



CITY OF DALLAS

Memorandum

DATE March 19, 2014
TO The Honorable Chair and Members of the Charter Review Commission
SUBJECT Suggested Technical Changes Still Outstanding

Following is a list of suggested technical changes, each with an explanation and a recommendation:

III §11

Clarify when the mayor is absent and when the Mayor Pro Tem assumes the duties of the Mayor. State that the Mayor is not absent if the Mayor can be reached by telephone or email.

Explanation: The meaning of the term “absent” is subject to debate. Does it mean when the Mayor is absent from city hall, absent from the city, absent from the state, or absent from the country? Also, modern technology allows the Mayor to continue governing the city even if the Mayor is not physically present.

The Commission requested information on when the Vice President can take over the duties of the President. The 25th Amendment to the U.S. Constitution states:

“Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President. . . .

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President. Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President

and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.”

Recommendation: Amend the first and second sentences: “The city council shall elect one of its members as mayor pro tem, who shall perform the duties of mayor in the case of the [absenee-er] inability of the mayor to perform the duties of office, who shall, during that time, be vested with all the powers belonging to the mayor. The council shall also elect one of its members as deputy mayor pro tem to act in the inability [absenee] of both the mayor and the mayor pro tem and to exercise the powers of the mayor during that time.”

III §17(c)

Amend the charter and code of ethics to conform to state law, which prohibits a city from terminating an employee who runs for public office. (See Texas Local Government Code §150.041.)

Explanation: This subsection prohibits an employee from running for any office in Dallas County, any office in another county having contractual relations with the city, or any office that would conflict with his position as an employee. Texas Local Government Code §150.041, which became effective on June 14, 2013, states: “A municipality may not prohibit a municipal employee from becoming a candidate for public office.” There are no cases or opinions construing the statute. The legislative history for the statute states: “Recently, some municipal employees have been terminated or disciplined because they have become candidates for public office. These punishments often occurred because of a misunderstanding of current election and municipal laws. H.B. 3739 seeks to remedy this problem by stating that a municipality may not prohibit an employee from becoming a candidate for public office, nor may it take disciplinary action against an employee for the sole reason that the employee is running for office.”

Recommendation: Delete Subsection (c): “[~~If any employee of the city becomes a candidate for nomination or election to any elective public office within Dallas County; or elective public office in another county within the state, having contractual relations with the city, direct or indirect; or any elective public office that would conflict with his or her~~”

~~position as an employee of the city, the employee shall immediately forfeit his or her place or position with the city.]”~~

Various

Wherever there is a publication requirement, change the requirement to publication as allowed by state law.

Explanation: The Local Government Code has eliminated the requirement to advertise in a newspaper of general circulation in many situations. See the attached chart of publication requirements for details.

Recommendation: Replace references to “publication in a newspaper of general circulation” with “notice as provided by state law” in the following locations:

III §19(a) amend the penultimate sentence: “A summary of the annual financial statements and the audit report [~~such report of the auditor or auditors~~] shall also be published as required by law [~~once in a newspaper of general circulation in the city~~].”

IV §13(a): No change recommended because there is no state law requiring publication of candidate campaign contribution disclosure reports.

IV §13(b): No change recommended because there is no state law requiring publication of candidate campaign contribution disclosure reports.


XI §3 amend the second sentence: “Following the public hearings, the council shall pass on first reading the appropriation ordinance and shall cause notice to be provided in accordance with state law [~~it to be published in a newspaper of general circulation in the city~~] with a separate schedule setting forth the items in the city manager’s estimate that were omitted or changed by the council, if any.”

XV §4(3) amend the third sentence: “Notice of such public hearing shall be provided in accordance with state law [~~published at least one time in a newspaper of general circulation in the city~~] at least 10 days prior to the date of said hearing, or as otherwise provided by [~~state law or~~] this charter.”

XVIII §7: “The descriptive caption or title of each ordinance stating in summary the purpose of the ordinance and the penalty for violation of the ordinance, shall be published in accordance with state law [~~published at least once in a newspaper of general circulation in the city, unless otherwise provided by state law or this Charter, in which event the specific provisions shall be followed~~].”

XVIII §15: “Whenever any ordinance or proposition is required by the Charter to be submitted to the voters of the city at any election, the city secretary shall cause notice of the ordinance or proposition to be provided in accordance with state law [~~printed in a newspaper of general circulation in the city and published once~~] at least 10 days prior to election.”

XXII §2(a) amend the third sentence: “Notice of the time and place when and where such contract shall be let shall be provided in accordance with state law with ~~[published in a newspaper of general circulation in the City of Dallas once a week for two consecutive weeks prior to the time set for letting such contract,]~~ the date of the notice ~~[first publication]~~ to be at least 14 days prior to the date set for letting said contract.”


JOHN ROGERS
Assistant City Attorney

Attachment (1)
Chart of publication requirements

PUBLICATION

| CHARTER PROVISION | SUGGESTED CHANGE | CURRENT STATE LAW PUBLICATION REQUIREMENT | CURRENT PRACTICE |
|--|--|---|--|
| <p>SEC. 19. INDEPENDENT AUDIT. A summary of such report of the auditor or auditors shall also be published once in a newspaper of general circulation in the city.</p> | <p>III §19 amend the penultimate sentence: "A summary of the annual financial statements and the <u>audit report</u> [such report of the auditor or auditors] shall also be published <u>as required by law</u> [once in a newspaper of general circulation in the city]."</p> | <p>Texas Local Government Code § 103.003. FILING; PUBLIC RECORD. (a) The annual financial statement, including the auditor's opinion on the statement, shall be filed in the office of the municipal secretary or clerk within 120 days after the last day of the municipality's fiscal year. (b) The financial statement is a public record.</p> | <p>The audit is published in a newspaper of general circulation in the city. It is also available on the Financial Transparency portion of the Dallas City Hall website: http://dallascityhall.com/transparency/index.html</p> |
| <p>SEC. 13. DISCLOSURE OF CANDIDATE CONTRIBUTIONS. (a) The city secretary shall cause to be published, in a newspaper of general circulation or on the city's website, on at least two separate dates (20 and two days, respectively) prior to each election or recall election, a notice disclosing the names and contribution amounts</p> | <p>No change suggested. The Charter allows for newspaper publication or online posting. The City Code, Chapter 15A §15A-11(b), requires contribution reports to be filed electronically and to be posted on the City website.</p> | <p>There is no state law requiring publication of candidate campaign contribution disclosure reports.</p> | <p>The reports are immediately posted on the City website.</p> |

PUBLICATION

| CHARTER PROVISION | SUGGESTED CHANGE | CURRENT STATE LAW PUBLICATION REQUIREMENT | CURRENT PRACTICE |
|--|---|---|--|
| <p>of individuals and political committees making contributions to the campaigns and/or election committees of the candidates for mayor and city council that have been reported to the city secretary prior to the dates of publication.</p> | | | |
| <p>SEC. 13. DISCLOSURE OF CANDIDATE CONTRIBUTIONS. (b) The city secretary shall also cause to be published, in a newspaper of general circulation or on the city's website, a notice disclosing the names and contribution amounts of individuals and political committees making contributions to the campaigns and/or election committees of the candidates for mayor and city council reported to the city secretary following any election or recall election.</p> | <p>No change suggested. The Charter allows for newspaper publication or online posting. The City Code, Chapter 15A §15A-11(b), requires contribution reports to be filed electronically and to be posted on the City website.</p> | <p>There is no state law requiring publication of candidate campaign contribution disclosure reports.</p> | <p>The reports are immediately posted on the city website.</p> |

PUBLICATION

| CHARTER PROVISION | SUGGESTED CHANGE | CURRENT STATE LAW PUBLICATION REQUIREMENT | CURRENT PRACTICE |
|--|---|--|--|
| <p>SEC. 3. ANNUAL APPROPRIATION ORDINANCE. Upon receipt of the city manager's estimate, the council shall call a public hearing upon the submitted budget to be held before a committee of the council, or before the entire council sitting as a committee of the whole. Following the public hearings, the council shall pass on first reading the appropriation ordinance and shall cause it to be published in a newspaper of general circulation in the city with a separate schedule setting forth the items in the city manager's estimate that were omitted or changed by the council, if any.</p> | <p>XI §3 amend the second sentence: "Following the public hearings, the council shall pass on first reading the appropriation ordinance and shall cause notice to be provided in accordance with state law [it to be published in a newspaper of general circulation in the city] with a separate schedule setting forth the items in the city manager's estimate that were omitted or changed by the council, if any."</p> | <p>Loc. Gov't Code § 102.0065 (a) The governing body of a municipality shall publish notice before a public hearing relating to a budget in at least one newspaper of general circulation in the county in which the municipality is located.</p> | <p>The budget notice is published, as required by law.</p> |
| <p>SEC. 4. DUTIES OF ZONING COMMISSION. The zoning commission</p> | <p>XV §4(3) amend the third sentence: "Notice of such public hearing shall be</p> | <p>Loc. Gov't Code § 211.007 (c) Before the 10th day</p> | <p>The publication is made as required by law.</p> |

PUBLICATION

| CHARTER PROVISION | SUGGESTED CHANGE | CURRENT STATE LAW PUBLICATION REQUIREMENT | CURRENT PRACTICE |
|--|--|---|------------------|
| <p>shall: (3) Act as an advisory body to the city council in relation to any changes in the boundaries of the various original districts and any changes in the zoning ordinances and regulations to be enforced therein. Such recommendation shall be made after advertisement of and a public hearing held thereon. Notice of such public hearing shall be published at least one time in a newspaper of general circulation in the city at least 10 days prior to the date of said hearing, or as otherwise provided by state law or this charter.</p> | <p><u>provided in accordance with state law [published at least one time in a newspaper of general circulation in the city] at least 10 days prior to the date of said hearing, or as otherwise provided by [state-law-er] this charter.</u></p> | <p>before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. If the property within 200 feet of the property on which the change is proposed is located in territory annexed to the municipality and is not included on the most recently approved municipal tax roll, the notice shall be given in the</p> | <p></p> |

PUBLICATION

| CHARTER PROVISION | SUGGESTED CHANGE | CURRENT STATE LAW PUBLICATION REQUIREMENT | CURRENT PRACTICE |
|-------------------|------------------|--|------------------|
| | | <p>Section 211.006(a) The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for adopting and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.</p> | |

PUBLICATION

| CHARTER PROVISION | SUGGESTED CHANGE | CURRENT STATE LAW PUBLICATION REQUIREMENT | CURRENT PRACTICE |
|---|---|--|--|
| <p>SEC. 7. PUBLICATION OF ORDINANCES. The descriptive caption or title of each ordinance stating in summary the purpose of the ordinance and the penalty for violation of the ordinance, shall be published at least once in a newspaper of general circulation in the city, unless otherwise provided by state law or this Charter, in which event the specific provisions shall be followed.</p> | <p>XVIII §7: "The descriptive caption or title of each ordinance stating in summary the purpose of the ordinance and the penalty for violation of the ordinance, <u>shall</u> be published in accordance with state law [published at least once in a newspaper of general circulation in the city, unless otherwise provided by state law or this Charter, in which event the specific provisions shall be followed]."</p> | <p>Loc. Gov't Code § 52.013 (a) The governing body of a home-rule municipality may publish a caption of an adopted ordinance that summarizes the purpose of the ordinance and any penalty for violating the ordinance in lieu of a requirement in the municipality's charter that the text of the ordinance be published.</p> | <p>The City Secretary's Office publishes ordinance captions the Saturday following adoption, unless otherwise provided within the ordinance.</p> |
| <p>CHAPTER XVIII. ORDINANCES AND RESOLUTIONS SEC. 15. PROMULGATION OF ORDINANCES BEFORE ELECTION.</p> | <p>XVIII §15: "Whenever any ordinance or proposition is required by the Charter to be submitted to the voters of the city at any election, the city secretary shall</p> | <p>Loc. Gov't Code § 9.004 (a) The governing body of a municipality on its own motion may submit a proposed charter amendment to the</p> | <p>The City Secretary's Office publishes the ordinance caption the Saturday following adoption of the ordinance calling the election. Further, the Election Notice which contains the ordinance and proposition language are filed within the stipulated timeline.</p> |

PUBLICATION

| CHARTER PROVISION | SUGGESTED CHANGE | CURRENT STATE LAW PUBLICATION REQUIREMENT | CURRENT PRACTICE |
|--|--|---|---|
| <p>Whenever any ordinance or proposition is required by the Charter to be submitted to the voters of the city at any election, the city secretary shall cause the ordinance or proposition to be printed in a newspaper of general circulation in the city and published once at least 10 days prior to election.</p> | <p>cause <u>notice</u> of the ordinance or proposition to be provided in accordance with state law [printed in a newspaper of general circulation in the city and published once] at least 10 days prior to election."</p> | <p>municipality's qualified voters for their approval at an election.</p> <p>(c) Notice of the election shall be published in a newspaper of general circulation published in the municipality.</p> | |
| <p>CHAPTER XXII. PUBLIC CONTRACTS SEC. 2. CONTRACT LETTING. (a) All city contracts calling for or requiring the expenditure or payment of an amount required by state law to be competitively bid creating or imposing an obligation or liability of any nature or character upon the city, must first be submitted for competitive bids in accordance with this chapter. Such bids shall be</p> | <p>XXII §2(a) amend the third sentence: "Notice of the time and place when and where such contract shall be let shall be provided in accordance with state law with [published in a newspaper of general circulation in the City of Dallas once a week for two consecutive weeks prior to the time set for letting such contract;] the date of the <u>notice</u> [first publication] to be at least 14 days prior to</p> | <p>Loc. Gov't Code § 252.041</p> <p>(a) If the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. The date of the first publication must be before the 14th</p> | <p>Procurement follows the procedure required by law.</p> |

PUBLICATION

| CHARTER PROVISION | SUGGESTED CHANGE | CURRENT STATE LAW PUBLICATION REQUIREMENT | CURRENT PRACTICE |
|---|---|---|-------------------------|
| <p>based upon plans and specifications prepared for that purpose. Notice of the time and place when and where such contract shall be let shall be published in a newspaper of general circulation in the City of Dallas once a week for two consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least 14 days prior to the date set for letting said contract. Such contract shall be let to the lowest responsible bidder.</p> | <p>the date set for letting said contract.”</p> | <p>day before the date set to publicly open the bids and read them aloud. If no newspaper is published in the municipality, the notice must be posted at the city hall for 14 days before the date set to publicly open the bids and read them aloud.</p> | |