



CITY OF DALLAS

Memorandum

DATE March 7, 2014
TO The Honorable Chair and Members of the Charter Review Commission
SUBJECT Technical Changes Recommended for Approval at the March 4, 2014 Meeting

Following is a list of technical changes recommended for approval at the March 4, 2014 meeting, each with an explanation and recommended wording:

III §6(a)(b) *City Council does not actually meet every week.*
Explanation: City Council adopts a calendar of meetings every year. City Council does not meet in July. City Council does not meet on the fifth Wednesday of the month. In 2014, for example, City Council is not meeting on January 1 (New Year's Day), March 12 and 19 (Spring break), the entire month of July (Summer break), November 26 (Thanksgiving), and December 17 and 24 (Christmas).
Recommendation: Amend the section: "(a) On the day the members of the city council take office, they shall meet at the building designated as the official city hall, and thereafter all regular meetings of the city council must be held in the city hall building in such locations and at such times as may be prescribed by ordinance, resolution, or lawfully-posted notice. [At least one regular meeting of the city council must be held each week unless postponed or canceled for valid reasons as determined by the city council.]"
(b) For purposes of this Charter, a regular meeting of the city council means a [weekly] meeting of the full city council at which city council members vote or are briefed on matters of interest to the city."

III §10 *Allow City Councilmembers to abstain from voting if required by any law.*
Explanation: The section lists only two reasons to abstain from voting (votes on their own conduct and their own financial interest). Dallas City Code Chapter §12A-3 also requires City Councilmembers to abstain if the vote could affect the financial interests of clients, employers, related businesses, potential employers, family members, and domestic partners. Other state law, now or in the future, may require abstention.
Recommendation: Amend the first sentence: "No member shall be excused from voting except on matters involving the consideration of his

or her own official conduct, where required by law, or where his or her financial interests are involved, and in those instances, the member shall not vote.”

III §19

Change reference to “accounts, records, and transactions” to “annual financial statements” because that is what is actually audited. Require the CPA to be licensed by the State of Texas. Certification of budget estimates is the duty of the city’s internal auditor, not the external independent auditor.

Explanation: This amendment is proposed to properly clarify the actual responsibilities of the external auditor and to mirror state law. The original language allowing an auditor to hold a license issued by another state conflicts with State law requirements that auditors must be licensed by the State of Texas. Certain duties have been removed from this section since these are not responsibilities of the external auditor. The requirement for newspaper publication has been removed since it is not required by the Local Government Code Chapter 103, but the change requires the city to follow state law which gives flexibility if the law changes.

Recommendation: Amend the section: “The city council shall cause the annual financial statements and related records and accounts of the city to be audited annually by a certified public accountant licensed by the State of Texas. [~~an independent audit to be made of the books of account, records, and transactions of all the administrative departments of the city at least once yearly. Such audits, during such fiscal year, shall be made by one or more certified public accountants who, for the three years next preceding, have held a certificate issued by the state board of accountancy of the State of Texas, or by a state maintaining an equal standard of professional requirements, which entitled the holder of such certificate to a Texas certificate.~~] The auditor [~~or auditors to make the audit~~] shall be selected by the city council, and shall be responsible to the council. [~~The duties of the auditor or auditors so appointed shall include the certification of all statements required of the city manager in the annual budget estimate. Such statements shall include a balance sheet, exhibiting the assets and liabilities of the city, supported by departmental schedules, and schedules for each utility publicly owned or operated, summaries of income and expenditures, supported by detailed schedules; and also comparisons, in proper classification, with the previous year.~~] The report of such auditor and the financial statements and related audit opinion [~~or auditors~~] for the fiscal year shall be printed and a copy shall be furnished to each city council member and the city manager, and a copy shall be kept available in the office of the city secretary for inspection by any citizen upon request. 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~~]. The financial statements and audit opinions [~~original report of~~

~~the auditor or auditors]~~ shall be kept among the permanent records of the city.”

III §20

Clarify that the Chief Financial Officer is responsible for management of the city's financial assets. Move responsibility for deposit of funds from XI §13 to this section. Require that deposits be made promptly rather than within 24 hours.

Explanation: The city has a Chief Financial Officer, not a treasurer or controller. Language regarding deposit of funds can be consolidated into this section, so there is no need to move it from XI §13 (see also amendments to XI §13). It is not possible for all monies to be deposited within 24 hours.

Recommendation: Amend the section: “(a) The person designated by the city manager as the chief financial officer of the city shall serve as the city treasurer, who shall have the custody of all the public moneys, funds, notes, bonds, and other securities belonging to the city. The chief financial officer [~~city treasurer~~] shall give such bond as the council may require, conditioned on the faithful discharge of his or her duties, and the premium of such bond shall be paid by the city. In addition to such bond, the city shall [~~may~~], in accordance with state law, require designated city depositories [~~the city treasurer~~] to hypothecate securities in such amount as it shall prescribe.

(b) The city council shall, in accordance with state law, select and designate a depository for the moneys and funds of the city. The city council may at any time, in accordance with state law, select and designate more than one depository. The chief financial officer [~~city treasurer~~] shall be responsible for administering the contract with the depository. The depository shall receive and securely keep all moneys belonging to the city and make all payments from the same upon orders signed by the city manager and countersigned by the chief financial officer [~~city controller~~], after authorization of the city council. All monies received by any person, department, or agency of the city for or in connection with affairs of the city shall be deposited promptly, but not later than 72 hours, in city depositories. The chief financial officer [~~city treasurer~~] shall ensure that a full and correct statement of receipts and payments is provided to the city manager and the city council, at such times as the city manager or council may require and in such form as the city manager may prescribe. The chief financial officer [~~city treasurer~~] shall perform such other acts and duties as the city manager may prescribe.

XI §4

“Unincumbered” is misspelled. Budgets are done per department, not “division or purpose.”

Explanation: The Chief Financial Officer, in a memo dated February 14, 2014, stated that the amendment to “division or purpose” is not necessary.

Recommendation: Amend the section: “Upon the written recommendation of the city manager, the city council may at any time

transfer an unencumbered [~~unincumbered~~] balance of an appropriation made for the use of one department, division, or purpose to any other department, division, or purpose.

XI §5

The cross-reference to Subdivisions (4) and (5) of Section 1 is not correct.

Explanation: The section makes reference to Subdivisions (4) and (5) of Section 1 of Chapter XI, but Section 1 does not have any Subdivisions.

Recommendation: Amend the section: “If at any time the total accruing revenue of the city shall be in excess of the total estimated income thereof, as set forth in the annual budget estimate in compliance with [~~Subdivisions (4) and (5) of~~] Section 1 of Chapter XI of this Charter [~~hereof~~], the council may from time to time appropriate such excess to such uses as will not conflict with any uses for which such revenues specifically accrued.”

XI §11

The cross-reference to Section 10 is not correct.

Explanation: The section prohibits the city council and city officers from waiving or qualifying the limits on obligations established by ordinances, resolution, or orders, and refers to Section 10 of Chapter XI. Section 10 of Chapter XI, however, has nothing to do with obligations established by ordinances, resolution, or orders. Instead, Section 10 of Chapter XI states that any accounts receivable shall be deemed to be in the treasury of the city.

Recommendation: Amend the section: “All contracts, agreements, or other obligations entered into, and all ordinances passed and resolutions and orders adopted, that are contrary to the preceding sections of this chapter shall be void, and no person shall have any claim or demand against the city thereunder, nor shall the council or any officer of the city waive or qualify the limits fixed by any ordinance, resolution, or order[~~as provided in Section 10 of this chapter~~], or fasten upon the city any liability in excess of such limits, or relieve any party from an exact compliance with a contract under such ordinance, resolution, or order; provided, that this section shall not apply in case of public disaster calling for extraordinary emergency expenditure or to the exceptions contained in Section 12 of this chapter.”

XI §13

It is not possible to deposit all monies collected by the city within 24 hours. Move responsibility for deposit of funds from XI §13 to III §20. Require that deposits be made promptly rather than within 24 hours.

Explanation: The substance of this section is covered by III §20, and so is no longer needed in XI §13. See III §20 for proposed language.

Recommendation: Delete XI §13: “**SEC. 13. RESERVED. [DISPOSITION OF FUNDS.** ~~The city controller shall pay over into the city treasury all moneys collected by the city controller and belonging to the city within 24 hours after receiving such moneys. Upon failure to do so, the city controller and the sureties on the city controller’s bond shall be~~

required to pay interest thereon at the rate of 10 percent per annum until such deposit is made.]”

XV §1(2)

The comprehensive plan is amended by ordinance, not resolution.

Explanation: Dallas Development Code §51A-1.108(d) provides that the comprehensive plan may be amended by ordinance.

Recommendation: Amend the subsection: “ADOPTION. Upon receipt from the city manager of a proposed comprehensive plan or proposed modification of the existing plan, the council shall hold a public hearing on the proposed comprehensive plan or modification thereof and shall thereafter adopt it by ordinance [~~resolution with or without amendment~~], or reject the same.

XV §7

Delete because alternate members of the Board of Adjustment are addressed in Dallas Development Code §51A-3.102(a).

Explanation: Dallas Development §51A-3.102(a) provides for the appointment of alternate members to the Board of Adjustment. There are no substantive differences between the Charter language and the Development Code language.

Recommendation: Delete the section: “**SEC. 7. RESERVED** [~~ALTERNATE MEMBERS OF THE BOARD OF ADJUSTMENT.~~ In addition to the membership provided by state law to serve on the board of adjustment, the city council may, if it so desires, appoint six additional members who shall be designated as alternate members. The alternate members shall serve on the board at the designation of the board chair in any case where any regular member of the board of adjustment is either absent or unable to serve in any particular case for any reason so that all cases to be heard by the board of adjustment will always be heard by the minimum number of members required by state law. These alternate members, when appointed, shall serve for the same period as the regular members, and any vacancies shall be filled in the same manner.]”

XVI §12(c)

Change the time from 10 days to 10 working days to be consistent with the Personnel Rules.

Explanation: The Dallas City Code §34-38, “Grievance and Appeal Procedures,” allows 10 working days to provide a notice of appeal.

Recommendation: Amend the first sentence: “Any aggrieved officer or employee who desires to appeal to the trial board must do so in writing within 10 working days from the date of notification of dismissal or reduction.”

XVI §16(a)

Include all protected classes (color, age, marital status, sexual orientation, national origin, disability). (See Dallas City Code §34-35.)

Explanation: The Dallas City Council has amended the City Code with regard to fair employment practices to prohibit a broader range of

discrimination. The Charter needs to match the Code standards. The recommendation adds military or veteran status.

Recommendation: Amend the first sentence: “No person shall be appointed, reduced, removed, or in any way favored or discriminated against because of race, color, age, religion, gender [sex], marital status, sexual orientation, gender identity, national origin, disability, military or veteran status, political [~~or religious~~] opinions, or affiliations.”

XVI §16(d)

Amend the section to conform to Wachsman v. Dallas.

Explanation: Wachsman v. Dallas held XVI §16(b)(1) unconstitutional as to endorsements to the extent that it prohibited individual police and fire department employees from endorsing candidates at private or nonpolitical gatherings. The Commission decided to leave the editor’s note regarding Wachsman, but amend the text to include federal law.

Recommendation: Amend the subsection: “(d) Notwithstanding any conflict with Subsections (b) and (c) of this section, a sworn employee of the fire-rescue department or the police department may engage in political activities to the extent permitted by [state] law.”

XIX §1

Change the reference to the tax assessor and collector to the chief appraiser of the appraisal districts of the counties in which the City of Dallas is located. Change the date from July 1st to July 25th. Delete the phrase “or as soon thereafter as practicable.”

Explanation: The section needs reflect that Dallas is located in multiple counties and reflect actual practice.

Recommendation: Amend the section: “All property, real, personal or mixed, lying and being within the corporate limits of the city on the first day of January, shall be subject to taxation, excepting such property as may be exempt from taxation under the Constitution, and the laws of the State of Texas. Pursuant to the Texas Tax Code, [It shall be the duty of] the chief appraiser of the appraisal districts of the counties in which the City of Dallas is located [tax assessor and collector] on or before the 25th [first] day of July of each year shall [~~or as soon thereafter as practicable, to~~] make and return to the city council a full and complete list and assessment of all property, both real and personal, held, owned or situated in the city on the first day of January of each year and not exempt from municipal taxation.”

XX §2

Delete the second sentence stating that notice of a council resolution is not required.

Explanation: Texas Transportation Code §313.047 requires that cities provide newspaper and mailed notice of a proposed assessment. Texas Transportation Code §313.048 requires a public hearing before cities impose an assessment. The Texas Open Meetings Act requires public notice of proposed City Council actions at least 72 hours before the

meeting. The reference to Texas Transportation Code 314 (condemnation) should be to Texas Transportation Code 313 (assessments).

Recommendation: Amend the section: “The city council shall have power by ordinance [~~resolution~~] to order the making of the public improvements mentioned in this chapter, or any of them, and the passage of such ordinance [~~resolution~~] shall be conclusive of the public necessity and benefits of making the improvements. Notice of the ordinance and a public hearing must be provided as required by state law. [~~No notice of such action by the city council is required to make it valid.~~] The ordinance [~~resolution~~] must, in general terms, set forth the nature and extent of the improvements to be made, the section or sections of any highway or highways to be improved, and whether or not assessments are to be made for such improvements. The city secretary shall, immediately upon the passage of the ordinance [~~resolution~~], furnish a copy to the county clerk of Dallas County, Texas, as provided in Chapter 313 [~~314~~] of the Texas Transportation Code, as amended, to be filed as therein provided. In addition, the city secretary shall furnish a copy of the ordinance [~~resolution~~] to the tax assessor and collector, who shall indicate upon any tax statement thereafter issued covering property abutting upon that part of the highway or highways to be improved that the proceeding is pending. Any failure by the city secretary to furnish a copy of the ordinance [~~resolution~~] to the tax assessor and collector, or any failure by the tax assessor and collector to indicate the pendency of such a proceeding upon a tax statement, shall not affect the validity of the proceeding under this chapter, nor of any assessment thereafter levied pursuant to this chapter.

XX §11

The reference to Texas Local Government Code Chapter 402 is no longer current.

Explanation: Texas Local Government Code Chapter 402 no longer exists.

Recommendation: Amend the section: “All of the powers conferred by [~~Chapter 402, Subchapter D of the Texas Local Government Code, as amended, and other~~] applicable state laws, authorizing cities to improve their waterworks and sanitary sewer systems and to make assessments therefor, are hereby adopted in all respects insofar as they may apply to the City of Dallas. Insofar as it is allowable under the state law, the city council shall have the option as an alternative to use any other methods of obtaining the same services and improvements as may be provided by state law.”

XXII §11(a)

Change the term “officer” to “official” to be consistent with Dallas City Code Chapter 12A.

Explanation: Dallas City Code Chapter 12A, the code of ethics, uses the term “city official” rather than the term “officer.” Note that other substantive amendments to this section have been suggested.


Recommendation: Amend the Subsection (a): “No city official [~~officer~~] or employee shall have any financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or services, except on behalf of the city as a city official [~~an officer~~] or employee. Any violation of this section shall constitute malfeasance in office, and any city official [~~officer~~] or employee guilty thereof shall thereby forfeit the city official’s [~~officer’s~~] or employee’s office or position with the city. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the city shall render the contract involved voidable by the city manager or the city council.”

XXIV §13

Change September to August, and allow City Council to begin the nomination process, rather than make the appointments.

Explanation: The change will reflect the actual practice of the city.

Recommendation: Amend Subsection (a): “During August [~~September~~] of each odd-numbered year, the city council shall begin the nomination process for [~~appoint~~] all members of the commissions and boards provided for in this Charter or which the city council may provide for by ordinance. Such members shall serve for a term as provided by ordinance by the city council not to exceed two years from October 1 or until their successors are appointed and qualified, except that a member of a board or commission that is only advisory in nature may not hold over in his or her position longer than nine months after the expiration of his or her term or after the creation of a vacancy in his or her position.”


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