



# CITY OF FULSHEAR

PO Box 279 / 30603 FM 1093  
Fulshear, Texas 77441  
Phone: 281-346-1796 ~ Fax: 281-346-2556  
[www.fulsheartexas.gov](http://www.fulsheartexas.gov)

## **CHARTER COMMISSION MINUTES November 10, 2015**

### **I. CALL TO ORDER**

A Regular Meeting of the Fulshear Charter Commission was called to order by Chair CJ McDaniel at 6:35 p.m. on Tuesday, November 10, 2015 in Irene Stern Community Center at 6920 Katy-Fulshear Road, Fulshear Texas and all citizens were welcomed.

#### *Members Present:*

*Bill Archer  
John Dowdall  
Cherryl Finney  
Ken Knapp  
C.J. McDaniel  
D.E. (Gene) Morgan  
Kent Pool  
Carolyn Randle  
Polly Royer  
Randy Stacy*

#### *Members Absent:*

*Erma Beal  
Larry Beustring  
James Molina*

#### *City Staff Present:*

*Tommy Kuykendall, Mayor  
CJ Snipes, City Administrator  
Lynn Raymer, Executive Assistant*

#### *Others Present:*

*Shannon Purcell, West Fort Bend Buzz  
Tricia Krenek, Council Member  
Tajana Mesic, Council Member  
Grady Randle, Randle Law Firm  
Byron Brown, Randle Law Firm*



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## II. QUORUM

*A quorum was present.*

## III. APPROVE MINUTES

*Member Stacy motioned to approve the October 13, 2015 Minutes.*

*Second by Member Pool.*

*Motion was carried by the following vote:*

*Ayes: All in favor*

*Nays: None opposed*

## IV. COMMENTS FROM THE PUBLIC (for matters not on the agenda)

*Council Member Tanaja Mesic read comments on behalf of Cross Creek Ranch resident, Randy Katz, who was unable to attend the meeting. Mr. Katz comments are attached to the Minutes.*

## V. APPROVE DRAFT OF CHARTER SECTION

*Attorney Brown is currently drafting the Charter Sections and were not ready for presentation at today's meeting.*

## VI. DISCUSSION OF AND POSSIBLE ACTION ON

### A. ***Scheduling of future meetings***

*Attorney Brown reminded Commission Members that the second meeting for the month of November is currently scheduled for November 24, which is the Tuesday before Thanksgiving and asked Members if they would be available for the meeting on that date. Discussion amongst Members regarding holiday travel schedules pertaining to the Thanksgiving holiday week. Commission Members agreed to meet on Monday, November 23, 2015. Additionally, Members discussed the December meeting schedule and agreed to meet on Tuesday, December 8 and Thursday, December 17, 2015.*

### B. ***At Large position geographic restriction***

*Attorney Randle stated that this topic is expected to take up a significant amount of time; and, therefore, it should be taken up later in the meeting so that other business may be considered without being rushed.*

### C. ***Prohibitions***

#### ***Dual Office Holding***

*Attorney Brown described the "dual office prohibition" as prohibiting the simultaneous holding of two public offices of emolument—the term "office of emolument" meaning a*



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*paid public office, an office of public trust, or both. The Texas Constitution already prohibits people from holding two offices of emolument; however, the Charter may extend the prohibition to additional positions. Attorney Brown provided examples of dual office holding permitted by the Constitution, which the Charter may prohibit. No action was taken on this item.*

### **Resign to Run**

*Attorney Brown described the "resign to run" provision of the Texas Constitution as pertaining to persons holding certain public offices who become candidates for another public office of profit or trust. The Texas Constitution provides that a council member automatically resigns by becoming a candidate for any other public office of profit or trust if their term exceeds two years and their unexpired term exceeds one year and thirty days. This provision would not apply to Fulshear council members because their terms do not exceed two years; however, the Charter may impose a "resign to run" requirement which is broader than that provided for in the Texas Constitution. Attorney Brown described the general purpose of "resign to run" as being to ensure that office holders are focused on the offices they hold rather than the offices they seek. No action was taken on this item.*

### **D. City Manager Qualifications, Appointment, and Compensation**

*Attorney Randle suggested that the Commission take action only after all topics relevant to City Manager Qualifications, Appointment, and Compensation have been discussed.*

#### **Qualifications**

*Attorney Randle reminded the Commission Members of their vote to have a Council-Manager form of government, and reiterated the roles of the Mayor, the City Council, and the City Manager in the Council-Manager form of government. Reading from Chapter 12 of "Texas Home Rule Charters" textbook by Blodgett, Attorney Randle provided examples of historic and current qualifications of a City Manager. For example "...the City Manager shall be appointed on the basis of executive and administrative qualifications..." Members discussed the options of both restrictive and non-restrictive qualifications, the current qualifications for City Administrator, and the difference between a "City Manager" and a "City Administrator."*

#### **Appointment and term**

*Attorney Randle indicated that some cities appoint the City Manager for an indefinite term and some appoint for a definite term. Attorney Randle explained that if hired for an indefinite term, they remain on the job until they either quit or are fired.*



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*Members discussed the advantages and disadvantages of setting a definite term for the City Manager, including the potential effect on candidates who may need to relocate. Attorney Randle reminded Commission Members that it was decided at a previous meeting that a 2/3 vote is required to both hire and fire the City Manager.*

### **Compensation and contract**

*Attorney Randle indicated that the Charter may fix the City Manager's compensation, may set a cap or range, or may permit City Council to determine the compensation. Additionally, the Charter may permit, forbid, or require an employment contract. Members discussed the advantages and disadvantages of fixing the City Manger's compensation by Charter, setting a cap or range, or permitting the City Council to determine the compensation, including the degree of flexibility for each option. Members also discussed the advantages and disadvantages of employment contracts.*

### **Review**

*Attorney Randle discussed reviewing the City Manager's job performance and how often the job performance could be reviewed by City Council. Additionally, Attorney Randle indicated that in one Charter he is aware of, it indicates that the City Manager may not be reviewed more than twice a year. Members discussed the advantages and disadvantages of limiting the City Manager's reviews, including the disruptiveness of such reviews, and the manner in which the reviews could be conducted.*

### **Residency**

*Attorney Randle indicated that the Charter may impose a residency requirement for the City Manager, mentioning that, due to the high cost of housing in the City, he is not aware of a single department head that works in the City who actually lives in the City. Members discussed the advantages and disadvantages of a residency requirement, including the potential effect on applicants, and whether the Charter may impose a commuting distance limitation in lieu of a residency requirement.*

### **Removal hearing**

*Attorney Randle indicated that the Charter may require a hearing prior to removal of the City Manager, stating that, by his estimate, approximately 40% of cities require such a hearing. Attorney Randle again reminded the Commission that they had decided it would take a 2/3 vote of the full City Council to remove the City Manager. Members discussed the removal process, including whether a hearing, if required, may be public or private.*



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*Motion by Member Stacy: (a) that the City Manager shall be chosen solely on the basis of executive and administrative training, experience, and ability; (b) that the City Manager shall be appointed for an indefinite term and receive compensation as shall be fixed by City Council in an employment contract; (c) that the City Manager shall be reviewed by City Council at least once but not more than twice per year; (d) that the City Manager shall not be required to reside within the City; and (e) that no hearing shall be required prior to the removal of the City Manager.*

*Second by Member Pool.*

*Further discussion regarding City Manager Qualifications, Appointment, and Compensation.*

*Motion carried with the following vote:*

*Ayes: All in favor*

*Nays: None opposed*

## **E. City Manager Powers and Duties**

*Attorney Brown referenced and explained the enumerated powers and duties of the City Manager set forth in Figure 12-3 of the "Texas Home Rule Charters" textbook, which reads as follows:*

*"The city manager shall be the chief executive officer of the city, responsible to the council for the management of all city affairs placed in the manager's charge by or under this charter.*

*The city manager shall:*

- (1) Appoint and suspend or remove all city employees and appointive administrative officers provided for, by, or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency;*
- (2) Direct and supervise the administration of all departments, offices, and agencies of the city, except as otherwise provided by this charter or by law;*
- (3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;*
- (4) See that all laws, provisions of this charter, and acts of the city council, subject to enforcement by the city manager or by officers*



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*subject to the manager's direction and super-vision, are faithfully executed;*

*(5) Prepare and submit the annual budget and capital program to the city council and implement the final budget approved by council to achieve the goals of the city;*

*(6) Submit to the city council and make avail-able to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;*

*(7) Make such other reports as the city council may require concerning operations;*

*(8) Keep the city council fully advised as to the financial condition and future needs of the city;*

*(9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;*

*(10) Provide staff support services for the mayor and councilmembers; and*

*(11) Assist the council to develop long term goals for the city and strategies to implement these goals;*

*(12) Encourage and provide staff support for regional and intergovernmental cooperation;*

*(13) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community; and*

*(14) Perform such other duties as are specified in this charter or may be required by the city"*

*Attorney Brown indicated that at least one City, Grand Prairie, has a more descriptive sentence in regard to the budget, which reads: "prepare an annual budget designed to accomplish the goals and objectives established by the City Council, submit it to the City Council for approval and be responsible for its faithful administration after adoption."*

*Attorney Brown discussed two additional duties of the City Manager set forth in the Grand Prairie Charter, which read "see that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchise or other franchise or contract are faithfully kept and performed; and, upon knowledge of any violation thereof, to call the same to the attention of the city attorney, whose duty it shall be to take such steps as may be necessary to enforce the same" and "prepare the agenda of each meeting of the City Council in accordance with this Charter and the rules of procedure adopted by the City Council."*



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*Members discussed the enumerated powers and duties of the City Manager, including the different and additional powers and duties set forth in the Grand Prairie charter. Motion by Member Dowdall to adopt the enumerated powers and duties set forth in Figure 12-3, with the substitution of the more descriptive sentence in regard to the budget from Grand Prairie for subpart (5), and with the addition of the additional duty regarding preparation of the agenda for City Council meetings from Grand Prairie. Second by Member Royer.*

*Further discussion regarding the Powers and Duties of the City Manager.*

*Motion carried with the following vote:*

*Ayes: All in favor*

*Nays: None opposed*

### ***Appoint Department Heads / Chief of Police, City Secretary, Chief Financial Officer***

*Attorney Brown indicated that home-rule charters often provide for some degree of City Council oversight of the appointment of the Chief of Police, the City Secretary, and the Chief Financial Officer. Attorney Brown indicated that each of these positions may be appointed solely by the City Manager; appointed by the City Manager with the approval of City Council; appointed solely by City Council outright; appointed solely by the Mayor; or appointed by the Mayor with the approval of City Council. The most common is the appointment by the City Manager with approval of the City Council.*

*Attorney Brown reminded the Commission that it was decided at a previous meeting that the municipal judge and the city attorney are each appointed by a supermajority of City Council. Members discussed the various appointment options for the Police Chief, the City Secretary, and the Chief Financial Officer, including the day-to-day responsibilities of such employees, and who has the authority to terminate such employees.*

*Motion by Member Dowdall that the Chief of Police, the City Secretary, and the Chief Financial Officer shall each report to the City Manager, but shall be appointed and removed by the City Manager with the approval of City Council.*

*Second by Member Archer.*

*Further discussion regarding Appointment of Department Heads, specifically the Chief of Police, City Secretary and Chief Financial Officer.*

*Motion carried with the following vote:*

*Ayes: Members Archer, Dowdall, Finney, Knapp, McDaniel, Pool, Randle, Royer, Stacy*

*Nays: Member Morgan*

### **F. Acting City Manager**



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*Attorney Brown indicated that most charters require the City Manager to designate a qualified person, either an officer or employee of the City, to act as the City Manager in the City Manager's absence, and City Council has the option of accepting the designated person on a temporary basis or revoke that designation and substitute their own selection.*

*Members discussed the City's current policies and procedures regarding the City Administrator's absences, and whether a particular person or a particular position should be designated as the Acting City Manager.*

*Motion by Member Stacy that the City Manager shall designate a qualified employee or officer of the City as the Acting City Manager.*

*Second by Member Royer.*

*Further discussion regarding the appointment of an Acting City Manager.*

*Motion carried with the following vote:*

*Ayes: All in favor*

*Nays: None opposed*

*Motion by Member Stacy that City Council may designate a person other than the person designated by the City Manager to be Acting City Manager if the City Manger's absence exceeds sixty days.*

*Second by Member Archer.*

*Motion carried with the following vote:*

*Ayes: All in favor.*

*Nays: None opposed.*

*Motion by Member Morgan that the Acting City Manager cannot be the Mayor or a City Council member.*

*Second by Member Stacy.*

*Motion carried with the following vote:*

*Ayes: All in favor*

*Nays: None opposed*

### **G. City Council Meetings – Agenda**

*Attorney Brown reminded the Commission of their previous decision that the City Manager shall have the duty to prepare the agenda for each meeting of the City Council, and may delegate that duty to an administrative officer subject to the direction of the City Manager. However, the Charter may require the City Manager to place certain items on the agenda under certain prescribed circumstances. For example, the Charter may require the City Manager to put an item on the agenda if requested to do so outside of a*





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*meeting by the Mayor alone, and either by any Council Member alone or by a concurrence of up to a certain number of Council Members, subject to the Open Meetings Act. Additionally, the public may bring up items which are not on the agenda during the Public Comment portion of a meeting, in which case the deliberation by City Council must be limited to a proposal to place the subject on the agenda for a subsequent meeting. Therefore, the Charter may provide that the item shall be placed on the agenda for a subsequent meeting if a motion to do so is made and seconded. Members discussed the advantages and disadvantages of permitting a lone Council Member to place an item on the agenda.*

*Motion by Member Archer that the City Manager shall place an item on the agenda if requested to do so outside of a City Council meeting by either the Mayor or by a concurrence of two Council Members, and shall place an item on the agenda of a subsequent meeting if a motion to do so is made and seconded at any City Council meeting.*

*Second by Member Dowdall.*

*Further discussion regarding agenda items.*

*Motion carried with the following vote:*

*Ayes: All in favor*

*Nays: None opposed*

### **Geographic Restrictions**

*Attorney Randle addressed the topic of geographic restrictions, indicating that this topic has been requested to be on the last 3 agendas. Attorney Randle reminded the Commission of the purpose for a restriction on the at-large positions, elaborating on the meanings of "one person, one vote," equal protection, and briefly described a pending Supreme Court case, *Evenwel v. Abbott*, which is scheduled to be argued before the Supreme Court on December 8, 2015, and which may affect such meanings. It will be decided, most likely, by July, 2016. Attorney Randle advised that the best option for the Charter is to authorize City Council to restrict the at-large positions at their discretion.*

*Motion by Member Archer that the two at-large Council Member positions may be restricted at the discretion of the City Council.*

*Motion seconded by Member Pool.*

*Further discussion regarding restriction of the at-large position, including the timing of the election to adopt the Charter and the expected decision of *Evenwel v. Abbott*.*

*The motion failed, with no roll call vote being called.*



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*Motion by Member Stacy that the agenda item regarding the restriction of the at-large Council Member position be postponed until the November 23, 2015 meeting.*

*Motion seconded by Member Morgan.*

*Motion passed with the following vote:*

*Ayes: All in favor*

*Nays: None opposed*

*The next meeting will be Monday, November 23, 2015 at 6:30pm at Irene Stern Community Center.*

### **VII. ADJORNMENT**

*Motion to adjourn by Member Stacy.*

*Second by Member Morgan.*

*The motion was carried by the following vote:*

*Ayes: All Members*

*Nays: None*

*Chairman McDaniel announced at 9:20 pm that we are now adjourned.*

C.J. McDaniel – Chairman

Attest:

Lynn Raymer – Executive Assistant

Good evening, home rule charter committee, and thank you for allowing you to speak to you tonight. My name is Randy Katz, I am a four and a half year resident of Cross Creek Ranch and Fulshear. I come here tonight to share my views of this committee's recent debate regarding the at large position geographic restrictions. I urge you to think long and hard about the legal, political, and community impact of what you are seeking to do here.

I deeply disagree with the effort to restrict the choice of master planned community citizens of Fulshear of their chosen representatives. I have already been in contact with Voting Rights and 14<sup>th</sup> Amendment attorneys, who are confident that the effort to restrict at large representation based on the character of their chosen neighborhood type will not survive a legal challenge. In addition, I should remind the committee that voting rights cases generally compel the loser to pay for the proceedings, so that your effort to restrict representation could become a very costly mistake for the city.

I also urge the committee to think about the political impact of its actions. I remind you that the charter you submit needs both city council and voter approval. I have shared my opposition to this provision with the current city council, and a majority of members share my opposition. In addition, you are asking master planned community residents to approve a charter that dramatically limits their access to run for elected office in Fulshear, in a way that not all city residents would be restricted. This clearly goes against my neighbors' own self-interest, and is unlikely to pass. I, and Cross Creek residents who share my opinion, will work tirelessly to raise awareness of the unfairness of this provision prior to the vote. I urge this committee not to spend time writing a document that has little to no chance of council and citizen approval.

Finally, I sincerely wonder the intent of the committee's effort. Why would you want to create a two tier citizenship structure in Fulshear? Individual qualifications aside, what makes the judgement of a resident of Bois'D Arc or downtown better than that of a CCR or Fulbrook resident, based solely on where they chose to live? Arguments regarding geographic or racial diversity fail when confronted by the fact that neighbors or members of the same ethnic group could still be at-large council members, as long as they did not live in a master planned community. I'm left to conclude that this effort is an attempt to preserve power for residents of "old" Fulshear, and restrict power for those who have moved to this city since the opening of its newer, master planned communities. That level of divisive politics does nothing to improve our city. I strongly urge this committee to abandon its effort to restrict the at large council districts based on the type of neighborhood in which our citizens choose to live.

