

**Open Work Session
Charter Amendments
June 21, 2016**

Mr. Cannon said he would like to talk about the recommendations that Council would like to see made for the upcoming November ballot. Mr. Creamer said, on the draft timeline, the October 17th date needs to be added as the Charter amendments have to be published five times. Mr. Kilmer said he thought the Charter amendments had to be sent to the state for review. He asked if the Charter amendments were sent to the state last time. Mr. Kilmer said he thought Ed Baker reviewed the Charter amendments and then he sent them to the state to review. Mr. Creamer said he is not aware of the state reviewing the Charter amendments, but he is not certain. Mr. Kilmer asked Mr. Creamer to check on that requirement because if the Charter amendments need to be sent to the state then the timeline needs to be changed. Mr. Joe Holloway said he thought some of the council members had issues about how the budget is done per the Charter. Mr. Cannon said they were concerned that in the Charter once Council makes the budget recommendations to the Executive that there is no deadline for the Executive to return the budget back to the Council, and it could create a problem if the budget was returned at the last minute without Council having time to review it. The question is, if there should be a deadline for the Executive to bring the budget back to allow Council enough time to review it because, if not, it would revert back to the original budget. Mr. Creamer said it would revert back to the original budget if Council does not take action of some kind. He said by Council cutting the budget and submitting it back to the Executive, action has been taken on the budget. Mr. Creamer said the gray area of the Charter is, say the Executive does not ever return the budget back to the Council, what will happen. This year, if that happened, the amount that was cut from the budget, say it was \$300,000, and the Executive did not come back agreeing with Council's recommendation and did not offer any alternatives, the budget would have been adopted and the difference would have been used from the fund balance. Mr. Cannon asked, if the best approach would be instead of Council trying to figure this out, is to go through legal to get this tighten up with a recommendation. Mr. Creamer said he would need some guidance on what Council would like to see improved. Mr. Kilmer said the budget is something they talked about in the Charter Review Committee. As he recalls, the Charter Review Committee spent a long time talking about the budget, but they never came to any sort of conclusion. It is tough to say what you are going to do when you cut money as to where are you going to put it. Mr. Joe Holloway said that is the problem, and the next step is that Council would have to have the right to put the money somewhere. Mr. Strausburg said when Council makes spending reductions in the budget that is out of the hands of the Executive; those spending cuts stand. There is no formal action that needs to be taken by the Executive once Council makes the spending reduction. He said the gray issue is if Council thinks that spending increases in a particular department(s) is warranted. If Council says that it does not think there is enough spending on roads, the only way that gets back to Council is if the Executive agrees. Mr. Joe Holloway asked Mr. Strausburg if he is suggesting that Council needs the power to do something with the money, to which Mr. Strausburg responded, no, he is suggesting that if Council thinks increase appropriations to department(s) are needed, then Council may be uncomfortable with the amount of time between when Council makes those recommendations and when

Council is required by Charter to adopt the budget. Mr. Strausburg said from the Executive's standpoint, they also need a reasonable amount of time between when they receive the recommendations and when they need to get the budget back to Council. Mr. Creamer said the only unanswered question is, suppose a budget was submitted that did not use any funding from the prior year fund balance. Suppose the budget would be executed entirely from new revenue or revenue that would be produced in the coming fiscal year. Mr. Strausburg said Council would still have the authority to cut the budget whether they are using prior revenue or not. Mr. Creamer said the conundrum we are operating under, not by our own doing, so, say there is a significant amount of money cut from the budget, the writers of the Charter, which he believes, intended for the County Council, in reducing expenditures, is to have the authority to rebalance the budget by reducing revenue in some way. Mr. Creamer said Council cannot do that because Council is constrained from reducing the income tax by the state legislature, and Council is constrained from reducing the property tax because of the revenue cap. Mr. Cannon said the bottom line is Council thinks there needs to be some better closure creating deadlines for everyone, so everyone has the time to review the budget. Mr. Creamer said he will provide some recommendations. Mr. Strausburg said the Charter is very clear that Council does not have revenue authority other than the setting of the property tax rate. He thinks when Council believes additional appropriations are warranted for department(s) that is where there is no Charter authority to do that. He said he is not suggesting that Council should have the authority. He said what Council is saying is that once it makes suggestions, it needs the budget back from the Executive in some reasonable period of time before, by Charter, Council needs to adopt the budget. Mr. Cannon said another item that needs to be looked at is tightening up the 90-day issue with appointing an acting director for 90 days and leaving it open. Mr. Kilmer said the 90-day issue is something the Charter Review Committee looked at. He said what is in the Brief Book is what he prepared. It is not exactly what the Charter Review Committee recommended, but Section 414 is language that he provided to Mr. Cannon that says, "The appointment of any person appointed as Acting Director of Administration or acting head of a department may not exceed 90 calendar days except by Council approval. This appointment must be re-approved by the Council every ninety (90) calendar days. Mr. Kilmer said acting should not be a permanent situation or if it is permanent, it should be with the concurrence of the County Council. Mr. Kilmer said that language was not change too much from what the Charter Review Committee recommended. Mr. Creamer said he does not have any issues with the proposed changes. Mr. Creamer said he thinks section 407 needs to be reviewed as he thinks letter B should provide for the Director of Administration to sit as Acting County Executive until the provisions that are shown in bold are enacted. He said that could be two weeks, three weeks or four weeks, but if there is nobody at the helm during that period of time, that would not be good. Mr. Joe Holloway said he would like to see something in the Charter that says any votes on considering the expenditure of any funds, there has to be a full Council present to vote. Mr. Creamer said the Charter says the Council acts as a Council if there is a quorum. Mr. Kilmer said getting back to Mr. Creamer's concern, Section 407 already says "In the event of a vacancy, the Director of Administration shall serve as Acting County Executive until a new County Executive is appointed." Mr. Kilmer said that language is in the Charter now and it would not be changed. Mr. Creamer said he thought that language had been stricken, but the first part of letter A addresses his concerns. Mr.

Kilmer said he thinks the Charter Review Committee recommended if there was a vacancy early in the term instead of having someone appointed for three years, it would be an appointment until the next congressional election, and you can have a special election concurrent with that election. Mr. Kilmer said it is the same thing with the County Executive as the state constitution allows that now. Mr. Cannon asked about the situation with the Law Department. He said, obviously, there has to be a Charter amendment made. The Executive created an Economic Development Department that is not listed in the Charter. Mr. Cannon asked Council if it should remove the Economic Development Department or keep it and amend the Charter to include it. Mr. Creamer said the Charter contains a list of departments that should not be included in the Charter. The Charter specifically provides a mechanism for creating departments and for eliminating departments and that is sufficient. Mr. Cannon said that is the other side of the coin. He then asked if Council should amend the Charter to eliminate that section. Mr. Cannon said the whole Charter needs to be redone. Mr. Creamer said it would make more sense to remove the long list of departments and go back to the departments that were originally stated in the Charter, which were Finance, Public Works and Law. Mr. Creamer said that does not mean that there are not any more departments; it means that those are the foundational departments. Mr. Cannon said Council could do that. They want to get beyond the semantics as to whether or not they are effectively changing something in the Charter that changes that way the County does business. He can accept the fact that the Department of Economic Development maybe does not need to be listed in the Charter. Mr. Strausburg said he thinks what the Charter is saying is that those are the departments that the County must have. It does not mean that the County cannot have additional departments, but you must have those departments identified in the Charter. Mr. Creamer said you should not have to enact a piece of legislation, which takes a prescribed period of time and significant effort, and every time you want to create a department, you have to amend the Charter, that is ridiculous. Mr. Cannon said what about the other aspect and the Law Department. The Charter has specific definitions and reorganization has completely been thrown out the window, so the question is what does Council want to do in terms of the Law Department. Mrs. Harris said that she would like to counter in that the Charter does not have a definition for reorganization, which is part of the problem. Mr. Cannon clarified that the Charter has the definition, but that it needs to be more specific. Mrs. Harris said the Charter just says reorganization, it does not define what a reorganization is. Mr. Cannon said without challenging anything in court, Council might be able to get a Declaratory Judgment from a judge. Mr. Strausburg said the way to do that is to go to court. Mrs. Harris said a judge is not going to issue a Declaratory Judgment without going to court. Mr. Cannon said he is thinking that it may be a less formal process. Mrs. Harris said she is not even sure the court would want to be involved in this matter as they would rather for the County to work out what it thinks would be an appropriate definition. Mr. Cannon then requested clarification on what a Declaratory Judgment is used for. Mrs. Harris said a Declaratory Judgment is for when you anticipate a legal dispute, but the court, as with any process, expects the parties to negotiate and attempt to work out the issues before they come to court. Mr. Strausburg said, in his experience, a Declaratory Judgment sets a pretty high bar. Mrs. Harris said judges prefer for the parties to work amongst themselves to work things out, and it is only when the parties butt heads completely that the judge makes the decision. Mr. Cannon said that is where Council is at, as they

have sent two letters and had a discussion with the Executive. Mr. Joe Holloway said, in a personal situation, the parties had to meet three different times to resolve things. He said one time the parties met on their own, and the judge ordered them to meet the other two times. Mr. Cannon asked what does Council want to do as far as that part of the Charter that references oversight of the Law Department and the reorganization. Mr. Kilmer asked Mr. Cannon if he had an idea of what he would like reorganization defined as. Mr. Cannon said he does not have a specific idea. He thinks Council should get a legal definition on what is binding more so than what he might come up with. Mr. Kilmer said if the definition is put in the Charter, then it is binding. The Council writes the legal definition. Mr. Cannon said with all the Charter amendments, he thinks Council needs to defer to law. Mr. Kilmer said he understands the changes have to be reviewed by law, but if Council is making the proposed changes, Council should write the language and then have it reviewed by law. Mrs. Harris said she thinks it would be best for Council to come up with a definition that it thinks reorganization should be and then if the Executive disagrees or the voters disagree, then they disagree. Typically, that is the way things go to court. Mr. Cannon said he thought it was very specific in the Charter on the fact that they wanted to see a complete budget and a plan had to be turned in 60 days before the budget is submitted to Council. Mr. Creamer said that is what the Charter says. The problem is that process was ignored. Mr. Strausburg said the word reorganization is undefined in the Charter. Mrs. Harris said the memo is the Executive's argument of why the Department of Law has not been reorganized. Mr. Cannon said he did not agree with the memo. Mr. Kilmer said that is the issue, if the term is not defined there is a gray area, and the Executive defines it to suit the Executive and Council defines it to suit the Council. Mr. Cannon said they have to defer to a legal definition of reorganization so that when it goes in the Charter and the recommendation is made, no one can skirt around that issue. Mr. Kilmer said for the purpose of this Charter, Council defines what the legal definition is. There is no set definition in what reorganization means in law. It is defined for every different document. Mr. Kilmer said if Council wants a definition in the Charter, it defines what it is and that definition is legally binding. Mr. Cannon said Council could define what a reorganization is, but he thinks it could be challenged. Mrs. Harris said she thinks whatever Council defines as reorganization, there should be a basis for how Council came up with the definition. She said she would have to check Black's Law Dictionary to see if the definition is in there, but that is just an example of what it could be. Council could use the definition out of Webster's Dictionary or anything. Mr. Kilmer explained that Council is the legislative body that writes the law. Mr. Cannon said he does not choose to do that independently, he would rather defer to someone that has a legal background to suggest a reorganization definition that would hold up. Mr. Joe Holloway said Council needs to write the definition and then get legal advice. Mr. Kilmer said if Council wants to go down this road, and it has an idea of what it wants a reorganization to be, Council should write the definition and then it goes to legal counsel, and he will tell Council yea or nay. Mr. Matt Holloway said he volunteers Mr. Kilmer to write the definition. Mr. Cannon asked if this is something that we need in the Charter or does Council what to change the Charter so the Law Department now becomes separate representation for the two branches of government. Mr. Joe Holloway said he has said for years, and it has nothing to do with Paul Wilber or Ed Baker, that each branch of government should have its own attorney. He does not know if that needs to go in the Charter or not. Mr. Cannon asked does there need to

be a Law Department or should it just be acknowledged that legal assistance could be contractual. Does it have to be established as a department? Mr. Strausburg said you will still end up with the dynamic that Mr. Joe Holloway mentioned in that you can have a difference of opinions between the Executive and Legislation branches. Mr. Joe Holloway said he thinks the Executive needs a Law Department because of the function of what he does. Mrs. Harris said the Executive definitely needs a Law Department. Mr. Strausburg said the language in the Charter would have to be amended if Council wants a separation because the Department of Law is currently defined as a single department that represents both branches of government. Mr. Creamer said the Law Department as written in the current Charter has operated both ways, contractual and in-house. When this Charter went into effect, Ed Baker was the County Attorney, and he was still in private practice. He was in no different of a capacity then what Paul Wilber is now, except Ed Baker was the only member of the firm that did County work. Mr. Cannon said perhaps what Council needs to do is look at changing the Charter so the Executive maintains the Law Department as Mr. Joe Holloway suggested. Since the Executive has an administrative function, he has all the departments in line, and the Council, per the current Charter, is allowed to hire legal counsel. He thinks Council needs to fine-tune the Charter and probably remove Council from its authority and oversight of the Law Department itself. Mr. Creamer said all the other charter counties with an elected county executive operate with an in-house Law Department, and they have at least one attorney in the Law Department that attends the County Council meetings and business and there is someone else in the Law Department that is assigned to work on matters for the County Executive, and some lawyers work for Planning and Zoning. Mr. Creamer said that is how they handle things in the big counties. Mr. Cannon said the Executive's Law Department would be writing legislation to benefit the Council's business and affairs, and there may be a situation where Council wants to come up with something that it wants the Executive to prepare. Mr. Strausburg said, in his opinion, he thinks the reason the Charter was written in the manner in which it is written with the Department of Law representing the County was to de-politicize the Law Department. Mr. Cannon said another issue may come up where the County Council wants to take a particular initiative on behalf of the County, and it would be nice to have a County Attorney just representing them as opposed to just legal counsel. Mr. Strausburg said Council really wants its legal advice being given with the County's best interest devoid of political considerations, and he thinks that is why the Charter language was originally drafted in the manner it is drafted. Mr. Cannon said that is why the County Council is supposed to be approving the appointments, then the attorney would be beholden to two branches of government, but when you have an Acting County Attorney that is floating out there for eternity, he is not beholden to this Council whatsoever. He is only beholden to one branch. Mr. Cannon said with that being the situation, which direction does the Council want to go. Does Council want to maintain a hybrid relationship, so there is an attorney beholding to two branches of government? Mr. Kilmer said Council has the ability to hire their own attorney for legal advice and help and that is sufficient for Council's business. He said the larger issue is the Acting County Attorney or Acting Department Head, as recommended by the Charter Review Committee, should be approved by the County Council. Mr. Kilmer said he thinks Mr. Strausburg is right in the sense that having a Law Department represent both branches of government does de-politicize and offers the County Attorney some independence from both branches of government. You want

an attorney that should be free to tell both the Executive and Council, no you are wrong. Mr. Cannon said he agrees, but Council needs the authority to appoint that person. Mr. Cannon said, if the 90 days issue with Acting Department Heads or Acting County Attorney is fixed, that may resolve some of the other issues. Mr. Kilmer said that may be the simplest way to handle it. Mr. Strausburg said he would like to get clarification because some of the people that are appointed as acting, they want to stay as acting. They want to stay acting because they are in a merited classification, and they do not want to be a political appointee. Mr. Strausburg said if Council is suggesting it wants the ability to have affirmation over acting that is one thing, but if Council is suggesting that they cannot have acting and that person needs to bubble up and become permanent, he thinks over time Council is going to run into problems, because there will be some people who just do not want to become political appointees. Mr. Davis said that person would then have to find another job. Mr. Strausburg said John Redden has been with the County for 30 years, and he does not want to get caught up in politics and be on the wrong side of politics. Mr. Kilmer said he thinks Mr. Strausburg is correct, but what was suggested is that any person appointed as Acting Director of Administration or acting head of a department, their term cannot exceed 90 days except by Council approval. He said you can be acting for five years, just every 90 days Council has to approve it. It would be a disincentive to have years of long acting department heads that we recognize that are not necessarily what was intended. Mr. Strausburg said, in that type of situation, from an administrative standpoint, when you are trying to run the affairs of the County, you really do not want a Public Works Director who is acting. You want a Public Works Director who is the County's Public Works Director. Mr. Strausburg said sometimes it is hard to find a person who can fill that slot. Mr. Creamer said the illustration that Mr. Strausburg is using is actual, but what has caused the level of angst is a different acting. Mr. Kilmer said the Charter should not be written necessarily about a specific circumstance, and this is an issue that the Charter Review Committee talked about years ago, and it was recognized as a loophole. This is not directly in response to the Acting County Attorney situation. Mr. Kilmer said they can serve as acting for 90 days, then the Council has to approve or reject, and then every 90 days the acting person could remain in the position with Council approval. Mr. Matt Holloway said as long as the position is being advertised over that 90 days, he does not see any reason why the Council would not approve it. If they are having trouble filling the position because they cannot find a qualified candidate, he does not think Council will have a problem approving the acting person. Mr. Strausburg said Mr. Joe Holloway was saying that he really thinks the County Council should have its own attorney and the County Executive should have its own attorney. He said if Council goes in that direction, he does not think the County Council should have any approval or authority over the Executive's attorney. Mr. Kilmer said as part of the Executive's Office, specifically, he should have the right to hire legal counsel because that is not in the Charter. Mr. Joe Holloway said the Executive's Office will run into that situation because Paul Wilber is not experienced in everything, such as collective bargaining or bonds, so the Executive's Office is going to have to have the means to be able to hire legal counsel. Mr. Kilmer said he thought they were talking about things more specific for the Executive's Office. Mr. Strausburg said the Executive has no authority over who Council hires, so he suggests that the playing field needs to be level if the County is going to have two attorneys. Mr. Cannon said he thinks the intention of having one attorney was so the Executive and Legislative branches would

not be getting into extended brawls where you have two different legal opinions battling each other out. Both branches would have to defer to the legal counsel to decide what is best for the County as a whole. Mr. Creamer said the Executive Branch would have an opinion and the Legislative Branch would have an opinion and what both branches of government have are just opinions. Mr. Cannon said he thinks Council should fine-tune the 90-day issue and keep the legal department responsible to both branches of government. Mr. Joe Holloway said this is going to be not just for this Council and this County Executive, this is going to be for future years. He said the Department of Law worked for eight years and then there was a change of opinion as the new County Executive wanted to do something different. The next Council and County Executive may be fine with the arrangement, but then eight or ten years later, this matter may come up again. He thinks there needs to be some kind of stability. He said he understands what Mr. Kilmer is recommending on the 90-days for acting people, but this needs to be set in stone. Mr. Cannon said Council does not have to approve the 90-day extension as it can say this is your last 90 days, so you need to hire someone permanent for the position. Mr. Joe Holloway said the Executive is not going to be happy. Mr. Cannon said we have to work in unison. Mr. Joe Holloway said it is not going to be in unison if the Executive does not agree. Mr. Cannon said out of the entire population of the County, he does not see why both branches of government cannot find an attorney they agree upon. Mr. Kilmer said the acting thing is not just about attorneys, it is about any department head. He said he thinks everyone agrees that acting should be temporary by the very name of it. If it is acting, we need to recognize the temporary nature of it. Mr. Kilmer said it is up to everyone to decide if it should go on the ballot. Mr. Cannon said he is assuming that Mr. Creamer will have Mr. Baker look into fine-tuning these matters. Mr. Joe Holloway said unless something has changed, Mr. Culver is not going to change his mind, and we are going to be in a great big fight. Mr. Cannon said it will be a Charter amendment, and it will be on the ballot in November, and it will be very specific by the time it is done. Mr. Kilmer said this is something that was recognized as a deficiency by the Charter Review Committee, and not specific to this situation. Mr. Kilmer said it was recognized a long time ago that the acting issue is flawed in the Charter, it is just the previous Council did not put it on the ballot. Mr. Joe Holloway said there are not many attorneys for both branches of government to agree on, as there are not many attorneys that practice government law. Mr. Cannon said that is a problem in every County. Mr. Kilmer asked if Council is going to vote at some point on what to put on the ballot or is that going to be done at the next work session. Mr. Cannon said the next work session is when Council will specifically decide what needs to be done. Mr. Strausburg asked what the deadline is to get the ballot questions to Elections. Mr. Strausburg said he will be meeting with Elections one day next week, so he would like to let them know. Mr. Joe Holloway asked if they can do an either/or like the school board. Mr. Kilmer said he thinks it is a yes or no.

Signatures are on the following page.

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John T. Cannon, President



Matt Holloway, Vice President



Ernest F. Davis, District 1



Marc Kilmer, District 2



Larry W. Dodd, District 3



John B. Hall, District 4



Joe Holloway, District 5



Matthew E. Creamer, Council Administrator