

City of Detroit Charter Revision Commission

RESEARCH REPORT

Prepared by Staff

March 5, 2011

Review, Evaluation and Recommendation of Mechanisms For Achieving Accountability
Within the Context of the Balance of Power Between the Executive and Legislative Branches
Of City Government

(Corrected Copy)

Introduction

The recent change in the selection and governance process for the legislative branch has necessitated a reconsideration and review of the balance of power between the executive and legislative branches to facilitate legislative accountability. While necessary, this is no easy or insignificant task. Its importance requires due consideration, appreciation and respect for the functions of each branch of government, and a balance between the need for each to remain free to accomplish their functions with minimal intrusion and the citizens right to obtain the level of representation that is responsive to their needs.

Important Factors

A call for heightened levels of accountability requires that several important factors guide the decision-making process on this matter. First, the effective administration of government requires a healthy respect for the firmly embedded concept of separation of powers and its legitimate and practical underpinnings. Neither branch, especially the executive which is charged with implementing the municipal services and legislative dictates so necessary to a properly functioning city, can be successful in its realm of responsibility where overreaching and interference are common practice, legitimized by charter.

The second factor to consider is what are the legitimate needs of the community that can actually be addressed through the mechanisms of accountability being offered? Not all perceived needs of a community are susceptible to fulfillment through mechanism of accountability. This is especially the case where limited resources are at play.

A third factor to consider is the legitimate scope and bounds of accountability? Does it require that an elected official deliver every need? How do you prioritize community needs? While no one can be certain why voters approved a district form of City Council, accountability would likely rank high as a motivation. Even still accountability can mean different things to different people. Thus, it is important that a mature and realistic understanding of its scope and limits be taken into account. At its extreme it can be conceived as the notion that district Council members will be responsible for delivering on all the needs and desires of their district. At the other end of the spectrum is the expectation that district Council members will merely solicit, record and submit the district's needs and concerns to the parties responsible for providing the service, project or resource desired. The more reasonable and practical notion of accountability has to take notice of the fact that obtaining all the needs of a community is an unrealistic expectation and that prioritization of needs is a modern day necessity. It also captures the idea that channeling needs, expectations and general information to key decision-makers is a vital component of accountability. In short, accountability can be seen as the ability to achieve prioritized goals and substantially impact key decision-makers with relevant information, with the knowledge that limitations and constraints are a practical reality.

Another factor of importance in the pursuit of accountability in government is the need for a realistic assessment of the role resources play in guaranteeing accountability and their relative availability. Often, what a geographical segment of citizens perceive as neglect, slight and indifference may be representative of a more widespread and systemic problem of resource scarcity. For example, the common complaint of blown street lights and frequent, lengthy power outages and subpar deliver of city services is not necessarily a testament to an indifferent and callous executive branch that has a preference for the affluent sections of the community, or an out-of-touch legislative branch, more concerned with self-preservation and perks. It may likely be a manifestation of a lack of equipment,

personnel and the rationing of limited resources, which in our case is evidenced by both affluent and less affluent areas of the city voicing the same concerns over power outages, blown streetlights and inadequate city services.

No amount of well intentioned increase in legislative power over selection, removal or ability to give directives to department heads will precipitate from scarcity the manifestation of abundant resources. Indeed, directing a department to attend to the no doubt legitimate needs of one particular district(s), in the midst of a general condition of resource scarcity, only exacerbates the problem, further burdening some other deprived district(s) which has just as legitimate needs. Economic and community development and the provision of other city services are likewise subject to the same observation and analysis of resource scarcity.

In fact, this particular factor (i.e. scarcity of resources) is crucial to understand, appreciate and communicate to constituents as a failure to do so can breed and sustain false expectations on behalf of citizens and a general frustration that is incapable of remedy through granting one branch of government responsibility and powers that traditionally and legitimately are the province of another branch. However, it should be noted that there are more effective means of addressing service disruption and uneven development even in a climate of resource scarcity, as noted below.

A district form of legislative governance highlights the importance of assuring that City Council is responsive to the needs of their respective districts, in addition to the citizens at large. As it relates to interaction with the executive branch, the ability to receive from it timely, reliable information and address concerns distinct to particular districts requires a formal mechanism to achieve these important ends. While the current charter already contains several crucial and effective components of such a mechanism there remains room for strengthening the ability of City Council to satisfy the public's expectation of accountability. Below are current mechanism, suggested improvements to them, where appropriate, and additional means that should be considered.

Mechanisms of Accountability

1. **Confirmation Authority** – The Commission has made an initial decision to grant confirmation authority to City Council for several key positions including Chief of Police, Fire Commissioner, Director of Planning, Director of Human Resources and Director of Community and Economic Development. This is significant and unprecedented in the City of Detroit.

The ability of the legislative branch to confirm the executive's appointment of key decision-makers in city government is a critical component to maximizing City Council's ability to deliver accountability to citizens. This final say on executive leadership cannot be taken lightly. If exercised properly, the power of confirmation allows the legislative branch to confirm city decision-makers based on a set of criteria they deem compatible with their concept of and standards for accountable decision-makers. It will allow City Council members to approve candidates who satisfy them that the needs of their respective districts will at least be taken seriously and a sincere attempt made to address them. In addition, by insisting on relevant core competencies and standards in the candidates, City Council satisfies citizens' expectation that it will only endorse candidates who articulate, exhibit and have a proven track record of sensitivity to the needs and concerns of diverse segments of society and the ability to equitably deliver city services, programs and other resources.

2. **Select Commissions, Councils, Committees and Boards on District Model** – Selection of certain Commission and Board members based on the district model is a quite effective means of securing accountability that should not be lightly considered or underestimated. It allows for direct input of districts' concerns on decisions affecting the lives of residents within the district. This builds into the decision-making process channels for organized segments of the community to participate in resource planning and allocation, and has the potential to minimize service disruption and uneven community development among districts.

By adopting the district model for selecting members of multi-member bodies that are directly connected to the executive branch, the bonds of accountability are strengthened without sacrificing fidelity to the principal of "separation of powers"

enshrined as an essential pillar in our democratic form of government. The executive function is still carried out without legislative interference, but now with direct input from those closest to the impact of decisions and familiar with the needs and aspiration of the community.

In addition, selection based on the district model is very helpful in realistically addressing the resource scarcity issue discussed earlier, because now the multi-member bodies associated with city services and development will have representatives from each sector of the city who will be knowledgeable about the level and range of available resources and relative needs of each district. This allows for intelligent and informed discussion and collaborative decision-making about the best ways to allocate resources, and whether it is necessary to raise additional revenue to satisfy urgent needs of specific districts when the current level of resources are not sufficient. The false expectations, pointless political promises and eventual community frustration have now given way to rational decision-making, realistic assessment of resource levels and needs, and reasonable prioritizing of needs within and among districts. This is arguably accountable government at its finest.

3. Investigation Power - A powerful instrument of accountability residing in the legislative branch is the ability to investigate “the affairs of the city and the conduct of any city agency.” §4-109 (*Investigation*). The extent of this power is unlimited in the charter and includes the power to “subpoena witnesses, administer oaths, take testimony and require the production of evidence.” §4-110 (*Investigative Powers*). Exercise of the power of investigation is expressly exempt from the general prohibition on interference in the executive branch, meaning that the exercise of this power allows City Council to deal directly with city officers and employees without going through the Mayor, as required by §4-113. See §4-113 (*Prohibition on Interference in Administration*).

This is a handy and effective power that will allow district Council members, acting through the City Council as a body, to follow up on citizens’ concerns and complaints about the affairs of the city and conduct of executive departments administering city services, as they generally impact citizens within their district.

4. Inquiry Power - The current charter takes account of the fact that the legislative branch will on occasion, either collectively or through individual members, have the need to obtain information from executive branch officers and employees, outside of a charter sanctioned investigation made pursuant to §4-109 (*Investigation*). Thus §4-113 (*Prohibition on Interference in Administration*) allows City Council and its individual members to obtain information through *inquires* made to “city officers and employees subject to the direction and supervision of the mayor,” instead of going through the mayor as required by §4-113.

By use of this power, City Council can obtain the information needed to address specific constituent and broad district concerns, which is a fundamental aspect of fulfilling their obligation to be accountable to residents within their district.

It should be noted that being unable to obtain information from executive branch departments and officers was not flagged as an issue by the legislative branch in their proposed revisions. In fact, City Council’s revised §4-113 primarily seeks to allow it to “exercise management supervision of the performance of the directors and personnel of city government departments.” *See GOS 60; or City Council’s Recommended Revisions dated 12/2/10.*

4. Power of the Purse – Often undervalued and rarely talked about as a mechanism for delivering on a promise of accountability is what some consider the ultimate power possessed by City Council – the power of the purse. This power takes the form of budget review, amendment and approval. This power also has value as an accountability mechanism in that it allows City Council to shape and prioritize service types, levels and allocation of resources in the various sectors of the City. Imbalances in resource allocation and uneven development become capable of remedy with deft and decisive use of this power.

Use of this power as a means of satisfying the obligation of accountability of the Mayor and executive department heads, focuses them in on what citizens, through their district Council person, considers important and needed in their respective communities.

The obvious utility and strength of this legislative power leaves little to be said about its value as a means for City Council to deliver on its promise and citizens' expectation of accountability.

6. Mayoral District Meetings - There is a direct correlation between the accuracy of information elected officials have about the conditions of their cities and needs of their citizens, and the plans devised, opportunities secured and services they decide to provide to citizens and communities. This flow of accurate information is facilitated by the district model. Moreover, the district system is not only a mechanism for facilitating council accountability, but mayoral accountability as well.

With the district system, the collective insight, concerns and aspirations that may be unique to particular areas of the city can now be directly channeled to the Mayor through his direct interaction with these distinct communities, by way of mandated meetings in each of the districts. Mandating this interaction assures that service provision, economic and community development, and the overall condition and concerns that are unique to a district are put before the Mayor on a consistent basis through required district community meetings. It expresses a realization among the citizens that “vacuum democracy”, where decisions are made without maximum community input and involvement, is an unacceptable and irrational approach to improving communities and the city generally.

Charter required meetings for public officials are not unprecedented in Detroit City government. The current charter mandates that City Council conduct at least eight meetings in “areas of the city” as determined by the Council. §4-102 (*Meetings*). The benefits to the community gained from such meetings are arguably increased many-fold by imposing a similar requirement on the Mayor, who is responsible for services that have immediate and consistent impact on citizens.

7. Power to Remove Executive Level Leaders – The sanctity and efficacy of the bedrock concept of “separation of powers” is readily apparent in the framing and day-to-day operation of our government at each level. Experience teaches that politics and political passions must be contained and regulated by some system that clearly delineates the roles and responsibilities of each branch, while allowing for each branch to serve as a check on the potential excesses and abuses of the others.

Some would suggest that the delicate balance achieved by the pragmatism of the “separation of powers” is seriously disturbed when the legislative branch has the threat of removal of executive level department heads at its disposal. The argument being that the decisive action expected of the executive branch has now been compromised by administrators who now have to be distracted with pleasing two (or 10) bosses with often competing interests, challenges and goals.

A standard rule of organizational management is that the person best able to evaluate the performance of employees are those whose span of control includes the responsibilities of the relevant employees; in our case the Mayor. Likewise, the actions flowing from such an evaluation, ranging from termination to a lesser form of intervention, are logically within the province of the Mayor, whose direction and plans are being carried out by the department heads.

It would seem that an historical and monumental shift in the balance of power warrants precise explanation and a showing of copious and necessary benefits to flow from such a radical departure in structuring government. When evaluated according to this standard of measurement the legislative power to remove department heads is found wanting. The explanation offered for this departure is that it will greatly assist district council members to fulfill their obligation of accountability to their constituents by them being able to indirectly manage and influence the actions and performance of department directors. The significant benefits to be gained from this remain less clear and harder to construct.

Indeed, allowing this drastic shift in the balance of power in order to satisfy or assist in the legislative branches accountability to constituents can be achieved by more effective, direct and less drastic means (as discussed herein), other than codifying overreaching and interference. Furthermore, by the legislative branch managing the realistic expectations of constituents and communicating to them the legitimate power and limits of the legislative branch, it will assist in eliminating their need to appropriate the powers of the executive branch, which only threatens the utility of the “separation of powers”, leaving in its wake more harm than gain.

8. Direct Action of Departments¹ - Giving the legislative branch power to direct executive departments is fraught with myriad dangers and negative unintended consequences that outweigh the benefit sought. It dilutes the ability of executive operations to be effective in the provision of services and execution of duties, and so tips the balance of powers scale as to make governing practically impossible. Having to take direction from multiple sources that have competing and diverse interest, however legitimate they may be, exacerbates the issues of inefficient, directionless, unresponsive and indifferent government it seeks to cure. Whose direction should one follow? On what basis is that decision made? How do you as a manager prioritize with limited resources and even greater demands on them from competing Council members and the Mayor? Whose plans (Council or Mayor) should one adopt in the execution of their duties? These and a host of other legitimate issues and problems are created and raised when you blur the lines between the executive and legislative functions.

Further, the earlier discussion regarding how the City's limited resources impacts decision- making on the delivery of services and activities should be noted here. The very problem to be remedied (i.e. making sure districts get the services they demand and expect) by allowing district Council members to direct the allocation and delivery of resources in their districts becomes even more acute and exacerbated. This is because coordination, prioritizing and allocation of limited resources are now subject to factors outside the planning function which have no legitimate or logical relationship to proper planning, delivery of services and allocation of resources.

It is significant to note that granting this power to the legislative branch is by no means a novel concept in the creation of our democracy. In fact, its conspicuous and pervasive absence at any level of government (local, state or federal) is not because it's an idea whose time has not yet come or whose value has been lost on generations of able statesmen. Indeed, it has been quite the opposite. The system of checks and balances was intentionally designed to guard against this government branch overreaching and imbalance in power.

¹ The above analysis on removal power applies to this power as well.

This is not to suggest that the nature of politics and governmental relations among the legislative branch and various departments is not conducive to achieving the outcome sought by the power to give legislative directives to department heads. It is often the case that concerns of significance to Council members will be addressed by executive departments without the need to institutionalize overreaching and the imbalance in power. On the part of the legislative branch this will undoubtedly call for, at a minimum, a level of tactful diplomacy, relationship building and judicious exercise of various other legislative powers within its arsenal (e.g. power of the purse, power of inquiry, power of investigation, etc.).

Achieving the expectation of accountability and effectiveness by shifting the balance of power to allow multiple directives from bodies with competing interests (i.e. multiple district council members) and directives from governmental branches with disparate duties and legitimate interests (i.e. legislative and executive) is like using the proverbial shotgun to kill a cold virus. A more tailored approach which requires and allows City Council to use the full complement of its current and proposed powers and resources, as addressed herein, is the necessary vaccine to remedy the problem, resulting in the least disruption in the delicate and critical balance of power between the branches.