



CITY OF DALLAS

Memorandum

DATE February 28, 2014

TO The Honorable Chair and Members of the Charter Review Commission

SUBJECT Suggested Technical Changes to the Charter

As requested at the February 4, 2014 meeting, following is a list of suggested technical changes, each with an explanation and a recommendation:

- III §6(a) *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: Delete the final sentence: “[~~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.~~]”
- 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 §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.

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 [~~absence or~~] 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 [~~absence~~] 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. Hickman v. Dallas, 475 F.Supp. 137 (N.D. Tex. 1979) held that a city employee had a First Amendment right to run for the city of DeSoto City Council. Dallas City Code §12A-10(b) was amended to reflect the holding of Hickman v. Dallas.

Recommendation: Delete Subsection (c) because Dallas City Code §12A-10(b) contains the applicable restrictions: “[~~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.]”~~”

III §18

Amend the city code to provide penalties for contempt of a city investigation.

Explanation: This section allows City Council to provide - by ordinance - penalties for contempt of a subpoena issued in connection with an investigation. This suggestion actually proposes an amendment to the Dallas City Code to detail the penalties.

Recommendation: No amendment to the Charter.

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 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.

VIII §4A

Add a cross-reference to III §17.

Explanation: This section provides that municipal judges must comply with any requirements for municipal judges established by applicable law. Chapter III §17(a) provides that “If . . . any appointive officer of the city becomes a candidate for nomination or election to any public office, he or she shall immediately forfeit his or her place or position with the city.” Dallas City Code §12A-2(24)(B) states that municipal judges are city officials. The amendment would clarify that municipal judges are required to resign their judgeship if they run for public office.

Recommendation: Amend the section: “A full-time or associate municipal judge may be removed from office by a majority vote of all members of the city council if the council determines, after a hearing before the council, that the municipal judge failed to comply with, or maintain compliance with:

- (1) any residency requirements for municipal judges established by city council ordinance; [øf]
- (2) any other qualifications or requirements for municipal judges established by city ordinance, state or federal law, or other applicable law; or
- (3) becomes a candidate for nomination or election to any public office. See Section 17 of Chapter III of this Charter.

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.]”

XV §8

Delete notice of thoroughfare plan amendments to surrounding property owners. It is covered in the Dallas Development Code §51A-9.201.

Explanation: Dallas Development Code §51A-9.102(c) sets out the procedure for amendment to the Thoroughfare Plan. There are no substantive differences between the Charter language and the Development Code language.

Recommendation: Delete the second paragraph of the section: “The city council shall by ordinance adopt a thoroughfare plan. A thoroughfare plan now in existence or hereafter adopted by the city council shall not be changed except by an ordinance duly adopted after a public hearing [as herein provided].”

~~[Prior to any change in a thoroughfare plan, the city council shall hold a public hearing. Written notice of all public hearings before the city council on proposed changes in the thoroughfare plan shall be sent to owners of real property lying within 200 feet of the area of the proposed change, such notice to be given, not less than 10 days before the date set for hearing, to all such owners who have rendered their said property for city taxes as the ownership appears on the last approved city tax roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the United States mail].~~

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, sex, marital status, sexual orientation, 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.

Recommendation: Incorporate the current editor’s note into the text of XVI §16(d): “(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 or Wachsman v. City of Dallas, 704 F.2d 160 (5th Cir. 1983).”

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. 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 [~~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."

XXIII §2

Add claims for breach of contract. (See Dallas City Code §2-86.)

Explanation: Dallas City Code §2-86 requires notice for certain breach of contract claims, but there is no such requirement in the Charter. XXIII §2 concerns property damage, so the proposed language is not appropriate in this section. Instead, a new section should be added to address claims for breach of contract. The language tracks the language of Dallas City Code §2-86.

Recommendation: Add new XXIII §2A: "**SEC. 2A. NOTICE REQUIRED -- BREACH OF CONTRACT.** A person may not file or maintain a lawsuit or alternative dispute resolution proceeding to recover damages for the city's breach of a city contract unless, as a condition precedent and a jurisdictional prerequisite to the filing of the lawsuit or proceeding, the person files a notice of claim with the city manager in writing, in the form required by city code, not later than 180 days after the date of occurrence of the event that gives rise to the breach of contract claim."

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.”

XXIV §17(a)

The Charter states that a person may not serve on more than two city boards or commissions. Dallas City Code §8-1.4(b), however, states that a person may not serve on more than one city board or commission, except that Dallas City Code §8-1.4(c) states that a person may serve on two boards of TIF reinvestment zones. The Charter also states that a person forfeits the board or commission position if they miss more than three meetings. Dallas City Code §8-20 states that a person forfeits the board or commission position if they miss three meetings.

Explanation: It has been the practice of the city to follow the more restrictive provision and allow persons to serve only on one city board or commission. There are several differences between the City Code and the City Charter regarding attendance. The Charter should just reference the attendance requirements of the City Code.

Recommendation: Amend the subsection: “Other than members of the city council, no person shall be appointed to more than one [~~two~~] permanent board[s] or commission[s] of the City of Dallas at any one time unless otherwise allowed by the city code. Any member of any commission or board appointed by the city council shall forfeit that office if the member violates the attendance rules provided by the city code [~~misses more than three regular meetings in succession, unless for medical reasons certified to by a physician or unless excused by the board or commission of which he or she is a member and the city council. In such case, the city council shall declare the position vacant and appoint a new member to fill the vacancy~~].”

Various

Change “City Treasurer” and “City Controller” to “Chief Financial Officer.”

Explanation: The position is currently titled as Chief Financial Officer. The references in III §20 are being corrected. There are no other references that require correction.

Recommendation: No other amendments.

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.

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): “The city secretary shall provide notice as required by state law [~~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 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.”

IV §13(b): “The city secretary shall also provide notice as required by state law [~~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.”

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.”

None

Make the definition of “commission” consistent throughout the charter and city code.

Explanation: There is no known inconsistency in the definition of “commission.”

Recommendation: No amendment.


JOHN ROGERS
Assistant City Attorney