

DETROIT CHARTER REVISION COMMISSION

PROPOSAL/ISSUE REVIEW SUMMARY

ISSUE NUMBER: GOS 72

ISSUE CATEGORY: Government Operations & Structure

SOURCE: City Council,

RELATED CHARTER SECTIONS: §_-100 (Corporation Counsel); 6-401 (Law Department)

Letter dated December 2, 2010

RELEVANT ORDINANCE SECTION: **RELEVANT LAW(S):**

ISSUE/PROPOSAL STATEMENT: Mayor may remove Corporation Counsel without cause, with Council's approval. Both Mayor and City Council may remove for cause. Clarifies that Corporation Counsel represents both executive and legislative branches of government.

Sec. - 100 Corporation Counsel (New Provision)

Located under neither the Executive nor the Legislative Branches

The law department is headed by the corporation counsel. The mayor shall appoint the corporation counsel, subject to approval of the city council. However, if the city council does not disapprove of the appointment within thirty (30) days, the appointment is confirmed.

The mayor, with the approval of city council by majority vote, may remove the corporation council without cause. The corporation counsel may be removed for cause by either the mayor or city council pursuant to section 2-107, paragraph 3.

The corporation counsel shall be responsible for advising and representing both the legislative and executive branches, and the elected and appointed officials thereof, in connection with their official duties and responsibilities.

RATIONALE: "A proposed new location for the office of corporation counsel and the law department has been suggested, under neither the executive nor the legislative branch, to reflect the needed independence of the position. This would enable the corporation counsel to serve both branches of government without fear of reprisal. Language has been added giving city council a role in removing corporation counsel without cause if initiated by the mayor. Corporation counsel is also subject to removal for cause pursuant to the provisions of section 2-107, initiated by either city council or the mayor.

"During the past term in particular, and in previous terms as well, conflicts and perceived conflicts have arisen between the executive and legislative branches resulting in the need for legal counsel. Occasionally, the conflict has resulted in litigation, requiring special counsel for city council. However, most often, smaller perceived conflicts arise, limiting the efficacy of the services corporation counsel provides to city council. For example, if city council requests a legal opinion with respect to a proposal advanced by the administration, the corporation counsel – taking direction from the mayor – may be in a position of conflict if asked to give an unbiased assessment to the council. This has been an ongoing dilemma and there may be no easy answer.

***However, the administration's proposal that does no more than require that all legal advice and representation must come from the corporation counsel does nothing to address the problem. Further, the administration's suggestion under section 4-121, "special counsel", which provides, "[a]ny city appointee or employee, who is a member of the State Bar of Michigan but is without charter authority to act as an attorney, shall not be designated as outside counsel," is without merit. A member of the state bar does not need charter authority to "act as an attorney." That individual is an attorney by virtue of membership in the bar. These provisions read together disempower city council by denying it adequate, responsive legal services. Another option must be found. Finally, the mayor's commentary indicates that if city council were permitted to be represented by a city employee (presumably not a member of the law department), that individual would be "double dipping." This comment is misleading. When attorneys from the research and analysis division (clearly, the mayor's target) have represented city council, they have not been "retained" to do so, but rather have provided the services they are qualified to provide, and been compensated by their regular salaries.**¹ -*City Council's Rationale, dated, December 13, 2010.*

ANALYSIS:

DISPOSITION/COMMISSION ACTION:

NOTES:

¹ The current problems with the inability of the corporation counsel to serve and represent both the mayor and city council equitably has never been more apparent than is evidenced by the administration's December 2, 2010 document to this body. The law department's participation in drafting and presenting the mayor's recommendations, which significantly undercut city council's authority and governmental role, was done without ever consulting with the council, and entirely at the mayor's direction.