

To: City of Flint Charter Revision Commission

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Through a series of interviews with state officials and individuals involved with charter revision processes in other cities, as well as a review of other recently revised charters in Michigan, we identified a series of best practices around charter enforcement.¹ There was general agreement throughout our conversations that enforcement is difficult to write into a charter, as much depends on the local culture. However, mechanisms and best practices exist that can help encourage accountability and build a culture of enforcement. The best practices described here will help to create a charter that is easily followed and allows for transparency and clear accountability.

Best Practices

1. **Create clear lines of accountability and responsibility.** Within the charter, delineation of powers between branches of government and different officials should be clear and simple. The charter should lay out in broad, but unambiguous terms who is responsible for different departments and processes, ensuring transparency and accountability. This means creating well-defined roles for the mayor and council and any other individuals involved in power sharing, such as a city administrator.
 - a. **An effective example: Dearborn, MI**
 - i. In the charter for the City of Dearborn, MI, Section 19.6, Penalties for Violation of the Charter, explicitly states, “The Council shall provide for the enforcement of the provisions of this charter.”²
2. **Ensure charter provisions remain flexible enough to be relevant in future years.** Since charters need to remain relevant for decades, amid unforeseen circumstances, it is crucial that provisions are flexible enough to do so. Provisions should not contain too much detail or excessive steps in a process that might lock a government into a process that is later found ineffective or inefficient. For example, provisions that require council approval for all city contracts, even small contracts, or requiring council approval for line item changes in department budgets are both too detailed for a charter provision.
3. **Develop an effective process for amending the charter.** It is important that the charter also contains an effective process for amending provisions as needed in the future. This should be easy enough that outdated provisions can be altered when necessary, but not so easy that it happens all the time. Creating a process that grants the charter the flexibility to adapt to changing circumstances would encourage necessary changes to be implemented.

through the formal amendment process rather than creating an environment in which provisions of the charter are disregarded or not complied with.

4. **Include checks for compliance with state law.** One way to ensure that the city is remaining in compliance with state law, especially with respect to its budget process, is to include periodic reviews. This could take the form of a provision that requires an individual (possibly the city attorney) to review the budget process (as prescribed in the charter and as done in practice) at specific intervals to ensure the city is still in compliance with state law and to reach out to the state for assistance if they are not. This would ensure that the city actively focuses on remaining in compliance with state law while avoiding mentioning specific text from state law that could become outdated if state law changes.

Accountability provisions

Through a review of other Michigan city charters that also went through revisions, we have identified a series of provisions focused on accountability and consequences for violating charter provisions. Examples of these texts are below:

1. **Inclusion of Penalty Provisions.** Many charters contain a specific provision for penalties for violation of the charter provisions. Penalty provisions have the potential to deter future employees from applying for city jobs and should be included with caution. A few examples include:
 - a. **Dearborn, MI**
Section 9.7 Ordinance Penalties: The Council shall provide in each ordinance for punishment of up to 90 days imprisonment, a \$500 fine, or both, or as otherwise permitted by law for those who violate its provisions.³
 - b. **Pontiac, MI**
Section 6.204 Penalties: The City shall, by ordinance, provide punishment, to the extent permitted by law, for the violation of any provision of this charter or any ordinance.⁴
 - c. **Hamtramck, MI**
Section 6-14 Officers; charter violations, penalty; city attorney, duty: Failure, neglect, or refusal by any elected official to comply with the provisions of the charter shall be a cause for his removal from office, and it shall be a duty of the city attorney to file a complaint against such offending officer before Council immediately upon receiving information of such offense. Should the city attorney fail, neglect, or refuse to file such complaint, any citizen of the City of

Hamtramck may file and prosecute such complaint on behalf of the city. A copy of the complaint shall be provided to the offending officer, who will be provided an opportunity to appear at a hearing before Council to be heard, to present witnesses and to cross-examine witnesses.⁵

2. **Creation of oversight bodies as an “independent branch.”** This approach is a key characteristic of the City Charter in the City of Detroit. In Detroit, the Corporation Counsel holds responsibility for charter enforcement. Although a mayoral appointment, the Corporation Counsel maintains independence through the requirements around removal. The Mayor can only remove the Corporation Counsel with two-thirds vote of City Council, thus ensuring cooperation between the legislative and executive branches before removal. Some aspects of this provision have not held up in the courts, however, but the Detroit example should be watched moving forward.

- a. **Detroit, MI**

Section 7.5-209. Enforcement of Charter: The Corporation Counsel shall be responsible for enforcing compliance with the Charter. Corporation Counsel shall document in writing any violation of the Charter by the executive or legislative branches, Office of City Clerk, elected official or other persons subject to compliance with the Charter. This written notice shall contain the nature of the violation, including the Charter section(s) violated, direct the necessary action to be taken to remedy the violation, and date by which the remedial action must be taken. The time for taking the required remedial action shall not exceed fourteen (14) calendar days. The notice of Charter violation shall be presented to the offending body or individual, with a copy provided to the Mayor, City Council and City Clerk.⁶

3. **Clearly delineating relationships between the executive and legislative branch can ensure accountability and information sharing across branches.** As identified in research from last semester, improving the flow of information across branches of government can result in greater transparency and more informed decision-making. Cities are addressing this in various ways.

- a. **Dearborn, MI**

Section 13.4 Council Consideration of the Budget: ...The Mayor and the departments shall provide the Council access to all persons and information necessary for budget deliberations as the Council may direct.⁷

- b. **Pontiac, MI**

Section 3.116 Relations with the Executive Branch: The Council and each of its members may make inquiries of, or request information and records from, the Mayor, the appointees or the employees of the executive branch. However,

neither the Council nor any member of thereof shall give any order or direction, either publicly or privately, to any appointee or employee of the executive branch.⁸

Budget Provisions

A crucial aspect of charter enforcement is centered on the budget process. The following recommendations are a revised and updated version of our previous suggestions around the budget process, based on our continuing research.

1. **Require periodic review of budget process to ensure continued compliance with state law.** As stated in enforcement best practices, one possible way to ensure that the budget process is following the appropriate state regulations is to require a review of the process at regular intervals.
 - a. Putting the text of state law in the charter has the risk of dating the charter if that law were to change. By contrast, this recommended review provision creates a clear connection to state law without the inflexibility of including the actual laws themselves.
 - b. The state provides technical assistance for cities struggling with various aspects of the budget process. If a review were to find the budget process out of compliance, the city could choose to reach out to the State for assistance.

2. **Create mechanisms for extra approval for unanticipated fund withdrawals after budget has been approved.** Make it challenging (but not impossible) to get approval for funding that was not originally in the budget. Require supermajority approval from city council.
 - a. **Dearborn, MI**
Section 13.6. Budget transfers. Neither the Council or any other officer or agency of the City shall have the authority to transfer budgeted funds from one departmental budget to another. An emergency appropriation may be made by the Council from the contingency reserve within the general fund when any budgeted appropriation shall be exhausted. Emergency appropriations shall be made by a vote of at least five council members and shall not be subject to veto. Appropriations from the contingency reserve may be made to provide for unforeseen and unusual expenditures.⁹

3. **Require specific levels of reserve for each fund within the charter to ensure savings for surprise events.** As discussed above in enforcement best practices, however, it is important that the charter not mandate what those levels are, which would create

inflexibility. Rather, the charter should require that those levels be set by council and be subject to periodic review and revision as needed.

4. **Ensure that the council is a part of the entire budget process, rather than just a one-time vote at the end of it.** The City of Detroit has specified one method through which to maintain communication through the year, specifically in the case of budget deficits, but this type of provision could be modified to require more regular reporting regardless of a deficit situation.

- a. **Detroit, MI**

Section 8-212. Report of Budget Deficit: Where, during the Fiscal Year, the head of any agency, department or City funded entity determines that the budget is in deficit, the head shall immediately notify, in writing, the Mayor and Budget Director of the reason for, and circumstance surrounding, the deficit. Within ten business days of notification, the Budget Director shall request a hearing with the City Council to apprise it of the deficit and outline actions to remedy the deficit.¹⁰

Additional Resources

General

- **Citizens Research Council of Michigan-CRC Memorandum on the Proposed Detroit City Charter, October 2011.** This memo from the CRC regarding the proposed Detroit Charter offers valuable insights for the Flint Charter Revision Commission as it provides context for the reasons behind many of the decisions and changes to the Detroit Charter. This memo can provide insights on how Detroit chose to balance flexibility and specificity within their charter and the measures they implemented to reduce corruption. In addition, the changes to the budget process highlight two mechanisms (budget deficit notifications and a revenue estimating conference) through which the City of Detroit hopes to address financial stability.

The CRC Memo on the Proposed Detroit Charter can be found here:

<http://www.crcmich.org/PUBLICAT/2010s/2011/memo1110.pdf>

- **Michigan Municipal League Charter Database.** The Michigan Municipal League maintains a charter database of Michigan's cities. It contains 272 city charters with the ability to search by the following categories: elections, council, mayor, other officials/operations, fiscal, ethics, charter or demographic data.

Access the database here:

<https://www.mml.org/resources/information/charter/charter-elections-search.php>

- **Michigan Municipal League Charter Revision Handbook.** An extensive handbook compiled by the Michigan League, the Charter Revision Handbook is intended to help inform the charter revision process with chapters covering topics on the structure of local government, critical decisions for charter commissions, publicizing the work of the Charter Commission and the politics of selling the new charter to the community. It also contains a list of Michigan cities that have undergone charter revisions

The Charter Revision Handbook can be found here:

https://www.mml.org/pdf/charter_revision/charter_handbook.pdf

- **Mallach, Alan and Eric Scorsone. "Long-Term Stress and Systemic Failure: Taking Seriously the Fiscal Crisis of America's Older Cities." Center for Community Progress. 2011.** This report highlights the common fiscal challenges facing America's older cities and offers policy-solutions to improve their long-term stability. The authors argue that accounting and budget solutions, while often necessary, should be viewed only

as short-term fixes. Rather, policymakers need to focus on long-term structural changes by embracing a long-term strategy, addressing public service delivery, long-term commitments and even incorporating more regional cooperation.

The full report can be accessed here:

<http://www.communityprogress.net/long-term-stress-and-systemic-failure--taking-seriously-the-fiscal-crisis-of-america-s-older-cities--pages-403.php>

Budget Resources

- **National Advisory Council on State and Local Budgeting. “Recommended Budget Practices: A Framework for Improving State and Local Budgeting.” Government Finance Officers Association. 1998.** This report outlines best practices for state and local budgeting from the budget process to budget practices. Organized around four principles--establishing broad goals to guide decision-making, developing approaches to achieve goals, developing budget consistent with approaches, evaluating performance and making adjustments--this report outlines the essential budget practices. For each recommendation, a specific practice, rationale and outputs are detailed.

The full report can be accessed here:

<http://www.gfoa.org/sites/default/files/RecommendedBudgetPractices.pdf>

- **Summary of the State of Michigan Uniform Local Budgeting Act.** This provides a high level summary of the State requirements for local government budgeting.

The summary can be found here:

<http://www.co.marquette.mi.us/departments/administrator/docs/Budget2012/Part8/SummaryOfBudgetingAct.pdf>

¹ Interviews included State Treasurer Nick Khouri, Eric Lupher of the Citizens Research Council, and Gregory Hicks, formerly of the Detroit Charter Revision Commission.

² City of Dearborn, MI. City Charter. Accessed at:

<http://www.mml.org/resources/information/charter/pdf/122.pdf>

³ City of Dearborn, MI. City Charter. Accessed at:

<http://www.mml.org/resources/information/charter/pdf/122.pdf>

⁴ City of Pontiac, MI. City Charter. Accessed at:

http://www.pontiac.mi.us/council/city_documents/docs/citycharterwithamendments.pdf

⁵ City of Hamtramck, MI. City Charter. Accessed at: <http://www.hamtramck.us/charter.pdf>

⁶ City of Detroit, MI City Charter. Accessed at: <http://www.detcharter.com/charter/pdf/2012-Detroit-Charter.pdf>

⁷ City of Dearborn, MI. City Charter.

⁸ City of Pontiac, MI. City Charter. Accessed at:

http://www.pontiac.mi.us/council/city_documents/docs/citycharterwithamendments.pdf

⁹ City of Dearborn, MI. City Charter.

¹⁰ City of Detroit, MI. City Charter.