

City of Detroit


CITY COUNCIL

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To: The Honorable Detroit City Council

From: David D. Whitaker, Director 
Research and Analysis Division (RAD) Staff

Re: **ADOPTION OF CHARTER REVISION COMMISSION
PROPOSALS REGARDING CORPORATION COUNSEL,
INDEPENDENT COUNSEL, AND INTRA-
GOVERNMENT BRANCH DISPUTE RESOLUTION**

Date: March 25, 2011

On Tuesday evening, March 22, 2011, the Charter Revision Commission voted 5-1 to adopt the attached *Proposed Revisions for Consideration with Report on Corporation Counsel*. RAD was not provided with a copy of this document prior to the start of the meeting¹, but now has had the opportunity to review and evaluate the proposals.

The task undertaken by the Charter Commission to address the shortcomings of the current Charter with respect to the position of corporation counsel is a difficult one. These provisions make significant and substantial changes to the role of Corporation Counsel, in terms of that office's accountability to the Mayor and City Council, and toward the laudable goal of creating more independence in that office.

Because of the great significance of these issues to City Council as an institution, and indeed to governance of the City of Detroit as a whole, RAD is providing this report to inform City Council of these proposals and their implications. In RAD's opinion, these related proposals are very significant and require the Body's immediate attention. RAD

¹ Commission staff emailed the proposal to RAD at 7:15 p.m. during the March 22, 2011, Charter Revision Commission meeting at which the proposal was adopted; therefore RAD had no opportunity to review it until the following day. The next day, RAD was provided further revisions (also attached), but without the explanatory commentary.

recommends that this review and analysis be read side by side with the Charter Revision Commission's proposal for reference.²

I. Summary and Effect of Proposed Corporation Counsel Provisions

Several features of the newly proposed scheme, in combination, sound alarms with respect to the increased power of the position of corporation counsel. First -- while giving voice to creation of a more independent corporation counsel, equally accountable to all elected officials of the City, the proposed provisions, in actuality, threaten to create a potentially **less accountable** corporation counsel with **excessive independence**.

Second -- a re-elected Mayor is required to keep the corporation counsel from the Mayor's previous term unless the Mayor can obtain the concurrence of a **super majority** of City Council to remove corporation counsel. The requirement of the concurrence of the Mayor and six members of City Council to remove the corporation counsel goes a step further than the suggestions of both the Administration and City Council.

Third -- no branch of government, department, agency, official, or employee may obtain legal advice or legal services of any sort from an outside law firm without the approval of corporation counsel. This provision potentially gives corporation counsel the ability to shut off discussion of any legal issues at her or his whim, and is therefore fraught with the potential for unintended consequences, the very least of which is excessive rigidity, restricting a governmental body to one source of advice, and generally inhibiting change - - *i.e.*, bad public policy.

Fourth -- the corporation counsel is newly designated as "**the authorized legal representative** for the City of Detroit and its constituent branches and units of government (emphasis added)." This designation elevates the corporation counsel to the status of an entity which may be authorized to **legally bind** the City -- potentially on par with the Mayor.

Fifth -- City Council's current right to obtain the opinion or advice of an outside attorney in any matter pending before it is extinguished in its entirety.

By establishing this lawyer and his or her subordinates as "the sole legal representative," requiring **both** the Mayor and two-thirds of City Council to agree before this official can be dismissed without cause (even in the event of a Mayor re-elected to a second term, or a Council President ascending to the position by virtue of a vacancy, who wishes to hire a new corporation counsel), **and** prohibiting City officials from seeking legal counsel from anyone else without corporation counsel's permission, these provisions potentially create a new power base within City government, wielding the authority of the law, with Charter-mandated exclusive professional expertise, without effective check or balance.

² RAD's review is based on the Proposed Revisions "As Amended from March 22, 2011 Commission Meeting. (Exhibit A). The commentary portion is, however, contained in the Commission's earlier draft. (Exhibit B).

II. Review of Proposed Corporation Counsel Provisions

Section 6.401 Law Department.

The new provisions (attached) revise the existing Charter **Section 6-401**, entitled "Law Department." They commence with what appears on its face to be an egregious error -- in the course of making it explicit that Corporation Counsel represents the City and all of its officials, agencies, and governmental bodies, the Charter Commission overstates the authority of Corporation Counsel by stating that s/he "is the **authorized legal representative** for the City of Detroit and its constituent branches and units of government." The significance and impropriety of expressly designating such an official, in the Charter, as "the authorized legal representative of the City of Detroit," is a serious error. Legally, it can be interpreted to mean that this official could bind the City to contracts, settlements, intergovernmental agreements, disposition of assets, and other significant legal actions. The Charter should not expressly make Corporation Counsel or any other single individual "the authorized legal representative of the City of Detroit."

Revised section 6-401 further states that,

Upon election, but not re-election to office, the Mayor may reappoint the existing Corporation Counsel, if any, or make a new appointment.

RAD believes that it would be undesirable to **force** a re-elected Mayor to retain Corporation Counsel. While the current Charter authorizes the Mayor to unilaterally remove the Corporation Counsel without cause, the new proposal changes the procedure for removal significantly:

The Mayor may remove the Corporation Counsel without cause, with a two-thirds (2/3) majority vote of the membership of City Council. City Council may remove the Corporation Counsel, without cause, by a two-thirds vote of its membership and concurrence of the Mayor.

Thus, where Corporation Counsel currently may arguably be removed too easily by the Mayor (unilaterally, at any time, without cause), the new proposal may go too far in the other direction, particularly when coupled with the restrictions placed on receiving advice from outside counsel.

The provision also adds a new subsection 1, entitled "Client and Representation." In addition to stating that the municipal corporation is the client (consistent with the Michigan Rules of Professional Conduct) and specifying the obligation to all elected officials, it adds the following restriction:

No branch or unit of government, department, agency, elected official or employee required or allowed to receive legal services by law, charter, ordinance, city policy or contract, may solicit or obtain legal advice,

services or representation from an outside law firm without requesting and receiving the approval of Corporation Counsel, unless expressly allowed by charter.

Commentary to the proposed revised **Section 6-401** explains the Commission's reasoning behind this change as follows:

In order to provide guidance to the branches of government and city officials on the proper role and function of Corporation Counsel as the sole legal representative of the City of Detroit and its constituent parts and agents, language has been added that prevents anyone from seeking legal advice, opinions or services pertaining to city business, without approval of Corporation Counsel, unless expressly allowed by charter. **Agents of the City of Detroit must divest themselves of the notion that the office of Corporation Counsel is partisan and therefore requires that they have access to "impartial" and "unbiased" legal counsel. Furthermore, they must re-evaluate their place and role in city government and embrace their positions as mere intermediaries and agents of the City of Detroit, which as a municipal corporation is the client of Corporation Counsel and the entity whose interest they were elected to serve.** The language in this section serves this purpose (emphasis added).

Simply stating in writing, even in the authoritative form of the City Charter, that Corporation Counsel shall equally and fairly counsel and represent all branches, officers and agencies of the City, unfortunately does not make it so. In the conduct of City government, conflicts of interest, differing priorities and policies naturally and inevitably arise on a daily basis. The theory of democratic government in terms of a system of checks and balances is based on the idea that this will occur. Prohibiting City officials from seeking advice without the permission of corporation counsel from advisors in whom they have confidence, and who support their interests and viewpoint in a complex and dynamic government organization is limiting and foolhardy.

The proposed restrictions in Section 6-401, subparagraph 1, would tie the hands of elected and appointed public officials, and prevent them from seeking or receiving valuable legal information in any number of circumstances under which, for innumerable reasons, the Law Department may be unwilling or unable to provide such professional advice and consultation on a timely basis. While the Charter Commission may have been focused on the relationship of RAD to City Council, there are a multitude of instances of City officials consulting other lawyers, both formally and informally. This restriction would be bad public policy, in addition to unfairly restricting officials' right of association and their legal rights to consult attorneys of their choosing.

Finally, the commentary's pointed criticism of City officials is inappropriate. It is respectfully submitted that the proper role of such commentary is to explain the reasoning

behind the text of Charter provisions, rather than to direct officials with respect to what they "must" do or think.

Section 4-121. Special Counsel³

Section 4-121 of the Charter addresses City Council's relationship with legal counsel generally. It therefore relates to the role of Corporation Counsel. In the current Charter, City Council has the express right to seek advice from any counsel regarding any matter under its consideration. Currently, Section 4-121 begins with the statement of Council's fundamental right:

The city council may obtain the opinion or advice of an outside attorney in any matter pending before it.

The Charter Commission's proposal deletes this sentence as well as the right it affords. The remainder of the section is left essentially intact, that is, in the event of a conflict between City Council and another branch of government, Council can retain an "outside law firm" (new language) through a new process described in Section 6-408 (infra).

The lengthy Commentary to this revision is worth review here:

The City Council is a co-equal branch and agent of city government, as such its legal interests and needs are served by the Corporation Counsel, who is the official attorney for both the [sic] branches of city government. The current charter has been revised (See, §6-401(1)) to reflect the fact that Corporation Counsel equally represents the executive and legislative branches of government in their capacity as representatives and agents of the City of Detroit, which exists as a municipal corporation. It has been further amended to mandate that City Council, as a body, has a right to receive legal advice and opinions from Corporation Counsel in the discharge of its duties and functions as an agent of city government. See §6-405 (Advice and Opinion)

Under the current charter City Council may obtain legal advice and opinions related to their [sic] duties and responsibilities as Council members from attorneys outside of city government. **This is a right the Mayor does not enjoy⁴ and its extension to City Council is untenable in light of the role, function and duties of Corporation Counsel under Michigan law and the Michigan Rules of Professional Conduct. This**

³ This section, although related to the role of corporation counsel, is contained in Article 4, Chapter 1 of the Charter pertaining to the Legislative Branch and specifically, City Council.

⁴ This claim that the Mayor cannot consult, and has not consulted, other attorneys outside of the Law Department is inaccurate and misleading.

body of authority is clear that Corporation Counsel's client is the municipal corporation and that the government officials are merely the corporation's agents. Further, the interest, duties and powers of City Council are subordinate to those of the municipal corporation from which they are derived, and it is expected that the legislative branch will only act in a manner consistent with the interest of municipal corporation, thus making unnecessary legal advice and opinions from attorneys other than those of the municipal corporation.

Moreover, allowing either branch of government to obtain legal advice or opinions in disregard of the role and function of Corporation Counsel reinforces the erroneous idea and ill-conceived perception of a partisan Corporation Counsel, which this revised charter discontinues. Citizens have the reasonable expectation that the chief legal officer for the city government will equally represent and assist both branches of government in the execution of their official duties, and will be the final authority on legal matters, except in extraordinary circumstances, like conflicts of interests between branches of government, government officials and city employees, in which case outside legal services may be required.

To this end language has been removed that gave City Council the authority to obtain the opinion and advice of attorneys outside the law department, since this is a service delegated to and expected of Corporation Counsel. However, City Council retains their [sic] right to obtain legal services from an outside law firm when there is a dispute between the branches of government. See proposed §6-408 (Intra-Government Branch Dispute Resolution) (Emphasis added.)

The Commentary to Section 4-121 asserts, without citation or factual support, that the Mayor does not have the right to consult any attorneys not employed by the Law Department under the supervision of Corporation Counsel. This is incorrect, and would come as a surprise to Mayors who regularly employ attorneys as Deputy Mayors, bond counsel, and general counsel, and who invariably seek out and are offered professional advice from lawyers, directly or indirectly.

In reality, there are many legitimate reasons why a public official may seek legal advice from more than one professional, consultant or team, with diverse experiences, skill sets, perspectives and other desired attributes. Our system of democratic government under the rule of law favors such free consultation with legal professionals, as an aid to responsible and informed decision-making on important issues.

The assumption that such consultation arises out of excessive self interest, partisanship or other illegitimate concerns should not be allowed to tie the hands of City officials who may be assisted in the performance of their duties by information from multiple sources. The people of the City of Detroit want their elected and appointed officials to gather the

best information and advice possible from as many sources as are available. The requirement that the Corporation Counsel and the Law Department should be the sole source of legal advice would deny officials access to information and resources to assist in doing their jobs.

The Charter Revision Commission's broad and sweeping mandate to draft a new City Charter is not so broad or all-encompassing as to direct other City officials in what they should, or should not believe. And the actual exercise of government authority in practice in a complex modern society is not as simple as the text of a legal document, even one as fundamental as the City Charter.

Section 6-405. Advice and Opinion.

The Charter Revision Commission revised Section 6-405, "Advice and Opinions," to emphasize that all of the City's elected officials "shall receive the legal advice and opinion of Corporation Counsel on matters pertaining to the execution of their functions and duties as governmental bodies and officials", and presumably to achieve balance in corporation counsel's duty of representation.

Section 6-408. Intra-Government Branch Dispute Resolution.

The new provisions substitute an entirely new Section 6-408 (formerly entitled "Special Counsel"), now entitled "Intra-Government Branch Dispute Resolution." The new Section states:

~~Upon request of an agency or officer, the corporation counsel may retain an outside attorney as special counsel for any particular matter or proceeding.~~

In all disputes between branches or units of city government, before any branch or unit can institute legal proceedings, they shall have first requested and obtained from Corporation Counsel a legal opinion which details which party has the legally correct position. Corporation Counsel shall then instruct the branch or unit found not to have the legally correct position to obtain legal assistance and representation from an outside law firm if they plan on instituting legal proceedings.

In cases of disputes between the branches of government, prior to filing a lawsuit or taking other legal action, the highest public officials from the disputing branches of government shall first meet to resolve the matter. In the case of the Executive branch the highest public official shall be the Mayor or designee; in the case of the Legislative branch it shall be the Council President or designee; and in case of the Office of the City Clerk shall be the City Clerk or designee. The parties shall engage in facilitation

of the matter over a period of fourteen (14) calendar days, or more as agreed to by the parties, before taking legal action. The facilitation shall be conducted by a facilitator, mutually agreed to by the parties. Nothing in this section shall preclude a branch or unit of government from seeking a temporary restraining order or other emergency legal action necessary to prevent irreparable harm, but this section shall be complied with upon a court ruling that no such irreparable harm exists, in which case the facilitation period shall be twenty-eight (28) calendar days.

The provided commentary emphasizes the desirability of alternative dispute resolution. Interestingly though, it directs corporation counsel to initially issue an opinion detailing "which party has the legally correct position". This puts corporation counsel in the position of making policy decisions, particularly when both parties have legally defensible positions - an entirely inappropriate role. In this instance, both parties may need independent counsel.

Additionally, the proposal requires the use of a facilitator which, in itself, may be a useful tool. However, we would caution that this could become very expensive and should perhaps be allowed but not mandated.

Conclusion

Summarizing the above new proposals, they would essentially introduce the following five (5) changes to the City Charter.

1. Make Corporation Counsel "the authorized legal representative of the City of Detroit," who could seemingly unilaterally bind the City in legal transactions. (Section 6-401)
2. Change the procedure for removal of Corporation Counsel without cause by prohibiting it unless the Mayor **and** two-thirds of City Council members agree, even for a re-elected Mayor. It is well established that confidence and compatibility is at the heart of any lawyer-client relationship. Therefore, requiring a super-majority of Council in conjunction with the agreement of the Mayor makes removal extremely difficult when either the Mayor or City Council becomes dissatisfied. This "unremovability" is extraordinary power for such a legal professional. (Section 6-401)
3. Prohibit all City of Detroit government entities and employees from receiving "services or representation from an outside law firm" without the Corporation Counsel's express approval⁵ (Section 6-401, subsection 1)

⁵ The further exception, "unless expressly allowed by Charter," presumably refers to Section 4-121 ("Special Counsel"), and it is unknown at this time whether or not the Charter Revision Commission plans to add any more specific exceptions.

4. Create a new dispute resolution process for resolving conflicts between branches of City government, before resorting to litigation. (Section 6-408)

5. Require that independent counsel hired by City Council in the event of a conflict must be a Michigan-licensed attorney from an outside law firm (as opposed to an attorney employed by the City, but outside of the Law Department. (Section 4-121)

6. Prohibit City Council from obtaining legal opinions or advice from attorneys outside of the Law Department. (Commentary to Section 4-121)

City Council may wish to address this issue directly to the Charter Revision Commission, as it has considerable significance beyond any perceived rivalry between the Research and Analysis Division and the Law Department.

CITY OF DETROIT CHARTER REVISION COMMISSION

CORPORATION COUNSEL

Proposed Revisions for Consideration with Report on Corporation Counsel

As Amended from March 22, 2011 Commission Meeting

Without Commentary

Sec. 6-401. Law Department.

The Law Department is headed by the Corporation Counsel who is the authorized legal representative for the City of Detroit and its constituent branches and units of government. The Mayor shall appoint or reappoint the Corporation Counsel subject to approval of the City Council. However, if the City Council does not disapprove the appointment or reappointment within thirty (30) days, the appointment it is deemed confirmed. Upon election, but not re-election to office, the Mayor may reappoint the existing Corporation Counsel, if any, or make a new appointment. Both reappointment and new appointments shall be made in the manner prescribed in this section for selection of Corporation Counsel.

The Mayor may remove the Corporation Counsel without cause, with a two-thirds (2/3) majority vote of the membership of City Council. City Council may remove the Corporation Counsel, without cause, by a two-thirds vote of its membership and concurrence of the Mayor.

1. *Client and Representation*

The client of the Corporation Counsel is the City of Detroit as a body corporate. The agents and representatives of the City of Detroit, for purposes of receiving and directing legal services in a manner consistent with Corporation Counsel's professional obligations to the City of Detroit, as herein provided in this charter or allowed by law, shall be the Mayor, City Council and City Clerk.

Corporation Counsel represents the City of Detroit as a body corporate and may represent its branches of government, departments, agencies, elected officials and employees as required or allowed by law, charter, ordinance, city policy or contract. No branch or unit of government, department, agency, elected official or employee required or allowed to receive legal services by law, charter, ordinance, city policy or contract, may solicit or obtain legal advice, services or representation from an outside law firm without requesting and receiving the approval of Corporation Counsel, unless expressly allowed by charter.

Sec. 6-408. Special Counsel. Intra-Government Branch Dispute Resolution.

~~Upon request of an agency or officer, the corporation counsel may retain an outside attorney as special counsel for any particular matter or proceeding.~~

In all disputes between branches or units of city government, before any branch or unit can institute legal proceedings, they shall have first requested and obtained from Corporation Counsel a legal opinion which details which party has the legally correct position. Corporation Counsel shall then instruct the branch or unit found not to have the legally correct position to obtain legal assistance and representation from an outside law firm if they plan on instituting legal proceedings.

In cases of disputes between the branches of government, prior to filing a lawsuit or taking other legal action, the highest public officials from the disputing branches of government shall first meet to resolve the matter. In the case of the Executive branch the highest public official shall be the Mayor or designee; in the case of the Legislative branch it shall be the Council President or designee; and in case of the Office of the City Clerk shall be the City Clerk or designee. The parties shall engage in facilitation of the matter over a period of fourteen (14) calendar days, or more as agreed to by the parties, before taking legal action. The facilitation shall be conducted by a facilitator, mutually agreed to by the parties. Nothing in this section shall preclude a branch or unit of government from seeking a temporary restraining order or other emergency legal action necessary to prevent irreparable harm, but this section shall be complied with upon a court ruling that no such irreparable harm exists, in which case the facilitation period shall be twenty-eight (28) calendar days.

Sec. 6-405. Advice and Opinion.

Each branch and unit of government shall receive the legal advice and opinion of Corporation Counsel on matters pertaining to the execution of their functions and duties as governmental bodies and officials. Upon request, the Corporation Counsel shall give such legal advice or opinions to the Mayor, City Council, a members of the City Council, City Clerk or the head of any agency.

Sec. 4-121. Special Counsel.

~~The City Council may obtain the opinion or advice of an outside attorney in any matter pending before it~~ Where there exists a conflict of interest between the City Council and another branch of government, the City Council has the authority to retain an outside law firm who shall represent the City Council in legal proceedings, in accordance with §6-408 (Intra-Government Branch Dispute Resolution). The attorney must be licensed to practice law in Michigan. ~~Such attorney~~ and shall not represent the city as a municipal corporation in any legal proceeding.

CITY OF DETROIT CHARTER REVISION COMMISSION

CORPORATION COUNSEL

Proposed Revisions for Consideration with Report on Corporation Counsel

March 22, 2011

Prepared by Staff

Sec. 6-401. Law Department.

The Law Department is headed by the Corporation Counsel who is the authorized legal representative for the City of Detroit and its constituent branches and units of government. The Mayor shall appoint the Corporation Counsel subject to approval of the City Council. However, if the City Council does not disapprove the appointment within thirty (30) days, the appointment is confirmed. Each elected Mayor shall reappoint the existing Corporation Counsel, if any, or make an appointment consistent with this section.

The Mayor may remove the Corporation Counsel without cause, with a two-thirds (2/3) majority vote of the membership of City Council. City Council may remove the Corporation Counsel, without cause, by a two-thirds vote of its membership and concurrence of the Mayor.

1. *Client and Representation*

The client of the Corporation Counsel is the City of Detroit as a body corporate. The agents and representatives of the City of Detroit, for purposes of receiving and directing legal services in a manner consistent with Corporation Counsel's professional obligations to the City of Detroit, as herein provided in this charter or allowed by law, shall be the Mayor, City Council and City Clerk.

Corporation Counsel represents the City of Detroit as a body corporate and may represent its branches of government, departments, agencies, elected officials and employees as required or

allowed by law, charter, ordinance, city policy or contract. No branch or unit of government, department, agency, elected official or employee required or allowed to receive legal services by law, charter, ordinance, city policy or contract, may solicit or obtain legal advice, services or representation from an outside law firm without requesting and receiving the approval of Corporation Counsel, unless expressly allowed by charter.

COMMENTARY: Corporation Counsel serves as the attorney for the City of Detroit, which is a corporate body. MCL 117.1 (Home Rule City Act). As such, Corporation Counsel is the sole legal representative of the municipal corporation, who happens to take legal direction from and provides legal services to the agents of his client - both branches of government. To this end the appointment and removal of the Corporation Counsel should equitably reside with both branches of government. In addition, this reinforces that the Corporation Counsel is not the exclusive legal representative of either branch of government, which misperception is held by many citizens and bolstered by the current removal mechanism that gives that right solely to the Mayor.

In order to provide guidance to the branches of government and city officials on the proper role and function of Corporation Counsel as the sole legal representative of the City of Detroit and its constituent parts and agents, language has been added that prevents anyone from seeking legal advice, opinions or services pertaining to city business, without approval of Corporation Counsel, unless expressly allowed by charter. Agents of the City of Detroit must divest themselves of the notion that the office of Corporation Counsel is partisan and therefore requires that they have access to "impartial" and "unbiased" legal counsel. Furthermore, they must re-evaluate their place and role in city government and embrace their positions as mere intermediaries and agents of the City of Detroit, which as a municipal corporation is the client of Corporation Counsel and the entity whose interest they were elected to serve. The language in this section serves this purpose.

Sec. 6-408. ~~Special Counsel.~~ Intra-Government Branch Dispute Resolution.

~~Upon request of an agency or officer, the corporation counsel may retain an outside attorney as special counsel for any particular matter or proceeding.~~

In all disputes between branches or units of city government, before legal action is instituted, the Corporation Counsel shall have first provided a legal opinion to the disputing parties that

details which party has the legally correct position and shall instruct the other branch or unit of government to obtain legal assistance and representation from an outside law firm.

In cases of disputes between the branches of government, prior to filing a lawsuit or taking other legal action, the highest public officials from the disputing branches of government shall first meet to resolve the matter. In case of the Executive branch the highest public official shall be the Mayor or designee; in case of the Legislative branch it shall be the Council President or designee; and in case of the Office of the City Clerk shall be the City Clerk or designee. The parties shall meet over a period of fourteen (14) calendar days, or more as agreed to by the parties, before taking legal action.

COMMENTARY: This section's allowance for special counsel at the discretion of Corporation Counsel has been incorporated into new section 6-401(1) (*Client and Representation*).

The proposed language provides a mechanism for resolving occasional legal disputes that arise between the branches of government, which may result in litigation. By forcing the disputants to meet in an effort to resolve their dispute, unnecessary litigation costs and expenditure of city resources will be avoided. This revision places the Corporation Counsel in the proper role of counsel to the City of Detroit as a municipal corporation and protector of its legitimate legal interests.

Sec. 6-405. Advice and Opinion.

Each branch and unit of government shall receive the legal advice and opinion of Corporation Counsel on matters pertaining to the execution of their functions and duties as governmental bodies and officials. Upon request, the Corporation Counsel shall give such legal advice or opinions to the Mayor, City Council, a members of the City Council, City Clerk or the head of any agency.

COMMENTARY: Corporation Counsel is the attorney for the City of Detroit as a corporate body and all of its constituent units and branches of government. As such, they are entitled to, and currently receive, the legal advice and opinion of Corporation Counsel. This section has been amended to reflect this reality by adding the City Council, as a body, and the City Clerk as agents of city government entitled to the legal services of the Corporation Counsel.

Sec. 4-121. Special Counsel.

~~The City Council may obtain the opinion or advice of an outside attorney in any manner pending before it. Where there exists a conflict of interest between the City Council and another branch of government, the City Council has the authority to retain an outside law firm who shall represent the City Council in legal proceedings, in accordance with §6-408 (Intra-Government Branch Dispute Resolution). The attorney must be licensed to practice law in Michigan. Such attorney and shall not represent the city as a municipal corporation in any legal proceeding.~~

COMMENTARY: The City Council is a co-equal branch and agent of city government, as such its legal interests and needs are served by the Corporation Counsel, who is the official attorney for both the branches of city government. The current charter has been revised (*See, §6-401(1)*) to reflect the fact that Corporation Counsel equally represents the executive and legislative branches of government in their capacity as representatives and agents of the City of Detroit, which exists as a municipal corporation. It has been further amended to mandate that City Council, as a body, has a right to receive legal advice and opinions from Corporation Counsel in the discharge of its duties and functions as an agent of city government. *See §6-405 (Advice and Opinion)*

Under the current charter City Council may obtain legal advice and opinions related to their duties and responsibilities as Council members from attorneys outside of city government. This is a right the Mayor does not enjoy and its extension to City Council is untenable in light of the role, function and duties of Corporation Counsel under Michigan law and the Michigan Rules of Professional Conduct. This body of authority is clear that Corporation Counsel's client is the municipal corporation and that the government officials are merely the corporation's agents. Further, the interest, duties and powers of City Council are subordinate to those of the municipal corporation from which they are derived, and it is expected that the legislative branch will only act in a manner consistent with the interest of municipal corporation, thus making unnecessary legal advice and opinions from attorneys other than those of the municipal corporation.

Moreover, allowing either branch of government to obtain legal advice or opinions in disregard of the role and function of Corporation Counsel reinforces the erroneous idea and ill-conceived perception of a partisan Corporation Counsel, which this revised charter discontinues. Citizens have the reasonable expectation that the chief legal officer for the city government will equally represent and assist both branches of government in the execution of their official duties, and will be the final authority on legal matters, except in extraordinary circumstances, like conflicts of interests between branches of government, government officials and city employees, in which case outside legal services may be required.

To this end language has been removed that gave City Council the authority to obtain the opinion and advice of attorneys outside the law department, since this is a service delegated to and expected of Corporation Counsel. However, City Council retains their right to obtain legal services from an outside law firm when there is a dispute between the branches of government. *See proposed §6-408 (Intra-Government Branch Dispute Resolution)*