

Robert's Notes – City Charter Amendments

FOR THE JANUARY 11, 2018 PUBLIC HEARING

Written by: Robert J Smith, Council Member District 8

The Charter Review Committee was appointed by the council to review the charter and provide a list of recommendation for charter amendments.

There will be a public hearing on these suggested amendments on Thursday, January 11th 2018 where the public will get a chance to comment on the proposals or make their own suggestions. The purpose of this document is to list the proposed amendments and summarize what they mean and why they are being proposed.

My notes were put together in a hurry due to the time constraints placed on us by the county elections department. Please excuse all typos, grammatical errors, and remember that all of this was typed after a sixteen hour work day during flu season.

The Charter Review Committee is recommending a total of 41 changes:

19 Legal Updates – These would bring our charter in compliance with changes to state and federal law

13 High Priority Updates – These were noted as high priority by the committee.

9 Medium Priority Updates – These were less critical to the committee.

I've listed the Amendments as they have been presented to council and included an explanation of each amendment as I understand them under each item. Amendments are presented in the following format:

Amendment # [Article # of the Charter, Section #, Page # in the Garland Charter Red Line PDF]

Description of the Amendment from the Charter Review Committee

A plain English, general explanation of what the amendment is about. This explanation should not be interpreted as a position of support or opposition for the amendment.

Additional space is included under each amendment for note-taking.

Links:

"Red Line" version of the charter, re-printed from the 2018-01-08 Council Work Session Agenda:

http://robertjsmithtx.com/charter/Garland_Charter_Red_Line.pdf

Official Current City Charter:

<http://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=garlandset>

LEGAL UPDATES, AMENDMENTS 1-19

Amendment 1 [Article III, Section 11, p. 9]

Amend Charter to be consistent with state law and the Texas Constitution, clarifying that in the event of a vacancy on Council, or any officer appointed by Council, the person vacating their respective office shall remain in office until such time as a successor is sworn into the vacated office.

Our charter determines what a 'vacancy' is, but based on a number of recent changes in state law there has been a lot of confusion as to what that actually meant legally. This change would bring the charter into sync with state law and clear up how we handle the effects of resignations.

Amendment 2 [Article IV, Section 6, p. 13]

Amend charter to set the term of office for the Municipal Judges to two years and update obsolete references and titles.

This is correcting the charter to match state law regarding appointment terms and terminology.

Amendment 3 [Article VIII, Section 2, pp. 19-20]

Amend charter to provide that the City Manager shall file the budget with the City Secretary on or before the date set by state law.

State law governs budget timing and composition. New charter language is offered to simplify this requirement and provide a reference to the state law that governs this process.

Amendment 4 [Article VIII, Section 3, p. 20]

Amend Charter to provide that the budget be prepared in accordance with state law and delete the current provisions listing specific requirements of the City Manager's budget.

Since we're required to follow state law which can change from year to year on our budget rules, the recommendation is to directly refer to state law instead of trying to keep a copy of state law in the charter itself.

Amendment 5 [Article VIII, Section 5, p. 20]

Amend charter provisions relating to public access of the proposed budget to accommodate digital and electronic access by the public.

This sets the initial public hearing notification to be issued when the budget is received from the city manager instead of the first council meeting where the budget is presented. The public hearing notification method will use provisions established in state law.

Amendment 6 [Article VIII, Section 6, p. 21]

Amend Charter so that the scheduling and adoption of the budget is done in accordance with state law, updating terminology, and setting the 21st day of September as the last day on which Council may approve a final budget prior to the proposed budget being deemed to have been finally adopted by the council.

This once again removes certain specifics out of the charter and refers to the rules established by state law. Should the council not adopt a formal budget by Sep 21st, then the budget that the City Manager submits to council would be automatically adopted.

Amendment 7 [Article X, Section 1, pp. 23-24]

Amend Charter provisions relating to the authority to issue bonds, time warrants, certificates of obligation, notes, and other evidences of indebtedness to be in accordance with state law and the Texas Constitution.

The language in this section is being greatly simplified and refers to the state law which already governs the various debt instruments that the city uses.

Amendment 8 [Article X, Section 3, p. 26]

Amend Charter provisions relating to establishing a bond study committee no later than 6 months preceding an election and the procedures that must be followed to hold such an election to be in accordance with state law and the Texas Constitution.

Instead of specifying that the bond committee must be convened in September preceding a May election, this would set the committee start date to 6 months prior to any election date. If a bond election were held

in November during the general election, this would allow formation of the committee in May of that same year. For May elections, the committee would need to be formed in November.

Amendment 9 [Article X, Section 10, p. 28]

Amend Charter to add a Section 10 to Article X providing that each bond proposition shall be in a form consistent with state law.

This would require bond propositions to have all information required by the state plus the expected maximum tax impact on the ad valorem tax rate for each project.

Amendment 10 [Article XI, Section 1, p. 28]

Amend Charter provision relating to the requirements to be a member of the Plan Commission by deleting the **unconstitutional real property ownership requirement** to serve as a member and substituting it with a residency requirement.

In 2017, the city legal team advised the council that the real property ownership requirement for a plan commissioner was unconstitutional, comparing it to an 'economic test' for holding public office. This measure would repeal that provision.

Amendment 11 [Article XII, Section 2, pp. 33-34]

Amend Charter so that the following items are **consistent with state law**:

- the number of signatures required on a petition of a person desiring to become a candidate for an office on City Council, and
- the filing deadlines for candidacy petitions.

State law and county timelines override most of what is in our charter today. This amendment would replace the dates and numbers in our charter with references to state law.

Amendment 12 [Article XII, Section 8, pp. 36-39]

Amend Charter provisions relating to the recall of the Mayor or Councilmember to update and clarify the petition submittal requirements, the petition process and schedule, the form of the petition, the required number of signatures, the verification process, and clarify and update vacancy and holdover terms.

These proposed changes are in direct response to the staff, council and petitioner's experiences during the recent recall process. Here is a summarized list of the changes:

- *Extends the amount of time that the city secretary has to prepare the petitions from 2 working days to 5.*
- *Requires a statement of intent for each recall effort*
- *The petitions are delivered to the person who initiated the recall*
- *A sufficient number of petition forms will be supplied based on the number required to recall the official.*
- *Specifies elements that must be present on the petition*
- *Provides for the circulator's signature for each page.*
- *The person accepting the petitions from the city secretary will sign a receipt.*
- *If forms are not picked up within 3 working days, then the statement of intent to recall will be considered to be withdrawn.*
- *The petition must be fully and properly completed.*
- *The petition must be returned within 30 days, have the appropriate number of signatures, have the signed affidavits, etc, otherwise it is considered invalid.*
- *Within 10 working days, the city secretary will certify the petition.*
- *The city secretary will not verify the authenticity of signatures or addresses.*
- *A petition that is deemed insufficient will be returned to the petitioners and must be picked up within 3 working days, otherwise it will be deemed as withdrawn.*
- *Once the petition is accepted, the City Secretary will post the item on the agenda of the next council meeting.*
- *Once received by council, the mayor or council member will have 10 working days to decide to either resign or be placed on the recall election ballot.*
- *If they choose to resign, then the holdover provisions in the state constitution apply.*

Amendment 13 [Article XIV, Section 5, p. 42]

Amend Charter so that publication of proposed ordinances by referendum is consistent with all other publication requirements of the Charter and **in accordance with state law.**

Removes specific references to a Garland newspaper and allows for publishing in a newspaper that circulates generally in our area.

Amendment 14 [Article XV, Section 1, pp. 42-43]

Amend Charter provisions relating to the general powers of the City in regard to utility systems **to be consistent with state law.**

This change lists all of the various things that the city is allowed to do with our utility system based on state law.

Amendment 15 [Article XV, Section 2, p. 43]

Amend Charter provisions relating to franchise fees to update terminology and **be consistent with state law.**

Franchise tax is renamed franchise fees, and language is added to detail that council has the power to set the franchise fees.

Amendment 16 [Article XV, Section 6, p. 44]

Amend Charter provisions relating to the terms and conditions of granting franchises to public utilities, and the notification thereof, **to be consistent with state law.**

Refers to state law for terms and conditions. Removes specific references to a Garland newspaper and allows for publishing in a newspaper that circulates generally in our area.

Amendment 17 [Article XVII, Section 4, pp. 47-48]

Amend Charter provisions relating to claims against the City to update terminology and clarify substantive requirements of any written notices of personal injury or death submitted to the City.

This requires people with a claim against the city to submit ‘facts in sufficient detail so a determination can be made’, replacing the language ‘stating specifically’.

Amendment 18 [Article XVII, Section 14, p. 52]

Amend Charter provisions to exclude liability coverage by the City on claims arising out of the criminal conduct of city officials and any claim that is excluded from coverage under a policy of insurance of the City.

This would change the liability insurance that the city provides for its employees’ actions to exclude certain criminal actions by employees and any other thing that is expressly excluded from the liability policy (a catch-all provision that matches the city’s policy up to the plan).

Amendment 19 [Global Updates, Entire Charter]

- Gender Neutrality
- Correction of obsolete and incorrect citations, references, titles, and correction of typographical errors

This is a language cleanup and update, and should have no material impact on the document.

HIGH PRIORITY AMENDMENTS FROM THE REVIEW COMMITTEE:

Amendments 20 - 32

Amendment 20 [Article III, Section 1(C), p. 5]

Amend Charter to change the residency requirements for persons running for Council:

- **[Current Provision]** the candidate reside within the Council district at the time of his or her nomination
- **[Proposed Provision]** the candidate reside for a minimum of one year in the Council district at the time of his or her election or appointment.

Currently, a person must live in the district when they file for council member or mayor, usually in Jan/Feb prior to the May election. This change would require a person to live in the district for a year prior to the May uniform election day. For appointees, the candidate would need to live in the district for a year prior to being appointed.

Amendment 21 [Article III, Section 1(D), pp. 5-6]

Amend Charter to change the eligibility requirements for a person serving as a member of Council, including Mayor, **for three consecutive terms** so that:

- he or she is not eligible to serve in any capacity on Council until at least one complete term of the office for which he or she was elected or appointed has elapsed, and
- the definition of “term” is consistent with state law and is to include partial terms that are a minimum of 364 days.

If a council member served for 3 consecutive terms, then they would not be allowed to immediately run for mayor. For instance, Districts 3/6/7/8 are elected in the same year as the mayor. So if a council person was to be re-elected to three consecutive terms, then they would have to take a 2 year break (which would be one complete term of office for council D8), before being allowed to run for Mayor. If I were in District 1/2/4/5, I would have to take a 3 year break – because I would take the 2 year break which satisfies the requirement, then wait an additional year for the mayoral election to happen again.

A person could be elected to the council for two terms, serve one term as mayor, but then be ineligible to run again until they had taken off one term as the mayor, but only if Amendment 22 (next) fails to be enacted. If Amendment 22 were to be enacted, then a council member could not resign to run for mayor.

Amendment 22 [Article III, Section 1(E), p. 6]

Amend Charter to move Section 1(E) to Section 1(F) and be replaced with a provision that prohibits a Councilmember, including the Mayor, who vacates his or her office prior to the end of the scheduled term from serving again until one complete subsequent term has elapsed.

This amendment would prevent a council person from resigning to run for mayor. It would also prevent a council member who resigned in response to a recall effort from running for their own seat in the next election.

Amendment 23 [Article III, Section 3, pp. 6-7]

Amend Charter to increase the compensation for the Mayor and City Council, **effective October 1, 2018**, to take into account a consumer price index inflation adjustment since **October of 2000**, and provide for an ongoing annual inflation adjustment.

	<u>Mayor</u>	<u>Councilmember</u>
Current Base:	<u>\$400 per month</u>	<u>\$200 per month</u>
Proposed Base:	<u>\$575 per month</u>	<u>\$288 per month</u>
Current Special Meeting:	<u>\$50 per special meeting</u>	
Proposed Special Meeting:	<u>\$72 per special meeting</u>	

This establishes a sliding pay increase for council members and the mayor that is based on inflation. The amount has been back-dated from the last established salary in 2000, then inflated to current dollars.

Amendment 24 [Article III, Section 5, p. 7]

Amend Charter provision relating to vacancies so that in the event a vacancy occurs on Council, the Council may elect to either:

- appoint a qualified person by majority vote, or
- hold a special election in accordance with state law.

When a council member resigns or a vacancy is created in their position currently, the Texas constitution requires that member to continue to serve until their successor is sworn in. Usually this means waiting until the next uniform election date (in May). This change would allow the council to either opt to wait until the next uniform election date or, but a majority vote, appoint someone to finish out the term.

Amendment 25 [Article IV, Section 1, pp. 9-10]

Amend Charter to update the titles of the offices of City Auditor and Municipal Judge and clarify that a former councilmember may not receive a council appointment within one (1) year of the expiration of the term for which he or she was elected or appointed

This section changes the name of the auditor from 'Internal Auditor' to 'City Auditor' and clarifies that a council member/mayor could not become a city manager / auditor / attorney for at least a year after the end of their last term.

Amendment 26 [Article IV, Section 3, p. 12]

Amend Charter to clarify that Council does not have the authority to direct or request a **Council appointee** to hire or remove any person from an office directed by a **Council appointee**.

NOTE: The City Attorney also recommends substituting the unenforceable penalty of forfeiture of office (as currently provided) and substituting therefor an enforceable penalty. Suggestions have included loss of pay, loss of committee membership, etc

Currently, a council member may not instruct the city manager to hire or fire an employee, although they may discuss hiring strategy, etc. This would extend that prohibition to all persons appointed by the council (City Attorney, Municipal Judges, etc). The current penalty for violating this provision is the possibility of expulsion by a majority vote of the council. According to legal, expulsion from office is not enforceable under current law. The city legal team has recommended looking at alternative consequences that may be levied by the council.

Amendment 27 [Article IV, Section 5, p. 12]

Amend Charter to allow for the office of City Secretary to be appointed and managed by the City Manager.

The City Secretary and Staff have been under management by the City Manager for some time now. This would formalize the arrangement and make the City Secretary an employee as opposed to being an appointee. Part of Amendment 30 also applies to this issue.

Amendment 28 [Article IV, Section 9, pp. 14-15]

Amend Charter by inserting provisions related to the qualifications, general powers and duties of the office of City Auditor, which shall be revised and moved from Article VII, Sections 4 and 5.

This new section of the charter details the duties and responsibilities of the City Auditor.

Amendment 29 [Article V, Section 2, pp. 15-16]

Amend Charter to provide that the City Council may appoint a City Manager for a definite term of two (2) years.

This would extend the appointment time of the City Manager from 1 year to 2 years, in line with other council appointees.

Amendment 30 [Article V, Section 3, pp. 16-17]

Amend Charter to:

- update titles of existing council appointees
- describe the general duties of the office of City Secretary
- grant the City Manager the authority to appoint, supervise, and remove the City Secretary

This would remove the city secretary as a council-appointed position and transfer the appointment power to the city manager.

Amendment 31 [Article VI, Section 1, p. 17]

Amend Charter to provide that the City Council may appoint a City Attorney for a definite term of two (2) years.

This would extend the appointment time of the City Attorney from 1 year to 2 years, in line with other council appointees.

Amendment 32 [Article XI, Section 10, pp. 32-33]

Amend Charter to provide:

- a one year residency requirement to be eligible to serve,
- that terms expire when the member of Council who nominated the respective board member or commissioner leaves office,
- for term limits of three consecutive terms for any term of office commencing after May of 2018, and
- prohibit councilmembers who have served for three consecutive terms of office on Council from being eligible to immediately serve on a board or a commission.

This would:

- *Require member of boards, commissions and committees to live in-district for at least 1 year. This would expressly prevent council members from appointing people to boards if those people lived outside of the council district.*
- *Connect a board member's term to their appointing council member's. However, the holdover provision would still apply, meaning that a board member would serve until their successor had been appointed by council.*
- *Set term limits on board members to three consecutive terms, starting May 2018.*
- *Prevent council members from going straight from council to serving on a board or commission.*

MODERATE PRIORITY AMENDMENTS FROM THE REVIEW COMMITTEE: Amendments 33 - 41

Amendment 33 [Article II, Section 2, p. 3-4]

Amend Charter to clarify the City's authority to purchase electric utility facilities inside or outside the City limits

This provision would allow the city to purchase land or facilities outside of the city limits to increase the size of our electric transmission and distribution systems.

Amendment 34 [Article III, Section 8, p. 8]

Amend Charter to allow Council to hold meetings at City Hall or other location designated by Council within the city limits

Right now our charter states that all meetings have to be held at the 'municipal building'. This gives the city the authority to move the meeting to another building within the city limits. The intent of this amendment is to allow for flexibility in case of disaster, building issues or security concerns.

Amendment 35 [Article III, Section 9, pp. 8-9]

Amend Charter to clarify that the Council shall adopt its own rules of procedure at the beginning of each term, but in the event the Council does not amend the rules at that time, the rules for the prior term shall be deemed to be adopted by the Council, and to increase the time the City Secretary has to enter the minutes of all meetings in the permanent record from 48 hours to 72 hours.

If council doesn't adopt its operating rules at the beginning of each term, then the old rules apply. [Note, council can propose changes to its operating rules at any time]. This amendment would also extend the amount of time that the city secretary has to enter meeting minutes into the permanent record. This accounts for three day weekends and meetings that occur late on Fridays.

Amendment 36 [Article IV, Section 10, p. 15]

Amend Charter by repealing provisions related to the authority of the City to sale public utility systems due to provisions in state law that grant such authority to the City.

This amendment would repeal all language regarding sale of public utilities, because state law directly governs this activity.

Amendment 37 [Article V, Section 1, p. 15]

Amend Charter to require that the City Manager reside within the City within 6 months of his or her appointment and throughout his or her term in the office.

The city manager will be required to move into the city within 6 months of taking office, and will be required to live in the city continuously during their employment.

Amendment 38 [Article VII, Section 1, pp. 17-18]

Amend Charter to update terminology by changing the reference to “police and fire” service to “public safety.”

This is a simple verbiage change, but I’m unsure as to the reason behind it since section 5 acts as a catch-all provision. This might just be a simple terminology change.

Amendment 39 [Article VIII, Section 4, p. 20]

Amend Charter relating to public access of the proposed budget be amended to accommodate digital and electronic access by the public.

This requires the City Secretary to put the budget on the city’s website.

Amendment 40 [Article XV, Section 7, pp. 44-46]

Amend Charter provisions relating to outdated reporting requirements of public utility franchises be repealed.

Old reporting requirements would be removed.

Amendment 41 [Article XVII, Section 12, p. 50]

Repeal Charter provision relating to the submission of the original Charter to the voters of the City of Garland in 1951.

This section, while historically interesting, is in regards to the initial adoption of the Charter in 1951. This amendment would remove the language from the charter.

Minority Report:

Laura Perkins Cox

Article XI, Section 10, pp. 32-33

Dissenting Opinion on Proposed Term Limits for Boards and Commissions

Ms. Cox dissents to the proposal to amend the charter to provide term limits of three consecutive terms.

One member of the charter review committee officially dissented to Amendment 32, which sets term limits on members of boards and commissions.