

In accordance with request of the Detroit Charter Revision Commission, this memorandum delineates changes that the Bing Administration is requesting be made to the 1997 Detroit City Charter. Please note that language, which is recommended to be deleted, is lined through and language, which is recommended to be added, is underlined. Each section, or cluster of related sections, is followed by a Commentary, which explains the legal or policy basis of the proposed change or changes.

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## **ARTICLE 2. GENERAL PROVISIONS**

### **Sec. 2-101. Qualifications for elective officers and appointive officers.**

A person must be a citizen of the United States, a resident and a qualified and registered voter of Detroit, at the time of filing for, and while holding, any elective City office. In addition, a person who represents a City Council district must be a resident and a qualified and registered voter of the district, at the time of filing for, and while holding, the position of an elective member of the City Council.

~~A person must be a citizen of the United States, a resident and a qualified and registered voter of Detroit, at the time of assuming the duties of, and while holding, any appointive city office. However, this requirement does not preclude an appointive officer who is assigned to a work location outside the city from using a residence outside of the city.~~

### **COMMENTARY**

*The recommended change in this section clarifies requirements for City elective officers and City appointees. In particular, this section requires that a candidate for City Council who is running from a district be required to be a qualified and registered voter from the district where he or she seeks office.*

*Section 3(d) of the Michigan Home Rule City Act, MCL 117.3(d), requires that our City Charter prescribe the qualifications of elective and appointive officers. However, Public Act 212 of 1999, which became effective on March 10, 2000, precludes the City of Detroit from requiring that appointive officers be City residents as a condition of employment or promotion.*

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### **Sec. 2-103. Oath of office.**

Every elective officer and every appointee before entering on official duties shall take and subscribe the following oath before the Detroit City Clerk: “I do solemnly swear (or affirm) that I will support the Constitution of the United States ~~and~~ the Constitution of this state and the Detroit City Charter, and that I will faithfully discharge the duties of office to the best of my ability;” ~~And shall file that oath, duly certified by the officer~~

before whom it was taken, in the office of the city clerk. The original of the oath shall be filed in the Office of the City Clerk and a copy provided to the elective officer or the appointee.

**COMMENTARY**

*During City Council’s attempt to remove former Mayor Kwame M. Kilpatrick, it was discovered that City elective officers are not required to swear or affirm that they will support the Detroit City Charter. The proposed change will remedy this omission.*

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**Sec. 2-104.5. Rules of Construction.**

For purposes of this Chapter, the following rules of construction apply:

*Including or included.* Unless the contrary is expressly stated, these are not words of limitation, but mean “including but not by way of limitation” or “included but not by way of limitation.”

*Number and gender.* The singular number includes the plural, the plural number includes the singular, and the masculine gender includes the feminine gender and the neuter.

*Tense.* This Charter is to be regarded as speaking in the present and continuously. For example, the phrase "as provided by law" will incorporate the provisions of law as they change from time to time.

**COMMENTARY**

*For ease of the reader, the rules of construction that are contained in Section 2-105 of the 1997 Detroit City Charter have been moved to this section.*

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**Sec. 2-105. Definitions.**

As used in this Charter:

~~4. Agency<sup>1</sup> means any department, office, multi-member body, or other organization of city government and includes any elective officer, appointee, employee, or person acting or purporting to act in the exercise of official duties~~ subdivision of the Legislative Branch of City government.

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<sup>1</sup> The term “agency” should be used through the Revised Charter where appropriate.

~~2. *Appoint and hire.* A person is appointed means being named to a position in the exempt service and is hired for a position in the classified service as defined by section 6-517 .~~

~~The exempt service comprises both compensated and uncompensated positions.~~

~~The term “appointee” refers to persons holding either compensated or uncompensated positions.~~

*Appointee* means a person holding either a compensated or uncompensated position.

~~The terms “appointive office” and “appointive officer,” however, refer only to compensated positions and appointees holding compensated positions.~~

*Appointive office or appointive officer* mean compensated positions and appointees holding compensated positions.

~~For the purpose of this subsection, reimbursement of expenses under section 2-109 is not “compensation.”~~

*City* means the City of Detroit.

*Department*<sup>2</sup> means any subdivision of the Executive Branch of City government that is created under this Charter or subsequently under Section 7-102 of this Charter.

*Director* means the administrative head of any department or agency regardless of the title of a particular director.

*District* means a ward drawn on a geographical basis, which constitutes a political unit from which members of the city council and community advisory councils are elected.

*Elective officers* means the Mayor, each member of the City Council, and the City Clerk.

~~3. *Filling of vacancies* — means, except as otherwise provided by this Charter, whenever a vacancy occurs in any appointive position, ~~it~~ the vacancy shall be filled by appointment (for the unexpired term, if any) in the manner provided for the original appointment.~~

Exempt service means both compensated and uncompensated positions.

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<sup>2</sup> The term “department” should be used through the Revised Charter where appropriate.

4. *General election in the city (distinguished from 'city general election')* — means a city-wide general election regardless of whether its purpose is to fill national, state, county or City offices.

Hire means being employed for a position in the classified service as defined in Section 6-517 of this Charter.

~~5. *Including or included.* Unless the contrary is expressly stated, are not words of limitation. They always mean "including but not by way of limitation" or "included but not by way of limitation."~~

Multi-Member Body means any board, commission, or other organization of City government.

~~6. *Number and gender.* The singular number includes the plural, the plural number includes the singular, and the masculine gender includes the feminine gender and the neuter.~~

7. *Serving and present* ~~—~~ means, when calculating an ordinary or extraordinary majority of:

- A. *City Council members serving*, vacant City Council seats are not included ~~—~~ ; and
- B. *City Council members present*, neither vacant City Council seats nor those of absent members are included.

~~8. *Tense.* This Charter is to be regarded as speaking in the present and continuously. Thus, for example, the phrase "as provided by law" will incorporate the provisions of law as they change from time to time.~~

9. *Vacancy* — means that the position of any elective officer or appointee ~~shall become~~ is deemed vacant upon death, resignation, permanent disability, or dismissal from the position in any manner authorized by law or this Charter.

~~10. *Voter of the city or city voter* — ~~Voter of the city or city voter~~ means a person who has the qualifications of and is registered as an elector of the City of Detroit under state law.~~

~~11. *Retain* (distinguishing legal representation other than the corporation counsel). The temporary hiring of outside legal counsel.~~

~~12. *District or ward.* District means a ward drawn on a geographical basis, which constitutes a political unit from which members of the city council and community advisory councils are elected.~~

**COMMENTARY**

*The current definition of “agency” has caused confusion. The recommended change in this section for the definition of “agency” and for the other definitions contained in the section will ensure that the terms are properly used throughout the Charter.*

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**Sec. 2-107. Dismissal proceedings.**

**NOTE:** Due to substantive changes in this section since the Bing Administration’s submission on December 2, 2010, the recommended changes to this section have been moved to the Bing Administration’s addendum document.

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**Sec. 2-108. Pay plans.**

All ~~persons~~ City appointive officers and employees, except elective officers and those whose compensation is stated in collective bargaining contracts made effective under section 6-508, employed by the City and paid either in part or in whole from City appropriations shall be compensated in accordance with pay plans which have been initiated only by the Mayor and approved by ordinance ~~the City Council~~ through adoption of a resolution.

The salaries of all City elective officers shall be determined by an Elected Officials Compensation Commission, which shall be created by an ordinance containing provisions as required by state law.

**COMMENTARY**

*All pay plans for City appointive officers, and for City employees who are not members of a collective bargaining unit, are approved in the Omnibus Budget Resolution, which is adopted each fiscal year by City Council at the conclusion of the budget process. This change will reflect the practice that has existed since at least July 1, 1974 when the 1974 Detroit City Charter became effective.*

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**Sec. 2-109. Reimbursement.**

Except as otherwise expressly provided, the members of every multi-member body created by this Charter    or under Section 7-103 of this Charter    shall serve without compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties. For the purpose of this section, reimbursement of expenses is not “compensation.”

**COMMENTARY**

*For ease of the reader, the proposed last sentence was moved from Section 2-105 of the 1997 Detroit City Charter, Definitions.*

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**Sec. 2-110. General provisions for multi-member bodies.**

Any multi-member body created by this Charter or under Section 7-103 of this Charter may select its officers and adopt rules of procedure. ~~It's~~ The Body's meetings shall be ~~public and it shall make~~ conducted in compliance with the Michigan Open Meetings Act, MCL 15.261 *et seq.*, including making a record of its proceedings. The record shall be made available to the public in accordance with the Michigan Freedom of Information Act, MCL 15.231 et seq. A majority of its members constitutes a quorum. ~~and, if its members serve for fixed terms,~~ Unless otherwise provided for in this Charter in the Detroit City Code, each term begins on the fifteenth (~~15<sup>th</sup>~~) day of February and ends on the final February 14<sup>th</sup> of the term.

**COMMENTARY**

*The recommended changes will clarify that the City multi-member bodies are subject to the strictures of the Michigan Open Meetings Act and the Michigan Freedom of Information Act and, unless provided for by other law, will establish a beginning and an ending date for each term.*

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**Sec. 2-111. ~~Rule-making~~ Promulgation of Administrative Rules.**

(1) Where a City ordinance permits or requires a City department director, agency head, or multi-member body to promulgate a rule governing dealings between the City and the public, or establishing hearing procedures for resolving matters in dispute, the City department director, agency head, or multi-member body shall comply with this section.

~~(1)~~ (2) Before adopting any rule governing dealings between the City and the public, or establishing hearing procedures for resolving matters in dispute, a City department director, agency head, or multi-member body shall give notice of a hearing by publication in a daily newspaper of general circulation, and by electronic posting available to the public, at least ~~four~~ (4) two (2) weeks in advance of the scheduled hearing.

The notice of hearing shall:

- A. Contain the proposed rule or procedure, or a statement of it's the substance;
- B. Specify the ~~officer or employee~~ department director or agency head or his or her designee, from whom additional information can be obtained; ~~and~~
- C. Specify the location, date, and time , ~~place, and method~~ for oral presentation of views by interested persons; and
- D. Specify that written comments and recommendations shall be submitted no later than the conclusion of the public hearing.

~~The agency shall give any interested person the opportunity to submit all written recommendations and comments, copies of which~~

(3) All recorded and written comments and recommendations shall be kept on file and made available for public inspection by the promulgating department director, agency head, or multi-member body.

(4) ~~No~~ After the conclusion of the public hearing and consideration of all comments and recommendations, the proposed rule shall become effective until it has been published upon publication in a daily newspaper of general circulation. All effective rules and procedures shall be printed in a book of city rules codified to correspond to the chapter of the City Code, which authorized adoption of the rules or procedures, and included in the Detroit City Code after City ordinances in a separate part titled "Administrative Rules."

2. (5) Notwithstanding the preceding subsections, in the case of an emergency declared in writing by the Mayor or the City Council concerning the public health safety or welfare, a proposed rule may be given effect for a period not to exceed sixty (60) seven (7) days pending completion of the required procedure.

(6) When promulgating a rule or procedure under this section, a City department director, agency head, or multi-member body is limited to proposing any rule, which establishes procedures and is precluded from promulgating a rule or procedure which is substantive in nature and is required to be enacted through an ordinance.

(7) ~~If~~ Where rules governing hearing procedures for resolving matters in dispute are adopted, those rules shall forbid the admission of any evidence where the admission would be contrary to be consistent with due process of law.

**COMMENTARY**

*Since the adoption of this section on July 1, 1974, when the 1974 Detroit City Charter became effective, and continuing after the adoption of the 1997 Detroit City Charter, there has been a great deal of confusion concerning the parameters and requirements of the section. The recommended changes will assist in clarifying ambiguities that have arisen over the past 36 years.*

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## ARTICLE 3. ELECTIONS

### ~~Sec. 3-101. City elections.~~

~~A regular city general election to fill the elective offices of the city shall be held on the Tuesday after the first (1st) Monday of November of 1997 2013 and every fourth (4th) year thereafter.~~

~~A regular city primary election to nominate candidates for city offices shall be held on the Tuesday after the second (2nd) Monday of September before the general election.~~

~~If a vacancy occurs in the office of mayor or city council thirty (30) days or more before the filing deadline for a general election in the city or special citywide election, the vacancy shall be filled at that election for the remainder of the unexpired term. When a vacancy occurs in the office of mayor or city council less than thirty (30) days before the filing deadline for a general election in the city or special citywide election, the city council shall order a special primary election for nomination of candidates and a special general election to fill the vacancy for the remainder of the unexpired term. The resolution ordering a special election shall be adopted at least eighty (80) days before the special primary election and at least one hundred twenty (120) days before the special general election. Nominating petitions shall be filed not later than the fourth (4th) Tuesday after adoption of the resolution ordering the special elections. Vacancies occurring on or after March 1st of the year in which city elections are held shall not be filled by a special election.~~

~~The city council may, by resolution adopted not less than seventy (70) days before any election or special election, submit any proposal to the voters of the city.~~

### ~~Sec. 3-102~~ 3-101. Department of Elections.

~~A The Department of Elections shall plan, monitor, and administer all elections in the city.~~

### Sec. 3-102. Election Commission.

The Department of Elections is headed by the City Election Commission, ~~composed~~ which is comprised of:

1. The City Clerk ; who, as the chief elections officer of the city, is chairperson;
2. The President of the City Council; and
3. The Corporation Counsel.

**Sec. 3-103. City clerk.**

~~1. Duties. The city clerk is the chief elections officer of the city and shall keep the corporate seal of the city and all papers filed in or pertaining to the city clerk's office. When requested, the city clerk shall certify, under the corporate seal, copies of all papers and records for the office. The city clerk may administer oaths and take affidavits and has such other powers and duties as provided by law, this Charter or ordinance.~~

~~2. Deputy. A deputy city clerk shall be appointed by and serve at the pleasure of the city clerk. In the absence or disability of the city clerk, or while the position is vacant, the deputy city clerk shall exercise all the powers and perform all the duties of the city clerk to the full extent permitted by law.~~

~~3. Vacancy. If a vacancy occurs in the office of city clerk, the city council shall appoint a successor who shall serve until an elected city clerk takes office. A city clerk shall be elected (for the unexpired term, if any) at the next general election in the city held not sooner than one hundred eighty (180) days after the occurrence of the vacancy.~~

~~4. Voter registration. The city clerk shall maintain reasonably accessible voter registration sites throughout the city on a year-round basis.~~

**Sec. 3-103. Powers and Duties of Commission.**

The Election Commission has general supervision of all elections in the City and may hire assistants, inspectors, and other election personnel. Precinct election officers and temporary employees required from time to time for periods not to exceed thirty (30) business days may be appointed, exempt from Article 6, Chapter 5, of this Charter.

Except as otherwise provided by this Charter or ordinance, the Election Commission shall perform all duties required of election commissions by law. ~~It~~ The Body may subpoena witnesses, administer oaths, take testimony and require the production of evidence. To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for the failure to obey a subpoena or order, the Commission shall apply to the appropriate court.

All meetings of the commission shall be ~~open to the public~~ conducted in compliance with the Michigan Open Meetings Act, MCL 15.261 et seq., including making a record of its proceedings.

In case of any doubt concerning election procedure, the Commission shall prescribe the procedure to be followed.

The Election Commission shall maintain reasonably accessible voter registration sites throughout the city on a year-round basis.

**Sec. 3-104. Deputy and Deputy Director.**

The City Clerk shall appoint, subject to the approval of the Election Commission, a director and deputy director of the Department of Elections, who are skilled and experienced in municipal election administration. Under the direction of the City Clerk and in accordance with general policies of the Election Commission, the director shall supervise, plan and monitor all activities and operations incidental to the conduct of elections and voter registration. The director or deputy director of elections may be removed for cause by a two-thirds (2/3) majority of the Election Commission.

**Sec. 3-105. City elections.**

A regular City general election to fill the elective offices of the City shall be held on the Tuesday after the first Monday of November of 2013 and every fourth year thereafter.

A regular City primary election to nominate candidates for City offices shall be held on the Tuesday after the first Monday of August before the general election.

If a vacancy occurs in the Office of Mayor or a City Council member before the filing deadline for a state general election, the vacancy shall be filled at that election for the remainder of the term. If a vacancy occurs in the Office of Mayor or a City Council thirty (30) days or more before member after the filing deadline for a state general election in the city or special citywide election , the vacancy office shall be filled at that next scheduled election for a full term. for the remainder of the unexpired term. When a vacancy occurs in the office of mayor or city council less than thirty (30) days before the filing deadline for a general election in the city or special citywide election, the city council shall order a special primary election for nomination of candidates and a special general election to fill the vacancy for the remainder of the unexpired term. The resolution ordering a special election shall be adopted at least eighty (80) days before the special primary election and at least one hundred twenty (120) days before the special general election. Nominating petitions shall be filed not later than the fourth (4th) Tuesday after adoption of the resolution ordering the special elections. Vacancies occurring on or after March 1st of the year in which city elections are held shall not be filled by a special election. The nominating petitions shall be filed in accordance with Michigan Election Law, MCL 168.1 et seq.

The City Council may submit, by resolution adopted not less than seventy (70) days before any election or special election, submit any proposal to the voters of the City.

**COMMENTARY**

*Although Michigan Election is silent, the 1997 Detroit City Charter requires special elections to fill vacancies in the Offices of Mayor and City Council, even though a state general election or a regular City general election is scheduled during the same year. This change will eliminate the requirement to schedule a special primary election*

*and a special general election to fill such vacancies, thereby avoiding the expense associated with special elections.*

**Sec. ~~3-104~~ 3-106. State law to apply.**

Except as otherwise provided by this Charter or ordinance, state law applies to the qualifications and registration of voters, the filing for office by candidates, the filing of petitions for initiative and referendum, and the conduct and canvass of City elections.

**COMMENTARY**

*Michigan Election Law, MCL 168.1 et seq., provides for certain requirements concerning ballot questions. The recommended change will clarify that the petitioners should review the applicable law before circulating and filing any petitions.*

**Sec. ~~3-105~~ 3-107. Elective officers of the City.**

[text remains unchanged]

**Sec. ~~3-106~~ 3-108. Geographical basis for electing Council Members.**

There shall be seven (7) Council districts and one (1) at-large district established in the City and one (1) member shall be elected from each Council district and two (2) members shall be elected at large.

The ~~Election Commission~~ City Council shall revise the boundaries of the districts within sixty (60) days after the figures from the federal decennial census ~~becomes (sic)~~ become available. New district boundaries created within one hundred twenty (120) days of a City Primary Election shall become effective after the General Election. To the greatest extent possible, the ~~Election Commission~~ City Council shall ~~, to the greatest extent possible,~~ establish wards that are compact, contiguous, and of equal population.

**COMMENTARY**

*Section 27a of the Michigan Home Rule City Act, MCL 117.27a, requires that the Local Legislative Body of a City, which is the City Council, apportion the districts of for its members.*

**Sec. ~~3-107~~ 3-109. Nominating petitions.**

A candidate for nomination to an elective City office shall file with the City Clerk a non-partisan nominating petition consisting of one (1) or more petition forms.

The candidate's petition shall be signed by a number of voters of the City equal to not more than one percent (1%) nor less than one-fourth percent (¼%) of the total

number of votes cast in the preceding Regular City General Election for the office which the candidate seeks.

Where a candidate is seeking nomination to the office of City Council at-large member, the candidate's petition shall be signed by a number of voters of the City equal to not more than one percent (1%) nor less than one-fourth percent (¼%) of the number resulting when the total number of votes cast at the preceding Regular City General Election for all offices of City Council members is divided by nine (9).

~~Were~~ Where a candidate is seeking nomination to the office of City Council district member, the candidate's petition shall be signed by a number of voters of the district equal to not more than one percent (1%) nor less than one-fourth percent (¼%) of the number resulting when the total number of votes cast at the preceding Regular City General Election for all offices of the City Council members is divided by nine (9).

**COMMENTARY**

*Section 3(b) of the Michigan Home Rule City Act, MCL 117.3(b), requires that our City Charter prescribe requirements for the nomination of elective officers. Section 168.544a of Michigan Election Law, MCL 168.544a, prescribes requirements concerning nonpartisan nominating petitions. The changes in this section correct grammatical errors that were contained on the petition, which resulted in the adoption of this section by the People of the City of Detroit on November 3, 2009.*

**Sec. 3-108 3-110. Nominees.**

The number of nominees for each elective city office selected at each primary election may not exceed twice the number of openings in the office to be filled. ~~The nominees are entitled to have their names printed on the general election ballot.~~

**COMMENTARY**

*The printing of names on the ballot is controlled by Michigan Election Law, MCL 168.1 et seq.*

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**ARTICLE 3.5. OFFICE OF THE CITY CLERK**

**Sec. 3.5-101. Office of City Clerk.**

There shall be an Office of the City Clerk, which is headed by the City Clerk.

**Sec. 3.5-102. Duties of City Clerk.**

The City Clerk shall:

- (1) Keep all papers filed in or pertaining to the Office of the City Clerk;
- (2) Keep the corporate seal of the City;
- (3) When requested, certify, under the corporate seal, copies of all papers and records for the office;
- (4) Administer oaths;
- (5) Take affidavits;
- (6) Serve as the City Council's clerk and shall keep a record of all its ordinances, resolutions, and other proceedings and perform such other duties as the Body may request; and
- (7) Exercise other powers and duties as provided by law, this Charter, or ordinance.

**Sec. 3.5-103. Deputy City Clerk.**

A deputy city clerk shall be appointed by, and serve at the pleasure of, the City Clerk. In the absence or disability of the City Clerk, or while the position is vacant, the Deputy City Clerk shall exercise all the powers and perform all the duties of the City Clerk to the full extent permitted by law.

**Sec. 3.5-104. Vacancy in Office of City Clerk.**

Where a vacancy occurs in the Office of City Clerk, the City Council shall appoint a successor who shall serve until an elected City Clerk takes office. A City Clerk shall be elected for the unexpired term, if any, at the next general election in the City held not sooner than one hundred eighty (180) days after the occurrence of the vacancy.

**COMMENTARY**

*Section 3(a) of the Michigan Home Rule City Act, MCL 117.3(a), requires that a city charter provide for a city clerk. In addition, Section 719 of Michigan Election Law, MCL 168.719, provides that a city election commission shall perform such duties relative to the preparation, printing and delivery of ballots as required by law of county boards of election commissioners.*

*Sections 3-101 through 3-108 of the 1997 Detroit City Charter intermix the separate responsibilities the Office of the City Clerk and the City Clerk as the “chief elections officer of the city” who is the chair of the Election Commission. The recommended changes provide a clear delineation between the responsibilities of the Department of Elections and the Office of the City Clerk. In addition, the recommended changes provide a clear delineation between the role of the City Clerk as a member of the Election Commission and as the head of the Office of the City Clerk.*

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## ARTICLE 4. THE LEGISLATIVE BRANCH

### CHAPTER 1. CITY COUNCIL

#### Sec. 4-121. Special counsel.

The City Council may obtain the opinion or advice of an outside attorney in any matter pending before ~~it~~ the Body. As provided for in this section, a member of the State Bar of Michigan may be designated as outside counsel.

Where ~~there exists~~ a conflict of interest exists between the City Council and ~~another the Executive Branch of City government~~, the City Council ~~has the authority is~~ authorized to retain ~~an attorney licensed to practice law in Michigan who shall~~ outside counsel, who is a member of the State Bar of Michigan and is not employed by, or under contract with, the City of Detroit, to represent the City Council, as a Body, in legal proceedings. Such attorney ~~shall not~~ is not authorized to represent the City as a municipal corporation in any legal proceeding.

#### **COMMENTARY**

*In the 1974 Detroit City Charter, this section provided that “The City Council may obtain the opinion of an outside attorney in any matter pending before it.” The modification of this section in the 1997 Detroit City Charter has resulted in confusion regarding the selection of outside counsel. If City Council were permitted to retain a City appointee or employee to handle legal research or litigation as outside counsel, when the individual is being paid to conduct other work, the individual would be “double dipping” when also performing work for City Council.*

#### Sec. 4-122. Approval of contracts.

The City may not purchase ~~of~~ goods or services, or in any way procure property ~~or the services of, from~~ independent contractors ~~without approval by resolution of the city council except as provided by ordinance unless the appropriation for the contract was approved during the budget process in accordance with Section 8-205 of this Charter.~~

#### **COMMENTARY**

*The Michigan Home Rule City Act, MCL 117.1 et seq., does not require that Michigan home rule city charters contain provisions for the method that contracts are approved. Council approves appropriations and priorities during their budget analysis. Contract level approval by Council is duplicative in some cases and inefficient in others.*

*Auditor General oversight under Section 4-205 of this Charter will provide transparency. This change will provide a more efficient process while ensuring that City Council maintains its oversight of City expenditures.*

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## **ARTICLE 4. THE LEGISLATIVE BRANCH**

### **CHAPTER 2. AUDITOR GENERAL**

#### **Sec. 4-205. Powers and duties.**

The auditor general shall:

1. Make audits of the financial transactions of all city agencies at least once every two (2) years or as otherwise directed by the city council. The auditor general shall have access to the financial and other records of all city agencies at any time.

2. Make a full report to the city council of each individual audit and file a copy with the mayor.

3. As soon as possible after the close of each fiscal year, make a report of the financial position of the city. The report shall be a public record.

4. Investigate the administration and operation of any city agency and report findings and recommendations to the city council and the mayor. The auditor general may request and shall be given necessary assistance and information by each agency. The auditor general may subpoena witnesses, administer oaths, take testimony, require the production of evidence relevant to a matter under investigation, enter and inspect premises within the control of any agency during regular business hours.

To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the auditor general shall apply to the appropriate court.

5. From time to time make reports to city agencies of irregularities of practice and erroneous accounting methods with recommendations for improving the accounting procedures and systems of the agencies.

Recommendations, which are not put into effect by the agency, shall be reviewed by the finance director, who shall advise the auditor general and the city council of action being taken with respect to the recommendations.

6. Upon request of the budget director, make available to the budget director all information useful in the preparation of the capital agenda or annual budget.

7. Settle all disputed claims in favor of or against the city to the extent and in the manner provided by ordinance. All appeals from determinations made by the auditor general shall be brought in the court provided by law. However, no proceedings may be

brought upon a claim within the jurisdiction of the auditor general until the claim is rejected by the auditor general or until six (6) months have elapsed from the time of filing the claim with the auditor general.

8. At the request of City Council, review all contracts for goods and services for compliance with Section 8-205 of this Charter and the City's Purchasing Ordinance.

**COMMENTARY**

*This section requires that the Auditor General review all contracts for goods and services to ensure compliance with Section 8-205 and the City's Purchasing Ordinance. This change will provide Legislative Branch oversight of Executive Branch purchases of goods and services.*

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**ARTICLE 4. THE LEGISLATIVE BRANCH**

**CHAPTER 3. OMBUDSPERSON**

**~~Sec. 4-301. Ombudsperson.~~**

~~The ombudsperson shall be appointed by a two thirds (2/3) majority of city council members serving.~~

**~~Sec. 4-302. Term of office.~~**

~~The ombudsperson's term is ten (10) years.~~

~~The ombudsperson may be removed for cause by a two thirds (2/3) majority of city council members serving.~~

~~Any person who has held the position of ombudsperson is not eligible for re-appointment.~~

**~~Sec. 4-303. Vacancy.~~**

~~If a vacancy occurs in the office of ombudsperson, the city council shall, within sixty (60) days, fill the office for a full term.~~

**~~Sec. 4-304. Salary.~~**

~~The salary of the ombudsperson is equal to the salary of the auditor general.~~

**~~Sec. 4-305. Staff.~~**

~~To carry out the responsibilities of the office, the ombudsperson may, within appropriations, appoint not more than six (6) employees who are exempt from article 6, chapter 5 of this Charter. The number of exempt positions on the ombudsperson's staff may be increased by a majority of city council members serving.~~

**~~Sec. 4-306. Definition.~~**

~~In this chapter, "official act" means any action, omission, decision, recommendation, practice or procedure of any agency.~~

**~~Sec. 4-307. Jurisdiction.~~**

~~The ombudsperson may investigate any official act of any agency except elective officers which aggrieves any person.~~

~~The authority of the ombudsperson extends equally to all agencies. However, with respect to any investigation authorized by this Charter to be made by an agency having subpoena power, the ombudsperson may only investigate and report whether the agency's investigation and hearing, if any, was conducted fully and fairly.~~

~~The ombudsperson may establish procedures for receiving and processing complaints, conducting investigations and hearings, and reporting findings. No fee shall be levied for the filing or investigation of complaints.~~

**~~Sec. 4-308. Powers of investigation.~~**

~~The ombudsperson may request and shall be given necessary assistance and information by each agency. The ombudsperson may subpoena witnesses, administer oaths, take testimony, require the production of evidence relevant to a matter under investigation, enter and inspect premises within the control of any agency during regular business hours, and establish rules of procedure. To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the ombudsperson shall apply to the appropriate court.~~

~~Where there exists a conflict of interest between the ombudsperson and another branch of government, the ombudsperson has the authority to retain an attorney licensed to practice law in Michigan who shall represent the ombudsperson in legal proceedings. Such attorney shall not represent the city as a municipal corporation in any legal proceeding.~~

**~~Sec. 4-309. Delegation of powers.~~**

~~The ombudsperson may delegate in writing to a member of the staff the powers to administer oaths and take testimony.~~

~~A delegation is revocable at will and does not prevent exercise of any power by the ombudsperson.~~

**~~Sec. 4-310. Correspondence from person detained.~~**

~~Any letter to the ombudsperson from a person in a place of detention, penal or otherwise, under the control of an agency shall immediately be forwarded, unopened, to the ombudsperson.~~

**~~Sec. 4-311. Consultation required.~~**

~~No report or recommendation that criticizes an official act shall be announced until every agency or person affected is allowed a reasonable opportunity to be heard with the aid of counsel.~~

~~After the hearing, if the ombudsperson believes it necessary to make a formal report, a copy of any statement made by an agency or person affected shall accompany the report.~~

**~~Sec. 4-312. Reports.~~**

~~The ombudsperson shall make periodic reports to the city council of action taken under this chapter. All reports shall be made public.~~

**~~Sec. 4-313. Duty to report illegal acts.~~**

~~If the ombudsperson has probable cause to believe that any elective officer, appointee, employee or member of an agency or any person doing or seeking to do business with an agency has committed or is committing any illegal act, the ombudsperson shall promptly refer the matter to the appropriate authorities.~~

**~~Sec. 4-314. Obstruction.~~**

~~The office or position of any elective officer or appointee who willfully and without justification or excuse obstructs any investigation of the ombudsperson by withholding documents or testimony may be forfeited under section 2-107(2) of this Charter.~~

**~~Sec. 4-315. Immunity.~~**

~~The ombudsperson and the staff shall be, to the full extent permitted by law, immune from any suit based on any report or communication within the scope of official duties.~~

**Sec. 4-316. Limitations.**

The ombudsperson may not hold any office of trust or profit other than the office of ombudsperson, or engage in any occupation for profit outside the duties of this office. The ombudsperson is not eligible to hold any city office until two (2) years after leaving the position.

**Sec. 4-317. Remedies cumulative.**

The remedies of this chapter are additional to those provided under any other law.

**COMMENTARY**

*The Office is an agency of the City Council. According to the Budget Department, a 2005 benchmark study on the funding of the Ombudsperson function revealed the uniqueness of this function in local government, whose primary service provided by an ombudsperson’s office is the intake and tracking of complaints. Based upon research conducted by the Budget Department, the International Ombudsman Institute indicates that only two municipal members in the United States, and few other non-members, have an ombudsperson’s office in their city-organizational chart:*

| <i>City</i>                             | <i>Description</i>   |
|---|--|
| <i>City of Anchorage Ombudsman</i>      | <i>Similar to Detroit office</i>   |
| <i>City of Boise Ombudsman</i>          | <i>Investigates Police misconduct</i>  |
| <i>City of Charleston Ombudsman</i>     | <i>Mayor appoints, assesses current systems</i>  |
| <i>Public Advocate for New York</i>     | <i>Elected next in line to the Mayor: reports City Charter non-compliance; monitors public information efforts; presides at City Council meetings; is retirement system member</i> |
| <i>Portland Oregon Auditor’s Office</i> | <i>Reports on complaints, attempts service improvements</i>  |
| <i>City of Provo Utah Ombudsman</i>     | <i>Similar to Detroit office</i>   |

*As indicated by the research conducted by the Budget Department, the City of Detroit is only one of three (3) cities in the United States, which has an Office of Ombudsperson. Due to the budgetary constraints facing the City of Detroit and the lack of utility for the function, the Office of Ombudsperson should be omitted from the revised Detroit City Charter as the Ombudsperson is only authorized to make referrals and recommendations.*

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**ARTICLE 4. THE LEGISLATIVE BRANCH**

**CHAPTER 4. BOARD OF ZONING APPEALS.**

In accordance with Section 601(1) of the Michigan Zoning Enabling Act, MCL 125.3601, the City of Detroit shall enact an ordinance that establishes one (1) appeal

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of the Buildings, Safety Engineering, and Environmental Department or of the Planning and Development Department; and 2) hold hearings for requests that non-conforming uses be changed or expanded, that a prohibited use be established, or that a variance be granted. In accordance with MCL 125.3601(1), the ordinance shall provide that the City Council appoints members to the Board of Zoning Appeals.

In addition, the ordinance shall provide:

1. For rules governing the appeal, including the parties entitled to be heard in proceedings before the Board;
2. In any review proceeding, that the Buildings, Safety Engineering, and Environmental Department or the Planning and Development Department file a written statement and may appear before the Board in support of its decision;
3. The effect of a decision of the Board; and
4. For compensation of Board members.

### **COMMENTARY**

*Section 601(1) of the Michigan Zoning Enabling Act, MCL 125.3601, provides that "A zoning ordinance shall create a zoning board of appeals." Pursuant to MCL 125.3601(1), the City Council is required to appoint members to the Board of Zoning Appeals. Based upon state law, the Board of Zoning Appeals has been moved from Article 7, The Executive Branch: Programs, Services and Activities Chapter 4, of the 1997 Detroit City Charter Building, to Article 4, the Legislative Branch.*

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## **ARTICLE 5. THE EXECUTIVE BRANCH: THE MAYOR AND GENERAL PROVISIONS**

### **Sec. 5-103. Mayoral appointments.**

The Mayor may appoint ~~a secretary and other~~ necessary secretaries and assistants to serve in his or her office.

Except as otherwise provided ~~for by law or~~ this Charter, the Mayor shall appoint a director for each department ~~of the executive branch a director~~ who serves at the pleasure of the Mayor as head of the department. ~~As used in this chapter, "director" means the administrative head of each department regardless of the title of a particular director.~~

Except as provided for by state law and subject to the approval of the City Council, the Mayor shall make all appointments to boards, commissions, or other multi-member bodies, which are implementing any program, services, or activity.

**COMMENTARY**

*Under Sections 5-103 of the 1997 Detroit City Charter, the Mayor is authorized to appoint his staff and a director for each department who serves at his pleasure. Except as provided for in Section 6-401 regarding the Corporation Counsel, the City Council does not have authority to approve or disapprove any department director. Section 5-102 of the 1997 Detroit City Charter, The Executive Branch, provides that: “Except as otherwise provided by law or this Charter, executive and administrative authority for the implementation of programs, services and activities of City government is vested exclusively in the Executive Branch.”*

*Despite the exclusive authority vested in the Mayor to implement programs, services and activities, since July 1, 1974, when the 1974 Detroit City Charter became effective, and continuing after the adoption of the 1997 Detroit City Charter, disputes have arisen between each Mayor and each City Council concerning appointment authority. In order to ameliorate this problem, it is recommended that Section 5-103 be changed. The recommended changes will assist in clarifying ambiguities that have arisen over the past 36 years and in dissipating conflicts between the Mayor and the City Council regarding appointment authority.*

**Sec. 5-105. Appointment of deputies.**

Except as otherwise provided by law or this Charter, the Mayor may appoint a deputy director of each department ~~of the executive branch shall, with the consent of the mayor, appoint a deputy.~~ The appointment shall be made, and may be revoked without cause, by a writing filed with the City Clerk.

**COMMENTARY**

*Under the City of Detroit’s strong-Mayor form of government, the Mayor has the prerogative to appoint a deputy director and, if so, to select the individual who will fill the position.*

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**ARTICLE 6. THE EXECUTIVE BRANCH: STAFF DEPARTMENTS**

**CHAPTER 3. FINANCE DEPARTMENT**

**Section 6-307. Privatization of City Services.**

~~The City shall provide by ordinance for a~~ This section provides the exclusive process by which the City shall act prior to any determination or action to enter into any agreement, by which a non-governmental person or entity provides services to the City substantially similar in whole or in part, to services provided by a regular employee of an a department or agency of the City. Such ordinance shall provide for the following: This section does not:

1. Apply to City employees who are covered by a collective bargaining agreement, which address outsourcing;
2. Apply to City employees who are covered by a collective bargaining agreement, which is silent regarding outsourcing, where the City is precluded by law from outsourcing the service;
3. Abrogate or limit any legal right afforded to the employees under the collective bargaining process;
4. Supersede Section 6-517 of this Charter;
5. Prohibit the City from obtaining contractual services, which are an expansion or addition to services already provided by governmental employees, provided, that the contractual services are not a replacement for existing governmental positions;
6. Apply to services, which are grant funded for a period of eighteen (18) months or less; or
7. Apply to voluntary or donated services, which are not being compensated by City funds.

The City shall not privatize City services unless and until:

1. The ~~preparation of~~ department or agency that provides the service prepares a comprehensive report ,\_ which details the need for the privatization -- and documents solicitation of bids from the affected employees and from outside vendors;
2. The department or agency provides comprehensive written estimates of the total current costs to the City of the ~~department or agency~~ providing the subject services in the most cost efficient manner, including all direct and indirect costs -- ; and
3. A requirement for Approval of by the legislative body to solicit bids ~~City Council~~ for the privatization, after its review of the comprehensive report and cost analysis.
4. An opportunity for the affected employees to organize and prepare a bid to provide the subject services.
5. A process whereby the agency prepares a comprehensive written analysis of all bids of public employees and non governmental entities, which would include, but not be limited to the cost of the bid to provide the

~~services, contract performance; and unemployment, pension or other accrued benefits resulting from loss of agency employees.~~

- ~~6. Other factors to be included in the consideration, other than cost, which could affect the public interest including the effect of transfer of services from the public to the private sector on the access, delivery or quality of services to be provided; the reduction in the employment level of City residents; the differences in work rules and management practices of the workers in the private sector, including those related to legal and constitutional protections and any loss of accountability to City residents which would result from the services being provided by a non-governmental person or entity.~~
- ~~7. The provision that any final recommendation for the privatization of services would require the two thirds (2/3) approval of the legislative body, which would be required to certify that it was its determination that the availability and quality of the subject services would be likely to equal or exceed the quality of services which could be provided by regular agency employees.~~
- ~~8. Provisions which would require the annual evaluation of the privatized services and the providing of such evaluation to the city council.~~

~~No provision of this section should be construed to abrogate or limit any legal rights afforded to the employees under the collective bargaining process.~~

~~Nothing in this section shall supersede provisions of section 6 517 of this Charter.~~

~~In addition, nothing in the ordinance should be construed as prohibiting the city from obtaining contractual services which are an expansion or addition to services already provided by governmental employees, provided that the contractual services are not a replacement for existing governmental positions.~~

~~An ordinance implementing this section shall be adopted within one hundred and eighty (180) days of the effective date of this Charter.~~

### **COMMENTARY**

*The changes that are recommended in this section will clarify the confusion that has arisen regarding the limits and standards that are intended by this section. Because collective bargaining agreements supercede both charter provisions and ordinances, the changes in this section recognize that, in fact, this section controls privatization concerning non-union employees.*

*Importantly, the rights of City employees will be protected by deleting language, which requires that the section be implemented through an ordinance. This change will*

*de-politicize the process and ensure that the will of the People of the City of Detroit is carried out without being modified through an ordinance.*

*It is understood that privatization of services is no panacea and in most cases City employees can perform services more cost effectively and efficiently than outside contractors. This Charter Provision mandates a thoughtful and thorough review of potential cost saving, service improvement recommendations, or both.*

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## **ARTICLE 6. THE EXECUTIVE BRANCH: STAFF DEPARTMENTS**

### **CHAPTER 4. LAW DEPARTMENT**

#### **Section 6-401. Law Department.**

The Law Department is headed by the Corporation Counsel and is responsible for providing all legal advice and representation to the Executive and Legislative Branches of City Government, except where disputes arise under Section 4-121<sup>4</sup> of this Charter. The Mayor shall appoint the Corporation Counsel, subject to approval of the City Council. However, if the City Council does not disapprove the appointment within thirty (30) days, the appointment is confirmed. The Mayor may remove the Corporation Counsel without cause.

#### **COMMENTARY**

*On August 17, 1972, the City Council Research and Analysis Division (“RAD”) was created, through enactment of an ordinance, to act as a research arm of the City Council. Over the past 38 years, RAD has often designated its agency, without charter authority, as the “attorneys” for the Legislative Branch of City government. When doing so, RAD duplicates and conflicts with the Law Department, which is Charter-mandated to represent both the Executive and Legislative Branches of City government and to protect the interests of the City of Detroit.*

*This change would assist in the proper delivery of legal services to the Legislative Branch of City Government. In addition, this change would ensure that legal advice be uniformly provided from one office. Lastly, this change will assist, along with the recommend changes, below, in Section 4-121 of the 1997 Detroit City Charter, to clarifying the charter authority of the Law Department to provide legal services, the non-charter authority of RAD to advise City Council on policy issues, and the selection of outside legal counsel when conflicts between the Mayor and the City Council result in litigation.*

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<sup>4</sup> See, Section 4-121 above.

## ARTICLE 6. THE EXECUTIVE BRANCH: STAFF DEPARTMENTS

### CHAPTER 5. HUMAN RESOURCES DEPARTMENT

#### Sec. 6-503. Human Resources Department director and deputy.

~~The human resources Mayor shall appoint a director shall be appointed by the mayor , and may appoint a deputy director, of the Human Resources Department.—The mayor may remove the director without cause. A deputy human resources director shall be appointed by and serve at the pleasure of the human resources director. Both the director and deputy director serve at the pleasure of the Mayor.~~

#### COMMENTARY

*This change recognizes that, because the Human Resources Department in under the Executive Branch of City government, the Mayor makes necessary departmental appointments.*

#### Sec. 6-508. Labor Relations.

~~A division of Labor Relations Division is created within the Human Resources Department. is created.~~

The Mayor may appoint either the Human Resources Director or another person as head of the Labor Relations Division.

The person named as head of the division shall hold the position at the pleasure of the Mayor.

In accordance with Article 6, Chapter 5, the head of Labor Relations Division may hire, promote, supervise, discipline and remove employees of the division, assign duties to the employees and supervise the performance of those duties.

The Labor Relations Division shall act for the City under the direction of the Mayor, in the negotiation and administration of collective bargaining contracts.

The City Council must ratify any collective bargaining contract agreed to between the City and the respective union before it becomes effective.

The terms of any collective bargaining contract, and all rules and rulings made under it, shall take precedence over any inconsistent classifications, rules, or policies of the Human Resources Department.

**COMMENTARY**

*This change clarifies the role of the City Council in ratifying collective bargaining agreements.*

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**ARTICLE 6. THE EXECUTIVE BRANCH: STAFF DEPARTMENTS**

**CHAPTER 6. ENVIRONMENTAL AFFAIRS**

**Sec. 6-601. Department of environment.**

~~The department of environment is headed by the director of environment.~~

**Sec. 6-602. General purpose.**

~~The purpose of this chapter is to conserve and protect the natural resources of the City of Detroit in the interest of the health, safety and welfare of the people, to promote improved social and economic conditions in the city and to protect limited environmental resources for the future benefit of city inhabitants.~~

**Sec. 6-603. Powers and duties.**

~~The department of environment shall:~~

- ~~1. Develop and implement a coordinated and comprehensive environmental policy for the City of Detroit;~~
- ~~2. Administer, enforce, manage and coordinate compliance by the City of Detroit with federal, state and local environmental laws and regulations;~~
- ~~3. Coordinate environmental programs for protection and conservation of land, water and air resources;~~
- ~~4. Develop and implement programs for response to emergency conditions which pose an immediate danger to health and safety to the people of Detroit or to the city's environment;~~
- ~~5. Advise, consult and cooperate with agencies of the federal, state and local governments in furtherance of the purposes of this chapter;~~
- ~~6. Develop and coordinate policy, programs and procedures for remediation, redevelopment and reuse of contaminated land sites in the City of Detroit;~~
- ~~7. Develop and coordinate policy, programs and procedures to encourage and promote innovative and competitively viable sustainable economic~~

~~development in the City of Detroit consistent with protection of the environment;~~

- ~~8. Provide technical support and assistance to other city departments in environmental matters, including response to federal, state and local governmental enforcement activities; qualification for eligible grant moneys, etc.;~~
- ~~9. Develop plans and proposals for joint cooperative investigation and research with the public and with private agencies and organizations on methods for eliminating or reducing land, air and water pollution;~~
- ~~10. Collect and disseminate appropriate educational literature and information, and otherwise promote education programs for the purposes of advising the general public of the necessity and methods for pollution prevention, securing public cooperation in pollution prevention measures and increasing public awareness of the importance of environmental protection and conservation of natural resources;~~
- ~~11. Do any and all other acts which may be necessary for the implementation of the powers and duties conferred on the department under this chapter.~~

#### **Sec. 6-604. Conservation.**

~~The department of environment shall develop programs for the protection and conservation of natural resources within the City of Detroit.~~

#### **Sec. 6-605. Environmental legislation.**

~~The department of environment shall propose new ordinances, laws and regulations to the mayor, city council and other governmental entities as appropriate for improvement of the quality of the environment and promotion of the mission of the department.~~

#### **COMMENTARY**

*On May 25, 2010, the City Council approved amendment of the Executive Organization Plan to merge the Building and Safety Engineering Department, an operating department, with the Department of Environmental Affairs, a staff department. This amendment resulted in the creation of the Buildings, Safety Engineering, and Environmental Department. These changes reflect the fact that functions of the new department fall within the sphere of an operating department. As such, the Environmental Affairs Department should be omitted from the revised Detroit City Charter as a staff department.*

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## **ARTICLE 7. THE EXECUTIVE BRANCH: PROGRAMS, SERVICES AND ACTIVITIES**

### **CHAPTER 1. GENERAL PROVISIONS**

#### **Sec. 7-102. Assignment of authorized functions.**

The Mayor shall prepare an executive organization plan, which, consistent with law and this Charter, sets forth all agencies of the executive branch and assigns authorized programs, services and activities to each agency.

The plan as proposed by the mayor shall be filed with the city council and made public. The City Council shall study and conduct hearings on the plan and may request the mayor to make modifications in it. Sixty (60) business days after the filing of the plan with the City Council, it shall become effective, with such modifications as are accepted by the Mayor, unless disapproved by a resolution adopted by a two-thirds (2/3) majority of city council members serving. All amendments to the plan must originate with the mayor and are subject to the same procedure in taking effect.

The plan shall include the office of mayor, the six (6) departments created by article 6, and all departments or functions created by article 7 or continued by section 7-101. However, the plan may not provide for more than thirty-six (36) departments, exclusive of any department organized under specific statutory authority, unless authority for a greater number is granted under Section 7-104.

The Mayor may not reassign or combine the functions of staff departments, but may ~~, except as to departments created under chapters 3, 9, 10, 11, 15 and 16 of this article,~~ assign any of the functions of an operating department to a staff department, reassign the functions of one (1) operating department to another operating department or combine operating departments.

#### **COMMENTARY**

*The current prohibition against reassigning or combining any functions of the Arts Department under Chapters 3, the Historical Department under Chapter 9, the Human Rights Department under Chapter 10, the Police Department under Chapter 11, the Water and Sewerage Department under Chapter 15, and the Zoological Park under Chapter 16 of Article 7, The Executive Branch: Programs, Services and Activities, with the functions of a staff or an operating department, or combining any of these six (6) operating departments limits the Administrations budgetary options regarding staffing. This change with permit flexibility in this area.*

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## ARTICLE 7. THE EXECUTIVE BRANCH: PROGRAMS, SERVICES AND ACTIVITIES

### CHAPTER 2. ~~RESPONSIBILITIES IN HEALTH AND SANITATION~~

#### ~~Sec. 7-201. Health.~~

~~The city is responsible for providing an adequate level of health services, both physical and mental, to all its residents.~~

~~An advisory commission for health, composed of at least five (5) members, shall be created under section 7-103.~~

#### ~~Sec. 7-202. Sanitation.~~

~~The city is responsible for collecting and disposing of wastes in the manner least harmful to the environment.~~

### COMMENTARY

*The City of Detroit Department of Health and Wellness Promotion was created under Section 2421 of the Michigan Public Health Code, MCL 333.2421, and not through the Michigan Home Rule City Act, MCL 117.1 et seq. In addition, the collection of waste by the Department of Public Works is provided for in Article 7, Chapter 7, of the 1997 Detroit City Charter. Because this Chapter has no current application, it is recommended that the Chapter be deleted.*

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## ARTICLE 7. THE EXECUTIVE BRANCH: PROGRAMS, SERVICES AND ACTIVITIES

### CHAPTER 4. BUILDINGS, SAFETY ENGINEERING, AND ENVIRONMENT

#### Sec. 7-401. ~~Duty under zoning law.~~ Buildings, Safety Engineering, and Environmental Department.

~~The building department shall administer and enforce all laws, ordinances and regulations relating to the use of land (“zoning”).~~

The Buildings, Safety Engineering, and Environmental Department is headed by a director who serves at the pleasure of the Mayor. The director may appoint, with the permission of the Mayor, a Deputy Director who shall serve at the pleasure of the Director.

**Sec. 7-402. ~~Applications filed under zoning law.~~ Responsibilities and duties.**

~~All applications for permits, grants, variances, waivers or exceptions of any kind under zoning laws, ordinances and regulations shall be made to the department.~~

~~The department may allow or deny permits, grants, variances, waivers and other exceptions upon the terms and conditions provided by ordinance.~~

The department shall:

1. Administer and enforce the Michigan Construction Codes, which regulate the construction and alteration of buildings in this state;
2. Administer and enforce the Detroit Zoning Ordinance, the Detroit Property Maintenance Code, and the Detroit Dangerous Buildings Ordinance to ensure the proper maintenance of existing buildings and their environments, and the elimination of blight;
3. Administer and issue business licenses that are required by the Detroit City Code;
4. Conserve and protect the natural resources of the City of Detroit in the interest of the health, safety, and welfare of the People,
5. Promote improved social and economic conditions in the City and protect limited environmental resources for the future benefit of City residents;
6. Develop and implement a coordinated and comprehensive environmental policy for the City of Detroit;
7. Administer, enforce, manage and coordinate compliance by the City of Detroit with federal, state and local environmental laws and regulations;
8. Coordinate environmental programs for protection and conservation of land, water and air resources;
9. Develop and implement programs for response to emergency conditions, which pose an immediate danger to health and safety to the people of Detroit or to the City's environment;
10. Advise, consult and cooperate with agencies of the federal, state and local governments in furtherance of the purposes of this chapter;
11. Develop and coordinate policy, programs and procedures for remediation, redevelopment and reuse of contaminated land sites in the City of Detroit;

12. Develop and coordinate policy, programs and procedures to encourage and promote innovative and competitively viable sustainable economic development in the City of Detroit consistent with protection of the environment;
13. Provide technical support and assistance to other City departments in environmental matters, including response to federal, state and local governmental enforcement activities; qualification for eligible grant moneys, and the like;
14. Develop plans and proposals for joint cooperative investigation and research with the public and with private agencies and organizations on methods for eliminating or reducing land, air and water pollution; and
15. Collect and disseminate appropriate educational literature and information, and otherwise promote education programs for the purposes of advising the general public of the necessity and methods for pollution prevention, securing public cooperation in pollution prevention measures and increasing public awareness of the importance of environmental protection and conservation of natural resources;

**Sec. 7-403. Board of zoning appeals. Coordination of Services.**

~~Except as otherwise provided by an ordinance, one (1) appeals board with the powers and duties that may be provided by ordinance shall be established by the city council in accordance with state law to review any decision made by the department under section 7 402 where any law, ordinance or regulation requires review by an appeals board.~~

~~The ordinance shall provide for rules governing the appeal, including the parties entitled to be heard in proceedings before the appeals board and the effect of a decision of the board, and may provide compensation for board members.~~

~~In any review proceeding, the building department shall file a written statement and may appear before the appeals board in support of its decision.~~

To the extent practicable, the department shall endeavor to create processes, which coordinate departmental services concerning development in the most efficient manner possible.

**Sec. 7-404. ~~Duty under other regulatory laws.~~**

~~To the extent practicable, the department shall also administer and enforce all other laws and ordinances regulating the development, maintenance and use of real property in the city.~~

**Sec. 7-405. One-stop service**

~~To the extent practicable, the department shall, in cooperation with other agencies whose permission is required prior to development, establish a procedure and application form under which an applicant for development permission may obtain, through the department, all necessary permission.~~

**COMMENTARY**

*On May 25, 2010, the City Council approved amendment of the Executive Organization Plan to the merge the Building and Safety Engineering Department, an operating department, with the Department of Environmental Affairs, a staff department. This amendment resulted in the creation of the Buildings, Safety Engineering, and Environmental Department. These changes reflect the current status of the department and the fact that functions of the department fall within the sphere of an operating department.*

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**ARTICLE 7. THE EXECUTIVE BRANCH: PROGRAMS, SERVICES AND ACTIVITIES**

**CHAPTER 6. CONSUMER AFFAIRS**

**Sec. 7-601. ~~Department.~~**

~~The Consumer Affairs Department shall:~~

- ~~1. Conduct research and, in consultation with other public and private agencies, develop programs for consumer education and protection;~~
- ~~2. Enforce laws and ordinances prohibiting fraudulent or dishonest practices in the advertising, offering for sale, and sale of goods and services;~~
- ~~3. Except as otherwise provided by law or this Charter, grant, revoke, or approve transfers of all licenses and permits required by any law or ordinance for any business and collect fees for licenses and permits; and~~
- ~~4. Receive, evaluate, and investigate complaints, refer cases to appropriate federal, state, regional or county agencies, or take such other action as may be authorized by ordinance.~~

**Sec. 7-602. Powers.**

~~The department director may subpoena witnesses, administer oaths, take testimony, require the production of evidence, and promulgate rules for the department's procedures. To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the department director shall apply to the appropriate court.~~

~~The department director may delegate the powers to administer oaths and take testimony.~~

**Sec. 7-603. Consumers Council.**

~~A consumers council is created.~~

~~The council consists of the department director and seven (7) members to be appointed for three (3) year terms by the mayor. The Mayor shall annually designate one (1) of these seven (7) as chairperson. Not more than three (3) terms expire each year. A member serves at the pleasure of the mayor. The members must represent a cross section of consumer interests.~~

~~The consumers council shall advise the department on general program goals, undertake studies, make reports, and foster cooperation among federal, state, regional, county and city agencies and private groups.~~

**COMMENTARY**

*Sections 7-610 through 7-603 of the 1997 Detroit City Charter provide for a Consumer Affairs Department. Through amendment of the Executive Organization Plan, the three (3) main functions of the department have been reassigned to the Buildings, Safety Engineering, and Environmental Department (business licenses), the Police Department (weights and measures), and the Human Services Department (consumer complaints).*

*Currently, there is no functioning Consumer Affairs Department. As such, the Consumer Affairs Department should be omitted from the revised Detroit City Charter.*

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**ARTICLE 7. THE EXECUTIVE BRANCH: PROGRAMS, SERVICES AND ACTIVITIES**

**CHAPTER 11. POLICE**

**Sec. 7-1105 1102. Chief of Police.**

The Police Department is headed by the Chief of Police. The Mayor shall appoint a Chief of Police, who is skilled and experienced in police administration or law enforcement. The Chief of Police serves at the pleasure of the Mayor.

**Sec. 7-1106 1103. Duties of the Chief of Police.**

The chief of police is the chief executive officer of the police department and shall administer the department under the policies, rules, and regulations established by the board and shall:

1. Organize the department with the approval of the board;
2. Recommend rules, regulations, and procedures to the board for its approval;
3. Prepare the annual budget for the police department;
4. Hire, promote, commend, transfer, and discipline employees of the department; have authority to suspend and discharge employees of the department under section 7-1107; file complaints against employees with the board secretary; and direct employees in the performance of their duties;
5. Except as otherwise provided by the board, keep and control all property, books, records, and equipment belonging to the department or held by the department as evidence;
6. Submit to the board an annual report of the operations of the department for forwarding to the mayor, the city council, and the public;
7. Present annually a police department operations improvement plan. The plan shall be filed with the city clerk, distributed to the mayor and city council, and be a public record;
8. Exercise such other powers as conferred by the board.

The chief, with the consent of the board, may appoint necessary deputy chiefs. The chief may attend all meetings of the board and speak on any issue but may not vote.

**Sec. 7-~~1102~~ 1104. Board of Police Commissioners.**

The ~~police department is headed by a five (5) member~~ Board of Police Commissioners shall consist of five (5) members. The members of the Board shall be appointed by the Mayor, subject to the approval of the City Council. However, if the City Council does not disapprove an appointment within thirty (30) days, an appointment is confirmed. The term of membership on the Board is five (5) years and not more than one (1) member's term expires each year. The Mayor shall not remove members of the Board except for cause. All members of the board must be residents of the City. As nearly as possible, the Board shall be representative of the total community. The Board shall elect a Chairman annually. A member of the Board ~~may~~ shall not serve consecutive terms as Chairman ~~nor may a person~~ serve more than five (5) consecutive years ~~consecutively~~ as a member of the Board. The Board shall meet at the call of its Chairman, but shall meet at least once each week. All meetings shall be public except that the Board may, in its discretion, publicly reserve specified subjects for executive session. No member of the Board shall have been an employee or elective or appointive officer of the City within three (3) years prior to appointment or while serving as a member of the Board. Compensation for members of the Board may be established by ordinance.

**Sec. 7-~~1103~~ 1105. Duties of the board of police commissioners.**

The board shall:

1. In consultation with the chief of police, and with the approval of the Mayor, establish policies, rules and regulations;
2. ~~Review and approve~~ Be consulted and comment on the departmental budget before ~~its~~ submission to the Mayor;
3. Receive and resolve, as provided in this Chapter, any complaint concerning the operation of the police department;
4. Act as final authority in imposing or reviewing discipline of employees of the department;
5. Make an annual report to the Mayor, the City Council, and the public of the department's activities during the previous year, including the handling of crime and complaints, and of future plans.

The Board may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the Board shall apply to the appropriate court. The Board may delegate in writing to a member of its staff the powers to administer oaths and take testimony. A delegation is revocable at the will of the Board and does not prevent exercise of any power by the Board.

**Sec. 7-~~1104~~ 1106. Staff.**

1. Secretary to the Board.

The Board shall appoint a board secretary, who serves at its pleasure. The secretary shall not have been an employee or elective or appointive officer of the city within three (3) years prior to appointment. The secretary shall attend board meetings.

2. Investigative staff.

The Board shall also appoint a chief investigator and such additional staff of investigators as it deems necessary. The Chief Investigator shall not have been an employee or elective or appointive officer of the city within three (3) years prior to appointment. Investigators serve at the Board's pleasure. They must possess skills and experience necessary for investigative work.

3. Other staff.

The Board may hire, in accordance with Article 6, Chapter 5, such additional staff as is necessary to carry out its duties. All members of the staff are under the direction of the Board, and the Chief of Police has no authority over any member of the staff.

**COMMENTARY**

*Section 117.3(a) of the Michigan Home Rule City Act, MCL 117.3(a), requires that a home rule city charter contain a provision for “the election of a mayor, who shall be the chief executive officer of the city.” However, the Michigan Home Rule City Act does not require that the Charter establish a Board of Police Commissioners.*

*Under the 1997 Detroit City Charter, the Police Department is only one of two City departments that are headed by a commission instead of a department director. Because the City of Detroit is a strong-Mayor form of government, the Chief of Police should be directly responsible, as the head of the Police Department, to the Mayor for the delivery of services without the Board of Police Commissioners being placed in the chain of command in the City Charter between the Mayor and the Chief of Police. As a part-time Board, the Board of Police Commissioners is unable to oversee the day-to-day operations of the Police Department, which requires the round-the-clock attention that only a full-time Chief of Police can provide. Sections 7-1102 through 7-1106 of the 1997 Detroit City Charter are realigned, above, to reflect these changes.*

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**ARTICLE 7. THE EXECUTIVE BRANCH: PROGRAMS, SERVICES AND ACTIVITIES**

**CHAPTER 15. WATER AND SEWERAGE**

**Sec. 7-1501. Department.**

The Water and Sewerage Department is headed by a seven (7) member board known as the Board of Water Commissioners. The members of the Board shall be appointed by and serve at the pleasure of the Mayor. No member of the Board shall be a City employee or a contractor of the City. The term of membership on the Board is four (4) years and not more than two (2) terms expire each year.

A member must be a citizen of the United States and a resident of Michigan. At least four (4) members of the Board must be residents of Detroit.

The ~~board~~ Mayor shall appoint, with the approval of the ~~mayor~~ Board, a director and a deputy director for the department. The director and deputy director serve at the pleasure of the ~~board~~ Mayor.

**COMMENTARY**

*The change codifies the current practice, which prohibits City employees or contractors from serving on the Board. Under the City of Detroit’s strong-Mayor form of government, the Mayor has the prerogative to appoint a director and deputy director and to select the individuals who will fill the positions with the approval of the Board.*

**Sec. 7-1502. Powers.**

Under the direction of the Board, the department shall supply water, drainage and sewerage services within and outside of the city.

The Board shall periodically establish equitable rates to be paid:

1. By the owner or occupant of each house or building using water, drainage, or sewerage services; and
2. By any person, municipality, or public or private entity or agency ~~making a wholesale purchase of~~ receiving water, drainage or sewerage services from the city.

Unless otherwise provided by contract, the unpaid charges for water, drainage, and sewerage services, with interest, shall be a lien of the City upon the real property using or receiving ~~them~~ the service.

The Board may make all necessary adjustments in the collection of water, drainage or sewerage charges.

~~The board may be given additional authority to establish rates by ordinance.~~

The Board shall make and enforce all necessary rules and regulations for the Department, and for the exercise of such other powers as are conferred upon the Board by this Charter.

Upon the request of the Mayor, the Board shall advise the various agencies of the City on matters involving water resource management.

The Board shall have exclusive charge of the construction, management, supervision, maintenance, extension, expansion, operation, use and control of all water, drainage and sewerage assets owned by the City.

**COMMENTARY**

*The changes in the rate language clarifies that the section applies not only to persons and entities with contracts with the Detroit Water and Sewerage Department, but also to all persons and entities using the Detroit Water and Sewerage System. In addition, the change clarifies the role of the Board.*

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## ARTICLE 8. PLANNING AND FINANCIAL PROCEDURES

### Sec. 8-205. Form of appropriation.

All appropriations to each department and agency shall be made in lump sums to the department or agency's specific programs, services or activities, or to additional classes as the Mayor may recommend in the proposed budget, subject to amendment by deletion, addition or substitution by the City Council. However, the accounts of each agency shall be maintained in such detail as required by generally accepted standards of financial reporting. A uniform system of accounts shall be established as required by state law.

Where the Mayor has designated general funds for the purchase of goods and services, or to procure property, the amount of the appropriation shall be designated in the Mayor's budget and approved by the City Council through adoption of the budget. During the budgetary process, the City Council may request such supporting data for each appropriation as ~~it~~ the Body deems necessary.

#### **COMMENTARY**

*This change will make this section commensurate with the change that is made in Section 4-122 of the Charter.*

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## ARTICLE 11. RETIREMENT PLANS

### Sec. 11-102. Continuation of existing plans.

The retirement plans of the City existing when this Charter takes effect, including the existing governing bodies for administering those plans, the benefit schedules for those plans and the terms for accruing rights to and receiving benefits under those plans shall, in all respects, continue in existence exactly as before until changed by ~~this Charter or an ordinance~~ or in accordance with this article applicable law.

#### **COMMENTARY**

*The adoption of a new Charter, even with the recommended changes to this article, will have no effect on existing plans, the governing bodies administering the plans, or the level of benefits accruing or provided under the plans. Since no change is being made, it is recommended that the words "by this Charter or" be deleted to clarify and avoid possible confusion. It is recommended that the phrase "or in accordance with applicable law" be added to recognize that municipal pension plans can be, and often are, changed through the collective bargaining process, and are always subject to applicable statutes notwithstanding the provisions of local charter.*

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**Sec. 11-103. Principles applicable in administering plans.**

~~Not more than two (2) governing bodies for administering the City's retirement plans may be established.~~

~~1. The board of trustees of the general retirement system shall consist of:~~

~~A. The mayor;~~

~~B. A city council member selected by that body;~~

~~C. The city treasurer.~~

~~D. Five (5) members of the retirement system, to be elected by the members of the retirement system under rules and regulations as may be adopted by the board, except that not more than one (1) trustee shall be elected from any department;~~

~~E. A citizen of the city who is neither an employee of the city nor eligible to receive benefits under the retirement system, appointed by the mayor, subject to approval of the board.~~

~~F. One (1) retirant, receiving benefits under the retirement system and elected by retired city employees under procedures established by ordinance.~~

~~2. The board of trustees of the police and fire retirement system shall consist of:~~

~~A. The mayor or in the absence of the mayor, a designee;~~

~~B. A city council member selected by that body;~~

~~C. The city treasurer;~~

~~D. The chief of police;~~

~~E. The fire commissioner;~~

~~F. Three (3) firefighters who are members of the retirement system elected by the firefighter members under the rules and regulations as may be adopted by the board. Trustees shall be:~~

~~1. Two (2) to be elected by and from members holding the rank of lieutenant (or equivalent) and lower ranks;~~

~~2. One (1) to be elected by and from members holding a rank above lieutenant (or equivalent).~~

~~G. Three (3) police officers who are members of the retirement system elected by police officer members under the rules and regulations as may be adopted by the board. Trustees shall be:~~

~~1. Two (2) to be elected by and from members holding the rank of lieutenant (or equivalent) and lower ranks;~~

~~2. One (1) to be elected by and from members holding a rank above lieutenant (or equivalent); and~~

~~H. A retirant, receiving benefits under the retirement system who shall be a resident of the city and elected by retired firefighters and police officers under procedures established by ordinance.~~

~~Staff services required by a governing body shall be provided as determined by the finance director.~~

## **COMMENTARY**

*Notwithstanding its title, Section 11-103 contains no principles to be applied in administering plans. The subject matter of the section, Board composition, need not be addressed in the Charter. Indeed, with respect to the Police and Fire Retirement System, the Board structure described in Section 11-103 is no longer in effect, having been replaced by a different structure pursuant to the collective bargaining process. Since under Section 11-102 the existing governing bodies administering the city retirement plans when this Charter takes effect continue in existence exactly as before, it is recommended that Section 11-103 be deleted and that any potential future changes be handled pursuant to Section 11-102 “by ordinance or in accordance with applicable law.”*

## **ARTICLE 12. INITIATIVE AND REFERENDUM**

### **Sec. 12-104. ~~Duties of the City Clerk~~ Filing and Canvass of Petitions.**

The petitions shall be filed with the Office of the City Clerk. The City Clerk shall verify the number of petitions that were filed and transmit petitions to the Department of Elections for a canvass of the petition. Within ten (10) days of receipt, the Department of Elections shall ~~, within ten (10) days,~~ canvass the signatures thereon to determine their sufficiency and make a report of the result to the City Council. Any signature on an initiative petition obtained more than six (6) months before the filing of the petition with the Office of the City Clerk shall not be counted.

### **Sec. 12-107. ~~Procedure~~ Time limit for enactment of ordinance.**

Upon the report of the ~~clerk~~ Department of Elections that the initiative or referendum petitions are sufficient, and filed within the time limits provided by this Charter, the City may within ~~thirty (30)~~ sixty (60) days:

1. In the case of an initiative petition, enact the ordinance , which is proposed by the petition, in accordance with Section 4-115, 4-116, 4-119 of this Charter;
2. In the case of referendum petition, repeal the ordinance ~~to~~ , which is set out in the petition refers , in accordance with Section 4-115, 4-116, 4-119 of this Charter.

~~If the City fails to enact or repeal the measure, the measure shall be submitted to the voters.~~

### **Sec. 12-108. Submission to Election Commission and voters.**

~~If a measure must be submitted to the voters, it shall be submitted:~~

1. ~~In the case of initiative, at the next election in the city, or, in the discretion of the city council, at a special election; and~~
2. ~~In the case of referendum, at the next election in the city occurring not sooner than seventy (70) days after the city council's determination not to repeal the measure, or, in the discretion of the city council, at a special election.~~

~~Except as otherwise required by law, the result of any initiative or referendum election shall be determined by a majority of the voters voting on the question.~~

If the City fails to enact or repeal the ordinance in accordance with Section 12-207 of this Charter, the City Council shall forward the proposed initiative or referendum petition to the Election Commission for a determination of whether the question can lawfully be placed on the ballot. If there is no legal impediment to placing the measure on the ballot, the Election Commission shall place the question on the ballot and submit the measure to the voters in accordance with the requirements of Michigan Election Law, MCL 168.1 et seq.

#### **COMMENTARY**

*The changes to Sections 12-104, 12-107, and 12-108 clarify the duties of the City Clerk, the City Council, the Mayor, and the Election Commission regarding the right of the People of the City of Detroit to initiate or repeal City ordinances. In addition, the changes make these sections commensurate with Michigan Election Law, MCL 168.1 et seq.*

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