

A Pittsburgh Model
for
Municipal Open Government
utilizing
**Pennsylvania's Home Rule
Amendment Process**

by
OpenPittsburgh.Org

(annotated version)

Revised: April 20, 2015

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Introduction

This presentation seeks to provide the reader with an understanding of a proposal for municipal open government that is being advocated for deployment in the City of Pittsburgh, PA. The initial six pages and the annotations which appear throughout the remainder are intended to explain the proposal's basis and help frame its context. A more extensive history is available online.

Following is a letter to the **American Town & Country Alliance** from the late **David Craig, President Judge, Pennsylvania Commonwealth Court**, considered at the time to be one of Pennsylvania's preeminent legal minds. It addresses the credibility and stature of the Alliance as a social innovator. Less than a year after Judge Craig's letter, the Alliance initiated a novel public participation process for regional transportation planning which became a national model of excellence in public participation.

The Alliance worked with suburban and urban communities where it had an opportunity to observe and analyze municipal governance and the impacts of various government structures, policies, and practices. Based upon the lessons learned from its earlier public participation process for regional transportation planning, that design has been modified and expanded to serve as the core of this proposed model for open government through an amendment to a municipal charter.

OpenPittsburgh.Org is the name of both the election committee and website that are being used to pursue a referendum initiative that would place a question on the November 2015 general election ballot for this **Open Government Amendment to the Pittsburgh City Charter**.



COMMONWEALTH COURT OF PENNSYLVANIA

DAVID W. CRAIG
PRESIDENT JUDGE

May 21, 1993

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445 FORT PITT BOULEVARD
PITTSBURGH, PA 15219
(412) 565-5548

David Tessitor, Founding Director
The American Town & Country Alliance
P.O. Box 272
Ingomar, PA 15127-0272

Re: The American Town & Country Alliance --- Its
Special Strengths

Dear David:

The best thing that I got out of the colloquium on regional planning held last week by the Institute of Politics at the University of Pittsburgh was the discovery of the innovative and hopeful approach to regional planning being taken by your American Town & Country Alliance.

The Alliance's focus upon the common goals which motivate both urbanites and exurbanites will surely increase public support for rational planning policies. It makes a great deal of sense to work for the reurbanization of central cities, so that their populations can find satisfactory livelihoods and lifestyles right there, while simultaneously moving toward self-sufficient living in suburban and rural areas. Both areas obviously have much to gain from avoiding more urban sprawl, which simultaneously drains the cities and chokes the suburbs.

To date, working in city and state government, I have become accustomed to seeing the cities and the suburbs fighting each other for state and federal assistance. But the Alliance has a telling point to make in demonstrating that suburban support for livable and vital cities can relieve the pressures of sprawl upon the suburbs, while sound planning for a balance of facilities outside the cities can lessen suburban pressures upon the metropolitan centers, exemplified most obviously by commuter traffic jams.

Important social values are also potentially enhanced. A mayor of Philadelphia, aware of the substantial African-American population in the central city, once referred to the surrounding suburbs as "a white noose around the city." There is a need to articulate and implement the reality that all Americans live in interdependent regional communities --- that self-interest at least should motivate the country dwellers to support salutary

reurbanization for the places where all city dwellers --- including minorities and the poor --- live, and the city's people in turn can benefit from public funds spent on their environment rather than upon the infrastructure of sprawl.

The idea of pursuing a course mutually attractive to cities and suburbs is exciting to me because I have just not seen that kind of approach in my civic and professional involvement in planning. In addition to working as a lawyer specializing in planning and environmental litigation, I have been chairman of the Pittsburgh City Planning Commission and national president of the American Society of Planning Officials, which was the forerunner of the present national American Planning Association. From my first professional work in the field, which was authoring a book on Pennsylvania building and zoning laws as a law school research fellow, up to my current responsibilities in helping to decide the land use and planning cases which reach my intermediate appellate court, I have not seen anything that shows as much fresh promise as the Alliance.

As you know, the Commonwealth Court of Pennsylvania is a unique intermediate appellate court because our jurisdiction involves public sector cases exclusively. The conflicts between local agencies and the state, and between cities and their surroundings, wind up in our court, reflecting the pathological results of public and private development gone astray. Municipalities are litigating against counties or against regional authorities of various kinds. Until now, nobody has tried to identify the situations in which urban localities and open-space areas could combine forces to get from the state or federal government what could be good for both of them, in terms of highway and transportation planning, housing support, educational facility relationships and commercial concentrations, as well as employment centers.

Of course, combat in the courtroom never results in good plans. For 43 years, as a researcher, lawyer and judge, I have been involved in drafting laws and litigating their application in the form of land use controls and regional project financing, but the result --- I must admit --- has been just more urban sprawl.

Contests in the courtroom and in the legislative halls have never been as productive as, for example, the common cause which business and local government discovered, and benefited from, in Pittsburgh's Renaissance.

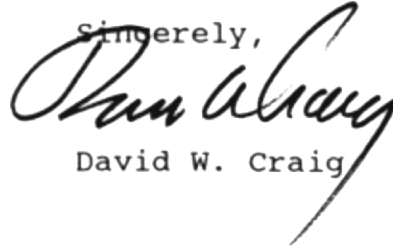
That's why implementing the common goals of city and country dwellers seems to hold out a lot of promise for those of us who are war-weary.

The Alliance deserves strengthening and support --- financial and political --- that will make it a useful resource for

the perspectives which today exist, largely unfulfilled, in state and regional planning agencies, and also in the federal transportation and environmental agencies.

I wish the Alliance well, in being accepted as a partner by both of those categories of public bodies, and also in garnering from public and private sources the financial support needed to do effective planning and communicate it persuasively.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Craig". The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

David W. Craig

DWC:vk

The concept

“Open data” is currently a popular topic among democracy advocates. By making more public data available for citizens to analyze, it becomes possible for them to better identify ways to improve the effectiveness of public policy and government programs. As such, open data offers an important contribution to transparency, but its use is basically limited to a small, technologically astute minority of the public. Even if the information that they obtain is made useful for the general public, still more is necessary to establish the full level of transparency that’s needed.

Transparency includes more than just data. People need to be able to oversee much more of the day-to-day workings of their government. They need to know more about what it’s doing and more about what it is planning to do. They need to be able to ask questions and get meaningful answers before decisions are made. In addition, moneyed interests have used various practices to keep the public in the dark as they’ve manipulated the decision making process for their financial gain, often with significant harm to others. The proposed Open Government Amendment effectively addresses these matters.

Though transparency is essential, it alone is not enough. Even if people are able to see anything they want, when they’ve not been informed that there is something in specific which needs their attention, they’re not likely to look into it. Should they eventually happen to find out, it won’t help if, by then, it’s a done deal and too late. Transparency needs to be combined with enhanced notification that lets people know in a timely manner whenever their interests are possibly affected. The Amendment adds expanded notification to the transparency it creates.

Transparency and notification, are still not enough! Being notified about and learning everything that’s going on in the halls of government will be of little benefit unless citizens have the means to develop and provide meaningful input for the decision making and governance of their communities and unless public officials are required to give their full attention to evaluate that input and act upon it. The Open Government Amendment includes an adaptation of a novel proactive public participation process, previously used for regional transportation planning in southwestern Pennsylvania, that has been revised and expanded for use across the municipal level.

The optimum solution combines transparency with notification and meaningful proactive public participation. The proposed Open Government Amendment was developed as a model for municipal home rule charters to provide such a comprehensive approach. A successful demonstration with its initial implementation will better enable other municipalities to evaluate and adapt it for their particular needs.

The municipal level is a first step. Longer range, when enough people have had a chance to get involved and become familiar with the experience of more open local government, it’s anticipated that the basic tenets of the municipal model can be applied at higher levels of government and serve as a means for redefining the democratic process from the bottom up.

Background & history

The proposed Open Government Amendment to Pittsburgh's City Charter has a history that reaches back over two decades. Its most important component is based upon the novel proactive public participation process used with regional transportation planning in the Pittsburgh area during the mid 1990's. It so impressed the U.S. Federal Highway Administration at the time that they used it as their example of excellence in public participation in working with communities across the country. But it is only one piece, albeit possibly the part having the greatest impact.

Other elements of the Amendment are based upon experiences of concerned citizens who have had their efforts thwarted by back room dealings, political maneuvering, and obstructive processes when trying to discover what their government was doing or when seeking to meaningfully engage and obtain the sincere attention of public officials to the needs of their communities.

The writing of the Amendment began after a controversy in 2002 over leases for the City-owned library buildings requested by the Carnegie Library of Pittsburgh. Buried inside was a purchase option allowing them to purchase the buildings for \$100 each, at any time, with clear and marketable title – enabling them to immediately sell several prime properties, having earlier divulged a desire to close or move branches. When the leases came before City Council, a duly requested public hearing was forbidden for the first time in Council's history. As citizens organized, the prospect of selling city library buildings was only narrowly averted when a last minute amendment was slipped in requiring that any sale come back to Council for final approval.

Further moves to keep the public in the dark made the need for an Open Government Amendment starkly evident. A first proposal was drafted the following year and rewritten the next.

Under home rule in Pennsylvania, the quickest way to pass an amendment is if City Council votes to place a referendum question on the ballot, but that path would surely result in it being watered down. A decision was instead made to use home rule's Initiative and Referendum process to take the matter directly to the voters. This requires collecting signatures from city voters equal to at least 10% of those who voted for governor in the last gubernatorial election, and the petitions can only be circulated during a seven week period that starts 20 weeks before the election.

A petitioning effort in 2005 got a late start and obtained around half the signatures needed. In the years since, the signature requirement has varied from over 10,000 in 2007 to just under 9,000 in 2011. A low voter turnout in 2014 further reduced the number required for 2015 to a more readily achievable 7,600 signatures.

In the intervening years, the proposed Amendment has been progressively revised to implement a number of suggestions that enable it to better address the need for open governance. It is currently under review with additional revisions still possible. Suggested wording, corrections, additions, etc. are welcomed and can be emailed to: comments@OpenPgh.org.

Proposed Ballot Question

Shall Pittsburgh's Charter be amended to delete Article 6: Community Advisory Boards (voided, Dec. 31, 2000) and substitute **Article 6: Open Government**, providing greater public disclosure; requiring public information, notices, and meetings be Internet accessible; setting applicable standards; creating a selectable notification process; and establishing an open membership Citizen Advisory Panel to which pending legislative and administrative actions must be explained and through which citizens can develop and provide information and comment before final approval?

The above proposed ballot question has gone through numerous drafts to most succinctly summarize the Charter Amendment within the maximum 75 words allowed. Unless a better version is suggested, the above will be on the Initiative petitions circulated in the summer of 2015 to place it on the coming November ballot. Final approval of the wording to be used rests with the Allegheny County Board of Elections, whose members can rewrite it as they wish.

Proposed

Open Government Amendment to the Pittsburgh City Charter

Preamble

Whereas, *Article 6, Community Advisory Boards* was effectively rendered null and void on December 31, 2000, when City Council officially dissolved the Community Advisory Boards citywide; and

Whereas, the citizens of the City of Pittsburgh need and desire increased access to public records; to publicly available information concerning the City and their neighborhoods; and to information about what their government is planning to do, before it does it; and

Whereas, the people deserve a better opportunity to join and participate proactively in the decision making process of their community; to provide information and express their concerns to their public officials; and to more fully explain to their government what they want it to do; and

Whereas, the City has an obligation to provide those who may be affected by its actions with ample opportunity to have a say; the City needs a government structured to better ensure it works with and for all people and not just an elite few; and the City can benefit from having a dedicated body for citizen involvement which can provide an enhanced conduit for communication between the people and their government; and

Whereas, in the time since the City Charter was first drafted and enacted in 1974, technological advances now enable opportunities for enhanced public access to records and information; for timely individualized notification on matters of concern; for more meaningful and effective involvement in monitoring and reviewing government actions; and for more productively providing comment and information to the government, in ways unimagined four decades ago; now

Therefore, Article 6, Community Advisory Boards is repealed in its entirety and is replaced with **Article 6, Open Government**, moving Sections 801, 802, and 810 of the Charter to become Sections 618(d), 618(e), and 601 and adding Sections 602-620; and

Further, Article 1, Home Rule Powers – Definitions is amended to add definitions applicable to the amended Article 6; and Article 3, Legislative Branch, Sections 318 and 320 are amended to provide corrections and clarifications relevant to Article 6, as amended:

*The entire Article 6: Open Government is to be added to the City Charter
(underlining normally used to indicate added text has been removed for easier reading)*

Context and explanations are provided as highlighted annotations for various sections.

Article 6: Open Government

601. Public right to inspect records

City records, the disclosure of which would invade a person's right to privacy, hinder law enforcement, endanger the public safety, or breach a legally recognized duty or confidence or the nondisclosure of which is legally privileged, or which have been prepared for or by the city solicitor for use in actions or proceedings to which the City is or may be a party, shall not be available for public inspection. All other city records shall be open for public inspection, but the officer, unit head, board or commission or other governmental agency of the City having the care and custody of such records may make reasonable regulations governing the time, place and manner of their inspection. For the purposes of preservation, copies of city records may be substituted for inspection in lieu of original records.

§601 already exists as §810 in the present Charter. It is moved here because it sets forth which information is subject to the provisions of other Article 6 sections.

602. Online access to public records

Records designated publicly accessible under Section 601 shall be available to the public for inspection, review, and use via remote access technologies such as the Internet and other subsequent technologies as may in the future become feasible and in wide usage, as shall be provided by the City information policy.

To keep up with rapid technological developments the amendment addresses unknown future technologies. Appropriate limitations upon access may be applied by adoption of a formal policy, as there can be situations where some friction in the access of information may be desirable: e.g., the County website currently has tax information for individual properties available online where it can be searched only by address. Yet there can be legitimate reasons for people to search by name, such as when seeking fulfillment of judgments. Searching by name can still be done but only in person at the County office, making it more difficult for anonymous stalkers and other abuses.

a. All public records created after the effective date of this amendment that are by law open to public inspection and not otherwise restricted and all such previously existing records which exist in digital form or which have digital copies shall be made available and accessible online.

The first step is to put the publicly accessible records online when created as digital files along with those that are already digital. That should take the least effort and involve relatively minimal cost.

b. The City shall establish a document conversion policy or program for previously existing, publicly inspectable records which exist as physical files (hard copy) but have no digital original or copy; at the minimum, it should provide for such documents to be translated into digital form for online access whenever copies of them are made or when they are used by the City or members of the public.

There are many records in the City's archives that aren't digital and don't currently have a digital copy; most of these may have no immediate relevance. It would be unreasonable to expect the City to undertake a massively expensive program to quickly convert every record. Yet the use or request of old records can indicate that they have some significance, providing reason to make digital copies. With the records already being handled, it may also reduce the costs involved and make the effort more feasible. However, the City can choose to implement a more aggressive conversion policy.

603. Online conduct of public business and provision of forms

When an online version of a form and information differs appreciably from its print version, a person can become confused. This provision was requested by citizens who experienced difficulty trying to use online versions that differed from the paper versions with which they were familiar.

a. Online information and instructions provided for the conduct of public business and for interaction with the City must be readily usable by the general public and must be consistent with other official sources of the same information and instructions.

b. Where feasible, City forms shall be available online and shall be in an acceptable digital file format that can be printed out to substantially resemble their regularly used physical counterparts. A secure means for online completion and submission of forms shall be provided where appropriate and feasible; such process shall also include a means for the electronic payment of charges or fees as appropriate and feasible.

604. Standards for public information

a. For all City information (including but not limited to) of, for, or about pending and effective legislative and administrative matters; concerning all other City activities; all documentation, communications, records, etc.; and related to non-City activities and matters which require public permitting or involve public spaces, property, or services, the City shall adopt, implement, and maintain a unified standard of mark up, indexing, and tracking for its internal use and for providing public access and notification. The City may either adopt state or federal standards or adopt its own standards if of comparable or greater capability or if demonstrably more appropriate for City operations without reducing the ability for public notification and archiving. Such standards shall apply to all City units of government and agencies and shall be updated as appropriate to incorporate and accommodate new technologies and practices.

Markup enables the City to more efficiently use information and automate notification in §606.

b. Where a document contains text, a digital version containing searchable, electronically readable text shall be provided. Where a physical or digital record contains non-textual elements, including but not limited to visual images, audio, video, programmatic or other inclusions, extraneous markings, hand written notes, etc., the publicly accessible digital file shall also include an accurate textual description of them, including the full content of any notes, with other contextual references as appropriate.

The inclusion of non-textual elements in records hinders accurate machine searching. Adding textual descriptions enables machine searching and enhances notification and administrative uses.

c. Each digital record or copy made available to the public shall have a cover sheet or other inclusion or attachment which contains a notation indicating whether the complete set of documents in which the original is/was stored is available online and whether known related documents are available online or exist elsewhere. Such notation shall, at the minimum, reasonably identify the associated and related documents which are not yet online, either listing each such document individually or generally describing the offline documents by category or group and giving either their exact or approximate number. A disclaimer of accuracy shall explain how a person may verify the availability of other documents not yet online and how they may access them.

Since it's likely not every City record will be converted in short order, it's important for people who are digitally searching to know of the availability of other related information.

d. Each City unit of government and agency shall conduct and keep current an inventory of its publicly accessible information and records. The City shall develop and maintain an index and mapping of its database of publicly accessible information and online records in a format(s) that shall be useful to and usable by the City and the general public.

Having a usable inventory makes the City records more useful for both internal and public use.

e. The City shall use best practices to verifiably certify that each digital file placed online is a true and correct copy of the original, including any digitally converted text and non-textual portions with textual descriptions added or attached:

Information is of little use if its credibility is in question, especially if for legal purposes.

1. Where the original of a record is a digital record, a publicly accessible copy shall be made and verified consistent with the original and certified as such at the time of its creation.

To not burden City employees, the process can be automated to compute unique identifiers.

2. Where a physical original or a certified or accepted true and correct physical copy of a physical record exists as the primary record, when a digital copy is made or if a digital copy already exists, a certified digital visual image of the physical record shall also be created of such scale and resolution as to: provide the best possible rendition which is prudent and feasible;

yield all relevant detail and faithfully represent the original in its form and content; and offer an alternative means for verifying any text or non-textual content. A reasonable, timely effort shall also be made to verify and certify the digital copy's consistency with its physical original. Digital files that are not yet certified shall contain or have attached a specific notation to that effect, referring the reader to the corresponding digital image file and the original.

Having a high quality digital image of a physical record adds a means for verifying its digitized machine readable digital text and gives an accurate context for it. Since certification might not be fully automated and may take longer, those accessing a digital version must be informed where to go.

3. A readily available and usable means shall be provided for any user of any digital file, whether certified or not, to identify whether its content has changed, been altered, damaged, or corrupted.

Computations done on a file can produce a "hash" which can be recomputed when the file is again used to verify whether it has changed. This also provides for other possibilities and new means developed in the future. Automating should be possible, to reduce any burden on City employees.

f. Businesses, firms, agencies, organizations, associations, professional individuals and others normally engaged in the practice of preparing or regularly submitting communications, proposals, plans, presentations, comment, and other materials or forms of information or data to the City, whether for themselves or on behalf of others, shall do so digitally or accompany any hard or physical copy with a digital copy which is in compliance with the City's information policy and standards; individuals and organizations not normally making submissions to the City shall be exempt or provided assistance to enable their compliance without causing hardship. The city shall provide written guidelines and such other instructional materials as may be needed to assist with compliance.

The submission of digital originals eliminates the need for conversion by the City. Those who regularly interact with the City can be reasonably expected to digitally submit. It's less realistic, at least at this time, to expect the same of those who don't regularly interact with the City.

605. Information and communication technologies

a. For the purposes of public access and involvement, the City shall use state of the art technologies where those technologies are in substantial public use and yield significant quality and usability at a reasonable cost; the City may also utilize those that have yet to attain substantial public use where they offer the City and public users significant advantages. In any case, the City shall continue to offer public access and involvement via older technologies as long as they remain in significant use and doing so is prudent and feasible.

Not everybody can afford or easily learn to use the latest new computer applications or devices. The City needs to keep up with technological developments while not abandoning those who use older technologies that are still quite workable.

b. The City’s software and digital file formats shall enable free and open public access.

1. Software and digital file formats used by the City for public information and activity involving members of the public, including but not limited to, remote, interactive access to public meetings, hearings, proceedings, etc. shall be compliant with standards set by generally recognized standards agencies.

The use of non-standard technology would create an unnecessary impediment to citizen access.

2. There must be functionally compatible software readily available to the public at no charge, either as open-source, public domain or as freely distributed copyrighted software which can be used by the end user without fee. Compatible software, though not necessarily as the same program, shall be available cross-platform for various computer architectures and operating systems in significant use, and there must be some version available of adequate functionality that is operable on older equipment which remains in significant use.

Citizens should be able to access information and interact with the City without incurring added expenses for software, and software should be available that works on differing hardware.

3. Digital file formats used by the City shall be machine readable and searchable; have complete, open, freely available specifications which disclose all functionalities of the format; and shall be free of any restrictions upon the creation and utilization of files or that would prevent or impede the free and open development or adaptation of alternative software capable of creating or fully utilizing such formats.

§605(b)(2) addresses software which creates files. §605(b)(3) addresses the files created, enabling “open data,” total accessibility, and full usability. Those who are capable of creating applications and new innovations for utilizing information need this openness.

4. In no instance shall the requirement for online public access to public records be deemed fulfilled where such access would be provided through the use of digital file formats which are only accessible and usable with proprietary software which is of restricted availability and/or for which a fee is required.

Impediments to access are not acceptable.

c. As may be prudent and feasible, considerations involving the initial purchase, replacement, or major upgrade of software used by the City shall give priority to standards compliant, open source products which can adequately meet the identified needs and have licenses that assure unrestricted use, modification, distribution, and the creation of derivative works unencumbered by patents or other limitations.

Open source software provides the best opportunity for capable individuals to improve and add functionality as well as assure the maximum security for those using it.

d. In the letting of any franchise to use public property or public rights-of-way for communications or distribution of information, either of which include the provision of broadcast or narrow-cast audiovisual channels, individual programs on demand, or their equivalent as such future technologies may provide, the City shall require as part of the franchise agreement that, in addition to the allocation of one channel for educational purposes of the City of Pittsburgh School District, there shall be allocated a minimum of one channel for public access programming, one for non-commercial, adult and general educational programming, one for governmental purposes, and one for public participation in the matters of the City, with the channels to be made available at no charge to the City for the use of and administration by the City or its designated agent; and shall also include that access to these channels shall be provided at no charge in properties where a connection can be activated and for those who are provided individual programs on-demand, the programming on the City channels shall also be offered on-demand at no additional fee. The City shall assure implementation of the designated uses of the channels assigned to it.

The standard of PEG (public access, educational, and governmental channels) is a national model. Pittsburgh has instead had one public access and two government channels, one of which has hardly been used since cable was first installed in the City. WQEX, the region's main channel for adult and general education course programming, shut down over a decade ago, depriving the public of its offerings. In the meantime, the City could have obtained much of that programming for free from the Annenberg CPB Project and cablecast it on the hardly used channel, but, despite a number of attempts to get it to do so, the City hasn't. The latest franchise agreements provide 5 channels for public purposes: one for the Pittsburgh Public School District, one for public access and 3 for other City purposes. One of the latter three could be used for adult education and another for cablecasting public participation activities.

606. Notice

a. All legally required public notice and advertisement of or related to any matter or process administered by, involving, or under the jurisdiction of any City unit of government or agency shall have added to its requirements that it also be posted, at the same time and for no less duration, upon the City website in a section devoted to public notice and within other online sites or presences maintained by and/or for the City. Such section shall be logically organized, readily usable by the general public, and directly accessible from every page on the City website and through an easily entered direct address.

Too often notices are considered given even though they are hard for the average person to find. Having a single place online where people can peruse all of the notices logically arranged by topic or subject can make it easy for people to find what they need.

b. The City shall also establish additional notification processes using such media as may be appropriate and in significant use, including but not limited to services to which members of the public may subscribe without fee.

As new means for notification are developed and used, the City needs to include them among those it uses in order to keep its citizens fully informed.

c. The City shall establish and offer a process of individualized notification about City matters which are active or pending, including but not limited to legislative and administrative decisions or actions, regardless of whether or not public notice is otherwise required by law or regulation, except as may be legally exempted.

In addition to the general postings which anybody can access and pursue on their own initiative, the City must set up a system to individually notify people about City matters. The former effectively requires knowing a priori that a notice exists or repeatedly checking when there may be nothing to find. On the other hand, with individualized notification the notice is delivered or “pushed” to the recipient without having to know about it in advance or checking needlessly over and over. It can and should apply even if there is no other legal notification requirement, unless specifically exempted.

1. Such process should enable interested parties to select and register various criteria for matters about which they wish to be notified, to be matched and applied to indices provided under Sec. 604(a) for information that is publicly inspectable under Sec. 601.

With the information generated by the City being marked up, an automated notification system can match it to a list of individual’s chosen interests.

2. The registrants shall be provided timely notice when the selected criteria are met; such notification shall occur at the time that the information is indexed, unless otherwise provided by the City’s information policy.

Too often notice is given when it’s too late for people to meaningfully act. However, it may not always be appropriate in some situations to issue an immediate notice.

3. The City shall make reasonable accommodations for those requiring alternative means of notification.

Not everybody is connected to the Internet all the time, and some don’t have email. Some people may prefer or need phone notification, others may need text messages or postal mail, etc.

4. In such instances where the cost of individualized notification to a person or organization is not insignificant, the City may charge a fee to cover the cost, as long as provision is also made for reduced or adjusted fees based upon ability to pay and for an in forma pauperis waiver for those who cannot afford to pay.

Costs for postage, mail handling, etc. could add up and reimbursement may be necessary.

d. Notification of matters that are to go before Council shall be given prior to introduction. For administrative and all other matters, notice shall be in adequate time to enable those notified to appropriately act or respond before a decision or subsequent actions may occur.

The above combines with the Amendment's subsequent provisions for proactive public participation to maximize the ability for effective citizen action.

e. Placement of online public notice under Sec. 606(a) and a reasonable attempt to provide notice under Sec. 606(b) and (c) must have occurred in order for the City to have fulfilled requirements of public notification, regardless of the origin or specific limits of such requirements.

Accepting anything less would surely result in halfway efforts to notify and can't be tolerated.

f. Having successfully posted public notice under Sec. 606(a) and exercised due diligence in providing individual notice under Sec. 606 (b) and (c), the City shall not be held responsible for the end delivery of any such notices, except where proof of delivery may otherwise be required by law.

If the City has done all that it reasonably should to provide notice, it would be unreasonable for the City to need to verify that every person has indeed read them.

607. Public meetings, hearings, proceedings, etc.

a. All meetings, hearings, proceedings, and other official activities of City Council, the administration, units of government, agencies, and other entities under the jurisdiction of the Charter which by law are to be open to the public shall be available to and accessible by the public for remote viewing, listening, and monitoring online at the time held and for later review also using such other means as may be appropriate.

Meetings are frequently at inopportune times or not easily accessible for citizens to attend. By making them remotely available it is possible for homebound individuals to witness proceedings.

b. Where the submission of public comment, questions, etc. is applicable under Sec. 607(a), reasonable provision shall be made for direct participation online, including but not limited to interactive communications integrated as part of an original webcast and/or via such other telecommunications as may be appropriate, to offer an opportunity for both oral and text transmission. A person submitting text comment prior to or during the public comment session shall be permitted to request a specific, willing individual to read the text comment (or a portion thereof if reading the entire text would exceed the time allotted each individual for comment); the submitter may alternatively defer that selection to the chair, who may choose to read the text; and the entire textual submission shall be accepted and considered as comment on the matter before action is taken. Public discussion or question and answer sessions, if any, shall also be open to remote participation as provided herein via such means as may be appropriate.

The public deserves reasonably expanded voice and participation using available technologies.

c. The City shall establish a registry through which individuals and groups may obtain verifiable identification for the purpose of participation in remote comment, questioning, and discussion.

The City shall further implement security measures to protect the integrity of the associated communications and to assure accurate, verified identification of participants during their participation.

It is reasonable that the city and the public be assured that people are who they say they are and that there are appropriate security measures to prevent abuses.

d. Meeting transcripts, exhibits, recordings and any other record, if made or provided, shall be maintained in compliance with Sec. 604.

Meeting records also need to come under the provisions for public information standards.

e. All Council regular, committee, special, and post agenda meetings; all City Council public hearings; all presentations made to Council, and all other instances where Council assembles as an official body shall also be cablecast.

Cablecasting of meetings is generally done but public hearings are not always included.

f. Whenever Council or the governing or decision making body of a City unit of government or agency receives direct or remote, live public testimony, comment, or presentations given by individuals, groups, organizations, or the CAP, a quorum of such receiving body shall be present. Should a quorum cease to exist at anytime, the presiding official shall recess the proceeding until a quorum shall be present.

Too often, public comment and input is ignored and not being heard when most of the officials are present only increases the likelihood – in some cases only one official may attend. Written transcripts don't always convey the full intent and meaning of the commenter. Citizens who take their time and go out of their way to testify should be given the respect of being heard.

g. The non-executive session meetings of the City, agencies, units of government, and entities operating City assets shall be considered public for the purposes of this Article and required to comply with the requirements for notice as well as for comment and public participation.

Notice is required across all city entities.

608. Timely access to public information

a. All available information pertaining to proposals before the City for legislative or administrative action shall be available to the public in such advance time as to enable members of the public to evaluate and make comment prior to the action, excepting in urgent or emergency situations where immediate action is necessary to avoid significant adverse consequences. When substantive changes are made to legislative or administrative matters for which public comment and/or notice is applicable, the timely provision of information to fully inform the public of the change and its implications shall precede reopening and re-scheduling the notification and/or public comment process.

Too often the public only learns what is involved when it is too late to act appropriately.

b. In any case where a public hearing is to be held, all information included in presentations related to the decision process and the subject and purpose of the hearing and such other information as is substantively germane shall be made available and accessible to the public when the schedule for the hearing is set. If any such information becomes available after the hearing schedule is set or it is known or becomes known prior to the hearing that such information will become available in a reasonable time after the hearing is to be held, the hearing shall be canceled and the setting of a new hearing date shall not occur until after such pertinent information is made available. If new information or a new presentation of information, either of which could substantively affect or assist the public in its comment, should become available after the public hearing and before action on the matter, an opportunity for a new hearing shall be provided and given applicable public notice. All such information shall be made available and publicly accessible online; at all public libraries; and at such public buildings as may be appropriate.

Holding hearings before full information is available prevents adequate research and preparation for meaningful input. The public needs sufficient time to fully vet all information available to develop their testimony. The inclusion of this section was prompted by a Kafkaesque incident where a hearing for public comment was scheduled to be held immediately before, rather than after, a presentation that was to divulge the particulars of the matter upon which comment was to be given. Deprived of the knowledge needed to make their comments, citizens could not formulate relevant testimony and were forced to use their comment time in vain protesting their deliberate exclusion.

c. Where a physical model or alternative means which can only be available at limited sites is used to convey information related to a proposed legislative or administrative action or to the subject of a public hearing, in addition to otherwise complying with Sec. 608(b), it shall be made available to the public in such easily accessible, germane location(s) as appropriate. Images of such quality and number sufficient to adequately convey the visual information of a site specific presentation, an explanation of the images and presentation, and other related, easily reproduced germane material, such as audio recordings, etc., shall be made available online, at public libraries, and other appropriate public buildings. Use of such other technically feasible means of presentation as may best enable the public and officials to experience and better understand relevant information, such as 3D computer modeling, interactive capabilities, or such other technologies as may become available, shall be encouraged and may be required.

Sometimes a scale model of proposed construction is created by an architect. It may be shown as part of a presentation or may be on display in a single location which may not be readily accessible to all who may be concerned. This can deprive much of the public of information in advance which could be helpful in formulating their comments. If there is a means for conveying the same or similar information so that it can be more available to the public, it should be used. As new technologies are developed to better present information they should be employed to enable more reasonable, more relevant comment.

609. Citizen Advisory Panel

There shall be established a Citizen Advisory Panel (CAP), as an official public participation body of the City having the purpose of providing members of the public with an opportunity to organize themselves to better monitor government activities; to investigate and make recommendations on the needs of the people; to inform, educate, and advise both the government and the public about matters affecting the City and its residents; and to otherwise serve as a conduit for enhancing communication between the people and their government and vice versa.

The Citizen Advisory Panel, as expounded in the following sections, is an adaptation of the Citizen Advisory Panel of the Southwestern Pennsylvania Regional Planning Commission (the CAP of SPRPC) which from 1994 to 1998 successfully demonstrated the potential of proactive public participation. The lessons learned from that included the clear need for the adjustments incorporated in this proposed municipal application.

610. Organization and operation of the Citizen Advisory Panel

The CAP shall adopt its own bylaws. Before being voted upon for final approval, the CAP bylaws and all subsequent amendment proposals shall be referred for review to the City Solicitor, who shall, within 10 days, provide comment and recommendations. The bylaws shall comply with the provisions herein and may address other matters not included.

The Amendment establishes a basic framework for the organization and operation of the CAP. This is to assure certain minimum standards are met and to speed up the initial organizing process, which can bog down and discourage participation in well intentioned groups. The CAP of SPRPC wrote its own bylaws “from scratch” without outside input or requirements. Specifics of its bylaws that worked well are included here. Its oversights and shortcomings are addressed too. Beyond these, the new CAP will have significant latitude to determine and adjust its rules.

a. Membership shall be open to residents, property owners, city taxpayers of record, business owners and/or operators, and people whose interests otherwise come under the City jurisdiction, except where a conflict of interest exists as provided under Sec. 611. Members must be real, natural persons who shall participate as individuals and not as a representative of any organization.

Since the body is self-selected and is purely advisory, non-residents can be allowed to participate without undermining the democratic process. On the other hand, allowing organizations to appoint representatives to the body would create an imbalance of influence. While CAP members may be involved with various organizations and raise issues of their concern, they cannot be appointed to participate as a group’s representative.

b. Members of the CAP shall vote as follows:

1. Unless provided otherwise under Sec. 610(b) or 611, city residents shall be able to participate in votes on all issues and matters before the CAP, except that those voting upon bylaws, officers, and contractual matters involving the CAP must also be of legal age; non-resident prop-

erty owners shall be able to participate in votes concerning issues affecting or related to properties within the City, non-resident city taxpayers of record shall be able to participate in votes concerning the City's taxing, spending, budget, and revenue related issues, and non-resident business owners and/or operators shall be able to participate in votes concerning or related to businesses and business operations within the City; all members may participate in votes concerning public safety issues.

Voting is based upon each individual's relationship to the City and to the issue being voted upon.

2. The election of officers shall be by secret ballot. Secret ballots may also be used for other votes if moved and approved for each such vote by a majority of those present and able to vote.

A proposal in favor of or opposition to the desires of powerful interests could be held against those voting. Secret ballots can be used for items of controversy to protect those voting from potential retaliation. However, most votes will likely be uncontroversial and a secret ballot would be cumbersome, so it can be used as needed.

3. Until otherwise designated in the CAP bylaws, for ballot votes where there are more than two alternatives and only one is to be chosen, a method of preferential voting shall be used in which those voting indicate their order of preference for as many of the available choices as they wish, with no more than one level of preference indicated per alternative. Any alternative that receives the highest preference on a majority of ballots shall be selected. If none receives a majority, the number of the next lower preference indicated for each alternative shall be added to its higher preferences through successive rounds until at least one alternative reaches a number equal to a majority of the ballots cast and the alternative with the highest such number is selected. In the case of a tie, the tied alternative with the lowest number of the last added preference shall be selected.

It is said that every method of voting can be shown to have some shortcomings. Plurality voting can and often does result in the selection of a choice favored by a minority of those voting. Runoff elections of the top two vote getters can reject a selection which could be everyone's second choice but nobody's first choice.

"Instant Runoff Voting" (IRV) uses a preferential ranking. If no alternative receives a majority of first preference, IRV drops the alternative receiving the lowest number of first preference votes and assigns its ballots among the remaining alternatives listed as the next highest preference. The problem is that it too can easily reject everybody's second choice and thus select an alternative that is less favored than would actually be the second choice of a majority of the voters.

There is also a variant which instead removes the highest number of lowest preference rather than the lowest number of highest preference. However, it too can remove a more favored alternative that just happens to have a larger plurality yet minority cluster of those who like it least.

The identified method assures the greatest acceptability among a majority of those voting without requiring the recalculation of ballot preferences due to dropped alternatives.

4. To assure that those who are voting to make decisions have at least some minimum level of involvement, the CAP bylaws may establish minimum attendance and/or participation requirements for individuals to acquire and retain membership, position, or voting rights, provided an allowance is made for waivers for exceptional circumstances and the criteria are in compliance with a nondiscrimination clause in its bylaws.

Having a minimum level of active involvement helps assure those voting have a better grasp of the matters before them.

5. Beginning 30 days after the initial meeting of the CAP, a member shall not be able to vote unless they have been enrolled as a member for 30 days next preceding the vote and have attended at least one prior meeting as a member.

This is an anti-packing provision. It is not unheard of for an outside group to organize a number of people to attend a meeting where attendance is expected to be sparse, then vote a takeover of the organization, suspend rules, appoint new officers, and take control of its treasury. It happened to a South Side community group years ago and was upheld when challenged in court. An anti-packing provision gives the membership a chance to recognize and identify a rapid influx of new members as a potential takeover and alert everyone so that an adequate number attends the next meeting to defend against it.

6. Under no circumstance may a CAP member use any form of intimidation nor the provision or offer of any form of enticement or inducement, whether explicit or implied or immediate or future, in order to influence another member's vote.

While it may seem obvious, it's best to explicitly disallow undue influence over other members.

d. Each member shall submit to the CAP a signed membership form which fully identifies the person; which provides pertinent information, such as contact information and that which may be relevant to potential conflicts of interest; and which indicates that the person desires to be a member of the CAP for the year from signing and both attests and agrees to compliance with the CAP's rules and Conflict of Interest Provisions. It shall be accompanied by verifiable proof of identity; and the information given shall be kept current by the member. A waiver may be granted for valid reason.

This feature of the CAP of SPRPC worked well. It's been expanded to include additional info.

e. The CAP shall not require membership dues. The CAP may assess mailing fees to cover costs for postage (when requested instead of email). In cases where there is a need to cover part or all of the costs of CAP activities and events related to fulfilling its official role and duties, the CAP may request a donation to help cover the cost involved, provided it is freewill and waived for those in need.

Prohibition of dues is carried over from the first CAP. Nobody should be required to pay to give their time for civic engagement, just as nobody has to pay to vote on election day. Donations can be requested but payment cannot be required.

f. The CAP may engage in fundraising activities which are not in the direct performance of its official role or duties. The CAP may administer its finances, subject to audit by the City Controller, and arrange for financing, grants, donations, etc. in compliance with the CAP's Conflict of Interest Provisions.

The CAP of SPRPC did not have a treasury as the planning agency paid all its expenses. The activities of this municipal CAP will be more extensive than its predecessor, with costs likely exceeding the minimal City support designated under §615. Having the CAP rely upon the good will of the Mayor and City Council for a yearly appropriation could give them influence over the CAP. Providing an open ended financial liability for the City would be out of the question. Giving the CAP an ability to raise and administer its own funds in compliance with a conflict of interest provision can enable its operations to continue unhampered, without there being an undue influence upon it.

g. The CAP may hire staff provided the CAP has obtained or made assured provisions for the necessary funding.

Staff assistance was provided for the CAP of SPRPC. This Amendment has the City provide some staff assistance. Should more be needed, the CAP could hire its own staff, but it must first cover the financial liabilities involved. However, the way this is written does not preclude City funding, possibly done as for its Citizen Police Review Board staffing and finances.

h. Officers of the CAP must be City residents, CAP members in good standing, and compliant with such other requirements as may be in its bylaws.

Officers should fully meet the highest requirements.

i. In addition to standing and ad hoc committees defined by issue, function, etc. the CAP may establish subdivisions of the CAP defined by area for portions of the City.

The now defunct Community Advisory Boards which this Amendment replaces were geographically defined by a cumbersome districting process. The CAP can set up "CAPlets" for specific areas of the city by itself, with later adjustments possible, in order to better meet local needs. This should make it easier for residents to work together on matters of their concern.

j. Minutes shall be kept for all meetings and, after approval, shall be posted on the Internet and in print at the city libraries and community centers, with a copy placed on file with the City Clerk.

As with any organization, if it's not in the minutes, it didn't happen.

k. Majority reports from the CAP may be accompanied by one or more minority reports when requested by a member in good standing after being reviewed and approved, without concurrence being implied, by 20% of the CAP members present and voting, except that a different minimum

vote may be set in the CAP bylaws. Reports must not contain libelous or slanderous material. The CAP Chair; a majority of the CAP Board; City Council; Council president; or the administration may request the City Solicitor review and rule on any questionable material, which the Solicitor shall do within 10 days. All majority and minority reports shall be posted on the CAP website; made available in print at libraries and community centers; presented to Council and the administration; and filed with the City Clerk.

Enabling minority reports gives those participating an assurance of being heard. Minority reports were supposed to be possible with the CAP of SPRPC. Unfortunately, when some of its members requested to submit minority reports, the practice itself was disallowed.

The 20% threshold is arbitrary, so it may be adjusted in the CAP bylaws. Approving a minority report's publication of is not an indication of agreement, but rather that the quality of its advocacy and presentation are adequate. The requirement of minimal approval is intended to avoid totally ridiculous reports which would pollute communications and undermine the credibility of the CAP.

l. The CAP bylaws shall include an anti-discrimination clause and conflict of interest provisions related to its operations.

The Amendment's requirements that prohibit discrimination and address conflicts of interest are a minimum for the CAP. It is expected that these will be elaborated upon in the CAP bylaws.

m. The CAP bylaws may also establish procedures for enforcing various requirements which apply within the CAP, provided there is a process for appeal.

The CAP is to determine how it enforces the CAP bylaws, but it must also provide for appeals.

n. The parliamentary reference for CAP meetings and organizational procedures not addressed by its bylaws and rules shall be the most recent edition of Robert's Rules of Order, Newly Revised or its successor.

Robert's Rules rule. Unfortunately, being unpracticed or uninformed and not knowing how to use them, too many citizens see Robert's as the tool of their oppression. As a result, some organizations do not use Robert's and thus have a tendency to spin wheels and get little done; some even refuse to have bylaws and end up merely being controlled by a click of insiders. City Council uses Robert's as its official rules of parliamentary procedure. It is therefore important for citizens interacting with their government to have a working familiarity with Robert's in order to be more competent.

611. Citizen Advisory Panel, Conflicts of Interest Provision

After the CAP of SPRPC was formed, a member of Delaware Valley Regional Planning Commission's public participation body advised that it was absolutely essential to have a conflict of interest provision from the start. Unfortunately, by that time a sizable block of members with conflicts of interest had already enrolled, making adoption of a conflict of interest provision virtually impossible.

The Conflict of Interest Provision in this proposal also represents a major difference with the “deliberative democracy” and “participatory budgeting” processes. Their rationale for not having a conflict of interest provision, according to the Deliberative Democracy Consortium, is that they consider it best to bring all the “stakeholders” to the table as equals, enabling everyone to openly evaluate the conflicting agenda items, just as long as any conflicts of interest are disclosed up front. While that may sound noble, the CAP of SPRPC found that including equal participation for those having conflicts of interest made its operations more difficult and their being given equal credibility gave Commission members cover to cast votes for politically promoted projects which weren’t in the public’s best interest.

Consider the implications of equal treatment in a different context: the news media has tended to give equal weight to the claims of global warming deniers, diluting the presentation of hard scientific evidence, confusing the public and policy makers, and putting the world several decades behind where we needed to be to avert the increasingly severe environmental problems now impacting the earth and its people. It hasn’t helped merely to point out the naysayers have had conflicts of interest.

A Conflict of Interest Provision does not preclude the citizen participants from hearing and discussing proposals from those who have a conflict of interest, but the integrity of the citizen evaluation won’t be diluted by the advocates sitting among them as equals to promote their interests.

a. For purposes of participation in the CAP, a conflict of interest shall in general exist when a person or entity to which a person is tied receives, stands to receive, is seeking, or plans to seek monetary or material gain (other than the general services provided all residents and assistance for educational purposes or low income) from any action, operation, or program of the City, its agencies, authorities, or units of government or that are under the direction, administration, or determination thereof. In addition, a conflict of interest shall be considered to exist where a person holds public office or a partisan political office or is an employee thereof or where an advantage may be gained for a business interest by disadvantaging a competitive interest.

In addition to material gain, having political influence over the matters likely to be considered by the City CAP are also considered conflicts of interest.

b. The CAP shall adopt and implement a Conflict of Interest Provision regulating funding or donations to the CAP and regulating participation in the CAP. For such purposes the following shall in specific be deemed to have conflicts of interest: elected officials, board or commission members, and employees of the City, its agencies, and its units of government; officers, board members and employees of nonprofit organizations in receipt or pending receipt of funding from the City, as may be addressed in the CAP bylaws; consultants, contractors, suppliers, vendors, and individuals, any of which do business with the City or have or seek contracts and employment with the City; litigants with material claims against the City; individuals employed by or holding an elected or appointed office within a political party; registered lobbyists; persons or agents of interests receiving real estate subsidies, tax abatements, tax incremental financing, forgivenesses, or other monetary or material gain from public sources for their interests in real estate property,

except for owner occupied residential properties, and all seeking such; individuals having arrangements or associations with the City which may be deemed to constitute a significant financial conflict of interest; and the employees and immediate family members of any of the aforesaid.

These conflicts of interest are specifically identified for exclusion prior to initiation of the CAP in order that it may start off with a clean footing.

c. The CAP Conflict of Interest Provision shall address: the status of the various parties having conflicts of interest; prohibitions of membership and restrictions on participation and funding; responsibility to disclose; situations when there may be participation without vote; the criteria and process for granting waivers; avoiding conflicts of interest in the acceptance of funding or donations; the handling of conflicts of interest which may arise with individual votes or issues for members not otherwise barred from membership or voting; funding or donations, either financial or in-kind, from organizations with a conflict of interest; and such other matters and circumstances as may involve conflicts of interests.

The CAP is given responsibility for expanding upon how it shall address conflicts of interest. This enables adjustments to be made as may be needed from time to time without needing to have another Charter amendment approved.

d. Until addressed in the CAP bylaws' Conflict of Interest Provision, where a conflict of interest as covered under Sec. 611(a)-(c) should arise for already seated CAP members, if the conflict will be ongoing, they shall remove themselves from membership, or, if the conflict is temporary and limited in nature as determined by the CAP board, they shall disclose the conflict when they speak in each related discussion and recuse themselves from any votes related to the conflict.

This is a bridge until the CAP develops its bylaws and approves them.

e. The CAP shall have an Ethics Committee, the purpose of which shall include considering, reviewing, and advising the CAP board and the membership on matters of conflicts of interest.

This could be the officers of the CAP or whomever may be decided to be best qualified.

612. Governmental Interrelations with the Citizen Advisory Panel

a. Before introduction to Council, all legislative proposals, including substantive amendments prepared in advance, shall be presented and explained to the CAP or appropriate committee(s) of the CAP with an opportunity for questions and answers in meetings which Council and the CAP shall cooperatively schedule. Proposals not presented and explained before the next Council meeting shall have their introduction deferred. In the event of an urgent or emergency situation where immediate action is required to avoid significant consequences, legislation may be introduced in Council without having first been explained to the CAP, provided the CAP board is

notified along with the reason for such expedited introduction when the decision to do so is made and that an explanation of the bill shall be given with an opportunity for a representative of the CAP to ask questions and receive answers prior to being taken up for deliberation by Council.

With the predecessor CAP of SPRPC, all matters that were to be put before the Commission members for approval were first presented to the CAP members by the Commission staff, with an explanation of what was involved and any questions answered. The Commission met once per month, as opposed to City Council which regularly meets twice each week. This compressed time frame needs to be accommodated and there needs to be provisions for urgent matters that do not fit in the set schedule. However, expediting passage of so-called “urgent” matters can become a matter of convenience. Expediting abuses can be appealed under §620.

b. Council shall provide sufficient time for reports and comments by a delegation or representative of the CAP as a regular feature of Council meetings with the CAP choosing for each meeting whether it goes before or after the public comment period, except that the CAP may also choose for its delegation or representative to present its report and comments about an agenda item when taken up by Council.

The CAP of SPRPC's report to the Commission members was a regular item on the agenda at the beginning of each SPRPC meeting.

c. Except during closed executive sessions, a representative of the CAP shall be able to participate with voice, but not vote, in Council's deliberations when Council meets, sitting with Council or, during Council general meetings, at a table to the front and/or side of Council or in a comparably convenient, mutually agreeable location. Having informed the meeting chair, the CAP representative may be changed before and/or during a meeting provided the substitutions are not disruptive in nature and do not substantially impede the conduct of the meeting or its business.

The CAP of SPRPC allowed the public to participate in deliberations, but that would be unfeasible for Council. However, adding a single voice to deliberations enables input in their course without unreasonably compromising Council's considerations. Speaking for a self-selected body, the representative of the CAP can't have a vote on Council matters. The ability to tag team its representation gives the CAP an ability to have the most knowledgeable person on a subject speak for it.

d. The CAP shall be able to make special organized presentations to Council and the administration, and such may involve one or more people with the use of various presentation media.

This is to enable presentations beyond the regular reports given in Council meetings. It is intended that these special presentations can take virtually any reasonable form, including audio-visual presentations; testimony from witnesses; and even dramatic enactments when that may best illustrate a point which the CAP needs to make to Council members.

1. The CAP may request and shall be given sufficient time, subject to availability, to make presentations during Council's regular, committee, post agenda, or special meetings. Should such time not be available, Sec. 612(d)(2) shall apply.

If it would fit into a regular meeting, then it can be included. Otherwise ...

2. Council shall, upon the CAP's request, schedule post agenda or special meetings as needed to accommodate CAP presentations and/or discussion with Council, with the scheduling of such meetings to be within a reasonable time and at a germane location, and Council shall not vote beforehand upon matters to which the requested presentation or discussion is relevant, unless urgent and necessary to avoid significant consequences.

The CAP can have a separate time to make its presentation, and Council must hold action on any items related to the subject until it is held. Expediting abuses can be appealed under §620.

3. At the request of the CAP, the mayor and appropriate members of the administration shall be in attendance for CAP presentations and reports to and/or discussion with the administration, including when such are requested to be held jointly with Council; should such attendance not be possible, the mayor and the CAP shall mutually arrange and expeditiously schedule such presentation, reports, and/or discussion; in either case, such shall take place before administrative decisions and/or actions on related matters may occur, unless urgent and necessary to avoid significant consequences.

The same goes for the administration. The CAP can also have particular people with the administration in attendance. Expediting abuses can be appealed under §620.

e. The CAP may propose legislation and introduce bills to Council and the CAP's representative or a delegation designated by the CAP shall be given opportunity to explain and respond to questions or concerns about its proposal or introduction when taken up by Council. Council shall explain to the CAP the reasons for its action on such bill or resolution.

While the CAP is given the power to introduce legislation for Council's consideration, it can't vote on it. However, the CAP can have one or more people speak to the matter when Council considers it. Experience with County Council's agenda initiative process has frequently had Council simply table a citizen introduction of legislation without any deliberation or discussion. City Council will at least need to explain the reasons for its actions rather than simply, silently walking away.

f. The CAP shall be able to request meetings with and/or presentations by the administration or members of Council to discuss or to have explained to the CAP certain identified issues of concern which may affect the City, its residents, and taxpayers.

This provides for communication in the opposite direction, enabling the CAP to have matters explained to the CAP members.

1. The subject of the requested presentation or meeting shall be clearly defined.

2. The meeting/presentation shall be scheduled and occur at a mutually agreed place and time, which, if so requested by the CAP, shall be before actions may occur upon or concerning matters relevant to the presentation or meeting, unless urgent and necessary to avoid significant consequences.

Expediting abuses can be appealed under §620.

3. The CAP shall also be able to mandate, by a majority vote of its board or of its members present at a general meeting, a meeting within two weeks with the appropriate head of an administrative unit of the City to discuss a specific problem.

This is a holdover from the old Article 6, Community Advisory Boards, which this new Article 6 replaces. It is somewhat more specific and more limited than under the preceding two criteria.

g. The Mayor or Council may request from the CAP specific reports on CAP activities which shall be provided within an appropriate and reasonable time.

This turns the power to request around, giving the administration and Council an ability to request information about CAP activities.

h. Council, individual members of Council, the Mayor, or their designated representative(s) may request to address the CAP, its board, or specific committee(s) of the CAP and shall be given time to make presentations and/or to discuss their concerns,; if more time is needed than is available at a regular meeting, the addressing party and the CAP body which is to be addressed shall mutually schedule a special meeting for such purpose.

This makes the public participation process a two way communication conduit, requiring the CAP to listen to the administration and Council members on their request.

i. The CAP may associate, coordinate, and function in conjunction with other similar bodies.

There are other advisory bodies with various parts of governments in the region. This also anticipates the possibility of there being other municipalities with a CAP and even other levels of government. A next logical step is be to establish a County CAP.

j. The CAP shall have the ability to petition and submit comment in the CAP's name to all branches and agencies of all levels of government.

Agency permits for various activities can affect the City and its citizens. Environmental permitting, transportation projects, etc. can all have a profound impact. Legislation before County Council or the state legislature can be of concern to the CAP. The CAP must be able to freely and directly approach any public entity in order citizens to best advocate for the public interest.

k. If approved by the School Board, an education committee of the CAP may serve and function as an official public participation body of the City Schools.

The Pittsburgh School District is a separate government. The City Charter cannot mandate that it come under its public participation process. It can, however, offer the use of its process and make it available to the School District as an easier way for the District to implement better public participation.

l. The CAP shall serve as a public participation body for all City agencies, units of government, authorities, boards, commissions, committees, advisory bodies, the City's publicly funded library, and entities managing and or operating City assets by lease or other arrangements to provide services to the public.

This is intended to expand the public participation process across the entire municipal realm, including to public authorities.

1. Prior to meetings of the subject parties, the agenda shall be submitted to the CAP or appropriate committee(s) thereof in sufficient time for the CAP to request that a knowledgeable representative of the subject party be provided who shall appear before the CAP or its committee to explain and answer questions about the agenda items in advance of the respective meeting.

2. In accepting public comment, the subject parties shall allow for comment by the CAP without a time limit and upon request shall make provision for presentations by the CAP either at a regular meeting or, if necessary, in a special meeting at a mutually agreed upon time.

3. Questions from the CAP shall also be accepted outside of meetings and answered in a reasonable, timely manner;

4. Appropriate representatives of the subject parties shall meet with the CAP or its applicable committee when requested either by such parties or by the CAP for the purpose of presentations or to discuss issues of concern which may affect the City, its residents, and taxpayers, the meeting to be scheduled with mutual agreement and without undue delay.

5. Should the CAP so request, any presentations, discussion, meeting, or the receipt of answers to questions shall occur before action on the matters to which such pertains, unless urgent and necessary to avoid significant consequences.

The catch all exception does apply but can be challenged in court under §620, if abused.

6. In non-executive session meetings, having notified the meeting chair prior to the meeting, a representative of the CAP shall be able to participate in deliberations with voice but not vote. The CAP representative may be changed at any time before or during a meeting upon informing the meeting chair, provided the substitutions are not disruptive in nature and do not substantially impede the conduct of the meeting or its business.

This mirrors the provision with Council.

m. In such instance(s) where a party's compliance with Section 612 may result in deferral of official action(s) or unduly impede or add burdens as to obstruct the duties of any involved party, all parties shall make expeditious accommodations as necessary to both comply and avoid unreasonable delay or burden.

This is to keep the public participation process from paralyzing government operations.

n. To facilitate quicker resolution of conflicts, to avoid unresolved disputes, and to reduce reliance upon the courts, the CAP and the City may negotiate and maintain a mutually agreed upon process for the resolution of conflicts and disputes, while reserving to all parties the rights and remedies provided by state and federal law.

This sets the ground for establishing a process to more expeditiously resolve differences without taking away an ability to use all means of recourse.

613. Other permissible Citizen Advisory Panel activities and association

a. The CAP shall be able to engage in activities for the purpose of outreach, membership recruitment, public education, and such other actions and activities as may benefit the CAP, the City of Pittsburgh, its residents, property owners, taxpayers, etc.

The CAP does not only advise the City government. It is also intended that it advise and engage the larger citizenry which is not among its participating members.

b. The CAP shall be able to conduct investigative hearings; hold hearings for public comment; and to use all lawful means to investigate issues.

The CAP is not a captive of the municipal government, taking its information only from public officials. It can reach beyond the internal channels of communication to investigate its concerns.

c. The CAP may join, participate, support, and receive support from organizations, associations, and coalitions that further its purposes and activities.

It is envisioned that there may be a national or international NGO to promote, foster, and support the Open Government process and various other allied organizations which currently exist or may be formed in the future. It is relevant that the CAP should be able to participate in these.

614. City logistical support for the Citizen Advisory Panel

a. The City shall provide staff and material support for: copying of CAP meeting materials (agendas, reports, minutes, etc.); copying and distribution of materials from the CAP for Council, the administration, and public posting; maintenance of the CAP membership roster; and, as requested, placement of meeting notices and ads for meetings and CAP public events.

This is minimal support which can be provided by the City Clerk's office. Similar support was provided by SPRPC for its CAP at minimal expense to the agency.

b. At the request of the CAP and subject to availability, the City shall provide event and meeting space in reasonably central locations which are easily accessible from all parts of the city and for satellite meetings at city facilities in neighborhoods and shall provide display and public presentation equipment, chairs, tables, and other accommodations as are reasonable and appropriate.

The City has a number of properties that can be used for meetings and is part of the Authority which administers Pittsburgh's convention center. The provision of space should be of nominal expense for the city, comparable to space provided to other activities for free.

c. The City shall provide sufficient office space for the CAP in a reasonably central location which is conveniently accessible to the public and served by transit; with appropriate utilities; with full telecommunications capabilities, including but not limited to broadband Internet connectivity or its successor; and with a compliment of office equipment and furnishings generally standard among fully functional offices.

The City has a number of properties in which it should be possible to find adequate office space.

d. The City shall upon request from the CAP provide advertising of CAP meetings and events, to include a display ad in the local news section of daily newspapers published in the City and appropriate neighborhood publications, in addition to standard legal notices; the City shall include mutually agreed upon information about the CAP and how people can get involved with it in tax billings and in general publications of the City, its agencies, and units of government; and the City shall provide for sending notices and reminders by email (and other popular technologies for notification) for CAP meetings, events, and activities to those indicating a desire to receive them.

The City can easily assist in promoting involvement with the CAP with minimal expense.

e. The City shall provide a website; computer and web services; mapping, data, communication, and information services; and such other applicable technologies and services as become available and may be needed for CAP purposes

The City has a department responsible for computer operations and its own web operations. The needs of the CAP can be fit in with minimal additional expense.

f. The City shall provide for the webcasting of CAP meetings, presentations, and other activities as requested by the CAP, and, upon the timely request of the CAP Chair or Board, shall provide for the cablecasting of any of the aforesaid.

The City currently handles its cablecasting, to which the needs of the CAP can be easily added.

g. The City shall provide insurance coverage for the attendance and participation of the general public at CAP meetings and its other activities, for the CAP related activities of CAP members, and for CAP property and such other insurance as may be reasonably needed for citizen involvement.

Insurance coverage is necessary to protect participants.

615. Implementation of the Citizen Advisory Panel

a. The Council President shall schedule the first meeting of the CAP to be held within a reasonable period following the Election Board's certification of ratification of this amendment and shall arrange for adequate space at a readily accessible location.

Certification of election results occurs 20 days after the election. The City will need time to make the necessary preparations. It could also utilize one of the web services for determining when most people can attend the first meeting.

b. The City Clerk shall place both display and legal ads in each of the daily newspapers published in the City giving notice of the first meeting of the CAP with a brief explanation and information about the CAP and an explanation of the Conflict of Interest Provision as it applies to the meeting, repeating the display ad in the local news section of the same papers' Sunday publication immediately preceding the meeting. The City shall also provide notice by such other means of notification as are in use at the time and shall include on the City website a notice for the first CAP meeting; a copy of the ratified amendment; an explanation and information about the CAP, the Conflict of Interest Provision, and other pertinent information.

Ads for the meeting are to be in both daily and Sunday papers in addition to other notices.

c. The City Clerk shall be responsible for drafting an initial membership form, for receiving them, and for verifying eligibility of prospective CAP members before the initial meeting. The Clerk shall be responsible for providing initial voting credentials to those without a conflict of interest who are qualified to vote at the first CAP meeting. The Clerk shall thereafter maintain a roster of the CAP membership.

This is similar to what SPRPC did for its CAP, though the eligibility requirements add a bit more.

d. The first meeting of the CAP shall be called to order by the City Council President or his/her designee. The meeting agenda shall include:

Somebody needs to call the meeting to order.

1. the City Solicitor shall read or give an adequate summary of Sections 609-614 and 615(c) and (d), pertaining to the Citizen Advisory Panel, providing explanations and answering questions;

Somebody needs to explain the legal requirements.

2. setting the quorum for CAP meetings until set in CAP bylaws;

Having a quorum set for the CAP is essential for it to successfully meet in the future. This is frequently overlooked with new organizations and the default of a majority of the members can cripple the organization if it can't be easily attained.

3. creation of a CAP Bylaws Committee;

Bylaws must be drafted as early as possible and must, therefore, have a committee established up front.

4. election of interim officers;

For the organization to function, there needs to be people who can be responsible for arranging the future meeting agendas, etc.

5. determining the next meeting time and date.

One of the online meeting applications might be used to set the next meeting. It could even be employed to identify the best date and time for the next meeting prior to the first meeting. If so, it could be presented and approved at the first meeting.

616. First Amendment Rights

A key element to increasing the involvement and participation of the public in the civic affairs of any community is the ability to approach citizens with information about the matters confronting them. As the privatization of once public spaces has increased, either by sale or assignment to private interests, that ability has been undermined. While new communication technologies have enabled the dissemination of greater amounts of information, they have also resulted in a cloistering of points of view which have isolated vast swaths of the public from one another. Personal contact remains highly important even as it has progressively diminished. In order to maximize public participation it is essential for concerned citizens to have direct access to members of the general public and the ability to communicate with them when they are in publicly accessible spaces.

Assignment of the management or use of public park resources to various non-public entities has had them restrict first amendment rights. Sales of public property, including former private properties, are often made to private buyers who then provide public access corridors and assemblage areas but may then restrict first amendment rights. This is designed to guarantee those rights.

The right to engage in activities protected by the First Amendment to the U.S. Constitution shall be guaranteed in the city when and where areas are open to the general public, provided the exercise of such right does not appreciably and significantly interfere with other permitted uses. The protection and guarantee of such constitutional rights shall be a condition of usage applying to all assignees, renters, lessees, permit holders, and any others who may use a City owned facility or

public space when and where such are opened to the presence or attendance of the general public. Such shall also be a stipulation in the sale of any properties by public entities where the new owners will provide easements or permission for public passage or assemblage. Inclusion of such protection and guarantee shall be required and apply whenever the City participates in any joint authority, public or private project or venture, or with other matters involving non-City entities including but not limited to operating arrangements or various tax, financial, or in-kind subsidies.

617. Public Disclosure

a. The Mayor, heads of City administrative units, City Council members, and governing members of City authorities, boards, and agencies shall publish and make available online a calendar of their non-personal activities and contacts of the preceding day on the City's website identifying the time, duration, nature and subject; the name of the individuals or group with whom a meeting or communication occurred; the associations, employment, and employer of the person(s) involved that may relate to the subject; whom they may represent; and the outcome.

This was a practice of the late U.S. Attorney General Ball. In contrast, the current Mayor of Pittsburgh publishes his schedule for the coming day. Ball's approach, being after the fact, has the advantage of identifying the people with whom he actually met rather than including those who may have been scheduled but didn't meet and not including those who met but weren't scheduled. Also, publishing the next day's calendar could compromise security, whereas after the fact doesn't.

b. Contacts and meetings of Council members, the Mayor, or the members of their staffs with lobbyists, with sales personnel, or with the principals (or their agents) involved in construction and real estate projects receiving public subsidies or requiring City approvals other than for simple building permits shall be audio recorded, with the legally required notice given, and where possible video recorded, and shall be made publicly reviewable online along with any materials involved which shall be processed as provided under Sections 604 and 608.

Meetings with these designees are the most likely to result in excessive influence.

c. Exceptions to public disclosure under Section 617 (a-b) shall apply as exempted under Section 601 or where disclosure may result in retaliation or jeopardize a non law enforcement investigation prior to its completion or as may otherwise be provided by statute or a City of Pittsburgh Disclosure Policy. Claims of exemption due to the presentation or discussion of nondisclosable or proprietary information shall be treated as may be applied under Section 618.

If a public official meets with somebody who is providing information that could result in retaliation from someone else or if a public official is investigating a matter concerning the City which may not be a law enforcement issue covered by §601, then that meeting should not be disclosed. If, as is likely to occur, a real estate speculator should meet with a Council member and request it not be made public on the basis of discussing proprietary information, then that party should be held to the full scrutiny of those parts of §618 for nondisclosable information that can be applied.

d. All elected officials of the City shall, on or before January 15 of every year during their term of office, file with the City Controller a disclosure as of January 1 of that year which shall be available for public inspection and shall contain the following information:

1. the names of all business or non-profit corporations, associations, partnership, joint ventures, estates, proprietorships, trusts business activities, and organizations, other than religious organizations and religious corporations, with which the official has any connection as an owner, officer, employee, consultant, contractor, creditor, shareholder, member, partner, joint venture, trustee, beneficiary or participant, or in which the official has any financial or property interest in any form, whether a legal interest or equitable interest or otherwise, including for each, a statement of the nature of the connection or interest;

2. a brief description of all legal and equitable interests of any degree in real property held by the official;

3. a statement of the remaining amounts of any funds and contributions related to the officials most recent nomination and election, and by whom and how held; and

4. the names of all creditors of the official and debts as to which the official is co-signer, surety or guarantor in excess of \$1,000.

§617(d) above and **§617(e)** below are already in the City Charter as §801 and §802 respectively, except that, as included here, they are corrected for typographical errors and grammar.

e. In connection with every elected city office, each candidate for nomination or election and every treasurer of a political committee, or person acting as treasurer, shall file a public preliminary account of receipts and expenses five days prior to the election. The preliminary account shall be in the same form and contain the same information as required by law to be filed following an election, except that the information shall be provided as of a time seven days prior to election.

618. Treatment of nondisclosable information

The preparation of “proprietary” material for applicant submissions seeking various approvals is one of the greatest abuses used to keep information from the public. By not having the information, it becomes quite difficult for citizens to challenge claims which can be erroneous. This section is intended to prevent such abuses to the degree possible.

a. For purposes of public access, if a record contains both disclosable and nondisclosable information, the nondisclosable information shall be deleted and the remaining record shall be disclosed unless the two are so inextricably intertwined that it is not feasible to separate them or release of the disclosable information would compromise or impinge upon the nondisclosable portion of the record.

§618(a) is taken from federal requirements for nondisclosable information, which has been a major means used to keep information from the public while proceeding behind the public's back.

b. Where information is held to be nondisclosable and is submitted for use as part of a decision making process that is open to public oversight or participation, the submitter shall identify the specific parts that are nondisclosable. The decision making body is responsible for final determination of the following, which shall be disclosed and made available online to the degree that it does not jeopardize national security or public safety or violate legitimate nondisclosure requirements:

These subsections set forth a number of provisions to make it difficult to hide information from the public by putting it in "proprietary" reports.

1. the existence of the information which is held to be nondisclosable; its title, owner, and preparer; the type, general character, and nature of the information; the specific reasons for nondisclosure, including the name(s) of any third party(ies) requesting, requiring, or otherwise responsible for the nondisclosure and their involvement or relationship to the information and/or to the other parties involved; and all information contained in it that is disclosable;

This is to have the applicant identify the full context of the information which is being withheld from the public without disclosing the actual protected information.

2. whether it was generated using accepted standards and practices; if so, which; if not, what method or process was used; if the specifics of the method are held to be nondisclosable, then such substantiation or verification as may exist of the efficacy of the method employed; if none, that there is none;

Applicants or their consultants have been known to fabricate findings and information out of thin air. In some cases they misuse otherwise credible processes and in others they simply make up a process that will produce the results they want.

3. how the information is related to the decisionable matter;

The public should be told the relationship of the decision to the undisclosed information.

4. how the information is normally used in other instances and how it is to be used or is being used for the decision process;

The public should also be told how the unknown information is used in other instances to give some sense of how it might or should be used to affect the government's decision.

5. the specific findings which are based or are to be based upon it, either all or in part; how those findings are affected by the information and the degree to which they are;

The public needs to know how derivative findings are related to the undisclosed information.

6. the degree to which the nondisclosable information and the findings based upon it each play(ed) a role in the decision process and its outcome, including but not limited to whether it is in the critical path, and thus is essential, or whether it provides supporting information or is used to corroborate other information;

Knowing the degree to which the hidden information affected the decision making and how is crucial, especially if a legal challenge needs to be filed without knowing the actual information.

7. whether any parts of the nondisclosable information contradicted the findings or conclusion of its own report or the decision making body's findings or conclusion;

It is not uncommon for technical reports to contain information which contradicts their purported conclusions or to contradict the decision making findings. Honest employees of consultants will frequently bury disclosure of critical shortcomings or they may challenge and even outright refute the final claims at some place in the body of their reports. Knowing if this is the case is important for the public to exercise its rights, especially if a legal challenge is appropriate.

8. any information from open sources which corroborates, contradicts or challenges the nondisclosable information and/or any related findings;

While the exact information being hidden may not be known, the public needs to know if reasonable challenging information is available but deliberately ignored by the applicant or the decision makers. It also helps the public to know if there are open sources supporting the findings.

9. the rationale for using the nondisclosable information instead of open sources.

Providing a specific rationale for not using open source information enables the public to evaluate whether it has merit or can be challenged.

c. Where either facts, numbers, the process used to generate or determine them, or any other substantively involved or associated matter may be in dispute or there may be cause to question the credibility of them or their preparer or there may be substantial controversy surrounding the nondisclosable information for other reasons, the applicable decision making body shall request a release from the information's owner(s) enabling either public disclosure or independent verification of such part or parts as may be relevant to the concern(s); in the absence of such release, the nondisclosable information shall be disregarded as if it were not submitted, except that suspected fraud shall be referred to the appropriate authorities.

Where information is questionable, it must be disregarded if it can't be openly verified in some manner. If there is any suspicion of fraud, which is all too frequently ignored or "conveniently" overlooked, it must be referred to the appropriate authorities.

d. An applicable decision making body may, with just cause, hire a third party which it selects as its agent to perform an independent verification of disclosable or nondisclosable information, provided the third party has no ties or connections with any of the parties involved in the matter

being reviewed. Such body may require an applicant to pay for the third party verification as a condition of a proposal or application's consideration. If a third party verification is done, all information that is disclosable from its findings shall be made fully available to the public and placed online, and such information that is nondisclosable shall comply with Sec. 618(b).

Having a third party verify information that is relevant to a decision gives a much stronger hand in evaluating a matter and can serve as a strong deterrent to a range of improprieties. As an example, a number of years ago a township north of Pittsburgh learned of deliberate falsifications done by one of the largest engineering firms in the region for an application by a large real estate speculator. The township commissioners, without acknowledging they knew the applicant had rejected 4 other consultant determinations before using the fraudulent findings, said they'd require another determination. The applicant seemed agreeable. Next the local officials added that they would choose the consultant. The applicant was a bit taken aback. Then they added that the applicant would pay for it. The application was withdrawn and not brought back. – This can be a huge fraud stopper!

e. Nondisclosable information submitted to the City as part of any public decision making process shall be permanently retained by the City, which shall protect, catalog, and store it, maintaining adequate back up copies and keeping it immediately retrievable for use by the applicable decision making bodies or by a court of competent jurisdiction, and at any time as it may be deemed disclosable, it shall be made fully available and placed online.

Once submitted, information is held even if an application is withdrawn, as it could later prove fraud. It will need to be secured and can be made available for future official use, including law enforcement purposes.

f. Declarations that information is nondisclosable, justifications thereof, and the information submitted as required under Section 618 shall be averred to be true and complete, under penalty of perjury, by the parties preparing it and by the parties submitting it.

Having submissions of information be averred under penalty of perjury is important and can lead to refutation of erroneous information provided to the public and officials which is not covered by penalty of perjury. For example, for decades the Port Authority of Allegheny County has repeatedly made the claim to public officials and the general public that its rail service cost it more to operate than its buses, as justification of its conversion of rail rights-of-way into busways. However, at the same time, information that PAT was submitting to federal agencies under penalty of perjury showed just the opposite, that its rail transit cost less to operate than its bus service.

619. Open government policies and regulations

The City shall establish, implement, and maintain policies and regulations covering its information, communications, remote participation, notification, public disclosure, and such matters, processes, and procedures as are necessary to assure open government.

Over time it is likely that certain adjustments will need to be made, preferably without resorting to another Charter amendment. That is the role provided by official policy and regs implemented by ordinance and is to be left to the normal administrative and legislative processes to work out. Much of the new policies and regs can be expected to mirror the Charter's requirements, but the devil is in the details. It is the role of the Amendment's public participation process to oversee the development of those policies and applicable regs in order to make sure the intent of the Open Government Amendment is not gutted.

a. Among such policies and regulations shall be addressed:

1. abuses and reasonable protections therefrom, improper or disruptive conduct, disciplinary actions, appeals, etc. with relation to Article 6;

While the CAP is expected to also address these concerns, Article 6 also applies outside of the CAP and its activities, which the policy should cover.

2. presentation of verifiable identity for acquisition of some or all public information, for public comment, for individualized notification, or for other forms of public participation; whether, when, and how such may apply; and such associated matters as user registration and sign-in for online access;

This is not to exclude but to protect residents from somebody using their name to make comments. Such an incident would be identity theft and could cause harm or embarrassment to the party whose identity is misused.

3. information for commercial use and purposes; information not online that is generated upon request; and applicable fees, if any;

This is one area barely touched upon by the Amendment.

4. the retention, preservation, and archiving of City information and communications, which if made outside the City's process for their creation and conveyance or transmission shall be copied to the City for inclusion;

An issue raised by Hillary Clinton's use of an outside email server.

5. implementation of the provisions of this article, to be done as expeditiously and effectively as reasonably possible;

Scheduling has been left open in order that it can be adjusted as needed.

6. such other issues not addressed herein that may arise.

There are sure to be matters that will arise and have not been anticipated in the Amendment.

b. Such policies and regulations shall further provide that:

1. No fees shall be charged for publicly accessible, online information which is to be used for individual and noncommercial purposes nor for general participation, monitoring, and proactive citizen involvement in the City's governance, unless otherwise provided herein;

2. Should the City information base be made available by contract to providers of fee based information services including but not limited to information mining, evaluation, notification, searches, etc., such providers shall be required to provide in forma pauperis waivers and/or pro bono services related to that information for groups and individuals who cannot afford their fees.

c. The City shall adopt a Disclosure Policy, approved by Council, incorporating Sections 617(a-c) and addressing exemptions and other pertinent matters, including but not limited to: whistle-blowing and protections for whistle blowers; anonymous suggestions and tips; instances where private individuals may be caused public embarrassment; ongoing, pending, and prospective investigations; subjects qualifying for executive session; and in cases where identity is withheld, how and when non-identifying information shall be disclosed where doing so is itself not exempted and does not jeopardize those whose identities are withheld.

There are exceptions to disclosure which may need to be adjusted from time to time as a matter of official policy.

d. The Pennsylvania Right to Know Law, the US Freedom of Information Act (5 U.S.C. §552, as amended by public law No. 104-231, 110 Stat. 3048), the American with Disabilities Act, and other state and federal statutes, regulations, standards, and guidelines that are related to public access and involvement shall serve, as far as their provisions may apply to the City or may be adapted and adopted by the City, as the minimum basis for the City in the development and implementation of its policies and regulations governing the provision of all public information, instructions, notice, involvement, participation, and opportunity for comment.

The City must meet or exceed the best standards of practice used elsewhere.

620. Jurisdiction, appeals, and enforcement

a. Article 6 and its corresponding City policies and regulations shall be applied to the appropriate extent applicable to all City agencies, units of government, authorities, boards, commissions, committees, advisory bodies, and such other entities or agents as may have appointees of the City; to entities funded, all or in part, by the City to act for or on behalf of the City; and to entities that administer and/or operate City-owned or leased facilities and/or provide services to the public through arrangements with or under the auspices of the City.

The goal is to encompass the entire municipal level in all its various forms.

b. In instances where there is no statutory basis to compel compliance with this Article, such requirements as needed to assure compliance shall be included by the City as a condition of City participation, funding, contracts, leases, and/or other arrangements as appropriate.

Even if compliance can't be compelled under existing law, the City should do what it can.

c. Unwarranted claims of urgent circumstances or emergency situations, either of which unduly purport to require immediate or early action in order to avoid significant consequences, and failures to otherwise comply with the provisions of Section 612 may be appealed by the Citizen Advisory Panel, through its board acting on its behalf as provided in its bylaws, to a court of competent jurisdiction which, if it should find a claim of timeliness to be unfounded or other non-compliance, shall enjoin or set aside the applicable actions and otherwise require compliance.

The CAP can appeal failures to comply with the provisions of §612 for its relations with the City.

d. Expedited consideration or actions, either of which has or imminently may unduly abbreviate or bypass the normally required notification, comment, or public participation process shall be appealable to a court of competent jurisdiction by a party with standing, either individually or as a class action, who, where timeliness is a factor and a particular legislative or administrative action or decision has occurred or is about to occur which is subject to a provision of Article 6, may request the court to stay and enjoin such due to the noncompliance.

The other provisions outside of §612 can be appealed by those who are impacted.

e. The court shall hold in its considerations any claims of urgent necessity to the highest standards; shall give weight to the requirements of Article 6; and shall only set them aside where the exigencies of the situation are compelling and of such significant and substantial nature as to necessitate the action or inaction that is being challenged.

The courts should do this anyway, but some judges get sloppy and go with the power structure.

f. Where timeliness is not a factor and a provision of Article 6 is not implemented or applied either in general or in specific, any resident, property owner, or party with standing may petition a court of competent jurisdiction for a writ of mandamus to require compliance, provided:

1. they have first given 60 days notice of the deficiency to the City Solicitor, who shall render a determination and notify the responsible parties; and
2. if during such time the noncomplying parties have not remedied the deficiency, nor proceeded in good faith to do so, nor provided adequate reason why compliance at the time is not required.

This is intended to provide an avenue of administrative relief which should be exhausted first before going to the courts.

g. Costs for appeals incurred by the prevailing side may be assessed by the court upon:

- 1.** the City and/or other culpable parties, if found against;
- 2.** upon the petitioner(s), if the filing is found to be grossly frivolous and without basis.

This is left to the discretion of the court and is included here to inform either party of its potential.

Article 1: Home Rule Powers – Definitions *(additions underlined)*

102. Definition of certain terms

"Digital file," "digital form," "digital record," or "digital copy" means a document or copy of a document as an electronically or machine readable file in which digits are used to represent specific information, where the textual content has each character of the alphabet, punctuation, symbols, etc. represented by an exact correspondence to a unique numeric encoding such that the file can be directly computer searchable for particular words or character arrangements, portions of its text readably selectable and extractable, and its textual information obtained for automated or other information processing; where any non-textual visual image, photo, or graphic content is numerically encoded such that it can be accurately recreated and reproduced in at least a comparable, corresponding appearance to its original use in the document; where any non-textual audio and/or video portion is numerically encoded such that the original can be accurately regenerated; and where any programmatic scripting, animation, or other type of document inclusions can be readily operated, run, or replicated.

"Digital file format" means the particular arrangement or encoding schema of data in a digital format which is storable and usable, operable, or readable by specific computer programs; the type of which is usually identified by unique or nearly unique letter extensions or suffixes.

"Online" means having or giving direct access, available from remote locations, through means of networked telecommunication in general usage which is widely and openly accessible to and by the public, including but not limited to the Internet and any such successor which may be developed.

"Webcast" or "webcasting" means the online presentation of the audio and visual record of an event both in real time as it is occurring and on-demand after its occurrence, and, if applicable, with the real time webcast having an ability for interactive participation by the recipient.

To be amended (added text underlined, deleted text ~~struck-through~~)

Article 3: Legislative Branch

318. Time and notice required between introduction and final passage of legislation

Council shall not take final action on any legislation until a minimum of seven days has elapsed from the date of its introduction, unless council finds and declares that an urgent reason exists requiring earlier final action, explaining the reason, giving its justification, and being subject to Section 612(a)(3). Council shall give public notice of the introduction of legislation within twenty-four hours after it is introduced. Notice shall consist of posting the proposed legislation or its title with an accurate abstract in a conspicuous public place readily observable by citizens entering the building occupied by Council; posting the proposed legislation, or its title with an accurate abstract and a link to its complete text, in the notices section of the City website; having a link to the position in the notices section from a brief and succinct descriptive reference that is prominently visible upon accessing the main webpage; entering the bill into the process for individualized notification as established under Section 606(c); and also by posting in the office of the city clerk. Council shall recommit legislation upon a substantive amendment, which shall be equivalent to a new introduction unless waived as provided for earlier final action, in which case prior to such action the floor shall be reopened for public comment.

Council frequently “waives Rule 8,” setting aside §318, too often with the appearance of being a matter of convenience rather than an emergency or there being a truly urgent need. Giving the rationale each time can either remove such an appearance or provide grounds for an appeal.

Notice is expanded to require posting to the Internet and digital processing requirements.

Even though both the City Solicitor and City Council’s own rules of procedure have held that a substantive amendment should reopen comment, Council has routinely ignored that requirement.

320. Citizens right to be heard

Council shall grant a public hearing to residents of the City:

a. On pending legislation, if they deliver a petition requesting a public hearing to the city clerk no later than three days, after notice of the introduction of the proposed legislation or after a substantive amendment to it, signed by at least twenty-five ~~qualified electors who reside in the City~~ residents of age 18 years or older, which includes a statement that all petitioners intend to attend the public hearing. Council shall not vote ~~on~~ or take any action upon the proposed legislation until a public hearing is held in response to a properly submitted petition.

Though a judge held that the City did not have a valid argument for proceeding without holding a duly petitioned hearing after a substantive amendment, he refused to order the hearing, “because

[the citizens] wanted something different than the Mayor and I'm going to take sides," which of course was siding with the Mayor who didn't want the judge to do anything.

The current requirement for being registered to vote in order to petition for a hearing violates the U.S. Constitution's First Amendment prohibition against infringing upon the right to petition for redress of grievances. The requirement is changed to residents of age 18 or older.

In another case, Council substituted a new ordinance for the introduced ordinance, for which citizens had duly petitioned to have a hearing, before the hearing was held. Then after the hearing, Council substituted another ordinance, which they passed.

To be deleted in its entirety and replaced

Article 6: Community Advisory Boards

These are no longer in effect, so deleting the current Article 6 would have zero impact.

601. DESIGNATION OF COMMUNITY ADVISORY BOARD DISTRICTS

These proved to be in effective.

~~Within one year after the effective date of this charter, the mayor shall submit to council a recommended division of the City into community advisory board districts for the purpose of establishing community advisory boards. The division shall be in accordance with the following criteria:~~

- ~~a. In designing districts, the mayor shall consider areas of the City recognized as neighborhoods because of historical, geographic or other factors.~~
- ~~b. Each community advisory board district shall consist of an entire voting district or contiguous undivided voting districts. Council may reject or adopt the mayor's recommendations but shall adopt, by ordinance, only a division recommended by the mayor.~~

602. ESTABLISHMENT OF COMMUNITY ADVISORY BOARDS

Some were instituted but not widely due to limited interest. Average citizens saw little opportunity and significant hurdles for participation.

~~Council shall, by ordinance, designate and establish a community advisory board, after receipt of a petition for establishment of a community advisory board for a district designated by ordinance under section 601 which is signed by the qualified electors residing within the district at least equal to ten percent of those who voted in the last preceding municipal election.~~

603. ORGANIZATION OF A COMMUNITY ADVISORY BOARD

The complicated process proved too cumbersome with virtually no meaningful payback. It also gave extra influence to unelected "community organizations" which many residents viewed as elite clicks, undermining the board's credibility.

~~An ordinance establishing a community advisory board shall prescribe its organization, including the number of board members and other offices as stated in a general ordinance adopted in accordance with this section. Various community advisory boards may have different number of members, and community advisory board districts may contain differing populations, but throughout the City each elected member of a community advisory board shall represent approximately the same number of residents of a community advisory board district. Following each federal census, the mayor shall promptly review each community advisory board district and rec-~~

~~ommend changes to council in the number of elected members of community advisory boards needed to maintain equality. Council shall then amend the appropriate community advisory board ordinance so that equality is maintained in this regard. In addition to elected members, each community advisory board shall have delegated board members appointed or elected by community organizations of the district. The number of delegated board members and the recognition of community organizations shall be as stated in the general ordinance, which shall also provide for periodic review of the recognition of community organizations. A delegated board member shall have a vote equal to that of an elected board member.~~

~~604. ELECTION AND QUALIFICATIONS OF COMMUNITY ADVISORY BOARD MEMBERS~~

People weren't eager to go through all the trouble and effort to run in an election for an office having little or now power to affect anything, especially when the "community organizations" had an easy route to appoint seats with equal standing to represent their interests.

~~Each elected member of a community advisory board shall be chosen at a municipal election to serve for a term of two years. An elected member shall take office on the first Monday of January following the election. No member of a community advisory board shall have held, with the year immediately preceding commencement of a term, any other elected position with the city, county or state governments. No person who was a candidate for city or county office may be a member of a community advisory board until after the expiration of one year following the election in which that person was a candidate. Elected community advisory board members shall reside in the community board district which they serve.~~

~~605. POWERS AND DUTIES OF COMMUNITY ADVISORY BOARDS~~

Council was not excited about giving additional powers or roles. The boards proved to be rather irrelevant and quarterly opportunities for citizen input were too removed from the average citizens.

~~The powers and duties of each community advisory board shall be:~~

- ~~a. to review and advise council and the mayor on proposed zoning changes in the district;~~
 - ~~b. to review and advise council and the mayor on the social and physical plans for the district;~~
 - ~~c. to review and advise council and the mayor on the distribution of city services to the district;~~
 - ~~d. to meet annually with the mayor and council to discuss problems, needs and public affairs of the districts;~~
 - ~~e. to mandate, by a majority vote of all its members, a meeting within two weeks with the appropriate head of a major administrative unit of the City to discuss a specific district problem.~~
- ~~Council may, by ordinance, give additional powers and duties to community advisory boards. Each community advisory board shall hold public meetings, after reasonable public notice within~~

~~the district, not less than four times each year to afford an opportunity to district residents to make known their views and needs.~~

606. PROCEDURES OF COMMUNITY ADVISORY BOARDS

Council had an interest in keeping short reigns on the boards

~~Council shall, by general ordinance, prescribe procedures for the exercise of the powers and duties of community advisory boards.~~

607. FUNDS AND EXPENSES OF COMMUNITY ADVISORY BOARDS

Starved from receiving any support from the City, the boards were severely handicapped.

~~Community advisory boards shall receive no grants from city tax funds and community advisory board members shall serve without compensation. Community advisory boards may, however, accept donations and grants from any other source.~~

608. REVISION OF COMMUNITY ADVISORY BOARDS

Council had the power to amend but had no serious interest in doing so and as handicapped as the boards were by the City Charter, there was little public enthusiasm to push revisions.

~~Council may, upon receipt of a petition with signatures as required in section 602, amend the appropriate ordinance to revise the organization and procedures of a community advisory board. District boundaries shall be revised only as provided by section 601.~~

609. DISSOLUTION OF COMMUNITY ADVISORY BOARDS

Existing at the pleasure of Council and being ineffective and hardly functional, Council finally eliminated them City-wide effective December 31, 2000.

~~Council may, by ordinance, dissolve all community advisory boards as of the end of any fiscal year. A particular community advisory board shall be dissolved only by a petition signed by the same number of qualified electors residing in the community advisory board district required by section 602 and an ordinance adopted after a public hearing by council with public notice to that community advisory board district.~~

Article 8: General Provisions

801. DISCLOSURE OF INTERESTS

Moved to be the new Article 6, §618(d).

Moved to be Article 6, §618(d). ~~All elected officials of the City shall, on or before January 15, of every year during their term of office, file a disclosure, as of January 1 of that year, with the controller, which shall be available for public inspection and shall contain the following information:~~

~~a. the names of all business or non-profit corporations, associations, partnership, joint ventures, estates, proprietorships, trusts business activities and organizations, other than religious organizations and religious corporations:~~

~~——— 1. —— with which the official has any connection as an owner, officer, employee, consultant, contractor, creditor, shareholder, member, partner, joint venture, trustee, beneficiary or participant; or~~

~~——— 2. —— in which the official has any financial or property interest in any form, whether a legal interest or equitable interest or otherwise: stating as to each name, the nature of the connection or interest:~~

~~b. a brief description of all legal and equitable interests of any degree in real property held by the official;~~

~~c. a statement of the remaining amounts of any funds and contributions related to the officials most recent nomination and election, and by whom and how held; and~~

~~d. the names of all creditors of the official and debts as to which the official is co-signer, surety or guarantor in excess of \$1,000.~~

802. CAMPAIGN CONTRIBUTION AND EXPENSES

Moved to be the new Article 6, §618(e).

Moved to be Article 6, §618(e). ~~In connection with every election city office, each candidate for nomination or election, and every treasurer of a political committee or person acting as treasurer, shall file a public preliminary account or receipts and expenses five days prior to the election. The preliminary account shall be in the same form and contain the same information as required by law to be filed following an election except that the information shall be provided as of a time seven days prior to election.~~

810. PUBLIC RIGHT TO INSPECT RECORDS

Moved to be the new Article 6, §601

Moved to be Article 6, §601. ~~City records, the disclosure of which would invade a person's right to privacy, hinder law enforcement, endanger the public safety, or breach a legally recognized duty or confidence or the nondisclosure of which is legally privileged, or which have been prepared for or by the city solicitor for use in actions or proceedings to which the City is or may be a party, shall not be available for public inspection. All other city records shall be open for public inspection, but the officer, unit head, board or commission or other governmental agency of the City having the care and custody of such records may make reasonable regulations governing the time, place and manner of their inspection. For the purposes of preservation, copies of city records may be substituted for inspection in lieu of original records.~~

811. SEVERABILITY

In the event this charter or its amendments cannot take effect in its their entirety because of the judgment of any court of competent jurisdiction holding invalid any provision, the remaining provisions ~~of the charter~~ shall be given full force and effect as completely as if the provision held invalid were not included.

This section is an existing provision from the Charter and is included without modification in lieu of adding a separate severability clause that would be just for the amendment. The ratified amendment would become part of the Charter and thus be covered by this clause too.

812. EFFECT OF CHARTER ON EXISTING LAWS

Subject to pertinent enabling legislation authorizing a home rule charter, this charter shall supersede any existing charter and all acts or parts of acts, local special or general and all ordinances and resolutions of the City to the extent that they are inconsistent or in conflict with this charter as amended. All existing acts of parts of acts and ordinances affecting the organization, government and powers of the City, not inconsistent or in conflict with this charter shall remain in full force and shall be construed as if enacted under this charter, but as of the date of their original enactment. No contract existing on the effective date of this charter or its amendments shall be affected by it. Council by ordinance or resolution may supersede any act of the general assembly insofar as permitted by pertinent enabling legislation and this charter.

References to "as amended" and "its amendments" are added, the latter because the effective dates of the amendments differ from that of the Charter itself and should also apply respectively to the exclusion for contracts existing at the time.

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