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TO: Elizabeth Glidden
Chair, Intergovernmental Relations Committee

FROM: Peter W. Ginder
Deputy City Attorney, Civil

CC: Barbara Johnson
Council President

Robert Lilligren
Council Vice President

DATE: June 27, 2012

RE: Comments on the Charter Commission's
Proposed "Plain Language Charter Revision"

MEMORANDUM

You have asked for my recommendation regarding the proposed "plain language charter revision" ("PLCR") developed by the Charter Commission. As you know, the City Attorney's Office ("CAO") has devoted hundreds of hours reviewing various drafts of the PLCR so that, if approved, the revised charter would not cause unintended and undesired consequences. Based on our experience in reviewing each new draft, however, we know that this extensive revision – a rewrite and reordering of the entire charter – will undoubtedly result in substantive changes in meaning that were not intended and could be quite problematic. This is despite everyone's best efforts (including the Charter Commission) to avoid any such issues. On that basis and for the reasons noted below, I do not support the PLCR charter revision and recommend that it not be approved.

This opposition to the project is not new. The CAO has consistently outlined its serious concerns to the Council and Charter Commission while, at the same time, fulfilling its obligation as legal counsel to both the City and the Commission to identify and correct issues as they are discovered.

My concerns include the following:

1. **Wholesale change to the City Charter will result in unintended consequences, potentially interfering with operations of the City and the governance structure.** The PLCR is a complete rewrite of our existing charter. Each time we have reviewed the PLCR, the CAO and counsel for the



Park Board have discovered new issues caused by PLCR revisions that require correction. The corrections themselves often cause yet other issues. Some of the issues have been relatively minor; others have been quite significant. There is a substantial likelihood, despite the best efforts of all involved, that the PLCR contains other oversights and/ or unintended changes that will be discovered when it is too late.

One recent example, just raised by the Park Board within the last month, relates to maximum tax levies allowed under the Charter. Tax levies involve a complex interplay between the Charter, state law and special laws. The Park Board has asserted that the percentage numbers (in lieu of the old fashioned mill rate language contained in the Charter) for the Park Board levy are too low. This is a significant issue and one that was only discovered by the Park Board recently even though the wording has been in the draft for a number of years. Another example involved a section that provided for current officeholders to hold over in the event that there was an election issue and an election certificate could not be issued in time for the start of a new term. This provision was inadvertently excluded in the PLCR draft submitted to the Council for comment. While now corrected, this is the type of error that could have significant consequences for the stability of city operations.

The risk is enhanced because process for changing even the most minor error in the City Charter is a lengthy process dictated by state law with a timeline that is many months in length, even if the City Council and Charter Commission are in unanimous agreement that the change needs to be made. The completely revised wording of the PLCR will inevitably result in changed interpretations and likely litigation as parties may seek to challenge the City's interpretation of these new provisions.

- 2. The proposed benefit of the PLCR, which is to 'modernize, simplify and unclutter' the Charter is greatly outweighed by the cost to the City and the public of implementing the rewritten charter.** The PLCR, if adopted, would result in a lengthy and time-consuming process of reinterpreting provisions of the new charter. This reinterpretation is in addition to the hundreds of hours it will take to translate into ordinance the many sections of the Charter that will be eliminated by the PLCR. The PLCR reduces the length of the Charter from 190 to 60 pages. It is expected that most of the excised 130 pages will need to be reviewed and incorporated into ordinance, requiring substantial staff work, not only by the CAO staff, but the staff of impacted departments. In the CAO's 2013 budget proposal, we have noted that, if the PLCR is approved, the CAO will need funding for an additional attorney position to revise ordinances and implement the new charter. In these budget times, in particular, there are higher priorities requiring staff time and resources.

From our request to cities across the country for guidance on how to implement a Charter modernization rewrite, we have learned that projects involving complete revisions of a city charter are rarely undertaken and even more rarely successful. In the one city where a charter modernization was approved, the city attorney advised that they had spent the following decade developing interpretations of the new charter and implementing its provisions.

Changes to our charter to fix certain inconsistencies and to eliminate or modify out-of-date provisions are undoubtedly advisable. The PLCR, however, does not fix these problems because that was not the Charter Commission's intent in undertaking the project – their intent has been to modernize the wording and shorten the length of the Charter without making any substantive changes.

Council Member Elizabeth Glidden

June 25, 2012

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These comments are not intended as a criticism of the former and current Charter Commission members who have devoted hundreds of hours of volunteer time to this undertaking. I have the utmost respect for the Commissioners and their work is to be commended. My comments merely summarize the inherent and unavoidable issues presented by the PLCR project.