the insufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

Section 1106. Referendum Petitions; Suspension of Effect of Ordinance.

When a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (a) There is a final determination of insufficiency of the petition; or
- (b) The Petitioners' Committee withdraws the petition; or
- (c) The Council repeals the ordinance; or

(d) Thirty-five (35) days have elapsed since the issue of the affidavit and the required number of signatures have not been secured.

Section 1107. Initiative and Referendum; Action on Petitions.

(a) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance in the manner provided in Article II or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) days or fails to repeal the referred ordinance within thirty (30) days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the City.

(b) Submission to Voters. The question shall be placed on the ballot at the next primary, municipal or general election occurring at least thirty-five (35) days after final Council action. Copies of the proposed and referred ordinance shall be made available at the voting precincts.

(c) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the forty-fifth (45th) day preceding the day scheduled for a vote of the City by filing with the City Clerk a request for withdrawal signed by at least four (4) members of the Petitioners' Committee. Upon the filing of such request, the petition shall have no further force of effect and all proceedings thereon shall be terminated.

Section 1108. Initiative and Referendum; Result of Election.

(a) Initiative. If a majority of the qualified voters voting on a proposed initiative vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(b) Referendum. If a majority of the qualified voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election.

Section 1109. Initiative and Referendum; Limitations.

(a) Default of Initiative and Referendum. Any ordinance proposed or sought to be reconsidered which is rejected by the qualified voters in an election cannot be resubmitted for initiative and referendum for a period of two years from the date of the election where the ordinance was defeated.

(b) Repeal or Modification of Initiative and Referendum by Council. The Council shall take no action to repeal or significantly modify an ordinance adopted by initiative and referendum within a period of two years from the date of the election at which the ordinance was approved.

(c) Limit on the Number of Initiative and Referendum. No more than two initiative and two referendum measures may be placed on the ballot at any primary, municipal or

general election. The first two initiative and referendum measures which are filed with the City Clerk will be the only ones allowed on the ballot.

Section 1110. Recall of Elected Officials.

Any person holding an elective office in the government of the City of Reading, whether by election, succession or appointment to fill a vacancy, shall be subject to removal from office at a recall election in the manner provided in this Charter or as may otherwise be required by general law.

(a) **Recall Petition.** Any five (5) qualified voters of the City may commence recall proceedings by filing with the City Clerk an affidavit stating they will constitute the Petitioners' Committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent. Within five (5) days after the affidavit of the Petitioners' Committee is filed and validated, the City Clerk shall issue the appropriate petition blanks to the petitioners. Only qualified voters of the City may circulate such petitions.

A recall of an incumbent of an elective office shall be initiated upon petition signed by thirty percent (30%) of the registered voters, in the City District, voting in the previous year's general election. Every recall petition shall name the office and officer against whom it is directed. Each voter shall place their signature, complete address and date of signing of the petition.

Signatures on a recall petition may be on separate sheets. Each sheet shall show the name of the person whose recall is sought and have appended to it a notarized affidavit of the circulator of the petition stating that it was personally circulated and that all signatures were personally affixed in the presence of the circulator, that to the best of the affiant's knowledge and belief the persons whose signatures appear on the sheet are registered voters of the City of Reading.

(b) **Filing of Petition.** A recall petition shall be tendered for filing to the City Clerk. No signature shall be counted as valid which is dated more than sixty days prior to the date the petition is tendered for filing. Upon submission to the City Clerk, the petition shall be available for examination by any interested person. Within five (5) days after tender of the petition, the City Clerk shall have the authority to pass upon the validation of the petition and the validation of the number of signatures required therein. The decision of the City Clerk shall be subject to immediate review on appeal to the Court of Common Pleas.

(c) **Notice to Incumbent.** As soon as the City Clerk has received a recall petition for filing and determined its validity and sufficiency, the City Clerk shall notify the incumbent named in the petition that the petition has been filed. Upon receipt of such notice the incumbent may resign from office and thereupon the recall proceedings shall terminate.

(d) **Recall Election.** If the incumbent against whom the recall petition is directed does not resign from office within ten (10) days after notice of filing of such petition

shall have been given to the incumbent, the election officers shall arrange a recall election. The recall election shall be held at the first regularly scheduled election, municipal, general, or primary, which shall occur not less than forty (40) days after the incumbent has been notified as provided above. The incumbent against whom a recall petition is directed may resign at any time prior to a recall election and thereupon the election for this purpose shall not be held.

(e) Recall Question. The following question shall be presented to each elector entitled to vote on the recall question:

“Shall (name of officer) be recalled and removed from the office of (name of office)”?

The above question shall appear as to every officer whose recall is to be voted upon and provisions shall be made for the elector to vote “YES” or “NO” to the question.

(f) Results of Election. If a majority of the registered electors who vote on the question at a recall election shall vote “YES” the incumbent shall be deemed recalled and removed from office, but if a majority of such registered electors shall vote “NO” the incumbent shall remain in office. Should the result of such election be affirmative, the date of the removal and vacancy in the office shall be effective seven (7) days after the date when the results of the election are certified by the County Board of Elections, unless such date is further postponed by order of a court.

(g) Filing of Vacancy. The filing of a vacancy created by the recall of an elected official shall be in accordance with the provisions of this Charter with respect to filling vacancies in the office involved.

(h) Disqualification for Office. No person who has been removed from an elective office by a recall election, or has resigned from such an elective office after a recall petition directed to such person has been filed, shall be eligible for election or appointment to any office of the City government or any board, authority, or commission within five (5) years after removal from office or resignation.

(i) Limitations. There may be only one recall attempt during each term of an elected official.

Section 1111. Citizens Right to Place an Item of the City Council Agenda.

(a) The qualified voters of the City of Reading, upon receipt of a petition by the City Clerk, may enter one agenda item on the regular agenda of City Council.⁶³

(b) The petition filed with the City Clerk must contain the signatures and addresses of thirty-five (35) duly qualified voters of the City and the item to be placed on the

⁶³ City Council is required to give the same consideration to an item placed on its agenda by a citizens’ petition as it would for any other item on its agenda. *In re Citizens’ Petition to Place Item on City Council Agenda* (Adv. Op. 10, Aug. 22, 2008) at 4

agenda of City Council for discussion/consideration before Council.⁶⁴ Upon receipt of such petition and a two day review/certification period of the petition by the City Clerk, the President of City Council must include the item on the agenda at the next regularly scheduled meeting of City Council.⁶⁵

Section 1112. Citizens Rights to Call a Special Meeting of City Council.

(a) The qualified voters of the City of Reading, upon filing a signed petition with the City Clerk, may require the City Council to hold a special meeting.

(b) The petition filed with the City Clerk must contain the signatures and addresses of two hundred (200) duly qualified voters of the City and the purpose for which the meeting is being called. Upon receipt of such petition and a two (2) day review/certification period of the petition by the City Clerk, the President of City Council must convene the special meeting on an evening within fourteen (14) days of the certification.

(c) The public notification process will adhere to the Special Meetings provisions of this Charter.

⁶⁴ [A] group of City Councilors may organize a petition process under Charter Section 1111, and they may also – as qualified voters – be signatories to the petition. *In re Citizens' Petition to Place Item on City Council Agenda* (Adv. Op. 10, Aug. 22, 2008) at 2.

⁶⁵ City Councilors may organize or coordinate the circulation of a citizens' petition to list an item on the City Council agenda, and such action does not circumvent the authority of the President of City Council to control the agenda or City Council's power to amend the agenda. *In re Citizens' Petition to Place Item on City Council Agenda* (Adv. Op. 10, Aug. 22, 2008) at 4.

ARTICLE XII

GENERAL PROVISIONS

Section 1201. Conflict of Interest and Code of Ethics.

(a) **Conflicts of Interest.** The use of public office for private gain is prohibited. No elected official, officer, or employee shall (i) act in an official capacity on matters in which the employee or official has a private financial interest clearly separate from that of the general public; (ii) accept gifts and other things of value in return for a favorable decision or vote. In all cases, gifts received must be publicly recorded and submitted to the City Clerk specifying the date received, the name and address of the donor, and the value of the gift; (iii) act in a private capacity on matters dealt with as a public official or employee; (iv) use confidential information for personal gain; and (v) appear before City departments, offices, and agencies on behalf of private interests.

(b) **Code of Ethics.** As a part of the Administrative Code, City Council shall adopt and enact a City code of ethics within one year of the effective date of this Charter which shall apply to all elected officials, officers, and employees. The code of ethics shall adopt regulations implementing the conflict of interest provision set forth above, shall provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual matters, and insofar as permissible under state law, provide for fines and imprisonment for violations.

(c) **Board of Ethics.** The Mayor, with the approval of City Council, shall establish an independent Board of Ethics consisting of five (5) City residents holding terms of three (3) years, to administer and enforce the conflict of interest provision 1201 of this Charter and the prohibition sections of this Charter. No member of the Board may hold elective or city office under the City or any other government or hold any political party office.⁶⁶ Insofar as possible under state law, the Mayor shall authorize the Board to issue binding opinions, conduct investigations on its own initiative and on referral or complaint, refer cases for prosecution, impose administrative fines, and to consult with independent counsel. City Council shall appropriate sufficient funds to the Board of Ethics to enable it to perform the duties assigned to it. Members of the Board of Ethics may be removed by the Mayor with the consent of City Council.

Section 1202. Prohibitions.

(a) **Activities Prohibited.**

(i) No person shall willfully make any false statement, certificate, mark, rating, or report in regard to any test, certification, or appointment under the provisions of

⁶⁶ Charter §§ 1002(a) and 1201(c) prohibit a member of the Ethics Board from serving as judge of elections or majority or minority inspector. *In re Prohibition on holding elective or party office, Charter §§ 1002(a) and 1201(c)* (Adv. Op. 15, May 27, 2009) at 3.

this Charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules, and regulations.

(ii) No person who seeks appointment or promotion to any City position or appointive City administrative office shall directly or indirectly give, render, or pay any money, service, or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion, or proposed promotion.

(iii) No elected City official shall knowingly or willfully solicit or assist in soliciting any assessment, subscription, or contribution for any political party or political purpose to be used in conjunction with any City election from any City employee.

(b) **Penalties.** Any person found in violation of this section by the Board of Ethics and confirmed by Council shall be ineligible for a period of five years following such decision to hold any City office or position, and if an officer or employee of the City, such person shall immediately forfeit his or her office or position. City Council shall establish by ordinances such further penalties as it may deem appropriate.

Section 1203. Review of Charter.

At least every ten (10) years, except for the initial charter review which shall take place under this provision no sooner than five (5) years but no later than ten (10) years after the effective date of this Charter, City Council and the Mayor shall appoint a Charter Review Commission composed of eleven (11) members, the majority of whom shall not be City officials or employees. Seven (7) members of this Commission shall be appointed by City Council⁶⁷ and four (4) members shall be appointed by the Mayor. All appointees shall be current residents and registered voters of the City. The Charter Review Commission shall review the current Charter, submit a report to City Council, the Mayor, and the citizens of the City, within six months of its appointment, and recommend any proposed amendments to the Charter. All proposed amendments shall be placed on the ballot no later than the next municipal election. City Council shall provide appropriations for the reasonable expenses incurred by the Charter Review Commission.

⁶⁷ City Council as a body must vote to make the required appointments to the Charter Review Commission under Charter § 1203. *In re: Necessity of a Vote by Council to Make Appointment to Charter Review Commission* (Adv. Op. 33, May 9, 2013) at 4.

The appointment by City Council of members of the Charter Review Commission is “official action,” that is, it is a vote taken on “any motion, proposal, resolution, rule, regulation, ordinance, report or order.” *In re: Necessity of a Vote by Council to Make Appointment to Charter Review Commission* (Adv. Op. 33, May 9, 2013) at 4.

Section 1204. Amendments.

The Charter shall be amended by:⁶⁸

- Charter;
- (a) The citizens of the City through the initiative process provided by this
 - (b) City Council through referendum⁶⁹; or
 - (c) A Charter Review Commission by amendments being placed on the ballot in accordance with Section 1103 of this Charter;
 - (d) Proposed amendments by a Charter Review Commission being placed on the ballot in accordance with Section 1203 of this Charter.

⁶⁸ The Charter may not be amended other than as provided in Charter § 1204, and where an amendment to the Charter was made by ordinance, such amendment was in violation of Charter § 1204. *In re Investigation of Reading City Council* (Inv. No. 31, Oct. 27, 2010) at 5, 15; *aff'd by Reading City Council v. City of Reading Charter Board*, No. 11-14382 (Berks Ct. Com. Pl. Feb. 17, 2012); *aff'd by Reading City Council v. City of Reading Charter Board*, No. 29 C.D. 2012 (Pa. Commw. Ct. Oct. 23, 2012).

The Charter may not be amended by mere ordinance. *In re Local Regulations for Initiative and Referendum Process*, (Adv. Op. 3, Nov. 22, 2006) at 5.

An ordinance that conflicts with the Charter is null, void, and of no effect. *In re Investigation of Reading City Council* (Inv. No. 31, Oct. 27, 2010) at 5; *aff'd by Reading City Council v. City of Reading Charter Board*, No. 11-14382 (Berks Ct. Com. Pl. Feb. 17, 2012); *aff'd by Reading City Council v. City of Reading Charter Board*, No. 29 C.D. 2012 (Pa. Commw. Ct. Oct. 23, 2012).

⁶⁹ [W]hen placing Charter amendment referenda on a ballot, City Council is not limited in the number of such referenda that it can propose. *In re Limitations on the Placement of Initiative and Referenda Placed on a Ballot by City Council* (Adv. Op. 6, Aug. 27, 2007) at 2.

[T]he Charter does not provide City Council with the power or right to place referenda on a ballot, other than as may arise in the course of amending the Charter. *In re Limitations on the Placement of Initiative and Referenda Placed on a Ballot by City Council* (Adv. Op. 6, Aug. 27, 2007) at 2.

ARTICLE XIII

TRANSITION

Section 1301. Purpose of Article.

The purposes of this Article are to establish an orderly procedure for the transition to the new form of government provided by this Charter. The provisions of this Article address the transition from the existing form of government to the form of government established by this Charter. Where inconsistent with the preceding articles of this Charter, the provisions of this Article shall constitute temporary exceptions.

Section 1302. Effective Date.

This Charter shall be submitted to the voters at the general election of 1993, and if adopted shall take effect on the first Monday of January 1996. However, to the extent necessary to comply with the other provisions of this Article governing the period between the date of adoption and the effective date of this Charter, this Charter shall be implemented upon the date of adoption.

Section 1303. Initial Elections.

(a) **1995 Election.** The following elected officials shall be nominated at the primary election in May 1995 and shall be elected at the municipal election in November 1995 for the following terms:

(i) One Mayor, for a term of four (4) years; and

(ii) Five (5) members of City Council as follows: The at large president of Council shall be elected for a two (2) year term. Of the four (4) members elected by district, the three (3) members shall serve for an initial term of four (4) years, and one (1) member shall serve for an initial term of two (2) years. The districts to be represented in this election will be determined by the Transition Committee. The two (2) carry over Council members from the previous term shall fulfill the term of their office. Commencing at the succeeding municipal election and at all subsequent elections, all Council members shall be elected for four (4) year terms.

(b) **Vacancy.** If any of the elected offices becomes vacant between the time this Charter is effective and January 1, 1998, such vacancy shall be filled as provided for in this Charter.

Section 1305. Continuation of Boards and Commissions.

All boards and commissions established for or under the authority of the City before the effective date of this Charter shall continue to exist and operate unless abolished by this Charter or by ordinance of City Council. Members of the boards and commissions existing on the effective date of this Charter and not abolished by its provisions shall remain in office for

as long as their respective terms continue or until the status of their respective boards or commissions shall be altered by City Council. Vacancies in the membership of such boards and commissions shall be filled in accordance with this Charter.

Section 1306. Specific Transfer of Functions.

The duties, functions, and powers assigned by law and not inconsistent with this Charter are hereby transferred to City Councilor to the Mayor or Managing Director in accordance with this Charter. If a department, office or agency is abolished by this Charter, its functions, powers, and duties shall be transferred to the department, office or agency designated by the Charter of, if the Charter makes no such provision, as designated by ordinance. All departments, offices and agencies shall continue until abolished or modified.

Section 1307. Personnel.

(a) **Charter Effect on Employees.** Nothing in this Charter, except as otherwise specifically provided, shall affect or impair the rights or privileges of individuals who are employees of the City on the effective date of this charter as to salary, tenure, residency, retirement, or pension benefits; employments; leave with pay; or other personal rights. Nothing in this Charter shall diminish the rights and privileges of any former employees in their pension or retirement benefits.

(b) **Exemption from Competitive Tests.** Any employee holding a position with the City at the time this Charter takes effect who is serving in the same or comparable position at the time of its adoption shall not be subject to competitive tests as a condition for continuance in the same position, but in all respects shall be subject to the personnel system provided for in this Charter.

(c) **Personnel Action.** Until approval by City Council of the Personnel Code required by Section 602, the Mayor, in consultation with the Managing Director, shall have the power to establish by written directive a personnel system for all employees. All appointments and promotions, except additions to the exempt service, shall be made on the basis of merit and fitness. All personnel actions shall be in accordance with the provisions of a personnel system established by such written directive. Copies of all such directives shall be forwarded by the Mayor to City Council within 24 hours after being issued.

Section 1308. 1996 Budget.

The City Council in office in 1995 shall prepare and adopt in 1995 the budget for 1996, complying insofar as possible with the provisions of this Charter. This shall in no way limit the power of City Council taking office on the first Monday of January 1996 to revise the 1996 budget as authorized by law and by this Charter.

Section 1309. Legal Continuity.

(a) **City Laws.** All City ordinances, resolutions, rules, and regulations which are in force on the effective date of this Charter, not inconsistent with the provisions of this Charter, shall continue in force until amended or repealed.

(b) **Legal Actions.** All rights, claims, actions, orders, contracts, and legal or administrative proceedings involving the City shall continue except as modified pursuant to the provisions of this Charter.

(c) **Property, Records, and Equipment.** All property, records, and equipment of any agency existing on the effective date of this Charter shall be transferred to the agency assuming its powers and duties; but in the event that the powers and duties are to be discontinued or divided between agencies, or in the event that any conflict arises regarding a transfer, such property, records, or equipment shall be transferred to one or more agencies designated by City Council in accordance with this Charter.

Section 1310. Temporary Ordinances.

In order to effect the transition of government under this Charter, City Council shall have the power to enact temporary ordinances. A temporary ordinance may be introduced and passed at any regular meeting of City Council during the three-month period following the effective date of this Charter. It shall become effective immediately after passage and shall automatically stand repealed at the end of six months after the effective date of this Charter. A temporary ordinance shall not be renewed or otherwise continued except as in the manner prescribed by this Charter for the regular consideration and adoption of ordinances.

Section 1311. Mandatory Acts.

From the date of adoption of this Charter until changed otherwise, the districts are comprised as follows, and one member of the City Council shall be elected from each district:

- (a) **District 1.**
 - 1st Ward
 - 2nd Ward – 1st precinct
 - 4th Ward
 - 5th Ward
 - 18th Ward

- (b) **District 2.**
 - 2nd Ward – 2nd precinct
 - 3rd Ward – 1st precinct
 - 10th Ward
 - 16th Ward
 - 9th Ward – 5th precinct

- (c) **District 3.**
3rd Ward – 2nd precinct
8th Ward
9th Ward – 2nd precinct
11th Ward
17th Ward – 3rd & 5th precincts
- (d) **District 4.**
13th Ward
17th Ward
- (e) **District 5.**
14th Ward – 6th precinct
15th Ward
19th Ward
- (f) **District 6.**
6th Ward
7th Ward
12th Ward – 1st precinct
14th Ward – 1st, 4th & 5th precincts

Section 1313. Transition Committee.

(a) **Establishment and Powers.** On or before January 1, 1995, there shall be a Transition Committee established consisting of 11 persons to facilitate the transition from the existing form of government to the form of government established by this Charter. The Transition Committee may draft necessary ordinances, rules, and regulations, including the Administrative, Fiscal and Personnel Codes in order that they may be adopted on or after the effective date of this Charter.

(b) **Membership.** The Transition Committee shall include:

- (i) The current Mayor;
- (ii) One member of current City Council;
- (iii) Three members of the Reading City Government Study Commission, said members to be selected by the Chairperson of the Commission; and
- (iv) Three staff employees of the City of Reading, including one from personnel and one from finance, such employees to be selected by the Mayor.
- (v) Three qualified voters of the City, said individuals to be appointed by current City Council.

(c) **Vacancies.** Any vacancy on the Transition Committee shall be filled by a majority of the remaining members of the Transition Committee.

(d) **Compensation.** The Transition Committee shall serve without compensation but shall be reimbursed for legitimate expenses.

Charter Amendments Approved by Referendum

November 2002 – creating the Charter Board and affirming the supremacy of the Charter

November 2007 – adding the definition of “Residency” to Section 105 (d) and amending Section 902 by changing the submission date of the budget from 60 days prior to the ensuing fiscal year (November 1) to 90 days prior to the ensuing fiscal year (October 1)

November 2008 – eliminating the link between the salary of the Mayor and Auditor, by removing the requirement for the Auditor’s salary to be increased when the Mayor’s salary is increased.

May 2010 – combining the Departments of Finance and Human Resources and calling it the Department of Administrative Services. Also replacing all references to the Director of Administrative Services with Director of Administrative Services in the City of Reading Home Rule Charter.