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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.

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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.