

**City of Oakland**  
***Agenda Report***

To: Council President Ignacio De La Fuente and  
Members of the City Council

From: Measure X Limited Charter Review Committee

Date: September 11, 2003

Re: **A REPORT AND RECOMMENDATIONS FROM THE MEASURE X LIMITED CHARTER REVIEW COMMITTEE RELATED TO THE MAYOR-COUNCIL FORM OF GOVERNMENT REGARDING: (A) BALANCE OF POWER AMONG BRANCHES OF GOVERNMENT, (B) THE ELECTED CITY ATTORNEY, (C) SETTING PAY FOR ELECTED OFFICIALS, (D) TERM LIMITS FOR ELECTED OFFICIALS, (E) MAYOR'S ATTENDANCE AT COUNCIL MEETINGS, (F) NUMBER OF COUNCIL MEMBERS AND AT-LARGE REPRESENTATIVES, (G) CITY COUNCIL STRUCTURE AND PROCEDURES AND (H) ROLE OF CITY MANAGER**

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**I. SUMMARY**

As directed by the City Council, the Measure X Limited Charter Review Committee (Committee) developed proposed modifications and amendments to the City Charter related to the following issues within Measure X, designated by the City Council. This report also contains Committee motions that were discussed but failed, and a commentary section conveying issues and concerns the City Council may wish to consider apart from Charter amendments. Please note that since this Committee is addressing proposals related to the City Charter, it refers to the type of government by its more formal term - Mayor-Council – although Measure X is commonly known as the “Strong Mayor” initiative.

Committee recommendations are as follow:

**A. The Balance of Power Among the Branches of City government, Including the Budgeting Process**

1. Retain the Mayor’s authority to appoint the City Administrator with City Council approval through a resolution.
2. Retain the Mayor’s current authority to remove the City Administrator without City Council approval.

3. Modify City Administrator's "Powers of Appointment and Removal" (Charter § 503) to require Mayoral approval for department/agency directors.
4. Keep the tie breaking system "as is" with the Mayor casting the tie breaking vote.
5. Retain the Mayor "reconsideration" powers on ordinances passed with 5 votes, but require 5 votes, rather than the current 6, to override a "reconsideration."
6. Keep current system of placing measures on ballot through action by the City Council or an initiative.
7. Retain current system of appointments to Boards and Commissions. However, if the Mayor fails to fill a seat on a City Board or Commission within 6 months of a vacancy or expiration of a term (holdover), the City Council also shall have the authority to make the appointment.

**B. The elected City Attorney, including whether the issue of an elected City Attorney should be considered separately (at a later date) than the other pieces of Measure X;**

1. Keep the elected City Attorney as a part of the mayor-Council form of government and put on ballot at same time in the same measure.

**C. Setting Pay for Elected Officials**

1. Mayor: Keep the current formula of setting the Mayor's salary, but require voter approval of any increase that exceeds 5% annually. Remove language regarding "not exceeding City Manager's salary."
2. City Council: Provide annual automatic pay increases tied to Consumer Price Index (CPI) with a cap of 5% in order to maintain some equity in pay. Public Ethics Commission has discretion to provide increases above CPI, but only up to 5%. Increases over 5% annually, if recommended by the Public Ethics Commission, require voter approval.
3. City Attorney and City Auditor: Retain current system of Council setting pay for these positions. Recommend that the City Council should adopt salary setting formulas, similar to the Mayor's, but not make them Charter amendments.

**D. Term Limits for Elected Officials**

1. Change the Mayor’s term limit to “two consecutive terms”
2. No term limits for any other elected official

**E. Required Attendance of the Mayor at Some or All City Council Meetings**

1. In addition to the Mayor’s required Budget presentation, require the Mayor to make a State of the City Address and conduct two additional public meetings to solicit and respond to comments, concerns or questions from the public. The meetings are to be attended by designated staff, at the discretion of the Mayor, and shall be noticed to the public no less than two weeks in advance. Timing of the meetings shall be spread through out the year.

**F. Number of City Council Members, Including the number of At-Large Representatives**

1. Leave number of Council seats and At-Large seat “as is”.

**G. City Council Structure and Procedures (selection of Council President and Vice Mayor, procedures for breaking ties, and overriding vetoes)**

1. Vice Mayor: Keep current system (duties and succession) in place (system of election/rotation to be decided by Council).
2. Leave current system governing the Council to the Council’s determination, including electing President of the Council.
3. Keep tie breaking process “as is”.
4. Give the Mayor “reconsideration” powers on ordinances passed with 5 votes, and require only 5 votes (instead of the current 6 votes required) to override a reconsideration.

**H. Role of the City Manager Relative to a Mayor-Council Government.**

1. Retain the current charter language requiring a “professional administrator”.
2. Change the title of the position from City Manager to City Administrator.

3. Retain the Mayor’s current authority to appoint the City Administrator and require City Council approval by resolution.
4. Retain the Mayor’s current authority to remove the City Administrator without City Council approval.
5. Retain the powers and duties outlined in Charter § 504 but modify Charter § 503, “Powers of Appointment and Removal of Department Heads”, to require Mayoral approval of appointments and removals of directors and department heads.

## II. BACKGROUND

On April 1, 2003 the City Council established the Measure X Limited Charter Review Committee to prepare a report and recommendations for City Council consideration by the August Council Recess, proposing Charter amendments related to the following areas of Measure X:

- A. The balance of power among the branches of City government, including the budgeting process;
- B. The elected City Attorney, including whether the issue of an elected City Attorney should be considered separately (at a later date) than the other pieces of Measure X;
- C. Setting pay for elected officials;
- D. Term limits for elected officials;
- E. Required attendance of the Mayor at some or all City Council meetings
- F. Number of City Council Members, including the number of At-large representatives;
- G. City Council structure and procedures (selection of Council President and Vice Mayor, procedures for breaking ties, overriding vetoes);
- H. Role of the City Manager relative to a mayor-Council government.

The following individuals were appointed to the fifteen-member committee composed of eight City Council appointments, six Mayoral, including the Committee chair, and one appointment by the League of Women Voters and Common Cause jointly.

|                |                       |
|----------------|-----------------------|
| Mayor          | Zack Wasserman, Chair |
| Mayor          | Cynthia Meyer         |
| Mayor          | Debbie Taylor         |
| Mayor          | Maryanne Dreisbach    |
| Mayor          | Judy Chu              |
| Mayor          | Robert Apodaca        |
| District One   | Judy Belcher          |
| District Two   | Richard Winnie        |
| District Three | Naomi Schiff          |
| District Four  | Bonnie Hamlin         |

|                |                |
|----------------|----------------|
| District Five  | Barbara Leslie |
| District Six   | Becky Taylor   |
| District Seven | Henry Gardner  |
| At-Large       | Benjamin Fay   |

League of Women Voters/Common Cause                      Helen Hutchison

The Committee held a total of seven (7) regular meetings from April 23, 2003 through July 30, 2003. The regular meetings were scheduled on Wednesday evenings beginning at 5:30 pm. Three subcommittee meetings to address (a) the boards and commissions appointment process, (b) the Mayor's attendance at City Council meetings and (c) setting pay for elected officials were also held to allow detailed discussion and the development of alternatives for the larger Committee's consideration. Please note that since this Committee is addressing proposals related to the City Charter, it refers to the type of government by its more formal term - Mayor-Council - although Measure X is commonly known as the "Strong Mayor" initiative.

Outreach efforts included a press releases announcing (a) Committee's formation and (b) meeting schedule. Every meeting agenda was mailed to 126 neighborhood groups registered with the City's Planning Department, to the Oakland Chamber of Commerce, the ethnic Chamber of Commerce offices and local political organizations. Staff established a web page on the City's main web site in which all the meeting agendas, relevant documents (including but not limited to minutes, decision matrix, and survey results) along with public comments were posted. In addition, a meeting was held at the East Oakland Senior Center to accommodate those who could not attend meetings held in City Hall. Committee meetings were regularly televised on the City's local government station (KTOP) on a delayed basis every Thursday evening at 7:00 pm and other times randomly throughout the week and weekend. Each full Committee meeting was re-broadcast 2 to 3 three times per week.

### **III. COMMITTEE RECOMMENDATIONS (Approved Motions)**

#### **A. The Balance of Power Among the Branches of City Government, Including the Budgeting Process;**

##### **1. Change the title of City Manager to City Administrator.**

**Rationale:** The Committee concluded that with the creation of Mayor-Council form of government under Measure X, the tradition of a City Manager was changed and therefore the title of the position should be changed to mark the difference clearly. There was discussion whether the title should be Chief Administrative Officer, but the Committee felt that the better title was City Administrator.

**Vote:** 12 ayes, 2 nays

2. **Retain the Mayor's authority to appoint the City Administrator with City Council approval by resolution.**

**Rationale:** The City Council's involvement with the selection of the City Administrator creates connection and accountability between the Mayor, City Administrator, and the City Council. It also preserves the checks and balances on the powers of the Mayor and helps ensure that the City Administrator has the professional experience required by the Charter. The Committee recommends that the Council should approve the Mayoral selection through a resolution to ensure a minimum of five (5) positive votes for this action.

**Vote:** Unanimous

3. **Retain the Mayor's current authority to remove the City Administrator without City Council approval.**

**Rationale:** Accountability and transparency being central themes for a Mayor-Council form of government, the Committee felt the Mayor was responsible for the performance of the City Administrator and needed sole authority over his/her dismissal. The Committee was concerned about creating dysfunction or paralysis in city government if the Mayor was dissatisfied with the City Administrator's performance but could not remove the individual without the Council's approval.

**Vote:** 12 ayes, 2 nays

4. **Modify City Administrator "Powers of Appointment and Removal" (Charter § 503) to require Mayoral approval for department/agency directors.**

**Rationale:** The Committee discussed this issue in conjunction with §504 of the Charter, "Duties" of the City Administrator, and whether those powers should all be transferred to the Mayor. There was concern expressed by some members that those powers would make a strong mayor too strong. There was also concern that transferring the "Duties" to the Mayor would be too far removed from the intent of the original Measure X. The Committee concluded that the City Administrator "Duties" should stay intact in order to have the City Administrator run the day-to-day business of the city efficiently, but that the selection and removal of key city staff should be done with the concurrence of the Mayor.

**Vote:** Unanimous

5. **Keep the Mayor's tie breaking System "as is".**

**Rationale:** The Committee received testimony from Council Members Wan, Quan, Nadel, Brunner, and De La Fuente that the current tie breaking process is

working well. The possibility of a tie vote and the tie breaking process is fostering better cooperation within the Council. In addition, in order to avoid the possibility of legislative deadlock, given the even number of seats on the Council, it is imperative for Oakland to have a process to break tie votes.

**Vote:** 10 ayes, 5 nays

**6. Give the Mayor "reconsideration" powers on ordinances passed with 5 votes and require 5 votes to override a "reconsideration".**

**Rationale:** The Committee approved this action to preserve the balance of powers between the legislative and executive branches. For the executive branch, the Committee agreed that a strong mayor should have the authority to ask the Council to reconsider an ordinance approved by the Council. For the legislative branch, however, the Committee believes that the current requirement to garner 6 votes on the Council to override a reconsideration (equal to 75%) places too high a burden on the legislative branch. Therefore, the Committee recommended that the requirement to override a reconsideration should be reduced from 6 to 5 votes (equal to 63%).

**Vote:** 11 ayes, 3 nays

**7. Keep current system of placing measures on ballot through the City Council or Voter Initiative.**

**Rationale:** The Committee felt that the current system allowing measures to be placed on the ballot by Council action or the initiative process provides for adequate check on the balance of powers.

**Vote:** Unanimous

**8. If the Mayor fails to fill a seat on a City Board or Commission within 6 months of a vacancy or expiration of a term (holdover), the City Council also shall have the authority to make the appointment.**

**Rationale:** Although the Council did not expressly ask the Committee to address this issue, the Committee felt it was appropriate to examine the appointment process under the balance of powers between the Council and Mayor. In light of the high Boards' and Commissions' vacancy rates, there is concern for action on the issue from various members of the community. The Committee formed a sub-committee on Charter Requirements Related to the Powers of Mayor and Appointments to Boards and Commissions to discuss the issue in greater detail and to develop alternatives for the full Committee to

consider. The sub-committee developed 5 alternatives. The proposed recommendation is to allow the City Council to nominate and vote on board and commission appointments directly when a vacancy or holdover has been open longer than six months. However, nothing prohibits the Mayor from making appointments to that particular board or vacancy during that time period until the Council makes an appointment.

**Vote:** 13 ayes, 1 abstention

**B. The Elected City Attorney, Including Whether the Issue of the Elected City Attorney Should be Considered Separately (at a later date) Than The Other Pieces of Measure X**

- 1. Keep the elected City Attorney as part of the Mayor-Council form of government and put on ballot at the same time and on the same measure.**

**Rationale:** The Committee felt that within a Mayor-Council form of government the City Attorney's independence from both the Mayor and Council was paramount and therefore the City Attorney should be elected. If the City changed back to a Council-Manager form of government then there would be a different set of issues regarding an elected City Attorney that the Committee did not review. The Committee voted to leave the election of a City Attorney within the provisions of Measure X.

**Vote:** 12 ayes, 2 nays, and 1 abstention

**C. Setting Pay for Elected Officials**

- 1. Mayor: Keep the current formula of setting the Mayor's salary, but require voter approval for increases over 5%. Remove language regarding not exceeding City Manager's salary.**

**Rationale:** The current formula used to generate the Mayor's salary appears to be a rational and non-political method for establishing a salary. However, the Committee felt that in order to preserve equity between the Mayor and the Council, the same parameters should be used for establishing the salaries of the Mayor and the Council. Therefore, the Committee recommends that the formula be retained for setting the Mayoral salary, with the limitation that any suggested increase generated by the formula more than 5% annually would require voter approval. Such an action would equalize the process, but not the amount, for Council Members and the Mayor.

**Vote:** Unanimous

2. **City Council: Provide annual automatic pay increases tied to the CPI with a cap of 5%. The Public Ethics Commission can provide increases over CPI but only up to 5% annually. Increases over 5% recommended by the Public Ethics Commission require voter approval.**

**Rationale:** One of the consequences of Measure X was the inequity created for the City Council Members in the manner for setting their salary. Council Members are the only independently elected offices in the City of Oakland where any increases to their salary require a public vote. Given that the general voting population is reluctant to give raises to elected officials, this requirement has created a significant imbalance. City Council Members have not received a salary increase since 1996 while other elected officials have received regular increases in salary. Therefore, the Committee strongly believes this inequity needs to be addressed. At the same time the Committee wants to preserve the spirit of the original Measure X language which requires that any raise for Council Members must be approved by the voters. The Committee developed a compromise position that provides for limited automatic increases tied to the CPI with a cap of 5% annually, allows the Public Ethics Commission to recommend salaries increase above CPI up to the cap of 5%, and keeps the mechanism for the PEC to recommend a raise larger than 5% annually that would require voter approval. This position continues to involve the PEC in the decision making process and more importantly, it continues the involvement of the voters for any significant raise for Council Members.

**Vote:** 12 ayes, 2 nays, 1 abstention

3. **City Attorney and City Auditor: The City Council should continue to set the salary for City Attorney and City Auditor.**

**Rationale:** As part of the balance of powers amongst the branches of government in Oakland, the Committee agreed that the City Council should retain the authority to set and approve the budget. With such authority, the Council has the power to impact the salaries of both the City Attorney and City Auditor. However, given that the City Attorney and City Auditor are both independently elected offices, the Committee believes that is important to use standards similar to those proposed for other elected officials, in particular the Mayor's salary formula. The Committee does not recommend that this should be made part of the Charter.

**Votes:** Unanimous

**D. Term Limits for Elected Officials**

**1. Change Mayor’s term limit to “two consecutive terms”**

**Rationale:** Some Committee members believe that in a democracy, there should be no term limits for elected officials although others disagree. If an elected official is not meeting the expectations of his/her constituency, then that constituency can remove the person by voting for another person. However, given that the language in the original Measure X called for term limits for the Mayor and that the charge of this Committee was to conduct a “limited” review of charter provisions related to Measure X, some members of the Committee believe that it is important for the Charter to retain the term limit requirements for the Mayor. In addition, others believe that, in order to gain the necessary votes from the public to re-approve Measure X, term limits should not be removed. However, some Committee members believe that term limits are an appropriate check on the powers of a “strong mayor”. Therefore, the Committee did recommend modifying term limits to “two consecutive terms” for the Mayor, in order to allow for a qualified candidate potentially to return to the Mayor’s office, after a break with someone else serving as Mayor.

**Vote:** 9 ayes, 6 nays

**2. No term limits for any other elected officials (Council Members, City Attorney, and City Auditor)**

**Rationale:** Some Committee member believe that in a democracy, there should be no term limits for elected officials. If an elected official is not meeting the expectations of his/her constituency, then that constituency can remove the person by voting for another person. In addition, given that the original Measure X does not place any term limits for elected officials other than the Mayor, the Committee sees no reason to place such restrictions for Council Members, City Attorney, or City Auditor.

**Vote:** Unanimous

**E. Required Attendance of the Mayor at Some or All City Council Meetings:**

**1. In addition to the Mayor’s Budget presentation, require the Mayor personally to make a State of the City Address and conduct two additional public meetings to solicit and respond to comments, concerns or questions from the public. The two public meetings are to be attended by staff designated by the Mayor and shall be noticed to the public no less than two weeks in advance. Timing of the meetings shall be spread through out the year.**

**Rationale:** The Committee received a number of comments from members of the public and various organizations that there is a perceived or real problem with public access to the Mayor. Some Committee members believe that the perceived lack of access might be attributed to the recent change in our form of governance that removed the Mayor from the City Council and its weekly meetings with public access. Nevertheless, given the number of comments received on this matter, the Committee felt that it was important for the Mayor to have more visible interaction with the general public. To this end, the committee voted to require a State of City and a separate budget presentation by the Mayor to the City Council along with two additional well-publicized meetings by the Mayor with the public. The Mayor would be given discretion on the meeting topics and composition of staff attending the meetings. The Committee felt that in order to preserve the separation of powers between the executive and legislative branches, that the Mayor should not be placed back on the Council for his/her interaction with the public.

**Vote:** 13 ayes, 2 nays

**F. Number of City Council Members, Including the Number of at large Representatives**

**1. Leave number of Council seats and At Large seats “as is”.**

**Rationale:** The Committee approved this recommendation based on three points. First, the presence of the At-large seat brings a citywide perspective to the Council that is very valuable, especially when the other citywide seat (the Mayor) has been removed from the Council. Second, although the current Council is comprised of an even number of seats, which can lead to tie votes, based on the testimony received from some of the current Council Members the tie breaking process is actually fostering better cooperation between Council. And third, the At-large seats gives residents another representative to work with if they do not have a good working relationship with their current district Council Member.

**Vote:** 11 ayes, 1 nay

**G. City Council Structure and Procedures (Selection of Council President and Vice Mayor, Procedures for Breaking Ties, and Overriding vetoes);**

**1. Vice-Mayor: Keep current system (duties and succession) in place. Clarify Charter language in § 208 to state that the Vice Mayor shall be elected each year and serve for a one-year term.**

**Rationale:** Although the Charter requires the selection of a Vice Mayor, the process is an internal one set forth by the City Council’s own rules and procedures. There was consensus on the Committee that the ceremonial aspects of this position are very important. However, given that the Vice Mayor may succeed the Mayor in the event that the seat is vacated, if there is less than 1 year left in the Mayor’s term, the Committee recognized that it is important for the Council to take a positive action and elect the Vice Mayor with that possibility in mind. In addition, the Committee recognized the need for modifications to §208 of the Charter regarding the election and term in office of the Vice Mayor.

**Vote:** 8 ayes, 6 nays

**2. Leave Current System of Electing President of the Council “as is”.**

**Rationale:** In order to have effective leadership for the Council, its leadership should be selected internally, based on the rules and procedures a particular Council chooses to adopt. The Committee also reasoned that the Council decision making and deliberative process is transparent, therefore, the rules and procedures for selecting the Council leadership should not be included as part of any Charter amendments.

**Vote:** Unanimous

**3. Keep Tie-breaking Process “as is”**

**Rationale:** The Committee received testimony from Council Members Wan, Quan, Nadel, Brunner, and Council President De La Fuente that the current tie breaking process is working well. The possibility of a tie vote and the tie having to be broken by the Mayor is fostering better cooperation within the Council. In addition, in order to avoid the possibility of legislative deadlock, given the even number of seats on the Council, it is imperative for Oakland to have a process to break tie votes.

**Vote:** 10 ayes, 5 nays

**4. Give the Mayor “reconsideration” powers on ordinances passed with 5 votes, and require only 5 votes (instead of the current 6 votes) to override a “reconsideration.”**

**Rationale:** The Committee approved this action to preserve the balance of powers between the legislative and executive branches. For the executive branch, the Committee agreed that a strong mayor should have the authority to ask the

Council to reconsider a piece of legislation approved by the Council. For the legislative branch however, the Committee believes that the current requirement for garnering 6 votes to override a reconsideration (equal to 75%) places too high a burden on the legislative branch. Therefore, the Committee recommended that the requirement to override a reconsideration should be reduced from 6 to 5 votes.

**Vote:** 11 ayes, 3 nays

## **H. Role of the City Manager Relative to a Mayor-Council Government.**

### **1. Retain the Current Charter Language Requiring a “Professional Administrator”**

**Rationale:** The likelihood of an elected official having the professional, technical and managerial skills to effectively monitor and guide the day-to-day operations of a city administration as large as Oakland’s is very low. This probability makes it necessary for the Charter to retain language requiring a professional administrator for the City.

**Vote:** 14 ayes, 1 abstention

### **2. Change the title from “City Manager” to “City Administrator”.**

**Rationale:** A survey of other cities in California and across the nation with Mayor-Council form of governance reveals that these cities do not have a “City Manager” position. In addition, to convey the changes made to the duties and powers of this position under a Mayor-Council form of government, it is important to change the actual title to reflect the proposed changes. The title of “City Administrator” continues to convey the importance of this position, but it clearly distinguishes this position from that of a city manager.

**Vote:** 12 ayes, 2 nays

### **3. Retain the Mayor’s authority to appoint the City Administrator with City Council approval by resolution.**

**Rationale:** The City Council’s involvement with the selection of the City Administrator creates a connection and accountability to the City Council. It also creates a check and balance on the powers of the Mayor and helps to ensure appointment of a professional qualified to fill the duties of City Administrator set forth in the Charter. The Committee recommends that the Council should approve

the Mayoral selection through a resolution to ensure a minimum of five (5) positive votes for this action.

**Vote:** Unanimous

**4. Retain the Mayor's current authority to remove the City Administrator without City Council approval.**

**Rationale:** Accountability and transparency being central themes for a Mayor-Council form of government, the Committee felt the Mayor is responsible for the performance of the City Administrator and need sole authority over his/her dismissal. The Committee was concerned about creating dysfunction or paralysis in city government if the Mayor was dissatisfied with the Administrators performance but could not remove the individual without the Council's approval.

**Vote:** 12 ayes, 2 nays

**5. Modify City Administrator "Powers of Appointment and Removal" (§ 503) to require Mayoral approval for department/agency directors.**

**Rationale:** The Committee discussed this issue in conjunction with § 504 of the Charter, "Duties" of the City Administrator and whether those powers should all be transferred to the Mayor. There was concern expressed by some members that giving all of those powers to the Mayor would make a strong mayor too strong and that many of the duties in § 504 need professional experience. There was also concern that transferring the "Duties" to the Mayor would be too far removed from the intent of the original Measure X. The Committee concluded that the City Administrator "Duties" should stay intact in order to run the day-to-day business of the city efficiently, but that the selection and removal of key city staff should be done with the concurrence of the Mayor.

**Vote:** Unanimous

Respectfully Submitted,

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R. Zachary Wasserman, Chair  
Measure X Limited Charter Review Committee

## Minority Opinions

This document contains eight (8) minority opinions relevant to different actions and/or considerations of the Measure X Committee.

**Please note that each opinion has a separate list of committee member(s) agreeing with the stated position.**

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### I. Budget Process Recommendations and Questions

- We recommend that at least one well-publicized hearing be added to the budget process during the process of setting the budget priorities (early in the cycle) to allow the public a chance to have input while the priorities are still being set.
- Is there some way to ensure that the City Attorney and City Auditor can do their jobs without fear of retaliation? Should their office budgets be protected in some way – either as a fixed percent of the total City budget, or by some other formula?
- Should the City Attorney and the City Auditor be permitted to raise money and carry on official activities that are not directly under the City budget? Should there be oversight of all money raised by and spent through their offices? By whom? For Example, the City Attorney’s Neighborhood Law Corps program, which, while commendable, allows the City Attorney to raise funds from vendors and expend such funds without FPPC or Council oversight.

Helen Hutchison  
Judy Belcher  
Bonnie Hamlin  
Richard Winnie  
Naomi Schiff

### II. Appointments

Before Measure X, under the Council/Manager form of government, the Mayor sat on the City Council, the policy-making body of our city government. Under Measure X, even though he no longer sits on the Council, the Mayor retained the power of making appointments to Boards and Commissions.

One can make the argument that, since it is the Council’s duty to make policy, it is inappropriate for the Mayor exclusively to make all the appointments to the Commissions and Boards. These bodies advise the Council; giving the Mayor all the appointment powers would give him policy-making powers. Generally, Mayoral policy ideas are expressed as suggested legislation to the Council.

In addition to concerns about the appointment process, there is also a desire from Oakland citizens for more democratic and diverse commissions with District-wide representation. In order to allow for flexibility of the appointment process and at the same time acknowledge the wide range of authorities and duties of the Boards and Commissions, we propose that the Mayor and City Council share the appointments to the City Commissions and Boards and that the City Council determine the Council/Mayoral appointment ratio for each depending on its function, since some have administrative functions with specific governing codes and duties and others have simple advisory functions.

Judy Belcher  
Helen Hutchison  
Bonnie Hamlin  
Naomi Schiff

### **III. Council Salaries**

The majority recommends a structure for setting Council salaries that consists of a “political statement,” but does not realistically address the problem.

Since the adoption of Measure X, the Council has not received any increase in compensation. Consequently, the salaries of Council Members have effectively been frozen. It is true that the salaries could have been raised by ballot measure, but it is not realistic that such a measure can be adopted at regular intervals in response to inflation.

To correct this, the majority would allow salaries to rise automatically in accordance with the Cost of Living Index (“CPI”), but places a cap of five percent (5%) on this amount. There is no explanation for this cap, other than to gain political acceptance. We feel that “electoral acceptability” should not be the criterion that governs the Committee’s actions. Instead, the Committee should base its recommendations exclusively on principles of public policy.

There are times when the CPI may exceed 5%. At such times the Council should not be selected out for having their salaries depressed, relative to other groups. If a series of high inflation years were to occur, then Council salaries will continue to fall behind, creating hardships.

If the Committee feels that salaries should keep pace with the cost of living, then it should not select out Council Members and place an artificial limit on the increases that they may receive.

We support the Committee recommendation, with the deletion of the five percent limit on cost of living increases.

Richard Winnie  
Bonnie Hamlin  
Naomi Schiff  
Judy Belcher  
Ben Fay

#### **IV. Mayor's Public Meetings**

The majority adopted a recommendation that calls for four opportunities for the Mayor to appear before the public annually. These consist of two appearances before the Council and two town meetings. While this would be an improvement over the present situation, the recommendation does not achieve the type of interaction between the Mayor and public that is needed.

The two Council meetings that are called for by the recommendation should be maintained, but they do not achieve the purpose of public interaction that is needed. Such appearances tend to be formal statements by the Mayor and do not include interaction between the Mayor and members of the public. These presentations should not be substitutes for public forums. Therefore, the Charter should require one or two formal presentations by the Mayor to the Council and also quarterly public forums.

In order to maintain at least the perception of accessibility to the public, and to afford the public the opportunity to pose questions and have them answered, the Mayor should be required to hold at least quarterly meetings with the public. These meetings must be well publicized all over the City, and should be scheduled for a convenient evening time at an easily accessible facility. The meetings should be broadcast on KTOP.

The citizens of Oakland are used to having weekly access to their elected officials. If the Mayor is to attend few or no Council meetings, we must ensure that there is a structure for direct contact between the Mayor and the public. Such interaction will tend to build support for government initiatives and elicit public assistance in a way that edicts reported by the news media—or worse, not reported at all—cannot do.

Holding a mayoral vote once every four years is not sufficient to build a consistently open government, access, transparency and accountability. Short of mounting recall initiatives or mass email campaigns, public meetings can provide a useful barometer of community opinion for the Mayor, to guide further actions and decisions.

Since the Council does meet frequently, at present they are put in the position of being the targets of all public complaint or expressions of concern. At least quarterly, public mayoral discussions

would allow the public to express their opinions to the person who is taking responsibility for guiding the government under the strong mayor provisions.

Helen Hutchison  
Judy Belcher  
Bonnie Hamlin  
Richard Winnie  
Naomi Schiff  
Henry Gardner

## **V. Term Limits for Mayor**

The majority recommended that the Mayor should be subject to term limits, but that such a limitation not be instituted for any other elected officials. Term limits, for any office, may have current box office appeal, but they create “lame-duck-itis”, and can force effective leaders out of office. Term limits adversely affect the accountability, representativeness and effective performance of elected officials. They also exacerbate the “musical chairs” tendency of politicians, who are continually forced to seek new jobs, and to fundraise for campaigns in new venues. The only effective term limit is elections, and voters can use them to end the term of any office holder. Therefore, we do not support term limits for any elected official.

Helen Hutchison  
Judy Belcher  
Bonnie Hamlin  
Richard Winnie  
Naomi Schiff  
Marianne Dreisbach

## **VI. Mayor’s Vote to Break Tie**

Instead of giving a tie-breaking vote to the Mayor, it is quite possible simply to let a tie vote be a losing vote. That continues to foster an environment in which the Council seeks to build consensus among a majority of the members; if anything, it strengthens that environment. Without five votes, a measure loses.

If the Mayor is to be given a vote on the City Council, even in the role of breaking a tie, then he or she should be required to attend the relevant committee and Council meetings, read the supporting information, hear the public and participate in the debate. While he or she can read the minutes of the meeting, or watch the debate on KTOP, there is an inherent value in being present during a discussion before voting on an issue.

Coming in just to vote on an issue, without being present during the debate, creates a public perception that the Mayor’s actions may be arbitrary, uninformed, or have been arrived at without taking into consideration what constituents have to say about it.

We therefore do not support the majority opinion giving the Mayor the power to cast a tie-breaking vote on the City Council. We would support letting tie votes be losses.

Helen Hutchison  
Judy Belcher  
Bonnie Hamlin  
Naomi Schiff

## **VII. Youth Representative**

While not addressed by Measure X, the idea of a Youth Representative on the City Council was raised before the Charter Review Committee. As we feel it has some merit, we would like to recommend that the City Council seriously consider adding a non-voting Youth Representative to the Council.

We would recommend:

- This position be appointed annually by Council after a referendum of youth conducted by Youth Commission;
- Council and Youth Commission to negotiate terms of service for youth representative, including the timing of the referendum, who would be eligible to vote, and committee assignments for the Youth Representative.

Helen Hutchison  
Judy Belcher  
Bonnie Hamlin  
Richard Winnie  
Naomi Schiff

## **VIII. The Selection of the Vice Mayor**

A motion to modify the selection of the Vice Mayor was narrowly defeated by a vote of 8 to 6. The defeated motion would have recommended modifying the Charter to provide that in the event the office of the Mayor becomes vacant, and there would be less than one year left on the Mayor's term, the Vice Mayor would not automatically assume the office of the Mayor. Instead, the Council would choose the mayoral replacement from amongst themselves.

This modification was proposed in response to the Council's current practice of rotating the position of the Vice Mayor around the Council. This is useful practice. It shares the ceremonial obligations of the Vice Mayor and exposes the members of the Council to other parts of the City. However, under section 303 of the current Charter, should the office of the Mayor become vacant, and there is less than one year left on the Mayor's term, the Vice Mayor would automatically assume the office of the Mayor for the balance of the term. This random selection

of the Vice Mayor from the ranks of the Council is not a good way to select the holder of this important position, particularly given the power of the Mayor under the mayor-Council form of government. This modification was therefore proposed to enable the Council to continue to rotate the ceremonial position of the Vice Mayor, while avoiding the possibility that the office of the Mayor could be filled with a Councilmember by chance.

Ben Fay  
Richard Winnie  
Zack Wasserman  
Cynthia Meyer  
Becky Taylor  
Marianne Dreisbach  
Barbara Leslie

## APPENDIX A

### FAILED COMMITTEE MOTIONS

The following motions were entertained and discussed at length, but failed to gain the necessary votes from the majority of the Committee. They are presented here for your information and to augment your understanding of the context under which the final recommendations from the Committee have been forwarded. Please note that only the failed substantive motions pertaining to each directed topic for consideration by the Committee have been listed (see page 4 for all topics). Those topics that did not have any failed motions are not re-listed in this section; therefore, the topics in this section are not in consecutive order.

**A. The Balance of Power Among the Branches of City Government, Including the Budgeting Process;**

**Motion:** Mayor and City Council to share appointment powers to City Boards and Commissions, with the Council having the authority to determine the ratio of appointments between the Council and Mayor, based on the mission and objective of a given body.

**Rationale:** The proposed action would force both the Mayor and City Council to look at whom a Board or Commission advises. It would also allow for review of the number of Boards and Commissions. Under the Council-Manager form of government, the authority was given to the Mayor to appoint but after Measure X was approved this authority was not changed. It created disconnect between the policy making body (Council) and the implementation entity (Mayor). There was concern expressed about making too many changes to the charter and the impact such a change would have on flexibility for future needs. Supporters of the motion argued that the Boards and Commissions are so varied that a one-size-fits-all approach would not address the problem. Opponents of the motion argued that appointment of members of Boards and Commissions is an inherent and critical part of a Mayor's ability to implement his/her programs.

**Vote:** 4 ayes, 10 nays

**F. Number of City Council Members, including the number of At-large Representatives**

**Motion:** Eliminate At-Large seat in four years.

Proponents of the motion argued that the At-Large seat only serves those districts with high voter turnout and the business community. The cost of running for a citywide seat is very expensive and requires fund raising in the development community making the incumbent especially sensitive to the needs of that community. The business community already has the Mayor as an advocate. The At-Large seat also becomes another vote for the Mayor. Opponents argued that a City wide perspective and vote on the Council was important. In addition, the At-large seat gives residents another representative to work with if they do not have a good working

relationship with their current Council Member. It was also observed that the opponents of a victorious District Council Member might need another Council Member to provide access on issues.

**Vote:** 3 ayes, 10 nays, 1 abstention

**G. City Council Structure and Procedures (Selection of Council President and Vice Mayor, Procedures for Breaking Ties, and Overriding vetoes);**

**1) Motion:** A tie vote would signify a losing vote with no tie breaking by Mayor.

**Rationale:** In order to preserve the separation of powers between the legislative and executive branches, the supporters of this motion believe that it is important to remove the Mayor from the decision making process of the Council, particularly since the Mayor is not present to hear comments from the public and the Council Members on the issue. However, for the following two reasons the Committee did not approve this motion. First, the Committee received testimony from current Councilmember's that the tie breaking system is working well. Second, the Committee did not vote to change the even number of seats on the Council, which preserved the possibility of tie votes. Such a possibility necessitates a mechanism to avoid legislative deadlock. The current system is currently functioning well in Oakland.

**Vote:** 4 ayes, 11 nays

**2) Motion:** Under duties of Vice Mayor, the charter should explicitly include that the Vice Mayor fills in for the Mayor on regional bodies, in his/her absence (§ 305)

**Rationale:** It was brought to the attention of the Committee that many regional bodies have their own statutory guidelines that dictate who are the representatives and alternates for the City of Oakland on those bodies. Therefore, it is beyond the ability of this Committee explicitly to direct the Vice Mayor to be a replacement for the Mayor in regional bodies.

**Vote:** 2 ayes, 10 nays, 2 abstentions

**3) Motion:** Charter to remain as is for Vice Mayor, with exception that in an event of a vacancy of 1 year or less by the Mayor, the Council is to choose the mayoral replacement.

**Rationale:** During Committee discussions it became evident that there are some ceremonial and leadership components to the title of Vice Mayor that are important to the community. However, the supporters of this motion believe that given the current rotation method for selecting the Vice Mayor and that this position is not a leadership position for the Council, it may not be the most effective mechanism for selecting someone who is to succeed a vacated Mayoral seat. The motion failed because the Committee recognized instead of mandating a separate action to choose a Mayoral replacement, which can potentially create political disorder in City Hall, that it

is important for the Council to take a positive action and select the Vice Mayor with the possibility of succession in mind.

**VOTE:** 6 ayes, 8 nays

## **APPENDIX B**

### **COMMENTARY**

This section contains a number of observations, based on the comments received, and suggestions the Committee wishes to forward to the City Council that were considered inappropriate for Charter amendments.

#### **A. Leadership positions for the Council to be visited on an annual basis**

The primary intent for establishing district specific Council seats in Oakland was to foster the development and increase the focus on neighborhood issues. Some Committee members believe that it is important for the Council to review all of their internal leadership positions on an annual basis, so that the leadership positions can be shared more democratically amongst all Council districts. Currently the Council President is chosen for a two-year term, while the Vice Mayor and President Pro Tempore are selected on an annual basis. However, the Committee concluded that selection of internal leadership positions for the Council should be made by the Council itself to ensure the effectiveness of those positions.

#### **B. Term limits for Council leadership**

Some Committee members believe that establishing term limits for Council leadership will allow for a larger number of Council Members to assume leadership positions. By increasing the opportunity for all Council Members to assume leadership positions, the supporters of this notion also believe that it would foster the development of leadership skills and opportunities for the various districts and neighborhoods in Oakland. However, most Committee members also believe that the very concept of term limits is inherently undemocratic and some Committee members strongly opposed such a restriction for elected positions in general.

#### **C. City Council salary “catch-up” provision**

The Committee recognized that the original language of Measure X created a significant disparity between the salary setting process for the Council versus other elected officials in Oakland. This disparity has resulted in the Council not having received an increase since 1996. Although the Committee did recognize this disparity, it wished to respect the will of the voters and did not believe it was appropriate to include a recommendation for a catch-up provision as part of the proposed amendments to the City Charter. However, given the depressed salary level for Council Members and the need to include caps along with voter approval provisions for setting salaries for the future, the Committee believes that a one time catch-up provision for Council Member salaries would be appropriate. Given that the Public Ethics Commission currently has the authority to recommend Council Members salaries subject to voter approval, the Committee suggests that the PEC explore the possibility of a one-time catch up provision for Council Members’ salaries.

#### **D. More Public Appearances for Mayor and Better Public Access**

One of the overriding concerns with Measure X expressed both by Committee members themselves and by members of the public is the public's accessibility to the Mayor either in a public forum, where his personal thoughts about Oakland are expressed, or otherwise. The Committee was concerned that the perceived lack of access might be attributed to the recent change in our form of governance that removed the Mayor from the City Council and their weekly meetings with public access. Nevertheless, given the number of comments received on this matter, the Committee felt that it was important for the Mayor to have more interaction with the general public.

#### **E. Boards and Commissions**

There was significant concern expressed by members of the public and the Committee about the state of Oakland's Boards and Commissions. The fact that Oakland has over 50 Boards and Commissions is a contributing factor to the very high number of vacancies for many Boards and Commissions. In addition, many Boards and Commissions do not appear to have a clear mandate or objective. The Council should utilize the surveys and data compiled recently to reassess the number of Boards and Commissions needed to develop policy. Furthermore, the Council should consider including sunset provisions when any new board or commission is created to ensure that boards and commissions continue to operate only as long as there is a need for their existence and work products. Some members of the public and some committee members favored changing the basic method of appointing members to Boards and Commissions to give all Council Members an opportunity to appoint such members. The suggestion was made to have all Boards and Commissions (or alternatively all non-Charter created Boards and Commissions) consist of nine or 18 members so that the Mayor would have one or two appointments and each Council Member would have one or two appointments. Such recommendations can be phased in over a two year period. The Committee did not make this recommendation.

#### **F. Recommendation from Youth Commission**

Several representatives of the City's Youth Commission suggested adding a youth representative to the Council, to be chosen by the youth of the city through various school sites. The Committee did not act on this suggestion but did want to commend the Youth Commission for its activities and the representatives who appeared before the Committee for their presentations.

#### **G. Procedural Issues Pertaining to Timing and Placement of Ballot Items For Consideration By The City Council**

- When should the recommended changes take place? Immediately, after the next election, or at some time in the future?

- How should the issues be put before the voters? As one whole package, a series of individual measures, or, one major measure with a few smaller items separately? Should the changes to Measure X be considered separately from the issue of renewing Measure X, or should they be combined?