ARTICLE X – OFFICERS AND EMPLOYEES

Recommended Section for Review: Article X, Section 1000

Current Charter Language:

Article X, Section 1000. Restrictions

No person shall be elected or appointed to any office, position, or employment, the compensation of which was increased or fixed by the City Council while said person was a member thereof, until after the expiration of one (1) year from the date when such person ceased to be a member of the City Council. No Councilmember or City Manager shall be interested directly or indirectly in any contract or transaction with the City or any department, board, officer, or employee thereof acting in official capacity, nor become surety for the performance of any contract made with or for the City upon bonds given to the City. No other officer or employee of the City shall be interested in any contract or transaction made by such officer or employee in official capacity, nor by any body or board of which such officer or employee is a member or by any subordinates nor become surety for the performance of any contract made with or for the City upon bonds given to the City. No officer, clerk, assistant, or employee shall receive any commission, money, or thing of value, or derive any profit, benefit, or advantage, directly or indirectly, from or by reason of any dealings with or service for the City by such officer, clerk, assistant, or employee or others, except lawful compensation as such officer, clerk, assistant, or employee. Any contract or transaction made in violation of the provisions of this section may be voided at the election of the City Council.

Any willful violation of the provisions of this section by any City officer or employee shall work the forfeiture of such office or employment.

Recommended Charter Language:

Article X, Section 1000. Restrictions

A. No person elected or appointed to the City Council or to the office of Mayor shall be appointed to any City office, position or employment until one year has passed following the expiration of his or her service as a member of the City Council or Mayor.

B. No officer or employee of the City shall receive any commission, money, or thing of value, or derive any profit, benefit, or advantage, directly or indirectly, from or by reason of any dealings with or service for the City by such officer or employee or others, except lawful compensation as such officer or employee.

C. The City Council may elect to void any contract or transaction made in violation of this section.
D. Any officer or employee who willfully violates this section shall forfeit such office or employment.

Problem Statement

The current language of section 1000 is awkward and some of what is addressed is preempted by state law. Also, the formatting of the current section, which contains several distinct ideas that are not set out independently, is unnecessarily convoluted and confusing.

Background

Section 1000 contains three independent restrictions on officers and employees of the City, which are difficult to readily discern because of the awkward manner in which the section is drafted. In the paragraphs that follow each restriction is set out for independent discussion and analysis, while each proposed amendment is described and the rationale for its inclusion is explained.

The first restriction represents an anti “revolving door” provision, wherein members of the Council are restricted from immediately stepping into a position of City employment.

“No person shall be elected or appointed to any office, position, or employment, the compensation of which was increased or fixed by the City Council while said person was a member thereof, until after the expiration of one (1) year from the date when such person ceased to be a member of the City Council.”

This provision obviously would prevent a member of the City Council from stepping into the position of a Council appointee (City Manager, City Attorney, City Clerk or City Auditor) immediately upon leaving office. However, as a practical matter, the Council sets the compensation for all employees through the budget and so this could be read to require a one year hiatus between service on the Council and any City employment. The proposed amendment (subparagraph A, above) would make this restriction plain and unambiguous.

The second restriction amounts to a local prohibition on public officials being interested in City contracts with which they have any involvement while in their official capacity. The terms of this restriction are set out below:

“No Councilmember or City Manager shall be interested directly or indirectly in any contract or transaction with the City or any department, board, officer, or employee thereof acting in official capacity, nor become surety for the performance of any contract made with or for the City upon bonds given to the City. No other officer or employee of the City shall be interested in any contract or transaction made by such officer or employee in official capacity, nor by any body or board of which such officer or employee is a member or by any
subordinates nor become surety for the performance of any contract made with or for the City upon bonds given to the City.”

This second restriction has created substantial confusion both by its less than artful language, and its overlap with state law. The state has through Government Code section 1090, et seq., provided for a restriction essentially identical to that which is provided here. The remedies and penalties for its violation are also similar under state law. Under state law a violation of section 1090 can carry criminal penalties as well as cause the avoidance of contractual obligations and transactions. Simply put, this restriction is redundant and unnecessary. Also, because this restriction so closely tracks the state law a court would likely find its terms are preempted. For the reasons set out above, the proposed amendment would delete this restriction in its entirety.

The third restriction involves a prohibition regarding extra compensation or the payment of gratuities or kick-backs to City employees. The current language is as follows:

“No officer, clerk, assistant, or employee shall receive any commission, money, or thing of value, or derive any profit, benefit, or advantage, directly or indirectly, from or by reason of any dealings with or service for the City by such officer, clerk, assistant, or employee or others, except lawful compensation as such officer, clerk, assistant, or employee.”

The main thrust of this restriction is to prohibit any employee from extracting financial gain from his or her City position through gratuities or kick-backs, in excess of lawful compensation. The proposed amendment (subparagraph B, above) would not materially alter the terms of the restriction, but would remove redundant language.

The remaining portion of the section addresses potential remedies and penalties for violations of the restrictions set out in this section. These remedies include the ability to avoid certain contracts and the potential forfeiture of office or employment.

“Any contract or transaction made in violation of the provisions of this section may be voided at the election of the City Council.

Any willful violation of the provisions of this section by any City officer or employee shall work the forfeiture of such office or employment.”

As it is presently written, the remedy of avoidance of contract is in conflict with state law to the extent that is applies to any contract wherein a member of the Council is financially interested. According to state law such a contract would be void, not voidable as provided in section 1000. In the recommended amendments this conflict is avoided by the removal of the second restriction, which deals specifically with contracts. It is therefore recommended that the remedy and penalty provisions be retained in substance, but rephrased using more simple and direct language (subparagraphs C and D, above).

Background Materials
Attachment A – Current Charter Section 1000
Attachment B – Proposed Amendments to Charter Section 1000 (redline)
SECTION 1000. RESTRICTIONS.

See Historical Notes at end of Article.

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Any willful violation of the provisions of this section by any City officer or employee shall work the forfeiture of such office or employment.

(Amended Election 11/8/94 effective 5/22/95; Amended Election 10/11/49 effective 12/19/49)
ARTICLE X OFFICERS AND EMPLOYEES

SECTION 1000. RESTRICTIONS.

See Historical Notes at end of Article.

A. No person shall be elected or appointed to any office, position, or employment, the compensation of which was increased or fixed by the City Council while said person was a member thereof, until after the expiration of one (1) year from the date when such person ceased to be a member of the City Council to the City Council or to the office of Mayor shall be appointed to any City office, position or employment until one year has passed following the expiration of his or her service as a member of the City Council or Mayor.

B. No Councilmember or City Manager shall be interested directly or indirectly in any contract or transaction with the City or any department, board, officer, or employee thereof acting in official capacity, nor become surety for the performance of any contract made with or for the City upon bonds given to the City. No other officer or employee of the City shall be interested in any contract or transaction made by such officer or employee in official capacity, nor by any body or board of which such officer or employee is a member or by any subordinates nor become surety for the performance of any contract made with or for the City upon bonds given to the City. No officer, clerk, assistant, or employee shall receive any commission, money, or thing of value, or derive any profit, benefit, or advantage, directly or indirectly, from or by reason of any dealings with or service for the City by such officer, clerk, assistant, or employee or others, except lawful compensation as such officer, clerk, assistant, or employee. No officer or employee of the City shall receive any commission, money, or thing of value, or derive any profit, benefit, or advantage, directly or indirectly, from or by reason of any dealings with or service for the City by such officer or employee or others, except lawful compensation as such officer or employee.
C. Any contract or transaction made in violation of the provisions of this section may be voided at the election of the City Council. The City Council may elect to void any contract or transaction made in violation of this section.

D. Any willful violation of the provisions of this section by any City officer or employee shall work the forfeiture of such office or employment.

(Amended Election 11/8/94 effective 5/22/95; Amended Election 10/11/49 effective 12/19/49)
Recommendation

Approve amended language as recommended by the Charter Review Advisory Commission and forward to the full Council for approval to place on the November 4, 2014 ballot.

At the August 28, 2013 meeting of the Charter Review Advisory Commission, City staff presented recommended language for consideration by the Commission (Attachment A). After deliberation, the Charter Review Advisory Commission approved staff recommended changes to Article X Section 1000 Officers and Employees: Restrictions - with the noted change to remove a redundant ‘shall be’ from the first sentence (Attachment B).
THE ORIGINAL STAFF REPORT RELATED TO THIS CHARTER AMENDMENT IS ALREADY INCLUDED AT THE BEGINNING OF THIS ATTACHMENT. IT HAS NOT BEEN INCLUDED AGAIN AS AN ATTACHMENT TO THE CRAC AGENDA TO AVOID REDUNDANCY.
ARTICLE X OFFICERS AND EMPLOYEES

SECTION 1000. RESTRICTIONS.

See Historical Notes at end of Article.

A. No person shall be elected or appointed to any office, position, or employment, the compensation of which was increased or fixed by the City Council while said person was a member thereof, until after the expiration of one (1) year from the date when such person ceased to be a member of the City Council to the City Council or to the office of Mayor shall be appointed to any City office, position or employment until one year has passed following the expiration of his or her service as a member of the City Council or Mayor.

B. No Councilmember or City Manager shall be interested directly or indirectly in any contract or transaction with the City or any department, board, officer, or employee thereof acting in official capacity, nor become surety for the performance of any contract made with or for the City upon bonds given to the City. No other officer or employee of the City shall be interested in any contract or transaction made by such officer or employee in official capacity, nor by any body or board of which such officer or employee is a member or by any subordinates nor become surety for the performance of any contract made with or for the City upon bonds given to the City. No officer, clerk, assistant, or employee shall receive any commission, money, or thing of value, or derive any profit, benefit, or advantage, directly or indirectly, from or by reason of any dealings with or service for the City by such officer, clerk, assistant, or employee or others, except lawful compensation as such officer, clerk, assistant, or employee. No officer or employee of the City shall receive any commission, money, or thing of value, or derive any profit, benefit, or advantage, directly or indirectly, from or by reason of any dealings with or service for the City by such officer or employee or others, except lawful compensation as such officer or employee.
C. Any contract or transaction made in violation of the provisions of this section may be voided at the election of the City Council. The City Council may elect to void any contract or transaction made in violation of this section.

D. Any willful violation of the provisions of this section by any City officer or employee who willfully violates this section by any City officer or employee shall work the forfeiture of such office or employment.

(Amended Election 11/8/94 effective 5/22/95; Amended Election 10/11/49 effective 12/19/49)
3.2 14-0353 AMENDED CHARter LANGUAGE ARTICLE X SECTION 1000 OFFICERS AND EMPLOYEES: RESTRICTIONS

Legislation Text

Attachment A - Staff Report - Article X SEC 1000

Attachment B - Article X Section 1000 - Redline

City Attorney John Luebberke provided staff report

Recommendation

Approve amended language as recommended by the Charter Review Advisory Commission and forward to the full Council for approval to place on the November 4, 2014 ballot.

Moved by: Councilmember Burgos Medina, seconded by Councilmember Zapien.

Vote: Motion carried 3-0

Yes: Councilmember Burgos Medina, Councilmember Zapien, and Chair Miller.
AD-HOC COMMITTEE FINAL RECOMMENDATION
AS IT WOULD APPEAR ON THE BALLOT AND CHARTER IF ADOPTED

ARTICLE X, SECTION 1000 Officer and Employees: Restrictions

A. No person elected or appointed to the City Council or to the office of Mayor shall be appointed to any City office, position or employment until one year has passed following the expiration of his or her service as a member of the City Council or Mayor.

B. No officer or employee of the City shall receive any commission, money, or thing of value, or derive any profit, benefit, or advantage, directly or indirectly, from or by reason of any dealings with or service for the City by such officer or employee or others, except lawful compensation as such officer or employee.

C. The City Council may elect to void any contract or transaction made in violation of this section.

D. Any officer or employee who willfully violates this section shall forfeit such office or employment.