

# Memorandum



Date February 28, 2014  
To The Honorable Chair and Members of the Charter Review Commission  
Subject City Secretary's Office – Prioritized Charter Amendment Recommendations

As requested at your February 18, 2014 meeting, attached are charter amendment recommendations submitted by this office in priority order.

- **Priority 1 – Chapter III [City Council], Section 3 [Council Qualifications]**  
This amendment is of utmost importance as the city cannot legally require candidates/incumbents to not be in arrears in the payment of any taxes or other liabilities due the city.
- **Priority 2 – Chapter IIIA [City Secretary], Section 1 [Appointment; Removal; Compensation]**  
An additional change was made to this recommendation to clarify that the city secretary's compensation should be commensurate to "other city council appointees," specifically the city manager, city attorney, and city auditor. There is additional language as to the city council providing the city secretary with a discrete appropriation. There have been general comments at the city council level that the city attorney, city auditor, and indirectly, the city secretary should submit their budgets to the city council.
- **Priority 3 – Chapter XVIII [City Secretary to Examine Petition], Section 12 [City Secretary to Examine Petition]**  
The merits of this change were specifically discussed with you at the above-noted meeting.
- **Priority 4 – Chapter XXIV [Appointments and Tenure of Commissions and Boards], Section 13 [Appointment and Tenure of Commissions and Boards]**  
The merits of this change were specifically discussed with you at the above-noted meeting.
- **Priority 5 – Chapter V [Petition For Recall Of City Council Members], Section 1(3) [Petition for Recall of Council Members]**  
The change was requested to align any petition verification to be conducted within the same time period (See Priority 3). However, based on the number of signatures that would have to be verified for a recall, there is no internal concern if this proposed change is not considered.
- **Priority 6 - Chapter III [City Council], Section 11 [Election and Duties of the Mayor Pro Tem and Deputy Mayor Pro Tem]**  
The merits of this change were discussed at the above-noted meeting.

- **Priority 7 – Chapter IIIA [City Secretary], Section 3 [Duties of the City Secretary]**

The one recommendation submitted by this office for this section was to include the responsibility of administrating the board/commission appointment process. The other two changes were submitted by other individuals: (1) prepare and submit its own operating budget and (2) hire all employees in the department. There is no internal concern if the added responsibility is not considered. As to the other two issues, those will be left for others to consider. However, as discussed, the city secretary already hires/fires office staff.

- **Priority 8 – Chapter IV [Nomination By Petition], Section 7 [Nomination by Petition]**

There is no internal concern if this proposed change is not considered.

I am available to discuss the prioritization at your convenience. Thank you for your consideration of the proposed/recommended changes.



Rosa A. Rios  
City Secretary

c: Bilierae Johnson, Assistant City Secretary  
John Rogers, Assistant City Attorney  
Barbara McAninch, City Attorney  
Anna Holmes, CRC Liaison, City Manager's Office

# PRIORITY 1

## Chapter III. City Council Recommended Changes by City Secretary

**SEC. 3. COUNCIL QUALIFICATIONS.**

Each member of the city council shall, in addition to the other qualifications prescribed by law, be at the date of election a qualified voter of the city, and shall not be in arrears in the payment of any taxes or other liabilities due the city. (Amend. of 11-8-05, Prop. No. 13)

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**Justification:**

The city cannot mandate council members be current on taxes and other liabilities in order to be elected.

**Note:**

Hunt v. City of Longview, 932 F. Supp. 828 (1995); City council members who were in a dispute with the city regarding payments for the costs of work done by city crews correcting code violations on property in which the council members had an interest sought a declaratory judgment that the City Charter provision requiring forfeiture of office for being in arrears in payment of taxes or other liabilities due to the city. The United States District Court for the Eastern District of Texas found the Charter provision requiring removable of elected officials for failure to pay liabilities owed to the city was not rationally related to the governmental interest of promoting good citizenship and is irrational.

# PRIORITY 2

## Chapter IIIA. City Secretary Recommended Changes by City Secretary

### **SEC. 1. APPOINTMENT; REMOVAL; COMPENSATION.**

The city council shall appoint a city secretary who shall serve for a period of two years from the date of appointment or until a successor is appointed and qualified, unless sooner discharged by the council. The city secretary shall be a resident of the City of Dallas. If at the time of appointment, the city secretary resides outside the City of Dallas, then he or she shall move into the city within a time period required by the city council. The city secretary shall be appointed by a majority vote of all of the members of the city council and shall not be discharged during his or her term of office except upon a majority vote of all of the members of the council. The city secretary shall receive such compensation as shall be fixed by the council. (Amend. of11-8-05, Prop. Nos. 2 and 13)

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(Amend. of11-8-05, Prop. Nos. 2 and 13)

#### **Justification:**

- Section is modified and expanded to align and provide uniformity in the appointment, removal and compensation with other appointed officials (city manager and city attorney and the proposed change submitted by the city auditor.)
- Changes provide for better control of office operations of the city secretary in order to meet professional standards and expected service level.
- Ensures the city council is able to review the needs of the office as submitted by the city secretary and before cuts are made at other levels.
- **Allows the salary to be aligned more in line with the compensation set for city manager, city attorney and city auditor; although the expectation is not expected to be equal to the existing salary.**

**Indicates changes since original submission**

# PRIORITY 3

## Chapter XVIII. City Secretary To Examine Petition Recommended Changes by City Secretary

### **SEC. 12. CITY SECRETARY TO EXAMINE PETITION.**

Within 30 days after the date the petition is filed, the city secretary shall examine and ascertain whether or not the petition is signed by the requisite number of qualified voters and shall attach to the petition a certificate showing the result of the examination. If the petition is found to be sufficient, the city secretary shall submit the petition to the city council without delay. (Amend. of 4-2-83, Prop. No. 2; Amend. of 5-1-93, Prop. No. 6)

### **SEC. 12. CITY SECRETARY TO EXAMINE PETITION.**

Within ~~30~~ **60** days, **unless otherwise provided by state law**, after the date the petition is filed, the city secretary shall examine and ascertain whether or not the petition is signed by the requisite number of qualified voters and shall attach to the petition a certificate showing the result of the examination. If the petition is found to be sufficient, the city secretary shall submit the petition to the city council without delay. (Amend. of 4-2-83, Prop. No. 2; Amend. of 5-1-93, Prop. No. 6)

#### **Justification:**

- Allows the city secretary the same amount of time given to the "petition circulator" prescribed in the Dallas City Charter, Chapter XVIII, Section 11(1). Initiative and Referendum of Ordinances, which states, "(l) A committee of at least five registered voters of the City of Dallas must make application to the city secretary and file an intention to circulate a petition, giving the date and the proposed ordinance to be circulated. Unless the final petition, with the required number of signatures is returned within 60 days from this date, it will not be received for any purpose."
- This change provides uniformity in the review period for any type of petition received.

The City Secretary's Office has been required to verify 18,000-50,000 petition signatures within a 30-day period (not considering the preparation required in order to begin the review). The increase of the review period will provide for a more controlled review of signatures and additional time for quality check of the review.

#### **Note:**

See also Chapter IV, Section 1(3) as this requested change/addition is also being requested for that Chapter of the City Charter.

Currently, there is no state law provision that prohibits the city from extending the verification of a petition. Discussions with the Secretary of State, provides that the Dallas City Charter prevails state law; and that in the event state law were to change, clear language would be added to specify state law trumps the city charter.



# PRIORITY 4

## Chapter XXIV. Appointments and Tenure of Commissions and Boards Recommended Changes by City Secretary

### **SEC. 13. APPOINTMENT AND TENURE OF COMMISSIONS AND BOARDS.**

(a) During September of each odd-numbered year, the city council shall 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.

### **SEC. 13. APPOINTMENT AND TENURE OF COMMISSIONS AND BOARDS.**

(a) During ~~September~~ **August** of each odd-numbered year, the city council shall ~~appoint~~ **begin the (re)nomination process for** 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.

#### **Justification:**

The charter provision, as currently stated, indicates all appointments are to occur within the month of September. The change will clarify it is the appointment process that begins at that time, although the requested change is to note August which is the month that the preparation process actually begins.

# PRIORITY 5

## Chapter V. Petition For Recall Of City Council Members Recommended Changes by City Secretary

### **SEC. 1(3). PETITION FOR RECALL OF CITY COUNCIL MEMBERS**

Within 30 days after the petition is filed, the city secretary shall examine the petition and, from the list of qualified voters, ascertain whether or not the petition is signed by the requisite number of qualified voters. If necessary, the city council shall allow the city secretary extra help, and, in the case of a petition to recall the mayor or multiple petitions to recall city council members, additional days to complete the examination. The city secretary shall attach to the petition a certificate showing the result of the examination. (Amend. of 6-12- 73, Prop. No. 12; Amend. of 4-2-83, Prop. No. 2; Amend. of 5-1-93, Prop. No. 6)

### **SEC. 1(3). PETITION FOR RECALL OF CITY COUNCIL MEMBERS**

Within ~~30~~ **60** days, unless otherwise provided by state law, after the petition is filed, the city secretary shall examine the petition and, from the list of qualified voters, ascertain whether or not the petition is signed by the requisite number of qualified voters. If necessary, the city council shall allow the city secretary extra help, and, in the case of a petition to recall the mayor or multiple petitions to recall city council members, additional days to complete the examination. The city secretary shall attach to the petition a certificate showing the result of the examination. (Amend. of 6-12- 73, Prop. No. 12; Amend. of 4-2-83, Prop. No. 2; Amend. of 5-1-93, Prop. No. 6)

#### **Justification:**

- Allows the city secretary the same amount of time given to the "petition circulator" prescribed in the Dallas City Charter, Chapter XVIII, Section 11(1). Initiative and Referendum of Ordinances, which states, "(l) A committee of at least five registered voters of the City of Dallas must make application to the city secretary and file an intention to circulate a petition, giving the date and the proposed ordinance to be circulated. Unless the final petition, with the required number of signatures is returned within 60 days from this date, it will not be received for any purpose."
- This change provides uniformity in the review period for any type of petition received.

#### **Note:**

See also Chapter XVIII, Section 12 as this requested change/addition is also being requested for that Chapter of the City Charter.

Currently, there is no state law provision that prohibits the city from extending the verification of a petition. Discussions with the Secretary of State, provides that the Dallas City Charter prevails state law; and that in the event state law were to change, clear language would be added to specify state law trumps the city charter.

# PRIORITY 6

## Chapter III. City Council Recommended Changes by City Secretary

### **SEC. 11. ELECTION AND DUTIES OF THE MAYOR PRO TEM AND DEPUTY MAYOR PRO TEM.**

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 absence of both the mayor and the mayor pro tem and to exercise the powers of the mayor during that time. (Amend. of 11-8-05, Prop. No. 13)

### **SEC. 11. ELECTION AND DUTIES OF THE MAYOR PRO TEM AND DEPUTY MAYOR PRO TEM.**

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 event of the mayor becomes incapacitated, unavailable for consultation, and is unable** 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 absence of both the mayor and the mayor pro tem and to exercise the powers of the mayor during that time. (Amend. of 11-8-05, Prop. No. 13)

#### **Justification:**

The need exists to clarify exactly under what circumstances the Mayor Pro Tem serves as "Acting Mayor."

#### **Note:**

In 2013, both the city attorney and city secretary had to inform the mayor pro tem they were unable to place an item on the agenda (in accordance with the City Council Rules of Procedure) as the mayor did not desire the item be scheduled for consideration. While the mayor was out of the country and could have been determined as being absent and unable to carry out his responsibilities, he was still available via cell and email and in regular contact with his office and city staff.



# PRIORITY 7

## Chapter IIIA. City Secretary Recommended Changes by City Secretary

### SEC. 3. DUTIES OF THE CITY SECRETARY.

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;
- (3) operate the city's archives and records storage facility for the storage of inactive city records until such time as those records may be disposed of and identify, preserve, and serve as custodian of the city's historical records;
- (4) inspect or direct the city records management officer to inspect the city records and report to the city council and the city manager any irregularities or failures of the city to create, identify, or maintain records in accordance with requirements assigned by law;
- (5) administer oaths;
- (6) attest contracts, assessment certificates, and other legal instruments when executed by the authorized officers of the city;
- (7) serve as the election official for all city elections; and
- (8) perform such other duties as may be required of the city secretary by this Charter, the city council, or state law. (Amend. of 5-1-93, Prop. No. 9)

### CH. IIIA, SEC. 3. DUTIES OF THE CITY SECRETARY.

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) prepare and submit its own operating budget;**
- (3) hire all employees in the department;**
- ~~(2)~~**(4)** 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;
- ~~(3)~~**(5)** operate the city's archives and records storage facility for the storage of inactive city records until such time as those records may be disposed of and identify, preserve, and serve as custodian of the city's historical records;
- ~~(4)~~**(6)** inspect or direct the city records management officer to inspect the city records and report to the city council and the city manager any irregularities or failures of the city to create, identify, or maintain records in accordance with requirements assigned by law;
- (7) oversee the process of receiving nominations for all boards and commissions, conducting applicable background checks and administering the appointment process at the city council level;**
- ~~(5)~~**(8)** administer oaths;
- ~~(6)~~**(9)** attest contracts, assessment certificates, and other legal instruments when executed by the authorized officers of the city;
- ~~(7)~~**(10)** serve as the election official for all city elections; and
- ~~(8)~~**(11)** perform such other duties as may be required of the city secretary by this Charter, the city council, or state law. (Amend. of 5-1-93, Prop. No. 9)

#### Justification:

- This section is modified to include other key and large responsibilities under the authority of the city secretary.
- Clearly define the department budget is submitted to the city council without changes.

# PRIORITY 8

## Chapter IV. Nomination By Petition Recommended Changes by City Secretary

### **SEC. 7. NOMINATION BY PETITION.**

A person desiring to become a candidate for the city council shall file with the city secretary, within the time required by the Texas Election Code, as amended, an application for a place on the ballot and a petition signed by qualified voters of the city eligible to vote for the candidate equal in number to the minimum number of signatures required for a candidate petition by the Texas Election Code, as amended. Each application and petition must comply in form, content, and procedure with the Texas Election Code, as amended. (Amend. of 6-12-73, Prop. No. 11; Amend. of 4-2-83, Prop. No. 2; Amend. of 8-12-89, Prop. No. 1; Amend. of 5-1-93, Prop. No. 6)

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#### **Justification:**

The filing fee will assist in recovering time/costs incurred in verifying petitions that do not meet the requirements, are inappropriately completed and do not contain all pertinent information.

Allows the city secretary the ability to also charge a \$50 filing fee along with the required amount of signatures as prescribed in Texas Election Code, Section 143.005 (e), which states, "If the city charter of a home-rule city with a population of more than 1.18 million located primarily in a county with a population of 2 million or more that holds nonpartisan elections for its offices requires both a petition and a **\$50 fee** to be filed for a candidate's name to be placed on the ballot, those requirements supersede the section."

#### **Note:**

The 2010 Census' population, Dallas County Total Population reports a 2.4 million population and city population is 1.2 million.

Currently, the City adheres to Texas Election Code 143.005 (d), which states, "For any petition required or authorized to be filed in connection with a candidate's application for a place on the ballot for an office of a home-rule city, the minimum number of signatures that must appear on the petition is the greater of:

- (1) 25; or
- (2) One-half of one percent of the total vote received in the territory from which the office is elected by all candidates for mayor in the most recent mayoral general election."

**The petition for a place on the ballot provides the circulator swear under oath and before a notary public, and states, in part, the circulator, "...verified each signer's registration status and believe that each signature is the genuine signature of the person whose name is signed and that the corresponding information for each signer is correct." However, it is very common to find signatures of individuals that are not registered voters.**