

# CARSON CITY CHARTER REVIEW COMMITTEE

## Minutes of the June 5, 2012 Meeting

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A regular meeting of the Carson City Charter Review Committee was scheduled for 2:30 p.m. on Tuesday, June 5, 2012 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

**PRESENT:** Chairperson Donna DePauw  
Vice Chairperson Bruce Robertson  
Member Ron Allen  
Member Linda Barnett  
Member Christine Fregulia  
Member Rob Joiner  
Member Stephen Lincoln  
Member Chris MacKenzie  
Member Larry Messina

**STAFF:** Larry Werner, City Manager  
Randal Munn, Chief Deputy District Attorney  
Kathleen King, Deputy Clerk / Recording Secretary

**NOTE:** A recording of these proceedings, the committee's agenda materials, and any written comments or documentation provided to the recording secretary during the meeting are part of the public record. These materials are available for review, in the Clerk's Office, during regular business hours.

**1 - 2. CALL TO ORDER AND ROLL CALL** (2:31:01) - Chairperson DePauw called the meeting to order at 2:31 p.m. Roll was called; a quorum was present. Member MacKenzie arrived at 2:49 p.m.

**3. PUBLIC COMMENTS AND DISCUSSION** (2:31:37) - Chairperson DePauw entertained public comment. (2:31:57) Independent American Party State Chair John Wagner expressed support for "voting by districts." He advised that the Independent American Party lobbied before the legislature in support of district voting. "SB ... 430 was passed out of both houses of the legislature last time only to go to the Governor to veto it." Mr. Wagner requested the committee to reconsider ward voting at a future meeting. Chairperson DePauw entertained additional public comment; however, none was forthcoming.

**4. POSSIBLE ACTION TO ADOPT THE AGENDA** (2:34:02) - Chairperson DePauw entertained a motion to adopt the agenda. **Member Lincoln moved to adopt the agenda, as presented. Member Joiner seconded the motion. Motion carried 8-0.**

**5. "FOR DISCUSSION AND POSSIBLE ACTION, CHANGE TO CHARTER SECTION 3.075, INTERNAL AUDITOR; APPOINTMENT; COMPENSATION; DUTIES; AND OTHER MATTERS PROPERLY RELATED THERETO; (A) RECOMMEND CHANGE TO CHARTER; (B) RECOMMEND BALLOT QUESTION; (C) RECOMMENDATIONS TO THE BOARD OF SUPERVISORS"** (2:34:22) - Chairperson DePauw introduced and explained the wording of the agenda item. (2:36:07) Bill Prowse provided background information on this item, reviewed the agenda materials, and responded to corresponding questions of clarification. In response to a question, Mr. Munn advised that the ordinance which created the Audit Committee would need to be revised to accommodate the proposed Charter amendment. Mr. Prowse explained his intent for the Charter to "parallel the existing ordinance." In response to a question, he expressed the opinion that the "ordinance ... gives more detail. The charter authorizes the existence and basic structure is the way I see it." He provided additional background information on creation of the Audit Committee by ordinance. In response to a further question, he expressed the opinion that the proposed charter amendment "creates a legal basis ... for an

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audit committee." He deferred to the District Attorney, but expressed the opinion based on his experience, "those are the kinds of things that leave auditors out hanging and gives other people the opportunity to attack their results if they don't like them. It makes them more vulnerable." He reiterated the opinion "it's a legal issue if nothing else."

Chairperson DePauw entertained additional questions or comments of the committee members and, when none were forthcoming, public comments. None were forthcoming. In response to a question, Mr. Munn expressed the opinion that an ordinance is just as valid to establish an audit structure. "... not every government organization is under a charter." [Member MacKenzie arrived at 2:49 p.m.] (2:50:26) Mr. Prowse suggested "if you've got a charter, you should use it and try to keep it relevant and current." He expressed the opinion "there's a conflict between the two and should be resolved somehow."

In response to a further question, Mr. Munn explained the process by which the proposed Charter amendment would be submitted to the legislature. He explained that Mr. Prowse's proposed language would "essentially ... change the mission from being the internal auditor, who reports to the Board, does certain things. It would be an internal auditor, who's essentially reporting to the Audit Committee, will do certain things. So, it does change the governance of how audits are done in this City. So, in that regard, the creation of the Audit Committee as it now stands under ordinance is the Board appoints those individuals. If you're going to change the governance of how we're going to do audits, then the creation of the committee should likewise be in this whole process for internal auditor."

In response to a question, Mr. Werner advised of no problems associated with the function of the Audit Committee under the current ordinance. He provided background information on the rather lengthy process of hiring a contract internal auditor, and advised of minimal experience with the Audit Committee relative to the internal auditor in relationship to the Board of Supervisors.

Member Joiner expressed appreciation for Mr. Prowse's proposed amendment, referred to Mayor Crowell's comments at the initial committee meeting, and expressed support for audits being conducted independent of direct oversight by the Board of Supervisors. Chairperson DePauw expressed support for the proposed amendment, and requested Mr. Munn to develop appropriate language for consideration at the next committee meeting.

Chairperson DePauw entertained additional public and City staff comments and, when none were forthcoming, a motion. **Member Joiner moved to request staff to develop more defined language on a process for the internal auditor and the audit committee process for consideration at a future committee meeting. Member Lincoln seconded the motion.** Chairperson DePauw entertained additional questions or comments and, when none were forthcoming, requested a roll call vote. **Members Barnett, Fregulia, Joiner, Lincoln, Messina, Vice Chairperson Robertson, Chairperson DePauw - Yes; Member Allen - No; Member MacKenzie - Abstain.** Motion carried 7-1-1. Chairperson DePauw advised Mr. Prowse that the item would likely be reagendized for the committee's June 25<sup>th</sup> meeting.

**6. "FOR DISCUSSION AND POSSIBLE ACTION, AMENDMENT TO THE CHARTER REQUIRING THAT A GRAND JURY BE IMPANELED AT LEAST ONCE EVERY FIVE YEARS, (A) RECOMMEND CHANGE TO CHARTER; (B) RECOMMEND BALLOT QUESTION; (C) RECOMMENDATIONS TO THE BOARD OF SUPERVISORS"** (2:59:07) - Chairperson DePauw introduced and provided background information on this item. She entertained committee member questions or comments and, when none were forthcoming, public comments.

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(3:00:30) Dave Campbell, a resident of Carson City, expressed support for the proposed amendment.

(3:02:07) Ward 2 Supervisor Candidate Dennis Johnson expressed support for the proposed amendment, and requested the committee's serious consideration.

(3:03:27) Carol Howell recalled a charter provision for impaneling a grand jury once every ten years. In response to a question, Mr. Munn advised of not having seen any charter provision for impaneling a grand jury. He explained that impaneling a grand jury is the province of the district court, pursuant to statute. "We have a separation of powers problem. The district judges are given the authority to call a grand jury ..." Mr. Munn was uncertain as to whether such authority can be granted under the charter. In response to a question of clarification, he explained, "The charter is a statute of the legislature. The current ... general ... long-established law on grand juries is that, in a community of our size, the authority is granted to the district court judge to call a grand jury when he feels he needs to. Or he can be petitioned, under the statutory scheme, to call a grand jury ... That province has been given by Nevada Revised Statutes to a district court judge. A district court judge is a State officer under the constitution. They're not a county employee. They're an individual that's under the constitution and part of the judicial branch of government. For us, as a charter city, to write something that says a grand jury has to be called invades the province of another branch of government, a district judge. ... and it may be unconstitutional." In response to a question, Mr. Munn suggested that proposing such a charter amendment "essentially ... ask[s] a legislative body to tell the judges what to do and that may or may not fly." After referencing the election process relative to the Board of Supervisors, Ms. Howell expressed concern that there is "no way to govern what they're doing or question what they're doing if they're not doing their job or doing it incorrectly without this type of process." She expressed the opinion that "the grand jury process should be something that we are doing."

Mr. Werner acknowledged that the last grand jury was impaneled in 1998. In reference to Ms. Howell's comments, Mr. Werner advised of a statutory provision for any tax payer and two other individuals to sign an affidavit alleging malfeasance, present the same to a district judge, who is then "almost require[d]" to form a grand jury. He explained that selecting a grand jury every number of years is different than impaneling a grand jury. "It just means that you're selected to serve for a four-year period and if that grand jury is impaneled, you're the one on it. It doesn't mean that a judge is going to call a grand jury every four years."

(3:10:04) Ms. Howell requested the formation of a citizens committee "to watch over what the Board of Supervisors, the City Manager, as a whole were doing and review that." In reference to NRS 6.132, Mr. Munn reviewed the process for 25 percent of the voters to petition a district judge to summon a grand jury. Ms. Howell acknowledged understanding of the clarification. Chairperson DePauw entertained additional public comment; however, none was forthcoming.

Mr. Werner acknowledged costs associated with impaneling a grand jury, and was uncertain as to costs associated with selecting a grand jury.

(3:12:18) John Wagner recalled a grand jury "quite a few years ago," and discussed "another way to take care of officials who aren't doing their job. It's called a recall." He reviewed the recall process, and expressed opposition to the proposed charter amendment. Chairperson DePauw entertained additional public comment.

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(3:13:58) Dave Campbell expressed support for selecting grand juries “because judges are elected too.” In reference to Mr. Munn’s comments, Mr. Campbell requested “not assum[ing] that it is unconstitutional.” He suggested “do it and let the legislature or somebody else say, ‘No, you can’t,’ but at least we should be able to tell them what it is that we want.” He advised that a grand jury, once convened, has subpoena power. He expressed the opinion that “25 percent is a very high hurdle.” Chairperson DePauw entertained additional public comment and, when none was forthcoming, additional committee member comment.

In consideration of Mr. Munn’s comments, Member Joiner suggested starting at the State legislature with the government affairs committee. He further suggested “there’s probably an appetite for this among some of the legislators to do a more standard approach than just in our charter and it sounds like we can’t do it through our charter anyway.”

Chairperson DePauw entertained additional committee member and public comments. (3:17:58) Fred Voltz suggested tying the previous agenda item with the subject agenda item “to somehow cross boundaries and make that internal auditor be responding to the grand jury in some way or connection.” He encouraged discussing the connection. “To have the watchers being watched by the watchers really isn’t good so that reporting to the Board of Supervisors isn’t especially a good practice in terms of auditing what they’re doing or not doing and so it would be very helpful if there was some way, legally, that that would be possible to set up.”

Chairperson DePauw entertained additional public comment and, when none was forthcoming, a motion. **Member Lincoln moved to not recommend a charter amendment with regard to the grand jury impanelment, as it is clearly defined in the Nevada Revised Statutes at this time. Member Allen seconded the motion.** Chairperson DePauw entertained questions or comments on the motion and, when none were forthcoming, requested a roll call vote. **Members Messina, MacKenzie, Lincoln, Joiner, Fregulia, Barnett, Allen, Vice Chair Robertson, and Chair DePauw - Yes. Motion carried 9-0.**

**7. “FOR DISCUSSION AND POSSIBLE ACTION TO RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE CITY’S ETHICS ORDINANCE BE UPDATED TO REQUIRE DISCLOSURE FROM ALL CARSON CITY ELECTED OFFICIALS AS TO THEIR BUSINESS CONNECTIONS SO THAT CONFLICTS MAY BE JUDGED BY THE PUBLIC, (A) RECOMMEND CHANGE TO CHARTER; (B) RECOMMEND BALLOT QUESTION; (C) RECOMMENDATIONS TO THE BOARD OF SUPERVISORS”** (3:20:27) - Chairperson DePauw introduced this item, and entertained committee member questions or comments. When none were forthcoming, she entertained public comment. (3:21:28) Andrea Engelman provided background information on this item, and recommended writing a letter to the Board of Supervisors requesting the formation of a committee for the purpose of revising Chapter 2.34.

Chairperson DePauw entertained additional public comment. (3:24:54) Ward 4 Supervisor Candidate Amy Clemens described the Outside Business Activity form required by her employer, and expressed a preference for a similar document to be required for “business officials.” By way of example, she referenced an elected official owning property in one of the redevelopment areas.

(3:26:14) Ward 2 Supervisor Candidate Dennis Johnson expressed support for the recommendation, and related employment experience relative to disclosure.

(3:27:36) Fred Brown inquired as to whether disclosures would be required prior to or after an election. Mr. Werner explained the provisions of Section 2.34.040, Filing by candidates. Mr. Munn reviewed the

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provisions of Section 2.34.010. Mr. Werner reviewed the City's policies and procedures relative to employees holding outside employment positions. He acknowledged that the subject ordinance is in effect and its provisions practiced by the Board of Supervisors, the City Manager, and all City department heads.

In response to a question, Mr. Werner advised that very little employee information is open to the public. Ms. Engelman reiterated the opinion that the language of the ordinance "needs to be cleaned up ..."

(3:33:58) John Wagner discussed his past experience as a candidate, and expressed the opinion "there's a lot of checks and balances already in statute that we don't need to have a whole lot more added on top of it."

Mr. Munn advised that public employees and public officers are subject to the State ethics law, "and that includes local government employees." In reference to the provisions regarding City employees receiving gifts, Member Joiner agreed that the subject ordinance is "already way out of date." Chairperson DePauw entertained additional committee member and public comments. When none were forthcoming, she entertained a motion. **Member Messina moved to recommend to the Board of Supervisors to appoint a committee to review Chapter 2.34, Code of Ethics, and make recommendations for modification. Member Joiner seconded the motion.** In response to a question, Mr. Munn advised that the committee making recommendations beyond the Charter "may exceed what it is you're formed to do." He expressed doubt, however, that the Board of Supervisors would be offended by the committee requesting review of an ordinance. Chairperson DePauw requested a roll call vote. **Members Messina, MacKenzie, Lincoln, Joiner, Fregulia, Barnett, Allen, Vice Chair Robertson, Chair DePauw - Yes. Motion carried 9-0.**

**8. "FOR DISCUSSION AND POSSIBLE ACTION TO RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE CHARTER BE AMENDED TO REQUIRE THE CITY MANAGER AND SENIOR STAFF LIVE WITHIN CARSON CITY, (A) RECOMMEND CHANGE TO CHARTER; (B) RECOMMEND BALLOT QUESTION; (C) RECOMMENDATIONS TO THE BOARD OF SUPERVISORS" (3:39:28)** - Chairperson DePauw introduced and provided background information on this item. Mr. Munn noted for the record that the previously agendized item failed for lack of a motion. Chairperson DePauw acknowledged the item had been reagendized for a possible recommendation.

Chairperson DePauw entertained public comment. (3:41:22) Ward 4 Supervisor Candidate Amy Clemens prefaced her comments by emphasizing that they were "in no way directed at Mr. Werner." She read prepared remarks into the record expressing support for the proposed recommendation. In reference to statistical information relative to Nevada's unemployment rate, she expressed the opinion that there would be a sufficient pool of candidates from which to draw should the City Manager's position become available.

(3:44:10) John Wagner expressed concern with regard to any attempt to force the existing City Manager to reside in Carson City, and support for emergency personnel being required to live in Carson City.

(3:46:18) Ward 2 Supervisor Candidate Dennis Johnson provided background information on this item, and emphasized there was no intent to impose the requirement on the existing City Manager. He suggested considering that inviting people to invest in Carson City should begin with the City's senior staff.

(3:47:03) Dave Campbell suggested that "the City Manager has a great deal of input into how our money is spent ..." He suggested that "effective two years from now, whatever happens to my real estate tax ought to happen to his real estate tax." Discussion followed.

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Mr. Werner advised of an existing Board policy for city managers to reside in Carson City, and that an exception was made when the Board requested him to serve as City Manager under a unique set of circumstances. Chairperson DePauw expressed a preference for the Board to pass an ordinance requiring the City Manager to live in Carson City "just to protect the public."

Chairperson DePauw entertained additional public comment. (3:51:55) Paul McGrath inquired as to whether the City provides Mr. Werner with a vehicle. Mr. Werner advised that he is provided a car allowance. Mr. McGrath expressed the opinion that the matter should "be left to the Board. ... Let them decide what they want to do with the City Manager ... or senior staff ..."

Chairperson DePauw entertained additional public and committee member comments and, when none were forthcoming, a motion. **Member Allen moved to not recommend to the Board of Supervisors that the Charter be amended to require the City Manager and senior staff to live within Carson City. Member Lincoln seconded the motion.** In response to a question, Mr. Werner advised that the requirement for the city manager and senior City staff to live in Carson City is included in each job description. Chairperson DePauw entertained public comment and, when none was forthcoming, requested Member Allen to repeat his motion. In response to a question, Mr. Munn noted the several options included in the title of the agenda item. Chairperson DePauw requested a roll call vote. **Members Messina, MacKenzie, Lincoln, Joiner, Fregulia, Barnett, Allen, Vice Chair Robertson - Yes; Chair DePauw - No. Motion carried 8-1.**

In consideration of previous discussion, Chairperson DePauw entertained a motion. **Member Joiner moved to recommend to the Board of Supervisors to revise the job description of the City Manager to require residency within Carson City. Member Barnett seconded the motion.** Chairperson DePauw entertained questions of the committee members and comments of the public. When none were forthcoming, she requested a roll call vote. **Members Messina, MacKenzie, Fregulia, Allen, Vice Chair Robertson - No; Members Lincoln, Barnett, Joiner, Chair DePauw - Yes. Motion failed 4-5.** Member Joiner commented on the irony that senior City staff is currently required to live in Carson City, "but ... we're afraid to change that for the City Manager ..."

**9. "FOR DISCUSSION AND POSSIBLE ACTION TO RECOMMEND TO THE BOARD OF SUPERVISORS THAT CITIZENS COMMITTEES MUST BE OPEN AND PROPERLY NOTICED WITH COMPLETE AGENDAS AND MINUTES WITHIN A REASONABLE TIME FRAME, (A) RECOMMEND CHANGE TO CHARTER; (B) RECOMMEND BALLOT QUESTION; (C) RECOMMENDATIONS TO THE BOARD OF SUPERVISORS" (4:00:13)** - Chairperson DePauw introduced this item. (4:00:54) Ward 2 Supervisor Candidate Dennis Johnson provided background information. Member MacKenzie related his experience serving on various City advisory committees over the years. In response to a question, Mr. Johnson clarified his concerns relative to publishing draft meeting minutes and final agendas. In response to a question, Mr. Munn advised that minutes are required to be published within 30 days of a meeting, according to the provisions of the Nevada Open Meeting law.

Chairperson DePauw entertained public comment. (4:05:58) Andrea Engelman reviewed the provisions of the Open Meeting law relative to publication of agendas and minutes, and expressed the opinion that a Charter amendment would be unnecessary. She discussed the similarities between Member Allen and former Governor Mike O'Callaghan.

Chairperson DePauw entertained additional public comment and, when none was forthcoming, a motion. Member Allen moved to not recommend to the Board of Supervisors that the citizens committees must be

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open and properly noticed with complete agenda and minutes within a reasonable time frame. Motion died for lack of a second. Chairperson DePauw entertained a motion; however, none was forthcoming.

#### **10. “FOR DISCUSSION AND POSSIBLE ACTION TO RECOMMEND TO THE BOARD OF SUPERVISORS THE CHARTER BE AMENDED TO REQUIRE THAT PERSONNEL CONDUCTING NEGOTIATIONS ON BEHALF OF THE CITY MUST NOT BENEFIT IN ANY MANNER INCLUDING PAY INCREASES AND ANY OR ALL BENEFITS AS A RESULT OF THOSE NEGOTIATIONS, (A) RECOMMEND CHANGE TO CHARTER; (B) RECOMMEND BALLOT QUESTION; (C) RECOMMENDATIONS TO THE BOARD OF SUPERVISORS”**

(4:08:53) - Chairperson DePauw introduced this item, and Ward 2 Supervisor Candidate Dennis Johnson provided background information. He responded to corresponding questions of clarification, and discussion followed. In response to a question, Mr. Werner advised that he conducts labor negotiations together with an appointed team and then reports to the Board of Supervisors. He couldn't "imagine a situation where a city manager would sit and agree to a bargaining that he then benefitted from. ... that ... is just absolutely unethical." He advised that his salary and benefits are specified by his contract with the Board of Supervisors.

Chairperson DePauw entertained additional committee member and public comments. (4:16:26) Andrea Engelmann advised that Attorney Charlie Cockerill used to negotiate on behalf of the taxpayers. In response to a comment regarding a pay increase within the last two years, Mr. Werner advised that most department heads "did not get as much as the classified employees ... The directors got less than that and I got zero." In response to a comment, Mr. Werner explained the apparent salary increase asserted by Transparent Nevada. Ms. Engelmann anticipates that NRS 288 will be reviewed "in depth" by the legislature during the next session. In response to a question, she advised that the elected officials are "supposed to be in there doing the negotiating on behalf of the taxpayer." She responded to questions of clarification regarding the mechanism of negotiation. Member Joiner expressed support for legislative review of NRS 288.

(4:21:54) John Wagner related a hypothetical situation relative to the possibility of bonuses for the City Manager and expressed concern over the breadth of the proposed amendment.

(4:23:45) Dave Campbell expressed support for hiring an outside negotiator to represent the taxpayers.

(4:26:16) Carol Howell expressed the opinion that "people who are benefitting from the pay raises shouldn't be negotiating them by any means, but somebody should be in this City saying ... 'We should have looked at freezing salaries, stopping pay raises, seeing what the economy was doing a lot quicker than what we did.'" She agreed with Mr. Campbell's comments, and requested the committee to consider "the whole negotiating process." She responded to questions of clarification.

Chairperson DePauw entertained additional public comment and, when none was forthcoming, a motion. None was forthcoming.

#### **11. “FOR DISCUSSION AND POSSIBLE ACTION TO RECOMMEND TO THE BOARD OF SUPERVISORS TO AMEND THE CHARTER TO REQUIRE THE BOARD OF SUPERVISORS TO REVIEW AND UPDATE THE CITYWIDE MASTER PLAN AND ECONOMIC VITALITY STUDY EVERY 5 YEARS, (A) RECOMMEND CHANGE TO CHARTER; (B) RECOMMEND BALLOT QUESTION; (C) RECOMMENDATIONS TO THE BOARD OF SUPERVISORS”**

(4:30:35) - Chairperson DePauw inquired as to any citizen present to hear this item. When none were forthcoming, she suggested deferring this item to the June 25<sup>th</sup> meeting. (4:31:10) Andrea Engelmann

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advised that the item was agendized at her request; that she had been advised as to more appropriate wording, and expressed a preference to defer the item to the next meeting. **Member Lincoln moved to defer this item to the next meeting. Member Barnett seconded the motion. Motion carried 9-0.**

**12. “DISCUSSION OF ANY NEW AGENDA ITEMS”** (4:32:19) - Chairperson DePauw entertained requests for future agenda items; however, none were forthcoming.

**13. PUBLIC COMMENT** (4:32:35) - Chairperson DePauw entertained public comment; however, none was forthcoming.

**14. ACTION TO ADJOURN** (4:32:51) - Member MacKenzie moved to adjourn the meeting at 4:32 p.m. Member Allen seconded the motion. Motion carried 9-0.

The Minutes of the June 5, 2012 Carson City Charter Review Committee meeting are so approved this \_\_\_\_\_ day of August, 2012.

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DONNA DePAUW, Chair