

Legislation Text

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Subject:

Possible Charter amendments for council to consider

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BACKGROUND:

The Littleton Charter was adopted by voters at a special election on July 28, 1959. Constitutions and charters are frequently amended to reflect changing circumstances. For example, from 1876 to 2017, the Colorado Constitution has been amended 159 times. Most of these amendments can be described as “housekeeping” in nature such as changing language or provisions to bring it up to date, or addressing a matter not contemplated at the time of adoption. Colorado is not unique in this regard.

Arizona - Constitution adopted in 1912 - Amended 154 times

California - Second Constitution adopted in 1879 - Amended 511 times

Nebraska - Second Constitution adopted in 1874 - Amended 234 times

The same situation exists with city home rule charters. Frequently, they are reviewed to incorporate minor changes to make the governing document of the city more current. The Littleton charter was amended in 1969, 1975, 1987, 1991, 1997, 2004, 2013 and 2015. However, the only significant review of the charter was done by a citizen’s committee in 2015. That committee recommended ten amendments for consideration by the voters of the city. The outcome of those amendments is attached. The 2015 committee had an additional twenty recommendations not voted on, three of which are included below. Additionally, citizens initiated some charter amendments in 2015, related to urban renewal.

The mayor requested a review of the City Charter for further areas that warrant being addressed to bring the charter in line with effective government practices.

STAFF ANALYSIS:

After a review of the charter, the five areas recommended for council to consider amending are:

1. Section 23 - Qualifications of Council Members and Section 29 - Council Membership Rules
2. Section 27 - Council Meetings
3. Sections 54-57 - Legal Department - City Attorney Appointment, Duties, Suits and Special Counsel
4. Section 58 - Establishment; Appointment, Qualifications, Term, etc., of Judge
5. Sections 117-118 - Revocable Licenses and Permits

Section 23 Qualifications of Council Members & Section 29 Council Membership Rules

There are provisions on qualifications of council members in both sections. This creates confusion. The recommendation is to remove the provision from Section 29 and have Section 23 be the sole location for

provisions on qualifications of council members.

Section 27 Council Meetings

The council meeting provision pertains to the permitted reasons for executive sessions. Currently, the council may not have an executive session to discuss protocols for dealing with an active shooter in the council chamber or Littleton Center. Educating individuals one-on-one results in a lack of knowledge and panic should such an event happen. Education and training in such areas is one of the best ways to prevent panic and save lives.

The council also does not have the ability to have an executive session to provide instructions to its staff regarding negotiations with employee organizations. Certainly, any action regarding such an agreement should occur in open session; however it is difficult to effectively negotiate where the position is already known. The concept of meeting with individual council members is contrary to transparency and openness since the public does not even know that such meetings are taken place.

Similar concerns exist with the lack of ability to discuss purchases and sales of real and personal property and obtain instructions for negotiations. Again, formal action regarding such matters should occur in open session, but who would negotiate with a seller to buy property and tell the seller at the start of negotiations how much you are prepared to pay? As noted above, the concept of meeting with individual council members is contrary to transparency and openness since the public does not even know that such meetings are taking place. More importantly, council does not act as individuals, but as a body and individual meetings deprive the body as a whole of the discussion and thought processes of each member.

Currently, the council may not discuss personnel matters pertaining to the appointment, evaluation and termination of a council appointed officer (city manager, city attorney, presiding municipal judge). Most cities provide for public meet and greet of the candidates and the actual appointment must be approved in an open council meeting. The current provision forces the city to delegate extensive responsibility to outside consultants in order to maintain confidentiality of the interview process or risk qualified candidates electing not to participate. The process actually operates to diminish transparency and openness since the public is not aware of the delegation and the discussion. An extensive discussion with individual council members denies the council as a whole the input of each other and increases the likelihood of serial meetings outside of public view.

Finally, the council may not seek and receive legal advice from its lawyer in executive session. This poses a number of problems. First, the lawyer has an ethical duty in every state, including Colorado, to maintain the confidentiality of their advice. However, there is no way for the lawyer to provide the advice to the body and maintain its confidentiality. The assertion that the lawyer may talk to individual council members about the advice is a fallacy as the lawyer represents the body, not individual council members.

Second, on decisions that belong to the client, a lawyer may only act based on the instructions of their client. Under the current charter provision there is no means for the lawyer to obtain instruction from the client except in an open public session as the lawyer represents the body, not individuals. This conflicts with the lawyer's duty to protect client confidences. One-on-one discussions with council members do not resolve this issue, as the lawyer is deprived of the body's instruction. More importantly it is at odds with openness and transparency, since the public is unaware that the members of the public body are consulting with their lawyer. The fact that a client is consulting with their lawyer is not privileged.

The proposed language is more restrictive than Colorado law; it limits executive sessions under this provision

to discussions with the lawyer to formulate legal questions and advice and contains protections against attempts to use this to defeat the public's right to know.

Sections 54-57 - Legal Department - City Attorney Appointment, Duties, Suits and Special Counsel

The proposal is to bring the provision up to date to align with current practices; specifically, the City Attorney may hire additional in house staff under a formal hiring process. In addition, the proposal would remove the preferences for local law firms in hiring. Finally, this proposal would remove City Attorney duties under Section 56 and combine with Section 55.

Section 58 - Establishment; Appointment, Qualifications, Term, etc., of Judge

The proposal is to bring the provision up to date to align with current practices; specifically, to support the current practice of the Presiding Judge appointing other judges and council is confirming all such appointments.

Sections 117-118 - Revocable Licenses and Permits

The proposal is to bring the provision up to date to align with current practices; specifically, to move the function of issuing revocable licenses and permits under the City Manager. This is consistent will all other permit and license issuances.

STAFF RECOMMENDATION:

Staff recommends council provide direction on the charter amendments they desire be brought before the council at a regular business meeting