

[Note: this working document reflects initial recommendations from the Governance Subcommittee, prepared in advance of the April 20 Commission meeting. This working document is superseded by the “Comprehensive List of Charter Changes Under Consideration” document of June 12, 2023.]

## **Preliminary Memorandum of Governance Subcommittee, April 7, 2023**

*This is a preliminary, non-binding working document aimed at crystalizing conceptual ideas generated by the Governance Subcommittee at its March 28, 2023 meeting. Both the language and the underlying concepts are preliminary and subject to revision or removal.*

### **Mayor-Council, Revised**

The Governance Subcommittee was initially charged with developing distinct scenarios for a) strengthening the position of Mayor and b) strengthening the role of City Council within the Mayor-Council form of government. After deliberation, we concluded that there is a pathway to achieving *both* goals simultaneously: strengthening the ability of the Mayor to in fact as “Chief Executive Officer” of the City, while also meaningfully and substantially strengthening the power of City Council vis-à-vis the executive branch. As shown below, a critical component of this pathway relates to the way the Chief Administrative Officer position is appointed and removed.

We delineate these strategies in two separate sections: Mayor-strengthening strategies and Council-strengthening strategies.

### **Mayor-Strengthening**

#### *Strengthening ability of Mayor to act as hands-on executive*

The City Charter states that the Mayor is the “chief executive officer of the city” with responsibility for the “proper administration of city government.” (5.01) But the charter provides few tools to the Mayor for exercising this responsibility. Instead, responsibility for day-to-day administration of city government rests with the chief administrative officer, who has sole ability to hire and fire directors or to give directives to employees.

### **Proposed steps:**

- 1. Explicitly state that the Mayor shall have the power to appoint or dismiss department heads, or to delegate such authority to the Chief Administrative Officer. (Modified language of 5.02 and 5.03 coming).**

Note: this revision allows but does not require the Mayor to take more hands-on responsibility for the operations of city government, while continuing to respect the professional prerogatives of agency directors and top administrators. Currently the only tool the Mayor has to exercise this responsibility is to hire and fire the CAO. But in many circumstances the Mayor may wish to bring about an action, but not be willing to fire a CAO who objects or disagrees with the proposed action. The CAO in practice has considerable scope to direct the details of city government.

We believe that this reality is at odds with the intent of the Mayor-Council system, to empower an elected Mayor to give direction to the work of city government. (The Council-Manager form

of government, by contrast, explicitly prioritizes the professional expertise of the city manager/chief administrative officer over that of elected officials.)

[The Mayor may, through the CAO, give directives to DCAOs or Department Heads. The Mayor is not to give directives to employees within agencies]

#### *Altering the structure of the City Attorney's office.*

Under current interpretation of the Charter, the City Attorney represents the City of Richmond as an entity, and regards both the Mayor, Chief Administrative Officer and City Council as its “constituents.” **This should be stated explicitly in the charter.** This positionality in effect gives the City Attorney a policy role in the event of conflicting perspectives between the Mayor and the City Council. The fact that the City Attorney is appointed by the Council, but does the majority of its work in service of the administration, is also problematic and can frustrate the timely execution of administrative priorities.

Proposed steps:

- 2. Allow the Mayor, with the input of City Council, to directly hire a City Attorney with responsibility for a) supporting the day-to-day execution and operation of city government and b) providing legal advice to the Mayor, Chief Administrative Officer, directors, and city employees more generally.**
- 3. Allow City Council to hire a City Council Attorney with responsibility for a) oversight of the legislative process (including preparation of Ordinances and Resolutions, clarification of legal procedures during City Council meetings) and b) providing legal advice to City Council. The City Attorney and the City Council Attorney would be expected to work together professionally and seek to amicably resolve disputes and differences of opinion and interpretation wherever possible. The City Attorney is considered the authoritative arbiter of municipal law. [Offers legal advice on proposed actions by the City]**

**--City Attorney handles admin business**

**--City Council Attorney handles legislative process/Council meetings**

**--City Attorney provides legal advice on actions by the City as a whole (no matter the constituent)**

#### *Increasing Compensation for the Mayor*

The Charter, again, describes the Mayor as the “Chief Executive Officer” for the City. Yet the Mayor’s compensation is actually less than that of the Chief Administrative Officer, and that of the majority of Deputy Chief Administrative Officers and Directors that the Mayor is to lead and direct.

Obviously, comparison to CEO roles of comparative size and complexity in the private sector is inappropriate. But we believe a significant pay increase to assure that the Mayor is better compensated both makes sense from an organizational perspective and would potentially increase the pool of talented individuals with executive-level experience willing to seek the office.

The Charter currently states that the salary of the Mayor is set by City Council.

Proposed step:

- 4. We recommend that the Charter stipulate that the salary of a new Mayor upon beginning his or her term of office shall be set by Council shall be equivalent to or greater than the average salary of the five highest-paid city executive officials (excluding constitutional officers) in the last full fiscal year of the previous mayoral term. This salary shall remain flat for the entire tenure of a mayor's term of office (including, if re-elected, a second term) except by positive vote of 7 members of City Council.**

*Context: In 2021, the average salary for the top five city executives was reported to be \$199,857, while the salary for the Mayor was \$125,000.*

### **Council-strengthening**

#### *Redefining the Hiring and Removal Process for the Chief Administrative Officer*

Background: Commission conversations with stakeholders established that there is a widespread sense that in practice, the Mayor-Council system is excessively adversarial. Some stakeholders also expressed concern that because the CAO is hired and may be fired by the Mayor, City Council members have little leverage over the actions of the administration, including implementation of policies adopted or endorsed by Council. To gain sufficient leverage on problems or concerns to result in action, Council members may have to turn to the media or to outside groups to publicize concerns that might be more easily addressed through more frequent communication and cooperation.

The proposals below, marked as “Alternative B” offers one strategy for redressing this issue, by redefining the ways in which the Chief Administrative Officer (and Interim Chief Administrative Officer) is hired and can be removed. (“Alternative A” leaves existing language unchanged.) The intent of this redefinition is to reflect the reality that the Chief Administrative Officer and City Council routinely work together, and that this work goes better when there is mutual trust and respect. City Council members depend on the responsiveness of the CAO to report on progress and to solve problems, and in general to be effective representatives of their constituents as well effective members of the governing body.

These proposals give City Council an explicit but subordinate role in the hiring of the Chief Administrative Officer, and under some circumstances a role in the removal of the Chief Administrative Officer. With one exception, final decision-making power remains with the Mayor. This final power is in fact decisive to the maintenance of the Mayor-Council form of government.

Taken together, it is the intention of these proposals to incentivize a stronger partnership between the administration and City Council. The Mayor remains the lead actor and the Chief Executive Officer of the city, but the role of City Council as the governing body and a key partner in the day-to-day work of city government is more explicitly recognized.

**Proposed steps: Add this language to the charter to specify the ways in which the Chief Administrative Officer is to be hired and removed. (Current section 5.01.1)**

1. Hiring of the Chief Administrative Officer

*Alternative A.*

[Keep existing charter language that the Mayor appoints the CAO, with consent of Council, unchanged.]

*Alternative B.*

In the event of a vacancy in the CAO role, the Mayor shall designate a qualified individual who currently serves or previously has served on a permanent appointment as a member of the City of Richmond's senior executive group as currently defined by City Code (22-317k), or a qualified individual who has served as a permanent CAO, City Manager, or County Manager in another locality in the United States, as the Interim CAO for a maximum length of six months. (The senior executive group consists of the CAO, DCAO, and agency heads, including those reporting to the CAO and to City Council, as well as the Chiefs of Staff of the Mayor's Office, City Council, and the Office of the Chief Administrative Officer, and several other specified positions.)

The Mayor shall present the qualifications of the nominee to City Council in an open meeting, and members of City Council shall have the opportunity to ask questions and receive answers from the nominee prior to a confirmation vote. The Mayor's selection for Interim CAO must be confirmed by Council on a majority vote. In the event the Mayor's selection for Interim CAO is not selected, the Mayor must bring forward an alternative Interim CAO candidate meeting the above qualifications within three working days.

To fill the position of permanent Chief Administrative Officer, the Mayor shall form a Search Committee, to include the City Council President or another member of City Council designated by the President. The committee shall cause the position to be advertised in appropriate national outlets according to industry standards as verified by the Director of Human Resources and publicly documented. The position shall be publicly advertised for a minimum of one month.

No later than six months since the vacancy in the position, the Search Committee shall provide the names and credentials of at least two candidates to City Council in closed session. (The requirements of eligibility for appointment as Interim CAO do not apply to the permanent position.) The closed session may include in-person or video interviews with the candidates, but this is not required. City Council members shall have the opportunity to convey feedback on candidates to the Search Committee.

Within five days of this closed session meeting City Council, the Mayor shall designate a candidate as the preferred nominee for permanent CAO, or refer additional candidates to Council for feedback (repeating the step noted above). Once a nomination has been made, the Mayor shall present the qualifications of the nominee to City Council in an open meeting, and members of City Council shall have the opportunity to ask questions and receive answers from the nominee prior to a confirmation vote. The Mayor's selection for permanent Chief Administrative Officer must be confirmed by City Council with a minimum of six positive votes required for confirmation.

In the event the Mayor's nomination is rejected, the Mayor may elect to bring forward any other applicant as an alternative nominee, or may elect to restart the search process. In the event the search process is restarted, the Interim CAO shall be eligible to serve in

the role a further six months. No single individual may serve as an Interim CAO for more than twelve months consecutively.

*Note: The intent of option B is to a) provide City Council a strengthened role in the selection of the CAO and b) set limits on who may be appointed Interim CAO and how long an individual may serve in that capacity.*

## *2. Removal of Chief Administrative Officer*

### *Mayor-initiated*

#### *Alternative A.*

[Unchanged from current language that the CAO serves at the pleasure of the Mayor.]

#### *Alternative B.*

The Mayor may request the resignation of the Chief Administrative Officer at any time. In the event the Chief Administrative Officer refuses to resign, the following procedures for involuntary separation will be followed:

Upon election or re-election to the office of Mayor, in the first six months of the new term the Mayor may terminate the employment of the sitting Chief Administrative Officer without giving cause and without consulting City Council.

In the first six months of a Chief Administrative Officer's tenure, the Mayor may terminate the employment of the sitting Chief Administrative Officer without giving cause and without consulting City Council.

After a Chief Administrative Officer has served six months, the Mayor may initiate the termination of the Chief Administrative Officer by requesting that the City Council President call a special meeting to consider the matter in closed session. The Mayor shall attend the meeting and participate in the closed session. City Council members shall have the right to provide feedback and to ask questions of the Mayor concerning the proposed termination, which the Mayor may agree or decline to answer at his or her discretion. Upon completion of the closed session, the Mayor may opt to move forward with termination.

*Note: This language creates a requirement in some circumstances for the Mayor to consult with City Council prior to an involuntary separation with the CAO. It does not constrain the authority of the Mayor to terminate the CAO's contract.*

### *Council-initiated*

City Council shall have the right once per calendar year to consider a motion of no-confidence in the performance of the Chief Administrative Officer. Such a motion shall require a total of five sponsors to move to consideration by full Council. Once such a resolution is introduced and read at a City Council meeting, the vote must take place at a subsequent meeting within 3-10 working days. A motion of no-confidence requires seven affirmative votes to pass. The effect of such a vote shall be to remove the Chief Administrative Officer from the position, taking effect on the last business day of the

week in which the motion is adopted. If a motion of no-confidence fails, such a motion cannot be refiled until the next calendar year.

*Note:* The proposal does provide an avenue by which a strong super-majority of Council members could act to remove the Chief Administrative Officer, without involvement of the Mayor. We believe that invocation of this power would be exceedingly rare, as most imaginable circumstances where 7 of 9 Council members publicly endorsed removal would already have led to mayoral termination or to a resignation of the CAO. The proposed clause should be understood as placing an outer boundary to protect the interests of the city and its citizens in the case of gross incompetence or malfeasance attributed to the CAO which the Mayor declines to address or correct.

### ***Budget Process***

The Commission has heard considerable concern about the budget process, specifically the fact that only the Mayor can introduce a budget amendment during the fiscal year. These proposed steps seek to address those issues.

Proposed step:

3. The Chief Administrative Officer is to develop the annual budget under the direction of the Mayor. City Council shall have the formal opportunity to provide input on budget priorities to the Mayor at a pre-budget public meeting to take place between December 1 and January 15 each year. City Council shall have access to the budget requests submitted by each agency to the Mayor and the Office of Budget and Strategic Planning seven days prior to this meeting. [Note: see additional detailed language from Bill Eichelberger on budget process, in separate document.]
4. City Council shall have the power to initiate amendments to the adopted budget twice during the fiscal year: in the first scheduled meeting of October and at the first scheduled meeting of January. The net fiscal effects of proposed amendments must be neutral. Five affirmative votes are needed to adopt the proposed amendments. Budget amendments shall not be combined with non-budget legislative items.
5. The Mayor shall have line item veto power on Council-initiated budget amendments. Six affirmative votes shall be required to override such vetoes.

### ***Increasing Compensation for City Council***

The current low pay for service on City Council inhibits the ability of Council collectively to act as the City's governing body and to hold the city administration meaningfully accountable, in two ways: the current pay scale impacts the pool of eligible residents willing to run for office and serve, and it inhibits the time available for Council service for members to devote to the role as opposed to earning additional money in other paid employment.

Proposed step:

6. We recommend that the Charter set Council pay as equivalent to the median household income for the Greater Richmond area (currently approximately \$55,000).

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