

AGENDA OF THE CHARTER REVIEW COMMITTEE  
TUESDAY, OCTOBER 9, 2012, 6:00 PM

THE MEETING WAS CALLED TO ORDER BY \_\_\_\_\_ AT \_\_\_\_\_ PM

ROLL CALL:

CHARTER REVIEW COMMITTEE

Ward I

David Dame

Allen Moore

Adriana Zavala Badal

Vacant

Ward II

Tito Ross

Larry Phillips

Raymond Rodgers

David Smith

Ward III

Vacant

Sylvia Anable

Karen Schasteen

Linda Weiland

Original Freeholder:

Former Committee Member:

Shirley Jones

Shirley Doughty

Secretary

CITY COUNCIL LIAISON

W.J. Porter, Mayor

STAFF LIAISON

Stephen J. Pauken, City Manager

Gloria Gonzalez, City Clerk

CITY ATTORNEY

John A. MacKinnon

CALL TO THE PUBLIC

THE FOLLOWING ITEMS WILL BE CONSIDERED, DISCUSSED AND/OR DECIDED UPON AT THIS MEETING:

1. Discussion and Possible Approval of the Minutes of the Charter Review Meeting for September 11, 2012.  
Chairperson Rodgers
2. Discussion and Possible Recommendations or Decisions Regarding an Additional Charter Article Addressing Legal and Ethical Obligations of Public Officials, Including Conflicts of Interest and a Code of Ethics.  
Chairperson Rodgers / Counselor Badal
3. Discussion and Possible Recommendations or Decisions Regarding an Amendment to Article XVII and the Effects of Future Amendments.  
John A. MacKinnon, City Attorney
4. Discussion and Possible Recommendations or Decisions Regarding Proposals Made at the June 12, 2012 Meeting for Improving the Wording and Removing unnecessary Provisions from the Charter as a Whole.  
Chairperson Rodgers / Counselor Smith

5. Discussion and Possible Recommendations or Decisions Regarding those Amendments that Have Been Approved by the Committee to Date.

John A. MacKinnon, City Attorney

6. Discussion of Future Agenda Items for the Committee.

Chairperson Rodgers

7. Next meeting has been scheduled for October 23, 2012 at 7:00 PM in Council Chambers.

Chairperson Rodgers

Adjournment

Anyone needing special accommodations to attend this meeting should contact Gloria Gonzalez at (520) 432-6012 at least twenty-four hours before the meeting.

**BACK-UP TO AGENDA ITEM I.**

CHARTER REVIEW COMMITTEE  
TUESDAY, SEPTEMBER 11, 2012, 6:00 PM

THE MEETING WAS CALLED TO ORDER BY Raymond Rodgers, Chair AT 6:00 PM

ROLL CALL:

CHARTER REVIEW COMMITTEE

Ward I

A

David Dame p  
Allen Moore P Vice- Chairperson  
Adrianna Zavala-Badal P  
Vacant

CITY COUNCIL LIAISON

W. J. Porter, Mayor

Mr. Bennie Scott, Mayor Pro-  
Tem

STAFF LIAISON

Stephen J. Pauken, City  
Gloria Gonzalez

Ward II

Tito Ross P  
P

Larry Phillips P  
Raymond Rodgers P Chairperson  
David Smith P Late

CITY ATTORNEY

John A. MacKinnon P

Ward III

Sylvia An able P  
Karen Schasteen P  
Linda Weiland P  
Original Freeholder Shirley Jones A  
Former Committee Member Shirley Doughty P Secretary

CALL TO THE PUBLIC

No one signed up for "call to the public"

1. Discussion and Possible Approval of the Minutes of the Charter Review Meeting for August 14, 2012. One correction noted, typo in Item #5, second paragraph states . . . to accept changes to 99.07a, should read 9.07a. Allen Moore moved for approval of the minutes with typo corrected. Sylvia An able seconded the motion and the decision was unanimous.
2. Discussion and Possible Recommendation on Article IX Elections.

Mr. MacKinnon – Recommendation on IX Elections

Mr. Smith made the motion to amend the previous motion on August 14, 2012. Mr. MacKinnon explained there is a bill before the AZ Legislature pertaining to cities and

towns governed by charter states In even numbered years;“For elections held before 2014 and notwithstanding any other law or any charter or ordinance of any county, city or town to the contrary, an election held for or on behalf of a county, city or town, school district, community college district or special districts organized shall be held on:

- a) Second Tuesday in March.
- b) Third Tuesday in May
- c) The tenth Tuesday before the first Tuesday after the first Monday in November.

Only in even numbered years.

Mr. Moore moved to amend the motion made on August 14, 2012 as explained by the City’s Legal Council for Articles 9.10 and 9.11. The motion was seconded by Sylvia An able, and carried unanimously

3. Discussion and Possible Recommendations or Decisions regarding Article XI Magistrate Court.

Mr. Pauken explained that in 2006, He and Mr. MacKinnon worked to consolidate the Magistrate Court and Justice Courts...In 2008 the Charter Review committee voted to consolidate these two courts in the manner authorized by State Law.

4. Discussion and Possible Recommendations or Decisions regarding Article XII Franchise and Public Utilities

There were no changes to Article XII.

5. Discussion and Possible Recommendations or Decisions regarding Article XIII, Public Records

Mr. Pauken, City Manager, reported staff felt there were no changes necessary in Article XIII

Article XIII, Public Records. Remains the same.

At this point Mayor Jack W. Porter joined the meeting.

6. Discussion and Possible Recommendations or Decisions regarding Article XIV General Provisions

Question was asked, what is the definition of plenary power? Mr. MacKinnon – Simply the Mayor and Council have every means necessary to exercise the powers that are legally appropriate in the City Charter...

Section 14.08 Council meetings to be recorded. Question was asked if Channel 5 is the local access channel for the Council. Since Cable One is the only channel in Bisbee, they do broadcast the Council meetings on Channel 5...

There were no recommendations to Article XIV, therefore it remains the same

7. Discussion and Possible Recommendations or Decisions regarding Article XV Gender

There were no comments on Article XV Gender, therefore it remains the same.

8. Discussion and Possible Recommendations or Decisions regarding XVI Succession in Government

See attachment by Linda Weiland. Ms. Weiland read her suggestion for changes in Section 16.02 Continuance of Present Officers and made a motion to accept these changes. Ms. Badal read her recommendation and amendment to Article XVI Section 16.02. A long discussion ensued after which Ms Badal withdrew her recommendation...

Ms Weiland requested Mr. MacKinnon to rewrite Section 16.02.

After discussion on this issue Mr. Moore made the motion to keep the verbiage as it is in Article XVI Succession in Government. The motion was seconded by David Dame Motion carried with nine (9) ayes, one (1) nay...

Section 16.01 Rights of Officers and Employees Preserved. It was noted that the motion by Mr. Moore was "to keep the verbiage as it is in Article XVI Succession in Government. This motion indicates all of Article XVI is left as is.

Mr. Pauken that all of Section 16 refers to changes that happened in the past and this committee should be making recommendations for the future.

After Mr. Pauken's explanation on verbiage changes in each section and that Article 16 is referenced to succession of staff and governing the City, perhaps a recommendation for the whole article should be looked at not each section. Sylvia Anable moved to accept 16-03 – 16.09 as written. Mr. Phillips seconded the motion and the decision was unanimous.

9. Discussion and Possible Recommendations or Decisions regarding Article XVII Amendments. Verbiage changes may be more appropriate in Article 17 Amendments

Ms Badal informed the group that there is language for amendments to the Charter in the Model City Charter.

If we were going to do that, it would be better to put it in a “catch-all” rather than do each amendment separately. Mr. Rodgers said he would rather add something than take-away.

Clarification – In terms of alternate verbiage in section 16. Mr. MacKinnon in terms of making recommendations to these amendments in a similar fashion as they were done in the quadrants of this document, do you think this verbiage is necessary?

Reply by Mr. MacKinnon It isn't as important as when the charter was changed from old government to new government. Most of the things were being fairly clear of what's going to happen with the language that is being specific to the unit. Now we are just tweaking around the edges.

Is it possible to review the charter every 3-7 years? Another recommendation was to review the Charter every 10 years.

Sylvia Anable moved to change the review for 5 to 8 years. Mr. Phillips seconded the motion carried with 9 ayes and 1 nay.

Next meeting is September 25, 2012 in Council Chambers, 6:00 pm7:50 pm

Agenda items  
Review Model Charter  
New Change General Provisions  
Powers of Council to include a new mayor.  
Conflict of Interest  
Code of Ethics  
High Degree of integrity  
Review of Section 17 Mr. MacKinnon  
Review of charter amendments

Adjournment Tito Ross moved to adjourn at

SECRETARY'S NOTE: It is very hard to take minutes or listen to the tapes with everyone talking at once and not speaking clearly or loud enough. Also, you skip around often and it is very hard to know where you are going with your comments. Help me and the minutes will be better.

Thanks,  
Shirley

**BACK-UP TO AGENDA ITEM 2.**

Section 14.09            Code of Ethics

The Council shall hold itself to the highest ethical, professional and legal standards while holding office, conducting the public's business and representing the citizens of Bisbee in order that the public trust may be maintained.

The Council shall conduct all official meetings in a way that is fair and unbiased in both appearance and fact to make certain that all parties to an argument receive equal treatment and to bolster public confidence.

A council member shall remove him or herself from hearing any matter and voting thereon where his or her impartiality might be reasonably questioned.

A public official who has a private interest in any law or policy proposed or pending shall disclose the fact and shall not vote thereon

Council members may not disclose confidential information gained by reason of their elected position, nor may they otherwise use such information for their personal gain or benefit.

**BACK-UP TO AGENDA ITEM 3.**

**ARTICLE XVII. AMENDMENTS**

**[NEW SECTION]**

**Section 17.03      Effect of Amendments upon Current Operations of City  
Government.**

**Except as otherwise specifically provided in any such amendment, the principals of "succession" and continuity of City government that are stated in Article XVI shall be equally applicable to any amendments of this Charter.**

**BACK-UP TO AGENDA ITEM 4.**

David Smith proposed City Charter changes.

**2008 C H A R T E R**

of the  
CITY OF BISBEE

COUNCIL-MANAGER GOVERNMENT  
Bisbee, Arizona

JANUARY 13, 1988

*Adopted June 7, 1988*

*Amended in 1994, May 19, 1998, Nov. 5, 2002, April 2, 2008*

**ARTICLE I.**

**INCORPORATION, FORM OF GOVERNMENT, POWERS OF THE CITY, AND BOUNDARIES**

**Section 1.01          Incorporation**

**(a)    Name of City**

We, the people of the City of Bisbee, within the corporate limits as now established in the manner provided by law, shall continue to be a municipal body, politic and corporate, in perpetuity, under the name of "City of Bisbee, Arizona."

**Section 1.02          Form of Government**

**(a)    Council-Manager**

The municipal government provided by this Charter shall be known as "Council-Manager Government."

**(b)    Council**

Pursuant to its provision and subject only to the limitations imposed by the Arizona State Constitution, laws of the State of Arizona, the laws and Constitution of the United States of America and this Charter, all legislative powers of the City shall be vested in an elective council, hereinafter referred to as "The Council," which shall enact local legislation, adopt budgets, determine policies, appoint the City Manager and such other officers deemed necessary and proper for the orderly government and administration of the affairs of the City.

**(c)    Exercise of Powers**

All powers of the City shall be exercised in the manner prescribed by this Charter, or if they be not prescribed, then in such manner as may be prescribed by Ordinance.

**Section 1.03          Powers of the City**

**(a)    Grant of Powers**

The City shall have all powers granted to municipal corporations and to cities by the Constitution and general laws of this State, together with all of the implied powers necessary to carry into execution all of the powers granted.

**(b) Control of Property**

The City may acquire property within or without its corporate limits for any City purpose in fee simple or any lesser interest or estate by purchase, gift, devise, lease, or condemnation and may sell, lease, grant, convey, exchange, mortgage, hold, manage, and control such property as its interests may require.

**(c) General Municipal Powers**

Except as prohibited by the Constitution of this State, or restricted by this Charter, the City shall and may exercise all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever and may enter into contracts, cooperative and otherwise, with the Government of the United States, the State of Arizona, Cochise County, or any other political subdivision of this State, or person, for the construction, maintenance, and operation of roads, highways, parks, sewers, waterworks, public utilities, and public buildings, including the right to sell sewer effluent, all when deemed in the best interests of the City.

**(d) Enumeration of Powers**

The enumeration of particular powers by this Charter shall not be deemed to be exclusive; and, in addition to the powers enumerated herein or implied hereby or appropriate to the exercise of such powers, it is intended that the City shall have and may exercise all powers, which, under the Constitution or laws of this State, it would be competent for this Charter specifically to enumerate.

**(e) Comprehensive Plan**

The City of Bisbee shall maintain a comprehensive plan defined as a written document that includes short range (1-2 years) and long range (3-5 years) goals/focuses for City operations, revisited annually. This plan may serve as a guide for departmental priorities, future physical development, land use regulations, capital improvements, and annual funding allocations. Additionally, the Council may by ordinance adopt planned land use and developmental regulations, including, but not limited to, an official map, zoning and sub-division regulations.

**(f) Specific Plans**

The City may adopt specific plans for areas within the City for the purpose of refining the Comprehensive plan.

**(g) Prior Approval of Construction**

The City may require Planning and Zoning Commission, Design Review Board, and architectural and site plan review and approval of the development, construction, reconstruction, or conversion of any building or structure prior to any physical construction.

**(h) Levy of Assessments and Enforcement of Liens on Real Property**

The City may levy and collect assessments and file liens on real property to collect amounts owed to the City for garbage and trash collections and sewer rental charges and reasonable amounts for the abatement of any nuisance, demolition, and removal of any legally condemned building or structure and the cleaning and renovating of lots which are offensive to the sight or smell or hazardous to the public health.

**(i) Streets, Alleys, Public Grounds**

The City shall have exclusive jurisdiction to control and regulate the use and enjoyment of its streets and alleys, public grounds, or ways.

**(j) Requirements for New Development**

The City may assess development fees to offset costs to the municipality associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real

property, engineering and architectural services, financing and professional services required for the preparation or revision of a development fee pursuant to Arizona Revised Statute 9-463.05. require all persons, firms or corporations responsible for new physical development within the City to provide for or furnish or pay a fee in lieu of providing for or furnishing the following:

- ~~\_\_\_\_\_ (1) Public utility easements;~~
- ~~\_\_\_\_\_ (2) Water production, storage, and transmission;~~
- ~~\_\_\_\_\_ (3) Sewer collection, treatment and disposal;~~
- ~~\_\_\_\_\_ (4) Park land and development;~~
- ~~\_\_\_\_\_ (5) School sites;~~
- ~~\_\_\_\_\_ (6) Dedication and improvement of public rights of way~~
- ~~\_\_\_\_\_ (7) Bike paths and other necessary transportation~~
- ~~\_\_\_\_\_ (8) Drainage~~
- ~~\_\_\_\_\_ (9) Flood control~~
- ~~\_\_\_\_\_ (10) Other public facilities necessary to maintain satisfactory levels of service for said new development, as provided by ordinance, which shall include definite standards, basing the foregoing requirements on the needs of the inhabitants of said new development.~~

**Section 1.04            Boundaries**

The boundaries of this City shall be the boundaries as established at the time this Charter takes effect or as such boundaries may be changed thereafter in the manner authorized by law.

**ARTICLE II. THE COUNCIL**

**Section 2.01            Powers of the Council**

All powers of the City not in conflict with the Constitution of the State of Arizona and subject to the limitations of this Charter shall be vested in the Council, which shall enact appropriate legislation and do and perform any and all acts and things which may be necessary and proper to carry out these powers or any of the provisions of this Charter.

**Section 2.02            Number; Selection**

The Council shall consist of a Mayor and six Council Members elected two from each of three wards.

**Section 2.03            Elections**

The ~~first~~ general election for the offices of Mayor and Council Members under the terms of this Charter shall be held ~~in 1990 and~~ every two years on even numbered years. thereafter.

**Section 2.04            Term of Mayor**

~~(a) **Two-Year Term of Mayor**~~

~~The Mayor shall be elected for a term of two years and shall serve no more than five (5) consecutive years. The Mayor serving on the date this Charter takes effect shall continue to serve until the Mayor's successor is elected in the 1988 general election and takes office as provided by ordinance in effect for said election.~~

~~(b) **Term of Mayor Elected in 1988**~~

~~The Mayor elected in the 1988 election shall serve until the Mayor's successor is elected, qualified, and installed as provided herein.~~

**Section 2.05            Terms of Council Members**

~~(a)    **Term of Present Council Members**~~

~~Council Members serving on the date of this Charter takes effect shall continue to serve until their successors are elected in the 1988 general election and take office as provided by ordinance in effect for said election.~~

~~(b)    **Term of Council Members Elected in 1988**~~

~~Council Members elected in 1988 shall serve until their successors are elected, qualified, and installed as herein provided.~~

~~(c)    **Term of Council Members Elected in 1990**~~

~~There shall be six Council Members elected in 1990. Two shall be elected from each of the three wards created herein. The Council Member receiving the greatest number of votes in that Member's respective ward shall serve a four-year term. The Council Member receiving the next greatest number of votes in that respective ward shall serve a two-year term.~~

~~(d)    **Run-Off in General Election**~~

~~In the event that any candidate fails to achieve a majority in that ward, as provided for in Subsection (c) hereof, a run-off of the top four candidates shall be in the general election in 1990.~~

~~(e)    **Term of Council Members Elected After 1990**~~

~~Every two years after 1990 three Council Members, one from each ward, shall be elected for four-year terms. These shall be the ones receiving the greatest number of votes. Until that time each incumbent Council Member shall retain his or her office, as provided by law. A Council Member shall not serve more than nine (9) consecutive years.~~

**Section 2.06            Wards**

**(a)    Laws**

It shall be the responsibility of the Council to ensure that all Federal and State laws are adhered to in the composition of wards.

**(b)    Boundaries**

The Council shall determine the boundaries of the wards to be approximately as follows:

**(1)    Ward Number One**

~~The approximate area of Old Bisbee Wards One and Two, as defined by ordinances in effect at the time this Charter takes effect, shall be known as Ward Number One.~~

**(2)    Ward Number Two**

~~The approximate area of Warren Township Wards Four and Five, as defined by ordinances in effect at the time of this Charter takes effect, shall be known as Ward Number Two.~~

**(3)    Ward Number Three**

~~The approximate area of San Jose Wards Three and Six, as defined by ordinances in effect at the time this Charter takes effect, shall be known as Ward Number Three.~~

**(c)    Boundary Changes**

These wards may be changed in geographic boundaries by the Council by ordinance at any time necessary to comply with State and Federal law.

**Section 2.07            Qualifications of Mayor and Council**

**(a)    Mayor**

The Mayor shall be a qualified elector of the City and shall hold no other elected public office for which the Mayor receives compensation. The Mayor shall have physically resided in the City of Bisbee for at least one year preceding the date of such election or appointment. The Mayor must reside within the City limits during the term of office. ~~If the Mayor shall cease to possess any of these qualifications or shall be convicted of a felony or any offense in violation of his or her official duties, the Mayor's office shall immediately become vacant.~~ City employees are not eligible to stand for election or serve as Mayor.

**(b)    Council Members**

Council Members shall be qualified electors of the City and the ward from which they are seeking office and shall hold no other elected public office for which they receive compensation. Council Members shall have physically resided in the City of Bisbee and the ward from which they were nominated and elected and/or appointed for at least one year preceding the date of such election or appointment. Council Members must reside within the City and the ward from which they were nominated and elected and/or appointed during their term in office. ~~If a Council Member shall cease to possess any of these qualifications, except as provided herein, or shall have been convicted of a felony or any offense in violation of his or her official duties, the Council Member's office shall immediately become vacant.~~ City employees are not eligible to stand for election or serve as Council Members.

**(c)    Residency in Ward; Redistricting**

In the event that a Council Member ceases to reside within the ward from which that Council Member was elected by reason of ward redistricting, said Council Member shall continue to serve out the remainder of his or her term.

**Section 2.08            Duties of the Mayor**

**(a)    Chairperson of Council**

The Mayor shall be the Chairperson of the Council and preside over its meetings.

**(b)    Voice and Vote in Council Proceedings**

The Mayor may make and second motions and shall have a voice and vote in all Council proceedings.

**(c)    Head of City Government**

The Mayor shall be recognized as head of the City Government for all ceremonial purposes and by the Governor for purposes of martial law and shall have executive but no regular administrative duties.

**(d)    Appointments**

The Mayor shall appoint members to the various committees, boards, and commissions, after due official notice to the public, and with the consent of the Council.

**Section 2.09            Mayor Pro Tempore**

The Mayor shall designate a member of the Council as Mayor Pro Tempore who shall serve in such capacity at the pleasure of the Mayor. The Mayor Pro Tempore shall perform the duties of the Mayor during the Mayor's absence or disability.

**Section 2.10 Salaries of the Mayor and Council Members**

The annual salaries of the Mayor and Council shall be as determined by ordinance, subject to ratification by the electorate.

**Section 2.11 Induction of Mayor and Council Members**

On the first regular meeting during the month next following the general election, the Council shall hold a meeting for the purpose of inducting the newly elected Mayor and Council Members to organize the Council.

~~**Section 2.12 Absence to Terminate Membership**~~

~~If the Mayor or any Council Member shall be absent from two regular consecutive meetings without the consent of the Council duly recorded in the minutes, that elected official shall thereupon cease to hold office.~~

~~**Section 2.1312 Vacancies in Council and Office of Mayor**~~

**(a) Vacancies.**

The office of the mayor or council member shall become vacant upon the member's death, resignation or removal from office or forfeiture of office in any manner authorized by law.

**(B) Forfeiture of Office.**

The mayor or council member shall forfeit office if the member:

- (1) Fails to meet the residency requirements
- (2) Violates any express prohibition of this charter
- (3) Is convicted of a felony or a crime involving moral turpitude, or
- (4) Fails to attend two consecutive regular meetings of the council without being excused by the council.

~~**(a)(c) Mayor**~~

In case of a vacancy, for whatever reason, in the office of Mayor, the Mayor Pro Tempore shall become the Mayor. Upon appointment of the Mayor Pro Tempore to the office of Mayor, said Council Member's seat shall be deemed vacated and shall be filled in the manner provided in Subsection (b) hereof.

~~**(b)(d) Council**~~

In case of a vacancy, for whatever reason, in the Council, the remaining members, including the Mayor, shall, by a majority vote, select a qualified person from the ward in which the vacancy occurs. The vacancy in the Council shall be filled within 31 days, but not less than 15 days from the date the Council receives official notice of the vacancy or accepts the resignation of one of its members. The appointed Council Member shall serve until the next general election or until a successor shall have been qualified.

~~**(e)(e) Remaining Term of Vacated Council Seat**~~

If the vacated Council seat has in excess of two years remaining in its term, the appointed Council Member shall serve until the next election. At that election candidates for the Council from said ward shall run for the remainder of the unexpired term of the vacated Council seat, and the ballot shall designate that said candidates are running for the unexpired term, or there shall be other suitable designation indicating that it is a "short term" of two years. In the event that the unexpired term shall be in excess of two years, but there is insufficient time within which candidates can have their names placed on the ballot for the primary election, then, in that event, the Council,

including the Mayor, shall fill the vacated Council seat in the same manner as if the vacancy were for a period of two years or less.

**(d)(f) Mayor Entitled to Appoint a Replacement in the Event of a Tie Vote.**

Should a tie vote occur in an attempt to select a person to fill such a vacancy, and because thereof, there shall be failure to choose in the manner shown in this Section after thirty days, the Mayor shall appoint a replacement member.

**Section 2.1413 Meetings of Council, Boards, Commissions and Committees**

**(a) Time**

All Council meetings shall be scheduled for times after 5:00 p.m., except in the event of a declared emergency.

**(b) Open Meeting Law**

All meetings of the City Council, the City's boards, commissions, and committees shall be open to the public, in accordance with the Arizona Revised Statutes pertaining to the open meeting law. No executive session may be held for the purpose of taking any legal action involving a final vote or decision. In the event that State Law shall become more restrictive than the provisions of Subsection (c) hereof, State law shall control.

**(c) Permissible Purposes; Executive Session**

- (1) Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining, or resignation of a public officer, appointee, or employee of any public body, except that with the exception of salary discussions, an officer, appointee, or employee with such notice of the executive session as is appropriate, but not less than 24 hours, for the officer, appointee, or employee to determine whether such discussion or consideration should occur at a public meeting.
- (2) Discussions or consideration of records exempt by law from public inspection.
- (3) Discussions or consultation for legal advice with the attorney or attorneys of the public body.
- (4) Discussions or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position in pending or contemplated litigation.
- (5) Discussions or consultation with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits to employees of the public body.
- (6) Discussion, consultation, or consideration for international and interstate negotiations.
- (7) Discussions or consultation with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase or lease of real property.

**(d) Minutes of Meetings**

All public bodies, except where no quorum is present, must provide written minutes or a recording of all meetings. The minutes or recording of all public meetings must include, at a minimum, the following:

- (1) The date, time and place of the meeting.
- (2) The members of the public body recorded as either present or absent.
- (3) A description of the matters discussed or considered, including an accurate description of all motions made, discussed, passed, and/or defeated, together with the names of the members making said motions and seconding same.
- (4) The names of persons making statements or presenting material to the public body and a description of the specific action addressed by such persons.
- (5) Additional information necessary to adequately, clearly, and specifically disclose the subject matter of all motions made and the reasons therefor, whether passed or defeated.
- (6) In the event that matters not on the agenda were discussed or decided at a meeting because of an actual emergency, the minutes must contain a statement setting forth the reasons necessitating the discussion, consideration, or decision without the matter being placed on the agenda.

**Section 2.1514 Special Meetings**

The Mayor or Mayor Pro Tempore acting as Mayor may, or at the request of two members of the Council, shall, by giving notice thereof to all members of the Council, or leaving the same at their usual place of abode, call a special meeting of the Council for a time not earlier than 24 hours after the notice is given. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances. At such meetings business concerning only such emergency shall be acted upon.

**Section 2.1615 Rules of Procedure; Minutes**

**(a) Council**

The Council shall determine its own rules and order of business subject to the provisions of this Charter. It shall keep minutes of its proceedings, and the minutes shall be open to public inspection.

**Section 2.1716 Quorum; Ayes and Nays**

**(a) Council**

A majority of the members of the Council shall constitute a quorum, but a smaller number may adjourn from time to time until a quorum can be assembled. The vote on any question shall be by ayes and nays and shall be entered in the minutes. At the request of any member of the Council, a roll call vote shall be taken.

**Section 2.1817 Failure to Vote**

**(a) Council Members**

No member of the Council shall be excused from voting, except upon matters involving the consideration of his own official conduct or in such matters as he may have a conflict of interest, as set forth in the laws of this State. All conflicts of interest shall be declared and noted in the minutes. In all other cases a failure to vote shall be entered on the minutes as an affirmative vote.

**Section 2.1918 Consideration of Petitions**

Any citizen of the City may appear before the Council at any regular meeting and present a written petition. Such petitions shall be considered and action taken by the Council pursuant to Section 7.01 of the City Charter within three regular meetings of the Council. A motion to table shall not be considered to be action.

**Section 2.2019 Non-Interference of Council in Administrative Service**

**(a) Non-Interference of Council with Powers and Duties of City Manager**

No individual member of the Council shall interfere with the execution by the City Manager of his powers and duties or order, directly or indirectly, the appointment by the City Manager of any person to an office or employment or the removal therefrom. Except for purposes of inquiry, the Council and its members shall deal with the administrative services under the City Manager solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.

**(b) Discussions Between Council and City Manager in Open Session**

Nothing in this section shall be construed, however, as prohibiting the Council, while in open session, from fully and freely discussing with or suggesting to the City Manager anything pertaining to City affairs or the interests of the City.

**(c) Violations of Provisions of This Section**

Any Council Member violating the provisions of this section shall be subject to expulsion by the unanimous vote of the remaining Council Members.

**Section 2.2120 Conduct of Council as to Powers Authorized by Charter  
When No Procedure Established by State Law**

**(a) Procedure Prescribed by Ordinance**

Whenever, by any provisions of this Charter, it is prescribed that any power, duty or procedure shall or may be exercised, performed, or adopted in the manner established by any law of this State and there is no procedure established by the law therefor, then the Council shall by ordinance prescribe the procedure.

**Section 2.21 Investigations**

The city council may make investigations into the affairs of the city and the conduct of any city department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Failure or refusal to obey a lawful order issued in the exercise of these powers by the council shall be a Class One misdemeanor punishable by a fine of no more than \$2,500 or by imprisonment for not more than one year or both.

**ARTICLE III. CITY MANAGER**

**Section 3.01 Appointment of Manager**

**(a) Council Appoints Manager**

The Manager shall be appointed by the Council wholly on the basis of his administrative and executive ability and qualifications and shall hold office for and at the pleasure of the Council. Whenever the word "Manager" is used in this Charter, it shall be construed to mean the City Manager of the City of Bisbee, Arizona.

**Section 3.02 Residence**

**(a) Manager Residence in City**

Residence in the City at the time of appointment of a Manager shall not be required as a condition of the appointment, but within 90 days after reporting for work, the Manager must become a resident of the City, unless the Mayor and Council approve the Manager's residence outside the City.

**Section 3.03 Eligibility**

**(a) Persons Eligible**

No member of the Council shall be eligible for appointment as Manager until one year has elapsed after such Council Member shall have ceased to be a member of the Council.

**Section 3.04 Bond**

**(a) Bond Required of Manager**

The Manager shall furnish a corporate surety bond to be approved by the Council, which shall be conditioned upon the faithful performance of the duties imposed upon the Manager as herein prescribed. The premium for such bond shall be a proper charge against the City.

**Section 3.05 Acting City Manager**

**(a) Designated by Manager**

By letter filed with the City Clerk, the Manager shall designate, subject to approval of the Council, qualified City administrative officers to exercise the power and perform the duties of the Manager during the Manager's temporary absence or disability. During such absence or disability the Council may revoke such designation at any time and appoint another officer of the City to serve until the Manager shall return or the Manager's disability shall cease.

**Section 3.06 Compensation**

**(a) Manager's Compensation Set by Council**

The Manager shall receive such compensation as the Council shall from time to time determine. In addition the Manager shall be reimbursed for all actual and necessary expenses incurred by the Manager in the performance of the Manager's official duties.

**Section 3.07 Powers and Duties**

**(a) Administrative**

The Manager shall be the administrative head of the government of the City under the direction and control of the Council. The Manager shall be responsible for the administration of all affairs of the City which are under the Manager's

control. In addition to the Manager's general powers as administrative head, it shall be the Manager's duty, and the Manger shall have the powers set forth in the following subsections.

**(b) Law Enforcement**

It shall be the duty of the Manager to see that all laws and ordinances of the City and that all franchises, contracts, permits and privileges granted by the Council are faithfully observed and to report any failure in that regard to the Council, which shall give such instruction and direction as it may desire for remedial, corrective or terminating action by the Manager.

**(c) Authority Over Employees**

It shall be the duty of the Manager, and the Manager shall have the sole authority to control, order, and give directions to all heads of departments and to subordinate officers and employees of the City under the Manager's jurisdiction.

**(d) Power of Appointment and Removal**

The Manager shall appoint and, when necessary for the good of the City, lay off, suspend, transfer, demote or remove all officers and employees of the City, except as otherwise provided by this Charter, and except as the Manager may authorize the head of the department or office to appoint and remove subordinates in such department or office, subject to such merit system regulations as the Council may adopt.

**(e) Ordinances**

It shall be the duty of the Manager to recommend to the Council for adoption such measures and ordinances as he deems necessary.

**(f) Attendance at Council Meetings**

It shall be the duty of the Manager to attend all meetings of the Council unless, at the Manager's request, the Manager is excused therefrom by the Mayor individually or by the Council. The Manager may present definite recommendations relative to any item on the agenda for approval, rejection, or modification by the Council.

**(g) Financial Matters**

It shall be the duty of the Manager to keep the Council fully advised as to the financial needs of the City in such form and at such times as requested by the Council.

**(h) Annual Budget**

It shall be the duty of the Manager to prepare and submit the proposed Annual Budget no later than April 1st. In preparing the Annual Budget, the Manager shall consult with the City Clerk, Treasurer and with the Finance Committee of the City Council. The Manager shall be responsible for the administration of the Annual Budget after its adoption.

**(i) Expenditure Control and Purchasing**

It shall be the duty of the Manager to see that no indebtedness is incurred or expenditure made in violation of the State laws applicable to cities or applicable provisions of this Charter.

**(j) Investigations and Complaints**

It shall be the duty of the Manager to make investigations into the affairs of the City and any department or division thereof. It shall be the duty of the Manager to investigate all complaints in relation to matters concerning the

administration of the City government and in regard to the service maintained by the public utilities in said City and report all findings to the Council.

### **Section 3.08 Internal Relations**

#### **(a) Council-Manager Relations**

The Council and its members shall deal with the administrative services of the City only through the Manager, except for the purpose of inquiry, and neither the Council, nor any member thereof, shall give orders or instructions to any employee or officer other than the Manager. The Manager shall take his or her orders and instructions from the Mayor so long as such orders are consistent with the provisions of this Charter. No individual Council Member shall give any orders or instructions except through the Mayor to the Manager.

#### **(b) Attendance at Commission Meetings**

The Manager may attend any and all meetings of all commissions, boards, or committees created by the Council, upon the Manager's own volition or upon the direction of the Mayor and Council. At such meetings which the Manager attends, the Manager shall be heard by such commissions, boards or committees as to all matters upon which the Manager wishes to address the members thereof, and the Manager shall inform said members as to the status of any matter being considered by the Council, and the Manager shall cooperate to the fullest extent with the members of all commissions, boards or committees.

### **Section 3.09 Removal of City Manager**

#### **(a) Preliminary Resolution**

The Council shall appoint the City Manager for an indefinite term and may remove the Manager by a four-sevenths vote of its members. At least 40 days before such removal shall become effective, the Council shall, by a four-sevenths vote of its members adopt a preliminary resolution stating intent to remove the Manager.

#### **(b) Public Hearing**

Within ten days the City Manager may reply in writing and may request a public hearing, which shall be held no earlier than 20 days nor later than 30 days after filing of such request.

#### **(c) Final Resolution of Removal**

After such public hearing, if one is requested, and after full consideration, the Council, by a four-sevenths vote of its members, may adopt a final resolution of removal.

#### **(d) Suspension from Duties**

By the preliminary resolution the Council may suspend the Manager from duty.

#### **(e) Salary upon Removal**

If the removal is for malfeasance or misfeasance in the performance of the Manager duties or the Manager shall be convicted of a felony or any offense in violation of the Manager's official duties, the Council shall cause to be paid to the Manager any salary due the Manager to the date of the preliminary resolution. Otherwise, the Manager shall be paid forthwith upon his or her removal the Manager's salary for the next three months following the adoption of the preliminary resolution for removal.

**(f) Council Discretion to Remove**

In removing the City Manager, the Council shall act at its discretion, and its action shall be final and shall not depend upon any particular showing or degree of proof at the hearing. The purpose of the hearing is to allow the Manager to present to the Council the Manager's grounds of opposition to the Manager's removal prior to the Council action.

**(g) Council Action Final**

The action of the Council in suspending or removing the Manager shall be final and conclusive on everyone. It is the intention of this Charter to vest all authority and fix all responsibility for such suspension and removal in the Council.

**(h) Removal Following Election**

Notwithstanding the provisions of this section, the City Manager shall not be removed from office, other than for misconduct in office, during or within a period of 90 days next succeeding any general municipal election held in the City at which election a member of the Council is elected or when a new Council Member is appointed. After the expiration of the 90-day period, the provisions of this section as to the removal of said City manager shall apply and be effective.

**BACK-UP TO AGENDA ITEM 5.**

**PROPOSED AMENDMENTS APPROVED BY VOTE OF THE CHARTER REVIEW  
COMMITTEE THROUGH SEPT. 11, 2012**

**1. Section 2.04 Term of Mayor**

**(a) Two-Year Term**

The Mayor shall be elected for a term of two years and shall serve for no more than two (2) consecutive elected terms or five (5) consecutive years. ~~The Mayor serving on the date this Charter takes effect shall continue to serve until the Mayor's successor is elected in the 1988 general election and takes office as provided by ordinance in effect for said election.~~

**2. Section 2.05 Terms of Council Members**

**(e) Term of Council Members Elected After 1990**

Every two years after 1990 three Council Members, one from each ward, shall be elected for four-year terms. These shall be the ones receiving the greatest number of votes. Until that time each incumbent Council Member shall retain his or her office, as provided by law. A Council Member shall not serve more than two (2) consecutive elected terms or nine (9) consecutive years.

**3. Section 6.03 Manager's Submission of Budget and Reporting  
Requirements to City Council**

**(a) Expenditures and Income**

On or before the second regular Council meeting in May of each year, or on such date in each year as shall be fixed by the Council, the Manager shall prepare and submit in writing to the Council the estimates of each Department of the City and the Manager's own personal report, recommendations, and estimates as to the probable ~~probably~~ expenditures of the City for the next ~~ensuing~~ fiscal year. Such report shall state in detail the amounts required to meet all expenditures necessary for the City purposes including payment on interest, sinking funds, and outstanding indebtedness. Such report shall also include an estimate of the amount of income expected from all sources and an estimate of the amount required to be raised by taxation to cover such expenditures.

**4. Section 6.08 Independent Audit and Review Financial  
Transactions of City C.P.A.**

**(b) Audit Report**

At the end of each fiscal year such accountant shall perform ~~make up~~ an audit of accounts and other evidence of financial transactions of the City Government and shall submit an audit report that is consistent with generally accepted accounting principles, including recommendations concerning policy and fiscal procedures to the Council and Manager.

**5. Section 7.06 Emergency Ordinances**

**(b) Matters Not to be Classified as "Emergencies"**

Ordinances granting, renewing or extending a franchise or regulating the rate charged by any public utility for its services, except as otherwise provided ~~provide~~ in this Charter, shall never be classified as emergency measures.

6. **Section 7.10 Publication of Ordinances and Resolutions**

All ordinances, except those necessary for the immediate preservation of the peace, health, or safety of the City, and resolutions having the effect of ordinances shall be published ~~at least once a week~~ for at least two consecutive weeks on the official website of the City ~~in the official newspaper of the City~~ before they become effective and operative. Emergency measures shall be published twice in the same manner ~~in the official newspaper of the City~~ within 30 days after their passage.

7. **Section 7.16 Codification of Ordinances**

Any and all ordinances of the City, which have been enacted and published in the manner required at the time of their adoption, and which have not been repealed, may be compiled, consolidated, ~~revised~~, indexed, and arranged as a comprehensive ordinance code, and such code may be adopted by reference, with the same effect as an ordinance, by the passage of any ordinance for such purpose. Such code need not be published in the manner required for other ordinances, but not less than three copies thereof shall be filed for use and examination by the public in the office of the City Clerk prior to the adoption thereof. Amendments to the code shall be enacted in the same manner as ordinances.

8. **Section 2.14 Meetings of Council, Boards, Commissions and Committees**

(a) **Time**

All regularly scheduled Council meetings and those special meetings at which some action may be taken by the Council shall be scheduled for a time ~~times~~ after 5:00 p.m., except in the event of a declared emergency. Work session and other gatherings of a quorum of the Council at which no action will be taken may be scheduled at the discretion of the Mayor.

9. **Section 9.07 Majority to Elect in Primary**

(a) **Mayor**

At the primary election any candidate for Mayor who shall receive a majority of all votes cast for that office ~~at such election~~ shall be declared elected to the office ~~for which he or she is a candidate~~, and no further election shall be held as to said office.

10. **Section 9.10 Time of Holding Primary Elections**

Primary elections shall be held on the date set by the State of Arizona for fall primaries in even numbered years. ~~eighth Tuesday before the first Tuesday after the first Monday in November commencing in the year 2000.~~

11. **Section 9.11 Time of Holding General Elections**

General elections shall be held on the date set by the State of Arizona for November elections on even numbered years. ~~the first Tuesday after the first Monday in November in each even-numbered year commencing in the year 2000.~~

12. **Section 17.02 Charter Review**

The Mayor, with approval of the Council, shall appoint a committee of electors, four from each Ward, to review this Charter for the applicability and content to best serve the City of Bisbee and its citizens, at least once every eight ~~five~~ years., ~~the first such review to be five years from the date of acceptance of~~

~~this Charter.~~ Elected City Officials, appointed City Department Heads, and City employees are prohibited from serving on this Committee.

To assist the Charter Review Committee in its task, and if they are available and willing to serve, one of the original freeholders and a member of the most recent Charter Review Committee shall be appointed by the same method as non-voting ex-official members of the Committee for advisory purposes.

To begin the first meeting of the Committee, the Mayor or designee shall explain the Charter Review process that is to be followed, as well as the steps that proposed Amendments must follow to become implemented into the Charter. The position of a member on the Committee may be declared vacant after three unexcused absences, with the member to be replaced according to the original designation process.