

Citizens Research Council of Michigan

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Detroit City Charter Revision

CITIZENS RESEARCH COUNCIL OF MICHIGAN IS A 501(C)(3) TAX EXEMPT ORGANIZATION

On November 2, 1993, as provided in the 1974 charter, voters of the City of Detroit will determine whether a charter commission will be established to revise the current charter. This series is being financed in part by grants from Community Foundation for Southeastern Michigan, Hudson-Webber Foundation, and Matilda R. Wilson Fund, and NBD Bank.

REPORT NO. 310-01

First in a special series on Detroit City Charter Revision Issues

JULY 1993

DEMOCRATIC PRINCIPLES AND HOME RULE CHARTERS

By

Susan B. Hannah

School of Public Affairs and Administration

Western Michigan University

A Home Rule Charter is like a local government constitution. It describes the structure and powers of the city government, establishes its officers, their responsibilities, how they are selected, their terms, and their limitations. In Michigan, the Home Rule Cities Act lays out the process for electing a charter commission to write a charter. It lists what the charter can and cannot include, and tells how the charter is put on the ballot for voters to adopt or reject. Even though the charter has to stay within the provisions of the state constitution and state laws, the power to develop, adopt, revise, or amend the city charter is broad and important. As one charter commissioner stated, "Everyone should have the chance to write their own government."

A good place to start thinking about "writing your own government" is with the basic democratic principles on which our American political system was founded. These principles form the basis for our entire governmental system--national, state, and local. We have just recently celebrated the 200th birthday of our national Constitution. Reminding ourselves of the principles on which it was written helps put the task of charter-writing in perspective and provides a set of standards to guide discussions about our

own local "charter-constitutions."

Six of these principles are particularly relevant to local government: popular sovereignty, individual rights, representation, majority rule, limited government/divided power, and accountability. Each principle has built-in tensions and our understanding about how to strike a balance among them has changed with our history. Most of the critical political issues of today can be expressed in terms of these fundamental values. They also set the standards for evaluating the consequences of one form of local government or another, one election system or another, one set of eligibility requirements or another, and other critical choices for city charter writers.

1. Popular Sovereignty. In the American political system, sovereignty—the authority to take life and property and make enforceable laws—is vested solely in the people. "We the people," begins the U.S. Constitution; "We, the people of the State of Michigan," begins the state constitution. We the people join together and decide how to organize our sovereign power into a government and write down our rules for governing in a constitution. So the government only has the power we give it. And what we put in the constitution,

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we can change. In Michigan, we put in the state constitution that citizens can create and then modify their local government through a city charter. But behind the home rule charter, the Michigan Constitution, and the U.S. Constitution, stand the only real rulers--the citizens themselves. What we create, we can change. As Thomas Jefferson, author of the Declaration of Independence, argued, "Laws and institutions must go hand in hand with the progress of the human mind." The tension between what was and what can be gives us room to create our own future.

2. Individual Rights. Not only do we believe that the real power is vested in the people, we believe it is vested first and foremost in individuals. In the Declaration of Independence, Jefferson wrote that individuals are endowed with certain inalienable rights, among them life, liberty and the pursuit of happiness. And when state conventions were voting whether or not to adopt the U.S. Constitution, many would not vote yes until it was agreed to add a Bill of Rights protecting those individual rights. The freedom for each individual to become whatever she or he wants to be is the very highest of our American ideals. This basic principle of individual rights has created many tensions in our history. One concerns equality, another the community. In the beginning, only men were property-owners, then only men who were white were really equal under the U.S. Constitution. Gradually we expanded our understanding, and now all individuals regardless of races sex, creeds or ethnic origin have equal rights and equal protection under the law. Vested with these individual rights, however, we sometimes bump up against each other or against the larger community. When do my rights stop and yours, or ours as a community, begin? Deciding where that balance lies is what most policy debates are about--letting a city regulate business or noise chooses the community over the individual, but we worry about where to draw the line. How much regulation? How much noise?

3. Representation. In the U.S. Constitution, we agreed to be a republic, that is, we agreed to express our sovereignty in the voting booth and elect representatives to carry out the tasks of governing following particular decision-making rules. The issue of the direct vote and representation was what the American Revolution was all about and is why we redraw our state legislative and congressional districts every ten years. Representation brings other tensions. One is that we want to be assured that our vote counts since it is the truest expression of popular sovereignty. We want election systems that protect that right. Another is that we tend to see the legislature as the institution most directly related to our vote, thus the most democratic, and thus perhaps the most important. Particularly relevant to local government, we still like the democratic ideal developed during the presidency of Andrew Jackson, 1828-1836, that to provide the best control over government, we should elect everybody in authority. Consequently, we have many local governments that still elect a long list of officers. But, the more folks we elect, the harder it is to see who to credit or who to blame. The most representative does not necessarily mean the most effective, or the most ethical.

4. Majority Rule. In our republic, we wrote in the constitution that majority rule is the best expression of the popular will. The tensions between the majority and the minority and the majority and the individual are parts of the principle itself. Because we value the individual, we also value the minority. By even writing a constitution (or a charter), however, we also value the community as expressed by the majority. Majority rule, minority rights, the individual, and the community--local government looks for a balance among these values in the way it selects city officers and in the rules it establishes for passing ordinances and conducting city business. We establish special voting rules for special situations. Occasionally, for example, we require an extraordinary majority--two-

thirds or three-fourths—for really important decisions like selling property (which actually belongs to us the citizens) at the local level or amending the constitution (at the state or national level).

5. Limited Government/Divided Power. Because we begin from principles of popular sovereignty and individual rights, government only has the powers we give it. The rest belongs to us. Based on our colonial experience and on a belief in the inalienable rights of the individual, we really do not like or trust government very much, and we are even more afraid of centralized power. We want to limit what government can do, so we split up the decision-making process into different parts, each with its own rules, but all having to agree to take action. Thus we divide government into federal and state, and then into local levels each having only the powers we write down in the constitution. And then we divide it again, into executive, legislative, and judicial branches, each selected differently and each with the power to “check and balance” the other. In local government, we check the power of the mayor or the city manager by requiring council confirmation of appointments or ratification of decisions. With limited powers and divided authority, however, the danger is that when so many have to agree, little gets done. The values of limited government and divided power conflict with the value of effectiveness implied by majority rule.

6. Accountability. Concerned about protecting our individual rights and our vote, we have divided up the process into so many parts and elected so many different officers that sometimes government cannot act even when we want it to. Over the years, we have learned that the key to effective local government is to balance responsibility and accountability. To be effective, we should give local officials, particularly the mayor or the city manager, enough authority to carry out their responsibilities, not divide up the power among so many elected

officers that little can be accomplished. Then, however, we should make these officers accountable for that authority, through the vote in the case of a mayor, or through a representative city council in the case of a city manager. Writing in defense of a single executive in the U.S. Constitution (many at the 1787 Convention wanted a committee), Alexander Hamilton argued eloquently that fixing responsibility in one place would make that position “more narrowly watched and readily suspected.” We would know who to vote for or against. We should build in accountability for other officers as well. Charters can assure popular control through provisions specifying called meetings, publication of minutes and ordinances, and access to city records.

The principle of accountability brings us back to the ultimate source of authority and responsibility for effective local government. We the people are the real sovereigns, and thus we must hold ourselves accountable to create and oversee an effective governance structure. That is what democratic citizenship means. Montesquieu, a French philosopher whose writings about democratic government were important to the first American constitution-writers, argued that the virtue of a democracy depended in the end on the virtue of its citizens.

“Writing your own government” in a home rule charter provides a powerful opportunity for citizens to express that virtue by getting involved in shaping their city government. Our democratic principles of popular sovereignty, individual rights, representation, majority rule, limited government/divided powers, and accountability—with tensions—provide all their a guide and a continuing challenge. More than 100 years ago at Gettysburg, President Abraham Lincoln spoke to the great dedication such a challenge demands. We have declared that “government of the people, by the people, and for the people” is our right; it is also our responsibility.

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REPORT NO. 310-02

Second in a special series on Detroit City Charter Revision Issues

JULY 1993

DETROIT CHARTER REVISION--A BRIEF HISTORY

By

George E. Ward

**Chief Assistant Prosecuting Attorney of Wayne County
Former Executive Director, Detroit Charter Commission; and
President, Wayne County Charter Commission**

Home Rule in Detroit

An enduring improvement in the way cities in Michigan are incorporated occurred early in this century when local home rule was authorized by the 1908 Michigan Constitution. Before then, city charters were drafted in Lansing, by the state Legislature, and handed down to local communities. Indeed, Detroit's first three "charters," in 1802, 1815 and 1857, were written by the Michigan Legislature.

A home rule charter is the city's articles of incorporation. It creates the offices of city government. It prescribes the manner for selecting people to hold those offices. And it defines the nature and extent of the powers and duties of the officeholders.

The Constitution of 1908 (Article 8, Section 21) and the Home Rule Cities Act (P.A. 279 of 1909, as amended) authorized the citizens of a city to elect a commission to frame a charter to provide for the governance of the city. Detroit's first try for a locally drafted or home rule charter ended in failure in 1914. But the city tried again, and in 1918 adopted a home rule charter that instituted the strong mayor-council

form of government.

The 1918 charter served as Detroit's constitution for 56 years, until replaced by the current charter in 1974. Besides the strong mayor-council plan, the 1918 charter reduced the size of Detroit's legislative body from 42 to 9, and changed the manner of its election from wards (two from each of 21 wards) on a partisan basis, to at-large and nonpartisan.

True to its era, this charter also contained numerous legal constraints that intended to ensure that "rascals" would be kept out of city employment. This early 20th-century negative emphasis was reflected in the minute detail found in the charter for functions such as personnel, accounting, and purchasing systems. With the passage of time, these constraints came to be seen as counter-productive, preventing desirable action. In its 56 years, the 1918 charter was amended over 200 times.

By the late 1960s, many were convinced that Detroit's horse-and-buggy-era charter was unduly hampering the administration of urban renewal, social programs, affirmative action and other new programs that were characteristic of

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the 1950s and 1960s. Thus, in 1968, Mayor Jerome P. Cavanagh appointed a charter study committee chaired by Judge John D. O'Hair (now Wayne County Prosecutor) to evaluate the much-amended 1918 city charter and to recommend whether necessary changes could best be accomplished by a series of amendments or by a complete revision. The O'Hair committee recommended that the city's constitution be completely rewritten.

The primary goal was not to change from the basic plan of executive government which was judged to have served the city well, but to retain that governmental form in a shorter, clearer, more generic charter and to eliminate many legal constraints that restricted elected leadership like handcuffs.

Experience has shown that, for effective governance, there is no substitute for a modicum of trust in elected leadership. Charter restraints were powerless to compel "good faith" official action, but often did have the unintended consequence of impeding innovation in administrative problem-solving. The Detroit charter revision effort two decades ago attempted to eliminate obstacles that the currently popular book by Osborne and Gabler, Reinventing Government, is still talking about: "If by making corruption virtually impossible we also make quality performance virtually impossible, have we done a good thing?" (page 137).

The Report of the Mayors Charter Study Committee was submitted in November 1969. In 1970, the city council placed on the August 4 primary election ballot both the question of electing a charter commission and the nomination of 18 candidates for the commission. The voters approved the calling of a charter commission in August (109,000 "yes" to 82,000 "no") and in November 1970 elected at-large on a nonpartisan ballot nine charter commissioners.

The 1970-1973 Charter Revision Effort

A charter commission's task is to draft and approve a proposed, revised city charter, and submit it first for gubernatorial review and then for voter adoption or rejection. A charter commission has a maximum of three years to complete its task, but may end sooner if a revised charter is adopted by the voters or if three revision proposals are rejected by the voters.

The state enabling act limits the compensation to be paid a charter commissioner to a per them for not to exceed 90 meetings. The Detroit City Council set the amount of the 1970-73 charter commission per them at \$75, and has now set the same compensation for the 1993 charter commissioners. The annual salary of the Detroit City Council 20 years ago was \$17,500 and is today \$54,000 (\$60,000 less a 10% pay cut).

The procedures of the 1970-73 Detroit Charter Revision Commission provide a good example of how charter commissions operate. The charter commission elected on November 3, 1970, held its initial meeting on November 30 and proceeded to organize, elect officers, and adopt rules of procedure. The main work of the 1970-73 commission was accomplished in a 20-month period beginning in early 1971. During this period, the commission had a staff comprised of an executive director, two deputies, an administrative secretary, and three clerical secretaries. Its budget, appropriated from the City general fund, was \$125,000 in fiscal 1970-71, \$190,000 in fiscal 1971-72, and \$170,000 in fiscal 1972-73--a total of \$485,000.

The commission held over 50 general open meetings at which it heard views expressed by officials and citizens, including eight meetings in Detroit neighborhoods that were televised on WTVS. In addition, its eight subject-matter subcommittees held an even greater number of

open meetings at which charter policies were formulated and initial drafts prepared. Policy drafts on charter subjects from the subcommittees were introduced and underwent “three readings” of debate and approval at general meetings of the commission.

By Memorial Day 1972, a single, consolidated revised charter was finally assembled and approved by the commissioners as a “Discussion Draft.” This draft called for converting from nonpartisan to partisan elections and continuing at-large election of the city’s legislative body. Five thousand copies were distributed throughout the city and additional public meetings were held in June and July of 1972.

The comments generated by this “Discussion Draft” convinced the commission that, in addition to asking voter approval for the main revision proposal, it would offer two separate proposals allowing the voters to decide directly whether to convert to partisan elections and whether to continue at-large council elections. On September 7, 1972, the commission set in motion the gubernatorial review and other steps necessary for the vote by the people on November 7, 1972.

At the November 1972 election, the main revision proposal itself lost narrowly (51-49%), but the separate items were settled decisively: 67% wanted to retain at-large elections of the council, and 63% opposed changing to partisan elections.

Since its three-year tenure had time remaining, the commission met again in early January 1973 and decided to try a second time. It modified its revision proposal by incorporating the voters’ preferences on the two separate items. The other principal modification involved the rewriting of the chapter on the police department to include a civilian police commission to advise on policy and to review disciplinary cases. On August 3, 1973, the commission approved this revision proposal, and directed that it again be

presented at the November 6, 1973, election for adoption or rejection by the voters.

In summing up its work in the Final Report to the People of Detroit, the commission expressed confidence that Detroit’s second home rule charter would be “a great improvement over the present charter,” because it better defined the respective roles of the two branches of government, was less wordy, and more flexible:

It strengthens both the executive and legislative branches and more clearly defines their respective roles. It attempts to address today’s problems. Yet it provides a greater flexibility in responding to changing circumstances. It is clearer and easier to read. And having reduced the number of words from 145,000 to 25,000 (1/6 the old charter’s length), it is much briefer.

On this second opportunity, Detroit voters adopted the proposed charter (186,283 to 140,697), and it took effect as the city’s constitution on July 1, 1974.

Charter Revision and Amendment

The 1970-73 charter commission recognized that circumstances change and no charter can be expected to last forever. State law provides alternate procedures for charter change--amendment and general revision by an elected charter commission. Both proposed amendments and the question of general revision of the charter can be placed on the ballot by three-fifths vote (6) of the city council or by initiative petition of five percent of the registered voters (5% = 28,638 signatures). Adoption in either case requires voter approval. In addition, the charter provides that periodically—in 1993 and every 16 years thereafter—voters should decide whether to undertake a “general revision of the City charter.” This is an idea the charter commission borrowed from the 1963 Michigan Constitution.

Amendment The 1918 charter had been amended over 200 times by the time it was replaced in 1974. There have been 17 proposed amendments to the 1974 charter submitted to the voters, 13 of which were approved. All 17 proposed amendments were submitted by the city council. None has been initiated by the voters.

The only explicit restrictions on amendments in the Home Rule Act are:

1. A proposed amendment shall be confined to one subject;
2. If the subject covers more than one related proposition, each proposition shall be submitted separately; and,
3. A defeated amendment cannot be resubmitted for two years.

The courts have held that “A change in a city charter that only amends, alters, or improves within the lines of the original charter, is an amendment; but if the change totally disrupts, cancels, abrogates or makes inoperable the original charter, it is a revision.” Proposed changes of either type are subject to review by the governor and to approval by the voters.

Revision A change in the basic form or system of city government can be done only by revision of the charter drafted by an elected charter commission and approved by the voters. A charter commission could rewrite and revise the entire charter, or alternatively, it could conclude that no change is needed or that only selected changes are required. If no change is needed, the commission would simply adjourn after completing its review. If selected changes were

needed, the commission would incorporate those

in a revised charters submit it to the governor for review, and to the voters for approval . A charter commission cannot submit only amendments to the voters. It can, however, submit a proposed revised charter along with specific alternative provisions to the voters for their separate approval as was done in the original charter revision submitted in 1972.

On November 2, 1993, the voters will decide whether there shall be a general revision of the city charter and will elect at-large nine charter commissioners from among the 18 nominated at the September 14, 1993, primary election. If the question of calling a commission is approved, then the commissioners will convene on November 16, 1993. If the question is rejected, the election of the commissioners is a nullity.

In deciding what position to take on the issue of charter revision, voters will want to consider the strengths as well as the weaknesses of the present city charter. Voters will further want to consider whether any problems they perceive are the result of the form, structure, powers and procedures of city government as set forth in the charter or of the elected leadership of the city.

As Alexander Pope pointed out over 250 years ago, “For forms of government let fools contest, What’er is best administered is best.” This is not to discount the importance of the form and structure of city government found in the charter, but to caution against over-optimism about what a charter can accomplish. The skills, good faith, and spirit of cooperation of the people elected to lead the city may be just as important as perfection in the drafting of the charter.

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REPORT NO. 310-03 Third in a special series on Detroit City Charter Revision Issues JULY 1993

THE NATURE AND PURPOSE OF A HOME RULE CITY CHARTER

A staff summary of a paper originally prepared in 1971 by David Morris, Attorney, Kalamazoo, Michigan who is now deceased. The paper has been updated and revised by William L. Steude, general Counsel, Michigan Municipal League and by Daniel C. Matson, City Attorney, Dewitt, Michigan and President, Michigan Association of Municipal Attorneys. Copies of the full paper (13 pp.) are available on request.

In Michigan, home rule charters provide the broad framework of city government. The challenges facing a charter commission are deciding what governmental structure will exercise power and determining how the government can be kept both responsible and responsive to the citizens. Home rule gives the citizens the right to form their own city government and the opportunity to innovate and invent in a search for the best structure to meet local conditions.

History

The word "charter" has a long history, including the Great Charter, or Magna Carta, of 1215, through the charters given the English colonies in America and the trading companies. A city charter is a basic law formulating the government for a city that, within the limitations of the state constitution and laws, establishes the framework of government, defines powers and duties, and identifies the rights and responsibilities of a city in fulfilling the needs of its citizens.

City charters are limited by federal laws, state constitutional provisions, and state statutes. Collective bargaining agreements negotiated pursuant to state law can supersede charter pro-

visions. While the charter sets forth the broad framework of city government, city ordinances, administrative codes, executive organization plans, and other means can be used to define and regulate the city government.

During the 19th century city charters took the form of general or special acts dictated from a 'distant legislature. These charters fixed the forms of city government and granted only such powers to local bodies as were expressly enumerated or necessarily implied. This is sometimes known as "Judge Dillon's rule" and contemplated that the city was a mere political subdivision of the state and, regardless of the city's needs, it could exercise only such powers as were expressly granted.

At the start of the 20th century great economic changes were bringing even greater social changes that placed new and heavy burdens on the cities. Large numbers of the rural population moved into the cities at the very time great waves of immigrants arrived. Cities experienced great growth and a need for many new services. As the industrial-economic-social revolution roared on, bossism, patronage, spoils, and the ward heelers appeared to be common-

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place, necessary evils. Even graft was common, and largely unchecked.

Home Rule

Thus the stage was set for municipal reform and the concept of “home rule.” It was reasoned that the vices of the past might be corrected or reduced if the local populace could frame its own charter, determine how best to secure representation on the city council, provide its own means for selecting the mayor and the administrators of the city activities, define the powers that might be exercised, and establish its own financial controls. The principle of municipal home rule was apparently first enumerated in the constitution of Missouri in 1875. It spread quickly to other states.

A major accomplishment of the 1908 constitution was establishing “home rule” for cities and villages in Michigan:

Article VIII, Section 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general law of this state.

After voter approval of the constitution, the legislature adopted Act 279 of 1909, the Home Rule Cities Act, to enable the citizens of Michigan cities to frame, adopt and amend their own charters within the ground rules established by that act. One provision states the essence of home rule:

Each city may in its charter provide for the exercise of all municipal powers in the management and control of municipal

property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants, and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.

The courts immediately appeared to drop the Dillon rule which held a city to be a political subdivision with restricted enumerated powers. Early cases declared that since the purpose of the home rule act was to give cities a large measure of home rule, it should be construed liberally and in the home rule spirit. The Michigan Supreme Court declared that a city with a home rule charter might enact and put into its charter any provision limited to purely municipal government which it might deem proper so long as such provision did not run contrary to the constitution or any general statute.

The Michigan Constitution of 1963 adopted verbatim much of home rule provisions of the 1908 constitution revision and then added the following language: “No enumeration of powers granted to ... cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.” It further reinforced home rule with this language: “The provisions of this constitution and laws concerning counties, townships, cities and villages shall be liberally construed in their favor.”

Erosion of the Home Rule Principle

There have been unfortunate reversions to the limitations of Dillon’s rule through the years with occasional references in court decisions to “mere political subdivisions” with only such powers as the state has granted. The greatest erosion to the home rule concept, however, has come from the legislature. Over the years the

legislature has superimposed state requirements on such subjects as local taxing and spending power, public meetings, public access to public records, conflicts of interest by public officials, political rights of public employees, mandatory collective bargaining and compulsory arbitration of police and fire labor disputes, thereby entirely or substantially preempting local home rule authority. In other areas, local authority has been subjected to rigid state standards.

Every year the erosion grows as bills are introduced which would diminish home rule discretion by prohibiting what a city might otherwise opt to permit, or by permitting what a city might otherwise wish to prohibit.

Home rule cities themselves have been partly responsible for this erosion of home rule principles. When in doubt about a given power, they have run to the legislature for an amendment spelling it out, thus dodging possible litigation. Many other statutes are expressly limited to cities in some specified population group, and thus infer that it is not extended to others. Many of these laws also supersede charter provisions, thus avoiding the necessity of selling a local charter amendment to the local electorate.

Unfunded state and federal mandates have become major forces eroding home rule. These statutes and administrative regulations impose major unreimbursed costs upon local budgets to comply with judicially enforceable deadlines, standards, and expenditures. Their cumulative costs diminish the resources available for self-government, distort local spending priorities, and have a staggering impact upon local government energy, time, and morale.

Home rule depends upon legislative and local restraint and municipal resistance to the power of the legislature to delimit home rule by general law. The home rule concept has to be jealously guarded, exercised, and nurtured with devotion if it is to remain healthy and meaningful.

Home Rule Act and Nature of a Charter

Essentially, home rule is the right of the people of the city to set up and change their own governmental structure. This is done through a written charter framed by an elected charter commission and adopted by the people. The home rule act fixes the procedures and establishes the ground rules within which charters are developed. The act contains long lists of mandatory, permissive, and prohibited powers and functions. A charter must cover all of the mandatory requirements with express provisions. It should cover the permissive powers desired either expressly or by necessary inference.

The act makes it mandatory that each city be a body corporate, have a legislative body, a mayor and a clerk, treasurer, assessor, and board of review.

The charter will establish the basic form of government of the city. The duties and qualifications of the council and mayor, and chief administrative officer or manager, if these positions are provided for in the charter, will have to be defined. The functions and responsibilities of the leading official should be delineated with care, so that they will be known to the officials and citizens alike and responsibilities can be fixed. Every official carrying responsibility should be given adequate authority to fulfill the expectation of the citizenry with regard to that responsibility. Power must match duty at every juncture in the performance of municipal functions.

The legislative body may be elected at-large, by ward, or a combination of the two. The charter determines the number of members of the legislative body, their terms of office and any limits on the number of terms. The mayor may be selected by the people or by the legislative body. The other officials of the city may be elected or appointed by the mayor, manager, or council as provided in the charter. Elections may be partisan or nonpartisan.

A tax limitation as high as \$20 per \$1,000 of state equalized valuation (20 mills) may be provided. Provisions must be made for the taxing procedure and for the protection of the public peace, health and safety of persons and properties. Ordinance adoption procedure must be established. All sessions of the legislative body and all records of the municipality are subject to public meeting and public records requirements. A journal shall be kept in the English language and a uniform system of accounts must be established.

The permissive charter provisions include the power to borrow money; provide for streets, sewers and water works, lighting and utilities; assessing the cost of public improvements; public buildings; condemnation; and many other municipal activities such as zoning; regulation of trades, gas stations, and billboards; initiative, referendum, and recall; civil service; rapid transportation systems; and city departments and municipal powers.

The prohibited powers are then discussed in the home rule act. No city may exceed the tax lim-

its established by law, call more than two special elections a years sell certain land or issue certain bonds except by a vote of the people, or repudiate any of its debts. Other sections of the home rule act relate to the activities of a charter commission and the adoption or amendment of the charter.

Most Michigan charters contain at least ten or twelve chapters covering the following subjects: incorporation and powers, the council, elections, legislation, administration, general finances, budgets and contracts, taxation, special assessments, borrowing, utilities, miscellaneous provisions, and a transition schedule. There may be other chapters especially addressed to matters of prime local concern.

The charter should be written with clarity and precision. Nothing is more frustrating than to find, several years after a charter has been adopted, that it contains inconsistent provisions, unworkable procedures, or fuzzy language. The city charter, adopted by the people themselves, constitutes the fundamental law for the city until amended or replaced.

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Detroit City Charter Revision

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REPORT NO. 310-04 Fourth in a special series on Detroit City Charter Revision Issues AUGUST 1993

REFLECTIONS ON CITY CHARTER REVISION

by

Bernard Klein and Richard Simmons

Former Charter Commissioners

City charters tend to reflect the ideas, problems, and political power relationships that exist during the time that the charter is written and debated. Although a city charter is the basic framework of a city and is supposed to be analogous to what the U.S. Constitution is to the national government, city charters are seldom as general and tend to be too specific and, therefore, in greater need of amendment and periodic revision.

That charters tend to reflect the power relationships in existence at the time of writing is illustrated by the Detroit Charters of 1918 and 1973. In the 1916-1918 period, the civic reform movement was en vogue and its main emphasis was to "clean up" the cities from all types of civic corruption revealed to be prevalent in most cities by the writing of the muckrakers. It is therefore not surprising that the features contained in the 1918 charter were a small city council elected at large, strong mayor form of government, strong specific fiscal restraints, off year elections, non-partisan government and other tenets of the civic reform movement.

These ideas still held sway when the 1970-73 Charter Revision Commission did its work (wit-

ness the overwhelming vote in 1972 to retain non-partisan government and at large elections when submitted to the voters as separate items). However, additional concerns emerged on the political scene by the end of the decade of the 1960s. In 1969, the late Mayor of Detroit, Jerome P. Cavanagh, appointed a committee of distinguished citizens headed by John O'Hair (currently Wayne County Prosecutor) to study whether Detroit could benefit from a thorough study and revision of its City Charter. That study committee reported in the affirmative, the Council voted to put the question on the ballot, and the voters voted to set up a Charter Revision Commission and elected nine commissioners after selecting 18 in the primary in 1970. There is little doubt that the deadlock between the Mayor and the Common Council in 1969 was a major factor in convincing the voters that charter revision was worth the effort.

However, while deadlock was a major factor in the vote to attempt charter revision, other political issues were emerging and were reflected in the deliberations of the Charter Commission. In general, these issues were the sense of alienation from government, control over the police department, effectiveness of city government, as

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well as the beginnings of fear of regionalization on the part of large segments of the Detroit population. It should be remembered that at the time of the Commission, the black-white ratio in the Detroit population was just about 50-50. While this was not a factor in arguments among the Commissioners, it was evident in testimony brought before the Commission by the varieties of organized and unorganized groups.

For example, let us consider the divergent views in regard to control over the police department. Many other cities were debating the establishment of civilian review boards to monitor the behavior of their police departments. This approach was strongly recommended by some and was equally as strongly opposed by others, and at the time the Charter Commission believed that it could come up with a structure that would provide greater civilian input into the department without the negative connotation of a civilian review board. This resulted in the establishment of a five-person civilian commission to set general policies and practices of the department while the law enforcement professionals carried out the day-to-day work of law enforcement. What the Charter Commission did not foresee was the emergence of a mayor who could control both the civilian commission and the department itself. Certainly any new Charter Commission should review this structure to determine whether it should be continued, be modified, or abolished.

Consider the issue of greater popular control of city government. Some of the Charter Commissioners believed that electing some Councilpersons from districts could help in bringing people closer to their city government, but most Commissioners and later the voters themselves rejected this idea. The Charter Commission did adopt a provision requiring the City Council to hold a number of meetings each year out in the community. It also established an office of the Ombudsman to give the citizenry easier access to lodge complaints against the city, especially

in its delivery of vital services. Certainly any new Charter Commission should reexamine this issue and decide whether this has successfully brought city government closer to the people or whether some other structure might be more beneficial.

These last two examples are among the many issues considered by the Charter Commission and examples of where the Charter Commission attempted to address specific concerns through the Charter. However, caution must be exercised not to substitute charter provisions for regular ordinances and policies. Using a charter as the means of solving current problems only makes the charter prematurely dated. Charters should set the broad framework of city government and provide for enough flexibility so that even unforeseen problems can be acted upon by future city administrations. Great care must be taken by Charter Commissioners not to use a charter to react to a particular mayor or council or city clerk or bureaucracy.

Before a charter can be presented to the voters it must also be scrutinized by the State Attorney General on behalf of the Governor who has the power to review proposed charters. This helps avoid any provisions in the charter that are in conflict with the state or federal constitution or state and federal laws. This is a wise requirement, since it also drives home to the Commissioners as well as the citizenry the limitations of charter revision and that it cannot solve all urban problems. The most serious urban problem about which charters can do very little is the problem of financial resources. Most of that issue is preempted by the state for better or for worse.

The guide to charter revision published by the National Civic League stresses that the ability to sell a proposed revised charter depends a lot on the public's perception of the members of the Charter Commission itself. This was certainly true of the Detroit Charter Revision of 1970-73.

If the voters perceive the commission as conscientious and hard-working, they will approve the product even if there are parts with which they disagree. On the other hand, if the commission is perceived as perk abusing, petty wranglers, self interested, the voters would tend to reject even a good charter submission.

The Charter Commission of 1970-73 was perceived positively by the people of Detroit. Frequent public meetings, opportunities for varieties of input and explanations for its actions, all contributed to this well deserved positive image. In retrospect, might some of the decisions have been better if decided differently? Undoubtedly! That's why the Commission chose to enable the voters to consider the question of charter revision in 1993 and every 16 years thereafter in addition to being able to propose amendments in the intervening years.

In the final analysis, a charter cannot guarantee effective and democratic city government. That

can only be accomplished by electing competent and effective officials and monitoring their performance constantly. The effective operation of block clubs, neighborhood groups and other popular bodies goes a long way to help guarantee to the citizenry their fair share of city services, even in an age of cutbacks and scarce resources. A charter can provide some mechanism for empowering the citizens beyond mere voting, but experience has shown that this too can be extended too far and can help produce stalemate as disputes result between and among citizen groups and the city officialdom. In other words, the real challenge to a charter commission is how to strike the proper balance between flexibility and creativity on the part of the elected and appointed officials and democratic input by the citizenry. Thus, a charter can help encourage even if it cannot be guaranteed that it would work out in practice.

It is an exciting adventure to try to achieve this balance.

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FORM OF CITY GOVERNMENT: SEPARATION AND BALANCE OF POWERS BETWEEN THE MAYOR AND THE CITY COUNCIL

The 1974 Detroit charter established a strong mayor-council form of government with clearly defined executive and Legislative branches and incorporated the system of checks and balances inherent in that structure. Strong leadership and diplomacy is necessary to smooth the operation of a government machine that is founded on the principle of checks and balance; there is a joint responsibility to make the system work. In Detroit, the tension and competition between the branches has been demonstrated by numerous Lawsuits filed by one branch against the other, proposed charter revisions to strengthen one branch or the other, printed budgets that do not reflect the council approved budgets, and refusal to share information. In this competition, the executive seems to have developed a dominant role. Conflict between mayor and council or too dominant a role for one or the other branch of government can undermine the necessary checks and balances and adversely affect city government operations.

The basic strength of the legislative and executive branches is determined by the charter, although legal decisions and practices affect the relative strength as well. The charter should not withhold the authority from either branch that is essential to effective government, but it is possible to retain the strong mayor form while changing the balance of power between the executive and legislative branches.

One critical charter issue is the separation and balance of powers between the legislative branch, headed by the city council, and the executive branch, headed by the mayor. The doctrine of separation of powers was developed in the 17th century as a means to prevent public officeholders from exercising their powers to their own advantage and to the disadvantage of society. This protection of the public good was built into the institutional arrangement of government by splitting authority among branches that had specific, limited powers. In Michigan, the powers and organization of the executive and legislative branches of cities are established by locally adopted charters within the constraints of state law, while those of the judicial branch are established by the state.

The 1974 Detroit charter contained little change in the roles or the relative authority of the mayor and council. Evaluation of the balance of powers between the council and the mayor is complicated by the presence in the mayor's position of the same individual for the full time that the 1974 charter has been in effect. It is sometimes difficult to distinguish between basic charter powers and the powers that an individual has accrued through political means over 20 years in the office. Consistent with the perceived relative power of the mayor, the city council's role in budget making and oversight in practice at times appears to be weaker than would be expected from a reading of the charter.

Charter amendments can be placed on the ballot

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by a three-fifths vote of the city council or by initiative petition. Since 1974, there have been eight proposed charter amendments that addressed the relationship between the city council and the mayor. All of these council-proposed amendments would have strengthened the city council. Four of these eight proposed amendments were approved by the voters.

Forms of City Government

City governments in large U.S. and Michigan cities are either the strong mayor-council or the council-manager form. These forms embody different relationships between the executive and legislative branches.

The strong mayor-council form, with the head of the executive branch directly elected by the people, most resembles the U.S. government model with its system of separation of powers and checks and balances. In the strong mayor-council form, the elected city council makes appropriations, ordinances, and policy, and exercises oversight of the executive branch. The elected mayor has executive responsibility for appointing and supervising city department heads, proposing the budget to the council and administering the budget, and has authority to veto acts of the council. There is a distinct separation of powers between the mayor (executive) and council (legislative), which frequently results in dissension between the two branches. There are variations within the strong mayor form which allocate more or less authority and responsibility to either the executive or the legislative branch.

In the council-manager form, all powers of the city are vested in the council. The city council has control of city finances, ordinances, and policy, and appoints, supervises, and may remove the city manager, who has executive responsibility for supervising and directing city department heads. The mayor is a member of the council.

A less common form of government in large cities is the weak mayor-council form, in which authority and responsibility are diffused. The mayor may be elected, but typically would not have veto power, and only limited appointment and budget powers. Several executive department heads may be directly elected. In addition, authority may also be shared with administrative boards whose members are elected or appointed for overlapping terms.

The table on page 6 presents data on city organization for the largest U.S. cities and the largest Michigan cities. The mayor-council form is used in 15 of the 20 largest U.S. cities, and in 14 of those cities the mayor has veto powers. Mayors in the largest mayor-council cities have (or share) budget authority and appointment powers. The 20 largest Michigan cities are fairly evenly split between mayor-council and council-manager forms. In the nine largest Michigan cities that have mayor-council forms, the mayor has veto powers, budget responsibility, and appointment authority.

Detroit Governmental Structure

As noted, city charters in Michigan establish the form of city government, the relationship between the executive and the legislative branches, and the checks and balances between the two branches. Under Michigan law, the form of city government can be changed only through a charter revision and not through the amendment process.

Both the 1918 and the 1974 Detroit City Charters provided for the strong mayor form. The problem of establishing a responsible and effective local chief executive is fundamental. If council exerts too strong control over the executive, he or she cannot take decisive action and government may become ineffective due to lack of leadership. If council exerts too little control, government may be unresponsive and unrepresentative.

The Executive The mayor is the chief executive officer of the city and controls the executive branch, which implements the services, programs, and activities of the city government. The mayor appoints the mayoral staff (the mayor designates one of the mayoral staff or the director of an executive branch department as deputy mayor) and appoints most of the heads, directors, or commissions of executive branch departments exempt from civil service and without council confirmation.

City Council The Detroit City Council is composed of nine members elected at large. It is a full-time, fully paid council which meets every business day during ten months of the year. city council may appoint a staff exempt from civil service. Staff include administrative assistants; secretaries; research and analysis staff; financial specialists; and other advisory and administrative personnel. Council appoints the Ombudsman, who may investigate any official act of any agency except elected officers which aggrieves anyone; the Auditor General, whose office audits the financial transactions of all city agencies and investigates and reports on the administration and operation of any city agency; and the Planning Commission, which advises the city council on development matters. A 1976 charter amendment permits council to sit as a board of review or to appoint a board of review for hearing property assessment appeals.

The Detroit charter provides that the city clerk, who is the chief elections officer of the city and is charged with keeping the records of the city council, is directly elected by the voters.

Executive Organization Plan The charter defines and assigns basic duties to various line and staff and departments and gives the mayor responsibility for preparing an executive organization plan that shows the programs, services, and activities assigned to each agency. Staff departments created in the charter may not be combined, but the mayor may, with certain ex-

ceptions, assign functions of an operating agency to a staff department, transfer functions among operating departments, or combine operating departments. Council may disapprove the mayor's organization plan by a two-thirds majority. The number of executive departments is generally limited to 35, but city council may pass an ordinance allowing the creation of more than 35 executive departments. Only the mayor may propose amendments to the executive organization plan.

City Budget The city budget in large measure determines policy: what services the city government will provide, the quantity that will be produced, and what resources will be used to pay for those services.

The mayor is responsible for submitting a proposed budget to the city council. Council may request supporting data for each proposed budget appropriation submitted by the mayor. A 1976 charter amendment strengthened the councils role in budget formulation by specifying that council may amend the mayor's proposed budget by deleting, adding, or substituting specific programs, services, or activates. The mayor may veto amendments made by the city council to the proposed budget. Council may override mayoral vetoes: the original 1974 charter required seven council votes to override a budget veto, but a 1988 amendment strengthened the legislative role by reducing the number of votes needed to override a budget veto to two-thirds (six) of the council members serving. If the council fails to override the mayor's veto, the mayor's original recommended budget item and amount become the appropriation. The mayor may advise the council during the fiscal year that there are additional revenues available for appropriation, and may request that council transfer funds from one program to another.

The Detroit Charter states: "All appropriations to each agency shall be made in the form of lump sums to the agency's specific programs

services or activities or to additional classes as the mayor may recommend in the proposed budget....” Adoption of a “program” rather than a “line item” budget limits council authority to approval of a maximum amount to be spent for defined programs. Transfers between accounts within programs can be made without council approval; transfers of funds between programs require council approval. Programs in the 1992-93 budget ranged in size from \$2,500 to over \$97 million.

The charter directs the mayor to submit a proposed five-year capital agenda to the council each year. Council may require the appearance of any agency head to assist in the process of evaluating the proposed capital agenda submitted by the mayor and may modify that agenda before approval .

Master Plan The 1974 charter mandates that the mayor propose to the council a master plan of policies for the social, economic and physical development and conservation of the city. He or she may also propose amendments to keep the plan current. Council may modify the master plan or any amendments submitted by the mayor before approval of that plan. A master plan wasn’t submitted to the council until 1985; revisions were submitted in 1987 and 1989. The plan was finally adopted by the Detroit City Council on August 5, 1992, 19 years after the charter mandate.

Ordinances and Resolutions The city council passes ordinances, which are municipal regulations, by majority vote; a two-thirds majority may give immediate effect to any ordinance. Council also passes resolutions, which are formal expressions of will, opinion, or intent. The Detroit City Charter requires that both ordinances and resolutions passed by the Detroit City Council be presented to the mayor. The mayor can return ordinances and resolutions to the city clerk with or without approval or with a veto and a written explanation. The interpreta-

tion of the possible mayoral responses to council actions has been the subject of two proposed charter amendments. The 1976 amendment passed by the voters specifies that if the mayor approves an ordinance, it is enacted; if the mayor returns an ordinance without either approving or vetoing its that ordinance is deemed enacted upon receipt by the city clerk; if the mayor does not return an ordinance to the city clerk within the required seven days, that ordinance is deemed enacted. If the mayor vetoes an ordinance or resolution, a two-thirds majority of council members serving may override the veto. A similar ballot proposal in 1989 applied to resolutions; it was defeated by the voters.

Purchase and Disposal of Property Requests for the purchase or disposal of city property originate in the executive branch. City council approval is required for the city to sell or dispose of property. A 1976 charter amendment required council approval of all purchases or procurements of property or the services of independent contractors except as otherwise provided by ordinance.

Legislative Oversight The city charter provides for the traditional oversight role of the legislative branch by providing that the council “may make investigations into the affairs of the city and the conduct of any city agency.” The charter specifically restrains council from direct involvement in executive branch operations by prohibiting council from giving orders to executive branch employees: “Except for purposes of inquiries and investigations, the city council or its members shall deal with city officers and employees who are subject to the direction and supervision of the mayor solely through the mayor, and neither the city council nor its members shall give orders to any such officer or employee, either publicly or privately.” The distinction between oversight and interference has been one of the main areas of contention between the mayor and council.

Changing the Balance of Powers

While separation and balance of powers are fundamental to the mayor-council form, there are varying degrees of authority that the charter may bestow on the executive and legislative branches.

The city council could be strengthened by requiring council approval of mayoral appointments; having council appoint the city clerk; allowing council greater access to executive branch department directors and staff; allowing council to hire outside legal counsel; requiring more frequent, more complete reports of financial and operational conditions by the executive to the council; allowing council to propose changes in the budget and executive organization plan; redefining programs from the appropriation level to the cost center level; or adopting a line item budget and requiring council approval of line item changes. Since the master plan is a policy instrument, the responsibility for both developing and adopting the master plan could be assigned to the city council.

The chief executive could be strengthened by further limiting council access to mayoral appointees and executive branch employees; limiting the number of council staff; redefining programs from the appropriation level to the departmental level; limiting the changes council can make in the proposed budget; eliminating council review and approval of the executive organization plan; eliminating commissions and providing for direct mayoral appointment of all executive branch department directors and deputies or further expanding the number of mayoral appointees. A very effective limit on the legislative branch would be imposed if the city council were made part-time and salaries for council members were reduced to a modest level.

In Conclusion The mayor, by virtue of his or her position, speaks for the city. Nearly 30 years ago, when the 1918 charter was still in effect, and before the current incumbent mayor was elected, author Edward C. Banfield commented on the mayor of Detroit in Big City Politics:

In fact as well as in law the mayor is the mainspring of Detroit city government. He has very little patronage to bestow: about thirty-five salaried jobs and 250 unpaid but more or less-prestigious commissions. He gets most of his informal influence from his ability to form and give expression to public opinion. His views and doings are always news, and this enables him to dominate the discussion of any issue. Detroit mayors have so much power and receive so much attention that they tend, some say, to develop Napoleonic complexes.

While the mayor may be expected to receive the lion's share of attention, the role of the city council is critical. The council decides what the city government will do, and the mayor decides how to do it, within the limitations of law and accepted principles.

In the ends it is the responsibility of the people to elect leaders who will exercise their rightful authority while not abusing their power. It is the responsibility of the officials elected by the voters to positions of leadership in the executive and legislative branches to use fully the authority granted in the charter in the interest of the citizens. The challenge is to establish a system that will allow the people of the city to fix accountability and to hold their officials responsible for the way they use their authority.

**COMPARISON OF FORM OF GOVERNMENT MD MAYORAL POWERS
FOR THE 20 LARGEST U.S. CITIES MD THE 20 LARGEST MICHIGAN CITIES**

LARGE U.S. CITIES

Name	Form of Government	Mayor-Full/ Part-time	Mayor Veto Power	Budget Responsibility	Appointment Authority
New York	Mayor-Council	Full-time	Yes	Mayor	Mayor
Los Angeles	Mayor-Council	Full-time	Yes	Mayor/CAO	Mayor
Chicago	Mayor-Council	Full-time	Yes	Mayor	Mayor
Houston	Mayor-Council	Full-time	No	Mayor	Mayor
Philadelphia	Mayor-Council	Full-time	Yes	Mayor	Mayor/CAO
San Diego	Council-Manager	Full-time	No	CAO	CAO
Detroit	Mayor-Council	Full-time	Yes	Mayor	Mayor
Dallas	Council-Manager	Part-time	No	CAO	CAO
San Antonio	Council-Manager	Part-time	No	CAO	CAO
Phoenix	Council-Manager	Part-time	No	CAO	CAO
San Jose	Council-Manager	Full-time	No	Mayor/CAO	CAO
Baltimore	Mayor-Council	Full-time	Yes	Mayor	Mayor
Indianapolis	Mayor-Council	Full-time	Yes	Mayor	Mayor
San Francisco	Mayor-Council	Full-time	Yes	Mayor	Mayor
Jacksonville	Mayor-Council	Full-time	Yes	Mayor	Mayor
Columbus	Mayor-Council	Full-time	Yes	Mayor	Mayor
Milwaukee	Mayor-Council	Full-time	Yes	Mayor	Mayor
Memphis	Mayor-Council	Full-time	Yes	Mayor	Mayor
Washington DC	Mayor-Council	Full-time	Yes	Mayor	Mayor
Boston	Mayor-Council	Full-time	Yes	Mayor	Mayor

LARGE MICHIGAN CITIES

Detroit	Mayor-Council	Full-time	Yes	Mayor	Mayor
Grand Rapids	Council-Manager	Part-time	No	CAO	CAO
Warren	Mayor-Council	Full-time	Yes	Mayor	Mayor
Flint	Mayor-Council	Full-time	Yes	Mayor	Mayor
Lansing	Mayor-Council	Full-time	Yes	Mayor	Mayor
Sterling Heights	Council-Manager	Part-time	No	CAO	CAO
Ann Arbor	Council-Manager	Part-time	Yes	CAO	CAO
Livonia	Mayor-Council	Full-time	Yes	Mayor	Mayor
Dearborn	Mayor-Council	Full-time	Yes	Mayor	Mayor
Westland	Mayor-Council	Full-time	Yes	Mayor	Mayor
Kalamazoo	Council-Manager	Part-time	No	CAO	CAO
Southfield	Council-Manager	Part-time	Yes	Mayor/CAO	Mayor/CAO
Farmington Hills	Council-Manager	Part-time	No	CAO	CAO
Troy	Council-Manager	Part-time	No	CAO	CAO
Pontiac	Mayor-Council	Full-time	Yes	Mayor	Mayor
Taylor	Mayor-Council	Full-time	Yes	Mayor	Mayor
Saginaw	Council-Manager	Part-time	No	CAO	CAO
St. Clair Shores	Council-Manager	Part-time	No	CAO	CAO
Royal Oak	Council-Manager	Part-time	No	CAO	Mayor/CAO
Wyoming	Council-Manager	Part-time	No	CAO	CAO

Sources: 1991 Form of Government Survey, International City Managers Association; CRC direct inquiries.

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THE DETROIT BOARD OF POLICE COMMISSIONERS: HISTORICAL AND POLICY CONTEXT

By

David F. Smydra

Urban Studies Program, Wayne State University

Former Executive Secretary, Detroit Board of Police Commissioners

Introduction

A major challenge for the 1970-1973 Detroit Charter Revision Commission was how to balance two fundamental and often competing principles concerning the accountability of the police department.

On the one hand, the Commission learned during long hours of hearings that an intense need existed for a police department which was responsive to the diverse people, interests, and values of Detroit. This need was expressed in terms of the importance of proper community influence on the policies and performance of the police department and more specifically in terms of the process for resolving citizen complaints fairly.

On the other hand, the Charter Revision Commission was confronted with the need to assure that supervisory control over the police department was vested securely in the mayor. This was seen as a way of clearly establishing the accountability of the mayor's office for an effective and equitable police department.

The Commission attempted to resolve its dilemma by creating a new police structure which provided for a five-member board of police commissioners, appointed by the mayor with council approval, to oversee the police department. The Charter Revision Commission also provided for a chief of police, appointed by the mayor, to administer the department. This new structure was actually a second attempt by the Charter Revision Commission to balance the supervisory control/citizen involvement dilemma, since an earlier charter revision proposal providing for a separate professional standards department was criticized widely.

When the voters of Detroit approved the final charter proposal on November 6, 1973, a form of civilian oversight that drew on historical precedent was merged with an innovative police accountability mechanism to give Detroit a unique position in American policing.

The purpose of this paper is to describe the characteristics which give the Detroit civilian oversight model this unique position. The objective here is not to evaluate the Detroit model, but rather to describe and define it in such a way that issues of effectiveness can be raised and discussed more clearly. The matter of evaluation is a task for the citizens of Detroit.

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Civilian Oversight and Civilian Review

Although frequently used interchangeably, the terms civilian oversight and civilian review have different meanings in the police literature and different operational implications.

Civilian oversight refers to the basic accountability of the police function of local government, and traces its conceptual origin to the philosophical underpinnings of American democracy. This basic accountability is manifested through the control of local police agencies by the executive level of local government, a structural control mechanism analogous to the President's control of the military at the federal level. The police literature is clear that the central issue concerning civilian oversight is not whether it should exist, but rather what structure it should take.

The two principal structures that civilian oversight in local policing have taken are the administrative model and the civilian involvement model. Under the administrative model, the head of the police department reports directly to the chief executive of local government (mayor, city manager), who is either elected, or appointed by an elected body. Civilian oversight is thus achieved by this direct reporting relationship to a civilian official.

Under the civilian involvement model, an additional civilian layer is inserted between the chief police official and the elected or appointed governmental official. The primary rationale for this additional layer is that it compensates for the limited attention that mayors or city managers often are forced to allocate to police concerns due to their other city-wide responsibilities. The history of American policing shows that most cities have tried both models at one time or another, and some have alternated between the two in periodic cycles. The most frequently cited stimulus for changing from one model to another is an experience with high level corruption.

Civilian review, however, has a narrower meaning, both conceptually and operationally. It refers to the process for detecting and adjudicating police misconduct within the police ranks, and is particularly concerned with the role of citizen complaints in that process. While there is conceptual linkage to civilian oversight, civilian review is more concerned with providing operational checks on internal police dis-

ciplinary systems through civilian participation in the administration of discipline, and through a citizen complaint process that offers easy access and equitable treatment for citizen grievances.

The literature on civilian review indicates that it is a far more recent issue than civilian oversight, and substantive policy debate about civilian review dates back only to the mid-1950s when Philadelphia created the first civilian review board in a major U.S. city. The succeeding years have witnessed considerable growth in the debate about civilian review, however, and the number of cities which presently have some form of civilian review has grown markedly. A national survey conducted in 1990 revealed that 30 of the 50 largest cities had civilian review mechanisms of some sort. The same survey also showed that half (15) of the cities with civilian review mechanisms established them since 1986.

The feature of the 1974 Detroit City Charter model that distinguishes it from all other models, is that it combines the most extensive elements of both civilian oversight and civilian review found anywhere in the United States.

Charter Provisions

The specific duties of the five-member board of police commissioners are listed in Article 7-1103 of the Detroit City Charter, which states in part:

The board shall:

1. In consultation with the chief of police, and with the approval of the mayor, establish policies, rules and regulations;
2. Review and approve the departmental budget before its submission to the mayor;
3. Receive and resolve, as provided in this chapter, any complaint concerning the operation of the police department;
4. Act as final authority in imposing or reviewing discipline of employees of the department;
5. Make an annual report to the mayor, the city council, and the public of the department's activities during the previous year, including the handling of crime and complaints, and of future plans.

Additional language provides for a staff, to include a secretary and chief investigator, as a means of assisting the part-time board in fulfilling its duties (Article 7-1104), and for the appointment of a civilian director to head the police personnel division (Article 7-1110).

Of considerable importance to the role of the board is the charter language describing the authority and process for addressing both discipline and complaints. The charter provides the board with an approval role on all rules, regulations, and procedures concerning the conduct of department members (Article 7-1107). The same article also establishes the board's appellate role in resolving disciplinary matters and designates the board's disposition of such disciplinary matters as final.

Regarding complaints toward the department, the charter gives the board a major role in the reception, investigation, and resolution of citizen grievances (Article 7-1108). By vesting the complaint function in the board, the Charter Commission was attempting to assure the independence and impartiality that were seen as "Indispensable to the proper discharge of the complaint function..."

It is, of course, important to recognize that several factors beyond the literal charter language also significantly influence the implementation of the provisions for civilian oversight and civilian review. These other factors include: collective bargaining, and especially Act 312 requirements; interpretations of the board's role by the mayor, board and chief; the political and community stature of commissioners; and the interplay of personalities and organizational dynamics in addressing board issues.

Historical Context

Detroit's experience with alternative approaches to the supervisory control/civilian involvement dilemma is reflective of a national pattern.

When Detroit was incorporated in 1802, peace and order were provided by *town* marshalls. As Detroit started to expand, a variety of policing methods including the use of constables, night watchmen, city watches, and militia periodically tended to the security needs of the city. These early policing efforts were loosely structured, very dependent on the co-

operation of the citizenry, and often the subject of public debate and occasional ridicule.

On February 28, 1865, the Michigan Legislature established the Metropolitan Police Commission and charged the commission with oversight of the newly created Detroit Police Department. A prominent feature of the new four-member commission was that it was appointed by and accountable to the governor of the state. Such structures were common in the mid-19th century and their rationale was the need to keep police policy decisions out of local politics, which at the time was riddled with corruption and political chicanery.

In 1918, Detroit adopted a new city charter in which the leadership structure of the police department was changed to a mayor-appointed, single police commissioner who served at the pleasure of the mayor. This change in Detroit was part of a national "home rule" and municipal reform movement that was underway in many local governments in the early 20th century. The 1918 charter emphasized the "administrative structure" model for addressing the supervisory control/civilian involvement issue. This model was operative until the voters approved the 1973 charter revisions and the new board of police commissioner provisions were implemented on July 1, 1974.

Implementation of Charter Provisions

While a city charter prescribes a set of required actions by city government, the manner and spirit of those actions *can* vary considerably, depending on factors external to the charter. Therefore, whether the charter provisions regarding the board of police commissioners have been implemented as fully as the charter framers and voters intended is an important question with an elusive *answer*. One must look at the practices of implementation, as well as the nature of actions taken by the board of police commissioners in order to render some judgment on this matter. Given the complexity of this task, it is too great for the confines of this brief paper. There are some indicators, however, which might offer a starting point.

An example relating to the implementation of the board's complaint function is illustrative of the difficulty in making the transition from charter language provision to operational reality. In March 1977, nearly three years after the charter took effect, a police

officer who was contacted by a board investigator regarding a citizen complaint refused to cooperate or provide any information whatsoever to the investigator on the grounds that the police collective bargaining agreement did not contain any provision for investigations by board staff. This challenge resulted in considerable discussion of possible alternative actions by the city for several years, and was not finally resolved until an arbitration award in 1979 ordered that a board resolution containing rules governing citizen complaints be incorporated into the union contract.

An example relating to the general oversight function of the board, and more specifically, to the board's access to police department information, is also illustrative of the difficulty of implementing the new charter provisions. During the first four years of the board's existence, there was considerable disagreement between the board and the chief regarding the extent to which the board staff could gather information needed by the board from units and individuals within the police department. This disagreement did not get substantially resolved until the mayor issued an executive order which established the working parameters and procedures for information gathering by the board.

Discerning whether the actions taken by the board in its 20-year history are commensurate with the charter provisions for civilian oversight is likewise very difficult. The task of trying to determine whether board actions are the result of a "pro forma," endorsing process, or a deliberative, policy shaping process, or some combination of the two, is a complex one. In all cases, the literal language of the charter can be followed, but only in the more deliberative policy process does the involvement of the board give meaning and substance to civilian oversight.

There are several examples on record where the board apparently had a significant policy shaping role on important issues. These include the police department's affirmative action policy and its subsequent legal challenges, the police department's role in a national police intelligence network accused of inappropriate use of intelligence methods, the oversight of the "Red Squad Files" legal settlement, and the consideration of personnel realignments due to budget cut-backs. The board also exercised its disciplinary review function on at least one dramatic occasion when it reversed a police chief's order to suspend without

pay several police officers while criminal charges were pending against them. The board placed the officers on restricted duty pending the resolution of criminal charges.

On the other hand, one can question the vigilance of the board regarding other important oversight issues given the problems experienced with the police department's "secret service" fund, the indictment and conviction of a police chief for theft of department money, and the problem surrounding the purchase and use of department aircraft. Whether these are isolated examples or part of a larger pattern of board abdication of charter responsibilities, or they are examples of anything other than unfortunate events, remains an open question.

Criteria for Assessment

There have been no independent evaluations of any of the civilian oversight or civilian review mechanisms anywhere in the United States. Assessment of the Detroit experience under the 1974 charter revisions is limited to selected aspects of civilian oversight or civilian review for selected time periods.

Given this near absence of assessment information, the forthcoming charter review process will need to rely on other forms of information when considering current charter provisions. One noted police scholar (Richard Terrill), who has specialized in civilian review and civilian oversight issues, has suggested that five factors are crucial to the success or failure of attempts to balance supervisory control and civilian involvement in police accountability structures:

1. The nature of political support;
2. The level of police opposition;
3. The degree of citizen interest;
4. The legal standing;
5. The extent of independence.

This brief paper has provided a starting point concerning information about each of these factors. Perhaps the gathering of additional information on these factors will provide insight to resolving the supervisory control/civilian involvement dilemma for the future.

Alternatives

Once some judgment is made concerning the effectiveness of current charter provisions, several alter-

native courses of action are available, depending on the nature of the judgment reached. These alternatives can be grouped into four broad categories of action, with several possible variations available in each category:

1. No change in charter provisions. This alternative would affirm the effectiveness of present provisions. One possible variation of this alternative is to maintain present provisions, but suggest (via charter review process) that the board be made more (or less) active through the selection of commissioners and its effect on the working relationship of the mayor, board, and police chief. In essence this would be a stylistic adaptation without a change in charter language.

2. Eliminate the board of police commissioners. This alternative would be commensurate with a judgment that the board had been at worst a failure, or at best irrelevant. Some other accountability model would have to be proposed as a charter change, and the model most compatible with this alternative likely would be the “administrative structure” model. In essence this alternative would resemble a return to the supervisory control/civilian involvement model provided in the 1918 charter.

3. Modify the duties of the board of police commissioners. This alternative would flow from a conclusion that the basic structure of the board of police commissioners is correct, but that some “fine tuning” to either strengthen or reduce the board’s role is needed to enhance effectiveness. Several modifications are possible, but the most likely ones are:

a. Strengthen and clarify the reporting requirements of the police chief to the board. It is at least arguable that present charter provisions require the police chief to have dual reporting requirements (mayor and board), but since the mayor is the appointing authority for the chief, that reporting line takes precedence. The reasoning under this alternative is that strengthening the reporting line from the chief to the board would clarify the lines of policy authority and decision responsibility.

b. Strengthen the board’s role in the selection and appointment of the police chief. This alternative could range from a role in selecting and recommending candidates to the mayor, to giving the board charter responsibility for appointment and removal of the police chief. This alternative would diminish

the supervisory control of the mayor somewhat, but enhance the citizen involvement role in the police department.

c. Reduce the board’s oversight responsibilities and make it more of an advisory body. This alternative, in essence, would place more emphasis on the informal influence of a civilian board, and diminish their direct oversight and review duties. This would also result in a leadership model more closely resembling the “administrative structure” model, inasmuch as the citizen involvement role would lack decision authority.

4. Select police commissioners by popular election rather than mayoral appointment. This alternative has the potential for providing an electoral check on the mayor and police chief, and would insert an overtly political character into the civilian oversight and review mechanisms of the police department. Whether there would be a qualitative improvement in the supervisory control/civilian involvement balance is speculative at best.

Other alternatives and modifications are certainly plausible, but given the deliberation that went into the present charter provisions, and given the historical and policy context of those provisions over the past 20 years, these choices represent the most likely array of alternatives regarding the future of police accountability in Detroit.

Conclusion

Designing and implementing methods for directing a police department with just the proper balance of supervisory control and citizen involvement is not easy work. The history of American policing is replete with examples testifying to the complexity of the task. In 1974, the voters of Detroit embarked on a unique and innovative course of action by establishing a civilian board of police commissioners with charter mandated responsibilities for civilian oversight and civilian review. Now, 20 years later, the voters of Detroit are presented with an opportunity to assess that course of action and decide on its future applicability.

This paper has provided a starting point intended to assist Detroiters with that important decision. The historical and policy context of the 1974 charter provisions have been described, several criteria for

assessing the implementation and effectiveness of the board of police commissioners have been suggested, and possible alternatives regarding the board's future role have been presented.

Now the real work of local democratic government begins.

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Detroit City Charter Revision

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On November 2, 1993, as provided in the 1974 charter, voters of the City of Detroit will determine whether a charter commission will be established to revise the current charter. This series is being financed in part by grants from Community Foundation for Southeastern Michigan, Hudson-Webber Foundation, and Matilda R. Wilson Fund, and NBD Bank.

REPORT NO. 310-07 Seventh in a Special Series an Detroit City Charter Revision Issues AUGUST, 1993

EXECUTIVE BRANCH ORGANIZATION

The 1974 Detroit City Charter establishes the mayor as the head of the executive branch of the city government, with responsibility for implementing programs, services, and activities. Me charter created and protected from reorganization five staff departments (Budget, Finance, Law, Personnel, and Planning) and -six operating departments (Arts, Historical, Human Rights, Police, Water and Sewerage, and Zoological). Eight other operating departments were created but not protected from reorganization under the executive reorganization powers granted to the mayor. The charter created, assigns very specific responsibilities to, and carefully defines structures and procedures for some departments (Finance, Personnel, Budget, and Police), while making very general statements about the city's responsibility in other departments (Recreation, Environmental Protection). In other areas (health, library), the charter creates responsibilities but does not establish departments. In addition to creating specified departments and protecting some of those departments from reorganization, the charter also assigns to the mayor the authority to organize the activities of the executive branch by defining, assigning, and reassigning other activities, programs, and services.

The charter provides that the mayor generally appoints the heads of executive departments without City Council approval. The mayor also appoints the members of numerous boards and commissions.

Reorganization Powers

The 1974 Charter (Section 7-102) establishes and defines the executive branch reorganization powers of the mayor. The mayor is required to prepare an executive organization plan that identifies all executive agencies and their programs, services, and activities; executive agencies existing at the time the charter was adopted were protected until superseded by the executive organization plan. The plan must be filed with City Council, which may request modifications. Sixty days after filing, the plan becomes effective with those modifications that the mayor approves, unless disapproved by a two-thirds majority of City Council. Only the mayor may submit amendments to the plan.

According to the charter, the executive organization plan must include the mayor's office, five staff departments and six of the operating departments established in the charter. The mayor's authorized to reassign functions, combine departments, and create other departments. Not more than 35 departments may be included in the plan unless an ordinance is passed by City Council to allow for a larger number.

An executive organization plan containing 33 departments was submitted to the Detroit City Council on April 2, 1974. That plan reflected charter mandated changes such as the consolidation of the Controller's Office, Board of Assessors, Purchases and Supplies, and City

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Treasurer into the new Finance Department and the elevation of the Budget Bureau of the Controller's Office into a separate department, and other changes that were not mandated, such as combining the Parking Enforcement Division of the old Streets and Traffic Department with the Municipal Parking Authority to create the Municipal Parking Departments and the creation of a new department from the City Engineer's Division of the Department of Public Works. Most of the existing city executive departments received new names, particularly those that were previously labeled "Commissions" and "Mayor's Committees," and some functions were transferred to new departments.

The structure of Detroit city government has continued to change since 1974. Changes in federal grant programs have driven the evolution of the new city departments of Employment and Training and Neighborhood Services. The city government no longer includes departments of Hospitals, Human Resources, Model Neighborhood, Youth, or Corrections, all of which were part of the 1974 executive reorganization plan. A nonprofit trauma hospital replaced the last of the municipal hospitals, some federal grant programs were eliminated, and the county and state assumed responsibility for operating correctional institutions. The Council of the Arts Department was established and then submerged in the Recreation Department. The most recent of various amendments to the executive reorganization plan was submitted to the City Council on May 14, 1992; this amendment transferred Hart Plaza from the Civic Center Department to the Recreation Department and Traffic Engineering Division from the Department of Transportation to the Department of Public Works.

1974 Executive Organization Plan

Key: Charter Protected Departments in **BOLD CAPITALS**

Charter Established Departments in **Bold**
Executive Organization Plan Departments
in Lower Case

Staff Departments:

BUDGET

FINANCE

LAW

PERSONNEL

PLANNING

City Engineering

Data Processing

Public Information

Operating Departments:

ARTS

HISTORICAL

HUMAN RIGHTS

POLICE

WATER & SEWERAGE

ZOOLOGICAL PARKS

Airport

Building

Civic Center

Community & Economic Development

Consumer Affairs

Corrections*

Environmental Protection

Fire

Health

Hospitals*

Human Resources Development*

Model Neighborhood*

Municipal Parking

Public Housing

Public Lighting

Recreation

Senior Citizens

Transportation

Youth*

* Since eliminated. New departments are Employment and Training, and Neighborhood Services.

Appointment Authority of the Mayor The 1974 charter (Section 5-103) expanded the appointment authority of the mayor: except as otherwise provided, the mayor appoints the director of each executive department. Mayoral appointment of the corporation counsel requires the consent of the City Council; other appointments of department directors do not require council consent, but the charter does require Human Rights Commission approval for the mayor's appointments to the positions of director and deputy of the Human Rights Department.

The charter provides that, in some cases, the mayor appoints a department board or commission which has responsibility for appointing the department director. The mayor must obtain City Council consent for appointments to the board of police commissioners, but not to other boards and commissions. The mayor appoints the members of the civil service commission, who appoint the personnel director subject to the approval of the mayor. The mayor also appoints the members of the board of water commissioners who appoint the Water and Sewerage Department director and deputy with the approval of the mayor. The city's cultural departments (Arts, Historical, and Zoological) are headed by commissions appointed by the mayor; those commissions appoint the department director and deputy subject to the mayor's approval.

The mayor is authorized by charter to appoint specific deputy directors and division heads: the deputy fire commissioner; the three members of the board of assessors, which heads the assessments division of the Finance Department; and the head of the labor relations division of the Personnel Department.

The charter (Section 5-105) specifies that, except as otherwise provided, each executive department director shall, with the consent of the mayor, appoint a deputy. Certain department heads may appoint designated division heads:

the finance director is authorized to appoint, with the consent of the mayor, the chief accounting officer, the treasurer, and the purchasing director; and the fire commissioner appoints the fire chief, two deputy chiefs, and the fire marshall subject to the approval of the mayor. The right of department directors to appoint their deputies and designated division heads was abridged immediately. The 1974 Executive Organization Plan submitted to council listed deputy director and designated division head positions among the 85 paid mayoral appointments (there had been 62 mayoral appointments prior to reorganization).

There are two very unusual appointment relationships. The mayor appoints both the chief of police to administer the Police Department and the members of the Board of Police Commissioners to establish policies, rules, and regulations for the department and to investigate complaints concerning the department. The Board of Police Commissioners appoints a board secretary, investigative staff, and other board staff, as well as the director of police personnel, who must be a civilian. The chief of police, with the consent of the board, appoints deputy chiefs. Interestingly, the 1974 Executive Organization Plan lists police commissioners (but no other commissioners), the board secretary, chief investigator, chief of police, two deputy chiefs, and the director of police personnel all as mayoral appointments. In the other unusual appointment situation, which is established not in the charter but rather in state law, the independently elected members of the Detroit Board of Education appoint the Library Commission which appoints the director of the semi-independent Detroit Public Library.

Although the charter limits the appointment authority of the mayor to members of boards and commissions, executive department heads and a few other specified positions, the goals of affirmative action and the realities of political control have resulted in Mayor's Office ap-

proval of promotions to the higher levels within the civil service system for both uniformed and civilian employees. This degree of control has no charter or other legal basis.

Boards and Commissions

In addition to establishing 19 executive departments other than the Mayor's Office, the charter also established 18 executive branch boards, commissions, or councils, and provides (Section 7-103) that the mayor may establish an unlimited number of additional advisory commissions to advise any agency or branch office.

A Board of Ethics composed of the corporation counsel, the personnel director, and three city residents appointed by the mayor was created (Sec. 2-106) and charged with responding to written requests for advisory opinions from elective officers, appointees, employees, or the superiors of appointees or employees of the city.

The five-member Civil Service Commission, which appoints, with the consent of the mayor, the personnel director, has operational responsibilities. It is charged (Section 6-513) with providing a procedure for the final resolution of any grievance brought by or against a classified employee of the city and is authorized (Section 6505) to hold hearings, subpoena witnesses, administer oaths, take testimony, and require the production of evidence.

Duties of the Board of Police Commissioners are listed in the charter (Sec. 7-1103) and include establishing policies, rules, and regulations; reviewing and approving the Police Department budget request; receiving and resolving complaints; disciplining Police employees; and making annual reports.

The boards of the Arts, Historical, and Zoological Parks Departments appoint the department directors and deputies subject to mayoral approval and have no other charter responsibility. The Council of the Arts may appoint a director

subject to the availability of appropriations; the appropriation has been eliminated.

The Executive Planning Council (Sections 6-206 through 6-208) is composed of the planning director, the directors of departments charged with eight specified responsibility areas or their designees, and other persons whom the mayor may appoint. This council is charged with advising the Planning Department concerning the development needs of, and activities within, the city.

The charter requires that all members of advisory commissions be Detroit residents unless the mayor expressly states otherwise in the executive order and indicates the reason for allowing nonresidents to serve. The mayor must endeavor to make city-wide advisory commissions as representative of the entire city as possible and any commission created to advise a branch office of any agency as representative of the people being served as possible (Section 7-103). The Advisory Commission for Recreation is to include one representative from at least eight districts.

Charter established boards and commissions include the following (number of members in parenthesis):

- Advisory Commission for Environmental Protection (at least 5)
- Advisory Commission for Recreation (members from 8 or more districts)
- Advisory Commission for Health (5)
- Advisory Commission for Transportation (at least 5)
- Arts Commission (7)
- Board of Assessors (3)
- Board of Ethics (Corporation Counsel, Personnel Director, 3 public members)
- Board of Police Commissioners (5)
- Board of Water Commissioners (7)
- Civil Service Commission (5)
- Consumers Council (department director plus 12)
- Council of the Arts (15)

Executive Planning Council (9 department directors and others)
 Fire Advisory Commission (4 may be appointed)
 Historical Commission (5)
 Human Rights Commission (11)
 Public Lighting Commission (5) Zoological Department Commission (5)

The 1974 executive organization plan included additional multi-member advisory bodies for the Airport, Civic Center, Corrections, Housing, Hospital, Human Resources, Model Neighborhood, Municipal Parking, Senior Citizens, and Youth Departments.

The Issues

Although the 1974 executive reorganization plan has been amended, no new plan incorporating all those amendments has been prepared, nor does the charter specifically assign to any agency responsibility for maintaining an updated plan and making that plan available to the public. There is no requirement that a new executive organization plan be filed at regular intervals, such as after every mayoral elections nor that each new mayor must file a plan. An existing executive organization plan presumably continues in effect from one mayoral administration to another until superseded or amended. The Personnel Department prepares organization charts of city departments at intervals of several years; these charts are not compared to the executive organization plan to insure compliance or to detect needed amendments.

The city executive has accrued greater appointment authority than would be assumed by a reading of the charter. The mayor's appointment authority has been extended beyond that prescribed in the charter to include not only deputy directors but also commission administrative coordinators who function as political extensions of the mayor's office.

Advisory and policy making boards and commissions have not functioned as planned. These

bodies do not regularly provide constructive input about departmental policies or operations, provide effective oversight, or insure accountability. Instead, they are generally composed of figurehead positions used to acknowledge and reward political supporters of the mayor. Boards and commissions diffuse responsibility; extensive use of boards and commissions could be reevaluated.

The charter recognizes the possibility of city agencies and activities being taken over by another unit of government and of activities of another private or public organization being taken over by the city, and provides for the protection of city employees in these transfers. Authors of the 1974 Detroit City Charter recognized community services areas and included provisions that could have led to decentralization and community level government.

There is no explicit acknowledgment in the charter that the service area for certain functions is regional. The charter protects from reorganization the Arts, Historical, Zoological, and Water and Sewerage Departments. There is a question as to whether amendment of the charter would be required to eliminate any of these functions or transfer any of them to a regional authority. The city's declining tax base and reductions in state and federal funding make continued city provision of regional services increasingly difficult. Although the charter recognized the need and provided the opportunity for the city to restructure or shift responsibilities in health, hospitals, sanitation, and other functions, some charter provisions actually impede regional solutions. A city Transportation Department was created, but a regional public transportation system capable of moving Detroit residents to job opportunities in the suburbs was discouraged by charter limitations Section 7-1404 provides: the city may not sell or dispose of property needed to continue the operation of the city's public transportation operation without voter approval; the city may not grant any

public utility franchise for transportation services that is not subject to revocation by the City Council unless approved by three-fifths of the voters; and contracts franchises, grants, leases, or other transfers that violate the limitations section are declared void. The charter allowed the city government to eliminate city operated hospitals and jails, but impedes the restructuring of public transportation and of protected cultural facilities.

The 1974 Detroit City Charter defined and protected departments and functions that reflected the concerns of the charter commissioners and

the voters at the time the charter was being developed. The structure created in the charter is often too fragmented to be effective and certain of the departments protected by the charter lack sufficient resources to adequately address problems or provide services. If the city is to be administered under a strong mayor-council form, it may be advisable to allow the elected chief executive to structure staff and line agencies with maximum flexibility. General functions that voters determine should be part of city government may be protected, but the charter should provide only the broad framework of the city government structure.

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Detroit City Charter Revision

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DECENTRALIZATION OF CITY GOVERNMENT

Decentralization of local government refers to a re-organization by moving one or more operations or decision-making responsibilities out of a central city hall and dispersing them into neighborhood areas, closer to the people of the city. It can involve administrative decentralization, in which offices and services are physically moved into neighborhood centers, or representative decentralization, in which policy or decision-making responsibilities are dispersed away from the central city hall. Representative decentralization moves a step beyond ward or district elections of city council members. It involves the creation, through election or appointment, of sub-city councils to make advisory or substantive policy decisions affecting the section of the city served by that council. Administrative and representative decentralization also can be combined.

Decentralization is usually implemented with several expectations. First, it is expected to increase government responsiveness to the desires and interests of the citizens, thereby improving people's perceptions of local government and reducing feelings of political alienation. Decentralization creates a more effective complaint response system. Second, it is expected to expand opportunities for political involvement, thereby creating a stronger sense of community, developing new leadership with new ideas, and strengthening the democratic process. It should allow decision-making to be done in a way that more effectively reflects the desires of the neighborhoods. Third, it is expected to improve the quality of city services by bringing service delivery closer to the people, improving the information flow and changing city employees' attitudes. Finally, by changing the administrative or decision-making

processes, it should increase the focus at the neighborhood level.

Detroit Charter Provisions

The 1974 Detroit City Charter introduced provisions on decentralization of city government. The charter defined "communities" and "community councils"; mandated the creation of a decentralization study commission; required a vote of the people to approve any proposed ordinance implementing decentralization; listed the kinds of functions that could be decentralized and provided for the powers and duties that could be delegated to the community councils if decentralization were to occur. The charter provided that:

A community council may exercise any powers and perform any functions within the community service area delegated to it by ordinance, including:

1. Advisory or substantive authority, or both, with respect to such programs as urban renewal, relocation, public housing, planning and zoning actions, and other physical development programs; crime prevention and juvenile delinquency programs; health services; code inspection; recreation; and manpower training; and
2. Self-help projects, such as supplemental refuse collection, beautification, minor street and sidewalk repair, establishment and maintenance of community centers, street fairs and festivals, cultural activities, recreation, and housing rehabilitation and sale.

The charter commission stated that the decentralization provision was introduced to reduce citizens'

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feelings of alienation from government and to bring governmental control and service delivery closer to the people. It is interesting to note that the 1972 proposed charter, which was rejected by the voters, mandated a decentralization commission to propose a comprehensive plan for community government which divided the city into at least eight communities represented by community councils with at least five members per council, while the 1974 version was much more permissive in regard to the actions of a decentralization commission and the structure of any community government.

Detroit City Decentralization Since 1973

As mandated by the charter, a Community Government Study Commission was appointed by the mayor with consent of the city council. Hearings were held to solicit public opinion, information was collected, and other cities' experiences were investigated. "The commission in its January 30, 1976, Final Report concluded that there was "no groundswell of support for the concept of community government in Detroit," that "the benefits of decentralization (improving citizen attitudes, service delivery, information flow, client control and agency attitudes) have failed to justify what were found to be the weighty personal costs of participation" in other cities, and that "public enthusiasm for decentralization as a cure for urban government problems has been declining on a national level since the late 1960s." Based on these findings, the commission concluded that it would be ill-advised at that time to draft an ordinance proposing the establishment of elected community councils in Detroit. No subsequent actions have been taken to move the city toward decentralization.

Decentralization Experience

Many large U.S. cities and school districts have experimented with decentralization. Large geographical jurisdictions have a natural tendency to incorporate some elements of decentralization.

Boston created "Little City Halls," New York City created "Neighborhood Councils" in city government and implemented school decentralization, Washington D.C. experimented with "Advisory Neighborhood Commissions" and Los Angeles, Minneapolis, Kansas City, and many other cities

have implemented some form of decentralization. While the goals of decentralization may be desirable, cities and school districts have had trouble moving effectively from generalities to specifics and from theory to practice. It has not been tremendously successful in any of these cities.

Detroiters have had some experience with decentralization of city government. Fifteen citizens district councils allow Detroit neighborhood residents to advise the city on issues of planning in their community. First authorized in 1968 as an amendment to the Blighted Areas Rehabilitation Act, these councils act as liaisons between the residents and the administration in deciding how federal block grant money should be spent. In addition to this experience, there are lessons from the experience of Detroit Public School decentralization that are applicable to decentralization of Detroit city government.

Detroit School Decentralization

Decentralization was implemented in the Detroit Public Schools by state law, without local voter approval, in an attempt to bring greater participation into the educational process and to improve cooperation between the community and school administration. A 1970 state act created eight regional boards in Detroit with five members each, with the highest vote-getter in each region designated as the region chairman. It required a 13-member central board of education, including the eight regional chairmen and five at-large board members. Decentralization was implemented in 1973 and lasted for eight years.

A 1981 state law required the question of the elimination of the regional school boards to be submitted to the voters. Detroiters voted to eliminate decentralization by nearly a three to one vote. There appear to be a number of factors that influenced the Detroit voters' decision on whether to eliminate school decentralization. Many of these factors have been issues with decentralization in other cities as well.

Representation Decentralization is advocated when there are diverse groups in the city who feel that they are not represented. Other cities and school districts have had some success in using decentralization to give minorities a sense of participation in government. Detroit Public Schools decentralization was a movement toward community control, a

means of giving minority parents a say in how their children were being educated. By 1973, however, minorities had won election to a majority of the central board of education seats and, in 1975, a minority superintendent was appointed. By 1981, decentralization of the Detroit schools for the purpose of empowering minorities was no longer necessary. When city residents are fairly homogeneous, there is less need for district representation.

Responsiveness Responsiveness is affected by decentralization only when real changes are made in the chain of command. Decentralization involves the surrendering of authority by a central body to neighborhood bodies. This is often opposed by the power-holders in the central body asked to surrender their authority. This was certainly an issue for the Detroit Public Schools board of education where the regional boards were given only minimal powers. Change had minimal effects on responsiveness.

The regional boards had only an advisory roles, with no real hiring or spending powers. Budgetary powers remained with the central board of education. Central board approval was necessary to confirm the regional boards' selections for the regional superintendents and the school principals. Teachers maintained their tenure system and contracts were still bargained with the central board. Lack of accountability resulted from a failure to define responsibility between the central administration and the regions. Over time, citizens learned that if they wanted to accomplish anything they had to go to the board that controlled the budget, the central board.

Democratic Process Decentralization implementation does not necessarily strengthen the democratic process. It is vital to the success of decentralization to have the support of city leaders and to have wide public support and interest. Detroit Public School decentralization never had a great deal of support from educational leaders, the school administration, or the public. Voter turnout has historically been low in urban areas, especially among minorities and the poor. Decentralization did nothing to change this in Detroit.

While decentralization initially increased citizen participation and educated citizens on the workings of the Detroit Public School's board of education, this interest faded over time. Citizen participation in the

regional boards declined when participants realized that the regional boards had no real power; they had neither control over teachers nor any real input into the budget. Some regional board members were elected in uncontested races and at least one region could not create enough interest to muster a full slate of candidates. Even when decentralization attracts new participants and limited powers are shared with the community councils, these bodies tend to be reactive, doing more to block change than to introduce new initiatives.

Costs Concerns with costs and with representation and responsiveness are not necessarily compatible. Costs increased in the Detroit Public School system, as it does in most cities that implement decentralization. Decentralization created additional layers of bureaucracy, caused red tape and duplication of effort between the central administration and the regions. The magnitude of the additional costs were not clear and some argue that the goals achieved through decentralization were worth the additional costs. Many cities that decentralized in the 1970s have had to re-centralize in the 1980s and 1990s to save money.

Attention to Neighborhoods Decentralization can place more attention at the neighborhood level, but this is not necessarily an advantage. Decentralization of the Detroit Public Schools created balkanization between regions: conflicts; competition for resources and special programs; and disparities in service delivery.

Service Delivery The ultimate test of decentralization is whether it changed the end product in a positive way. Service delivery is often perceived to improve during the implementation of decentralization, as the public gets closer to the actual operations of the governmental unit. Decentralization did little to improve the education of the students or to bring about any real change to the large school system. Whether because decentralization was not implemented in a fashion that could bring about meaningful change or due to external circumstances of the period, decentralization did not bring about the improvements that were hoped for when it was implemented. This has been the experience of other cities as well.

There is little evidence from the Detroit school experience or elsewhere that the services provided

through decentralized programs differ dramatically from those produced under centralized programs.

Conclusion

Experience with decentralization has shown that it is vital to have the support of the city's leaders, wide public support and interest, and the coordination of service delivery with neighborhood centers. Decentralization is meant to increase community control and strengthen the democratic process. Without public support and participation this is impossible.

When responsiveness is improved it often increases costs. Improvements in information flow and responsiveness tend to increase departmental workloads as more people bring their problems to the government to be solved. More cost effective alternatives may be found to increase responsiveness.

It is also important to stress the decentralization of things that are local in nature. While community control is clearly desirable to an extent, there are also economies-of-scale and the well-being of the community as a whole that should be considered in allocating decision-making responsibilities. Decentralization emphasizes potential disparities between the concerns of the neighborhoods and the needs of the entire city.

The most important issue in decentralization is the distribution of authority, especially the authority to allocate resources. Experience shows that decentralization with only limited authority given to the community councils stands little chance of success. George Washnis, in a 1972 study done for the Center for Governmental Studies, concluded that there is little point in decentralizing unless it is done with specific goals in mind and the means to reach those goals to the point of creating additional cities with substantive powers "... anything less would merely be an administrative mechanism for carrying out centrally devised programs."

Effective decentralization does not diffuse authority; it takes power that is diffused throughout a larger bureaucracy and concentrates it into new nuclei of authority. This has proven to be very difficult, if not impossible. Power-holders usually resist surrendering power. Superimposing a decentralization system on top of the existing system simply adds another layer of government, without necessarily addressing any of the problems. For this reason, decentralization is most likely to be successful when it is an integral part of the form and structure of city government.

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PLANNING AND ECONOMIC DEVELOPMENT UNDER THE DETROIT CHARTER

By

Professor John E. Mogk, Wayne State University Law School*

Planning and economic development are two of the most important City Charter functions, helping to shape the city's future physical and economic environment. During the first 20 years, planning and economic development provisions of the Charter have not been strictly followed, shortcomings in wording have been exposed and important questions of interpretation have been raised. If the City were the subject today of widespread private growth and investments these Charter issues might be viewed as insignificant in comparison with improving prosperity and community life. However, the City is experiencing major disinvestment and deterioration, requiring the most effective City government response possible to reverse the decline. Under these conditions, the City structure and process, as established in the Charter, must be either strictly followed, modified or replaced, so that all responsible agencies and branches of government have a common, understood and coordinated responsibility in revitalizing the City.

Introduction

Within the bounds of state law and the Michigan Constitution, the 1974 Home Rule Charter of the City of Detroit ("Charter") defines the structure of local government, its powers and limitations. It includes a Declaration of Rights in the people of Detroit:

The people have a right to expect aggressive action by the City's officers in seeking to provide residents with decent housing; excellence in education; Job opportunities; clean air, clean waterways and a sanitary City; proper care for all physical or mental health problems; reliable, convenient and comfortable transportation; recreational facilities and or-

ganized programs of recreational activities; and cultural enrichment, including libraries and art and historical museums.

Planning and economic development go hand in hand. Logically, planning is performed first, followed by economic development. The Charter requires the preparation of a Master Plan (Section 8-101), which must comply with the Michigan Municipal Planning Act (M.C.L.A. 125.36). The Master Plan coordinates public and private investment and assures, to the extent possible, that all persons understand a common set of goals and objectives being pursued in furtherance of a defined vision for the City's fu-

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ture. Sound planning is central to successful urban revitalization.

The 1918 Charter placed planning under the control of a Planning Commission whose major duties included long range and current planning, zoning and urban renewal. Although the Mayor appointed the Planning Commissioners, the Planning Director and staff were civil servants, giving the Planning Commission semi-independent status with a staff and functions somewhat insulated from the Mayor and Council. The 1974 Charter strengthened the office of Mayor by placing planning administration directly under the Mayor and making the Planning Commission an advisor to the City Council in performing its legislative functions, including adopting and amending the Master Plan.

Comprehensive economic development is dependent upon the successful implementation of the Master Plan. Public investment (federal, state and local) is strategically positioned in accordance with the Plan to attract private investment from within the City, as well as from outside. Sustained economic development will occur when rational choices by private investors are made in the belief that investment in the City offers a competitive return on capital in the long term. Thus, the City's future vision embodied in the Master Plan is of critical importance to the development process.

Combined planning and economic development operations of any city can be compared to the cardiovascular system of the human body. They reach into virtually every organ of a city's structure, cutting across most branches and departments of City government. As a result, this assessment is not limited to a few isolated Charter provisions describing planning or development, but addresses the working relationships among departments and across branches of government as well. Today, the Planning Department, Planning Commission, Community and Economic Development Department, Department of Build-

ings and Safety Engineering, Budget Department, Law Department, Water and Sewage Department, Transportation Department, Consumers Affairs Department, Mayor, City Council, Ombudsman, and others, are all participants in a carefully balanced network of authority, responsibility and accountability, controlling the City's planning and development process.

Charter Operation

The Charter must be consistently interpreted and strictly followed if it is to achieve its intent and be effective. Planning and economic development, in particular, cannot achieve anticipated results if there is conflict in interpretation or a lack of adherence to the Charter's framework.

Charter Compliance Full compliance with the Charter has been a problem during the first 20 years. Relating specifically to planning and economic development, the Master Plan was not adopted on time (Section 8-101), annual amendments to the Plan have not been proposed (Section 8-102) and the Executive Planning Council has not functioned (Section 6-206), as required by the Charter. The Charter provides no simple mechanism to assure that City agencies comply fully with it, nor is there a clearly defined process to inform the voters that the Charter's provisions are not being met. The charter does allow for the adoption of an ordinance providing punishment pursuant to a criminal proceeding for persons who violate the Charter, a highly impractical approach (Section 9-505).

The Charter provides that the Master Plan, or recommended amendments, be submitted by the Mayor to the City Council so that it may hold public hearings and make necessary modifications by December 1 annually (Sections 8-102 and 8-103). Compliance with this procedure would have meant that a Master Plan, or the work in progress, would have been submitted prior to December of 1975, but a first draft was not produced until 1985 and it was not until

1992 that a Plan was finally adopted. Moreover, many view the plan as too vague to be useful in directing future public and private investment decisions.

In addition, an Executive Planning Council is to be established, composed of the planning director, and the directors of departments responsible for housing, commercial or industrial development, transportation, recreation and parks, environmental protection, human resources development or public health, capital agenda and capital budget, and enforcement of codes (Section 6-208). The Executive Planning Council is non-functional, having met only once in 20 years, despite a Charter requirement to meet at least once per month (Section 6-207). The intent of the 1974 Charter Revision Commission was to create a body to ensure that all concerned interests would be involved in the planning process. The Charter states that “the executive planning council shall provide information to the Planning Department concerning the total development needs of the City as well as development activities being planned or carried on within the City or affecting the interests of the City. It shall also advise the Mayor and the Planning Director in determining priorities, in evaluating studies, in formulating development proposals, and implementing authorized programs and projects” (Section 6-208).

Since the Executive Planning Council is composed of the Mayor’s department heads, the provision is criticized by some as unduly meddling in the Mayor’s administrative authority. Understandably, the Mayor can consult with his departments at any time. Nonetheless, the likelihood is that the 1974 Charter Revision Commission understood this intrusion and intended to require regular meetings of department heads to assure optimal coordination of the planning (and development) process, widely viewed as lacking today within the City. Thus, for example, the Department of Buildings and Safety Engineering was unable to establish a

Charter encouraged one-stop-service for developers (Section 7-405). An active Executive Planning Council may have been helpful in securing the cooperation of all departments to meet this goal.

The City is experiencing disinvestment and decline. Under these conditions, full cooperation among all City agencies involved in planning and development is essential to effective revitalization. Unfortunately, detrimental conflicts regarding Charter structure and operation have arisen between the City Council and the Executive. The 1974 Charter established a “program budget” approach to replace the “line item budget” of the 1918 Charter. A program budget concept means that blocks of funds are made available for agency programs, to be spent as the appropriate agency sees fit. The Budget Department, however, has continued to exercise veto power over allocations and spending made within the program accounts by City agencies, including the City Council, with no express authorization under the Charter, leading to dissension and mistrust among the executive and legislative branches.

A practical mechanism is needed to assure full compliance with the Charter by all City agencies. The 1974 Charter created the office of the Ombudsman as an independent agency, based on the Scandinavian model. The Ombudsman functions primarily as a complaint bureau, with authorization to make reports to the City Council. The Charter provides the Ombudsman with the authority to investigate, but excludes from the Ombudsman’s jurisdiction elected officials, meaning the Mayor, the City Council, and the City Clerk. Although the Ombudsman could today prepare reports on Charter compliance by City departments, a Charter provision requiring the Ombudsman to make regular (annual or bi-annual) reports to the people covering all City agencies and elected officials should be considered.

Charter Interpretation The inability of the Council to get information from the Executive branch is an obstacle to rational Council decisions on planning and economic development matters. Under the 1974 Charter the basic structure of government was retained, the office of Mayor strengthened and distinct checks and balances established to assure accountability and trust among the branches and agencies of government. Conflicting Charter interpretations are detrimental to this balance. One principal conflict is the access of City Council to information from Executive Departments to make legislative decisions. The Charter prohibits the Council from interfering in administration (Section 4-112). It requires the Council to deal with city officers who are subject to the direction of the Mayor only through the Mayor. However, it allows for direct investigations of any City agency (Section 4-108), following the 1918 Charter. The official comment of the 1974 Charter Revision Commission states that the Charter allows for formal inquiry and investigation, but prohibits City Council direction of city officers. Can the City Council routinely obtain all information it believes is needed to perform its legislative function, as a check and balance on the Executive? Where is the line to be drawn between the City Council dealing with department heads and conducting investigations? When inquiries and investigations are held, can department heads be instructed by the Mayor not to cooperate? Does the City's balance of power turn on the power to subpoena? Clarification of the intent of the Charter is needed and may require continuing interpretation. The Ombudsman faces a similar information gathering problem.

A practical approach to impartially interpreting the Charter should be considered. The Corporation Counsel, who heads the Law Department, is authorized to "give legal advice or opinions to the mayor, a member of the city council, or the head of any agency" (Section 6-405), which can extend to the proper interpretation of the Charter. However, the Corporation Counsel is ap-

pointed by the Mayor, with the approval of the City Council, reports only to the Mayor, and serves at the Mayor's pleasure (Sections 6-401). Many question whether the Corporation Counsel can be truly objective in construing the original intent of the Charter under a strengthened Mayor form of government.

An independent (or more independent) Corporation Counsel might be considered. The Charter currently provides for an independent Ombudsman and Auditor General. The State Attorney General, as an example, is independent of both the Governor and the State Legislature and performs similar functions to the Corporation Counsel. While the primary advantage of an independent Corporation Counsel is unbiased and consistent interpretation of the Charter and ordinances, there could be others. The Charter provides that "[t]he corporation counsel shall prosecute all actions or proceedings to which the city is a party or in which the city has a legal interest, when directed to do so by the mayor" [emphasis added] (Section 6-403). The State Attorney General has authority to prosecute legal matters when requested to do so by the legislature, executive, or a department head. In the absence of confidence in the impartiality and availability of Corporation Counsel, agencies of government, particularly the City Council, may be inclined to develop their own legal expertise and resource base, further contributing to duplication and potential conflict within the City's structure. The City Council has retained outside legal counsel to represent its interests, including compelling the Mayor to implement the Nuisance Abatement Ordinance designed to address the abandoned housing problem in the City.

Planning

Problems exist based, in part, upon the language of the Charters with respect to (1) the vagueness of the City's Master Plan and (2) the lines of authority and responsibility within the City's planning structure relating to advanced planning, cur-

rent planning and the capital agenda and budget. The 1974 Charter Revision Commission provided that the Master Plan expressly involve social and economic planning, as well as physical planning, and that the Mayor have administrative control over the planning process. The Charter created a Planning Department and a Community and Economic Development Department under the Mayor, each with planning responsibilities, and a Planning Commission as an advisor to the City Council. This separation of planning function and role among three agencies of government is unique in the State.

The City's Master Plan prepared by the Planning Department, submitted by the Mayor, approved by the Planning Commission and adopted by the City Council is widely criticized as being too vague to be useful. Arguably, it complies with the Charter, but not with the spirit and intent of the Michigan Municipal Planning Act. The Charter requires only that "the Master Plan be a set of guidelines to assist the Mayor and others in proposing, and the City Council in evaluating and implementing, specific proposals for the total development of the City and its residents" (Section 8-104). The Plan itself states that it was drafted "following the instructions of the charter..." was intended to be vague with little detail and that the detailed plans will be found in the five year capital agenda, department plans, the annual budget, major project and program plans, ordinances, and private plans (Master Plan of Policies-Summary Edition, 1989, p. 5). The Michigan Municipal Planning Act, on the other hand, specifically sets forth standards for what is to be contained in the City's Master Plan: The location and extent of all public facilities, utilities, parks, and community centers; the general character, extent, and layout of replanning and redevelopment of blighted areas; and a zoning plan which controls the height, area, bulk, location, and use of buildings and premises (M.C.L.A. 125.36). The Act expressly requires a more detailed vision for the physical development of the City.

Currently, the City appears to follow an "opportunity planning" approach, embracing maximum flexibility. The Master Plan declares that maximum flexibility is required in order to deal with changes in public needs, unexpected opportunities, and unforeseen social and economic changes. A detailed Master Plan, it is argued, would have a chilling effect on prospective projects which do not fit. This approach, however, (1) leaves most of the public and private sector guessing while prospective projects gestate and (2) disregards that the Master Plan can be routinely revised or amended (the Charter mandates annual amendments to keep the Master Plan current (Section 8-102). The requirement of a more detailed Master Plan in the Charter, based upon a policies plan, supported by a future land use map and infrastructure map, would (1) force City planners to develop a realistic vision for the City's future, (2) more effectively guide the public and private sector development of the City toward accomplishing the vision, and (3) better coordinate neighborhood-based planning and development activities with those of the City. Today, a number of neighborhoods, often hiring professional consultants with external funding, are independently developing area-wide plans of their own, further fragmenting the City's planning process.

The distinction between advance planning and current planning is not clearly drawn in the Charter. Both were the responsibility of the Planning Commission under the 1918 Charter. Today the Planning Department has the responsibility for information and studies done on "development matters," entitled "advance planning" in the Charter (Section 6-202) and may assign responsibility for "current planning" to any agency (Section 6203). The Planning Commission is to advise the City Council on "development matters" (Section 4-402). The Community and Economic Development Department is authorized to propose, administer and carry out "projects" (Section 7-501) often involving current planning. Advanced planning

and current planning are not well coordinated. This contributes to criticism in some quarters that today's planning is slow, fragmented and contentious, when compared with planning under the 1918 Charter. Moreover, the advisory role of the Planning Commission is not defined in the Charter or well understood. Reportedly the belated adoption of the Master Plan resulted, in part, from the Planning Department and Planning Commission not agreeing on the Plan's format.

Responsibilities for the capital agenda and the capital budget are obscured by the Charter. Both the capital agenda and budget must be consistent with the Master Plan for development to work as planned. Both the Planning and Budget Departments have responsibility, although the Mayor is ultimately responsible for submitting both capital items. The Charter states that the Budget Department "shall obtain from city agencies all information required by the mayor for the preparation of the capital agenda and the capital and annual budgets." Also, "[t]he budget director, with the assistance of the planning director, shall assist the mayor in the preparation of the capital agenda and the capital budget" (Section 6-102). However, the Charter also provides that the planning director "shall obtain all information and conduct all studies required by the mayor and heads of agencies in the preparation of proposals relative to development matters."

(Section 6-202). The Charter defines "development matters" to include the capital agenda and the capital budget (Section 6-204). The intent seems to have been to have the departments share responsibility equally for these requirements, itself a problem, but further the Charter is subject to conflicting interpretations.

Economic Development

Development results from public and private investment in the City's infrastructure. Investment is the lifeblood of the City's economic fu-

ture. It should be guided by the long range vision as contained in the Master Plan.

Public Function Under the Charter, the Community and Economic Development Department is responsible for the City's public development function. The Department is authorized to:

- * conserve neighborhoods, eliminate blight and restore decent, safe and sanitary living conditions,
- * stimulate the development of housing,
- * receive federal development funds,
- * seek federal assistance for business interests in the City, and
- * attract and assist in the expansion of new commerce and industry.

This scope of authority provides the Department with the power and flexibility to fulfill the City's development role. For the development function to work as intended in the Charter, however, all projects must be assigned to the Department and not to other City agencies or administered within the Mayor's office itself, as has reportedly occurred from time to time.

With the exception of the public infrastructure (roads, sewers water systems) and City facilities (parking structures, public housing, municipal offices) the City does not develop anything directly. It aids the private sector by providing technical assistance, financial incentives, subsidies, and land, acquired through special land assembly programs or tax reversions. Accordingly, the Department's primary role is to facilitate private investment. It has the flexibility under the Charter to augment its resources, which it has done by (1) cooperating under contract with the Detroit Economic Growth Corporation, a Michigan nonprofit corporation, in providing technical assistance and (2) utilizing the powers and resources of the Downtown Development Authority (a public authority) and the Economic Development Corporation (a public

corporation), to expand aid to private business interests. This assistance structure increases the challenge of administering a well coordinated and effective city development response. If administration or communication lines fail, problems will be felt more severely. Some business interests do not well understand the workings of this arrangement. Today, the public development function must be performed within an environment of deficit reduction, government budget cutting and fewer incentive programs. The City is expected to have less to do more. Internally, the Department should consider a program structure distinguishing between (1) economic development, (2) neighborhood preservation and (3) neighborhood reclamation.

Private Function Private investment will occur in the City only when there is a competitive return on a developer's time and an investor's capital. The City donates to private development, while simultaneously regulating it. Business owners have described the process of "getting things done" in the City as a maze. The 1974 Charter Revision Commission attempted to establish a "one-stop-service" within the Department of Buildings and Safety Engineering for all developers. The Charter states that "To the extent practicable, the department shall, in cooperation with other agencies whose permission is required prior to development, establish a procedure and application form under which an applicant for development permission may obtain through the department, all necessary permission" (Section 7-405). It was not practicable for the Department to meet this important goal. The Executive Planning Council may have been a more appropriate body to have the responsibility. The Charter itself further fragmented licensing by creating a Department of Consumers Affairs (Section 7-601). A one-stop-service is even more important today than it was in 1974 and could be implemented administratively by the Mayor or carefully reviewed as part of any Charter revision or amendment process.

Neighborhoods

The City's neighborhoods are in great need of development assistance. Many of its commercial strips are decimated. Countless square miles of developed land are substantially abandoned, according to all recent surveys, including that of the Ombudsman. Full attention must be turned to neighborhood preservation. Rebuilding the City's housing stock with public land subsidies approximating \$100,000 per lot as invested by the City in the Victoria Park Subdivision (Jefferson-Chalmers) would cost \$10 billion of public funds to rebuild the 100,000 residences already lost during the past 20 years and another \$1 billion for each 10,000 lost in the future, if the neighborhood housing stock is not preserved. U.S. Census figures computed the City's housing stock as 530,108 residential units in 1970 and 410,027 residential units in 1990, a decline of 120,000 residences. The City issued 53,521 housing demolition permits in the 1970s and 52,469 demolition permits between 1980 and 1992, primarily to remove deteriorated, neglected and abandoned homes. Many thousands more remain in the City's neighborhoods today. Disinvestments decline and the deteriorating quality of neighborhoods must be addressed.

Private investment in neighborhoods will come primarily from today's owners and residents using personal savings or loans; no other major source of funding is forecasted. The City needs a program and structure that will motivate owners and tenants to commit to improving and maintaining their property and assure accountability in the delivery of City services to them. The general principle designed to accomplish this objective is citizen participation or control. Article 9 of the Charter permits the establishment of Community Government for the purpose of decentralizing the functions of the City. The Mayor created the required study commission (Section 9-103) to assess the value of decentralization, which reported promptly that no community government was desirable. This

principle in its present or a modified form should be reassessed and experiences in other cities examined for what value they may have in preserving the City's neighborhoods. For example, in Minneapolis under its city-wide Neighborhood Revitalization Program every neighborhood will have a degree of control over the delivery of city services. Some have suggested that electing the City Council from districts, rather than at large, would contribute to accomplishing this goal.

Special attention in the Charter must be given to enforcing standards governing the City's building and housing stock. The Charter provides for the City to foreclose upon tax delinquent properties and to take title to the property in lieu of the payment of taxes (Section 8-403). Other cities delegate the responsibility to the county. Reportedly, the city has lacked the staffing to aggressively pursue tax foreclosures. Thousands of tax delinquent vacant homes are

blighting the City's neighborhoods today and the City's tax collection strategy as reflected in the Charter must be reassessed. In addition, the Charter was recently amended to permit the City to proceed personally against property owners for delinquent taxes (Section 8-603). The Charter language should be further modified to make it clear that the cost of demolishing dangerous buildings may be recovered in a personal action, as well. Further, the Charter provides that liens may be placed against property for services rendered which improve the property (Sections 8-601 and 8-604). This provision has been interpreted to exclude liens for inspection services. The City has millions of dollars of uncollected fees for inspection services. Grand Rapids allows liens for inspection services and the City should consider doing the same.

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625 SHELBY STREET, SUITE 1B, DETROIT, MI 48226,3220 • (313) 961-5377 • FAX (313) 9614)648
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REPORT 310-10

Tenth in a special series on Detroit City Charter Revision

OCTOBER 1993

ELECTION OF CITY COUNCIL MEMBERS

Introduction

The method of electing city council is a fundamental aspect of local home rule and a basic component of representative democracy. The city charter specifies the number of members of city council, the method of representation, and the term of office. Detroit has elected nine council members, at-large, in nonpartisan elections since 1918. The term of office has been four years since a charter amendment in 1951.

A major issue in revision of the Detroit City Charter is whether to continue to elect council members at-large or to elect them by district or by a mixed at-large and district system. Many residents feeling disenfranchised are advocating changing to a district system to improve city services. The current method of electing city council members could be modified by either a charter amendment or by charter revision.

Election of Detroit City Council

There have been numerous changes in the legislative branch of Detroit city government since the early charters that have affected the size of the legislative body, the term of office, and the system of election.

Early History Detroit's first three charters (in 1802, 1815, and 1857) were written by the Michigan Legislature. In both the 1802 and 1815 charters the legislative body consisted of five member so called trustees, appointed by the

Governor on an at-large basis, serving a one-year term of office.

Significant changes in the selection and composition of the legislative branch were introduced in the 1857 charter. The legislative body was made elected, on a partisan ballot, for two-year terms. It also was increased in size to 20 members, called aldermen, with two elected from each of ten wards. As Detroit's population grew, the number of wards was periodically increased to 21 with 42 elected aldermen, in 1917.

Detroit's first home rule charter of 1918 was greatly influenced by the municipal reform movement of the era which advocated changes in municipal election procedures. Among the reforms advanced were changing from district to at-large elections and reducing the size of the city council. The 1918 charter reduced the number of council members from 42 to nine, changed the system of electing council members to at-large, and provided for nonpartisan elections.

Charter Revision, 1970-73 While the 1974 charter made no change in the provision for electing city council, the 1970-73 charter commission gave extensive consideration to the composition and selection of city council. The issue of returning to district elections was central to this debate.

The proposed revised charter submitted to the

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voters in November 1972, had ballot issues on council election. The proposed charter was defeated; however, the voters gave the commission clear indication of their preferences on the separate questions. The voters, by a 67 percent majority, selected a nine-member city council elected at-large over a 15-member mixed council (eight from districts, seven at-large), and, by 63 percent, favored nonpartisan city elections. The commission incorporated these preferences in a second proposed charter which was approved in 1973.

Alternative Systems of Electing Council

City council elections are at the very core of any democratic system of government. In concepts elections provide a communications process enabling the voters to transmit their values, attitudes and beliefs about how government should be managed and who should manage it. How council members are elected reflects how the voters prefer to be represented in the legislative body of the city.

There are three predominant systems of electing council members: at-large; district; and mixed, a combination of some members elected at-large and some by district.

Election At-Large The at-large system has generally allowed citizens to elect council members best qualified to represent the interests of the city as a whole. Further, each citizen is a constituent of nine council members, and can approach any or all of them with his/her concerns. The at-large system of electing council remains the preferred system of the National Civic League, a national association devoting attention to concerns and practices. In large cities, citizens may feel isolated and disconnected from city government without some geographic basis of representation on city council. A council member elected at-large may have less knowledge of local community problems and be less responsive to the constituent. Cities with significant differences in, or conflict among,

ethnic, racial or economic groups may wish to consider whether one of the alternative systems may achieve more equitable representation of the city's citizens.

A variation of the at-large system is nomination and election at-large with district residence requirements. A complaint frequently lodged against the at-large system is that a majority of the council may live in the same area of the city. This situation can give rise to questions concerning the equitable distribution of services with allegations that particular sections receive preferential treatment. This objection can be met while still maintaining a council elected at-large by creating districts of equal population with the voters of the city at-large nominating two candidates and electing one from each district.

Single-Member District System An alternative to the at-large system is the single-member district system. The growing recognition that membership on councils should represent all racial and ethnic groups more adequately has spurred increased use of the single-member district system. It is easier to elect minority council members from districts. In addition, district elections can open the way for more diversity among candidates because the costs of running a district campaign are less than those of running city-wide. As previously noted, citizens feel closer to district elected council members, whom they can hold responsible for addressing their community concerns.

The district system does have its drawbacks. An inherent problem is the danger that the pursuit of parochial concerns by district-elected members will result in inadequate care to city-wide concerns. The potential for "logrolling" or vote swapping is ever present. Some district council members will be more effective than others in "working the system" with the result that disproportionate benefits may be received by their districts.

Mixed At-Large and Single-Member District System The mixed system for a council with some members elected at-large and some elected by and from districts has become increasingly popular in recent years. One reason for this is the approval it has received from the U.S. Department of Justice as a method of electing the city council which complies with the requirements of the Voting Rights Act in cities where the at-large system has been challenged and where there is opposition to a pure single-member district system.

The mixed system combines the city-wide perspective of the at-large council members with the local concerns and accountability of district council members. It can allow minority groups (ethnic, racial and economic), who live in concentrated areas to influence and even determine the outcome of elections in their districts.

Problems can arise in this system when at-large council members consider their positions to be superior in importance to district members and are perceived as rivals to the mayor. It is essential that at-large and district council members have equal status with respect to offices and services, and that there be no difference in length of terms.

State Attempt to Amend Charter There have been efforts at the state level to superimpose on the citizens of Detroit specific systems of representation on the city council in contravention of the concept of a home rule charter. This year, the Michigan Senate adopted a bill (SB 561) amending the City Home Rule Act that provides that in cities over 1,000,000 population (Detroit) “the at-large city council provided by charter is hereby abolished on January 1, 1994, and shall be replaced by a city council of nine members from single member neighborhood election dis-

tricts at regular municipal elections beginning with the 1993 municipal primary election.” This amendment also provides that a city council may amend the charter to comply with this section without voter approval. The bill has not been adopted by the House and is no longer timely because at-large city council elections are currently being held in Detroit. However, the action illustrates the tendency of the state Legislature to infringe on municipal local home rule powers.

Comparison With Other Cities

The data on city council organization found on page 4 clearly shows that most large U.S. cities use district or mixed elections while most Michigan cities use at-large elections. Among the largest U.S. cities, only three elect council members at-large, nine elect council members by district, and eight by mixed at-large and district systems. In Michigan, 14 of the 20 largest cities elect city council members at-large, four by district, and two by mixed systems.

Among the 20 largest U.S. cities, most councils range in size from seven to 19 members. City councils in New York and Chicago are unusually large with 51 members. Among the large Michigan cities council size is generally smaller, ranging from seven to 11 members with 14 cities having seven-member city councils.

Four-year terms for council members are used in most of the major U.S. cities (15 of 20) and in Michigan (16 of 20). The others use two-year terms with the exception of Troy, which uses three-year terms. Staggered terms are used in seven of the largest U.S. cities and in 13 of the large Michigan cities. Nonpartisan elections are used in most large U.S. cities (14 of 20) and in all of the large Michigan cities, except Ann Arbor.

COMPARISON OF CITY COUNCILS -- THE LARGEST U.S. AND MICHIGAN CITIES

City	Form of Government	Partisan/Nonpartisan	Electoral System	Size of Council	Term Length	Staggered/Simultaneous
U.S. Cities:						
New York	M-C	Partisan	District	51	4	Simultaneous
Los Angeles	M-C	Nonpartisan	District	15	4	Staggered
Chicago	M-C	Partisan	District	51**	4	Simultaneous
Houston	M-C	Nonpartisan	Mixed(9/5)*	15**	2	Simultaneous
Philadelphia	M-C	Partisan	Mixed(7/10)*	17	4	Simultaneous
San Diego	C-M	Nonpartisan	District	9**	4	Staggered
Detroit	M-C	Nonpartisan	At-large	9	4	Simultaneous
Dallas	C-M	Nonpartisan	Mixed(1/14)*	15**	2	Simultaneous
San Antonio	C-M	Nonpartisan	District	11**	2	Simultaneous
Phoenix	C-M	Nonpartisan	District	9**	2	Staggered
San Jose	C-M	Nonpartisan	District	10**	4	Staggered
Baltimore	M-C	Partisan	District	19	4	Simultaneous
Indianapolis	M-C	Partisan	Mixed(2/5)*	7	4	Simultaneous
San Francisco	M-C	Nonpartisan	At-large	11	4	Staggered
Jacksonville	M-C	Nonpartisan	Mixed(5/14)*	19	4	Simultaneous
Columbus	M-C	Nonpartisan	At-large	7	4	Staggered
Milwaukee	M-C	Nonpartisan	District	16	4	Simultaneous
Memphis	M-C	Nonpartisan	Mixed(7/6)*	13	4	Simultaneous
Washington D.C.	M-C	Partisan	Mixed(5/8)*	13	4	Staggered
Boston	M-C	Nonpartisan	Mixed(4/9)*	13	2	Simultaneous
Michigan Cities:						
Detroit	M-C	Nonpartisan	At-large	9	4	Simultaneous
Grand Rapids	C-M	Nonpartisan	District	7**	4	Staggered
Warren	M-C	Nonpartisan	At-large	9	4	Simultaneous
Flint	M-C	Nonpartisan	District	9	4	Staggered
Lansing	M-C	Nonpartisan	Mixed(4/4)*	8	4	Staggered
Sterling Heights	C-M	Nonpartisan	At-large	7**	2	Simultaneous
Ann Arbor	C-M	Partisan	District	11**	2	Staggered
Livonia	M-C	Nonpartisan	At-large	7	4	Staggered
Dearborn	M-C	Nonpartisan	At-large	7	4	Simultaneous
Westland	M-C	Nonpartisan	At-large	7	4	Staggered
Kalamazoo	C-M	Nonpartisan	At-large	7**	2	Simultaneous
Southfield	C-M	Nonpartisan	At-large	7	4	Staggered
Farmington Hills	C-M	Nonpartisan	At-large	7**	4	Staggered
Troy	C-M	Nonpartisan	At-large	7**	3	Staggered
Pontiac	M-C	Nonpartisan	District	7	4	Simultaneous
Taylor	M-C	Nonpartisan	At-large	7	4	Simultaneous
Saginaw	C-M	Nonpartisan	At-large	9**	4	Staggered
St. Clair Shores	C-M	Nonpartisan	At-large	7**	4	Staggered
Royal Oak	C-M	Nonpartisan	At-large	7**	4	Staggered
Wyoming	C-M	Nonpartisan	Mixed(3/3)*	7**	4	Staggered

(1) M-C means Mayor-Council; C-M means Council-Manager

* Mixed refers to those city councils composed of both members elected at-large and from single-member districts, the number of members elected are shown in parenthesis (at-large/by district).

** Mayor is member of council

Source: The Municipal Year Book, 1993, International City Management Association; direct inquiry by Citizens Research Council.

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Report No. 310-11

Eleventh in a Series on Detroit City Charter Revision Issues

October 1993

THE DETROIT CITY CHARTER: BUDGET AND FINANCE ISSUES

The power of the budget is the power to define the services and operations of the city: which facilities will be open and which closed; what programs will be offered; which level of service will be provided. One of the major elements of a strong mayor-council form of government is the power of the executive to prepare and to administer the city budget and to veto council actions on the budget. The Detroit City Charter provides the mayor with exceptionally strong budgetary powers.

State policy makers have taken particular interest in the budgetary financial affairs of political subdivisions of the state. Various sections of the state Constitution and numerous state statutes prescribe budgeting, accounting, taxing and bonding processes, and restrict the financial activities of Michigan cities. Although the state Constitution provides for liberal construction in favor of counties, townships, cities, and villages, a city charter cannot provide different budget processes or higher tax rates or debt level than those specified by the state. The Detroit City Charter provides the maximum taxing and bonding authority allowed by state law.

Structure for Financial Responsibility

The Detroit Charter establishes that the mayor is responsible for proposing and implementing the city budget and assigns the responsibility for budgeting and financial operations to specific departments. The Budget and Finance Departments are staff agencies that must be included in the excessive organization plan. The Budget Department is charged with assisting other city agencies in the development of program and service objectives and in the financial planning to achieve those objectives; obtaining information required by the mayor for the preparation of the annual budget; assisting the mayor in preparation of the capital agenda and capital budget; and conducting management audits. The Finance Department is composed of the Accounts Division, which maintains financial records of

the city; the Assessments Division, which is responsible for assessment of property in the city; the Treasury Division which collects, accounts for, and disburses all city funds; and the Purchasing Division, which procures property and services for the city. The City Council adopts and amends the budget, and is assisted by the Auditor General Department which is also responsible for auditing the financial transactions and accounting practices of all city agencies.

Some of the mandatory city charter provisions required by the Home Rule Cities Act are contained in Article 8 of the Detroit City Charter, which includes chapters on budgeting, property taxation, borrowing, and special assessment procedures.

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Budget Procedures

The Detroit Charter establishes the city's fiscal year as July 1 through June 30, although that can be changed by ordinance. The mayor must submit by April 1 a proposed budget that is a complete financial plan for the next fiscal year. The budget must set forth all estimated revenues and appropriations, must include any surplus or deficit from the preceding year, and must be balanced, as required by state law. The Detroit City Charter requires that appropriations be made to programs, services, or activities, rather than on a line item basis; state law does not require a line item budget. At the August 3, 1976 election, the charter was amended to provide that the City Council may change the mayor's proposed budget by deleting, adding, or substituting specific programs, services, or activities.

Council has until May 15 to consider the budget, and may request such supporting data as it deems necessary. A public hearing is required before council adoption, as required in the state constitution. The mayor may disapprove any amendments made by Council, but must within seven days submit to council in writing the reasons for disapproval. Council has three days to reconsider items vetoed by the mayor. Originally, a vote of seven of the nine Council members was required to override a mayoral budget veto. In 1988, voters approved an amendment providing for a two-thirds majority (six of nine) of Council members serving to override mayoral vetoes of the Council's amendments to the budget.

According to the city charter, adoption of the budget constitutes passage of the appropriations act required by state law, approval of the property tax levy, and authorization for issuance of bonds included in the budget.

After adoption of the budget, the mayor must initiate action to recognize additional revenues and make supplemental appropriations, and to transfer unencumbered appropriation balances

among programs. There is no provision in the charter requiring the mayor to initiate action to reduce budgeted revenues and appropriations as soon as revenue shortfalls become known, although such action is required by the Uniform Budgeting and Accounting Act.

Budgeted amounts are to be allotted by periods within the year, but periods are not defined as monthly, quarterly, or other. Although the charter does not require use of the uniform chart of accounts prescribed under the Uniform Budgeting and Accounting Act, the budget process defined in the Detroit City Charter is consistent with the requirements of that act.

The Detroit City Charter specifies that no obligation or payment may be made from city funds except in accordance with formal appropriations and unless the chief accounting officer advises that sufficient funds are available. Any violation of this provision is illegal and constitutes cause for removal of the guilty official, who would be liable for any amount paid and would be subject to criminal sanctions.

Pension Funding

The charter requires that the city provide by ordinance for a retirement plan for city employees, makes the accrued pension benefits of city employees a protected contractual obligation of the city, requires that pension benefits arising on account of service rendered in each fiscal year be funded during that year, and prohibits that funding from being used for financing unfunded accrued liabilities. These provisions are consistent with state constitutional requirements.

City Property Taxes

State law restricts the subjects of municipal taxation, the kinds of taxes and tax rates a city may impose, and the ratio of assessments to market value. City taxes are not subject to the 15 and 50 mill limits in the state constitution, but the Home Rule Cities Act limits the rate of city ad valorem property tax for general operating purposes to a maximum of 20 mills. The

charter authorizes the city to levy 20 mills or the maximum property tax allowed by state law. The Detroit charter asserts that the city may impose the maximum rate that is now or may in the future be allowed by the state. Under state law, an increase above 20 mills would be subject to voter approval. The charter also establishes the procedure for the levy and collection of taxes and limits the subjects of city taxation to those allowed under state law. Provisions addressing these issues are mandatory under the Home Rule Cities Act.

The city does levy the maximum allowable rates of 20 mills for general operations and three mills for garbage disposal. The rates for general obligation debt service and Building Authority lease payments are determined by the amount of principal and interest to be paid for those obligations in each fiscal year. While not provided in the charter, Detroit voters have approved two mills for library operations in addition to the .64 mills statutorily required to be passed through from the school levy; the two voted mills are included in the city levy. Although the charter allows property taxes for transportation and transit services to the maximum rate allowed by law, no such tax is levied. The 1993-94 budget includes a total city and library property tax rate of 32.379 mills and a total city and library property tax levy of \$188.3 million.

The charter provides that the City Council may sit as a board of review or appoint a board to hear and determine appeals from property tax assessments. Council has chosen to appoint a board of review. The collection and enforcement of city property taxes are specified in the charter. Property owners may pay half of their city property tax by August 15 and the remainder by January 16, but property taxes become delinquent if the first half taxes are unpaid on September 1. Before the end of the fiscal year, the city treasurer must give notice to all persons who are liable for delinquent real property taxes that the city's lien on real property for delin-

quent taxes will be sold to the finance director on the last day of the fiscal year. Two years after the sale of the lien, the city may bring action to foreclose the lien; the resulting Judgment, which may be entered 120 days after the filing of the complaint, gives the owner another 60 days to redeem the property before the city takes title. In 1991, Detroit voters adopted a charter amendment to permit collection of unpaid property taxes as a personal obligation of the property owner.

State statutes authorize special property taxes for specific purposes, including up to three mills for garbage disposal. State laws determine the conditions for transfer of specific categories of property (industrial facilities, commercial facilities, commercial housing facilities, etc.) from the ad valorem tax roll to other specific tax rolls, and provide for different rates of taxation on those properties.

Other Municipal Taxes

The Detroit Charter allows the city to lay and collect rents, tolls, excises, and taxes; this is consistent with the permissible charter provisions listed in the Home Rule Cities Act. State law has preempted the right of cities to impose taxes except those specifically authorized in state statutes. Neither the municipal income tax nor the utility users excise tax is mentioned in the charter, although the municipal income tax is a much more significant source of revenue for the city than the property tax. The 1993-94 budget assumed revenues of \$283 million from the maximum municipal income tax rates that may be levied in a city of 1 million or more population under the Uniform City Income Tax Act: three percent on residents, two percent on non-residents, and 1.5 percent on non-residents who work in the city. In addition, the city expects to receive \$50.8 million from the maximum five percent utility users excise tax levied under the Uniform City Utility Users Tax law.

Cities are prohibited from levying any tax not authorized by law or charter when the Headlee Amendment was ratified in 1978 or from increasing the rate of an existing tax above that rate authorized by law or charter in 1978 without voter approval.

Section 9-508 of the charter states that the city may, by ordinance, provide that certain individuals or firms that make investments in the city may be allowed to treat a specified percentage of that investment as a credit on any tax levied by the city. This provision has not been utilized.

Special Assessments

The Detroit City Charter authorizes the city to finance local public improvements and to repair public transportation or rapid transit facilities by using special assessments to the maximum extent permitted by law; the Home Rule Cities Act provides that cities may assess the cost of a public improvement to a special district. Special assessments procedures are to be established by ordinance. Delinquent special assessments may be collected as delinquent city property taxes. The charter contains specific authorization for the city to issue special assessment bonds to finance local public improvements.

The city has used the special assessment process to charge the costs of sidewalk repairs, tree removal, removal of unsafe conditions, and cleaning vacant lots to the affected property owners,, but recognition of the low income status of many Detroit residents has resulted in very limited use of special assessments that could result in the loss of property.

Borrowing

The city charter allows bonded indebtedness to the extent permitted by state law and includes five specific kinds of borrowing within the city's general power: special assessment bonds to finance local public improvements; emergency bonds; budget bonds to be repaid from the property tax; bonds to finance transit facilities; and bonds to finance public lighting facilities.

Although the charter authorizes the city to issue unlimited tax budget bonds as part of the annual budget process without voter approval, the subsequently adopted Headlee Amendment requires voter approval of unlimited tax bonds. The city currently issues without voter approval limited tax bonds which are repaid from existing general revenues. The Fiscal Stabilization Act allows cities to issue general obligation bonds to fund an operating deficit. Voter approval is required if deficit funding bonds are to be repaid from an unlimited tax.

The Home Rule Cities Act classifies the authorization to borrow money on the credit of the city, for any purpose within the scope of its powers, as a permissible charter provision. That state law also limits the total amount of net debt subject to the general debt limitation that may be outstanding at one time to ten percent of assessed value of all real and personal property in the city with certain adjustments, and provides for issuance of emergency bonds not to exceed three-eighths of one percent of assessed value. The Home Rule Cities Act includes provisions for issuance of sewer and waterworks, public lighting, and rapid transit system bonds among permissible charter provisions. Bond proceeds may only be used for the purpose for which the bonds were sold. The city is prohibited from repudiating a debt by a change in its charter. The Municipal Finance Act and other state laws authorize specific kinds of city bonds and prescribe processes and regulations that must be followed in the issuance and administration of debt.

Audits

The Detroit City Charter assigns responsibility to the legislative branch Auditor General for auditing financial transactions of city agencies. The Uniform Budgeting and Accounting Act requires local units of government with 1 million or more population to obtain an annual audit, but if internal auditing procedures for all public monies are established and a copy of the annual

internal audit is filed with the state Department of Treasury, then an independent audit is required not less frequently than each five years.

The Uniform Budgeting and Accounting Act requires the State Treasurer to prescribe minimum auditing standards for cities and provides that if any audit or investigation conducted under the act discloses statutory violations on the part of any officer, employee or board of any local government, the report must be filed with the state Attorney General who may institute criminal proceedings against the local officer or employee. The Attorney General or the prosecuting attorney must institute civil action for the recovery of any public moneys disclosed by any examination to have been illegally expended or collected and not accounted for or for any public property that was disclosed to have been misappropriated.

Charter Issues

The charter establishes departments of Budget and Finance to assist the mayor in the development and monitoring of the budget and in the conduct and audit of financial operations. Neither of these departments may be reorganized without amending the charter.

The assignment of budget powers and the requirement to share financial information are critical issues in the separation and balance of power between the legislative and executive branches. In the city, the state, and the national governments, the chief executive submits a proposed budget to the legislative branch. In the state and national models, the legislature acts not on the executives proposed budget, but rather on budget bills. If an item is not included in a bill, it is not included in the budget. The Uniform Budgeting and Accounting Act and the Detroit Charter provide that the recommended budget transmitted by the mayor shall be considered by the Council. The City Council acts on the mayor's proposal. The state and federal procedure eliminates from the final budget those

items proposed by the executive which are not appropriated by the legislative body, but under the city charter, the mayor's proposals become part of the final budget unless disapproved by the City Council.

The mayor does not have to veto an entire budget item, but can veto the Council's change to the item. This, and the two-thirds majority required for budget veto overrides, gives the mayor extraordinary budget powers. The Model City Charter developed by the National Civic League allows a strong mayor to disapprove or reduce increases or new appropriations added by Council.

The strong mayor-council form of government allocates budget preparation and budget veto powers to the mayor. In the weak mayor-council and council-manager forms of city government, the City Council's role in developing and adopting the city budget is much stronger. The legislative role could be strengthened by establishing a budget procedure similar to the state's, in which the City Council makes appropriations, and the mayor's veto extends to the appropriation rather than to the changes made in the executives recommended budget.

The adversary relationship between the executive and legislative branches has affected the sharing of critical budgetary and financial information with the City Council. The independence of the executive branch has been enhanced by its tight control of financial information. Council has reacted to this by increasing legislative staff and attempting to duplicate and validate work done in the Budget and Finance Departments, not only to fulfill their oversight responsibilities, but also to determine what is happening to the fiscal affairs of the city. Under the charter, City Council does not have authority to initiate increases, decreases, or transfers between appropriations, but must wait for the mayor's proposal. More frequent and informative reporting of issues affect-

ing the budget would be helpful to Council in its roles as policy maker and overseer. The Uniform Budgeting and Accounting Act requires that the chief executive officer furnish to the legislative body information required for proper consideration of the proposed budget. Requiring Council confirmation of mayoral appointees could make executive branch department heads more respectful of Council's authority.

The 1974 charter allows the city to levy property tax of 20 mills or such maximum rate as may be permitted by law; allows rents, tolls, and excises that permit income and utility taxes; specifies that the subjects of taxation are in accordance with state law; and allows the city to incur debt to the limit permitted by law. State laws specify the maximum rates of property, income, and utility users excise taxes that cities of over 1 million population may impose. Detroit has fully utilized these maximum authorized tax rates, with the result that the city's relative tax effort is nearly seven times the average of Michigan cities, villages, and townships. If high rates of taxation discourage economic growth, lower charter limits on tax rates could be considered. Charter limitations would force the reduction of city tax rates below the maximum levels set in state statutes. Lower rates

of taxation on the same tax base would produce less revenues, but some economists hold that lower rates of taxation would result in growth in the tax base, eventually producing more revenues than are obtained at higher rates.

State law limits the issuance, forms, and amounts of city debt. The forms of borrowing referenced in the charter are illustrative rather than exhaustive. There are differences of opinion as to whether a charter should broadly permit all bonding authority now or hereafter allowed by state law or should instead detail the authorization of the issuance of bonds for specific purposes.

Because extensive state constitutional, statutory, and regulatory constraints apply to the budgetary and financial affairs of cities, charters must be carefully constructed to include all pertinent mandatory provisions and those permissible provisions and grants of authority necessary to ensure the city government will be able to provide desired services. State laws applicable to cities are valid whether those laws are repeated in the local charter or not. Any local charter provision that contradicts a state law is a nullity. The maze of legal requirements in this area demands that any proposed charter changes be examined very carefully.

Citizens Research Council of Michigan

625 SHELBY STREET, SUITE 1B, DETROIT, MI 48226,3220 • (313) 961-5377 • FAX (313) 9614)648
1502 MICHIGAN NATIONAL TOWER, LANSING, MI 48933-1738 • (517) 485-9444 • FAX (547) 485-0423

Detroit City Charter Revision

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On November 2, 1993, as provided in the 1974 charter, voters of the City of Detroit will determine whether a charter commission will be established to revise the current charter. This series is being financed in part by grants from Community Foundation for Southeastern Michigan, Hudson-Webber Foundation, and Matilda R. Wilson Fund, and NBD Bank.

REPORT NO. 310-12 **Twelfth in a series on Detroit City Charter Revision Issues** **OCTOBER 1993**

TERM LIMITATIONS FOR LOCAL OFFICIALS

Under the home rule provisions of the Michigan Constitution of 1963 and the Home Rule Cities Act, a city charter shall provide for the election of a mayor and a legislative body and for the election or appointment of other officers including a clerk, a treasurer and an assessor. The length of the term of office of these officials is established in the city charter and the charter may limit the number of terms of office that elected public officials can serve (term limitations). In the Detroit charter, the term of office of the elected officials (mayor, council and clerk) is set at four years and there are no term limitations.

Term limitations are an emerging public policy issue. At the November 1992 general election, Michigan voters adopted an amendment to the state Constitution limiting the number of terms which may be served by the state's congressional delegation (three-two-year terms for the house and two six-year terms for the senate), state legislators (three two-year terms for the house and two four-year terms for the senate) and for the governor, lieutenant governor, secretary of state, and attorney general (two four-year terms). The result in Michigan was consistent with the national trend: in all, 15 states have enacted state legislative term limitations.

There has been a similar trend at the local level. According to data collected by the International City Management Association, nine of the 20 most-populous U.S. cities limit the terms

of office of both the mayor and the council and a tenth limits the term of the mayor only. While none of the 20 most-populous cities in Michigan currently has term limits, 17 smaller Michigan cities reported term limits for the mayor or council or both. The most common term limit in these cities is eight years (two terms of four years). (See Table.)

The number of terms of office of elected officials in Detroit has been relatively long. During the 20 years of the Detroit charter there has been one mayor and one city clerk and only 17 individuals have served on the nine-member council. Of the nine incumbent council members, one has served six terms (not consecutive), five have served five terms and three have served one term or a partial term.

Proponents of term limitations argue that it will increase accountability by replacing career elected officials with citizen officials and will bring new talent and ideas to the process. Term limitations also increase electoral competition by limiting the inherent advantages of incumbents.

Opponents argue that term limitations are unnecessary because the voters can already "throw the rascals out" at any election. The turnover of elected officials resulting from term limitations will eliminate valuable experience and continuity and make officials more dependent on unelected staff members.

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**TERM LIMITATIONS FOR LOCAL OFFICIALS AMONG THE 20 MOST-POPULOUS
U.S. CITIES AND SELECTED MICHIGAN CITIES**

City	Maximum Number of Consecutive Terms		Length of Term (years)	
	Mayor	Council	Mayor	Council
U.S. Cities:				
Baltimore	No Limit	No Limit	4	4
Boston	No Limit	No Limit	4	2
Chicago	No Limit	No Limit	4	4
Columbus	No Limit	No Limit	4	4
Dallas	2	4	4	2
Detroit	No Limit	No Limit	4	4
Houston	2	2	2	2
Indianapolis	No Limit	No Limit	4	4
Jacksonville	2	2	4	4
Los Angeles	2	2	4	4
Memphis	No Limit	No Limit	4	4
Milwaukee	No Limit	No Limit	4	4
New York	No Limit	No Limit	4	4
Philadelphia	2	No Limit	4	4
Phoenix	2	2	4	2
San Antonio	2	2	2	2
San Diego	2	2	4	4
San Francisco	2	2	4	4
San Jose	2	2	4	4
Washington D.C.	No Limit	No Limit	4	4
Michigan Cities:				
Allegan	2	No Limit	1	4
Bay City	3	3	2	2
Caspian	2	No Limit	2	2
Cheboygan	2	3	2	4
E. Grand Rapids	No Limit	2	4	4
Essexville	3	3	2	2
Harbor Springs	3	3	2	2
Hart	2	2	2	3
Hillsdale	No Limit	2	4	4
Imlay City	2	2	2	4
Ishpeming	2	2	2	4
Marquette	No Limit	2	1	3
Owosso	No Limit	2	2	4
Plymouth	2	2	2	4
Rockwood	4	4	2	4
South Haven	4	2	2	4
Whitehall	2	3	2	4

Source: International City Management Association, 1991 Form of Government Survey (209 of 273 Michigan cities responded); direct inquiries by Citizens Research Council.