

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

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. 310-11

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.

BOARD OF DIRECTORS

DANIEL J. KELLY, President
ALFRED R. GLANCY, Vice President
GEORGE N. BASHARA, JR.
BEVERLY A. BELTAIRE
LOUIS BETANZOS
J. JAMES BROAAO
JOHN W. CLARK

MALCOLM G. DADE, JR.
GEORGE C. EADS
MICHAEL M. GLUSAC
ALICE GUSTAFSON
JOHN J. HOLTON
HARRY KALAJIAN
SUSAN L. KELLY

DAVID B. KENNEDY
PATRICK J. LEDWIDGE
ROBERT F. MAGILL
ROGER L. MARTIN
PAUL H. MARTZOWKA
MICHAEL E. MASLYN
DAVID N. McCAMMON

DONALD R. PARFET
IRVING ROSE
WILL SCOTT
HOWARD F. SIMS
A. ROBERT STEVENSON
RICHARD WEBB

ROBERT L. QUELLER, Vice President-Executive Director

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.