

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

March 22, 1989

89-0981

Agenda item 84: Ordinance ordering a special election for Saturday, May 6, 1989, for the purpose of submitting to the voters an amendment to the City Charter to require creation of a civilian review board

Councilman Lipscomb moved passage of the ordinance.

Motion seconded by Deputy Mayor Pro Tem Ragsdale and unanimously adopted.

Assigned ORDINANCE NO. 20252.

03/22/89

ORDINANCE NO. 20252

An ordinance ordering a special election to be held in the city on the question of adoption of an amendment to the Charter of the City of Dallas; authorizing creation of a civilian review board; designating May 6, 1989, as the date of the special election; prescribing the form of the ballot; designating polling places; providing for voting by an electronic voting system; providing for absentee voting; providing for a special canvassing board to canvass absentee voting; providing for notice of the election; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That a special election is ordered to be held in the city on May 6, 1989, between the hours of 7:00 a.m. and 7:00 p.m., for the purpose of submitting to the qualified voters of the city, a proposition on whether a new Section 9 should be added to Chapter XII of the Charter of the City of Dallas. The proposed amendment shall read as follows:

SEC. 9. CIVILIAN REVIEW BOARD.

(a) There is hereby created and established a civilian review board to be composed of eleven (11) members, one for each council representative, who are qualified citizens of the City of Dallas. Biennially, in August of each odd-numbered year, the city council shall appoint the board members, one member for each council district. Each council representative shall appoint the board member of his/her choice, not subject to approval of other council representatives. The members of the civilian review board shall not hold any other position under the city, county, state or federal government, nor shall any member be a city, county, or state employee. A civilian review board member may be employed by a program funded by county or state funds so long as the program is not a direct

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unit of county or state government. The members of the civilian review board shall neither be employees nor members of any law enforcement or law investigative agency, nor volunteer, nor reserve, nor private security agency, nor shall any member be formerly the same. No civilian review board member shall be in the immediate family of a law enforcement officer or official.

(b) Immediately after the appointment of the complete civilian review board, the board shall organize by electing one member as chairperson and one member as vice chairperson. The first order of business for the civilian review board shall be that of appointment of a staff, which shall consist of secretary, attorney(s) and necessary staff, and investigator(s), neither of whom shall be members of the civilian review board. The civilian review board shall appoint a duly qualified secretary who shall record, maintain, and secure records of board meetings, actions, and business.

(c) Attorney. The civilian review board shall appoint a special attorney who shall be a qualified attorney-at-law. The special attorney shall be responsible for legal advice to the board. In any legal dispute, the special attorney shall represent the board. The civilian review board special attorney shall not be a member of the Dallas city attorney department. Where necessary and feasible, the special attorney may serve as a special prosecutor. The special attorney shall be provided with a staff of at least one attorney and at least one paralegal researcher, as needed, subject to approval of the board. The special attorney and staff shall be completely separate from and independent of the city attorney and staff. The city attorney shall not have any authority over the special attorney. The city attorney shall not even serve in an advisory capacity to the special attorney.

(d) Investigator. The civilian review board shall appoint a duly qualified investigator to work under the supervision of the special attorney and civilian review board. The investigator shall not be a member of city, county, nor any other law enforcement agency.

(e) The staff shall be fulltime paid staff employees of the civilian review board. The board shall provide employee rules. The board shall submit a budget to the city council who shall so provide. Staff positions shall be considered unclassified.

(f) Subpoena Power. In any investigation conducted by the board, it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation and to administer oaths to such witnesses.

(g) A person who fails to obey a subpoena or order of the civilian review board to produce books, papers, or other evidence, or fails to appear, commits an offense and, upon conviction, shall be fined not exceeding \$200. A person is guilty of a separate offense for each day or portion of a day during which the failure to obey the subpoena is continued.

(h) Functions of Board. The civilian review board shall review citizen complaints against city police officer(s) (regular or reserve) that involve an injury or claim of civil rights or civil liberties violation upon receipt of a written complaint from one or more citizens.

(i) In any and every fatality inflicted against a citizen by city police officer(s) (regular or reserve), the board shall investigate completely independent of any other investigation. In such instances, the board representative shall be the agency that submits its findings before the appropriate grand jury(s). The Dallas police department's investigation shall be submitted to the civilian review board. In any case under investigation by the civilian review board, the police department shall not submit a case nor recommendations to the grand jury unless same is subpoenaed by grand jury(s).

(j) After an investigation and a public hearing, the board shall make one of the following determinations:

(1) There exists probable cause that a criminal law was violated by said officer(s).

(2) Available evidence does not indicate that a criminal law was violated.

In the instance of the former, the board shall vigorously seek indictment; in the latter, the board may recommend a "no bill" or make no recommendation. The board shall also determine:

(3) if a citizen was abused according to the definition of abuse of a citizen as herein listed; and

(4) if a Dallas police department policy and/or procedure was violated.

The civilian review board shall have the power to impose disciplinary action against any city police officer(s) subsequent to the outlined procedures and after a public hearing, providing all due process of law. Any disciplinary action shall be based on a finding that a citizen was abused or that an established Dallas police department policy and/or procedure was violated. In appropriate circumstances, both disciplinary action and grand jury action shall be taken. The decision of the board in any disciplinary action shall be final

and shall be considered the exhaustion of administrative remedies.

(k) The civilian review board may advise the chief of police and the civil service board.

(l) Citizen's Rights. One or more citizens shall have the right to file written charges of abuse of a citizen against any city police officer(s) before the civilian review board. One or more citizens shall also have the right to file written charges alleging a Dallas police officer violated established Dallas police department policies and/or procedures. Abuse of a citizen shall constitute any instance of physical brutality, abusive language, harassment, or violation of civil rights or civil liberties. The board shall, within five (5) days, furnish the police officer(s) with a copy of the complaint. The board shall conduct an investigation and thereafter conduct a public hearing wherein a decision shall be made as to its findings. A citizen may file on behalf of a second party.

(m) Board Policies. The civilian review board shall have the power to adopt and/or amend the board's governing by-laws. A quorum of the board shall be seven (7) members. The board members shall be compensated as determined by the board itself for each regular or special called meeting or hearing.

(n) Where there exists any other section(s) of the city charter that is inconsistent with the provisions of this section, the provisions of this section shall prevail and supersede all other section(s) inconsistent therewith.

(o) This section applies only to police action committed on or after its effective date.

SECTION 2. That an electronic voting system shall be used for the special election in compliance with the provisions of the Texas Election Code, and the vote shall be upon an official ballot prepared in such a manner as will permit the voters to vote "Yes" or "No" upon the proposition submitted, with the proposition to be expressed on the official ballot in a form substantially as follows:

PROPOSITION NO. _____

CREATION OF CIVILIAN REVIEW BOARD

Shall a Section 9 be added to Chapter XII of the Charter of the City of Dallas to create an 11-member civilian review board, each member to be appointed by an individual city council member, with the power to review and investigate allegations of police civil rights violations or abuse of citizens, issue subpoenas, appoint a special attorney and staff to investigate allegations, be compensated for meetings and hearings, and discipline officers only upon a finding that a citizen was abused or Dallas police department policy violated and after the officer has been provided all due process of law?

PROPOSICION NUM. _____

Deberá agregarse la Sección 9 al Capítulo XII de la Carta Constitucional de la Ciudad de Dallas para crear una junta de revisión civil compuesta de 11-miembros, cada miembro siendo nombrado por un miembro del consejo de la ciudad, con el poder de examinar e investigar alegaciones de violaciones de derechos civiles o abuso de ciudadanos por parte de la policía, extender citaciones, nombrar un abogado especial y personal para investigar alegaciones, ser compensado por asistir a juntas y audiencias, y disciplinar oficiales unicamente en el fallo donde un ciudadano fue abusado o violado por el departamento de policía de la ciudad de Dallas y después de haber proporcionado al oficial de policía todo el debido proceso de la ley?

SECTION 3. That voting at the election and for the casting of absentee ballots, both by personal appearance and by mail, shall be by the use of a lawfully approved electronic voting system. The regular polling places shall be open from 7:00 a.m. to 7:00 p.m. on the date of the election. Absentee voting shall be conducted in accordance with Section 9 of Ordinance No. 20232.

SECTION 4. That the boundaries of the election precincts for the election are those established in Ordinance No. 20231. Locations of the polling places in the respective voting precincts are as designated in Ordinance No. 20232, as amended.

SECTION 5. That the election shall be held and conducted in the manner provided by law governing the holding of city charter elections by home rule cities of the State of Texas, and the official ballots, together with such other election materials as are required by the Texas Election Code, as amended, shall be printed in both the English and Spanish languages, and shall contain such provisions, markings, and language as may be required by law.

SECTION 6. That the absentee ballots shall be canvassed by a special canvassing board to be appointed in accordance with the Texas Election Code.

SECTION 7. That notice of the election shall be given by the mayor, or, in her absence or inability to act, by the mayor pro tem, by publication as required by state law in a newspaper of general circulation published in the city.

SECTION 8. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

ANALES LIE MUNCY, City Attorney

BY Chisa Davidson
Assistant City Attorney

Passed MAR 22 1989

9157J

Memorandum

CITY OF DALLAS

DATE March 14, 1989

TO Honorable Mayor and
Members of the City Council

SUBJECT PETITION TO AMEND CITY CHARTER - CREATION OF CIVILIAN REVIEW BOARD

On February 23, 1989, Joan Smotzer and other citizens filed with the city secretary a petition seeking a referendum to amend the city charter. A copy of the proposed charter amendment is attached.

The Texas Local Government Code provides that if a petition to amend the charter is signed by five percent of the registered voters of the city, or 20,000, whichever is less, the city council must call an election for the next available uniform election date.

The Texas Election Code provides that the city secretary may use any reasonable statistical sampling method in determining whether a petition contains the required number of valid signatures. We have used the verification procedure adopted by the state of Washington to test the petition submitted by Ms. Smotzer. This is the procedure employed in the past to verify similar initiative petitions.

We have determined that, based on an unrestricted random sample of the signatures submitted, the petition contains in excess of the 20,000 names required. Therefore I recommend that the city council certify the petition as sufficient and order a special election to submit the proposed charter amendment to the voters on May 6, 1989, the next available uniform election date. The ordinance calling the special election will be on the March 22 council agenda for your consideration.

If you have any questions, please let me know.

A handwritten signature in black ink, appearing to read 'Robert S. Sloan'.

ROBERT S. SLOAN
City Secretary

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