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| 10.18.2018 |  | Memo |
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To

Councilmember Ortega

From

Jonathan Griffin, Legislative Analyst

Re

City Council’s Ability to Hire External Consultants

*The Charter for the City and County of Denver* (“*The Denver Charter*”) explicitly states that the City Attorney can only hire special counsel with Mayoral approval[[1]](#footnote-1) and that “[a]ll contracts or other instruments of writing, requiring the assent of the City and County, shall be subscribed by the Mayor, or acting Mayor, as the case may be, under the seal of the City and County, and attested by the Clerk.”[[2]](#footnote-2) *The Denver Charter* also states that the Department of Law exclusively represents the City and County of Denver in all civil litigation and serves as counsel and legal advisor to the City Council and Mayor.[[3]](#footnote-3) I was asked to find if other cities allow for city council to contract with special counsel or other external consultants. I conducted a review of the charters of the thirteen most-similar cities to Denver - using population size and type of government as determining factors - using data provided by [Ballotpedia](https://ballotpedia.org/List_of_current_mayors_of_the_top_100_cities_in_the_United_States).[[4]](#footnote-4)

While I was unable to find any municipal code that specifically overruled the Mayor’s ability to hire or contract for external consultants, I found three code sections that could provide guidance for how to amend the city charter. *The Charter of the City of Columbus, Ohio* (“*The Columbus Charter*”) is similar to *The Denver Charter*, as both charters provide that the Department of Law represents the city in all legal matters and acts as legal advisor for all departments within the city[[5]](#footnote-5). *The Columbus Charter* differs from *The Denver Charter* as the mayor is not the named contracting entity of the city. *The Columbus Charter* is silent on that issue. *The Columbus Charter* does empower the City Council to hire staff, stating “[t]he council shall appoint such officers and employees of council as it deems necessary.”[[6]](#footnote-6) *The Denver Charter* is currently silent on the City Council’s ability to hire staff, but broad language such as this could give the council an opportunity to hire and pay contracted experts when the council deems the hiring “necessary.”

The next city I’d like to highlight is Nashville, Tennessee. Like *The Denver Charter*, *The Charter of the Metropolitan Government of Nashville and Davidson County, Tennessee* (“*The Nashville Charter*”), the Department of Law represents the city in all legal matters and acts as legal advisor for all departments within the city.[[7]](#footnote-7) *The Columbus Charter* and *The Nashville Charter* are both silent on the named contracting entity of the city. *The Nashville Charter* does allow for the council to hire external staff as needed. *The Nashville Charter* states that:

In addition to the foregoing and in aid of its legislative function, the council is authorized by resolution passed by a three-fourths (3/4ths) majority of its entire membership and not subject to the veto power of the mayor to conduct investigations by the whole council or any of its committees; to employ and compensate personnel necessary for such purpose; and to make appropriations therefor.[[8]](#footnote-8)

While this language only provides for investigative personnel, it could be expanded to allow for other personnel as well.

Finally, the City of Baltimore might provide the clearest roadmap on gaining outside counsel or other services. *The Baltimore City Charter* gives the City Council the ability to hire an independent General Counsel.[[9]](#footnote-9) The counsel has the following duties: provide independent legal advice to the City Council, its committees, and subcommittees; assist the City Council in investigations undertaken by the City Council or any of its committees or subcommittees; and generally serve as attorney for the City Council.[[10]](#footnote-10) Unlike the above citations, this change was made in 2013, so there is some legislative history to draw from. In 2013, the City Council proposed resolution [13-0236](https://baltimore.legistar.com/LegislationDetail.aspx?ID=2177847&GUID=F1325115-8989-4880-BDE9-C325CE21F010&Options=ID|Text|&Search=), a charter amendment to allow the city council to retain the services of independent legal counsel. The initial bill granted the city council’s counsel a wide range of functions, including “serv[ing] as attorney for the city council.”[[11]](#footnote-11)

In a 2013 advisory opinion by the city’s Chief Solicitor, she states that the City Council may employ a general counsel as it employs other staff, but it cannot enter into contracts or be a party to a lawsuit, as the City Council is a branch of government, not the city’s corporate identity.[[12]](#footnote-12) Only the City’s corporate identity can be party to lawsuits and the Charter gives the City Solicitor “sole charge and direction of the preparation of all suits, actions, and proceedings, as well as giving legal advice that affect the [city].”[[13]](#footnote-13) As stated throughout the memo, Denver prescribes similar functions to its Department of Law.[[14]](#footnote-14)

After outlining other issues with the bill, the Chief Solicitor recommends “that the bill be amended adopt a model that recognizes the City Council is not a separate legal entity that can sue or be sued or enter into contracts but that still provides the City Council legal assistance consistent with the duties of that body as provided in the City Charter.”[[15]](#footnote-15) The bill was amended and placed on the ballot in its current form in 2014.[[16]](#footnote-16) It was subsequently approved by voters 66.5% for to 33.5% against.[[17]](#footnote-17)

As stated at the beginning of the memo, none of these options provide a direct solution for the City Council to hire external consultants, but all provide possible paths for the City Council to explore.

1. The Charter for the City and County of Denver, §6.1.2 [↑](#footnote-ref-1)
2. *Id*.at §2.2.4 [↑](#footnote-ref-2)
3. *Id*.at §6.13 [↑](#footnote-ref-3)
4. The cities used for comparison were: Indianapolis, Indiana; Jacksonville, Florida; San Francisco, California; Columbus, Ohio; Detroit, Michigan; Memphis, Tennessee; Seattle, Washington; Boston, Massachusetts; Nashville, Tennessee; Baltimore, Maryland; Louisville, Kentucky; Milwaukee, Wisconsin; and Albuquerque, New Mexico. [↑](#footnote-ref-4)
5. Charter of the City of Columbus, §67 [↑](#footnote-ref-5)
6. *Id*. at §14 [↑](#footnote-ref-6)
7. The Charter of the Metro. Gov’t of Nashville and Davidson County, Tennessee, §8.602 [↑](#footnote-ref-7)
8. *Id.* at §3.06 [↑](#footnote-ref-8)
9. Baltimore City Charter,Art. III §15(a) [↑](#footnote-ref-9)
10. *Id.* at §15(d) [↑](#footnote-ref-10)
11. [First Reading of 13-026](https://baltimore.legistar.com/View.ashx?M=F&ID=3538824&GUID=7C89AC1B-6E6C-49A1-AA2A-ED0DD7336F28), p. 2 [↑](#footnote-ref-11)
12. Elena R. DiPietro, [Re: City Council Bill 13-026](https://baltimore.legistar.com/View.ashx?M=F&ID=3539157&GUID=CAE3A53E-7461-4270-B785-19462E21663A), p. 2 [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. Den. City Charter §6.1.3 [↑](#footnote-ref-14)
15. DiPietro, p. 3 [↑](#footnote-ref-15)
16. [Third Reading of 13-026](https://baltimore.legistar.com/View.ashx?M=F&ID=3539295&GUID=35065B11-FCFF-4949-8491-E5F9A9F5F4A4) [↑](#footnote-ref-16)
17. [2014 Maryland Election Results](https://elections.maryland.gov/elections/2014/results/general/gen_qresults_2014_2_03_1.html), Question H [↑](#footnote-ref-17)