City of Prescott

Mayor’s Charter Review Commission

June 19, 2023 | 10:00 AM
201 N. Montezuma Street
Executive Conference Room, 3rd Floor
Prescott, AZ 86301

AGENDA

The following Agenda will be considered by the **Mayor’s Charter Review Commission** to be held **June 19, 2023**. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **DISCUSSION & ACTION ITEMS**
   - A. Approval of June 5, 2023 Mayor's Charter Review Commission Meeting Minutes.
     Recommended Action: MOVE to approve minutes as presented
   - B. Discussion and Possible Action Regarding Proposed Revisions to Article II, Section 5 - Qualifications
     Recommended Action: MOVE to approve revised language for Article II, Section 5 as provided by staff
   - C. Discussion and Possible Action Regarding Proposed Revisions to Article VIII, Section 13 - Lease with Option to Purchase
     Recommended Action: MOVE to approve revised language for Article VIII, Section 13 as provided by staff
4. **ADJOURNMENT**

Upon a public majority vote of a quorum of the Board, the Board may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

(1) Discussion or consideration of personnel matters (A.R.S. §38-431.03(A)(1));
(2) Discussion or consideration of records exempt by law (A.R.S. §38-431.03(A)(2));
(3) Discussion or consultation for legal advice with the city’s attorneys (A.R.S. §38-431.03(A)(3));
(4) Discussion or consultation with the city’s attorneys regarding the city’s position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid litigation (A.R.S. § 38-431.03(A)(4));
(5) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03(A)(5));

(6) Discussion, consultation or consideration for negotiations by the city or its designated representatives with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city (A.R.S. §38-431.03(A)(6);
(7) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03(A)(7)).

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on 6/16/23 at 10:30 a.m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

Sarah M. Siep

Sarah M. Siep, City Clerk

CITY OF PRESCOTT
ARIZONA

TO:	MAYOR AND CITY COUNCIL
AGENDA:	Special Mayor's Charter Review Commission Meeting
DATE:	June 19, 2023
DEPT:	City Clerk
ITEM #:	3.A
SUBJECT:	Approval of June 5, 2023 Mayor's Charter Review Commission Meeting Minutes.

ITEM SUMMARY

This item is for the approval of the June 5, 2023 meeting minutes.

BACKGROUND

None.

FINANCIAL IMPACT

None.

RECOMMENDED ACTION

MOVE to approve minutes as presented

ATTACHMENTS

1. June 5, 2023 Meeting Minutes

City of Prescott

Mayor’s Charter Review Commission

June 5, 2023 | 2:00 PM
201 N. Montezuma Street
Executive Conference Room, 3rd Floor
Prescott, AZ 86301

MINUTES

1. **CALL TO ORDER**
   Chair Arnold called the meeting to order at 2:00 p.m.

2. **ROLL CALL**
   Chair Charlie Arnold
   Vice Chair Ralph Hess - arrived at 2:19 p.m.
   Member Ted Gambogi
   Member Michael Gjede
   Member Jerry Hulm
   Member Bonnie McMinn - arrived at 2:06 p.m.

3. **DISCUSSION & ACTION ITEMS**

   A. Approval of May 8, 2023 Mayor's Charter Review Commission Meeting Minutes.
   MOTION BY MEMBER GAMBOGI TO APPROVE MAY 8, 2023 MINUTES; SECONDED BY MEMBER HULM (4 - 0)

   B. Article VIII, Section 12 - Sale of City Property

   Chair Arnold stated that the group will be reviewing the updated language from previous discussions. Staff incorporated the amended language which is to have two public hearings to be held on different meeting dates to receive public comment that shall be held within 60 days prior to the regular council meeting at which the proposed sale is agendized for discussion and possible action. He pointed out some typos and added that it is important that there are two separate opportunities for public to comment prior to the day in which Council will vote and staff feels 60 days is sufficient.

   Member Hulm requested some clearer wording on this. For example: Item 1 *"two public hearings to receive public comment shall be held on two different meeting days within the 60 day period prior to the regular council meeting".*

   Deputy City Attorney Matt Podracky said what was approved at the meeting and was adopted. He asked Member Hulm to restate the revised language.

   Member Gambogi asked if the gap between the two meetings should be defined.

   Chair Arnold responded that "meeting date" is defined elsewhere in the Charter.

   Member Gjede clarified that the time between the two meetings might need to be specifically addressed.

Member Hulm stated that the Commission talked about that last time and it was decided just to say a 60-day period.

Chair Arnold asked if there were any further comments and if all members are comfortable with Member Hulm's modification.

Mr. Podracky commented that the section reads better with the revision and confirmed the language.

Member McMinn arrived at 2:06 p.m.

Chair Arnold recapped their discussion for Member McMinn.

Member McMinn stated that she wants to talk about keeping the dollar amount at $2 million. She wants to know when there would be a property sale worth over $4 million and feels this change is negating the opportunity for the public to be involved.

Chair Arnold said the airport has several hundred more acres that will be sold over the next many years, and the water ranch is valued at an excess of 4 million, but he is not sure about in town properties that would be over that dollar amount.

Mr. Podracky stated that Member Hess' concern was that the city would start wholesaling parks.

Member McMinn commented that the state statute is $2 million, Prescott is a charter city and therefore able to do it in the way they choose to. She agrees that parcels at the airport would be an exception, but otherwise the Council would not be involved in sales like this unless it was over $4 million.

Mr. Podracky clarified that the Council has to approve all property sales of any size so they would still be involved, just not by a super majority vote.

Chair Arnold added that these revisions would make any property worth more than $4 million require two public hearings and a super majority vote.

Mr. Podracky confirmed and reminded the Commissioners that is a 6 out of 7 vote.

Chair Arnold asked Member Hulm to re-read the language change, which he did.

MOTION BY MEMBER GJEDE TO APPROVE LANGUAGE WITH REVISIONS AS DISCUSSED FOR ARTICLE VIII, SECTION 12 - SALE OF CITY PROPERTY; SECONDED BY MEMBER HULM: PASSED (4-1) MEMBER MCMINN DISSENTING

C. Discussion Regarding Proposals to Be Provided to Council at the June 13 Study Session Meeting.

Chair Arnold stated that all of these have been previously approved by a majority of this Commission and have just been formalized, however, if members would like to review one-by-one they may do so.

Member Gambogi stated that in Prop 469 that language reads "may serve at the pleasure of the Council" but he feels this is nebulous and leaves room for debate on what is fair and not fair so it is not a clear rule.

Member Gjede commented that applies to a couple of positions in the city.

Chair Arnold responded that this item in the charter is specific to the City Manager.

Mr. Podracky added that the City Manager was the only appointee position which had a 5 out of 7 votes rule and "serve at the pleasure of" just means the appointee can be removed upon a majority vote of the Council.

Member Gjede said it does not say that anywhere in the charter.

Member Gambogi commented that the former language was more clear in stating how many votes were needed to remove for cause and how many for no cause, but the new language is not clear. He feels that if it is going to read "at the pleasure of the Council" they should also include the votes so it is defined for the public.

Mr. Podracky asked if he wanted to state that the City Manager shall serve at the pleasure of the majority of the Council.

Member Gambogi stated he was okay with that and asked if Mr. Podracky did not want to go into cause or no cause.

Mayor Goode asked why not replace with "at will of the Council".

Mr. Podracky commented that the appointees have contracts, so takes it out of the at will/not at will dichotomy.

Member McMinn stated that one of the issues was these contracts and the charter were in conflict.

Chair Arnold also stated that there could be confusion over what defines the majority. For example if four Councilmembers meet and three vote to terminate that isn't a majority of the Council as a whole.

Member Gjede concurred and said that goes to Member Gambogi's point in needing to define if it is a majority or super majority otherwise it can be open to interpretation.

Member Gambogi commented that it could also state 5 out of 7.

Member McMinn responded that it already says that, the question the Commission was trying to address is if the City Manager should be treated differently than the other appointees.

Mr. Podracky stated that the City Clerk section of the Charter states "at the pleasure of the Council".

Member Gambogi said he doesn't care about the number, but just wants to define it for clarification.

Member Hulm commented that in looking through the Charter, and Charter Government provisions of AZ Cities nearly everybody has a "majority vote of Council".

Vice Chair Hess arrived at 2:19 p.m.

Chair Arnold recapped the discussion and stated that Member Gambogi would like to define a number or a majority to remove the City Manager and are debating whether "serve at the pleasure of Council" is clear enough or needs to be defined further.

Member Gjede explained that he is questioning if a certain number of Councilmembers that have to vote should be defined and whether it is a majority or a super majority.

Vice Chair Hess said that because of the fact that any action by Council requires a simple majority, anything other than a simple would be reflected in the "pleasure of the Council".

Mr. Podracky added that he does not think it is debatable. The "pleasure of the Council" would be a simple majority of the council. A winning argument is that however many show up to the Council meeting, the majority of those present will carry the vote.

Commission and staff discussion regarding definitions of super majority versus simple majority and how these are further defined if not all members of Council are present for a vote.

Vice Chair Hess stated that appointees are hired by Council and therefore can be removed by them as well.

Mr. Podracky added that Section II, Article 2 Section 16 defines a quorum of the Council and Section 17 defines a failure to vote. State law is different than the Charter which states a majority of whoever shows up to the meeting. For the City of Prescott, a majority vote is four with a seven member Council, unless there is a legitimate conflict of interest.

Assistant City Attorney Chris Resare added that he has looked at a couple of other charter cities that state the City Manager "serves at the pleasure of Council" and can be terminated by a majority vote of the Council.

Chair Arnold commented that if the language states "serves at the pleasure of the

Council and can be terminated by a majority of the Council" that might be more clear.

Member Gambogi added that then the other appointee language would need to be updated as well for consistency.

Chari Arnold concurred, but they can't do that now as this is the language that will be presented to the Council for a final decision so it can be placed on the ballot and that would be amending two more sections of the charter that we have not touched yet.

Mr. Podracky stated that staff can add a final sentence stating City Manager can be removed by majority vote of the Council.

Vice Chair Hess responded that should be added. And confirmed that a majority is defined as four (4) regardless of how many are present.

Mr. Podracky confirmed. He read language as follows: "a majority of the members of the council shall constitute a quorum", "no member of the Council present shall be excused from voting except upon matters involving consideration of his or her own official conduct or involving a conflict of interest. In all other cases the failure to vote by a present council member shall be entered in the minutes as an affirmative vote" and stated that if there are four (4) people it is a majority of the four. That is how the case law of the state defines it. He is looking for whether the Charter has a special provision that a majority vote will always be four votes regardless of the number of council members present. He thinks it would be a majority of the quorum at that point.

Further Commission and staff discussion regarding absent and/or excused members for these types of votes and how "majority" is defined in these cases.

Chair Arnold asked if there was a motion to amend Prop 469 as presented.

MOTION BY MEMBER GAMBOGI TO AMEND LANGUAGE FOR PROP 469; SECONDED BY MEMBER MCMINN.
MEMBER MCMINN MOMENTARILY WITHDREW HER SECOND AS SHE MISUNDERSTOOD THE MOTION. MOTION DIED DUE TO LACK OF SECOND.

Chair Arnold asked if the Commissioners would like to further discuss any other propositions.

Mr. Podracky pointed out some typos which staff will address before finalizing for presentation to the Council.

Chair Arnold called for a motion to approve the presentation of the proposed propositions at the June 13 Study Session of the City Council.

MOTION BY CHAIR ARNOLD TO APPROVE PROPOSED PROPOSITIONS FOR DISCUSSION AT THE JUNE 13 STUDY SESSION; SECONDED BY

MEMBER GJEDE: PASSED (4-2) VICE CHAIR HESS AND MEMBER GAMBOGI DISSENTING.

4. UPDATES

A. July Meeting Schedule

Chair Arnold stated that the Commission has discussed limiting meetings since the focal point moving forward is going to be dependent on Council action. He proposed meeting in the second week of July, on July 10 at 2:00 p.m., subject to the approval of the City Clerk and then determining additional meetings as necessary at that time.

Vice Chair Hess stated that if something comes up at the Study Session the Commission may need to get together to discuss and that he would not be available and needs to be excused.

Chair Arnold clarified that the Commission is essentially handing off the recommendations to Council to discuss and make a decision form there. He understands that it will be on the consent agenda of the June 27 Voting Meeting so this group will not be meeting again prior to that. He feels that concerns have been addressed and they made some good changes.

Vice Chair Hess asked if this would be the only think on the General Election Ballot if all members of Council are elected in the Primary.

Mr. Podracky confirmed.

Member Gambogi asked if there are any means to publicize the changes to the charter to the public.

Chair Arnold said that during the July meeting the Commission can discuss outreach, he plans on dedicating an hour on KYCA to charter amendments. There is an opportunity with KQNA for the same and the Daily Courier will likely include some information. There is a limit to how much people can advocate over educate.

Mr. Podracky stated this is called influencing the outcome of an election. Generally, commissioners can do some public education, i.e. a yes vote means this and a no vote means that. He will provide a presentation in July for clarification.

5. ADJOURNMENT

There being no further business to discuss, Chair Arnold adjourned the meeting at 3:04 p.m.

CHARLIE ARNOLD, Chair

ATTEST:

Commission Staff Liaison

TO:	MAYOR AND CITY COUNCIL
AGENDA:	Special Mayor's Charter Review Commission Meeting
DATE:	June 19, 2023
DEPT:	City Clerk
ITEM #:	3.B
SUBJECT:	Discussion and Possible Action Regarding Proposed Revisions to Article II, Section 5 - Qualifications

ITEM SUMMARY

Staff recommends approval of the revised language as presented by staff in follow up to the June 13 City Council Study Session.

BACKGROUND

The Mayor's Charter Review Commission has established this section of the City Charter as a priority for update in the 2023 General Election Cycle. At previous Meetings the Commission has discussed revisions which were incorporated into the draft language that was presented to Council at their June 13, 2023 Study Session. Feedback was provided and additional revisions have been made based on that feedback. Staff is seeking approval and/or feedback regarding the proposed language.

FINANCIAL IMPACT

None at this time.

RECOMMENDED ACTION

MOVE to approve revised language for Article II, Section 5 as provided by staff

ATTACHMENTS

1. REVISED Qualifications_Prop XXX

PROPOSITION ____

PROPOSAL BY THE CITY COUNCIL TO AMEND CITY CHARTER ARTICLE II, SECTION 5, ENTITLED “QUALIFICATIONS”

SHALL ARTICLE II, SECTION 5 OF THE CITY CHARTER ENTITLED “QUALIFICATIONS” BE AMENDED AS FOLLOWS?

The mayor and ~~councilmen~~ COUNCIL MEMBERS shall ~~be~~: 1) Be a~~A~~ ~~q~~Qualified ~~e~~Elector~~s~~; 2) Have been a resident of the city ~~one year~~ THREE (3) YEARS prior to the primary election; and 3) ~~s~~Shall hold no other public office for which they receive compensation except that of a notary public or a member of the National Guard, ~~or naval~~ or military reserve, and shall have resided in said city for ~~one (1) year~~ THREE (3) YEARS next preceding the date of such election or appointment. If the mayor or a ~~councilman~~ COUNCIL MEMBER shall cease to possess any of these qualifications or shall be convicted of a felony, ~~his~~ THEIR office shall immediately become vacant.

FULL BALLOT TEXT:

OFFICIAL TITLE: PROPOSAL BY THE CITY COUNCIL TO AMEND CITY CHARTER ARTICLE II, SECTION 5 ENTITLED “QUALIFICATIONS”

DESCRIPTIVE TITLE: AMENDMENT TO THE CITY CHARTER TO CHANGE THE QUALIFICATION FOR MAYOR & COUNCIL FROM ONE (1) YEAR TO THREE (3) YEARS RESIDENCY, AND LANGUAGE CLEANUP.

A “YES” vote shall have the effect of changing the residency requirement for Mayor and Council from one (1) year to three-years (3) and clean up language of the section.

A “NO” vote shall have the effect of maintaining the current wording.

TO:	MAYOR AND CITY COUNCIL
AGENDA:	Special Mayor's Charter Review Commission Meeting
DATE:	June 19, 2023
DEPT:	City Clerk
ITEM #:	3.C
SUBJECT:	Discussion and Possible Action Regarding Proposed Revisions to Article VIII, Section 13 - Lease with Option to Purchase

ITEM SUMMARY

Staff recommends approval of the revised language as presented by staff in follow up to the June 13 City Council Study Session.

BACKGROUND

The Mayor's Charter Review Commission has established this section of the City Charter as a priority for update in the 2023 General Election Cycle. At previous Meetings the Commission has discussed revisions which were incorporated into the draft language that was presented to Council at their June 13, 2023 Study Session. Feedback was provided and additional revisions have been made based on that feedback. Staff is seeking approval and/or feedback regarding the proposed language.

FINANCIAL IMPACT

None at this time.

RECOMMENDED ACTION

MOVE to approve revised language for Article VIII, Section 13 as provided by staff

ATTACHMENTS

1. REVISED Lease with Option to Purchase_Prop XXX

PROPOSITION ____

PROPOSAL BY THE CITY COUNCIL TO ADD A NEW SECTION 13 TO CITY CHARTER ARTICLE VIII, ENTITLED "LEASE OF CITY PROPERTY WITH OPTION TO PURCHASE"

SHALL ARTICLE VIII, OF THE CITY CHARTER BE AMENDED BY ADDING A NEW SECTION 13, ENTITLED "LEASE OF CITY PROPERTY WITH OPTION TO PURCHASE" AS FOLLOWS?

ANY LEASE OF CITY-OWNED REAL PROPERTY PROPOSED TO BE ENTERED INTO PURSUANT TO CITY CHARTER ARTICLE VIII, SECTION 11, THAT INCLUDES AN OPTION FOR THE LESSEE TO PURCHASE THE LEASED PROPERTY SHALL COMPLY WITH THE SALE OF CITY PROPERTY REQUIREMENTS IN CITY CHARTER ARTICLE VIII, SECTION 12. THE REAL PROPERTY TO BE LEASED SHALL BE APPRAISED PRIOR TO THE EXECUTION OF THE LEASE WITH OPTION TO PURCHASE. IF THE VALUE OF THE PROPERTY AT THE TIME OF APPRAISAL EXCEEDS FOUR MILLION DOLLARS, ~~THE~~ ALL REQUIREMENTS SET OUT IN CITY CHARTER ARTICLE VIII, SECTION 12 AND ITS~~ALL ,~~ SUBSECTIONS ~~2 AND 3~~ ~~WILL~~SHALL APPLY. ~~NO ADDITIONAL APPRAISALS OR VALUATIONS OF PROPERTY SHALL BE CONDUCTED OR REQUIRED BY EITHER THE LESSEE OR THE CITY AT THE TIME THE LESSEE EXERCISES ITS OPTION TO PURCHASE THE PROPERTY.~~

FULL BALLOT TEXT:

OFFICIAL TITLE: PROPOSAL BY THE CITY COUNCIL TO ADD CITY CHARTER ARTICLE VIII, SECTION 13 ENTITLED "LEASE OF CITY PROPERTY WITH OPTION TO PURCHASE"

DESCRIPTIVE TITLE: AMENDMENT TO THE CITY CHARTER TO ADD ARTICLE VIII, SECTION 13 REGARDING LEASE OF CITY PROPERTY WITH OPTION TO PURCHASE AND SETTING APPRAISAL REQUIREMENTS.

A "YES" vote shall have the effect of adding Article VIII, Section 13 to the City Charter regarding lease of city property with option to purchase and setting appraisal requirements.

A "NO" vote shall have the effect of maintaining the current wording.