

Memo

To: Members, Drafting Committee
From: Erwin Chemerinsky and George Kieffer
Date: February 8, 1999
Subject: Matters for Discussion

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The Appointed Commission approved a Unified Charter on February 1, 1999. On February 3, 1999, the Appointed Commission formally submitted the Unified Charter to Council. On that day, the City began the meet-and-confer process with employee organizations based on the Unified Charter. On Thursday, February 11, 1999, the appointed commission present the Unified Charter in detail to the City Council. A final vote by the Council is likely to occur before the end of this month. In order to present a complete, revised Unified charter to the Council for a possible vote in the week of February 22, 1999, all changes (including those proposed by City staff and the Elected Commission) must be incorporated and at the printer by the end of next week.

At their February 1, 1999 meeting, the Elected Commission endorsed the principles of the Unified Charter, while calling for further efforts to reconcile policy and drafting differences with the Appointed Commission. The Elected Commission has set February 16, 1999 for review and approval of changes made through this process. The Elected Commission has joined with the Appointed Commission in the meet-and-confer process with employee organizations based on the Unified Charter.

Since the Unified Charter is now formally in the City Council, the process for making any further changes is more complicated than when the only participants were the two commissions. City officials have made suggestions for language revisions to the staffs of both commissions. Proposed revisions by the two Commissions now must be formally considered by such city officials as the City Attorney, and must ultimately be incorporated through a joint process involving the City Council, as well as the two commissions. Obviously, the sooner such revisions are proposed, the better. There will not be time to return to the appointed commission, which has already completed its vote on the Unified Charter. The process of meet-and-confer requires a stable document on which to base negotiations.

In the meantime, the two Chairs have been meeting with Elected Commission Senior Policy Analyst, Steve Pressberg and Appointed Commission Staff Counsel Mary Strobel in a

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section by section review of the Unified Charter. Changes made as a result of these meetings are being incorporated subject to approval by the Drafting Committee.

The Drafting Committee's task is to consider the remaining areas of substantive or language disagreement between the two Commissions and to make recommendations for their resolution to both Commissions and the City Council. The hope is that the Drafting Committee can have completed its consideration of all remaining issues of substance and language by the February 16, 1997 meeting of the Elected Commission. Also, completion by that time would facilitate approval of the completed Unified Charter by the Council and the Elected Commission by the end of February.

There are two types of matters that the Drafting Committee needs to consider. First, there remain a few areas of substantive disagreement between the Commissions. These are discussed below. Second, areas have been identified where questions have been raised as to whether the language accurately reflects the substantive agreement or where the language can be improved. Although these are not detailed in this memo, a procedure for discussing these drafting issues is discussed below.

It seems unlikely that we will finish all of this work in our meeting on Wednesday, February 10. Also, additional comments and suggestions concerning the draft are being received from many sources and they need to be considered. Therefore, we suggest that we plan a second meeting of the Drafting Committee for Monday, February 15, at 1:00 p.m. We realize that this is a holiday, but it appears that it is the only possible time for an additional meeting before the Elected Commission's scheduled meeting on February 16.

I. Remaining substantive areas of disagreement

We have identified four remaining areas where the Commissions have taken different approaches.

1. Implementation date(s). The two chairs recommended an effective date of July 1, 2001 for the new Charter. The Appointed Commission discussed this recommendation and agreed. The Elected Commission had not considered this issue, but several Elected Commissioners have indicated that they strongly prefer an earlier implementation date.

We recognize that there are arguments both for July 1, 2001 and for an earlier date. On the one hand, it has been argued that the July 1, 2001 date will allow sufficient time for transition. Shifting from the old Charter to the new Charter will require an enormous effort, including review of every provision in the Administrative and Municipal Code. Moreover, it is argued that there is a great benefit to having the entire Charter, or virtually all of it, come into effect on the same date so that there is not the confusing problem of the City being simultaneously governed by two Charters. It is also argued that this date is consistent with representations made and relied upon that Charter reform is not intended to benefit current office holders.

On the other hand, it is argued that the promise of Charter reform should be realized as soon as possible; the City and its residents have expended enormous time and effort in the Charter reform process and there should be no delay in implementing the new Charter. Furthermore, it is argued that there is no need for the entire Charter to go into effect at once; delay can be prescribed for those areas where additional time would be advantageous, but for other matters immediate implementation is best.

Recommendation: We recommend that the Drafting Committee not decide this issue at its Wednesday meeting. We believe that the new Charter should go into effect as soon as is practical, considering all of the above arguments, but think that additional information is needed before the issue can be properly addressed. We need to learn more about the necessary details of the transition process and how long it should reasonably take. Therefore, we propose inviting several individuals to speak with the Drafting Committee on Wednesday and describe, in as much detail as possible, the tasks involved in transition and the amount of time they will require.

2. Neighborhood Councils. The two Commissions agree that the Charter should create a system of participatory, advisory neighborhood councils. However, we now realize that there is disagreement over the degree of detail to be included in the Charter. The Elected Commission wants much more detail than the

Appointed Commission and than is contained in the Unified Charter. The Appointed Commission favors less detail and disagrees with the substance of some of the detail in the Elected Commission's draft.

Recommendation: With certain exceptions, the Elected Commission's approach should be followed in that significant additional detail should be added to the Charter concerning the system of neighborhood councils. (It should be remembered that the Unified Charter already has been revised to make clear that self-selection will be used in choosing the officers and members of neighborhood councils. This was contained in the Clarifications memo issued on February 1, 1999).

Specifically, we recommend that the following revisions to Article IX (p. 151 of the February 3, draft):

A. Section 901 concerns the Office of Neighborhood Empowerment.

1. Add the following language to the initial paragraph of 901 (the proposed new language is indicated in bold face): "The Office of Neighborhood Empowerment shall have the duties and responsibilities set forth in this Article and elsewhere in this Charter to implement and oversee the ordinances and regulations creating the system of neighborhood councils enacted pursuant to 5904. Duties and responsibilities shall include."

2. Revise (a) as follows: Prepare a plan for the creation of a system of neighborhood councils to ensure that every part of the city is within the boundary of a neighborhood council and has the opportunity to form a neighborhood council.

3. Add as a new subsection concerning the duties of the Office of Neighborhood Empowerment: **Within budgetary limitations, arrange training for neighborhood councils' officers and staff.**

4. Add as a new subsection concerning the duties of the Office of Neighborhood Empowerment: **Assist groups of neighborhood councils to share resources, including offices, equipment, and other forms of support for them to communicate with other neighborhood councils and with government officials.**

5. Add as a new subsection concerning the duties of the Office of Neighborhood Empowerment: **Assist neighborhood councils with the election or selection of their officers.**

B. Add a new section (it should be 902 with subsequent sections renumbered):

Board of Neighborhood Commissioners

(a) There shall be a board of seven Commissioners to be

known as the Board of Neighborhood Commissioners ("Board"). Appointment and removal of Commissioners shall be in accord with the procedures in 5502 of this Charter.

(b) The Board shall be responsible for policy setting and policy oversight, including the approval of contracts and leases and the promulgation of rules and regulations, but shall not be responsible for day-to-day management.

(c) The Board shall operate in accord with the provisions in sections 503-508 and 510 of this Charter.

C. Section 903 of the draft (which as renumbered would become 904) should be changed in the following manner:

1. The first sentence should state: The Commission shall direct the Department of Neighborhoods to develop a Plan and shall approve a plan for a citywide system of neighborhood councils, in conformance with the following.

2. Change the date in 903(h): The Mayor and Council shall provide for the creation of the Department of Neighborhoods and Neighborhood Commission within 120 days of the approval of this Charter. (Section (h) now requires that this be done within 180 days. This provision means that the Neighborhood Councils section would be implemented immediately after approval of the Charter, regardless of the implementation date for the rest of the Charter).

3. Move section 903(i) to section 904 and revise as indicated below.

D. Section 904, Implementation of the Plan, should be revised by adding the following sentence at the beginning of the section:

The Commission shall complete development of a plan and present the plan and all necessary regulations for a system of neighborhood councils to the Council and the Mayor within one year of the establishment of the Department and Commission.

E. Section 906, Early Warning System: add to the section:

Notices to be provided include matters to be considered by the City Council, City Council committees, and city boards or commissions.

F. Add a new section: Monitoring of City Services:

Neighborhood Councils shall monitor the delivery of City services in their respective areas and have periodic meetings with responsible officials of City departments, subject to their reasonable availability.

G. Revise section 907, Powers of Neighborhood Councils:

Input from neighborhood councils shall be advisory. Subject to applicable law, the City Council may delegate its authority to neighborhood councils to hold legally required public hearings prior to the City Council making a decision on a matter of local concern. [Delete sentence currently in 907 that the Council can delegate decision-making authority; this would create serious problems under the Voting Rights Act.]

H. Revise section 910 review to seven years after adoption of the Charter rather than five years after implementation of the plan.

3. Police discipline:

A. Composition of the Board of Rights. The Appointed Commission continues the current system of two command officers (captains or commanders) and one civilian on each Board of Rights. The Elected Commission decided to modify this to provide that each Board of Rights shall be comprised of one command officer (captain or commander); one officer of the rank of lieutenant, detective two or sergeant three; and one civilian.

Recommendation: The Appointed Commission's approach.

B. Salary while relieved from duty. The Appointed Commission continues the current arrangement where an officer is entitled to a maximum of 30 days compensation when relieved from duty pending a Board of Rights hearing. The Elected Commission continues this provision, but also provides: "In the event of any continuance of delay beyond 60 days from the date first set for a board of rights hearing, and such delay is not caused by the member or his or her counsel, the member shall receive compensation for a maximum of an additional 30 days. There shall be a calendar priority for Board of Rights hearings when a member is subject to relief from duty pending a hearing." In other words, this allows an officer to receive up to 30 days of additional compensation while relieved from duty, but only if the person has been relieved from duty for more than 60 days and only if the delay is not the caused by the member of his or her counsel.

Recommendation: The Elected Commission's approach.

4. Succession: The Appointed Commission provides that if a permanent vacancy occurs in the Mayor, the City Attorney, or City Comptroller, the Council shall designate a replacement to serve until the next election (the Charter requires a special election if more than two years remain on the term). The Elected Commission

provides that if a permanent vacancy in the Mayor, the President of the City Council becomes the Mayor. If there is a permanent vacancy in the City Attorney or City Controller, a designated deputy, selected by these officials, shall serve until the next election.

Recommendation: The Appointed Commission's approach.

II. Reviewing Draft Language

A large number of suggestions have been received for revisions in the language of the Unified Charter. These include areas where Elected Commissions have offered improvements in language or questioned whether the language accurately reflects the substantive agreements reached. Also, many stakeholders have offered largely technical, but detailed suggestions.

The two of us, together with Steve Presberg and Mary Strobel, have reviewed all of these suggestions and have developed recommended language changes. There are literally dozens and dozens of such changes, the substantial majority of which are technical.

We propose that all of the members of the Drafting Committee receive a copy of the Unified Charter with handwritten notes clearly indicating proposed revisions. Any Drafting committee member can raise any of these areas for discussion. We believe that this can provide the most expeditious method of handling a large list of items, especially since it is likely that most of the suggested revisions are unlikely to warrant discussion.