



# City of Tacoma 2024 Charter Review Committee

## Open Government and Code of Ethics Presentation

January 11, 2024

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# Open Government Topics

- Open Public Meetings
- Public Disclosure
- Public Records Management

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# Open Public Meetings Act

- State Law RCW 42.30 passed in 1971
- All meetings public, all business conducted openly
- 2022 amendments recognize virtual and hybrid meetings and add some corresponding requirements

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# Open Public Meetings Act

- Applies to City Governing Bodies, Committees, Boards and Commissions, including Charter Review Committee.
- Applies to formal meetings and most other gatherings – retreats, study sessions, workshops etc.

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# Open Public Meetings Act

A “meeting” is when a quorum is present and action occurs.

- Action is any official business – discussion, deliberation, receipt of public testimony, consideration, review, analysis – not only final action or vote.
- Can also apply to less than quorum subcommittees or smaller group, if delegated authority by Committee.

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# Open Public Meetings Act

“Final Action” is an actual vote or other collective positive or negative decision on a motion, proposal, resolution, order or ordinance.

- Ordinary procedural motions probably not “final action”
  - intended to apply to substantive decisions

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# Meeting Requirements

- Notice to public and agenda published on web
- Physical Location for Public to Attend
  - Exception – if declaration of emergency prohibits in person meetings
- Committee can attend any meeting remotely if technology allows real time participation
- If meeting is virtual **only** due to emergency, must be mechanism to allow public to participate remotely in real time at no cost - otherwise hybrid is optional but encouraged

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# Meeting Requirements

- Public is permitted to attend without conditions
  - Can be required to register enter a virtual meeting platform or meet other general health, safety, welfare conditions
- Public comment **required** only at regular meeting when **final** action is taken, but is otherwise encouraged (can be written only)
- Disruptive members of public may be removed
- If order cannot be restored meeting can adjourn and reconvene elsewhere
- Minutes are taken

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# Special Meetings

- Any meeting other than regularly scheduled meeting: can be called by Chair or majority of members
- Notice given at least 24 hours in advance to:
  - Committee Members (unless waiver of notice on file or if they are present at the meeting)
  - Public (by posting on City website and in print at City Hall for in person meeting)
- Agenda is published at the time of notice
- No topics can be discussed or acted on in a special meeting if not on the agenda

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# Things to Watch Out For

- E-mail exchanges can be meetings
  - Avoid “reply all” to group communications from staff
    - Reply individually and let staff manage conversations
- 3 Board Members conversing in shared environment can be meetings
  - Telephone
  - E-mail
  - Zoom/Face Time/Skype/Messenger etc
  - In person (but can travel together)
  - Social Media Posting

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# Violations

- Enforced by court action
- Individual member liability
  - \$500 penalty for knowing violation, \$1000 for subsequent violation
- Committee action null and void
- Bad Press
- Public Distrust

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# Public Records Act

- State law RCW 42.56 passed in 1972
- Applies to City Committees Boards and Commissions, including Charter Review Committee and individual members
- Duty to search and produce public records if requested

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# What is a Record?

- Information relating to the conduct of government, performance of a government function
- Owned used or retained by Committee or its members
- Paper, electronic, audio, video, social media etc.
- Content, not location, defines whether it is a public record – public records can be kept in personal devices, accounts or locations

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# What Can be Requested?

- All public records available upon request
- Exemptions to production are narrow
- Requester cannot be limited or asked reason for request

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# Public Records

- Activity as Committee member generates records
- Keep all Committee related records in one location (**use separate e-mail address, specific folders**)
  - E-mail address used to conduct Committee business is public record, any other email, residential, or personal contact address or personally identifying information on file with City is exempt
- Liability to City for not timely or adequately searching – City's good faith is defense
- No individual liability for Committee members

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# Managing Public Records

- State law RCW 40.14 passed in 1957
- City must maintain records of its committees boards and commissions
  - Retention period set by state and City
  - Some records are “transitory” and don’t need to be saved for a set time
  - Existing records must be searched and produced if asked

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# Managing Public Records

- City is generally owner of and responsible for records relating to Committee business
- Committee members should discard records when not needed
- If members do create records, discard when no longer needed or transfer records to the City staff
- If requested perform a timely and thorough search and provide records to staff
- If contacted by public with a request for records immediately inform staff



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# City of Tacoma Code of Ethics

- Tacoma Municipal Code Chapter 1.46
- Applies to Committee Members as Covered Officials “appointed members of City Board, Commission, Committee, task force or other multi member body”

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# Code of Ethics

Purposes of Code of Ethics include:

- Avoid conflicts of interest and assertion of undue influence as part of Committee decision making
- Prevent use of City position and powers for personal gain
- Avoid improprieties and the appearance of improprieties

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# Code of Ethics

Gifts (TMC 1.46.030 K):

- Prohibition against giving or receiving “compensation, gift, favor, reward or gratuity for matter connected with or related to” Committee service
- Exception for nominal items not reasonably presumed to influence decision making

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# Code of Ethics

Other prohibited conduct (TMC 1.46.030):

- Disclosure of confidential information gained by reason of service on Committee
- Use of position for personal benefit or gain or to gain or benefit another
- Use of City personnel or property for personal benefit or gain or to gain or benefit another
- Commission of act of moral turpitude relating to position as a Committee member

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# ETHICS VIOLATIONS

- Committee members under jurisdiction of Board of Ethics
- If complaint – review by Board of Ethics, possible investigation or hearing before Board of Ethics
- Sanctions for violation if found can include termination from position on Committee

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# QUESTIONS?

Thank You!

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# **Charter Review Process**

**Charter Review Committee**

**January 18, 2023**



# Overview

- Authority for and History of City Charter
- Relationship to State Law
- Process for Amending

# State Constitution Art. XI Section 10

- State legislature determines incorporation and organization of Cities and Towns
- Cities over certain population may “frame a charter for its own government, consistent with and subject to the Constitution and laws of this state”
  - Freeholders” are elected to convene and prepare and propose a charter
  - Submitted to voters - if adopted by majority vote becomes “the charter of said city, and shall become the organic law thereof, and supersede any existing charter including amendments thereto, and all special laws inconsistent with such charter.”

# History of Charter

- Tacoma Board of “Freeholders” elected in 1952, drafted present day Charter and submitted to the voters.
  - “Freeholder” in Washington once meant “one who owns either a legal or equitable title to real estate”
  - Property ownership requirement struck down by state Supreme Court in 1972, violates equal protection clause of US Constitution.
- Established Council/Manager form of Government
  - Replaced the Strong Mayor/Commission style of government that had been in place since 1910 – separate officials were elected to control utilities, public works and public safety
  - Built Tacoma Power and Water, but full of “widespread vice and corruption” by the 1950s.
- Charter has been amended nine times by votes of the people.
- See History hand out! (Credit Bill Baarsma – through 2014 )

# Relationship to State Law and City Code

- Tacoma is a First Class City. RCW 35.10.010.
  - Has population of 10,000 or more at its organization and has a charter adopted under Article XI Section 10 of state Constitution
- A City with its own charter “may legislate on every subject not inconsistent or hostile to the Constitution or general law”
  - Per state law City legislation is by Ordinance, subject to publication before adoption and must be codified.
  - Codification is Tacoma Municipal Code (TMC)
- Charter and Code can do **more** than Constitution or state law allows, but cannot conflict with or operate to nullify state law.
- General proposition is that something is allowed if not prohibited by state law or Constitution
  - [RCW 35.22](#) governs First Class Cities and includes the “specific powers enumerated”
  - Additional state laws govern operation of municipal utilities
  - [Tacoma Municipal Code - City of Tacoma](#) contains numerous instances of legislation intended to interpret and apply Charter

# Process for Amending Charter - State Law

- Washington state Constitution:
  - A City charter may be amended by proposals submitted by the vote of a majority of the legislative body of City (City Council) to the voters.
  - Council can submit alternate articles or propositions for the choice of the voters – each to be “voted on separately without prejudice to others.”
- Washington State law
  - Charter amendment by initiative of people (subject to election law requirements)
  - People can petition for election of new Freeholders
    - Concurrent and additional methods to City Council submission

# Process for Amending Charter - City Charter

- City Charter Section 2.25.
  - Charter Review Committee – proposes recommendations to Council
    - Council may accept, reject or modify
  - Freeholders may be elected (after a proper petition to convene a Board of Freeholders)
  - Council may directly submit to ballot (per state Constitution)
  - Anything submitted to voters must be in context of an election governed by state law
    - Tacoma doesn't run its own municipal elections – 2014 amendments to Charter aligned election processes with state law.
  - Majority vote of people will amend

## City Charter Dates and Events of Note

**Oct. 16, 1909:** Citizens vote out the Mayor-Council Plan in favor of the Commission System which incorporates non-partisan, at-large elections, the direct primary, as well as initiative, referendum and recall provisions.

**Feb. 17, 1922:** Fred Shoemaker, the outgoing City Controller, calls for replacing the Commission Charter with the City Manager Plan.

**March 31, 1925:** A "Committee of 100" is formed by the Chamber of Commerce calling for an election of freeholders to frame a City Manager Plan for Tacoma. Nothing comes of it.

**March 8, 1927:** The Commission Charter is amended through a freeholder process. Shoemaker, elected a freeholder, unsuccessfully argues for a change to the Manager Plan.

**Feb. 15, 1934:** Another effort is made by civic groups to call for the Manager Plan. A petition with 7,000 plus signatures is presented to the City Council (Commission).

**March 14, 1934:** An advisory vote in favor of a freeholder election to frame a city manager charter is defeated at the polls. Shoemaker leads support of ill-fated effort. A key issue in the measure's defeat is the supposed threat to the integrity of the City's publicly owned utilities by the corporate interests supporting the Manager Plan.

**Oct. 12, 1951:** Mayor John Anderson's Charter Advisory Committee calls for a freeholder's election to reform the government by ousting the commission plan. No recommendation on the form of government is made but the Manager Plan is implied. (City embroiled in crime hearings, led by State Senator Albert D. Roselini.)

**March, 1952:** Voters support electing a freeholders commission to frame a charter by an 83 percent affirmative vote. Fifteen freeholders are elected. Fred Shoemaker is elected by the commission to be chair. He soon puts the freeholders' commission on record in favor of the Manager Plan--before the Central Labor Council can testify. Labor is outraged.

**Nov. 1952:** A City Manager Plan is approved narrowly at the polls after a contentious campaign against it led by organized labor and its allies. Shoemaker and freeholder E.K. Murray incorporate the separation of three City utilities in the proposed charter--power, water and rail--under a semi-autonomous board and second city administrator. The issue is debated by divided freeholders, but after strong support from business interests and the Electricians Union, it is included in the final draft. The Charter also includes an appointed mayor (by the council), election of council members by plurality vote, at-large and an appointed and advisory civil service board.

**May 13, 1953:** After a nationwide search, Frank Backstrom is appointed City Manager on a 6-3 vote. Backstrom's appointment is vehemently opposed by organized labor. When asked about labor's opposition, one council member commented: "Labor be damned." Opposition to the Manager Plan begins to intensify.

**March 5 1955:** A new "Committee of 100" is formed by labor and other manager opponents and files a petition with 18,750 signatures calling for a new freeholder election. The City Council responds by calling for an election on May 10, 1955.

**May 10, 1955:** The freeholder proposition passes narrowly; most of the new freeholders favor a mayor-council charter. The TNT comes out strongly opposed to the new freeholder group. The newspaper warns of "sinister forces" behind the effort.

**March, 1956:** The Mayor-Council Charter is defeated by a 54 percent vote. The key defining issue is the charter change consolidating all of the utilities under the mayor and council. This leads E. K. Murray and other opponents of the Manager Plan to oppose the mayor-council proposal.

**Feb. 17, 1956:** Backstrom is forced to resign; takes post in Wichita. There are calls for the appointment of a local person as city manager.

**June, 1956:** After a nationwide search, Dave Rowlands is appointed Tacoma's second City Manager by a unanimous vote.

**March 1958:** Four new council members are elected: Ben Hanson, Ellen Price, Jimmy Porter and Forrest Easterday. All four supported the Mayor-Council Charter in 1956.

**Nov. 3, 1958:** The new City Council places three substantive charter amendments on the ballot and they are passed by large majorities: direct election of the mayor for a two-year term, election of council members by position and majority vote, and the direct election of a civil service board with broad policy-making authority. The TNT strongly opposes the amendments, to no avail, arguing that they would weaken the Council-Manager Charter.

**March 31, 1960:** Outgoing council members Clara Goering and Homer Humiston call for the creation of City Council Oversight Committees to assist in making policy decisions. Humiston complains that, to the City Manager, the Council is nothing more than a "statutory nuisance."

**Nov. 6, 1967:** A.L. "Slim" Rasmussen is elected Mayor, defeating incumbent Harold Tollefson (the outgoing president of the National League of Cities), the key issues: changing the form of government and ousting Dave Rowlands as city manager. Two Rasmussen allies are also elected. Chaos ensues with Rowlands facing a 5-4 council.



**Feb. 6, 1968:** Advisory vote on changing the form of government loses narrowly.

**Nov. 1969:** Rasmussen loses reelection to Gordon Johnson in one of the closest elections in history. Rasmussen's allies win and Rowlands resigns.

**Jan.-Sept. 1970:** The five-member council majority appoints political ally Floyd Oles city manager without a formal search, without public notice and under a suspension of the rules. A group of Rasmussen supporters meet to propose that strong mayor amendments to be placed on the ballot. Recall charges are filed against the five-member council majority. Signatures are collected and certified and the court orders the Council to place the recall charges on the September primary ballot.

**Sept. 20, 1970:** The five council members (Cvitanich, Banfield, Dean, Zatkovich and O'Leary) are recalled by a two-to-one vote. All of the charter amendments are defeated except the one clarifying the charter's audit procedures.

**Sept. 18, 1973:** The first formal Charter Review Committee recommends that the Charter be amended to include: extending the mayor's term to four years, nominating council members by district, establishing term limits and expanding the Civil Service Board to five members. In all, 19 amendments are placed on the ballot by the Council. Eighteen amendments pass.

**Nov. 6, 1979 and Sept. 16, 1980:** Technical amendments are placed on ballot by the Council and passed.

**Nov. 8, 1983:** Only two technical amendments are passed after a contentious City Charter Committee review process which focused on the independence of public utilities and the authority of the city council.

**Nov. 3, 1992:** The Charter Review Committee recommended a number of amendments including the direct election of five council members by district, clarification of civil service provisions and an affirmative action requirement in the anti-discrimination provision. City Manager Ray Corpuz recommended a charter change that would require TPU to use all of the general government's staff functions (article 4.17). Corpuz's proposal is placed on the ballot by a 5-3 Council vote. This becomes a most contentious amendment with TPU and its allies campaigning in opposition. It passed.

**Nov. 2, 2004:** The Charter Review Committee recommends 21 amendments. The City Council places ten on the ballot including: an annual performance appraisal of the City Manager, a formal review and vote on the Manager's tenure every two years, clarification of the referendum and initiative provisions and a required formal review of the City Charter every ten years. All passed.

**Nov. 4, 2014:** The Charter Review Committee recommends numerous amendments including change to Form of Government from Council Manager to Mayor/Council/Chief Administrative Officer. Committee was not united on advancing Form of Government changes. The Committee was united on advancing amendments to form Salary Commission, the number of Council meetings per year, eliminating the publication requirement for emergency ordinances to be effective, clean ups to Initiative and Referendum and City election processes and vacancy in office provisions to align with state law, to give council the authority to hire its own legislative staff, to require Council confirmation of Department heads, to give Council appointment power of City Attorney, adding Landmarks Preservation Commission, term limiting Public Utility Board, providing additional back and forth between Council and Utility Board over Utility budget and Utility operations, giving Council authority over Utility Board ten year audit requirement, requiring Council to confirm and reconfirm every two years Utility Director appointment, deleting citizenship and City residence requirements for classified employees, adding additional nondiscrimination provisions, expanding financial disclosure requirements to members of Committees, Boards and Commissions who have budget and contracting authority, deleting the prohibition against the siting of cemeteries and making gender neutral language throughout.

The Council did not advance all of the recommended changes. The Council advanced 12 amendments to voters, including addressing term limits for the Mayor which was not part of the Committee recommendations:

**Amend 1:** To conform election provisions to state law. **PASSED**

**Amend 2:** Make language gender neutral throughout. **PASSED**

**Amend 3:** Add color, ancestry, gender-identity, sexual orientation, familial status, honorably discharged veteran, and military status to the list of classes protected from discrimination in City employment.

**PASSED**

**Amend 4:** allow emergency ordinances to take effect immediately upon passage rather than after publication. **PASSED**

**Amend 5:** require Council confirmation for appointment of department heads. **PASSED**

**Amend 6:** require City Council confirmation of the appointment of the Director of Utilities by the Public Utility Board, with reconfirmation by the City Council every two years following annual performance reviews by the Public Utility Board. **PASSED**

**Amend 7:** require a Landmarks Preservation Commission. **PASSED**

**Amend 8:** Allow a person to serve ten consecutive years as a Council Member **and** two full consecutive terms as Mayor. **FAILED**

**Amend 9:** add a Citizen Commission on Elected Salaries to determine the compensation and salary of the Mayor and Council. **PASSED**

**Amend 10:** remove the prohibition against new cemeteries, mausoleums, or crematories within the City of Tacoma. **PASSED**

**Amend 11:** allow City employees to contract for utility services and participate in conservation environmental and other programs available to the public generally and otherwise allowed by state law. **PASSED**

**Amend 12:** remove citizenship and City residency as requirements of eligibility for City employment. **FAILED**