

MEMO

To: Charter Review Commission
From: Mike Northrup
Re: Proposed Charter Amendment addressing record retention
Date: May 2, 2014

Summary:

Following the Commission's April 22, 2014 meeting, I set out to collect additional information to address comments and concerns I heard from various members of the commission. What follows is some background as to the relationship of city's retention program to state law and how it appears the city arrived at the current retention policy for electronic recordings. I have also included some cost information insofar as storage costs for these electronic recordings. Finally, I am attaching four alternatives for proposed language to accomplish permanent retention of the electronic records. I developed these alternatives after listening to comments from some of the commissioners as to how they would prefer to see this issue handled.

Background:

State law requires that municipalities have a records retention program, with schedules for disposition of certain records. State law also sets "minimum" requirements for periods of retention of certain types of records, but allows municipalities to adopt longer periods of retention. In the 1993 and 1995 legislative sessions, the Texas legislature revised state law to impose retention requirements addressing electronic and digital records of municipalities.

In response to the new state-law requirements, in October of 1998, the Dallas City Council adopted a resolution that submitted to the Texas State Library and Archives Commission an amended ordinance (Chapter 39C of the Dallas City Code)¹ for a records management program and a certification of compliance with the State's minimum retention requirements. With respect to the retention of minutes of meetings and recordings of those meetings of the city council and of boards and commissions, Dallas adopted (and certified compliance with) the State's minimum requirements.

The state law "minimum" retention period for recordings of meetings of the council and of boards and commissions is 90 days after approval of the minutes to which the recording relates. For written minutes of those meetings, the minimum retention period is permanent retention. Dallas has certified compliance with these minimums since the adoption of its amended ordinance in 1998. Although state law and Dallas' ordinance allows the city to adopt a longer retention period for the recordings of the meetings of the council and the boards and

¹ The original ordinance was adopted in 1990.

commissions, I understand that there may not have been any uniform policy. Perhaps informally the administrators of the city's boards and commissions kept the recordings for many years, but last year, I learned that this was no longer the case and that most board and commission recordings were not being kept longer than the minimum 90-day period that had been certified to the Texas State Library and Archives Commission.

One other fact of note is that the Texas Legislature retains the recordings of *every* hearing of the house and senate and of every hearing of the various committees of the house and senate.

Cost information:

There are 52 boards and commissions.

You can purchase 100 writeable CDs for less than \$18 or 100 writeable DVDs for less than \$21. The city secretary has advised me that 100 DVDs will hold 10 years' worth of recordings for the Permit License and Appeal Board. Extrapolating from that, the estimated cost to keep 10 years' worth of recordings of all 52 boards and commissions and of the council for 10 years is \$1113, or approximately \$115 per year. Alternatively, the estimated cost of keeping 10 years' worth of recordings of the council and of 10 selected boards and commissions is less than \$250, or \$25 per year. These DVDs and CDs are generally stored with the files containing the minutes of the meetings.

If the city later chose to post all or some of the recordings on a webpage, the cost of purchasing a server with space to do so would range between \$1200 and \$8500. Alternatively, there are third-party providers who could host the recordings in the "cloud." One such local provider—Opus 3—can host up to 40 hours of video at a price of \$99/month, which allows for 200 "viewer hours, or \$399/month, which allows for 5000 viewer hours. Assuming state law would permit, the city could set this service up to recoup the cost by charging viewers for the privilege of viewing the records online. **Please note that while I support the concept of making these recordings available on a website, that proposal is NOT part of my current proposed charter amendment language.**

Reasons to adopt this proposed amendment:

- *public property.* State law makes these recordings "public property." The public ought to have a say over whether this property is destroyed.
- *property rights.* The proceedings of the council and of many boards and commissions involve matters of zoning and property rights. Property owners ought to be able to find out not just *what* the outcome of a vote affecting their property was but also the *reasons* behind that outcome.
- *transparency.* Recordings give transparency to the decisions that are made by these important city bodies. When the recordings are destroyed, it raises questions. Transparency has been a theme of the Charter Review Commission and the Commission has already adopted two specific items that ensure transparency.
- *state "minimums" are inadequate.* The recordings are sometimes needed more than 90 days later to explain unclear minutes that were adopted. The recordings are sometimes

necessary more than 90 days later because litigation may result from a decision of the council or a board or commission. The recordings are sometimes necessary because an item may take longer than 90 days to wend its way through internal appellate processes and remands until final completion.

- *historical value.* The council and boards and commissions often make decisions with historical implications. Additionally, members who serve on the council and on boards and commissions may themselves become a part of Dallas' rich history. Destruction of the recordings of the council and of the boards and commissions undermines efforts on the part of future historians to document part of Dallas' history or to document the participation of a particular individual in the making of Dallas' history.

Chapter IIIA, § 3(2)

SEC. 3. DUTIES OF THE CITY SECRETARY.

ALTERNATIVE NO. 1:

The city secretary shall:

- (1) attend all meetings of the city council and keep accurate records of all actions taken by the city council;
- (2) oversee a records management program for the city that provides for the identification, maintenance, retention, security, electronic storage, microfilming, disposition, and preservation of city records and appoint a city records management officer to administer the program. The records management program shall include permanent retention of any electronic recordings of the meetings of the city council and of all city boards and commissions;

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ALTERNATIVE NO. 2:

The city secretary shall:

- (1) attend all meetings of the city council and keep accurate records of all actions taken by the city council;
- (2) oversee a records management program for the city that provides for the identification, maintenance, retention, security, electronic storage, microfilming, disposition, and preservation of city records and appoint a city records management officer to administer the program. The records management program shall include permanent retention of any electronic recordings of the city council and of the following boards and commissions:

[insert list. See suggested list from page 4]

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ALTERNATIVE NO. 3:

The city secretary shall:

- (1) attend all meetings of the city council and keep accurate records of all actions taken by the city council;
- (2) oversee a records management program for the city that provides for the identification, maintenance, retention, security, electronic storage, microfilming, disposition, and preservation of city records and appoint a city records management

officer to administer the program. Electronic recordings of the city council and of the following boards and commissions are hereby declared to be “essential records” as defined by Chapter 441 of the Texas Government Code:¹

[insert list. See suggested list from page 4]

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ALTERNATIVE NO. 4:

The city secretary shall:

(1) attend all meetings of the city council and keep accurate records of all actions taken by the city council;

(2) oversee a records management program for the city that provides for the identification, maintenance, retention, security, electronic storage, microfilming, disposition, and preservation of city records and appoint a city records management officer to administer the program. It is the policy of the City of Dallas to protect and preserve any electronic recordings of the meetings of the city council and of its boards and commissions where property rights are at issue, where litigation may result, or where the records may have historical significance. To that end, the electronic recordings of the following boards and commissions are declared to be “essential records” as defined by Chapter 441 of the Texas Government Code:

[insert list. See suggested list from page 4]

This list is a non-exclusive list and the city council should review the list at least every two years to ascertain whether other boards and commissions should be added to the list;

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Justification: The current charter calls for a records management program. State law requires permanent retention of minutes of meetings of the council and of board and commissions, however, state law requires only that recordings of the hearings be kept for 90 days. Municipalities are expressly allowed to keep recordings for longer periods of time. Dallas has opted not to keep recordings of boards and commissions more than 90 days, with some limited exceptions. Keeping such records is essential to the function of open and transparent government. In some circumstances, the recordings are needed for litigation purposes. In other

¹ TEX. GOV'T CODE § 441.151:

(5) "Essential record" means any local government record necessary to the resumption or continuation of government operations in an emergency or disaster, to the re-creation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the state.

circumstances, the recordings involve matters of property rights and property values. And in still other circumstances the recordings are needed for historical purposes, such as to give some background as to why a particular decision was reached. The cost of retaining such records continues to decline. Under state law these recordings are “public property.” The public should have the right to vote whether to retain them permanently or to continue with the current retention schedules.

[suggested list of boards and commissions]

Dallas City Council
Board of Adjustment
City Planning and Zoning Commission
Dallas Citizens Police Review Board
Civil Service Board
Ethics Advisory Commission
Landmark Commission
Park and Recreation Board
Permit and License Appeal Board
Redistricting Commission
Charter Review Commission