

[Note: this working document reflects initial recommendations on a variety of issues from the Governance Subcommittee, some of which were reversed following the discussion with the full Commission on May 10, 2023, as noted. This working document is superseded by the “Comprehensive List of Charter Changes Under Consideration” document of June 12, 2023.]

Governance Subcommittee Supplementary Memorandum: Additional substantial recommendations from Administration and community members, updated draft May 10, 2023

The Commission received in writing at its January meeting a series of recommendations regarding the Charter from the Chief Administrative Officer reflecting the administration’s review of the document. Recommendations pertaining to Charter chapters 4 and 5 are listed below (others will be taken up at another time). These recommendations relate to matters that are significant for the operations of the Mayor-Council form of government, but less fundamental than the issues noted in the primary memorandum. Comments made are preliminary. The Commission as a whole will want to reach a final collective judgment on these matter before finalizing its overall recommendations.

In addition, this document contains brief discussions of issues raised concerning Chapter 17 of the Charter (Planning) by a city resident.

1. Re Powers 4 (02a), 4 (02b), 4 (02c).

The Administration has recommended to the commission:

- Changing the power to “provide for conduct and operations of all departments, bureaus, divisions, boards, commissions, offices and agencies” from power of Council to a power of Mayor/CAO
- Changing the power to create, alter or abolish departments from a power of Council to a power of Mayor/CAO

Subcommittee View: *With respect to 4 (02a) we see two possible approaches:*

- *Keep charter language as it is*
- *Specify that agencies that report to the Mayor/CAO are the responsibility of the Mayor/CAO, not Council, while agencies that report to Council are the responsibility of Council*

We also think that boards and commissions should continue to report to City Council, although as established by ordinance some boards or commission may have mayoral appointees and requirements to report to the administration. Transferring this function and power writ large to the Mayor/CAO would be a large undertaking and would occupy a considerable amount of the Mayor/CAO’s time better spent on leading the city’s professional agencies.

With respect to 4 (02b) and 4 (02c), we agree that City Council should not be able to create or alter departments reporting to the Mayor/CAO without approval of the Mayor/CAO under the Mayor-Council form. We also believe that City Council should approve Mayor/CAO proposals to create or alter departments. Language that specifies that only the Mayor/CAO may initiative changes in agencies reporting to the Mayor/CAO but that Council must approve the changes would resolve this issue.

Meeting note: Re a) Mayor can create things that for Mayor and Council create things for council b)

2. Re Powers 4(02d), the Administration has recommended removing the power of Council to provide for the “titles, qualifications, powers, duties,,, of all officers and employees” while retaining Council’s power to approve the compensation of such officers and employees, in order to allow greater flexibility.

Subcommittee View: *Retaining the capacity of the Council to review the titles, qualifications, etc. in addition to compensation seems reasonable.. [Note: Subcommittee initial view reversed following Commission discussion, 5-10-23]*

3. Re Powers 4 (16a), the Administration recommends that Council's power of investigation be limited to agencies, boards, and commissions that report to Council, and/or that parameters be placed upon this power; and also that this provision might be moved to City Code rather than the Charter.

Subcommittee view: *This power has rarely been used by Council under the current form of government but its existence serves as a check in the event of serious known issues with an agency that the Mayor/CAO are not addressing. The suggestion of placing parameters to prevent the power from being misused is worthy of further discussion.*

4. The Administration also recommends removing reference to the City Clerk (4.04), the City Attorney's Office (4.17), the City Auditor's Office (4.18), and the Inspector General (4.19) from the Charter to the City Code, on grounds doing so would allow the specifics of each office to be altered by the Mayor and Council without General Assembly approval

Subcommittee view: *The organization of the City Attorney's office is sufficiently complex and important that we would recommend that it be kept in the Charter. We would need input from Council regarding the wisdom of the other offices noted from the Charter but would be reluctant to endorse this if there is not consensus. [Commission discussion, 5-10-23: Support keeping all these offices in the charter.]*

5. The Administration recommends moving the Inspector General to report to the CAO.

Subcommittee view: *This proposal is likely to be seen as a significant incursion on the powers of Council. We do not recommend adoption at this time.*

6. The Administration recommends striking provisions 5.05.1(b), 5.05.1(c), 5.05.1(d), 5.05.1(e), and 5.05.1(f) for the following reasons:
 - 5.05.1(b) and 5.05.1(c) pertain to required financial reporting.
 - 5.05.1(d) reports to maintenance of cemeteries
 - 5.05.1(e) pertains to CAO attending or being represented at Council meetings
 - 5.05.1(f) pertains to duties of the CAO

Subcommittee view: *As an initial observation, we note that it may be desirable to maintain the financial reporting requirements even if they are duplicative. We are unsure of the rationale for adjusting the requirements that the CAO attend or be represented at Council meetings or the other duties of the CAO. We agree that the language on cemeteries perhaps does not need to be in the Charter unless there is a specific benefit to including it.*

7. The Administration recommends altering 5A.03 so that the CAO, not Council, establishes the personnel system, noting that it is incongruent with Section 5.03 stating that Council deals with the administrative services solely through the CAO.

Subcommittee view: *The Charter envisions that the Mayor/CAO develop the personnel system and that Council approve it. We do not see this provision as per se incongruent with the established prohibition on Council members giving direction to city employees. Council oversight of the personnel system as a whole seems appropriate.*

Budget Process recommendations

6.02. Administration recommends removing specific dates for budget process from ordinance to give more flexibility.

Subcommittee view: we view the existing parameters on dates as sufficiently broad to permit flexibility while assuring that the budget is adopted at least a month in advance of the commencement of each fiscal year.

6.04-6.08. Administration recommends removal of these provision for various reasons (i.e. duplicates Virginia law, unduly burdensome to require introduction of the ordinance at some time as budget introduction, unnecessary to mandate printed documents, formatting should be done according to professional standards not recommendation).

Subcommittee view: We are open to removing the stipulations on format of the budget document if there is support from Council for this provision. We think retaining the balanced budget language, while duplicative, may be wise to build confidence amongst City residents in the City's fiscal practices. We agree with the administration's proposal that the requirement that the budget introduction be linked to introduction of budget ordinances be dropped, as unnecessary and burdensome on the staff. We agree that requirements for printed budgets can be dropped from the Charter and addressed via ordinance according to the wishes of Council, but recommend that substitute language requiring timely publication of budget documents on the world wide web (as is current practice) be included in the charter.

6.10. Detailed provision that appears to require Council to hold an additional public hearing **to increase expenditures above the mayor's proposal**. The administration questions whether this provision is necessary.

Subcommittee view: *The language in 6.10 is confusing, but the intent appears to be to specify the process by which Council may amend the budget. We recommend developing streamlined and clearer language. While the requirement to hold a public hearing of Council when acts to increase expenditures beyond the Mayor's proposal before the adoption of the budget may appear functionally unnecessary, we generally favor retaining provisions that promote public transparency so are not convinced of need to remove that provision.*

6.13. Administration recommends removal of section concerning utilities budget as unnecessary.

Subcommittee view: we would like more detailed information on this item and the implications (if any) of removing the section.

6.15.3. Administration recommends removal of a charter provision that a school modernization plan be developed by January 1, 2019.

Subcommittee view: we agree this charter provision should be removed.

6.16. Administration recommends elimination of most of this provision, which includes requirement that Council approve budget amendments. Instead administration would like flexibility to move money between departments. The mayor would continue to be required to report projected deficits to council and to report all budget transfers made to Council.

Subcommittee view: *This recommendation would likely be seen as significantly weakening the power of City Council. A provision to allow the administration to move money **within** departments without prior Council approval in some circumstances, may be worth consideration. The subcommittee also discussed whether it might be feasible or legal to establish a fund within the General Fund budget, perhaps equivalent to no more than 1% of the total budget, that could be allocated to an agency to meet urgent operational needs, without prior Council approval. Such a fund might assist with the operational concerns cited by the administration without compromising Council oversight of the budget as a whole.*

Borrowing

7B. 01. Administration recommends that provision be changed to read that the City, not city council, may issue bonds.

Subcommittee view: *We agree with this recommendation. [Subcommittee view reversed following Commission Discussion, 5-10-23]*

Utilities

13.06. Administration recommends removing language about utilities and placing it in city code.

Subcommittee view: *More information is needed.*

Development

18.02. Eminent Domain. Administration raised question about whether this provision is still legal.

Subcommittee view: *We will request legal expertise supporting the Commission to review this provision for its legality but otherwise see no issue with the provision.*

Planning

A resident has brought forward to the Charter Review Commission several requests pertaining to the composition and powers of the Planning Commission (Chapter 17 of the charter). These include a) establishment of term limits for Planning Commission members b) establishment of clear conflict-of-interest standards for Planning Commission members and c) giving City Council the power to amend or make exceptions to the Master Plan without going through approval of the Planning Commission as per Chapter 17.06 of the charter. It was stated by the community member that Richmond is unique in Virginia in treating the Planning Commission as a decision-making rather than advisory body. Suffolk and Virginia Beach are examples of cities with charter provisions for an advisory Planning Commission. Some other cities do not specify the duties of the planning commission in their charters.

Subcommittee view: *It's important to recognize that 17.07 allows Council to approve a variance or exception from the Master Plan and established zoning, without Planning Commission approval, by six votes. (To confirm with City Attorney this is correct understanding of 17.07.)*

In the case motivating the citizen, the request was not for an exception to the Plan but to alter the Plan itself, which requires Planning Commission approval (followed by City Council approval), as per 17.06.

There is a broader discussion for the Commission regarding the delegation of significant policymaking powers to a non-elected body. This may be justifiable given the technical expertise requisite to an effective city plan, to assure that neighborhood-specific interests do not override broader public goods, and also to insulate members of Council from continuous pressure on planning issues.

If members of City Council wish to reclaim the power to amend the Master Plan and redefine the Planning Commission as an advisory body we invite them to make that wish known to the Commission.

The notion of term limits for Planning Commission members may be worthy of discussion especially if it retains its current policy authority. We would need guidance from the City Attorney as to current conflict-of-interest policies applying to Planning Commission members to respond intelligibly to that part of the resident's comment.

[Meeting note, 5-10-23. Look at Model Charter for possible simplifying language. Council can by ordinance give the Planning Commission powers.]