

**CHARTER REVIEW COMMITTEE MEETING
MUNICIPAL LIBRARY, COMMUNITY ROOM, 2ND FLOOR
41 WEST THURMAN AVENUE
OCTOBER 9, 2013, 5:30 P.M.**

Call to Order
Roll Call

ORAL COMMUNICATIONS

This is the opportunity to address the Charter Review Committee. Unless additional time is authorized by the Committee, all commentary shall be limited to three minutes.

SCHEDULED MATTERS

- 1. Minutes of October 2, 2013**
Re: Approving draft Minutes of the Charter Review Committee Meeting of October 2, 2013.
- 2. Consideration of Modifications to Charter Section 12, Pertaining to Publication Requirements**
Re: Review and consideration of existing Charter provisions related to publication of ordinances.
- 3. Consideration of Modifications to Charter Section 68, Pertaining to Leases**
Re: Review and consideration of draft language pertaining to leases of City property.
- 4. Consideration of Modifications to Charter Section 9, Pertaining to Council Reorganization**
Re: Review and consideration of draft language pertaining to the above named section.
- 5. Consideration of Modifications to Charter Section 67, Pertaining to Council Manic Interference**
Re: Review and consideration of language options pertaining to the above named section.
- 6. Consideration of New City Charter Section 74 – General Penalty**
Re: Review and consideration of draft language adding a General Penalty Section to the Charter.
- 7. Consideration of Committee Member Items of Interest**
- 8. Scheduling of Future Meetings**

OTHER MATTERS

ADJOURNMENT

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the Committee after distribution of the Agenda packets are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at www.ci.porterville.ca.us.

**CHARTER REVIEW COMMITTEE MINUTES
MUNICIPAL LIBRARY, COMMUNITY ROOM, 2ND FLOOR
41 WEST THURMAN AVENUE
OCTOBER 2, 2013, 5:30 P.M.**

Called to Order at 5:30 p.m.

Roll Call: Member Green, Member Hardin, Member Salazar, Member Irish, Vice Chair Giraudi, Chair Bailey, Member Stowe

Absent: Member Bush, Member Cortez

ORAL COMMUNICATIONS

- Brock Neeley, Porterville, noted that under Robert's Rules of Order a motion to reconsider an item can only be made only by a member who voted with the prevailing side.
- Rick Elkins, Publisher of The Porterville Recorder, spoke in opposition of Item No. 6, stating State Law required publication of all ordinances in the local newspaper.
- Barry Caplan, Porterville, spoke regarding Item No. 4 and encouraged out of the box thinking with regard to elections and responsibilities of the mayor.
- Linda Hoy, Porterville, spoke in favor of strong mayor form of government and of areas where she has resided in the past.
- Joe Faure, former Mayor of Porterville, recommended a two year term for mayor and a super majority requirement for removal of the mayor; and spoke in opposition to district elections.
- Cathy (last name inaudible), Porterville, expressed concerned regarding Porterville's image; and spoke in favor of a separate election for mayor.
- Carlos Gomez, Porterville, spoke in support of an elected mayor; and expressed concern regarding the recent Council reorganization.
- Nicole Celaya, Porterville, thanked the committee for their invitation to speak regarding council reorganization and for their consideration of the process.
- Margaret Schaffer, Porterville, expressed concern regarding negative publicity received following recent council action; and spoke in support of positive changes.
- Linda Hoy, Porterville, spoke of erroneous statements made by members of the council during meetings, and the public's inability to correct them at the time they are made.

SCHEDULED MATTERS

1. Minutes of September 25, 2013

Chair Bailey introduced the item, and welcomed comments or amendments. Chair Bailey requested Page 2, Paragraph 2 be amended to read, "...may be unenforceable," and that the vote on Page 3 with regard to 12 months severance pay be amended to reflect his no vote.

COMMITTEE ACTION: MOVED by Member Irish, SECONDED by Vice Chair Giraudi that the Committee approve the Minutes of September 25, 2013, as amended by Chair Bailey.

AYES: Green, Hardin, Salazar, Irish, Giraudi, Bailey, Stowe
NOES: None
ABSTAIN: None
ABSENT: Bush, Cortez

Documentation: M.O. 01-100213
Disposition: Approved, as amended.

2. Consideration of Modifications to Charter Section 68, Pertaining to Leases

Chair Bailey introduced the item, and City Manager Lollis provided background regarding the federal government's interest in expanding their air attack base, and conflicts with their contract requirements. Mr. Lollis communicated that the Council desired flexibility with regard to leasing City owned properties. City Attorney Lew also elaborated on previous efforts to remove the 90-day notice of termination clause, which was rejected by the voters as a stand alone ballot measure in 2010; and spoke of the pros and cons associated with the existing 90-day language.

Member Hardin expressed concerns regarding long-term leases, and spoke against removing the 90-day noticing requirement entirely. Chair Bailey inquired about reimbursement for improvements to City facilities. A discussion followed about negotiation terms and existing license agreements. Member Green suggested the length of the termination notice be based on a percentage of the length of the lease.

The committee directed the City Attorney to draft sample language for both the percentage and the "90 days to 1 year" options.

Disposition: Direction given.

3. Consideration of Modifications to Charter Section 39, Pertaining to Fiscal Year

Chair Bailey introduced the item, and City Attorney Lew provided a brief history for the committee. City Manager Lollis explained the current timeline associated with budget adoption during election and non-election years. Member Irish pointed out that the committee was also tasked with considering the timing of Council elections, which could affect the need to change the fiscal year. Without objection, the item was tabled until such time that election years were addressed.

Disposition: Item tabled.

The committee recessed for five minutes at 6:50 p.m.

4. Consideration of Modifications to Charter Section 9, Pertaining to Council Reorganization

Chair Bailey introduced the item, and provided a brief recap of previous committee discussion with regard to the matter. Vice Chair Giraudi spoke in support of a 2-year term for mayor; and also spoke in favor of a 4-vote requirement to replace the mayor. A discussion followed, during which various members of the committee spoke of the importance of continuity and stability in leadership.

Chair Bailey suggested that making it more difficult to remove a mayor that a majority of the council may be unhappy with could worsen the situation, and noted that the recent removal of Council Member Gurrola as mayor was still fresh in everyone's minds.

COMMITTEE ACTION: MOVED by Member Irish, SECONDED by Vice Chair Giraudi that the Committee approve the recommendation of a two-year term for mayor; mayor to be appointed after the seating of the new council by three or more of their peers; and require four votes for removal of mayor prior to the end of their term.

AYES: Green, Salazar, Irish, Giraudi, Stowe
NOES: Hardin, Bailey
ABSTAIN: None
ABSENT: Bush, Cortez

City Attorney Lew stated that she would work on language and present it at the next meeting. She recommended that the committee approve the final provisions of the Charter at the end of the process and sign off on a submittal to the Council.

Documentation: M.O. 02-100213
Disposition: Approved drafting of language for consideration.

5. Consideration of Modifications to Charter Section 67, Pertaining to Council Manic Interference

Chair Bailey introduced the item, and City Attorney Lew spoke of the Council's interest in maintaining a division between administrative and legislative powers. Ms. Lew provided samples of penalty provisions from Culver City, Newport Beach, Santa Clara and Oakland; and spoke of the difficulties associated with the enforcement and/or implementation of penalty provisions. Members Hardin and Stowe voiced their preference for the language provided from Santa Clara, and hypothetical scenarios were explored.

City Attorney Lew advised that the Charter Committee should consider the addition of a general penalty provision at a future meeting.

COMMITTEE ACTION: MOVED by Member Hardin, SECONDED by Member Stowe that the Council authorize drafting of language similar to Santa Clara to be brought back for consideration.

AYES: Green, Hardin, Salazar, Irish, Giraudi, Bailey, Stowe
NOES: None
ABSTAIN: None
ABSENT: Bush, Cortez

Documentation: M.O. 03-100213

Disposition: Authorized drafting of language for consideration.

6. Consideration of Modifications to Charter Section 12, Pertaining to Publication Requirements

Chair Bailey introduced the item, and City Manager Lollis requested that the item be continued in the absence of Administrative Services Director Hildreth. City Attorney Lew indicated that she would be looking into those comments made by Mr. Elkins during Oral Communications.

Disposition: Item continued.

7. Consideration of Committee Member Items of Interest

Chair Bailey introduced the item. Member Hardin spoke in favor of reconsidering the issue of pensions, and requested clarification regarding potential conflicts.

City Attorney Lew advised that in her opinion there were no legal conflicts of interest for former or retired CalPERS members. She added that the committee could request direction from the Council for clarification.

Member Salazar reiterated her position that the issue of pension was outside the scope of the committee, in that the current language did not require revision. Member Green clarified that he was cashed out of PERS, and noted that the end result of the vote would have remained the same, even if Member Stowe had abstained.

In response to a question posed by Member Green with regard to potential litigation resulting from pension reform, the City Attorney stated that the City, and ultimately tax payers would be responsible for liability incurred.

Member Green expressed concern regarding the absence of two members who voted with the prevailing side.

City Attorney Lew stated that time did not permit discussion of other items of interest of committee members, and recommended that the item remain on future agendas.

COMMITTEE ACTION: MOVED by Member Irish, SECONDED by Member Salazar that the Charter Review Committee reconsider pensions after

all other Charter sections have been addressed; and request clarification from the Council.

AYES: Hardin, Salazar, Irish, Giraudi, Bailey
NOES: Green, Stowe
ABSTAIN: None
ABSENT: Bush, Cortez

Disposition: Approved reconsideration; and requested clarification from the Council.

8. Scheduling of Future Meetings

City Attorney Lew spoke of difficulties experienced by staff with regard to turnaround between weekly meetings, and the committee considered possibly scheduling meetings every other week.

Member Hardin spoke in support of scheduling meetings at an earlier time, and discussion followed regarding committee member availability. The meeting was then scheduled to take place the following Wednesday, October 9th, at 5:30 p.m. in the Library Community Room.

Disposition: Meeting scheduled.

OTHER MATTERS

None

ADJOURNMENT

The Committee adjourned at 8:07 p.m. to the meeting of October 9, 2013.

Luisa M. Zavala, Deputy City Clerk

Allan Bailey, Chair

**MCCORMICK KABOT JENNER & LEW
MEMORANDUM**

TO: Porterville Charter Review Committee
Cc: John Lollis, City Manager

FROM: Julia M. Lew, City Attorney

DATE: October 4, 2013

SUBJ: City Charter Section 68 Language Options (Leases of City Property)

Per the direction of the Charter Review Committee, the following are potential amendment options for the above-referenced Section. In addition to the modifications discussed, I would propose to add an exemption for month-to-month leases, given either discussed notice period would be too short under the legal requirements for termination of month-to-month leases. These generally require at least 30 days notice unless a different period is specified. It may also make sense to omit the market value reimbursement requirements for such short-term leases as well, as generally there are different expectations associated with month-to-month leases. Since this wasn't specifically discussed at the meeting the language is in brackets. Also note that the bracketed language below specifying the notice amount as a maximum notice period – this also may be appropriate in the event a shorter notice lease period is desired by the City given the specific circumstances.

PERCENTAGE OPTION

Sec. 68 Leases of City Property.

In every lease of city property the basic amount of rental shall be fixed by the council.

All indentures of lease shall provide that the council may terminate the same at its pleasure and repossess the premises therein described, upon ~~three months' notice thereof~~ *written advance notice equivalent to [a maximum of] five percent (5%) of the total lease term period as specified in the lease*, and upon paying to the lessee the market value of any improvements made or put upon said premises by the lessee. The market value of such improvements shall be determined by a board of appraisers consisting of one appraiser appointed by the council, and a lessee appraiser appointed by the lessee.

In the event of their failure to agree upon the market value of the improvements within thirty days from and after their appointment, said two appraisers may appoint a third appraiser as a member of said board, and the determination of the majority of said board of appraisers, as to the market value of the improvements, shall be final and conclusive and binding on all concerned. Should the two appraisers by the council and the lessee respectively, fail for forty days from and after their appointment to agree upon the market value of the improvements or to appoint a third appraiser, then upon the petition in writing of either party to any such lease, a judge of the superior court of Tulare County is hereby

empowered to appoint the third appraiser upon such board; provided, however that the council shall not terminate any such lease or repossess any such premises except for a public use and purpose; provided, further, that no lease of city property shall be made for a maximum term of more than fifty years.

[For any month-to-month lease of city property, the above notice requirements shall not be required, and responsibility for improvements and any associated reimbursement may be negotiated and set forth in the terms of the lease.]

FIXED PERIOD NOTICE OPTION

Sec. 68 Leases of City Property.

In every lease of city property the basic amount of rental shall be fixed by the council.

All indentures of lease shall provide that the council may terminate the same at its pleasure and repossess the premises therein described, upon ~~three months' notice thereof~~ *written advance notice of at least three months but no more than one year*, and upon paying to the lessee the market value of any improvements made or put upon said premises by the lessee. The market value of such improvements shall be determined by a board of appraisers consisting of one appraiser appointed by the council, and a lessee appraiser appointed by the lessee.

In the event of their failure to agree upon the market value of the improvements within thirty days from and after their appointment, said two appraisers may appoint a third appraiser as a member of said board, and the determination of the majority of said board of appraisers, as to the market value of the improvements, shall be final and conclusive and binding on all concerned. Should the two appraisers by the council and the lessee respectively, fail for forty days from and after their appointment to agree upon the market value of the improvements or to appoint a third appraiser, then upon the petition in writing of either party to any such lease, a judge of the superior court of Tulare County is hereby empowered to appoint the third appraiser upon such board; provided, however that the council shall not terminate any such lease or repossess any such premises except for a public use and purpose; provided, further, that no lease of city property shall be made for a maximum term of more than fifty years.

[For any month-to-month lease of city property, the above notice requirements shall not be required, and responsibility for improvements and any associated reimbursement may be negotiated and set forth in the terms of the lease.]

**MCCORMICK KABOT JENNER & LEW
MEMORANDUM**

TO: Porterville Charter Review Committee
Cc: John Lollis, City Manager

FROM: Julia M. Lew, City Attorney

DATE: October 4, 2013

SUBJ: City Charter Section 9 (Reorganization of the City Council)

Per the direction of the Charter Review Committee, the following is draft language for the above-referenced Section. This edits reflect all proposed changes recommended by the Committee (so far).

Sec. 9 Legislative Body; Composition; Election; Term; Compensation; Ineligibility for Other City Office; President of the Council; Vice-President; Installation of Newly Elected Officer; Powers to be Exercised by Council.

The legislative body of the city shall consist of five persons elected at large, which body shall be known as the council.

The members of the council shall be elected by the qualified voters of the city at a general municipal election to be held in the said city at the same time as the primary election for state offices for the state of California. They shall hold office for the period of four (4) years from and after the ~~Monday next succeeding the day of their election~~ date upon which they are installed in office in accordance with this section *and/or* until their successors are elected; and ~~qualified; installed in office. provided the respective terms of any council member presently serving or elected at the time of the adoption of this amendment shall be extended one additional year to the even-numbered year following the expiration of their respective terms.~~

The members of the council shall each receive the sum of twenty dollars (\$20.00) for each council meeting actually attended; the mayor shall receive the sum of twenty-five dollars (\$25.00) for each meeting of the council actually attended, provided, however, that the members of the council shall not receive compensation for more than seven meetings in any one calendar month. In addition, the council shall be reimbursed for necessary expenses incurred for authorized city business.

The members of the council shall not be eligible to any other office or employment with the city.

The council shall reorganize at ~~its next~~ the meeting following each municipal election wherein the newly-elected members are installed and shall choose

one of ~~their~~ its number to serve as president of the council to be known as mayor. At this time, the council shall also choose one of their number to serve as vice-president, and he/she shall act as mayor pro tempore in case of the absence, sickness or other disability of the mayor. The mayor and mayor pro tempore shall serve a two year term, but either may be removed at any time by a ~~majority~~ *four fifths (4/5)* vote of the council. If the council removes the mayor prior to the expiration of his/her term pursuant to this provision, the council shall choose one of their number to serve as mayor until the next organizational meeting.

~~The council shall meet at its usual meeting place on the first Monday after any municipal election, duly canvass the returns and declare the result thereof, and install the newly elected officers, if any. Where the canvass of the vote is to be completed by the city elections official, the canvas shall be completed no later than the fourth Friday after the election. Upon completion of the canvass, the elections official shall certify the results to the city council, which shall meet at its usual place of meeting no later than the fourth Friday after the election to declare the results and to install the newly elected officers. For a consolidated election, the city elections official, upon receipt of the results of the election from the elections official conducting the election, shall certify the results to the city council, which shall meet at its usual place of meeting no later than the next regularly scheduled city council meeting following the presentation of the canvass of the returns, or at a special meeting called for this purpose, to declare the results and to install the newly elected officers.~~

All powers granted to and vested in the city of Porterville by law or by the provisions of this charter, shall, except as herein otherwise provided, be exercised by the council to be designated the "Council of the City of Porterville." The council shall be the governing body of the city and subject to the express limitations of this charter shall be vested with all powers necessary or convenient for a complete and adequate system of municipal government, consistent with the constitution of the state.

**MCCORMICK KABOT JENNER & LEW
MEMORANDUM**

TO: Porterville Charter Review Committee
Cc: John Lollis, City Manager

FROM: Julia M. Lew, City Attorney

DATE: October 4, 2013

SUBJ: City Charter Section 67 Language Options (Councilmanic Interference)

Per the direction of the Committee, the following language options concerning the above-reference section are submitted for the Committee's consideration:

Sec. 67 Interference With Performance of Duties of City Manager; ~~Interference by City Manager in Elections.~~

~~No member of the council shall in any manner attempt to influence or coerce the city manager in the making of any appointment or the purchase of supplies in accordance with applicable state and federal law.~~

~~The council shall deal with the administrative functions of the city through the city manager. The Council shall only have direct contact with the directors of the city's departments for the purpose of asking questions.~~

Neither the City Council nor any of its members shall order or request the appointment of any person to an office or employment or his/her removal therefrom, by the City Manager, or by any of the department heads [or any other employees] in the administrative service of the City. Except for the purpose of inquiry, the City Council and its members shall deal with the administrative service and powers under the City Manager solely through the City Manager, and neither the City Council nor any member shall give orders to any subordinates of the City Manager, either publicly or privately.

Any City Council member violating the provisions of this section, or voting for a resolution or ordinance in violation of this section shall be guilty of a misdemeanor and, upon conviction, shall cease to be a Council Member. Additionally, any City Council member violating this section may be subject to civil remedies as specified in Section 74.

[Note – move the rest of section 67 to its own section...]

Section 67.1 Political Activities by Legislative and Administrative Officers, Employees

Political activities of and campaign contributions by the city's legislative officers, administrative officers, and employees shall be governed in accordance with applicable state and federal law. All legislative and administrative officers and all city employees are prohibited from engaging in political activities during working hours. City officers and employees are prohibited from engaging in political activities at their work place.

Furthermore, city officers and employees are prohibited from engaging in political activities on city properties, provided this prohibition does not pertain to property that is otherwise open to the public for the purpose of engaging in political activities.

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**MCCORMICK KABOT JENNER & LEW
MEMORANDUM**

TO: Porterville Charter Review Committee
Cc: John Lollis, City Manager

FROM: Julia M. Lew, City Attorney

DATE: October 4, 2013

SUBJ: New City Charter Section 74 – General Penalty

Per the direction of the Committee, the following can serve as a starting point for Committee discussion concerning adding a General Penalty Section to the Charter. As the current charter does not contain a penalty section, I would propose to add it as Section 74. I will also provide additional samples of general penalty language at the October 9th meeting as requested.

Sec. 74 Violations.

This section shall apply only if a penalty/violation is not otherwise explicitly provided for in the Charter. A violation of any provision of this Charter shall be a misdemeanor, except that such violation may be prosecuted as an infraction, at the discretion of the City Council.

Any violation of this Charter may be prosecuted in the name of the People of the State of California or may be redressed by the City through any legal or equitable remedies; including but not limited to civil action and/or injunction, or administrative citation in accordance with adopted City ordinances. To extent allowed by law, civil remedies may be utilized in addition to or as an alternative to criminal enforcement.

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