

## 2013 CITY CHARTER CONVENTION

March 18, 2014

The Honorable Jean Stothert, Mayor  
The Honorable Pete Festersen, City Council President  
and Members of the Omaha City Council

It is my great pleasure to transmit herewith the Final Report of the 2013 Charter Study Convention. The convention has reviewed the operation of the government of the City under the Charter and has given careful review and consideration to all items submitted to it for review by the Mayor, City Councilmembers, City employees and the public. All recommendations were reviewed by the entire Charter Convention. Convention members spent many hours evaluating the recommendations hearing testimony from citizens, City employees, the Mayor's office and representatives of the Mayor and the Council, and discussing and deliberating the benefits and consequences of each recommendation.

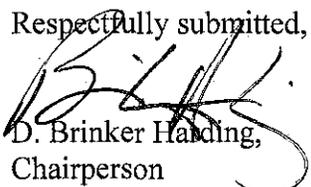
The full Charter Study Convention met a total of nine (9) times over the eight-week period it was in session. Each of those meetings was held at a time to accommodate public input.

The Charter Convention considered a variety of proposals. Some of the proposals were administrative in nature and were intended to clean up outdated language and inconsistencies. The Charter Convention also vigorously debated a number of issues including elimination of the Human Rights and Relations Department, changes to the City election cycle, potential changes to the process for referendum and initiative, changes to civil service protection for the Fire Chief and the Police Chief, changes to pension provisions and provisions dealing with religious freedom and rights of conscience.

The result is that the Charter Convention is making a variety of recommendations to the City Council. The Charter Convention addressed several very difficult and in some cases controversial issues directly in a professional and constructive way. Pursuant to the

provisions of section 8.15 of the Charter and on behalf of the entire Charter Convention, I do hereby respectfully submit the following recommendations to the Mayor, the Council and the people of the city of Omaha. The Convention believes these recommended changes to the Charter will be beneficial in the improvement of the governmental structure and the conduct of the City's affairs.

Respectfully submitted,

  
D. Brinker Harding,  
Chairperson

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**MEMBERS OF THE CONVENTION**

D. Brinker Harding, Chairperson  
Christine A. Lustgarten, Vice-Chairperson  
Michael Leahy, Secretary

Matthew Biereger

Mark McColley

Jonathan Benjamin-Alvarado

Patrick McPherson

Robert Borgeson

Stephen Pedersen

Timothy Butz

Walt Pfeffer

James Cann

Ruth Ann Popp

William Gaughan

Carol Russell

Steve Grasz

Symone Sanders

Anna Hernandez-Valencia

Stephanie Shearer

Wayne Hudson

Wesley Siebert

Mike Kennedy

Mary Jane Truemper

David Kramer

Patricia Zieg

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**Legal Advisors – Full Convention**

Paul Kratz, City Attorney  
Robert Hamer, Attorney

Bernard in den Bosch, Deputy City Attorney

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## **Convention Recommendations**

**October 28, 2013**

**Item No. 1** Elimination of the Human Rights and Relations Department

Full Convention Action – Motion to make no recommendation to the City Council to eliminate the Human Rights and Relations Department. Motion by McColley, second by Kennedy, **adopted** 22-0 (Kramer, Popp, and Gaughan absent)

**November 4, 2013**

**Item No. 2** Changes to Article 6 of the City Charter requested by the City of Omaha Personnel Board to update process by which the Human Resources Director is chosen and to clean up other portions of Article 6.

Full Convention Action – Motion to make recommendations to amend Sections 6.01, 6.03, 6.05, 6.06, 6.07, and 6.11 of the Charter. Motion by Butz, second by Leahy, **adopted** 20-0-1 (Benjamin-Alvarado, Kennedy, Grasz, and Lustgarten absent)

**Section 6.01. Merit System—Definition and Scope.**

All employees of the city shall be appointed ~~with reference only to their qualifications on~~ their basis of qualification and fitness for employment in the city service. The city service shall be divided into the unclassified and classified services. The unclassified service shall consist of:

- (1) All elective officers.
- (2) The heads or directors of the Convention and Tourism Department; Human Rights and Relations Department; Finance Department; Parks, Recreation, and Public Property Department; Human Resources Department; Planning Department; ~~Public Safety Department~~; Public Works Department and such departments as may be established in the future under this charter.
- (3) Employees in the immediate office of the Mayor, provided that the Mayor optionally may appoint as members of the Mayor's personal staff employees with permanent status in the classified service in which case such employees shall be continued in the classified service.
- (4) Part-time, temporary, and seasonal employees.
- (5) Members of appointive boards, commissions, and authorities.

(6) The heads or directors of the Dock Board, Housing Authority, Library Board, and such administrative boards, commissions, and authorities as may be established in the future under this charter.

(7) Consultants, experts, and others employed to conduct special inquiries or studies.

The classified service shall consist of all positions not specifically included in the unclassified service. All personnel actions relating to positions in the classified service shall be consistent with the provisions of this article and subject to the supervision and control of the Human Resources Department as provided in this article.

### **Section 6.03. Human Resources Director.**

The Mayor shall appoint and shall have the power to remove the Human Resources Director. The Director shall have at least ten years of Human Resources experience with supervisory and decision-making responsibility in the field. ~~who shall have had at least five years of such experience in a responsible post in the public or private personnel field as shall qualify the Director for the duties of the office. The Mayor shall appoint the Human Resources Director from a list of persons recommended to the Mayor by the Personnel Board, which list shall contain not less than three nor more than five names of persons having the qualifications established in this section for the office.~~ The Human Resources Director shall be the administrative head of the Human Resources Department, and shall be responsible for the proper conduct of all administrative affairs of the department and for the execution of the human resources program prescribed in this charter and in ordinances and rules consistent therewith.

### **Section 6.04. Personnel Board.**

There shall be a Personnel Board comprised of five members of the public who shall be appointed by the Mayor and confirmed by the Council. ~~The first appointees shall be appointed for terms of one, two, three, four, and five years, respectively. Thereafter all~~ All appointments shall be for five-year terms. Vacancies in an unexpired term shall be filled by the Mayor by appointment for the remainder of the term, and such appointments shall be confirmed by the Council. Members shall be appointed from among the qualified electors of the city and shall be known to be someone who understands personnel regulations, Human Resources Law, and have an appreciation for (and understanding for) ~~in sympathy with~~ the merit principle as applied to the civil service. A member of the board may be removed by the affirmative vote of five members of the City Council for cause and after being given a written statement of the charges against such board member at a hearing, which shall be a public hearing if the member so requests. The board shall elect its chairperson from among its members.

In addition to the five regular board members, three alternate members shall also be appointed by the Mayor and confirmed by the Council. The provisions of this section regarding qualifications, appointment, vacancy and removal of regular board members shall also apply to alternate board members. In the event that a regular board member is

unable to participate in or attend any meeting, the board's chairperson shall select, on a random basis, an alternate member to serve on the board in the same manner as a regular member.

The board shall have power and shall be required to:

(1) Advise the Mayor, Council, and Human Resources Director on matters concerning personnel administration, and shall render decisions on matters referred to it by the City Council within 60 days, unless the Board requests additional time. Approval of requests for additional time shall not be unreasonably denied by the City Council. If the Personnel Board fails to render such decision within the allotted time, approval shall be presumed by the City Council.

(2) Review the personnel rules and regulations developed and recommended by the Human Resources Director; conduct hearings thereon; approve or reject such rules in whole or in part and with or without modifications; and transmit such rules with recommendations to the Council for its consideration and legislative action. In the enactment of any personnel rules, the Council may not enact legislation at variance with that recommended by the Personnel Board unless at least five Councilmembers vote to do so.

(3) Hear appeals in case any officer or employee in the classified service is suspended or removed, or reduced in classification or pay by the Mayor or a department or division head. In each such appeal, the city shall have the burden to establish, by a preponderance of the evidence, that the disciplinary action was taken for just cause and in good faith. For the purposes of this section, the term "just cause" shall mean any action for which discipline may be imposed under the terms and provisions of the Omaha Municipal Code, labor agreements, or personnel rules. The Board shall report in writing to both parties its findings and decision. Any such decision shall be subject to appeal by either party as provided by law.

(4) Make any investigation which it may consider desirable concerning personnel administration in the city service, and report to the Mayor and Council its findings, conclusions, and recommendations.

(5) Review examination schedules and eligibility lists to assure compliance with the requirements of this charter and of the rules enacted thereunder, in matters relating to appointments and promotions in the classified service.

(6) Perform such other related duties as may be necessary to fulfill its responsibilities under this charter or as may be assigned by the Mayor or Council.

(7) Establish its own rules of procedure, provided that three members shall constitute a quorum for the transaction of business and three affirmative votes shall be required for final action on any matter acted upon by the board.

(8) The Personnel Board and each member of the board shall have the power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this section. Any person who shall fail to appear in response to subpoena, or to answer any question or produce any books or papers pertinent to any such investigation or hearing, or who shall knowingly give false testimony therein, shall be guilty of a misdemeanor and be subject to such penalties as may be fixed by an ordinance, which the Council is hereby authorized to pass, and such other penalties as may be provided by law.

Members of the board shall serve without pay but may be reimbursed for any travel expenses incurred in the performance of their assigned duties.

### **Section 6.05. Personnel Rules and Regulations.**

The Council shall enact and revise as appropriate a set of personnel rules. The personnel rules shall, among other things, provide for:

- (1) The methods of holding and grading competitive examinations covering all positions;
- (2) The establishment, maintenance, consolidation, and cancellation of eligible lists;
- (3) The methods of certifying eligibles for appointment;
- (4) Such residence requirements for employment in the classified service as the Council may establish, provided that the Personnel Board may, upon the request of the Human Resources Director, waive any such requirements, whenever, in its discretion, such waiver is necessary to attract an adequate number of well qualified applicants;
- (5) The promotion of employees from lower to higher positions in the classified service through an examination program which shall foster a municipal career service;
- (6) The administration of position classification and pay plans and the methods of awarding pay increases and promotions based on merit and seniority;
- (7) Probationary periods of employment, which shall not be less than six months nor more than one year; provided, however, that this subsection shall not be applicable to any employment which is the subject matter of collective bargaining;
- (8) Temporary appointments, which shall not exceed ninety days, and the methods for selecting and appointing part-time, temporary, and seasonal employees;
- (9) Transfers of employees within the classified service;
- (10) Hours of work, vacation and sick leaves, other leaves of absence, and overtime pay;

- (11) The manner in which lay-offs and reductions in force shall be effected and the re-employment rights of employees so released;
- (12) The manner in which disciplinary actions may be taken and the kinds of actions permitted for specified causes;
- (13) The establishment and maintenance of records setting forth all transactions made in respect to each employee;
- ~~(14) The certification of pay rolls;~~
- (145) The establishment and administration of an inservice training program;
- ~~(15)~~ (15) The manner in which employee appeals shall be made and heard;
- ~~(16)~~ (16) The regulation of outside employment of city employees;
- ~~(17)~~ (17) The procedure and assignments of responsibility for making investigations, bringing charges, and taking other necessary actions in connection with violations of section 6.11 of this charter.

These rules shall have the force of law when processed and enacted as an ordinance by the Council as prescribed in section 6.04.

#### **Section 6.06. Position Classification Plan.**

The Human Resources Director shall prepare and maintain a current record of the duties and responsibilities of each position in the classified service. ~~Within one year after the appointment of the first director under this article, the director shall prepare and submit to the Personnel Board a plan classifying and grading all such positions on the basis of assigned duties and responsibilities. The Personnel Board shall review and approve any amendments to any such plan, with or without amendments. After adoption of the plan the director shall, with the approval of the Personnel Board, allocate each position to its appropriate class. Affected employees shall be given the opportunity to request a review and hearing on the allocations so made. The plan, once adopted, shall be maintained on a current basis by the director so that it shall reflect changes in the duties and responsibilities of existing positions and classes, including the creation of needed new classes and the abolition of obsolete ones. The plan shall serve as the basis for the pay plan and the examination and training programs. The position and class titles shall be used in budgets and other official documents and records. Amendments to the plan shall be made in the same manner as herein provided for the original adoption of the plan.~~

### **Section 6.07. Pay Plan.**

The Human Resources Director shall develop a pay plan for all positions in the classified service, which shall be based upon the position classification plan as set out in section 6.06 and adhere to the general principle of like pay for like work. Ranges of pay shall be established for each class of positions, including minimum and maximum pay rates as deemed reasonable for comparable sized city staff. The pay plan shall prescribe the manner of its administration, including the methods of fixing individual pay rates and of awarding pay increases within the established ranges. Recommendations shall also be submitted for salaries to be paid for the following positions in the unclassified service: heads or directors of departments; employees in the immediate office of the Mayor; part-time, temporary, and seasonal employees; and the heads or directors of boards, commissions, and authorities. The Human Resources Director shall submit the pay plan to the Personnel Board for consideration and approval. When approved by the Personnel Board, with or without amendment, the Plan shall be submitted to the Mayor, who in turn shall submit it along with comments to the Council. The plan shall become effective when adopted as an ordinance by the Council. Amendments to the plan shall require the same approvals as are provided herein for the original adoption of the plan.

### **Section 6.11. Prohibitions.**

No action affecting the employment status of an employee or applicant for a position in the city service, including examination, appointment, promotion, demotion, suspension, or removal, or other conditions and privileges of employment, shall be taken or withheld by reason of the age, race, creed, color, sex, disability, sexual orientation, gender identity, national origin, religion, or political affiliation of the affected person; provided nothing in this section shall be construed as prohibiting any action affecting the employment status of an employee or applicant in those certain instances where disability or sex is a bona fide occupational qualification reasonably necessary to the normal operation of city business. No person shall be employed or retained in the city service who advocates or belongs to an organization advocating the overthrow or change of our government by force or violence.

No non-elective officer or employee in the city service shall during working hours or while such employee is otherwise engaged in the performance of official duties or while wearing a uniform required by the city service, solicit or contribute funds for any candidate in any election for Mayor or City Council Member; take part in or manage the campaign of any candidate for Mayor or City Council Member; address or take an active part in any rally or meeting for or in support of any candidate for Mayor or City Council Member; solicit votes, assist voters at the polls, or help any candidate for Mayor or City Council Member get voters to the polls; participate in the distribution of campaign literature supporting any candidate for Mayor or City Council Member; initiate or circulate any petition nominating a candidate for Mayor or City Council Member; ride in any caravan for any candidate for Mayor or City Council Member. Nothing in this section shall prohibit any non-elective officer or employee in the city service from

exercising such person's right as a citizen to express an opinion, cast a vote, or do any other partisan or non-partisan political act not expressly prohibited herein.

A non-elective officer or employee in the service of the City shall not hold any office in, or be employed by, any other public body which would interfere with the performance of such person's official duties in the service of the City or create any conflict of interest. No person seeking appointment to or promotion in the service of the City shall give, render, or pay any money, service, or other valuable thing to any person in connection with a test, appointment or promotion. Any person who willfully or corruptly violates any of the provisions of this section shall be subject to dismissal and such other punishment as may be provided by law.

### **November 12, 2013**

**Item No. 3** Changes to Article 5 of the City Charter proposed by the City of Omaha Finance Department to Sections 5.03, 5.07, 5.17, and 5.30.

Motion to make recommendation to amend Sections 5.03, 5.07, 5.17, and 5.30 of the Charter. Motion by Lustgarten, second by Butz, **adopted** 22-0 (Cann, Siebert, and Kennedy absent)

### **Section 5.03. Fund Structure.**

In this charter the word "fund" shall mean "a sum of money or other resources that is segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations, and that constitutes an independent fiscal and accounting entity." If and as needed, the following types of funds shall be established for the purposes and types of operations with which identified:

- (1) A single "General Fund" shall be established to account for all revenues and the activities financed by them which are not accounted for in some special fund.
- (2) "Special Revenue Funds" shall be established to account for taxes and other revenues, except special assessments, set aside for a particular purpose.
- (3) "Internal Service Funds" shall be established to account for the financing of activities carried on by one department or division for other departments and agencies of the city government and may be established for the control of inventories.
- (4) "Special Assessment Funds" shall be established to account for special assessments levied to finance improvements or services deemed to benefit the properties against which the assessments are levied.

(5) "Capital Project Funds" shall be established to account for the receipt and disbursement of proceeds of bond issues, tax increment financing receipts and other financing services, except for those payable from special assessment, utility, and enterprise funds.

(6) "Debt Service Funds" shall be established to account for the accumulation of resources for retiring bonds, including any administrative costs related thereto; such as, publication of notice, trustee, registrar, and paying agent fees.

(7) "Fiduciary Funds" shall be established to account for cash or other assets held by the city as trustee, custodian, or agent.

(8) "Proprietary Funds" shall be established to account for the financing of services rendered primarily to the general public for compensation where the intent is that the operation shall be self-supporting.

(9) "Advance Acquisition Fund." There shall be established a Capital Project Fund to be known as the Advance Acquisition Fund, the purpose of which shall be to facilitate the orderly and timely acquisition of real estate for public purposes. Moneys in the fund may be used to option, purchase, make down payments, and take other actions necessary to acquire real estate for specific public purposes related to the development of the City as proposed in the master plan. No purchase of any real estate or any substantial expenditure in connection therewith shall be made unless reviewed and reported on by the Capital Improvement Priority Committee and approved by the Council. Any real estate purchased or otherwise acquired by the City through the workings of this fund may later be sold or otherwise disposed of by the City if it is found that such real estate is not needed for a public purpose.

(10) "Cash Reserve Fund." There shall be established a reserve fund for the purpose of meeting emergencies arising from:

- (a) The loss or partial loss of a revenue source; or
- (b) An unanticipated expenditure demand due to a natural disaster, casualty loss or act of God; or
- (c) Expenditure demand for the satisfaction of judgments and litigation expenses when the Judgment Levy Fund balance is inadequate.
- (d) Conditions wherein serious loss of life, health or property is threatened or has occurred.

The amount of funds to be held in this account, if any, shall not exceed 4% ~~8%~~ of General Appropriations. Interest earned on any such amount shall be retained in said account and shall be included in the calculation of the fund balance. In the event that the fund has reached the 4% ~~8%~~ maximum balance, then any interest accruing thereafter, until the balance is decreased by an expenditure, shall be transferred to the General Fund. Notwithstanding section 5.14 of the home rule charter, or any other provision to the contrary, any amount, or portion thereof, held as general fund surplus at the close of any fiscal year may be appropriated for the sole and limited purpose of increasing the balance

of this reserve fund; provided, however, that some shall not be used to increase the balance beyond the ~~4%~~ 8% limitation stated herein.

(11) *Reserved.*

#### **Section 5.05. Scope and Content of the Budget.**

The annual budget shall be a complete financial plan for the ensuing budget year and shall consist of an operating budget and a capital budget. The capital budget shall provide for acquisition of real estate, physical improvements, equipment and furniture required in connection with physical improvement projects, and equipment with a probable useful life of fifteen or more years; and the operating budget shall provide for all other classes of expenditure. The budget submitted by the Mayor to the Council shall contain at least the following:

(1) A budget message in which the Mayor shall discuss the city's financial condition and prospects, explain both in terms of money and work programs the important features of the operating budget, identify major projects in the capital budget, and outline the financial policies the Mayor proposes for the ensuing budget year.

(2) Appropriate statements showing for each fund the estimated transactions and balances for the ensuing budget year and comparative data for the current and immediately past budget years.

(3) Schedules of all estimated revenues itemized by sources for the ensuing budget year and comparative data for the current and immediately past budget years. Revenue estimates for the general and special revenue funds shall include only those revenues expected to be received in cash during the budget year concerned.

(4) Operating budget schedules showing by activity or program the proposed operating expenditures for the ensuing budget year, and in a column entitled "Appropriations," the lump sum recommended for appropriation, which lump sums need not be itemized further than by departments, divisions, and major activities and programs. Comparative expenditure data for the current and immediately past budget years and information on work programs and volumes shall also be presented.

(5) Capital budget schedules showing the total amount proposed for expenditure on ~~each capital project~~ during the ensuing budget year and a complete analysis of the sources of funds by projects showing balances available and amounts to be appropriated, borrowed, or derived from other sources.

#### **Section 5.07. Tax Levy.**

The Council, on the basis of the budget as finally adopted, shall certify by adopting an appropriate resolution a single City of Omaha tax levy for the ensuing fiscal year, which single tax levy shall be sufficient so that total year end fund balances are greater than or

~~equal to zero anticipated revenues plus receipts from authorized borrowing will at least equal total proposed expenditures.~~ The single City of Omaha tax levy certified in any year shall not exceed \$.6125 per \$100 of actual taxable value plus whatever tax levy is necessary to provide for principal and interest payments on the indebtedness of the city, and for the administrative expenses incurred in issuing and maintaining bonds, and for the satisfaction of judgments and litigation expenses in connection therewith.

### **Section 5.17. Contracts.**

Except as provided in Section 5.16, competitive bids shall be secured before any purchase is made or any contract awarded for construction, alteration, repairs, maintenance, or services, and contracts in all cases shall be awarded to the bidder submitting the lowest and best bid. All contracts in excess of \$20,000 shall be approved by resolution of the Council. All contracts involving the payment of money from appropriations of more than one fiscal year of the City Government shall be approved by Ordinance. No contract involving the payment of money from appropriations of more than one fiscal year of the City Government shall be made for a period of more than ten years with an option to renew or renegotiate for subsequent ten-year periods subject to the approval of the Council in office at the time said option or renegotiation is put into effect, nor shall any such contract, option, or renegotiation be valid unless made or approved by Ordinance. Leases in which the City is to be either the lessee or lessor may be consummated where the power to lease exists and may be for such periods as the Council may determine. The Council may by Ordinance enter into lease-purchase agreements. The Council may by Ordinance require that successful bidders provide performance bonds, labor and material bonds, or other appropriate types of bonds, but it shall not provide in connection with any contract that a percentage of the contract amount be withheld for a period beyond the date on which the City finally accepts materials, equipment, work, or services as provided by the contractor. All contracts of the City shall contain a provision that contractors shall not, in the performance of the contract, discriminate or permit discrimination in violation of Federal or State laws or local ordinances because of race, color, sex, sexual orientation, age, political or religious opinions, affiliations, or national origin. The Council may by Ordinance authorize participation by the City in joint procurement of materials, equipment, work, or services with other public corporations within the state. The Council may by Ordinance establish contract requirements and procedures that extend this section but do not conflict with it.

### **Section 5.30. Bonds; General Provisions.**

General provisions concerning the form, issuance, interest rates, and other matters relating to bonds shall be as follows:

(1) Bonds of the city shall be prepared under the direction of the Council, shall be signed by the Mayor, and countersigned by the City Clerk. Bonds shall be sold and disposed of by and under the direction of the Council and shall be delivered by the Finance Director, who shall promptly deliver the proceeds therefrom to the City Treasurer in all cases except where an exchange of bonds is directed. The purpose or

purposes of each bond issue shall be stated on the bond, and the proceeds received from the sale thereof shall be used for no other purpose or purposes.

(2) General obligation and Revenue bonds of the city shall ~~not~~ be sold or exchanged for such prices as the Council shall provide, ~~less than 98 per cent of par. Revenue bonds shall be sold at par or at discounts not exceeding 2 per cent.~~ Interest on all bonds shall be payable as the Council may provide.

(3) Bonds shall be payable at the office or place provided by general law or at such other place or places of payment as may be provided by the ordinance authorizing the issuance of the bonds.

(4) The Council may provide for the registration of bonds by the Finance Director.

(5) Bonds may be executed with the facsimile signature of the Mayor, and City Clerk, except that each bond shall be authenticated as to its validity in the manner designated by Council. The use of a printed facsimile of the city seal on bonds is also authorized.

(6) Bonds of the city shall contain such provisions for call in advance of maturity as the Council may provide or as may be required by the general laws of the State. Call premiums, if any, shall not be in excess of 4 per cent.

(7) Interim bonds or notes may be issued pending the issuance of permanent bonds and shall have the same qualities of negotiability as outstanding permanent bonds of the city. Owners thereof shall have the same rights as owners of permanent bonds.

**Item No. 4** Change purchase amount needing City Council approval from \$20,000 to \$50,000.

Full Convention Action – Motion to make recommendation that the amounts necessary to go the City Council for a purchase increase from \$20,000 to \$50,000 Motion by Harding, second by Leahy, **failed** 8-13-1 (Cann, Siebert, Kennedy absent).

**Item No. 5** That the City of Omaha should move to a biennial budgeting cycle.

Full Convention Action – Motion to make recommendation that City move to a biennial budgeting cycle. Motion by Kramer, second by Borgeson, **adopted** 20-2 (Cann, Siebert, Kennedy absent).

**Item No. 6** Change election of Mayor and City Council members to coincide with state elections in non-presidential years.

Full Convention Action – Motion to make a recommendation that the City change its election cycle to coincide with state elections in non-presidential years. Motion by Grasz, second by McPherson **adopted** 17-3 (Cann, Siebert, Kennedy, Butz, and Hudson absent)

**Section 8.01. Nominations and Elections.**

Candidates for the office of Mayor shall be nominated at large at a primary election. Candidates for the office of Councilmember shall be nominated and Councilmembers elected in the manner provided by state law. The primary election shall be held on the same day as the statewide election opposite the governor's election first Tuesday of April preceding the dates of the general or regular city election. Any person desiring to become a candidate for Mayor shall, at least thirty days prior to the primary, file with the officer in charge of elections a statement of candidacy and a request that such candidate's name be printed on the ballot. The person filing shall at the same time file a petition signed by at least one thousand electors of the city and shall pay to the City Treasurer, to aid in the expense of holding said primary, a filing fee of \$100.00, the receipt for which shall be filed with the officer in charge of elections. Any person desiring to become a candidate for Councilmember shall at the time of filing a statement of candidacy file a petition signed by at least one hundred electors of the council district from which such candidate seeks election and shall pay to the City Treasurer a filing fee of \$10.00, the receipt for which shall be filed with the officer in charge of elections. The official ballot to be used at the primary for nomination for Mayor shall be in substantially the following form and shall bear no party designations.

Candidates for nomination for Mayor of the City of Omaha at the primary election of April, 19\_\_\_\_\_.

Vote for One

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Names of Candidates)

In all other respects the general character of the ballot to be used shall be the same as authorized by the Australian Ballot Law of the state. In printing, the names shall not be arranged alphabetically but shall be rotated according to the following plan: The form shall be set up by the printer, with the names in the order in which they are placed upon the sample ballot prepared by the officer authorized to conduct the general city election; and in printing the ballots for the various election districts or precincts, the position of the names shall be changed for each election district, and in making the change of position,

the printer shall take the line of type containing the name at the head of the form and place it at the bottom, shoving up the column so that the name that was second before the change shall be first after the change. After receiving such ballot from the election judges, endorsed by them as provided by general law, the voter shall mark and cast such ballot. Any voter who shall declare that such voter will require assistance in voting shall be aided in the manner provided by general law. The polls at such primary election shall open at 8 o'clock a.m. and close at 8 o'clock p.m. In all respects such primary election shall be held and conducted, and the vote canvased and the result declared, as provided by general law, and all officers charged with any duty respecting the proclaiming, holding, and conducting of the general election shall perform such duties for and at such primary election. The two candidates for Mayor receiving the highest number of votes upon the primary ballot shall be the candidates and the only candidates whose names shall be printed upon the official ballot for Mayor at the general election, which shall be held on the first Tuesday after the second Monday in May each four years thereafter. In the event that a nominated candidate for Mayor or Councilmember shall die between the date of the primary election and the general election, the vacancy on the ballot shall be filled by moving up the names of the person who ran for the office concerned in the primary election and who failed of nomination but received more votes than any other candidate who failed of nomination. Should more than one vacancy be created or should the nomination be declined by any person eligible to be moved up, the names of other persons who ran in the primary election shall be moved up in the order that they finished in that election. At the general election the ballot shall be prepared in substantially the same form and the names rotated as hereinbefore provided for the primary election. The person receiving the higher number of votes for Mayor shall be elected to that office. In all other respects the election law of the state shall apply so far as the same is applicable and not inconsistent with the provisions of this section.

**Item No. 7** Amend Sections 2.18 and 2.19 of the City Charter to change the percentage needed to proceed with a referendum and a petition from 15% to 10%.

Full Convention Action – Motion to make recommendation to amend sections 2.18 and 2.19 of the City Charter to change the percentages needed for a referendum and petition from 15 to 10. Motion by Grasz, second by McPherson, **failed** 8-12 (Cann, Siebert, Kennedy, Butz, and Hudson absent).

### **November 25, 2013**

**Item No. 8** Amend 6.09 of the City Charter to require that all employees who commence employment January 1, 2016 go to a defined contribution system.

Full Convention Action – Motion to make recommendation to amend 6.09 of the City Charter to require that all employees who commence employment January 1, 2016 go to

a defined contribution system. Motion by Kramer, second by McPherson, **failed** 12-12 (Butz absent).

### **Section 6.09. Pension and Retirement System.**

The Council shall have authority to establish a pension and retirement system or systems for any or all groups of officers and employees in the service of the city. Beginning January 1, 2016, the Council shall no longer have the authority to offer, by collective bargaining agreement or otherwise, a pension and retirement system or systems for employees hired on or after that date that are defined benefit pension plans as set forth in 26 USC § 414(j). For purposes of this section 6.09, "applicable defined benefit plan" as defined in 26 USC § 411(a)(13)(C)(i) shall not be considered a defined benefit plan. All pension and retirement system or systems in effect for employees hired prior to January 1, 2016, shall remain in effect for those employees, except that no new employees may be added to such system or systems on or after January 1, 2016. Each pension and retirement system shall be financed on an actuarially funded basis. For all pension and retirement systems established for employees hired on or after January 1, 2016, the city and the employee shall make substantially equal contributions, except that the city shall bear the entire cost of prior service credit for officers and employees in the employment of the city prior to the establishment of the system or systems. Moneys required for pension administration and the city's contribution for current service shall be provided by appropriation from the general fund, and the portion of the appropriation allocable to each activity or project shall be included in the budget appropriation for that activity or project. The provisions of pension ordinances shall require actuarial evaluations at least annually, which shall serve as the basis for the determination of contribution rates and shall also provide for the maintenance of adequate actuarial reserves. Officers and employees of the city, except elected officials shall become members of the system as a condition of employment. The benefit schedule for the system may include benefits for service retirement, disability, death, surviving widows and minor children, and separation from the service. Provisions for vesting may be included. The legal right to a pension or benefit for the members and beneficiaries entitled thereto shall become effective when such pensions or benefits become payable, and the same shall not be impaired, abrogated, or diminished thereafter. The benefit schedule may provide for automatic recalculation and adjustment of pensions and benefits whenever salaries being paid to specific classes of active employees are revised. Co-ordination or supplementation of the city system or systems with the Old Age and Survivors Insurance provisions of the Federal Social Security Act may be provided. In the establishment of any new system or systems pursuant to this section, the Council shall not in any way provide lesser benefits or rights for employees in the city service on May 26, 1957 than those employees would receive under the pension and retirement systems in effect on that date.

**Item No. 9** Amend 2.05(3) of the Charter to make clear that a Councilmember will lose their seat if they move out of their Council District unless it is as a result of redistricting.

Full Convention Action – Motion to make recommendation to amend 2.05(3) of the Charter to make clear that a Councilmember will lose their seat if they move out of their Council District unless it is as a result of redistricting. Motion by Harding, second by McPherson, **adopted** 19-5 (Butz absent)

### **December 3, 2013**

**Item No. 10** To clarify the City of Omaha Home Rule Charter that it is limitation of power Charter.

Full Convention Action – Motion to approve a recommendation that Section 1.03 of the City of Omaha Home Rule Charter is amended to make clear that it is a “limitation of power” Charter. Motion and second, **adopted** 13-8-1 (Kramer, Benjamin-Alvarado, and Hernandez-Valencia absent)

### **Section 1.03. Powers of the City.**

~~The city shall have all powers of local self-government and home rule and all other powers that it is possible for it to have at the present and in the future under the Constitution of the State of Nebraska. The city shall also have all powers that now are, or hereafter may be, granted by the laws of the State of Nebraska. Except for powers expressly denied it by this charter, the city shall also have all powers granted to it or claimed by it in the Home Rule Charter of 1922, as amended, but the city shall not be limited to these powers. All powers shall be exercised in the manner prescribed in this charter, or if not prescribed herein, in such manner as shall be provided by ordinance.~~

The City of Omaha shall have the right and power to exercise all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever that it is possible for it to have at the present and in the future under the Constitution of the State of Nebraska, except as prohibited by the state constitution or restricted by this charter, and to exercise any powers which may be implied thereby, incidental thereto, or appropriate to the exercise of such powers. The city shall also have the right and power to exercise all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever that now are, or hereafter may be, granted by the laws of the State of Nebraska to all cities and villages or applicable to cities of the metropolitan class, provided that such laws are not inconsistent with this charter.

The city shall have the right and power to makes such ordinances, by-laws, rules, and regulations, except as prohibited by the state constitution or restricted by this charter, as may be necessary or expedient for maintaining the peace, good government, and welfare of the city, its trade, commerce, and manufacturing, and for preserving order, securing

persons or property from violence, danger, and destruction, for protecting public and private property, for promoting the public health, safety, convenience, comfort, morals, and general interests and welfare of the inhabitants of the city and to enforce all such ordinances by providing for the fine or imprisonment, or both the fine and imprisonment, of those convicted of violations thereof.

All powers shall be exercised in the manner prescribed in this charter, or if not prescribed herein, in such manner as shall be provided by ordinance.

Notwithstanding any other provisions of this charter, all powers may now and in the future be exercised outside the limits of the city to the extent permitted by law.

**Item No.11** Amend Section 2.02 of the City Charter to make clear that the definition of high elective office applies to the entire Article and not one section.

Full Convention Action – Motion to approve a recommendation that Section 2.02 of the City Charter be amended to make clear that the definition of high elective office applies to the entirety of Article 2 and not just this section. Motion and second, **adopted** 22-0 (Kramer, Benjamin-Alvarado, and Hernandez-Valencia absent)

**Section 2.02. Qualifications of Councilmembers.**

A candidate for the office of Councilmember shall, at the time of filing for the office, be a qualified elector and a resident of the district from which such candidate seeks election and a resident in the city and district or any area annexed by the city for one year. No person shall be disqualified from candidacy for the office of Councilmember because of the fact that such person holds any other public office, either elective or appointive, and no holder of any such other office shall be required to resign such other office in order to become and remain a candidate for the office of Councilmember. However, no person may serve as a Councilmember at the same time he or she holds another high elective office. For purposes of this ~~Section~~ Article high elective office means a member of the Nebraska Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city or school district elective office. Notwithstanding the above, no person shall be precluded from serving as a Councilmember for the reason that he or she has been elected or appointed to serve or holds another office, other than a high elective office, as described in this section.

**Item No.12** Amend Section 2.05 (7) of the City Charter to make clear that the standard for disqualification from office for a City Councilman is the same as it in 2.02.

Full Convention Action – Motion to approve a recommendation that Section 2.05(7) of the City Charter be amended to make clear that the standard for disqualification from office for a City Councilman is the same as it in 2.02. Motion and second, **adopted** 22-0 (Kramer, Benjamin-Alvarado, and Hernandez-Valencia absent)

**Section 2.05. Removal From, and Forfeiture of the Office of Councilmember.**

Any Councilmember may be removed from office by recall as provided in section 8.03. A Councilmember shall be deemed to have forfeited office upon any of the following grounds:

- (1) Failure to meet at any time during the term the qualifications for the office established by this charter.
- (2) Failure to take the oath of office.
- (3) Ceasing to be a resident of the city.
- (4) Conviction of a felony or any crime involving a violation of the official oath.
- (5) Being absent from regular Council meetings for three consecutive calendar months without being excused by the Council.
- (6) Being absent from regular Council meetings for six consecutive calendar months regardless of whether the absences are excused.
- (7) Accepting appointment or being elected to a ~~public office~~ high elective office other than an office that is incidental to the member's duties as a Councilmember and on which the member serves with Council approval.

In addition to the foregoing, the office of Councilmember shall become vacant upon the death or resignation of an incumbent or upon an adjudication of incompetency. The Council shall be the judge of the qualifications of its members and shall be responsible for removing by resolution a Councilmember from office for any of the reasons stipulated in this section.

**Item No.13** Remove the Communications Department and Chief from the City of Omaha Rule Charter.

Full Convention Action – Motion to approve a recommendation that Communications Department and Communication Chief be removed from Section 3.07 of the City Charter, as well as any other appropriate section. Motion and second, **adopted** 22-0 (Kramer, Benjaimin-Alvarado, Hernandez-Valencia absent)

**Section 3.07. Organization of the Executive Branch.**

The Executive Branch shall comprise the office of Mayor and the following departments and department heads:

Convention and Tourism Department—Convention and Tourism Director  
Finance Department—Finance Director  
Law Department—City Attorney  
Parks, Recreation, and Public Property Department—Parks, Recreation, and Public Property Director  
Human Resources Department— Human Resources Director  
Planning Department—Planning Director  
Fire Department—Fire Chief  
Police Department—Police Chief  
~~Communications Department—Communications Chief~~  
Public Works Department—Public Works Director  
Human Rights and Relations Department—Human Rights and Relations Director

The primary subdivisions of departments shall be designated as divisions for purposes of identification in this charter.

### **Section 3.11. Public Safety Departments.**

- (1) The public safety functions shall be performed by the following three departments: The Fire Department headed by the Fire Chief and; the Police Department headed by the Police Chief, ~~and the Communications Department headed by the Communications Chief~~. Each of these two ~~three~~ department heads shall be in the classified service, notwithstanding any provision of the Home Rule Charter to the contrary.
- (2) The Public Safety Department and the Office of the Public Safety Director are abolished as of January 1, 1993. The existent fire division and; police division; ~~and communications division~~ of the Public Safety Department shall become, respectively; the Fire Department; and the Police Department ~~and the Communications Department~~. The functions and obligations of each of these two ~~three~~ divisions shall be continued without interruption by each respective successor department, unless lawfully changed by ordinance or contract. All persons holding office or position, including the division heads, shall continue in their respective office or position, unless lawfully reclassified or separated therefrom. No provision of this charter amendment shall effect or impair any employee benefit, vacation or sick leave accrued or the validity of eligible lawful promotional lists or any existing lawful contract.

**Item No.14** Amend the Duties and Responsibilities of the Parks and Recreation Board to comport with the duties they perform.

Full Convention Action – Motion to approve a recommendation that Section 4.06 of the City Charter be amended to change the duties and responsibilities of the Parks and Recreation Board. Motion by McPherson, second by Peffer, **adopted** 21-1 (Kramer, Benjamin-Alvarado, and Hernandez-Valencia absent).

**Section 4.06. - Park and Recreation Board.**

There is hereby created a Park and Recreation Board comprised of seven members of the public who shall be appointed by the Mayor and confirmed by the Council. All appointments shall be for three-year terms, provided that members serving under current appointments shall complete the terms for which appointed. Vacancies in an unexpired term shall be filled by the Mayor by appointment for the remainder of the term, and such appointments shall be confirmed by the Council. Members shall be appointed from among the qualified electors of the city and shall be known to be in sympathy with the development of a park system and recreation program. A member of the board may be removed by the Council only for cause and after being given a written statement of the charges against the member at a hearing, which shall be a public hearing if the member so requests. The board shall elect its chairperson annually from among its members and shall establish its own rules of procedure. The board shall have power and shall be required to:

- (1) Advise the Mayor, Council, and Parks, Recreation and Public Property Director on matters concerning parks and recreation.
- (2) Furnish to the Planning Director for inclusion in the master plan, or any modifications thereof, recommendations on the location of sites for park and recreational areas.
- (3) ~~Review~~ Submit to the Planning Director annually a Parks, Recreation and Public Property Department's schedule of improvements to be undertaken in any of the six succeeding years for the location, extension, and development of parks and recreational areas, which schedule shall be given due consideration in the formulation of the city's capital improvement program and budget and advise the Mayor, Council, Planning Director and Parks, Recreation and Public Property Director.
- (4) ~~Recommend to the Finance Director annually a proposed operating budget for the parks and recreation programs.~~
- (5) ~~Recommend to the Human Resources Director a classification and pay plan for all positions in the classified service relating to parks and recreational activities.~~

- (4) Advise the Council on the sale, exchange, lease, transfer, or acceptance of any real estate or buildings for parks and recreational purposes.
- (5) Advise Parks, Recreation, and Public Property Director on the Parks Master Plan(s).
- (6) Review and Approve modifications to Sanitary and Improvement District (SID) park and recreation areas.
- (7) Liaise between community and Parks, Recreation, and Public Property Department.
- (8) Submit to the Mayor and Council annually a report on the status of the parks and recreational facilities.
- (9) Perform such other related duties as may be assigned to the board by the Mayor or Council.

**Item No.15** Amend Article 8 of the City Charter by inserting Section 8.02A on Religious Freedom and Rights of Conscience.

Full Convention Action – Motion to approve a recommendation that Section 8.02A of the City Charter be inserted to add rights for Religious Freedom and Rights of Conscience. Motion by Grasz, Second by McPherson, **failed** 7-11-4 (Kramer, Benjamin-Alvarado, and Hernandez-Valencia absent).

#### **8.02A Religious Freedom and Rights of Conscience**

All persons have a natural and infeasible right to worship Almighty God and exercise their religion according to the dictates of their own consciences, and there shall be no interference with the rights of conscience of any person. Notwithstanding any other provision of this Charter or any ordinance adopted thereunder, municipal action shall not burden a person's exercise of religion or rights of conscience, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion or conscience in the particular instance is 1) essential to further a compelling governmental interest; and 2) is the least restrictive means of furthering that compelling governmental interest.

**Item No.16** Amend Article 3.11 of the City Charter to remove classified service for the Fire Chief and to provide that in the event of a removal, the Fire Chief be returned to his former rank and pay grade.

Full Convention Action – Motion to approve a recommendation that Section 3.11(1) of the City Charter be amended to remove classified service for the Fire Chief and to return the Fire Chief to his previous rank and pay grade in the event that they are removed from service.

Amendment was introduced to add Police Chief. That amendment was moved by Kennedy, second by McPherson and **failed 8-14**.

The original item was then voted on. Motion by McPherson, second by Grasz, **failed 9-13** (Kramer, Benjamin-Alvarado, and Hernandez-Valencia absent).

Amendment to Section 3.11(1)

Remove in Section 3.11(1) in its entirety and replace with; “The public safety functions shall be performed by the following two departments: The Police Department headed by the Police Chief which position shall be in the classified service, notwithstanding any provision of the Home Rule Charter to the contrary; and The Fire Department headed by the Fire Chief who shall be appointed by the Mayor and be subject to removal by the Mayor.”

To Be Added: Section 3.11(a)- “In the event the Fire Chief is removed by the Mayor for any reason except cause, and said Chief was previously employed by the City of Omaha, he/she will be given the right to return to their former rank and pay grade.”

**Item No.17** Clean up language in Section 3.11(2) to remove reference to the Communications Department.

Full Convention Action – Motion to approve a recommendation that Section 3.11(2) of the City Charter be amended as shown to remove reference to the Communications Department. Motion by McPherson, second by Pedersen, **adopted 21-0** (Kramer, Benjamin-Alvarado, Hernandez-Valencia, and Lustgarten absent).

Remove in Section 3.11(2) replace the second sentence in its entirety with; “The existent fire division and police division of the Public Safety Department shall become, respectively, The Fire Department and the Police Department.

In the third sentence replace the word “three” with “two”.

Item No.18 Rename the Taxpayer Complaint Office as the Mayor's Hotline Office and clean up the language.

Full Convention Action – Motion to approve a recommendation that 3.15 of the City Charter be amended as rename the Taxpayer Complaint Office as the Mayor's Hotline Office and clarify the duties. Motion by McPherson, second by McColley, **adopted 19-2** (Kramer, Benjamin-Alvarado, Hernandez-Valencia, and Lustgarten absent).

ADJOURNED