



CITY OF FULSHEAR

PO Box 279 / 30603 FM 1093

Fulshear, Texas 77441

Phone: 281-346-1796 ~ Fax: 281-346-2556

www.fulsheartexas.gov

CHARTER COMMISSION MINUTES

November 23, 2015

I. CALL TO ORDER

A Regular Meeting of the Fulshear Charter Commission was called to order by Chair CJ McDaniel at 6:30 pm on Monday, November 23, 2015 in Irene Stern Community Center at 6920 Katy-Fulshear Road, Fulshear Texas and all citizens were welcomed.

Members Present:

Bill Archer

John Dowdall

Ken Knapp

C.J. McDaniel

James Molina

Kent Pool

Carolyn Randle

Polly Royer

Randy Stacy

Members Absent:

Erma Beal

Larry Beustring

Cherryl Finney

D.E. (Gene) Morgan

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

Ramona Ridge, Council Member

Grady Randle, Randle Law Firm

Byron Brown, Randle Law Firm



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Laurie Szantay

Randy Katz

Kaye Kahlich

II. QUORUM

A quorum was present.

III. APPROVE MINUTES

MOTION by Member Stacy to approve the November 8, 2015 Minutes.

SECOND by Member Royer.

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)

No comments from the public

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. *Powers of the City*

Annexation and Disannexation

Attorney Randle explained that one benefit of Home Rule authority it is the unilateral ability to annex land into the City. Attorney Randle further explained that annexation is the ability to bring land into the City limits which allows the City the ability to regulate and tax. Conversely, disannexation is the separation of property from the city limits. Currently, as a General Law city, annexation requires the permission of the land owner to consent to an annexation into the City. The procedure for annexation is highly regulated by the State and is dependent on how large of a city you are.

Commission members requested clarification from Attorney Randle regarding where annexation can take place to which Attorney Randle clarified that the annexation property must touch the City limit lines and that it is best to list annexation as one of the City powers within the Charter so that you can annex if you so choose.



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MOTION by Member Archer to specifically authorize the powers of annexation and disannexation in the Charter.

SECOND by Member Molina.

Further discussion regarding annexation and disannexation.

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Franchises

Attorney Randle provided the Members with a brief history of franchises and franchise fees and further explained that cities used to be able to regulate public utilities such as electric, gas, cable, telephone, water and other public utilities. The basis of this power was the utilities ability to use the city street and, if the utility was going to use the city streets, that utility would pay the city a percentage of their gross, with 2% being a typical franchise fee. A consolidation effort began in the 1970's with the PUC starting up and regulating electric rates, the Railroad Commission regulating gas and the TCEQ regulating water. There is no water rate regulation as that regulation is still within the City. Fulshear is in a coalition for electric rates.

Attorney Randle indicated that some Charters do not include franchise language. Most Charters exempt franchises from initiative and referendums, as this Commission had decided previously. Time limits for the franchises vary amongst Charters, but are typically 20 years.

Members questioned if franchises are something the Council would take up on its own as well as the advantage/disadvantage to include in the Charter. Attorney Randle indicated that it is advantageous to include franchise language in the Charter to both generate some revenue and to empower the City with clear language regulating the City's ability to keep their right-of-way intact and clear.

MOTION by Member Pool to specifically authorize the power to franchise in the Charter, leaving the terms and details to the discretion of the Council.

SECOND by Member Archer.

Further discussion regarding franchise language in the Charter. Attorney Randle provided Members with examples from the City of Richmond whose Charter contains 2 ½ pages of franchise language and Mont Belvieu which does not mention franchise language beyond initiative, recall and referendum.

Motion carried with the following vote:



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Ayes: All in favor

Nays: None opposed

B. General Provisions

Personal Liability of City Officers

Attorney Brown indicated that the City has sovereign immunity in most cases. Additionally, there is official immunity for certain city officers in certain circumstances, which may differ under federal and state law. Generally, there is immunity for public officials for discretionary action, but not for ministerial action; however, it can sometimes be unclear if a particular action is discretionary or ministerial. This creates a dilemma for public officials when they do not know if taking or failing to take a particular action will expose them to liability. Therefore, some Charters address the issue by providing for either indemnification of or liability insurance for its officers, employees, or both. Indemnification essentially passes the responsibility for paying all applicable damages through to the City, while liability insurance pays covered damages up to the coverage limit, with the usual premiums, deductibles, and other terms associated with insurance policies.

Attorney Brown indicated that indemnification is simple, rigid, and broad, and that liability insurance is complex, narrow, and flexible. Attorney Brown also indicated that indemnification would be set forth entirely within the Charter, and that liability insurance would require Council action to purchase a separate insurance policy, which they could negotiate and renew from time to time.

Attorney Brown provided examples of instances where City officials may be subject to personal liability.

CJ Snipes, City Administrator, explained the City's current policy regarding personal liability of officers and employees.

Discussion of the advantages and disadvantages between indemnification and insurance.

MOTION by Member Archer that the Charter require City Council to purchase personal liability insurance for all City officers for official acts.

SECOND by Member Pool.

Further discussion regarding personal liability of City officers.

Motion carried with the following vote:



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Ayes: All in favor

Nays: None opposed

Severability

Attorney Brown explained that, when a document like the Charter is adopted, a severability clause is often included, which provides that each individual provision would have been adopted separately on its own merit, regardless of the adoption of any other provision. This provides protection for the remainder of the Charter if an individual provision is ruled invalid or void. Attorney Brown provided examples of documents which could or could not remain in effect due to the inclusion or lack of a severability clause.

MOTION by Member Stacy that the Charter include a severability clause.

SECOND by Member Molina.

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Non-substantive Revisions

Attorney Brown indicated that the Charter may authorize non-substantive revisions of the Charter text, which would allow the Charter to be rearranged, renumbered, or reformatted, such as for codification after its adoption, and would also allow for correction of grammar and punctuation. Attorney Brown read proposed language for the non-substantive revision provision from section 1.07 of the Sugarland Charter, which reads:

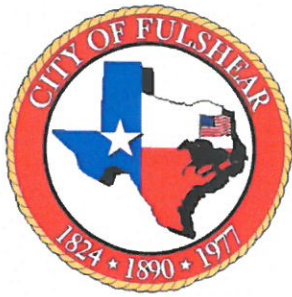
Sec.1.07.Non-SubstantiveRevisions.

(a) The City Council may, without approval of the voters, adopt an ordinance that makes the following types of revisions to the Charter:

- (1) Renumbering, revising titles, and rearranging parts thereof;*
- (2) Correcting errors in spelling, grammar, cross-references, and punctuation; and*
- (3) Revising language to reflect modern usage and style.*

(b) A revision adopted under this section is not intended to and is not to be interpreted as making any substantive change in any Charter provision.

MOTION by Member Stacy to authorize non-substantive revision of the Charter.



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SECOND by Member Pool.

Further discussion retarding non-substantive revision.

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Charter Review and Amendment

Attorney Brown indicated that substantive revisions of the Charter would require an election, and that, under the Texas Constitution, the Charter cannot be amended more often than every 2 years. Attorney Brown indicated that the Charter may provide stricter requirements for its amendment than those imposed by State law, and described the typical review and amendment process found in many charters, which involves the appointment of a Charter Review Commission every five years, which is charged with reviewing the charter and proposing amendments.

Attorney Brown indicated that the Charter may also prescribe what happens when the Charter Review Commission proposes an amendment. Specifically, the Charter can either give City Council discretion to call a charter amendment election, or it can require City Council to do so. Attorney Brown indicated that state law requires a charter amendment election to be called if the amendment is initiated by petition.

MOTION by Member Knapp that the Charter require a Charter Review Commission to be appointed every 5 years and that City Council shall call an election to submit all amendments proposed by the Commission, if any, to the voters for their approval.

SECOND by Member Molina.

Further discussion regarding Charter Review and Amendment

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Attorney Brown reminded the Commission that it had previously decided that the Mayor appoints boards and commissions with approval of the City Council, unless otherwise provided in the Charter, and indicated that the Commission may provide otherwise for the Charter Review Commission if it so desires. Attorney Brown gave examples of various methods for appointing Charter Review Commissions provided for in other home-rule city charters in Fort Bend County.

Discussion regarding various options for the selection of the Charter Review Committee and the number of Review Committee members.



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MOTION by Member Pool that the Charter Review Commission shall be composed of 13, 15, or 17 members, who are appointed by a majority of the full City Council from a pool of qualified applicants.

SECOND by Member Knapp.

Further discussion regarding Charter Review and Amendment.

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Comprehensive Plan

Attorney Brown described the Comprehensive Plan as being a long-range development plan for the City, which is necessary for the adoption of zoning regulations. State law authorizes, but does not required, cities to adopt comprehensive plans, and the City of Fulshear adopted its current comprehensive plan in 2014. Attorney Brown indicated that requiring a comprehensive plan in the Charter would ensure that the City always has a long-range development plan.

MOTION by Member Molina that the Charter shall require City Council to adopt a comprehensive plan for the City, and shall review the plan at least once every 5 years.

SECOND by Member Archer.

Further discussion regarding the Comprehensive Plan.

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Disaster Clause

Attorney Randle discussed history and reasoning for the disaster clause and need for containing a disaster clause in the event that a disaster occurs impacting the City's ability for the government to obtain a quorum and council is no longer able to meet. This clause would include language indicating how the highest ranking Council member would petition the local county commissioner's court to appoint a quorum of council members to serve until a new election is called and the election results come in.

MOTION by Member Stacy that the Charter include a disaster clause.

SECOND by Member Molina

Further discussion regarding a disaster clause.

Motion carried with the following vote:

Ayes: All in favor



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Nays: None opposed

Security and Bond

Attorney Randle indicated that most Charters have a provision indicating that the City does not have to post bonds. Attorney Randle gave examples of situations where a bond or other security is usually required, and explained that the City would be exempt from such requirements if so provided in the charter; however, Attorney Randle cautioned that the law is currently unsettled on this issue and it could be decided either way in the future.

MOTION by Member Pool that the Charter exempt the City from posting bonds or other security.

SECOND by Member Royer.

Further discussion regarding the Security and Bond.

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Notice of Claim

Attorney Randle indicated that certain claims have notice requirements prescribed by state law, such as claims under the Texas Tort Claims Act, and that the Charter may similarly provide for a general notice requirement for claims which are not preempted. Attorney Randle indicated that the typical notice period is 120 days after the claim accrues.

MOTION by Member Royer that the Charter include a 120 day Notice of Claim provision.

SECOND by Member Archer.

Further discussion regarding Notice of Claim. Attorney Randle reiterated that this provision is subject to preemption by State law.

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Power to Settle Claim

Attorney Randle indicated that the power to settle claims is arguably an inherent power of a home-rule city, but that it is advisable to specifically authorize the power to settle claims in the Charter so that there is no question. This allows the parties to the



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settlement to rely on the explicit authority granted by the Charter for the validity of the settlement.

MOTION by Member Pool that the Charter include a Power to Settle Claims provision.

SECOND by Member Royer.

Further discussion regarding the Power to Settle Claims.

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Service of Process Against City

Attorney Randle indicated that this provision helps to ensure that, if the City were getting sued, notice of the lawsuit gets to the proper City officer timely. Without such a provision, a constable may attempt to serve process on any employee of the City.

Attorney Randle indicated that the City Manager is typically the agent for service of process for a home-rule city with a council-manager form of government.

MOTION by Member Stacy that the Charter include a provision that the City Manager is the agent for Service of Process for the City.

SECOND by Member Molina.

Further discussion regarding Service of Process against City.

Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Property Not Exempt from Special Assessments

Attorney Randle explained that this provision would relieve the City Council of the onus and potential political fallout from deciding whether to grant or deny requests to waive certain special assessments, which typically come from charitable organizations.

Attorney Randle indicated that this is strictly a policy decision, and is completely optional. Attorney Randle gave examples of special assessments for which waivers are often requested, including permit fees and inspection fees.

Discussion regarding the advantages and disadvantages of exempting special assessments, including the effect on negotiating a development agreement, and the granting of waivers to one group and not another.

NO ACTION was taken on this topic.



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C. Departments, Offices, Agencies, and Boards

Qualification

Attorney Brown indicated that many charters prescribe eligibility requirements for membership on boards and commissions, most commonly residency within the City and, sometimes, a minimum continuous residency period. Attorney Brown indicated that certain boards and commissions have requirements prescribed by state law, which may preempt the general requirements of the Charter, and gave examples of such boards and commissions, including boards of Economic Development Corporations.

Discussion regarding residency requirements, including the residency requirements previously established for eligibility for City Council and the procedure for appointing boards and commissions.

MOTION by Member Stacy that eligibility for boards and commissions requires continuous residency of 6 months in Fulshear City limits at the time of appointment. Further discussion regarding residency, including residency within the city limits and ETJ. SECOND by Member Pool.

Motion carried with the following vote:

Ayes: Members Dowdall, McDaniel, Molina, Morgan, Pool, Randle, Royer and Stacy

Nays: Members Knapp

Planning and Zoning

Attorney Brown indicated that, with the broad powers of the City, the City can create various boards, committees, and commission on an as needed basis. However, some Charters require certain boards, committees, and commissions. For example, many charters require either a separate planning commission and zoning commission, or a combined planning and zoning commission, which are otherwise discretionary. The City currently has a combined planning and zoning commission. Therefore, the Charter may require that they be separated, require that they be combined, or leave it to the discretion of City Council.

Discussed regarding the current, combined Planning and Zoning Commission, including its appropriateness for the City.

MOTION by Member Archer that the Charter require a Planning Commission and Zoning Commission, which may be combined at the discretion of City Council.

SECOND by Member Molina.

Further discussion regarding Common Commissions that Require Appointment.



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Motion carried with the following vote:

Ayes: All in favor

Nays: None opposed

Board of Adjustment

Attorney Brown advised that state law sets certain requirements for the Board of Adjustment; however, if the City does not appoint a Board of Adjustment, the City Council may act as the Board of Adjustment. Attorney Brown discussed the advantages and disadvantages of the City Council acting as the Board of Adjustment, including the appeal process.

Discussion of the advantages and disadvantages of requiring City Council to appoint a Board of Adjustment.

Attorney Randle indicated that a true Board of Adjustments is a quasi-judicial board. They are separate other than City Council and act as a sort of mini court. This depends on how the jurisdiction is drawn, but it takes it out of the City Council and takes it to a quasi-judicial forum where there would be a short appellate time to go to district court to say that the City acted unreasonably.

Further discussion regarding whether appointment of the Board of Adjustment should be at the discretion of City Council.

NO ACTION was taken on this topic.

D. Financial Administration

Due to the late hour, this topic will be added to the Agenda for the December 8, 2015 meeting.

E. Comments of City Council

Attorney Randle addressed certain concerns and comments brought to his attention during the November 17, 2015 City Council meeting. Specifically, certain City Council members expressed concern regarding the Commission's proposal to increase the Council size from 5 members to 7 members, and certain City Council members expressed concern regarding the 1 year residency requirement. Attorney Randle indicated that state law prohibits the Charter from extending the residency requirement beyond 1 year.



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Attorney Randle reiterated that residency is essentially a subjective state of mind, and provided examples of local instances where residency was questioned.

Additionally, a City Council member expressed concern regarding the compensation of City Council members. Attorney Randle indicated that he had reread all the previous minutes where Members discussed compensation of City Council, which was decided by the Commission in August. Attorney Randle relayed the comments of the City Council member that by compensating the Council, it is possible to open the pool of candidates because babysitting costs are high. These and other issues it was decided will be taken up at the final review of the Charter.

Attorney Randle reviewed again the process for adopting a home-rule charter. Attorney Randle indicated that Mr. Randy Katz's note read both during the November 10 Charter meeting and November 17 City Council meeting brought a particular issue to his attention regarding whether City Council may approve or reject the proposed Charter before the charter is submitted to the voters at an election. Attorney Randle stated that City Council does not get to vote on the charter, only a vote that is required to call an election, in other words it goes straight to the voters.

Attorney Randle provided the description for the Charter process as follows: there is the original Charter that is currently in process; then there are Charter amendments proposed by a charter review committee; or there are petitions by citizens for Charter amendments or amendments proposed by the City Council. If there are petitioned amendments by the voters, adoption of the amendment must be by an election per state law. If it is a Council directed amendment or a charter review committee amendment, then state law does not require an election and the Council may "veto" it by not calling an election unless the charter itself requires that it must go to the voters. This Charter Commission just voted to require an election for all proposed amendments regardless of the source. The "all or nothing" means that it is all or nothing for the voters of the City at a charter election. The Charter goes to the Council so that Council can call an election, which the Council must call an election for the next uniform election date per state law. The election is mandatory. This is state law; there are no vetoes allowed. The timeframe for the Charter election is no earlier than 40 days after the Commission finishes their work.

In order to make the May deadline, February is the Charter Commissions drop dead date. The Charter Commission would like to make the final presentation to Council in January, 2016.



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Members discussed the desire to review the final document. Noticing that a number of Council members were present, Members asked Attorney Randle if it was possible to get feedback or comments from them at this meeting. Attorney Randle indicated that, because the notice posted for this meeting is limited to deliberation of the Charter Commission, deliberation by Council Members would be a violation of the Open Meetings Act.

F. Restriction on At-Large Council Member Positions

Due to the late hour, this topic will be added to the Agenda for the December 8, 2015 meeting.

G. Qualifications for City Office

Due to the late hour, this topic will be added to the Agenda for the December 8, 2015 meeting.

H. Compensation and Expenses of City Council

Due to the late hour, this topic will be added to the Agenda for the December 8, 2015 meeting.

I. Transition

Due to the late hour, this topic will be added to the Agenda for the December 8, 2015 meeting.

The next meeting will be Tuesday, December 8, 2015 at 6:30pm at Irene Stern Community Center.

VII. ADJORNMENT

Member Stacy motioned to adjourn at 8:39pm.

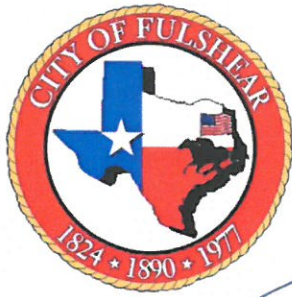
Second by Member Molina.

The motion was carried by the following vote:

Ayes: All Members

Nays: None

Chairman McDaniel announced that we are now adjourned.



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C.J. McDaniel – Chairman

Attest:

Lynn Raymer – Executive Assistant