

10-26-1962

Report on Partial Charter Revision (Municipal Measure No. 53)

City Club of Portland (Portland, Or.)

Follow this and additional works at: https://pdxscholar.library.pdx.edu/oscdl_cityclub



Part of the [Urban Studies Commons](#), and the [Urban Studies and Planning Commons](#)

Let us know how access to this document benefits you.

Recommended Citation

City Club of Portland (Portland, Or.), "Report on Partial Charter Revision (Municipal Measure No. 53)" (1962). *City Club of Portland*. 210.

https://pdxscholar.library.pdx.edu/oscdl_cityclub/210

This Report is brought to you for free and open access. It has been accepted for inclusion in City Club of Portland by an authorized administrator of PDXScholar. Please contact us if we can make this document more accessible: pdxscholar@pdx.edu.

REPORT
ON
PARTIAL CHARTER REVISION
(Municipal Measure No. 53)

Ballot Title: Act amending Chapters II, III, VII, & VIII of Charter relating to governmental powers, and procedures relating to election, financial, purchasing and contract matters, so as to delete or change obsolete ambiguous and conflicting provisions, to modernize, simplify, broaden or specify powers and procedures, and to facilitate administration.

To the Board of Governors,
The City Club of Portland:

ASSIGNMENT

Your Committee was appointed to study and report on the proposed partial charter revision referred to the voters by the City Council on August 8, 1962. The revision concerns Chapters II (Government), III (Nominations and Elections), VII (Finance) and VIII (Advertising and Contracts).

BACKGROUND

From 1948 to 1950, a committee appointed by Mayor Lee investigated the form of city government. That committee recommended various revisions of the Charter, including adoption of the Council-Manager form of government. Attempts were made to put such charter revision on the ballot in 1950 and in 1952, but both attempts were unsuccessful. In 1958, in the primary election, the Committee for Effective City Government proposed by initiative petition a charter amendment to establish a Council-Manager form of city government for the City of Portland. The measure failed by a narrow margin. During the course of that campaign, the Commissioners and the Mayor, who opposed it, suggested that the necessary modernization of the charter could be accomplished internally by the City Attorney's office.

As a result of this suggestion, the Council, in 1958, assigned to the City Attorney's office the task of reviewing the Charter and making revision suggestions. During 1958 and 1959, the City Attorney's office prepared in mimeographed form a document called "Charter Revision Suggestions" in which the Charter was reviewed section by section with recommended changes. It was the declared intention of the authors of these suggestions to limit themselves to purely housekeeping or procedural matters and not to affect either the form of city government or any rights or remedies under the Charter.

Following the preparation of these "Charter Revision Suggestions" a draft was made of specific Charter changes relating to Chapters I, III, V, & VI. This proposed Charter amendment, called "Partial Charter Revision", was adopted by the Council on August 9, 1960, as Municipal Measure No. 60. On October 21, 1960, a City Club Committee reviewed this proposal and recommended a YES vote (see City Club Bulletin Vol. 41, No. 21 Page 161-163). At the general election the ballot measure was defeated. The defeat was attributed largely to the general negative attitude of the people at that time toward ballot measures, particularly those with respect to appropriations. Although the partial charter revision did not in fact contain any appropriations, it did involve Chapter V dealing with the Fire and Police Disability and Retirement Fund, giving the impression that tax levies were involved.

After the defeat of the measure at the general election in 1960 the City Attorney's office continued work on proposed charter revisions and completed revision of Chapters II, VII, & VIII.

Because of its interest in matters relating to annexation, and in order to avoid the cost of putting each proposed annexation measure on the ballot, the Council decided to re-submit to the voters in the 1962 primary election, as City Measure No. 51,

only that portion of the 1960 proposal relating to general powers and annexation contained in Chapter I. On April 13, 1962, a City Club Committee composed of the same members as your present committee reviewed that proposal and recommended a "YES" vote. (See City Club Bulletin Vol. 42, No. 45 Pages 437-438.) This time the proposal was adopted by the voters on May 18, 1962.

Encouraged by the passage of the revisions relating to Chapter I, the Council on August 8, 1962, referred the present measure to the voters for the general election to be held November 6, 1962. This measure contains proposed revision of Chapters II, III, VII and VIII. The omission of the changes to Chapters V and VI, proposed in 1960, was explained to your committee as follows:

Whether or not justified, any proposed change in Chapter V, relating to the Fire and Police Disability and Retirement Fund, results in controversy. This is because voters seem to get the impression that a measure relating to a fund necessarily involves an appropriation of money. Further, active and retired firemen and policemen and their families become alarmed at any tampering with Chapter V which they themselves do not author and would likely generate substantial opposition to such a measure. In order to avoid such opposition to the entire measure, any changes to Chapter V will not be included as part of a package, but will be presented in a separate measure at a future date.

The revision of Chapter VI relating to the Dock Commission proposed in 1960 became unnecessary when the 1961 Legislature passed legislation to achieve the same objective.

Of the four revised chapters on the ballot in the forthcoming November 6, 1962 general election, only Chapter III (Nominations and Elections) has heretofore been presented to the public. It was included in the package defeated two years ago and is again presented, virtually unchanged.

The revisions to Chapters II, VII & VIII have not previously been presented to the voters and, as far as we can ascertain, were not made available to the public until referred by the Council on August 8, 1962.

INVESTIGATION

The proposed revisions are published in the revised form without annotation or explanation. It is impossible therefore to ascertain from reading the proposed revisions themselves what changes are made. It thus became necessary for your committee to make a detailed word for word comparison of the proposed revision with the present Charter. Despite the short time available, your Committee has performed this sizeable task in order to analyze the significance of the proposal now before the voters.

To assist in this section-by-section analysis your Committee met with Miss Marian Rushing, Chief Deputy City Attorney. Miss Rushing prepared the preliminary draft of the revisions which was reviewed within City Hall by other deputy City Attorneys, various department heads, the Mayor and Commissioners. After suggestions and comments were received the final draft was submitted to the council for adoption. During the course of this preparation no civic, business, labor, news media or other group was consulted nor were any drafts of the proposed changes circulated outside City Hall.

This lack of public participation in the preparation of these Charter revisions was presumably due to the attitude of the authors that they were engaged in a purely "housekeeping" enterprise and that they intended no policy changes of a substantial or controversial nature. Your committee's study, however, has led it to the conclusion that the measure goes substantially beyond mere "housekeeping". It contains proposals which, in our opinion, make substantial and controversial policy changes, and in some instances, highly objectionable ones.

ANALYSIS

A city charter, like a constitution, serves two prime purposes. First, it constitutes the grant of power which the people choose to delegate to a government and provides the basic structural organization for the exercise of such power. Second,

it contains express limitations and restrictions on the powers and procedures of government which the people deem necessary and desirable.

The proposed Charter revisions were fashioned with only this first purpose in mind. They appear to be concerned with the internal convenience of the operation of City Hall and demonstrate little or no consideration of the public's interest and concern in the operation of government. This serious shortcoming resulted from the erroneous assumption that changes which do not directly alter the form of government are by definition merely "housekeeping" and, therefore, require no collaboration with public or civic groups in their formulation.

CHAPTER II (Government)

Specific Enumeration of Powers

Most modern city charters eliminate specific grants of powers as unnecessary. Where long lists of specific powers are made, as in Portland Charter, Section 2-105, they are invariably followed by a statement that such enumeration is not to be construed as any limitation on the powers given the City under its general grant. (See present Section 2-120 and proposed Section 2-106.)

While most of the changes proposed for Chapter II are helpful clarifications or make express powers already implied in the general grant of powers to the City, they would all be unnecessary if the proposal conformed to the modern practice of omitting enumeration of specific powers. The specific powers now enumerated in Section 2-105 comprise seventy-eight subsections and cover fourteen pages in the present Charter. Rather than deleting this unnecessary list of specific powers, the proposed revision re-shuffles them into 64 subsections and in so doing creates problems not heretofore existing.

Limitation on Indebtedness

Present Subsection 24 of Section 2-105 was a simple limitation relating to bonded indebtedness:

"24. Except as otherwise expressly provided in this charter, the city shall not have the power to issue its bonds for any indebtedness, or for any purpose, or to increase the bonded indebtedness of the city in any amount or for any purpose whatsoever."

The revision contained in new Subsection 15 changes the section to a grant of power accompanied by a limitation. The limitation is the same as in present Subsection 24. The grant, however, is much broader and, as a result, is a grant *without limitation* of the power of the city to issue "certificates, warrants, checks, and other evidences of indebtedness":

"15. To issue city bonds authorized by this charter or statute or expressly authorized by vote of the City electors, certificates, warrants, checks and other evidences of indebtedness, but otherwise the city shall not have the power to issue its bonds for any indebtedness or for any purposes, or to increase the bonded indebtedness of the city in any amount or for any purpose whatsoever."

Providing Qualification of Specialists in Trades

Present Section 28 deals with a limited subject:

"28. To regulate the plumbing, drainage and sewerage of buildings and the use of steam boilers and steam generators; to provide for the registration of plumbers and stationary engineers; to create the offices and define the duties of plumbing inspector and boiler inspector."

In its revised form, however, new Subsection 32, perhaps unintentionally, puts the city in the business of providing for registration and *qualification* of specialists in trades or in installation or use of appliances and facilities:

"32. To regulate the plumbing, drainage and sewerage of buildings and structures and the installation and use of appliances or facilities for heat,

light, cooling and energy; to provide for the registration and qualification of specialists in trades or in installation or use of appliances and facilities; to provide inspection for such installation or use."

Whether the City should have the power to provide for *qualifications of specialists in trade* is one which might be of concern to many groups including labor unions.

Use of Prison Labor on Public Works

In new proposed Section 2-107 dealing with punishment for ordinance violations it is provided for the first time that persons punished by imprisonment may be worked "upon any public or other work under official supervision, or in any public place during the term thereof . . ." The question of the use of convict labor on public works in competition with the free labor market is a highly controversial subject in Oregon. Obviously, the proposed change cannot be deemed "housekeeping."

Public Nature of Meetings of the Council

Present Section 2-123 provides that "all meetings of the council and all committee meetings of the council shall be public." Revised Section 2-112 eliminates the requirement that committee meetings of the council be public.

Passage of Ordinances and Emergency Ordinances

Proposed Section 2-120 changes present Section 2-131 in several respects, two of which appear undesirable. Under the present provisions at least one week must elapse between introduction and final passage of an ordinance. As the Council customarily meets every Wednesday morning and Thursday afternoon, a matter introduced on a Thursday, for example, cannot be passed finally until the following Thursday. A citizen interested in a matter introduced on a particular day therefore ordinarily can anticipate final consideration exactly one week later. The proposed revision would reduce the waiting period to five days obviously for the purpose of enabling the Council in its Wednesday morning session to vote final passage of an ordinance introduced the previous Thursday afternoon. Although the convenience of the Council may be served by this change, we believe citizens appearing before the Council may find the uncertainty confusing and prejudicial.

Under the present Charter an emergency ordinance, which may be enacted upon the day of its introduction, must "specify with distinctness the facts *and* reasons constituting such an emergency". The revised provision requires either the "facts *or* reason" be specified. Emergency ordinances deprive the public of the week's lapse between introduction and final passage which is required for regular ordinances. The present Charter thus imposes strict requirements on the Council as a condition precedent to the exercise of this extraordinary power. The proposed revision, for no apparent reason, reduces the obligations of the Council to the public in the passage of such "emergency" legislation.

The Auditor

In the present Charter the provisions relating to the Auditor are separately stated in Chapter II, Article 4, distinct from the provisions relating to the Mayor and Councilmen. Although substantial parts of these provisions are retained in proposed Chapter II, Article 5, the new draft in numerous provisions now lumps the Auditor with the Mayor and Councilmen. The expressed reason for this was the fact that, like the Mayor and Councilmen, the Auditor is elected. We do not believe that it was ever intended that the Auditor be accorded the same status as the Mayor and Councilmen.

In this drafting process ambiguities were created. In the present Charter Section 2-402 the Council fixes the amount of the bond to be posted by the Auditor. In the proposed revision it is provided in Section 2-502 that the amount of the Auditor's bond be fixed by the Council, while in proposed Section 2-203 the Auditor is required to post a \$25,000.00 bond.

A more serious objection occurs in the matter of suspensions pending investi-

gation. Under the present Charter Section 2-304, pending an official investigation for official defalcation, wilful neglect of duty or official misconduct the Mayor may suspend any officer of the city except a councilman. Proposed Section 2-404 now excepts the Auditor as well as Councilmen from this power of the Mayor. Your committee believes this is unwise.

Of all administrative officers, the Auditor should be subject to suspension pending investigation of defalcation or misconduct. A dishonest Auditor may do infinitely more damage than a dishonest Councilman, who may legislatively be isolated by the remaining council members and whose administrative responsibilities may be taken from him by the Mayor. Ironically, this obviously inadvertent result places the Auditor in a more insulated position than Councilmen.

Mayor's Annual Message

The Mayor is now required by present Sections 2-301 and 2-302 to make an annual message to the Council on the conditions and affairs of the City, including a report of the exact condition of all franchises granted by the City. Your committee feels that the requirement of an annual message is highly important. Proposed Sections 2-401 and 2-402 eliminate this requirement. The only explanation given for this deletion was that it was inadvertent.

Mayor's Appointments of Members of Boards and Commissions

Under the present Charter, the Mayor appoints without Council approval the members of some boards and commissions, such as the Dock Commission (Section 6-102). The proposed revision, Section 2-601, adds to present Section 2-501 a provision that the Mayor appoint members of boards and commissions, subject to Council confirmation, thereby impliedly amending Section 6-102. This change, of course, lessens the already weak power of the Mayor under the present Charter. (See City Club report on Portland City Government, May 19, 1961 in City Club Bulletin Vol. 42, No. 51.)

Interest in City Contracts of City Officials, Agents and Employees

Proposed Section 2-606 constitutes an amalgamation of present Sections 2-110, 2-111 and 2-506. It lessens the present strict requirements that the Mayor and Councilmen not be:

“Directly or indirectly pecuniarily interested in any public service corporation engaged in business in the city of Portland or in or with any person or corporation having contracts with the city of Portland . . .” (Present Section 2-118).

The question of conflict-of-interest and how to deal with it is a highly controversial subject. The Dixon-Yates case, for example, reached the United States Supreme Court before it was finally determined that the contract there involved was illegal and void under the federal conflict-of-interest statutes. The changes sought by proposed Section 2-606 deserve full public consideration before adoption.

Liability on Bond of Superior Officer for Subordinate

Under present Section 2-604 every officer is made liable on his bond for “acts and omissions of his deputies, assistants, clerks and employees, appointed by him and of any and each of them”. This provision is entirely eliminated from the proposed Section 2-701 (Chapter II, Article 7 covering bonds for city officers or employees). This is a substantial policy change and cannot be deemed “housekeeping.”

Public Records

Present Charter Sections 2-701 and 2-702 provide that the “official books and papers of all the officers” and “all books and records of every office and department”, except the records of the police department, shall be open to public inspection and certified copies made available. Access to police records now requires Council permission.

Under proposed Section 2-801, the charter requirement that official books and papers of all officers may be inspected by the public is eliminated. With respect to the books and records of offices and departments, there would be excluded from public inspection under proposed Section 2-802 "all inter-departmental or inter-bureau advice or memoranda". Under this latter category, City employees might be permitted to withhold from public scrutiny a significant portion of their records. Such a limitation on the public's access to City records has no place in a City Charter. Further, such limitation is in conflict with the opinion of the Oregon Supreme Court in *MacEwan vs. Holm* (1961) 226 OR 27.

The proposed change represents an undesirable tendency of some government officials to value internal secrecy above the public interest. There may be certain limited areas in the administration of personnel problems and in the areas of criminal investigation which appropriately require secrecy. Apart from these limited areas, however, your Committee feels that government functions best in the public interest when it remains public.

Municipal Court

The original legislative charter granted the city of Portland in 1903 contained extensive provisions governing the Municipal Court, including its creation, jurisdiction and rules of procedure. In 1928 these provisions were removed from the Charter and continued in effect as Charter ordinances. As Charter ordinances these provisions may be amended by vote of the Council and do not require a vote of the people. As now proposed, vote of the people would be required to change any of these provisions. Your Committee feels that this is a step backward. The present Charter ordinances should not be frozen into the Charter.

The federal constitution provides for the entire federal court system in three short sections. The proposed charter revisions would insert in Portland's "constitution", nine sections approximately three times as long. This particular part of the proposed revision might more appropriately be termed "house-cluttering" rather than housekeeping.

A further objection is that the proposed revision, as it relates to appeals from Municipal Court, conflicts with the state law. Under ORS 157.020 (as amended in 1959), an appeal may be taken from Municipal Court to Circuit Court where any imprisonment or fine is imposed. Proposed Section 2-908 purports to limit the right of appeal to cases where imprisonment or a fine exceeding \$20.00 is imposed (except where the validity of constitutionality of the Charter or ordinance is involved).

CHAPTER III (Nominations and Elections)

As heretofore mentioned, this chapter was on the ballot in November, 1960. The changes proposed in this chapter are non-controversial clarifications and were previously approved by the City Club itself. (See City Club Bulletin, Vol. 41, No. 21, October 21, 1960.)

CHAPTER VII (Finance)

The major changes in the proposed revision of this chapter are laudable. They establish a procedure whereby special tax levies and bonds (other than bonds for public improvements payable out of assessments upon the property benefitted and sewer bonds) may be voted upon by the people as measures. This will eliminate much clutter from present Chapters VII and XI of the Charter, where specific special levies and bond issues are now set out as part of the Charter itself. It accomplishes in this field what the revisions to Chapter I (adopted in May, 1962) did, by eliminating long boundary descriptions from the Charter. Most of the other changes appear to make appropriate clarifications and modernizations.

Two substantive changes should be noted. Section 7-102 is changed to add the word "wilfully", so that it reads as follows:

"Any liability or liabilities *wilfully* incurred by the council to be paid in any fiscal year, which singly or in the aggregate shall be in excess of the revenues and receipts for such year, shall be null and void."

The consequences or purposes of this change are difficult to understand or

foresee. A question might well be raised as to what *inadvertent liabilities* may legally be incurred in excess of revenues and receipts under the proposed revisions.

Proposed Section 7-204 provides that bonds which are general obligations of the City shall not be issued if their total exceed four per cent of the true cash value of all real and personal property in the City. This is intended to replace the present limitation contained in present Section 10-105, that such obligations should not exceed seven per cent of the assessed valuation. Four per cent of true cash value may or may not be substantially the same as seven per cent of assessed valuation at this time. However, even if it is now, it may not be in some future time.

CHAPTER VIII (Advertising and Contracts)

This chapter deals with the very vital subject of the procurement policies of the City. There is perhaps no area of greater public interest than the method of expending public funds and the elimination of wasteful favoritism in this regard. The present Charter seeks to protect the public by requiring, with respect to purchases in excess of \$600.00, formal bidding in which only the lowest responsible bidder may receive the award. Proposed Section 8-105, which amends present Section 8-106, marks a substantial and, in the opinion of your Committee, unjustified and unfortunate departure from this principle. The proposed measure as compared with the present measure is shown as follows: (Omitted matter is bracketed; new matter underlined).

"The council shall make no purchase of supplies or [and] material in which a written contract is required under this Charter (i.e. in excess of \$2500.00) [in excess of Six Hundred (\$600.00) Dollars] without having duly advertised for bids on the same in the city official newspaper. On all other purchases of supplies and material, informal bids may be obtained. The council shall have no power to let any contract for any public improvement or for any supplies for the city of Portland for which formal bids are required unless [except] such contract be let to the lowest responsible bidder for the class or kinds selected by the council, whose bid is found by the council to be most advantageous to the City. [The specifications upon which the bids shall be made shall clearly state the kind, class, grade and quality of improvement or supplies desired and one or more sets of the specifications may be adopted by the Council]. The Council shall have the right to reject any and all bids or any part thereof. This provision shall not prevent the Council from employing labor direct to construct, carry on public works or to make public improvements. This section shall not be applicable to purchase of particular supplies or material when the council determines that no other product of equal value, utility or merit to the City is available for the same purpose or that the particular make or design of product is necessary for use in connection with equipment or property already owned or being acquired by the city, or that it is otherwise impracticable to obtain competition; in the event of such determination the Council may authorize purchase without prior bidding or advertisement therefore.

"Notwithstanding the provisions of this section, the Council may authorize obtaining informal bids without advertising when materials or supplies or a particular public improvement are urgently necessary for the public welfare and the time for advertising would result in delay improper in the circumstances.

"If the Council has rejected all bids on the grounds that the same were excessive, identical, collusive, non-responsive or otherwise unacceptable in the public interest, further advertising may be waived by the council, and purchase or improvements may be authorized within 90 days after such rejection without bids on a negotiated basis."

The proposed changes result in the following substantive changes, some of which, as hereinafter discussed, are undesirable:

1. Bidding is required for contracts in excess of \$2500.00 rather than for those in excess of \$600.00.
2. Bids need not be awarded to the "lowest" bidder, as now required, but may be awarded to the bidder "whose bid is found by the council to be most advantageous to the city".
3. The requirement is eliminated that the invitation to bid clearly state the kind, class, grade and quality of improvement or supplies desired and that one or more sets of specifications may be adopted by the Council.
4. In addition to the power to reject any and all bids for good cause the council would be given the right to reject, and by implication accept, any part of any bid, whether or not the invitation to bid indicated an intention to reserve such right.
5. Competitive bidding could be circumvented entirely by the Council merely by their determination:
 - a. that no other product of equal value, utility or merit to the City is available for the same purpose.
 - b. that the particular make or design of product is necessary for use in connection with equipment or property already owned or being acquired by the City.
 - c. that it is otherwise impracticable to obtain competition.
6. It permits abandonment of competitive bidding where public improvements are "urgently needed".
7. It would permit abandonment of competitive bidding if all bids to the original invitation are rejected.

Suddenly, what was meant as a *limitation* on the power of Council in this sensitive area of public contracts, where the possibility of corruption and favoritism is greatest, becomes an *enabling* act for abuse of discretion.

We were advised that the intention was to bring the city procurement practices in line with federal procurement practices. Unfortunately, the proposed Charter revision fails to accomplish this. We were given two examples of what the proponents of the change hope to accomplish by this proposal:

1. The city calls for bids on machine "x". *A* bids \$1000.00 and is low bidder. *B* bids \$1200.00 for machine "y", which he claims will perform all the work that machine "x" will perform, but in addition, will also perform what machine "y" performs, which machine, if purchased separately would cost \$500.00. The city may accept *B's* bid for \$1200.00 for machine "y", as most advantageous to the city.

2. The city calls for bids for the replacement of the roof on City Hall but lets each bidder vary its bid by including a period of time of free maintenance. *A* is low bidder, but includes only 6 months free maintenance. *B* bids a higher figure but includes 18 months free maintenance. The City figures *B's* bid is really lower because the cost of a year's maintenance is more than the difference between *A* and *B's* bids. Thus *B* gets the City contract.

Procurement in accordance with these practices would be destructive of competitive bidding because they would permit bidders to vary the terms of the "proposal", resulting in unequal bidding. In these examples, *A* would be bidding on oranges, *B* on apples, and, after bidding, the City would be determining what it wanted.

Neither of these cases could occur under federal procurement laws and regulations. In Comptroller General Decision B-135669 (38 CG 59), quoting from 17 CG 554, 558-9, the Comptroller General has stated the applicable principle:

"To permit public officials to accept bids not complying in substance with the advertised specifications or to permit bidders to vary their proposals after the bids are opened would soon reduce to a farce the whole procedure of letting public contracts on an open competitive basis. The

strict maintenance of such procedure required by law is infinitely more in the public interest than obtaining an apparent pecuniary advantage in a particular case by a violation of the rules."

Federal procurement procedures are governed by statute, the prototype of which is:

"Award shall be made with reasonable promptness by written notice to that responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered." (See 41 USCA Section 253.)

Federal regulations indicate that the "lowest bidder" to which award must be made is determined by consideration of price factors only.

"The lowest bid received is considered to be that bid which is lowest after consideration of price factors only." (See ASPR Par. 2-407.7.)

An individual bid may, and in fact must, be rejected only when it does not conform to the Invitation to Bid.

"Any bid which fails to conform to the essential requirements of the invitations for bids shall be rejected. Any bid which does not conform to the specifications contained or referenced in the invitation for bids shall be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation." (See ASPR Par. 2-404.2.)

Rejections of all bids may only be for good cause:

"The preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation." (See ASPR Par. 2-404.1.)

For advice on prevailing federal bid practices, your Committee consulted with a leading government procurement counsel with over 15 years experience on thousands of contracts involving expenditures of millions of dollars of public funds. He advised that federal contracts are invariably awarded to the *lowest* responsible bidder in the following manner:

"In other words, first determination on bid opening is to ascertain the low bidder. The second is to ascertain if that low bidder is a responsible bidder, and third, if the response meets the invitation requirements. If these conditions are met, award must, in the public interest, be made to that bidder as satisfying the requirement of law."

Rather than conforming to federal practice, the proposed charter changes would vary City procurement substantially from those requirements, with the following objectionable results:

1. They would eliminate the requirement that bids be awarded to the *lowest* responsible bidder.
2. They would permit the City to accept bids which do not conform to the invitation to bid.
3. They would permit abandonment of competitive bidding at the discretion of the Council.

The public interest cannot permit tampering with the integrity of the fair competitive bidding system. The proposed changes in Chapter VIII constitute a major threat to that integrity and are of such significance, in themselves, as to justify rejection of the proposed ballot measure.

CONCLUSIONS

The Charter is the formal instrument by which the people of Portland define their fundamental relationship with their city government. Charter revisions should be undertaken only with full citizen collaboration in their formulation and full public consideration of the resulting proposal. The present ballot measure was drafted entirely by city employees. No outside civic or other interested group was consulted, nor was the public apprised of the content of the measure until it was placed on the ballot only two months ago.

The proposed charter changes include certain desirable "housekeeping" revisions. On the other hand, many substantive changes are made. Many of these are controversial and, in the opinion of your Committee, some are objectionable. If these changes were widely known, substantial opposition would have been generated.

The proposed ballot measure should be defeated at this election. The Charter could then be submitted to interested groups for study, consultation and appropriate revision. In that way, a far more satisfactory measure could be submitted to the voters in 1964. The resulting delay would not affect adversely the operation of city government in the interim.

RECOMMENDATION

Your Committee recommends a "NO" vote on this proposed Charter Amendment which is City Measure No. 53.

Respectfully submitted,

Robert H. Huntington

Phillip H. Mayer

Robert C. Shoemaker, Jr.

Francis A. Staten

Paul R. Meyer, *Chairman*

Approved by the Research Board October 19, 1962, for transmittal to the Board of Governors.

Received by the Board of Governors October 22, 1962 and ordered printed and submitted to the membership for discussion and action.