City Administration Recommendations to the Charter Review Commission

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Executive Summary

The Administration is pleased to present our recommendations for the 2013 Charter Review Commission. This report provides the Administration's input in three parts:

1. General issues of concern, where in largely conceptual terms, the charter could be improved for the general benefit of the city.
2. Priority recommendations that deserve the full attention of the Commission in evaluating and taking action upon as final recommendations to improve the Administration's ability to operate within appropriate parameters.
3. Additional areas of consideration that are deemed worthy of review and improvement, perhaps not as final recommendations but as suggestions for future action.

For issues of general concern, we discuss the broad areas of reform we consider relevant for review by the Commission, and provide context for our specific recommendations. This includes clarifying governance authority, where we hope to frame the debate over some of the most hot-button subjects for charter reform, including a review of the last Commission's proposed change to a Council/Manager form of government, the roles of the Mayor, Managing Director, and City Council, fundamental flaws in the balance of power, and the Administrative Code. We also cover ways the Charter can reduce ambiguity in the language used, be kept updated through regular editions that incorporate recent changes in Charter Board decisions, amendments, or by other means, and how we plan to address deficiencies in the Charter Board without bogging down the Commission.

We then present our two priority recommendations:

1. **Repeal or significantly restrict legislative use of the Administrative Code.** We believe that the Charter's broad application of legislative authority to administrative policy and procedures through the Administrative Code has both inadvertently and sometimes intentionally undermined the Mayor's ability to effective direct the administrative branch as chief executive. Repealing the Administrative Code will restore an appropriate balance of power and improve the effectiveness of the Administration in governing.
2. **Designate separate solicitors for the legislative and executive branches.** Having the City Solicitor serve both the Mayor and City Council has complicated the provision of non-conflicting legal advising and in the cases when disagreements between branches have resulted in Charter complaints and court cases, forced costly outside counsel to become involved. Providing for separate attorneys will solve both long-standing issues.

Beyond the priority recommendations, we will share a number of sections in the Charter that deserve attention and consideration of the Commission. The ones selected are not in any priority order, but all are important in their own right.

Introduction

The City of Reading is in its 18th year of self-government under the home rule charter as established in 1996, and has since adopted both the challenges and opportunities of attempting to craft a governing document that meets the rapidly changing needs of a Pennsylvania municipality the 21st century. Home rule law allows a city to free itself of many of the outdated limitations of the Third Class City Code, but in doing so, also opens the city to uncharted territory in defining governing structures that ensure traditional systems of checks and balances of power while also enabling for innovation—and even experimentation—in local government.

As requested by the 2013 Charter Review Commission, the City Administration is submitting for consideration its evaluation of the current charter's effectiveness in providing for a sound governing structure that serves the needs of Reading, from the perspective of the Administration. The Administration affirms the supremacy of the charter, and believes that overall, the home rule form of government is working in the best interest of the city. We also, of course, strongly support the continuity of the strong mayor form of government, and believe that consistent, centralized, and directly accountable leadership is critical to both the short- and long-term vitality of our city.

However, like the former charter review Commission, we also believe that "the Charter is, and is intended to be, an evolving document" in need of regular reconsideration, and have identified a number of areas that are due for review and, where appropriate, reform.

This report provides the Administration's input in three parts:

1. General issues of concern, where in largely conceptual terms, the charter could be improved for the general benefit of the city.
2. Priority recommendations that deserve the full attention of the Commission in evaluating and taking action upon to improve the Administration's ability to operate within appropriate parameters.
3. Additional areas of consideration that are deemed worthy of review and improvement, perhaps not as final recommendations but as suggestions for future action.

Before getting into the details, we would like to formally thank the previous Charter Review Commission for their hard work on a difficult task and let the current Commission know that the Administration is here to support the new effort to maintain and modernize the City's home rule charter.

Part I: General Issues

Clarifying Governance Authority

The Administration is unequivocally in favor of retaining the strong mayor form of government, as originally defined by the charter. There exists a legislative branch in charge of establishing and maintaining a system of law, constituted as City Council, and an executive branch in charge of operating the government and enforcing the law, constituted as the Mayor and her or his Administration. Additionally, the charter and ethics boards and the City Auditor provide independent legal and operational oversight. Each branch is intended to support a healthy and productive tension that advances the common interests of the electorate.

There are some who would outright dismantle the strong mayor form of government in favor of reverting to the longstanding Commission form that existed before the home rule charter, and others that continue to advocate for a modified home rule charter operating under a Council/Manager form, as recommended by the prior charter review Commission. Many of these individuals argue that the current form exists as a hybrid model that loosely interprets or defines ultimate authority and responsibility, particularly within the Administrative branch.

The Administration rejects these proposals for alternative forms, and desires the Commission to proactively address areas of the Charter that cloud the separation of power inherent in the current form. The prior charter review Commission attempted to do this through the perspective of correcting perceived flaws in the dynamics between the Mayor, Managing Director, and City Council. We will spend some time reacting to the 2003 report's finding on this issue, and then briefly summarize what we believe to be a deeper deficiency in the Charter's power structure, especially present in the Administrative Code.

Comments on the 2003 Report's Conclusions Regarding the Council/Manager Recommendation

One of the 2003 Commission's final two recommendations was to "change the structure of Reading's Home Rule from Strong Mayor to Council/Manager over a three-year period."[1] Believing that the current structure "institutionalizes an adversarial relationship that stresses competition over collaboration and political expediency over professionalism," the Commission believed the best way to address the conflict was to eliminate the directly-elected, unitary executive position, have the Mayor become a member of Council (in a role similar to Council President), and convert the Managing Director into a City Manager reporting to Council.[2]

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[1] "Charter Review Commission Report and Recommendations," 7.
[2] Ibid., 3.

Citing the rationale of the 1993 Government Study Commission, the prior Commission viewed the role of the Managing Director as serving as a conduit between the political nature of the Office of the Mayor and the rest of the Administration, seeking to "separate the professional, management functions of the City from the political leadership."[3] As an example of the conflict between the roles of Mayor and Managing Director, Sections §308(a) and §406(b) are cited from the Charter, whereby both the Mayor and Managing Director are given the responsibility to

> *Direct and supervise the administration of all departments, offices, and agencies of the City, except as otherwise provided by this Charter or by law.*

While recognizing that the language in these sections overlaps, we do not see a "direct conflict of authority and responsibility," as suggested by the Commission.[4] §301 of the Charter clearly states that

> *[t]he 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.*

For the Mayor to be given these general powers and responsibilities, but not have them consistently and explicitly enumerated in §308 of the Charter, would undermine the original and ultimate intention of the chief executive. Being one of the key areas of perceived conflict of authority, however, we recommend that the simplest way for this to be addressed is by editing §308(a) to read

> *Direct the administration of all departments, offices, and agencies of the City, through the Managing Director, except as otherwise provided by this Charter or by law.*

as a way to more clearly state the Mayor's authority over the executive branch, and edit §406(b) to read

> *Supervise the administration of all departments, offices, and agencies of the City, as directed by the Mayor, except as otherwise provided by this Charter or by law.*

These changes should satisfy the concerns over conflicting powers between the two roles by explicitly recognizing their fundamental duties while maintaining the proper chain of command in the executive branch.

As a second point, the Commission also argued that the effectiveness of the Managing Director is further weakened by the fact that although the Managing Director's appointment must be confirmed by City Council, she or he could be removed at the Mayor's

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[3] Ibid.
[4] Ibid., 4.

discretion at any time and without cause. The arguments here were that it "places the Managing Director … into the position of an administrative assistant responsible to the Mayor alone. This potentially limits the pool of willing qualified candidates for the position."[5]

This is in reference to §404(a), which states:

> *The Managing Director may be removed from office by the Mayor at any time, without cause.*

Being far from a problem, however, it is consistent with the general removal powers of anyone else appointed by the Mayor, as stated in §310:

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

Like the previous argument, the raising of this issue runs counter to the fundamental power of the Mayor as established by the Charter. More specifically, §603(b) states that:

> *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.*

With that said, this argument appears applicable to every professional appointed by the Mayor and applicable under §603(b) for possible removal, including the directors of every department. Addressing the main argument for the Commission's position, it has not appeared to be a deciding factor on recruiting qualified people for such positions; many people have expressed sincere interest in serving under a Mayor. More importantly, for any chief executive accountable to the electorate to be effective in governing, the power to hire and fire personnel as determined is necessary for maintaining a system of performance and accountability throughout the Administration.

The one case where this doesn't apply—the Solicitor—has long been a recognized problem of having a professional manager report to two masters; in fact, this will be discussed as a priority reform recommendation further in the report. Interestingly enough, the 2001 Center for Community Leadership (CCL) report, which served as a basis for much of the former Commission's recommendations, noted that "[t]here was virtually unanimous agreement that it is difficult for one person to represent both the administration and Council."[6] Why would this apply to legal advice and representation but not in daily operations?

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[5] Ibid.
[6] "Reading City Charter Review Task Force Final Report," 9.

In addressing this issue, we will briefly supply responses to both the supporting and opposing arguments listed in pages 7-11 of the 2003 Commission report. Responses follow the outlines in the original report. First, for the arguments in support the reform:

a. Attempting to "separate out the managerial functions of government operations from the leadership functions of an at-large elected leader" due to an assumed deficiency in the skills of Mayoral candidates is a difficult and improbable way of removing decision-making power from the electorate in choosing who they feel is best suited for the job of chief executive.
b. Having the City Manager report to City Council will in no way effectively "[insulate] the position from political influence and patronage." City Council is a political body with competing political interests and is just a prone to the problems this proposal attempted to solve.
c. Stating that "[u]nder the present system, the Managing Director has no accountability to Council, the directly elected representatives of citizen constituents" surprisingly ignores the fact that the Mayor, too, is directly elected and accountable to citizen constituents.
d. The report believes that "[t]he Mayor's primary task will be establishing policy, setting agendas and lobbying federal and state government, and businesses on behalf of the City. He/she should not be distracted by the details of operational management of the City departments and bureaus." Further comments cited from the CCL report state that "both [former] mayors have gotten too involved in the daily management of City departments." While the degree of involvement could be debated based on varying philosophies about government, the Mayor, as chief executive, has an inherent right to decide how best to manage the Administration and serve the electorate. This varies depending on the situation, but the present difficulties facing the city call for a level of highly engaged and involved leadership from the Mayor, assisted, of course, by the Managing Director.
e. It is difficult to prove that the Council/Manager structure will "greatly reduce, or eliminate, the incidence of political patronage that is based on criteria other than professional merit and qualifications." This again appears to be an attempt to isolate the professional from the political spheres of government.

As for the arguments opposing the proposal, which the Administration does:

a. We agree that such a change in government form is allowable under the home rule charter.
b. While we agree that the size of the city isn't necessarily relevant in debating the merits of Council/Manager over Strong Mayor, it is a mistake to argue in favor of it simply because it has become a dominant trend in cities across the country. For a more in-depth analysis of this topic, we highly recommend the Commission review the Yale Law Journal article *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System* by Richard C. Schragger (see attached). In the article Schragger argues that there are larger forces that have both influenced the trend toward the Council/Manager form but that recent reformers have been shifting back to models of strong executives as a way to regain political and

economic strength from the regional and federal structures that have weakened cities over the last century.

c. See "a" in the prior list above. If the concern is ensuring the best candidate is elected, then work to improve the overall electoral system should be the focus.
d. See above; the type of electoral system more directly influences the quality of campaign, candidates, and ultimately, elected officials.
e. Ditto.
f. The City of Reading is not a comparable corporation; the chief executive, in this case, is directly elected by and accountable to the citizens, and can effectively direct the Managing Director as appropriate to address city priorities from both Council and the general public. As for the parallels to the school superintendent and the school board, the recent history here locally strongly indicates an adversarial and, in multiple prior cases, unworkable relationship much worse than the city's internal tension.
g. As mentioned several times above, we urge caution in assuming that "inept leadership with too much power" can be designed away entirely without correcting broader dynamics in the electoral system, and suggest that the Mayor is not the only elected official that can contribute to a "dysfunctional state" of affairs.

In the end, it is our position that the attempt to propose a Council/Manager form stemmed from several historical conflicts that could best be corrected with surgical reforms that (1) properly calibrate the balance of power between the Council and Administration, and (2) consider potential modernizations to the overall electoral system that improves participation, representation, and cooperation across the board. In the sections below we will briefly highlight significant examples of where the Charter should be improved on balance of power issues. We will defer to the Commission to consider exploring the broader electoral reforms.

Comments on the Absence of Analysis of the More Fundamental Balance of Power Flaws in the Charter

While the CCL report recognized that

> *"many respondents felt the separation of legislative and executive powers is a major improvement, they noted a need to improve the working relationships between City Council and the Mayor and commented that the checks and balances envisioned for the system have not materialized to date. They had different opinions, however, on why this has not been accomplished.*[7]

the previous Commission did not appear to spend much time at all attempting to address this in reaching its conclusion on recommending a change in the form of government. The CCL report went on to explain that

[7] Ibid., 1.

> *"[m]ost respondents felt this situation [of roles in conflict] is not due to any structural problems with the Charter but to individual leadership styles, the lack of executive leadership, the tendency for City Council to micro-manage, and the need for both Council and the Mayor to become more familiar with their roles under the new system … [s]ome individuals also felt the wording of the Charter is vague in certain areas."*[8]

and further,

> *"[s]everal respondents commented that neither Mayor has been able to establish an effective working relationship with City Council. Some individuals, however, felt there is a general lack of understanding among both elected officials and the general public regarding the separation of executive and legislative functions.*[9]

With the fourth Mayor now serving in office, who before becoming Mayor was Council President and has a deep understanding of the charter and was in good standing with his peers, we have experienced ongoing power struggles that suggest fundamental shortcomings in the Charter's ability to clearly define powers and boundaries between the executive and legislative branches. We call on the current Commission to revisit these issues and remedy the remaining imbalances that distort power and damage relations between the two political bodies. Two areas this is evident is in the authority over the Managing Director and the Administrative Code.

While the Administration does not wish to restart debate over changing the form of government and continue a tug of war over the position of the Managing Director, it is illustrative to point out, while the Charter is clear that the Managing Director is part of the Administration and responsible directly to the Mayor, where inconsistencies exist in the chain of command.

In general, Council is prohibited from directly dealing with employees or attempting to conduct administrative business, as detailed in §209(d) and (e):

> *Except for the purpose of inquiry, the Council and its Members shall deal with the [sic] all departmental and bureau employees through the Mayor or the Managing Director.*
>
> *Neither the Council nor any of its Members shall in any manner dictate the appointment or removal of any City administrative offices or employees who the Mayor or subordinates of the Mayor are empowered to appoint except as otherwise provided in this Charter.*

or discuss administrative policy, as detailed in §405(c) and §605(c):

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[8] Ibid.
[9] Ibid., 3.

> *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.*
>
> *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.*

§406 states that "[t]he 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." The Managing Director, however, is treated somewhat differently than other employees with respect to Council in this case. In the same section stating the Managing Director is responsible to the Mayor, it also says, in 406(i) that the Managing Director will "[p]erform such other duties as are specified in this Charter or may be required by the Mayor or City Council.

Given the boundaries set in every other case and the need for consistency between the separation of power, Council should not be included in this catch-all for the Managing Director's powers and duties. Such general language should be removed from the Charter where present and avoided in the future when balance of power conflicts could potentially exist.

The Administrative Code is another area where Council has been given broad powers inconsistent with a strong mayor form of government. This, too, was acknowledged by the CCL report as a deficiency in the Charter that has lead to historical discord and dysfunction between the Mayor and Council:

> *"Some respondents felt that part of the Mayor's inability to provide executive leadership has been due to City Council usurping some of the office's authority through provisions included in the Administrative Code. The need for both the executive and legislative bodies as well as the general public to better understand the provisions of the Charter and its interrelationship with City Codes was mentioned by several people."*

Although mentioned by the CCL, this is another example of a significant issue about which the Commission remained silent on in arguing the case for a Council/Manager form. In recommending a change in the form of government, the Administrative Code should have been central to assessing the balance of power dynamics that ensnared the Mayor and Administration in a lengthy and complicated set of rules set by the legislative body; instead, the Commission's analysis centered on the role of the Managing Director.

Revisiting §301 again, we are reminded that the intention of the Charter was that

> *[t]he 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.*

Such language suggests that the Mayor would be able to define and design all operating policies and procedures she or he deemed necessary for governance. Upon further reading, however, we are then told these "executive, administrative, and law enforcement powers" may be overridden by §601, which outlines broad powers of the legislative branch through the 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:*
>
> *(a) a specific enumeration of departments, offices, and agencies and the division of powers and responsibilities among them;*
>
> *(b) the internal procedures for the operation of the departments, offices, and agencies; and*
>
> *(c) any other rules, regulations, and procedures reasonably appropriate for efficient administration.*

This general language suggests that Council has the ability micro-manage nearly any administrative activity, such as the frequency of staff meetings, if it so chose. §601(a) could be appropriate in defining the overall structure of government and is consistent with similar provisions in other charters in the Commonwealth, but 601(b) and 601(c) do not appear in any other city's home rule charter we have reviewed, save for Allentown (which adopted Reading's Charter as a model for its own and thus not used here for comparison). What is the justification for such enabling powers in a strong mayor form if not to, in the words of the CCL report, "usurp some of the [chief executive's] authority?"

This provision is further extended in §602, "Common Administrative Procedures," which establishes that:

> *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.*

Review and reform of these sections of the Charter will be further discussed in "Priority Recommendations" below, as the Administration believes that whatever the original intention of the Administrative Code, its use by City Council may have become overreaching beyond the reasonable purview of the legislative branch.

Reducing Charter Ambiguity

Beyond clarifying authority, we seek reductions in ambiguous language in the Charter to help avoid misinterpretations and misunderstandings. These efforts might help to prevent conflict from even starting and better inform both the branches of government and the public of the language and intentions of the Charter.

A simple way to start would be to have a section of terms added to Article I that clearly defined important words, and ensure consistent terminology is used throughout the document. Many charters are very explicit about this, and similar attempts have already been made in the Administrative Code and many ordinances. The 2007 amendment to §105, "Construction," added subpart (d), "Residency," to explain that "[a]ll references to residency in this Charter shall mean legal residence or domicile," yet no other term is similarly explained.

For some specific examples, the terms "departments," "offices," and "agencies" are used extensively in the Charter; "departments" is readily recognizable in its use to reference major units of government, but "offices" and "agencies" are not. §209(d), "Prohibitions," mentions "bureaus," but is more accurately referred to as "divisions" being subunits to "departments." §905(b) references "programs" as a component of the budget that can be amended by Council, but the term is never defined in that context (other than in §902, "Submission of Balanced Budget & Capital Program," which suggests the total capital portion of the budget). §308(i) refers to the Mayor's ability to set administrative "policy," and both the Managing Director in §405(c) and department heads in §605(c) are prohibited from discussing "policy" with Council unless authorized by the Mayor, but what does this term mean? Finally, 706 prohibits "political activity," but it is not defined in the Charter. The Code of Ethics, however, does define it as being "[a]ny activity which promotes the candidacy of any individual seeking elective office, or the advocacy of any political party or position, including but not limited to the circulation of election petitions and the sale or distribution of fund raising items or tickets." Some activity defined as such, however, is difficult to restrict, particularly within the offices of the elected officials.

Another aid in interpreting the Charter would be to add commentary to each article or, ideally, section of the document. This can be seen in Pittsburgh's home rule charter, which summarizes the articles with narrative before introducing the actual charter language. The National Civic League's *Model City Charter* offers excellent section-level commentary that allows for much better interpretation of the section's intent and history. Both will be submitted to the Commission along with this report for review and reference.

A final request is to eliminate contradictory language that can confuse the reader. A good example is in §902, "Submission of Balanced Budget & Capital Program," where the Charter states that "[t]he Proposed Balanced Budget and Capital Program shall be in such form as the Mayor deems desirable, unless otherwise required by Council." It is not immediately

clear as to which party has precedence in determining the budget's form, if both insist upon different arrangements.

Keeping the Charter Current

In addition to eliminating ambiguities, it would be beneficial to have the Charter regular published, perhaps annually, as updated editions with the latest changes properly integrated and annotated. Good examples that still create regular confusion include §907, "Appropriation & Revenue Ordinance" and §1110, "Recall of Elected Officials," both of which were repealed over conflict with state law. This should be properly reflected in the latest editions of the Charter. The most current one available was updated in 2010.

The document should also integrate Charter Board advisory opinions, final rulings, and the results of any related court cases. As of this writing there have been 33 advisory opinions, 12 final rulings, and several court cases, all affecting the interpretation of the Charter. These, too, could be included in updated editions of the Charter.

The Charter Board appears to be the most appropriate body to be responsible for maintaining the Charter for such purposes, and may have even begun doing such work. The Administration supports any effort to improve the education on and understanding of the City's governing documents.

Our Position on the Charter Board

The City of Reading Charter Board is a unique entity to a home rule municipality in Pennsylvania created to oversee compliance with the Charter through offering advisory opinions, investigating complaints, and educating elected leaders on matters of the Charter. Although the Administration has disagreed with the Charter Board on a number of issues and even now continues to litigate some of the board's decisions in court, we respect and support the efforts of the Charter Board in its role.

Instead of using time in the Commission to revisit the history and rationale leading up to the creation of the Charter Board as part of the former Commission's final recommendations and ultimate amendment through referendum, we will instead work with City Council to improve several shortcomings in the current implementation of the Charter Board by amending the enabling legislation that created and governs the board.

This includes things like providing full disclosure on both the plaintiff and defendant; the nature of the complaint; and developing ways to mediate settlements that obviate the need for attorneys, court appeals, and other aspects of a lengthy legal process. A draft proposal was already submitted to Council, and we await their response and action on the suggestions.

Part II: Priority Recommendations

1. Repeal or Significantly Restrict Legislative Use of the Administrative Code

The first recommendation for the Charter Review Commission is to repeal or significantly restrict the legislative use of the Administrative Code. As described in the section above, the Administration believes that these provisions of the Charter complicate and, in some cases, undermine the Mayor's executive powers.

Issue Background

The main sections of the Charter specifically under consideration here are §601, "Administrative Code," in whole:

> *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:*
>
> *(a) a specific enumeration of departments, offices, and agencies and the division of powers and responsibilities among them;*
>
> *(b) the internal procedures for the operation of the departments, offices, and agencies; and*
>
> *(c) any other rules, regulations, and procedures reasonably appropriate for efficient administration.*

and §602, "Common Administrative Procedure," in whole:

> *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.*

Amendment Recommendation

As a replacement for §601, the following would apply:

> *The Administration shall enact and from time to time amend an Administrative Manual which shall set forth in detail the administrative policies and procedures of the City, including:*
>
> *(a) general administrative policies, as directed by the Mayor and implemented by the Managing Director, for the efficient and effective operation of government;*

(b) the internal procedures for the operation of the departments, offices, and agencies, as directed by the Managing Director and heads of departments; and;

(c) any other rules, regulations, and procedures reasonably appropriate for efficient and effective administration.

This amendment will eliminate the Administrative Code, as currently constituted, in favor of the creation of an Administrative Manual, to be established and amended under the sole direction of the Mayor, which is much more consistent with the general powers of the Mayor as specified in §301 and §308 in Article III. §308(i) specifically enables the Mayor to take such actions through the power and duty to "[b]e responsible for the establishment and development of administrative policy to be implemented by the Managing Director" and thus the proposed amendment for §601 is completely consistent with the Charter in this regard.

The creation of an Administrative Manual is not a new requirement, and is in fact already specified and mandated in the Administrative Code. §1-102, "Definitions" of the Administrative Code defines the Administrative Manual as

> *those documents specifying operational matters of municipal units including, but not necessarily limited to, descriptions of the duties and responsibilities of subordinate units, rules, and regulations and appropriate administrative procedures, records, and reports.*

The Administrative Manual is referenced in several places in the Administrative Code, including as a requirement by every director to produce for their department in §1-184, "Duties:"

> *Develop and prescribe, in written form, an administrative manual of policies and procedures for the department subject to the approval of the managing director.*

Specific departments have been given detailed items for inclusion in their manuals, such as in Administrative Services, under §1-186(3), "Regulations Concerning Appropriations and Transfer," subpart (A):

> *The authorization and expenditure of all funds and preparation of department budgets shall be in accordance with a policy adopted by the Council and a procedures manual to be prepared and periodically reviewed and updated by the Department of Finance. Expenditures shall be executed in a uniform manner for every City Department.*

§1-186(3), "Regulations Concerning Appropriations and Transfer," subpart (D):

> *Justification for transferring money between departments must be presented to and approved by Council. The procedures manual will stipulate the following:*

(1) expenditure procedures.

(2) justification procedures for transferring money between line items.

(3) justification procedures for transferring money between department.

(4) administration of petty cash funds.

and §1-187, "Department Director Duties," (for Human Resources) subpart (F):

> *Create and maintain a personnel policy and benefits manual and communicate this information to employees both in writing and by seminars.*

Maintenance of such manuals has been poor, from what we have gathered. Rather than relying on Council to attempt to legislate every detail of these truly administrative functions, such manuals would be much better developed and followed if the Administration was able to properly exercise its executive powers under the Charter.

But what would become of the existing Administrative Code? Much of the language would be extracted as the basis for the Administrative Manual. What would remain would be mainly the structural organization of the City, including the departments and divisions, the Code of Ethics, as well as all boards, authorities, and Commissions. At that point, the revision of this chapter of the codified ordinances could be renamed from "Administration and Government" to "Government Structure."

The removed language from §601 relating to these government structures, originally written as

> *(a) a specific enumeration of departments, offices, and agencies and the division of powers and responsibilities among them;*

would be replaced with a new subsection (b) in Article II, §216, "Ordinances in General," which will add to the Charter the language in §1-122, "Ordinances." Subpart (1) of the same title in the Administrative Code, specifying:

> *Acts of the Council shall be by ordinance which:*
>
> *(i) adopt or amend the codes or establish, alter, or abolish any unit of the City.*
>
> *(ii) provide for a fine or other penalty or establish a rule or regulation for which a fine or other penalty is imposed.*
>
> *(iii) levy taxes and provide for service charges, permit fees and assessments.*
>
> *(iv) grant, renew or extend a franchise.*

(v) adopt and amend the annual budget and capital program budget.

(vi) repeal or amend any ordinance.

(vii) adopt procedures for purchasing of products, goods, or services, for the making of contracts and for the sale or lease of personal or real property of the City.

(viii) adopt other actions which are legislative in nature.[10]

(ix) authorize the borrowing of money.

(x) purchase, convey or lease lands or buildings.

(xi) adopt zoning, subdivision or other land use controls.

In this subpart (a)(i) will serve the same purpose as the former §601(a) in allowing, via ordinance, the establishment, alteration, or abolishment of any units of government. This section will also drop §1-122 subpart (L) included in the Administrative Code regarding the position ordinance, which would be abolished and reverted back to the informational position listing included as part of §904(d) of the Charter.

Negotiation would also occur on subpart (g), purchasing policies, which along with the position ordinance have been an obstacle for the administration to have flexibility in managing the operating budget. Yet even while allowing for greater flexibility, some fiscal oversight powers should also be provided to Council to check against unbudgeted spending. Other areas of the Charter that reference the Administrative Code, such as §908, "Amendments After Adoption," subpart (c), will need to be amended, as well.

With an updated version of §601 in place, §602 could be eliminated completely. The current language gives Council control over the activities of both the Administration and City Auditor, which if the intention of the Charter is to provide for balance of power, should have autonomy over such procedural decisions.

As examples, in the case of the City Auditor, §503(a) states that she or he shall "[h]ave 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." How can the City Auditor provide independent financial oversight if §602 can override how she or he operates outside of the parameters of the Charter? What if the Mayor was given the ability, in reverse of the Administrative Code, to override Article II, §212, "Procedures," subpart (a) "Rules," which states that "[t]he Council shall determine its own rules and Order of Business?"

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[10] This should be more specific, and consistent with the state constitution and state law.

2. Designate Separate Solicitors for the Legislative and Executive Branches

The second recommendation is to designate separate solicitors for the legislative and executive branches. Doing so will solve a number of number of significant problems that both the Administration and Council are facing.

Issue Background

The main sections of the Charter specifically under consideration here include §309, "Appointment by the Mayor," which states that the Mayor will appoint

> *One City Solicitor. Any person so appointed shall hold office 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.*

and §801, "Qualifications and Responsibilities (City Solicitor)," which states

> *(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 advisor to the Mayor, the Council, and all City departments and agencies; 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. 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.*

The problem with the current arrangement has been well-established in the CCL report, but it again bears repeating here, noting that "[t]here was virtually unanimous agreement that it is difficult for one person to represent both the administration and Council."[11] While it didn't make it as a final recommendation of the former Charter Review Commission, their report did also acknowledge it's importance as a top ongoing issue that needs to be resolved:

[11] Ibid., 9.

> *There appears to be a consensus that the §801 limitation to one legal advisor for the City is too restrictive and that provision should be made, in some way, for the employment of additional legal staff.*[12]

This issue goes beyond it being difficult to provide legal representation to both the Administration and Council. There are two additionally problematic aspects to the Charter's current limitation.

First, even though the Charter does limit the City to one solicitor, the City does employ three additional attorneys in the Law Department that assist the solicitor with the City's caseload. It is debatable whether this is allowable under a strict interpretation of the Charter, which could essentially prohibit having multiple attorneys—not even if they were considered solicitors. It is clear to us that there certainly is a need for multiple in-house attorneys, but we are obligated to obey the Charter as written. The Charter does allow for outside counsel to represent the City in §801(b), but it must be temporary and for specific legal purposes, such as the Department of Justice's consent decree with the City.

Second, if a legal dispute arises between the Administration and City Council, and the matter must go before the Charter Board or courts, the current Law Department, under one solicitor, must recuse themselves from the case and contract with outside counsel to represent both parties. This is described in §1-123, "Independent Legal Counsel" of the Administrative Code:

> *In the event either the Mayor/Administration or City Council require legal representation in an area of conflict, each party shall have the ability to select their own legal counsel independent of the City.*

As has happened recently in Charter challenges between Mayor Spencer and at least one member of City Council, the retaining of temporary solicitors can increase the cost of litigation significantly, particularly in lengthy and complicated cases. Having separate solicitors can prevent this from happening in the future.

Recommended Amendment

Our recommendation is to amend §801(a) to eliminate the language specifying one solicitor, replace the Administrative Manual for Administrative Code, and exempt Council from having to use this solicitor for their own legal matters as follows:

> *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 advisor to the Mayor and all City departments and agencies; shall represent the City in all legal proceedings and shall perform such other duties prescribed by law, by this Charter, by*

[12] Ibid., 12.

the City Administrative Manual or action of Council, except when Council or a unit of government authorized to do so by this charter chooses to use its own counsel.

§309 may be able to stand as currently written, but it would be wise for the Commission to carefully review whether the existing language would in any way be needed to prevent the sections from counteracting each other. Also for consideration would be removing §211, "Removal Powers," subpart (b), which states "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."

Subparts (a) and (c) of this section already provides for removal of anyone appointed by Council that is found guilty of "[m]alfeasance, committing a fraud upon the City or Commission of any corrupt act or practice," and so should cover every reasonable "just cause" grounds for removing the Solicitor. Allowing for the current language permits an arbitrary removal of the Solicitor by either Council or the Mayor, and thus still binds the position to the will of two masters.

Council will then explicitly be given the ability to also retain an attorney, along with other staff in general, as §227 in Article II:

> *Council shall have additional power to employ or retain its own staff and consultants, including an attorney who shall be a member of the Bar of the Supreme Court of Pennsylvania and experienced in municipal law, who may act as Solicitor and legal advisor to Council, and may represent Council as a body in legal proceedings. Council's attorney shall not represent the City as a municipal corporation in any legal proceeding.*

This amendment not only allows for a second solicitor to advise and represent Council, but also corrects another longstanding restriction in the Charter limiting City Council to only being able to formally employ one staff member, the City Clerk. For many years, however, Council has additionally enjoyed staff support from an Assistant City Clerk and additional assistants, which technically remain employees of the Administration authorized to work with the City Clerk and aide in the needs of Council members. Enabling Council to employ its own staff, generally, and through this allowance create a Solicitor for Council simply and effectively solves the related problems.

An outstanding question, then, becomes what to do about the City Auditor. Under 702, "Personnel System and Personnel Code," subsection (a)(iv), there shall be "[o]ne clerk or secretary for each of the full-time elected City officials and the heads of each City department." A 2009 debate over whether Council was entitled to additional staff was initiated over the wording of this section, in which the Charter Board issued an advisory opinion in the negative, arguing that Council members did not qualify as full-time, and thus,

unlike the Auditor, were not each entitled to a clerk or secretary.[13] Revisiting this section is recommended for the purpose of clarifying this, generally, as well as considering the solicitor needs of the City Auditor.

[13] http://www.readingpa.gov/content/advisory-opinion-number-17-whether-city-council-part-time-body

Part III: Additional Considerations

§207. Filling of Vacancies.

Vacancies on Council should be permanently filled through direct election by the people at the next election permitted by law, whether a primary or general election. The current language in this section could be amended to provide for this with the following:

> *A vacancy on Council shall be filled in a special election within one hundred twenty (120) days of the filing of a Writ of Election.*
>
> *Within three (3) calendar days of the death, resignation, or removal of a Member of Council, the Council President shall instruct the City Clerk to issue a Writ of Election.*
>
> *The Clerk shall issue the Writ of Election within four (4) calendar days for a special election to be held within sixty (60) days of the issuance of the writ,*
>
> *Providing that:*
>
> > *(a) the Writ of Election shall not be issued on the day of a primary, municipal or general election.*
> >
> > *(b) a Writ of Election shall not be issued less than sixty (60) days prior to primary, municipal or general election.*
> >
> > *(c) a Writ of Election issued to fill a vacancy occurring less than one- hundred (120) days but more than fifty-nine (59) days prior to a primary, municipal or general election shall direct that the special election shall coincide with said primary, municipal, or general election.*
>
> *The special election shall be held on any day other than a weekend or an official federal, state, or local holiday.*
>
> *The person elected shall take office as soon as possible after certification of election and shall serve the unexpired portion of the vacated term.*

§208. General Powers and Duties

The Charter defaults all authority in it not otherwise provided for to Council, again appearing as a residual of the previous Commission form of government. It currently makes no specific provision defining Council's legislative powers, and runs the risk of allocating unintentional powers not properly defined elsewhere. This should be more specific so that such broad grants of power are unnecessary, perhaps by simply and explicitly stating in this section that

The legislative power of the City shall be vested in City Council.

While it is important to avoid restricting the Charter's overall authority under home rule, the City must be careful in crafting balance of powers between the branches of government, and specific language like this better establishes the extent of each branch's power.

§213. Citizens' Right to be Heard.

The previous Commission reported concerns with this during the previous report, and we agree that it is worth further attention:

> *Public comment at Council Meetings. Council Ordinance 10-98, insofar as it (a) provides time limitations on public comment, and (b) prohibits public comment before a vote, is in violation of Charter Section 213. These provisions of the Ordinance should be repealed as soon as possible.*

§217. Procedures.

The Administration regularly submits ordinances for introduction to Council, but we are concerned about whether the process used is in compliance with the Charter, which in this section states that "[t]he first reading of an ordinance may be introduced by any Member at any regular or special meeting of the Council without vote." This suggests that Council members must, like other legislative bodies, have members sponsor and introduce bills for consideration, and that they cannot simply be introduced by the anyone in the Administration, on Council Staff, or otherwise.

§225. City Clerk.

The role of the City Clerk has grown from simply clerical in nature to a wide-ranging position, and one that has in many cases has evolved to take on functions which are administrative in nature. In more clearly establishing the line between legislative and administrative role and responsibilities, redefining the role of the City Clerk is a critical aspect of correcting the imbalance.

According to the City's own description of the City Clerk, as documented on the City's own website,

> *"The City Clerk acts as the Secretary to the Council, or Secretary to the Board of Directors. The City Clerk is the Director of the Legislative Branch, responsible for managing the operations of City Council by providing leadership and administrative*

> *support, implementing Council policies and providing quality services to the people of Reading."*[14]

Describing the position as "Director of the Legislative Branch," it appears that a broader role for this person is desired than as set in the Charter. While we respect this as a valid possibility, we believe that first the primary roles of the City Clerk should be addressed. As mentioned above, the Clerk's office is currently provided with an Deputy City Clerk, and there is a concern that the Clerk's responsibilities might be shifted to the deputy as a way to spend time working on activities that overlap or interfere with the Administration's responsibilities.

Of additional concern is having a City Clerk that is able to directly participate in City political affairs and still maintain an objective perspective on her or his duties. Under §605, "Prohibitions," the Charter states that

> *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.*

§1-161, "Duties," subpart (A) of the Administrative Code confirms that the City Clerk is treated as a department head, so §605 should technically apply. According to records of the City of Reading Democratic City Committee, however, the current City Clerk serves as secretary of the committee, which would appear to violate §605(a).[15]

More generally, the ethics of the *International Institution of Municipal Clerks*, of which certified municipal clerks must adhere to, require the person "to be ever mindful of my neutrality and impartiality, rendering equal service to all and to extend the same treatment I wish to receive myself" and "to strive constantly to improve the administration of the affairs of my office consistent with applicable laws and through sound management practices to produce continued progress and so fulfill my responsibilities to my community and others."[16] These international ethics suggest that greater emphasis should be placed on the fundamental role of the Clerk, just as has been argued for the professionalization and de-politicization of the Managing Director and other department heads.

It could, however, be argued that regulating personal political activity should be beyond the purview of the Charter, and that any employee, including the Managing Director and heads of departments, should retain the right to engage in political activity outside of their employment with the City. If that were the case, it should be consistent across the board, both then and now.

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[14] http://www.readingpa.gov/content/city-clerks-office
[15] http://www.berksdems.org/city_committee
[16] http://www.iimc.com/DocumentView.aspx?DID=55

§304. Vacancy.

Just as discussed for §207 above, the filling of a vacancy for the position of Mayor should be determined by the voters as soon as possible. We recommend the same process for Council vacancies be followed in this case, as well.

§308. Powers and Duties of the Mayor.

Although issues of this section have been addressed at length above, one area where additional discussion is necessary is in subpart (m):

> *Unless otherwise provided, be responsible for the employment of personnel necessary for the effective operation of City Government.*

The Administration interprets this to mean that, save for anyone requiring Council approval or other Charter requirements, the Mayor has the ability, as chief executive, to staff the Administration in a manner she or he best decides, just as Council now has full control over who to hire for City Clerk and the City Auditor has in hiring a clerk for the Auditor's office.

Mayor Spencer immediately ran into this issue, however, upon taking office with the hiring of his own staff in the Office of the Mayor. For the past several administrations, the title and number of employees in each division of the Administration has had to be authorized by City Council as part of the "position ordinance," which was created within the Administrative Code.

Through the position ordinance, it is possible for Council to object to the Administration's allocation of employees among divisions if the type of position or number of employees did not exist at the time of the current budget. As was done in January of 2012, City Council used the position ordinance to reject the Mayor's choices for the Office of the Mayor for several months, which lead to a lengthy and costly legal conflict. This was again used during the 2013 budget, during the final vote to approve the entire budget, when several members of Council attempted to reduce the staffing of the Mayor's Office even though the office's operating budget more than covered the cost of the current staffing levels. In this manner the Administration views the position ordinance as a tool to control the Mayor's powers under 308(m), often for political instead of fiscal reasons.

Beyond the political problems the position ordinance enables, it also may be in violation of the Charter by attempting to essentially amend the Charter through the Administrative Code. Under §1-186, "Fiscal Provisions," subpart (9), "Annual Budget", subpart (C), "Budget Organization and Content," subpart (2)(d) of the Administrative Code, requires of the budget, that

> *It shall include the position ordinance, defined in §1-122, which shows the number of all proposed employees in every job classification, as defined in §1-221, highlighting changes and the proposed salaries of all exempt employees beginning in 2009 (plain italic language required by Bill No. 3-2009 enacted January 26, 2009, and approved by the Mayor January 27, 2009). [Ord. 60-2009]*

Yet this is simply an insertion into §904, "Budget," subsection (d) of the Charter, which simply says

> *It shall show the number of proposed employees in every job classification.*

When reviewed side by side, it is difficult to see how such language in the Administrative Code is not an attempt to legislatively amend the Charter, and goes to the first recommendation of the Administration in outright eliminating the Administrative Code to correct any violations and add clear and proper boundaries to the balance of power between branches.

Further legal action is pending on this matter, but regardless of the rulings, this is an area the Commission should consider for review.

§312. Deputy Mayor

The Charter currently only allows for the Managing Director to act as Deputy Mayor, but there may be a time when the Mayor is absent from the City, and the Managing Director is either absent as well or the position of Managing Director is vacant. In this case, there should be a clear provision for the Mayor to choose a Deputy Mayor to assume the role as otherwise defined in this section.

§401. Appointment; Qualification; Compensation.

As in §312 above, another scenario where the Charter is not clear is in §401(d), describing the appointment of a Temporary Managing Director. After two advisory opinions from the Charter Board and a Charter case still under court review, there is much confusion as to the timing and process of appointing a Temporary Managing Director.

§502. Eligibility.

It is our concern that the newly instituted requirements from the 2012 referendum that the City Auditor be a CPA with a minimum of five (5) years experience in business administration, accounting, management or municipal government may severely limit the pool of candidates for City Auditor. We expect the current City Auditor will be given an opportunity to speak about this to the Commission.

§503. Responsibilities.

Assuming it is a typo, subsection (d) should read

> *Perform specific audits of City finances from time to time as determined by the Mayor or City Council.*

§505. Vacancy.

Again, this should follow the suggestion for vacancies of other elected officials as described above.

§606. Department of Public Works/City Engineer

This section mandates the creation of the Department of Public Works and defines a head of the department. As part of this person's duties, however, she or he is also required to be a "professional civil engineer registered in Pennsylvania," to serve as city engineer in addition to general management responsibilities. We believe that this requirement unnecessarily restricts the pool of qualified candidates for the position, and assigns to this position something that could more effectively be the focus of another employee who would perform such engineering tasks in consultation with the head of the department. Beyond the qualifications of the Solicitor, having specific requirements for each director should rightfully be the discretion of the Mayor in making such appointments.

§607. Department of Administrative Services.

The departments of Finance and Human Resources were consolidated under the Department of Administrative Services through a referendum in 2010, mainly as a way to streamline operations and reduce the cost of a department director. With several years of functioning of the new department now observed, it may have been too ambitious to attempt such a consolidation, and the resulting savings are not where they expected to be. In addition, it is extremely difficult to find candidates for the head of the department that are effectively qualified in all the areas now managed by the position. It may be something for the Commission to recommend for reconsideration in the future.

§1002. Membership.

Subpart (c), which restricts citizens from "concurrently serv[ing] on more than one authority, board, or Commission" severely limits the number of people willing and able to participate in governance. Provision should be made for serving on multiple bodies as long as no conflict is determined or the roles are solely advisory in nature.