



The City of Lago Vista

*To provide and maintain a healthy, safe, vibrant
community, ensuring quality of life.*

**AGENDA
CHARTER REVIEW COMMITTEE
MONDAY, JUNE 1, 2015, 6:00 PM
CITY COUNCIL CHAMBERS
5803 THUNDERBIRD
LAGO VISTA, TX 78645**

NOTICE IS HEREBY GIVEN that the Charter Review Committee of the City of Lago Vista, Texas will hold a Regular Meeting on the above date and time, for consideration on the following:

1. Introduction of Committee members/staff/City Attorney.
2. Review of the creating resolution and the charge of the Charter Review Committee/called November election.
3. Overview by City Attorney of actions taken to get the City in this position.
4. Election schedule and timeline to report to the City Council.
5. Other Charter language the Committee would like to look at.
6. Scheduling of next meeting.
7. Adjourn.

IT IS HEREBY CERTIFIED that the above Notice was posted on the Bulletin Board located at all times in City Hall in said City at 2:45 p.m. on the 28 day of May, 2015.

Sandra Barton, City Secretary

THIS MEETING SHALL BE CONDUCTED PURSUANT TO THE TEXAS GOVERNMENT CODE SECTION 551.001 ET SEQ. AT ANY TIME DURING THE MEETING THE COUNCIL RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION ON ANY OF THE ABOVE POSTED AGENDA ITEMS IN ACCORDANCE WITH THE SECTIONS 551.071, 551.072, 551.073, 551.074, 551.075 OR 551.076.

THE CITY OF LAGO VISTA IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. REASONABLE MODIFICATIONS AND EQUAL ACCESS TO COMMUNICATIONS WILL BE PROVIDED UPON REQUEST.

MEETING DATE: June 1, 2015

AGENDA ITEM: Introduction of Committee members/staff/City Attorney

Comments:

The applications received from each member have been provided.

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Bradley _____ ; **Helm** _____ ; **Raley** _____ ; **Townsend** _____ ;

Wilhow _____ ;

Motion Carried: Yes _____ ; **No** _____

**CITY OF LAGO VISTA
APPLICATION FOR BOARDS, COMMISSIONS, AND COMMITTEES**

ROBERT BRADLEY 4122 ROCKWOOD DR LV FL 33467
 Name Address City, State, Zip ~~78647~~

512-267-2461 512-431-0125
 Home phone: Cell phone: Business phone:

jbbsg@att.net
 Email address:

BSBA
 Education*

RETIRED
 Employment*

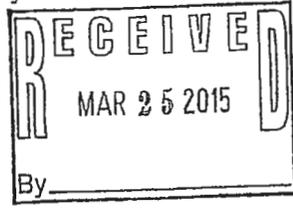
GOLF - HIAK SCHOOL BOARD -
GRAND KIDS -
 Areas of Interest*

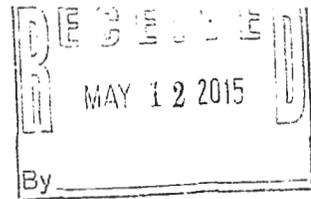
EXPERIENCE IN BUSINESS ADMIN -
SUPERVISOR POSITIONS FOR 25 YEARS
LAGO VISTA CITY COUNCIL
 Experiences, characteristics, or other factors that would contribute to your ability to serve on the Board, Commission, or Committee.*

Position(s) desired (Please indicate your choice in order of preference by placing a 1, 2, 3... in the blank beside the position you're interested in.)

- | | |
|----------------------------------------------------------------|-----------------------------------------------|
| <u>1</u> Board of Adjustments | _____ Airport Advisory Board |
| <u>2</u> Planning & Zoning Commission/
Impact Fee Committee | _____ Library Advisory Board |
| _____ Roads & Grounds Committee | _____ Parks and Recreation Advisory Committee |
| <u>1</u> Building Committee | <u>1</u> Golf Course Advisory Committee |
| _____ Keep Lago Vista Beautiful Board | |

*You may attach additional sheets if necessary.





**CITY OF LAGO VISTA
APPLICATION FOR BOARDS, COMMISSIONS, AND
COMMITTEES**

Hubbard Helm 21519 lakefront Dr. Lago Vista TX 78645-6124
Name Address City,State,Zip
512-535-7708 512-423-4223 N/A
Home Phone Cell Phone Business Phone

HHelm@austin.rr.com
Email address:

Education* BS degree University of Iowa

Employment* Retired, prior work experience Infrastructure Architect in charge of design, project management, implementation, recovery and operation of time sensitive financial networks and systems.

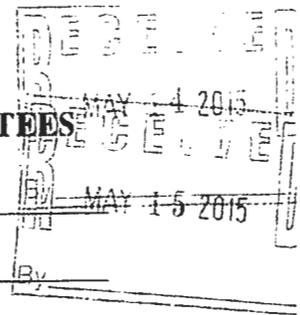
Areas of Interest* Government, Recreation, Zoning, citizen representation.

Experiences, characteristics, or other factors that would contribute to your ability to serve on the Board, Commission, or Committee.*
Server as on city council in Runnels Iowa. Founder and chairman of DOS users group, Member of Rural fire department.

Position(s) desired (Please indicate your choice in order of preference by placing a 1, 2, 3... in the blank beside the position you're interested in.)

- Board of Adjustments Airport Advisory Board
- 3 Planning & Zoning Commission/
Impact Fee Committee Library Advisory Board
- Roads & Grounds Committee 2 Parks and Recreation Advisory
Committee
- Building Committee Golf Course Advisory Committee
- Keep Lago Vista Beautiful Board 1 Charter Review Committee

**CITY OF LAGO VISTA
APPLICATION FOR BOARDS, COMMISSIONS, AND COMMITTEES**



Nicolette Raley 20108 Victoria Chase L.V.
Name Address City, State, Zip

512/788-4152
Home phone: Cell phone: Business phone:

lakeshorepropertysolutions - raley@yahoo.com
Email address:

Education* 2 years college

Employment* LVISD

Areas of Interest* Home & ~~Business~~ Business Qualifiers/Beautifi-
Area-Wide Beautification, Sports Complex, cation
City Park

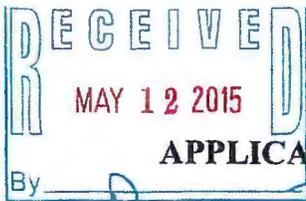
Experiences, characteristics, or other factors that would contribute to your ability to serve on the Board, Commission, or Committee.*
Home Build & Design, Business management,
Love of our city and its future

Position(s) desired (Please indicate your choice in order of preference by placing a 1, 2, 3... in the blank beside the position you're interested in.)

- | | |
|--------------------------------------------------------------------------------|------------------------------------------------------------------|
| <input type="checkbox"/> Board of Adjustments | <input type="checkbox"/> Airport Advisory Board |
| <input type="checkbox"/> Planning & Zoning Commission/
Impact Fee Committee | <input type="checkbox"/> Library Advisory Board |
| <input type="checkbox"/> Roads & Grounds Committee | <input type="checkbox"/> Parks and Recreation Advisory Committee |
| <input type="checkbox"/> Building Committee | <input type="checkbox"/> Golf Course Advisory Committee |
| <input type="checkbox"/> Keep Lago Vista Beautiful Board | <input checked="" type="checkbox"/> Charter Review Committee |

*You may attach additional sheets if necessary.

*Thank you for
your consideration*



CITY OF LAGO VISTA

APPLICATION FOR BOARDS, COMMISSIONS, AND COMMITTEES

By Parsons Townsend 21502 High Dr. Lago Vista, TX 78645

Name: (SR) 965-2401 Address: City, State, Zip

Home phone: Cell phone: Business phone: Email address: parsons.townsend@gmail.com

Education* Bachelor of Science in Finance - Tarleton State University, TX Cert. Fed. Government Auditing Professional and Certified Internal Controls Auditor

Employment* Texas State Auditor's Office - specializes in audits of States, local governments and non-profit organizations.

Areas of Interest* Community Service, City Governance

Experiences, characteristics, or other factors that would contribute to your ability to serve on the Board, Commission, or Committee.* I have 7 years of management experience while as a project manager internal auditor with the Texas State Auditor's Office. My professional work has provided government leaders and citizens with independent, objective and reliable information concerning the operations of institutions at higher education and State agencies. I have extensive experience with research in federal-state laws, codes and regulations; examining, analyzing and maintaining audit evidence and documentation with federal requirements and governmental auditing standards.

Position(s) desired (Please indicate your choice in order of preference by placing a 1, 2, 3... in the blank beside the position you're interested in.)

- Board of Adjustments Airport Advisory Board
Planning & Zoning Commission/ Impact Fee Committee Library Advisory Board
Roads & Grounds Committee Parks and Recreation Advisory Committee
Building Committee Golf Course Advisory Committee
Keep Lago Vista Beautiful Board 1 Charter Review Committee

*You may attach additional sheets if necessary.

(CITY MANAGER)

CITY OF LAGO VISTA
APPLICATION FOR BOARDS, COMMISSIONS, AND COMMITTEES

Travis Wilkow 21129 Northland Dr. LAGO VISTA TX 78645
Name Address City, State, Zip

830-265-0611 512-267-4117
Home phone: Cell phone: Business phone:

WILKOWWA@SBCGLOBAL.NET
Email address:

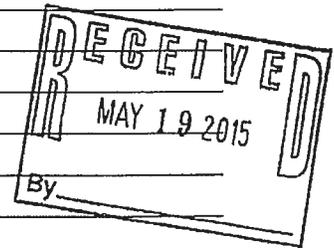
Education* FOREST PARK HIGH SCHOOL, 12 YRS GRADUATED

Employment* SELF EMPLOYED (TRAVIS WILKOW INC)

Areas of Interest* BASEBALL - SOFTBALL - PARKS & RECREATION
FOR THE CHILDREN OF THE COMMUNITY,

Experiences, characteristics, or other factors that would contribute to your ability to serve on the Board, Commission, or Committee.*

OWN MY BUSINESS
BETTER OUR COMMUNITY



Position(s) desired (Please indicate your choice in order of preference by placing a 1, 2, 3... in the blank beside the position you're interested in.)

- _____ Board of Adjustments
- _____ Airport Advisory Board
- _____ Planning & Zoning Commission/
Impact Fee Committee
- _____ Library Advisory Board
- _____ Roads & Grounds Committee
- 2 Parks and Recreation Advisory Committee
- _____ Building Committee
- _____ Golf Course Advisory Committee
- _____ Keep Lago Vista Beautiful Board
- 1 Charter Review Committee

*You may attach additional sheets if necessary.

MEETING DATE: June 1, 2015

AGENDA ITEM: Review of the creating resolution and the charge of the Charter Review Committee/called November election.

Comments:

A copy of Resolution No. 15-1610 is attached. The Resolution was signed on May 21, 2015 at the May Council meeting and shows the appointment of the five members of the Charter Review Committee.

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Bradley _____ ; **Helm** _____ ; **Raley** _____ ; **Townsend** _____ ;

Wilhow _____ ;

Motion Carried: Yes _____ ; No _____



AGENDA ITEM
City of Lago Vista

To: Mayor and City Council

Council Meeting: April 16 2015

From: Melissa Byrne Vossmer, City Manager

Subject: Discussion Concerning the Process of Appointing a Charter Review Committee

Request: Other

Legal Document: Other

Legal Review:

EXECUTIVE SUMMARY:

This item is on the Council agenda to provide the opportunity for Council to discuss the process of appointing a Charter Review Committee to help examine options to transition the Council elections back to the schedule currently included in the City of Lago Vista Charter.

As Council is aware, the City election cycles are off the schedule outlined in the Charter. At the March 19th meeting, Staff was directed to meet with the all Council candidates and go over the election issues and results. A handout was developed and distributed along with a copy to the City Council and posted on the City's website. The City Manager and City Attorney met with the Council Candidates, with the exception of Jason Shoumaker, on March 24th and went over the materials, answered questions and supported the discussion.

In addition, on March 25th, the City Secretary contacted the Charter Review Committee appointed in 2014 to see if they would be interested in working to develop options. These members, Clara Hammonds, Bob Bradley and Mike Beal had initially presented their findings and recommendations to the City Council in June of 2014. As Staff looked at the original Resolution #13-1589, October 2, 2013, appointing them to serve, it was noted that their terms of appointment expired in October, 2014.

Staff did make contact with these past members of the Charter Review Committee. As of this writing, Bob Bradley has indicated a desire to serve again. Mike Beal has declined. Staff is waiting to hear from Clara Hammonds. In addition, it has been suggested that since the City Council is literally starting over to appoint a Charter Review Committee, perhaps there should be some consideration to increase the number of members. City Charter Section 11.14 Charter Review outlines that the Charter Review Committee shall be a minimum of three (3) members and no more than six (6) members to serve for a twelve (12) month term. A copy of the appropriate sections from the City of Lago Vista Charter is attached. Suggestions on how to consider residents for appointment range from advertising and taking applications to asking Council Candidates for recommendations.

Impact if Approved:

Staff will implement Council direction to move forward to position the City to appoint a Charter Review Committee.

Impact if Denied:

This will not move forward at this time.

Is Funding Required? Yes No **If Yes, Is it Budgeted?** Yes No N/A

Indicate Funding Source:

Suggested Motion/Recommendation/Action

Motion to

Motion to

Motion to

Known as:

Discussion concerning the process of appointing a new Charter Review Committee.

Agenda Item Approved by City Manager

Section 11.13 Charter Amendment

Amendments to this Charter must be formulated and submitted to the voters of the City in the manner prescribed by the laws of the State of Texas.

Section 11.14 Charter Review

The Council shall appoint a Citizens Review Committee comprised of residents of the City to periodically review the Charter after its adoption and no later than every four (4) years thereafter. The Council shall appoint a minimum of three (3) members and no more than six (6) members to serve for a twelve (12) month term, and such term may be extended by the Council. The Committee shall inquire into the operations of the City government as related to the Charter and review said Charter to determine if revisions are necessary.

Public hearings may be held and the Committee shall have the power to compel the attendance of City officers or employees and may require the submission of the City records necessary to review.

The Charter Review Committee shall make a written report of its findings and recommendations to the Council of any proposed amendments.

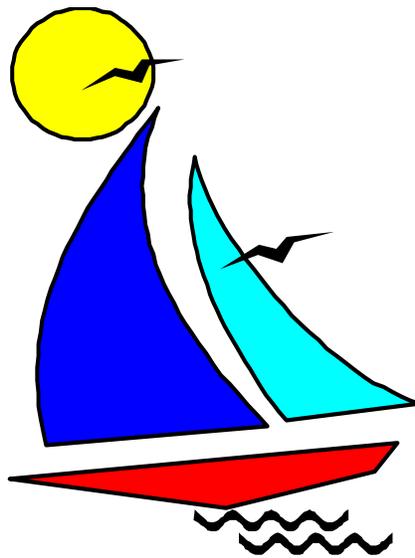
ATTEST:



Sandra Barton, City Secretary

On a motion by Council Member Jason Shoumaker, seconded by Council Member Dale Mitchell, the above and foregoing instrument was passed and approved.

HOME RULE CHARTER



**CITY OF
LAGO VISTA, TEXAS**

**HOME RULE CHARTER
OF THE
CITY OF LAGO VISTA**

PREAMBLE

We, the people of Lago Vista, Texas, do hereby establish this Home Rule Charter to grant full authority and power of local government to the City of Lago Vista, Texas, and to reserve powers to the people as provided in this Charter. The City of Lago Vista shall have all the authority and powers of local government that are not inconsistent with state law, subject to the powers reserved to the people herein. The purpose of this charter is to establish and maintain an effective system of home rule government resulting in an overall better environment for the health, safety, and welfare of the residents of the City.

ARTICLE I

Incorporation, Form of Government and Boundaries

Section 1.01 Incorporation. The inhabitants of the territory and geographic area shown on the official map of the City of Lago Vista, Texas as being within the boundaries of the City hereby incorporate the City of Lago Vista as a Texas home-rule municipal corporation. Such territory and area is and shall continue to be a body politic and corporate, in perpetuity, under the name of the "City of Lago Vista", hereinafter the "City", with such powers, privileges, rights, duties, and immunities as herein provided.

Section 1.02 Form of Government. The municipal government shall be a Council-Manager form of government. All powers of the City will be vested in an elected City Council, hereafter known as the Council, subject to the limitations of state law and this Charter. The Council shall enact local legislation, adopt budgets, determine City policies and appoint a City Manager. The City Manager shall be responsible to the Council for the management and administration of the City government.

Section 1.03 Boundaries. The boundaries of the City are hereby established as above provided, with the intent that such boundaries are as were provided and intended by the original incorporation of the City of Lago Vista, Texas, in August 1984, as modified and amended by subsequent annexations and disannexations. The corporate limits of the City shall be as now and as hereafter established, extended and modified.

Section 1.04 Annexation and Disannexation. The Council may by ordinance unilaterally annex or disannex any land, property or territory upon its own initiative, or upon a petition submitted by a majority of the registered voters, or the owners of a majority of the property, within the territory being annexed or disannexed. The procedure for establishing the City boundaries, and the annexation or disannexation of territory, may not be inconsistent with any applicable requirements and limitations established by state law; provided that absent procedures established by state law, the action may be taken by ordinance adopted after one public hearing is held at least ten (10) but not more than twenty (20) days after notice of such hearing is published in a newspaper of general circulation in the City. Upon final passage of an ordinance fixing, establishing or modifying the boundaries of the City, or annexing or disannexing any property by any method prescribed herein, the boundaries of the City shall be so extended or modified as provided in such ordinance. Upon an ordinance annexing property into the City, the

annexed territory shall become a part of the City, and the land and its residents and future residents shall be bound by the acts, ordinances, codes, resolutions, and regulations of the City.

Land disannexed from the City shall not be relieved from any unpaid assessments or taxes levied against the land while such land was within the City.

ARTICLE II POWERS OF THE CITY

Section 2.01 General. The City is a home-rule city. Accordingly, the City shall have full and complete power of local self-government and all authority and powers, both defined and implied, that are not inconsistent with state law. The City shall further have all other and additional authority and powers now or hereafter granted to home-rule cities by state law.

The City may:

- a) Use a corporate seal;
- b) Contract and be contracted with;
- c) Sue and be sued; provided that such power shall not be construed as a waiver of governmental immunity;
- d) Co-operate with other government entities;
- e) Acquire any property, whether real, personal or mixed, by purchase, gift, devise, lease, or condemnation, inside or outside the City limits;
- f) Sell, lease, mortgage and control such property as its interests may require;
- g) Construct, own, lease and operate public utilities;
- h) Establish rates and otherwise regulate public utilities and service providers, and entities using the public streets and rights-of-way, to the fullest extent not inconsistent with state law;
- i) Assess, levy and collect taxes;
- j) Borrow money on the faith and credit of the City by the issuance of bonds, certificates of obligation, warrants or notes of the City, or by lease-purchase;
- k) Appropriate money;
- l) Pass and enforce ordinances and provide penalties for ordinance violations;
- m) Preserve and promote the health, safety, and welfare of local citizens; and

- n) Exercise all municipal powers, functions, rights, privileges and immunities of every name and nature except those prohibited by state or federal law.

Section 2.02 General Powers Adopted. The enumeration of powers in this Charter is not exclusive. The City shall have all powers incident to local self-government, both direct and implied, that it would be possible to individually and specifically list in this Charter. The enumeration of special powers herein or in any state law making a grant of power and authority to a home-rule city shall not be held or construed to preclude the City from exercising all other powers of local government not inconsistent with the Constitution, the laws of the State of Texas, and the reservations to the people contained in this Charter. The purpose of this Charter is to enlarge upon the power extended by the general and special laws to cities, and to secure to the City, all the powers of local government possible to be conferred on the city under the Texas Constitution.

Section 2.03 Eminent Domain. The City shall have full power and right to exercise the power of eminent domain for any public purpose or as necessary or desirable to carry out any power conferred by this Charter or state or federal law. The City shall have and possess the power of condemnation for any public purpose even though such power of eminent domain is not otherwise specifically enumerated in this Charter or in state law. The City may exercise the power of eminent domain in any manner authorized or permitted by state law and, in those instances in which state law does not authorize, permit or establish the procedures, method of establishing value, or other requirements for condemnation and the exercise of the power of eminent domain, the City Council shall by ordinance establish the process, rules and procedures for valuing the property and the property interests to be condemned.

The City shall not, however, use the power of eminent domain to acquire land that is owned by a property owners association, and that is dedicated and used as parkland, for use as a City park.

Section 2.04 Zoning. For the purpose of promoting the public health, safety, and general welfare and protecting and preserving places and areas of historical, cultural or architectural importance, the Council shall have full power and authority to regulate and control the use of land, to zone and re-zone land within the City and to adopt ordinances, rules, and regulations governing the same to the fullest extent not inconsistent with state law.

Section 2.05 Rights Reserved. All suits, taxes, penalties, fines, forfeitures, and all other rights, claims and demands, of every kind and character, which have accrued under the laws in favor of the City, heretofore in force governing the same, shall belong to and vest in the City and shall not abate by reason of the adoption of this Charter, and shall be prosecuted and collected for the use and benefit of the City and shall not be in any manner affected by the taking effect of this Charter; but, as to all of such rights, the laws under which they shall have accrued shall be deemed to be in full force and effect. The budget and all ordinances, rules and regulations of the City shall be and remain in effect, subject to the terms of this Charter and the future discretion and vote of the Council. All present commissions, boards, officers and employees of the City shall continue in office subject to the provisions of this Charter, including, but not limited to, the provisions governing election and removal, and the authority conferred on the City Manager and the Council by this Charter.

Section 2.06 Streets and Public Property. The City shall have exclusive dominion, control, and jurisdiction, in, upon, over, and under the public streets, sidewalks, alleys, highways, public squares, public ways, and public property within the corporate limits of the City. With respect to all such facilities and public property, the City shall have the power to establish, maintain, alter, abandon, or vacate the same; to regulate, establish, or change the grade thereof; to control and regulate the use thereof; and to abate and remove in a summary manner any encroachment. The City may develop and improve, or cause to be developed and improved, any and all public streets, sidewalks, alleys, highways, and other public ways within the City by laying out, opening, narrowing, widening, straightening, extending, and establishing building lines along the same; by purchasing, condemning, and taking property thereof; by filling, grading, raising, lowering, paving, repaving, and repairing, in a permanent manner, the same; by constructing, reconstructing, altering, repairing and realigning curbs, gutters, drains, and sidewalks, culverts and other appurtenances and incidentals in connection with such development and improvements; and may make or cause to be made any one or more of the kinds or classes of development and improvement authorized hereinabove, or in any combination or parts thereof.

ARTICLE III THE CITY COUNCIL

Section 3.01 Number, Selection, and Term of Office. The City Council shall be the legislative and governing body of the City and have control of all the City finances, property, functions, services, affairs and programs subject only to the terms and provisions of this Charter. The City Council shall consist of a Mayor and six (6) Council Members. When used in this Charter or any other City document "Councilperson", "Councilmember" or "Council Member" includes the Mayor unless the context indicates otherwise.

The Mayor shall be elected from the City at Large. The Council Members shall be elected from the City at Large, by Place. Each seat on the Council, except for the position of Mayor, will be numbered, and the place numbers shall be Place 1 through Place 6. The Council Member occupying a particular seat will be identified by the Place number assigned to that council seat. The Mayor and the three Council Members occupying places 1, 3, & 5 shall be elected in odd numbered years and the three Council Members occupying Places 2, 4, & 6, shall be elected in even numbered years. The candidate who receives the largest number of votes for a particular office shall be declared elected for that office. Elections shall be held in the manner provided in Article V of this Charter.

The terms of office for all members shall be two (2) years. Office terms shall commence at the first regular Council meeting after a member of the Council has been declared elected. The Council shall, at the first regular City Council meeting following the taking of office of all new members after each scheduled general City election, elect from among its membership a Mayor Pro-Tem. The Mayor Pro-Tem shall act as Mayor during the disability or absence of the Mayor and in this capacity shall have the rights and duties conferred upon the Mayor.

Section 3.02 Qualifications. All candidates for City elective office shall:

- a) Meet all the requirements for the office prescribed by state law;

- b) Be a registered voter residing in the City or annexed area for at least one (1) year prior to the date of the election;
- c) Be at least 21 years of age by the date of the election;
- d) Hold no other elected public office if elected;
- e) Not be a City employee;
- f) Not be in financial arrears to the City for any reason; and
- g) Not file for more than one (1) office per election.

Section 3.03 Judge of Election Qualifications. The Council shall be the judge of the election and the qualifications of its members, and all officers and officials of the City appointed by the Council.

Section 3.04 Application for City Office. Each candidate for an elective City office shall make application to have his/her name listed on the ballot in accordance with state law.

Section 3.05 Compensation. Members of the Council and the Mayor shall serve without pay or compensation provided however, that the Council may, at some future date, determine by ordinance, a compensation package. Council Members and the Mayor shall be entitled to reimbursement for reasonable expenses incurred in the performance of their official duties as approved by the Council.

Section 3.06 Mayor. The executive power of the City shall be vested in a Mayor who shall be recognized as the head of the City for legal and ceremonial purposes and by the Governor of the State of Texas for all purposes of military law. The Mayor shall work closely with the Council to obtain legislation in the public interest and with the City Manager to ensure that the same is enforced, preside at all meetings of the Council and provide the leadership necessary to ensure good government. He or she may call special meetings of the Council and any board or commission and set the agenda therefore, and shall participate in discussion and vote on all matters coming before the Council but shall have no power to veto. The Mayor may meet with and obtain information from the City Manager or any department head, consult with and advise the City Manager with respect to any city business or issue, direct the City Manager with respect to the performance of any duty or provision of any service, and require any item or items to be included on or deleted from the agenda for a Council meeting. Agenda items which have been specifically requested by two (2) or more Council Members may not be deleted. The Mayor shall have signatory authority for all legal contracts and commitments of the City, but may not bind or obligate the City in any way without prior authorization from the City Council. He or she shall sign all approved ordinances and resolutions, and may recommend appointees for boards and commissions. The Mayor, in time of declared emergency, may govern the City by proclamation and direct the City Manager so as to maintain order and enforce all laws. The Mayor shall have such additional powers as are granted to the office by state law, or by ordinance not inconsistent with this Charter.

Section 3.07 Vacancies. An office of council member may become vacant by reason of the death, resignation, disability, recall, removal or forfeiture provided by law. The Council, at the first regular Council meeting after the vacancy occurs, shall declare the office vacant and initiate action to fill the vacancy in accordance with Section 3.09 of this Charter.

Section 3.08 Removal from Office. The City Council may remove any member of the Council from office for any of the following reasons:

- a) Failure to maintain the qualifications for office required by Section 3.02 of this Charter;
- b) Willful violation of any provision of this Charter, or any provision of the Code of Ethics adopted under Section 11.05 that provides for removal or termination of employment;
- c) Conviction of a felony or a crime involving moral turpitude;
- d) Failure to attend three consecutive regularly scheduled Council meetings without being excused by the Council.

Removal proceedings shall be initiated when a sworn or notarized written complaint charging a member of the Council with an act or omission that constitutes a reason for removal is presented to the Mayor or, if the complaint is against the Mayor, to the Mayor Pro Tem. The person receiving the complaint shall file it with the City Secretary, who shall provide a copy to the member complained against and all other Council Members. Upon the receipt of a complaint the Mayor, or the Mayor Pro Tem as appropriate, shall cause the complaint to be initially considered by the City Council for the sole purpose of the Council deciding if the complaint alleges a violation that is grounds for removal and that should be considered in Executive Session. If a majority of the Council finds the complaint alleges a violation that is grounds for removal it shall set a time and date for a hearing in Executive Session on the complaint.

If the Council Member complained against does not resign, the remaining members of the City Council shall conduct a hearing in executive session to take evidence on the complaint, unless a written request to conduct the meeting in public is made by the member complained against. The member complained against shall have a right to representation at the hearing and to question and cross-examine all witnesses, but may not vote on the question of removal. Based on the evidence presented at the hearing, the City Council shall, in public session, make a decision whether the member should be removed from office and issue an order setting out its decision. If it determines by a majority vote of four (4) members that removal is warranted, it shall declare a vacancy to be filled no sooner than the next regular meeting in accordance with Section 3.09. The Council may schedule and reschedule any such hearing for any reason, including convenience to enable attendance by all members of the council. The decision of the City Council shall be final and binding so long as it is made in good faith and, may in the discretion of the Council, include a lesser penalty of censure and/or a fine as provided in the Ethics Ordinance.

Section 3.09 Filling Vacancies. Within thirty (30) days of declaring a vacancy, the Council, by a majority vote of the remaining members of the Council, shall appoint to the vacancy a person

possessing the qualifications specified in this Charter. If two or more vacancies exist and there is more than 180 days before a general City election, the remaining members of the City Council shall, within thirty (30) days of the occurrence of the multiple vacancies, call a special election to fill the vacancies for the remainder of the unexpired terms. If there are less than 180 days before the next general City election, or if no uniform election date at which members of the Council may be elected will occur prior to the next general city election, a majority of the remaining members of the Council shall appoint qualified persons to fill the vacancies until the general election. All persons holding office by appointment shall serve only until an election is held to fill that position and the person elected to that position is seated. If no qualified candidate files for election to the office of Mayor or a Council place for any special or general election, the Council shall appoint a qualified person to fill the position until the next general election.

If at any time there are no members of the City Council able to serve, or if a quorum of the Council is not able to serve, the following individuals together with the members of the City Council, if any, remaining and able to serve, shall immediately call an election to fill the City Council vacancies and act as a temporary City Council to conduct City business that is deemed urgent and that should not be postponed until after elections are held: The Chairperson of the Planning and Zoning Commission; The Chairperson of the Board of Adjustment; The Chairperson of the Roads and Grounds Committee; and the Chairperson of the Building Committee.

Section 3.10 Dual Office Holding. Neither the Mayor nor any other member of the Council shall hold another City office or City employment during the term of their office. Former members of the Council shall not receive any compensation from the City or hold any compensated appointive City office within one (1) year after their elective office terminates.

Section 3.11 Council Meetings. The Council shall fix the time and dates for regular meetings by resolution and define by ordinance the manner in which meetings are conducted. The Council shall meet at a regular time at least once a month. Special and called meetings shall be held as determined by the Council or called by the Mayor. Notice of all meetings shall be in accordance with state law.

Section 3.12 Quorums. Three (3) members of the Council and the Mayor, or the Mayor Pro-Tem and three council members during the absence of the Mayor, shall constitute a quorum for the purpose of transaction of business. No action of the Council, except as provided in Section 3.09, shall be valid or binding unless adopted in an open meeting with a quorum present, provided that less than a quorum may adjourn any meeting or canvass an election, and no action or motion shall be passed, approved, adopted, taken or consented to except by a majority vote of the members of Council present and voting; provided that not less than three (3) affirmative votes shall be required to pass, approve, adopt, take action or consent to any ordinance, resolution, action, matter, issue, or motion.

Section 3.13 Rules of Procedure. The Council shall establish by ordinance its procedures for conducting Council meetings. Such ordinance shall provide the citizens, or their representatives, a reasonable opportunity to comment on any matter on the agenda of any regular or special meeting of the Council prior to the Council voting on the matter, and citizen communications shall be an agenda item for all meetings for that purpose. In addition to agenda items, any issue over which the city has jurisdiction may be addressed during citizen communications. All

persons present at Council meetings or any public hearing and requesting in writing to be heard may address the Council on the subject of the hearing. The City Secretary shall maintain and record all minutes of all proceedings of the Council, except for Executive Sessions, and make these minutes available to citizens of the City for a reproduction fee.

Section 3.14 Voting. Members of the Council present shall vote and have their votes recorded in the minutes upon every action requiring a vote. Only in the event the vote involves a member's conduct or conflict of interest shall that member abstain, and the reasons for the abstention shall be noted in the minutes. The rules set forth in Section 11.05 shall control conflict-of-interest issues unless a more restrictive provision is established by state law.

Section 3.15 Ordinances in General. The Council shall have the power to adopt, waive, suspend, repeal or amend any ordinance, and provide for the enforcement and punishment of ordinance violations in any manner, not inconsistent with state law. All expenditures of City funds and creation of City indebtedness shall be by ordinance. All such actions shall state, "Be it ordained by the Council of the City of Lago Vista".

An ordinance must be enacted whenever the purpose is to regulate persons and property; whenever there is imposed a penalty, fine, forfeiture, or tax; whenever the purpose is to set a rate to be paid by consumers; whenever an ordinance is required by state law or this Charter; or when an ordinance is amended. The authority of the Council to legislate to accomplish any public purpose shall be subject only to the following:

Section 3.16 Procedure to Enact Legislation. Every ordinance shall be introduced in written or printed form, and shall have a clearly summarized and fully descriptive title or caption. The reading aloud of the title or caption of the ordinance shall suffice as a reading of the ordinance in its entirety, provided that a written or printed copy thereof has been furnished to each member of the Council prior to such meeting, or at such meeting without objection by a member of the Council. A majority of the members of the Council present and voting may require an ordinance to be read in its entirety. All ordinances to be enacted by the Council shall be considered and the descriptive caption of such ordinance read in open meeting of the Council at a minimum of one (1) Council meeting. Any Council Member may by request made on the record at the meeting require a second reading. The affirmative vote of the majority of the members of the Council present and voting, except as otherwise required by statute or this Charter, shall be necessary to adopt any ordinance.

The vote upon the passage of all ordinances and resolutions shall be recorded in a book kept for that purpose by the City Secretary. Every ordinance enacted shall be authenticated by the signature of the Mayor or, in the absence of the Mayor, by the Mayor Pro-Tem and the City Secretary, and shall be systematically recorded and indexed in an ordinance book in a manner approved by the Council. It shall be necessary to record only the caption, subject matter and assigned ordinance number or title of ordinances in the minutes of the Council meetings.

Section 3.17 Publication of Ordinances. Except as otherwise required by state law or this Charter, the City Secretary shall give notice of the enactment of every ordinance imposing any penalty, fine or forfeiture and every ordinance relating to the budget, franchises, taxes, or public utilities and public service providers and the setting of the rates, fees and charges thereof. This shall be done by causing the ordinance in full or its caption, including the penalty if any, to be

published at least one (1) time in a newspaper of general circulation within the City. The provisions of this section shall not apply to the correction, amendment, revision or codification of the ordinances of the City in book or pamphlet form.

Section 3.18 Emergency Meetings and Ordinances. The Council may adopt ordinances and take other action to protect life, property or the public peace at an emergency meeting held in compliance with state law. An emergency ordinance shall be plainly designated as such and shall contain a declaration stating that an emergency exists, and describing it in clear and specific terms. The emergency ordinance shall be effective for a maximum period of sixty (60) days from enactment, except as noted below. It may be renewed or re-adopted if necessary by the procedures required for the enactment of a new ordinance. An emergency ordinance may not:

- a) Levy taxes, grant, renew, or extend a franchise;
- b) Regulate rates charged by public utilities;
- c) Authorize the borrowing of money, except as authorized by state law or provided for in Sections 8.06 or 8.10 of this Charter.

Emergency ordinances authorizing the borrowing of money in compliance with state law and Section 8.06 shall not be subject to expiration in sixty (60) days.

Section 3.19 Adoption of Code. The City may, by ordinance, adopt a codification of its ordinances, and any standard code, regulations and or standards for buildings, plumbing, electrical, air conditioning and heating, other trades and construction, and establish appropriate penalties for their violation. Copies of adopted codes, trade regulations and standards and technical regulations shall be available for purchase.

Section 3.20 Resolutions and Minute Orders. The Council may act by written resolution regarding any subject or matter relating to or dealing with any public purpose or business except as provided in Section 3.15 of this Charter. The enacting clause of every written resolution shall be "Be it resolved by the Council of the City of Lago Vista". The Council may further give instructions to the City Manager, approve bids and contracts, and take other actions regarding the day to day business of the City by resolution adopted by motion and vote recorded in the minutes of the Council meeting.

Section 3.21 Investigative Body. The Council shall have the power to inquire into the conduct of any City office, department or agency, inquire into the conduct or qualifications of any officer or employee of the City appointed or confirmed by the Council, and make investigations as to municipal affairs. For those purposes the Council may subpoena witnesses, administer oaths and compel the production of books, papers and other evidence material to a specific inquiry. The Council shall establish by ordinance the procedures applicable to the investigations authorized herein, and shall set penalties for failure to comply therewith.

Section 3.22 Transition. The members of the Council in office upon the adoption of this Charter shall serve the remainder of their respective terms of office. The Council shall appoint a sixth member to serve on the Council until the next general City election. The Council shall renumber the Council places to effect this transition and the place number of the sixth Council

Member shall be Place number 5. At the general City election in 2005, the Mayor and Council Members for Places 1, 3 & 5 shall be elected to serve a term of office as provided in this Charter. At the general City election in 2006, Council Members for Places 2, 4, & 6 shall be elected to serve a term of office as provided in this Charter.

All non-elective officers and employees of the City shall continue in such office or employment, subject to death, resignation or their removal at will by the City Council or the City Manager, as applicable, consistent with this charter.

Section 3.23 Authority as the Governing Body. The City Council shall have and exercise all the powers and authority of the City, not inconsistent with this Charter, for the benefit of the City and its residents. The Council shall have the power to ordain, alter, waive, amend or repeal and enforce ordinances, resolutions, rules, orders, and regulations, for any public purpose, that are not in conflict with this Charter or state law. The Council shall have the power and authority to provide for any public purpose, including but not limited to recreation, the regulation and control of public property, municipal finances, the preservation of the public peace and good order, the security and protection of the public health, safety and welfare, the promotion of trade, commerce and economic development, the quality of life within and beautification of the City, and any other service, program or activity beneficial to the City and its citizens. The City shall have full and complete power of local self government to the fullest extent not in conflict with this Charter or state law, including all such authorities and privileges that are now or hereafter provided to cities by state law, and such power and authority both expressed and implied as necessary to accomplish and enforce any such duty, program or public purpose.

Section 3.24 Prohibitions. The Council shall have powers only as a body meeting with a quorum present and no member other than the Mayor shall have power to act individually outside of such a meeting; provided that, except as may be limited by majority vote of the council, the individual Council members shall have the right to meet with the Mayor to inquire about any matter or issue and with the City Manager or department head to obtain information deemed necessary to make informed decisions regarding the business of the city. No member of the Council, other than the Mayor as provided in Section 3.06, shall give orders directly to the City Manager, and no Council Member shall give orders directly to any other City employee.

ARTICLE IV ADMINISTRATIVE SERVICES

Section 4.01 City Manager. The Council shall appoint a City Manager who shall be chosen primarily on the basis of his/her executive and administrative training, experience and ability. The affirmative vote of five (5) members of the Council shall be required to appoint a person as City Manager. Within six (6) months after employment, the City Manager shall reside within the City, unless the Council approves an outside residence. The City Manager shall receive compensation as determined by the Council. The compensation shall be agreed upon prior to employment and the Council may contract with the City Manager to establish the terms of employment. The Council shall reserve the right to raise or lower the compensation at its sole discretion. The City Manager may be removed or suspended at the sole discretion of the Council by an affirmative vote of five (5) members of the Council. Subject only to the authority of the Mayor under Section 3.06, the City Council shall have the exclusive authority and responsibility to supervise, suspend or remove the City Manager.

The City Manager shall be the chief operating and administrative officer of the City and shall be responsible to the Council for the proper management and administration of all affairs and business of the City, and for those purposes the City Manager shall have the power to:

- a) Implement the general policies established by the Council and enforce all applicable state laws and City ordinances;
- b) Sign all legal contracts and commitments of the City, but may not bind or obligate the City in any way without prior authorization from the City Council;
- c) Supervise and give direction to all departments, and hire, suspend or remove any employee of the City except for department heads which require Council approval for employment or removal;
- d) Prepare all agendas in conjunction with the Mayor and attend all meetings of the Council except when excused by the Council. He/she shall have the right to take part in all discussions but shall not have a vote;
- e) Prepare and submit the proposed annual budget and administer the approved City budget in accordance with this Charter;
- f) Prepare and present to the Council a complete annual report of the financial and administrative activities of the City for the preceding year. This report shall be due one hundred twenty (120) days after the end of the fiscal year;
- g) Prepare and submit to the Council monthly financial reports and keep the Council advised on the financial condition and future needs of the City;
- h) Provide staff support services for the Mayor and Council Members, consistent with the intent and requirements of this Charter;
- i) Ensure 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. Upon knowledge of any violation thereof, he/she shall call same to the attention of the City Attorney, whose duty it shall be to advise the City Manager and the City Council of such steps as may be necessary to enforce the same;
- j) Perform other duties prescribed in this Charter, and all duties required by the Council not inconsistent with this Charter.

The City Manager shall designate by letter filed with the City Secretary, a qualified administrative officer of the City, subject to approval by the Council, to perform the duties of the City Manager in his absence or disability from his/her duties. No member of the Council shall act as City Manager. No member of the Council shall, during the time for which he or she is elected, or for one (1) year thereafter, be appointed City Manager.

The Council, except for the Mayor as provided for in Section 3.06 of this Charter, shall direct and supervise the City Manager only by majority vote. Neither the Council nor any of its members shall give orders to any subordinate of the City Manager, either publicly or privately.

Section 4.02 City Secretary. The City Manager, subject to approval by the Council, shall appoint a City Secretary. The City Manager shall employ such assistant City Secretaries as the Council authorizes. Except as otherwise required by state law or ordinance, the City Secretary shall:

- a) Keep an accurate register of all laws, resolutions and ordinances of the City, and attend all meetings of the Council unless excused by the City Manager;
- b) Keep the corporate seal;
- c) Take charge of and preserve the books, pages, documents, files, contracts, and other records of the City;
- d) Prepare all notices required under any state law or regulation or any ordinance of the City;
- e) Keep a register of bonds and bills issued by the City and all evidence of debt due and payable to the City, noting the relevant particulars and facts as they occur;
- f) Perform all other duties required by law, ordinance, resolution, or order of the City Manager.

Section 4.03 Municipal Court. A municipal court, designated as the Municipal Court of the City of Lago Vista, is hereby established. The court shall have jurisdiction over all matters, offenses and issues as now or hereafter provided by state law, and all other matters, offenses and issues as provided by ordinance not inconsistent with state law. The Municipal Judge and any Associate Municipal Judges deemed necessary shall be appointed by the City Manager, subject to approval by the Council. Compensation for the Municipal Judge and any Associate Judges shall be set by the City Manager and approved by the Council. A Court Clerk and such deputies as deemed necessary shall be appointed by the City Manager. The Court Clerk and any deputies shall have the power to administer oaths and affidavits, make certificates, affix the court seal and perform any and all duties authorized by state law or ordinance, or directed by the city manager. All costs, fees, special expenses and fines imposed by the Municipal Court shall be paid into the City Treasury for the use and benefit of the City unless otherwise required by state law.

Section 4.04 City Attorney. The City Manager shall appoint a City Attorney subject to approval by the Council. The City Manager may also appoint other attorneys to assist the City Attorney as may be deemed necessary and approved by the Council. The City Attorney and any appointed associates shall be duly licensed to practice law in the State of Texas. The City Attorney shall be the legal advisor for the Council and all offices and departments of the City. The City attorney and any approved associate attorneys may represent the City in litigation and legal proceedings that may arise.

Section 4.05 City Police. A Police Department headed by a Chief of Police shall be established to maintain order within the City and to protect citizens from threats or violence and their property from damage or loss. The Chief of Police shall be appointed by the City Manager subject to approval by the Council. The Chief of Police must be a licensed peace officer in the State of Texas and have verifiable experience which qualifies him/her for the position. This experience may have been gained in the service of police agencies outside the State of Texas either from another state or with a Federal agency. The Chief of Police shall be responsible for the operation of the Police Department and shall enforce state law and all the ordinances of the City. He/she shall perform such other associated duties as the City Manager may require and shall, upon approval of such documents by the City Manager, establish and maintain written procedures relating to police administration, policies and procedures.

Section 4.06 Human Resources. The City shall be an equal opportunity employer and the service of each officer and employee shall be “at will”. The administration of human resources of the City shall be governed by written rules and regulations to be known as “Personnel Policies”. The City Manager or his/her designee shall prepare such policies and recommend their adoption to the City Council. Such policies shall not be inconsistent with this Charter and will become effective when approved by the Council by ordinance. All policies so adopted and not inconsistent with this Charter shall have the force and effect of law. No person related, within the second degree by affinity or within the third degree by consanguinity, to the Mayor or to any member of the Council or to the City Manager shall be employed or appointed to any office, position or clerkship of the City. This prohibition shall not apply however, to any person who shall have been employed by the City at least six (6) months prior to and at the time of the election or appointment of the officer related in the prohibited degree.

Section 4.07 Other and Additional Departments. There shall be such administrative departments as are required to be maintained by this Charter, and as are established by ordinance, all of which shall be under the control and direction of the City Manager except as herein provided. Other and additional departments may be recommended by the City Manager but shall be established by ordinance.

ARTICLE V NOMINATIONS AND ELECTIONS

Section 5.01 City Elections. The general City election shall be held annually on the first Saturday in May or on the date nearest thereto as may be required by the election laws of the State of Texas. The Council shall fix the places for holding such election, and the City Secretary shall give notice of the election in the manner required by the laws of the State of Texas. The Council may, by ordinance, call special elections as required or authorized by state law or this Charter. The Council shall fix the time and places for such special elections, direct the City Secretary to give notice thereof and provide all means for holding same. A certified list of registered voters residing within the City shall be obtained by the City Secretary for each election. All City elections shall be held in accordance with state law, this Charter, and the ordinances, resolutions and orders adopted by the Council for the conduct of elections. The Council shall provide for the election, appoint election judges and other officials and shall determine and provide for their compensation and for all other expenses of holding municipal elections. In the absence of state law providing regulations for the conduct of any election, or any related action or procedure, the council shall provide such regulations by ordinance.

Section 5.02 Official Ballots. The name of each candidate for office, except those who may have withdrawn, died, or become ineligible prior to the preparation of the ballot, shall be printed on the official ballots without party designation or symbol. In elections for members of the Council, the order of the names of the candidates on the ballot shall be in accordance with state law, and shall be determined by lot in a drawing to be held under the supervision of the City Secretary. Early voting shall be governed by state law. The ballot for all propositions and measures shall be established by ordinance. Each proposition shall be presented for voting by ballot title, which may differ from the measure's legal title, and a clear, concise statement objectively describing the substance of the measure. The content and form of the ballot shall be determined by ordinance. Procedures for write-in votes shall be governed by state law.

Section 5.03 Canvassing. The election judges and officials appointed by the Council shall determine, record and report the results of any general or special City election in accordance with state law. In accordance with said laws, the Council shall, after an election, meet, canvass, and officially declare the results of the election as to candidates and questions. Unless provided otherwise by state law, elections shall be canvassed not less than three or more than eight days after the date of the election. The returns of every municipal election shall be recorded in the minutes of the Council.

Section 5.04 Election. Candidates for the Council shall file for a specific office, designated by Place number or Mayor, and the Mayor and the Council Member for each Place shall be elected by plurality vote. In the event no candidate for an office receives a plurality of the votes cast for that office in the general or special election, the Council shall, upon completion of the official canvass, order a run-off election among the candidates who tied for the highest number of votes. The run-off election shall be held on the third Saturday following the canvass of the vote in the general or special election.

ARTICLE VI INITIATIVE, REFERENDUM, AND RECALL

Section 6.01 Power of Initiative. The people of the City reserve the power of direct legislation by initiative, and in the exercise of such power, may propose any ordinance not in conflict with this Charter or state law, except an ordinance appropriating money or repealing an ordinance appropriating money, levying taxes, zoning land, annexing land, or setting rates, fees or charges. Any initiated ordinance may be submitted to the Council by a petition signed by qualified voters of the City equal in number to at least ten (10) percent of the number of registered voters who resided in the City at the time of the last general City election. When such a circulated petition has been certified as sufficient by the City Secretary, the Council shall proceed in compliance with this article.

Section 6.02 Power of Referendum. The people reserve the power to approve or reject at the polls any legislation enacted by the Council which is a proper subject for the initiative process under this Charter, except for the limitations specified in this Article and in Section 8.10. An ordinance enacted for the immediate preservation of the public peace, health or safety is not subject to referendum if it contains a statement declaring a specific emergency and the requirement for immediate and urgent action. Referendum petitions shall be signed by qualified voters of the City equal in number to at least fifteen (15) percent of the number of registered voters who resided in the City on the date of the last general City election. When such a petition

has been certified as sufficient by the City Secretary, the Council shall proceed in accordance with the requirements of this article.

Section 6.03 Petition Requirements for Ordinances. Initiative petitions shall contain the full text of the proposed legislation in the form of an ordinance including a descriptive caption. Referendum petitions shall contain the full text of the disputed ordinance. All petitions shall be prepared, submitted, circulated and certified in accordance with the requirements of this article.

Section 6.04 Commencement of Proceedings. Any five (5) qualified voters of the City may commence an initiative, referendum or recall proceeding by filing with the city secretary a statement signed by them, together with the complete form of a petition proposed to be circulated, including signature pages and the full text of the initiative ordinance, the ordinance reconsidered, or the grounds for the recall, as applicable. Any ordinance set forth in the petition shall be complete and in proper form including the caption.

The City Secretary shall place the time and date on the petition and documents when filed and may refer the same to the City Manager for subsequent forwarding to the City Attorney for review and recommendation for compliance with this charter if deemed appropriate; provided that neither the City Secretary nor the circulators of the petition shall be bound by any recommendation made by the City Attorney. The City Secretary shall examine the filing for sufficiency as to form and, if certified, place the time and date of the certification for circulation on such petition and documents. The City Secretary shall provide a certified copy of such filing as certified for circulation to the person presenting same, and file a copy of the certified documents and petition in the archives of the city.

The circulated petition must be returned and re-filed with the City Secretary within forty-five (45) days after the date the petition is certified for circulation. Signatures obtained prior to the date of such certification shall be invalid and a petition returned after the expiration of forty-five (45) days shall not be considered.

Section 6.05 Initiative Petition. When the Council receives an initiative petition certified by the City Secretary to be sufficient, the Council shall either:

- a) Adopt the initiated ordinance without amendment within thirty (30) days after the date of the certification to the Council; or
- b) Submit the initiated ordinance without amendment to a vote of the qualified voters of the City. The election on the proposed ordinance shall be held on the next available uniform election date authorized by state law that is forty-five (45) days or more after the expiration of the thirty (30) days provided in (a) above. The called special election may coincide with a general City election should such City election fall within that specified period; or
- c) At an election, submit to a vote of the qualified voters of the City the initiated ordinance without amendment, and an alternative ordinance on the same subject proposed by the Council. The election on the proposed ordinance shall be held on the next available uniform election date authorized by state law that is forty-five days or more after the thirty days provided in (b) above. The called election may

coincide with a general City election should such City election fall within the specified period. If an initiative ordinance and an alternate ordinance proposed by the Council are submitted at an election and either of such ordinances receives a majority vote, only the ordinance receiving the highest number of votes shall be adopted.

No ordinance on the same subject as an initiated ordinance which has been defeated at any election may be re-initiated by voters within two (2) years from the date of such election. Special elections on any initiated ordinance shall not be held more frequently than once every twelve (12) months.

Section 6.06 Referendum Petition. When the Council receives a referendum petition certified by the City Secretary as sufficient, the Council shall either:

- a) Cancel the ordinance specified in the petition if it has not gone into effect; or
- b) Repeal the referred ordinance within thirty (30) days if it has gone into effect; or
- c) Submit the referred ordinance to the voters at an election. The election on the referred ordinance shall be held on the next available uniform election date authorized by state law that is forty-five (45) days or more after the expiration of the thirty (30) days provided in (b) above. The called election may coincide with a general City election should such general City election fall within that specified period.
- d) No ordinance on the same subject as the referenced ordinance which has been defeated at any election may be re-submitted to the voters within two (2) years from the date of such election. Special elections on any referred ordinance shall not be held more frequently than every twelve (12) months.

Section 6.07 Ballot Form and Results of Election. The ballot used in voting upon an initiated or referred ordinance shall comply with Section 5.02(d) and set forth on separate lines the words, "For the Ordinance" and "Against the Ordinance". A referred ordinance, an initiated ordinance and any alternative ordinance proposed by the Council, which are submitted at the same election shall be appropriately identified as the initiated or referred ordinance and as the ordinance proposed by the Council. Any number of ordinances may be voted upon at the same election in accordance with the provisions of this Article. A referred ordinance which is not approved by a majority of the votes cast shall be deemed thereupon repealed. An ordinance submitted and receiving an affirmative majority of the votes cast shall thereupon be effective as an ordinance of the City. An ordinance so adopted may not be repealed or amended by the Council prior to the expiration of two (2) years after the election at which it was adopted.

Section 6.08 Power of Recall. The people of the City reserve the power to recall the Mayor or any other member of the Council and may exercise such power by filing with the City Secretary a valid petition demanding the removal of the Mayor or a Council Member(s). Such petition shall be signed by qualified voters of the City equal in number to at least twenty (20) percent of the number of registered voters who resided in the City at the time of the last general City election. The petition shall be signed and verified as required by Section 6.12 and shall contain a

specific statement of the grounds for which the removal is sought. One of the signers of each petition shall make an affidavit that the statements therein made are true. A separate petition is required for each elected official to be recalled. The recall petition process shall begin with the filing of a written notice of intent with the City Secretary. This notice shall be signed by five (5) qualified voters of the City and shall state the name of the elected official to be recalled. The filing date of this notice shall be the formal beginning of the recall process. All petition signatures shall be collected and the petition filed with the City Secretary in accordance with the requirements specified in Section 6.12.

Section 6.09 Recall Election. Within fifteen (15) business days after the date of the filing of the papers constituting the recall petition, the City Secretary shall certify the signatures and petition as sufficient or insufficient, and, if sufficient, present such certified petition to the Council at the next regular meeting for which the required notice may be given.

The Council member(s) whose removal is sought may, after such recall petition has been presented to the Council, request in writing to the Council at the next regular meeting that a public hearing be held to permit that officer, and a representative of the petitioners, to present facts pertinent to the charges specified in the recall petition. In this event, the Council shall order such public hearing to be held not less than five (5) business days nor more than fifteen (15) business days after receiving such request for public hearing.

If the officer whose removal is sought does not resign, then it shall be the duty of the Council to order an election. The election shall be held on the next authorized uniform election date for which notice may be given as required by state law. Said called election may coincide with a general City election should such a City election fall within the specified period.

Section 6.10 Results of Recall Election. If an equal number or a majority of the votes cast at a recall election shall be against removal of the Mayor or Council Member(s) named on the ballot, he/she shall continue in office. If a majority of the votes cast at such election be for the removal of the Mayor or Council Member(s) named on the ballot, the Council shall immediately declare the office vacant and such vacancy shall be filled in accordance with the provisions of Section 3.09. A Mayor or Council Member thus removed shall not be a candidate to succeed himself/herself in an election called to fill the vacancy thereby created.

Section 6.11 Limitations on Recall. No recall petition may be filed against any officer of the City within six (6) months after his/her initial election or appointment, or within the three (3) months preceding the expiration of his/her term of office, or more than once during any two (2) year term of office.

Section 6.12 Petition Form and Certification. Petitions for initiative, referendum and recall shall:

- a) Be written;
- b) Be signed in ink or indelible pencil by qualified voters as the person's name appears on the most recent official list of registered voters;

- c) Include each person's residence address including street and number and printed name;
- d) Include the date each signature is affixed. Signatures need not be affixed to only one paper. However, one of the signers of each separate petition shall make an affidavit that they, and they only, personally circulated such petition and that each signature appended thereto was made in their presence and is the genuine signature of the person whose name it purports to be. No signature shall have been placed on the petition prior to the date certified for circulation under Section 6.04 nor more than forty-five (45) days after that date. Identical copies of the petition may be circulated, filed as one petition, and the signatures of the several petitions aggregated, provided that in every instance a complete petition is circulated and all signatures are made on a complete petition.
- e) Within fifteen (15) business days after a petition is filed, the City Secretary shall examine the petition and certify the petition as sufficient or insufficient, and submit the results to the Council at the next regular meeting for which notice may be given. The certification shall clearly state the number of persons found on the petition who are qualified to vote and the number of persons found on the petition who are not qualified to vote. If the certificate of the City Secretary shall show a petition to be insufficient, the City Secretary shall notify the person(s) filing the petition, and it may be amended within ten (10) working days from the date of such notice by filing additional papers signed and submitted as provided for in the original petition. Within ten (10) working days after such additional papers are filed, the City Secretary shall examine the said papers and certify as to their sufficiency. If the petition is still found to be insufficient, the City Secretary shall return the petition to the person filing same, provided, however, that upon finding the total petition to be insufficient, no new petition covering the same subject matter shall be filed until one year shall have elapsed from the date of filing of the original petition.

ARTICLE VII BOARDS AND COMMISSIONS

Section 7.01 Establishing Boards and Commissions. The Council shall have authority to establish, by ordinance, such boards and commissions as it may deem necessary for the conduct of the business and affairs of the City. Except as otherwise provided by state law, each such board and commission shall be advisory and the composition, authority, functions, and responsibilities thereof and the qualifications and procedures for the appointment and removal of their members shall be set forth in the enabling ordinance. All existing boards and commissions heretofore established shall be continued in accordance with the ordinance or resolution pursuant to which each has been created until the Council shall by ordinance repeal or amend the ordinance or resolution. The Council shall make appointments to boards and commissions unless otherwise provided by ordinance. The term of each appointee shall be as described in the enabling ordinance.

Section 7.02 Qualifications and Terms of Office. In addition to any qualifications prescribed by ordinance, each appointee to City boards and commissions shall:

- a) Be a registered voter of the City;
- b) Be a resident of the City and have resided therein for at least twelve (12) consecutive months preceding his/her appointment; and
- c) Not be in financial arrears to the City for any reason.

The above provisions shall not preclude the Council from waiving the voter and residency requirements for less than a quorum of the members of a board or commission that has advisory powers only, when it is deemed to be in the best interests of the City. The waiver shall apply only to the number of members specified in the ordinance establishing the board or commission, which number shall be less than a majority of the members of the board or commission.

Section 7.03 Planning and Zoning Commission. A Planning and Zoning Commission is established to perform such duties and functions as are required or authorized by state law, this Charter and the enabling ordinance. The number of members and additional duties of the Planning and Zoning Commission shall be provided by ordinance. The Planning and Zoning Commission shall:

- a) Act as an advisory board to the Council with respect to the planning, use and development of land, and related matters as provided by ordinance;
- b) Recommend a comprehensive Master Plan for land use and the physical development of the City and its extraterritorial jurisdiction,
- c) Recommend zoning, subdivision and other land use and development ordinances consistent with the Master Plan;
- d) Recommend the zoning and rezoning of land, and amendments to the Zoning Map and the land use and services planning map for the extraterritorial jurisdiction that coincides with the Master Plan;
- e) Study and recommend approval or disapproval of proposed subdivision plats and plans to ensure conformance with subdivision and development ordinances; provided that Council may provide for administrative approval of short-form plats;
- f) Recommend to the Council changes in the current Master Plan for the City and its extraterritorial jurisdiction;
- g) Recommend to the Council any changes deemed necessary in ordinances regulating the zoning and development of the City or its extraterritorial jurisdiction;
- h) Consider Capital Improvement Programs and Annexation Plans in connection with the comprehensive Master Plan;

- i) Perform any other planning and development related functions as required by State law or requested by the Council.

Section 7.04 Board of Adjustment. A Board of Adjustment is established to perform such duties and functions as required or authorized by state law, this Charter, and the enabling ordinance. The board shall provide a forum whereby an individual can appeal decisions of the building official as permitted by state law or ordinance, or petition the Board for a variance from provisions of the building codes or the zoning ordinances. The board is expected to review each such appeal or request on its individual merit and to render decisions which shall have applicability to that particular situation alone without change to the code or ordinance from which the variance or exception is granted. The decisions of the Board shall be written and filed in the office of the building official and city secretary. The Board shall notify the Council of matters pending and all decisions made in connection therewith.

Section 7.05 Roads and Grounds Committee. An advisory Roads and Grounds Committee is established to perform such functions and duties as required by the enabling ordinance and as directed by the Council.

Section 7.06 Building Committee. An advisory Building Committee is established to create and maintain a set of aesthetic guidelines for buildings and grounds in the City and to perform such functions and duties as required by the enabling ordinance and as directed by the Council.

ARTICLE VIII FINANCIAL PROCEDURES

Section 8.01 Fiscal Year. The fiscal year of the City shall begin on the first day of October of each year and end on the thirtieth day of September of the following year.

Section 8.02 Submission of Budget. The City Manager, prior to August first of each year, shall submit to the Council a proposed budget for the ensuing fiscal year and an accompanying budget message.

Section 8.03 Budget Message. The City Manager's budget message shall outline the Capital Improvement Program and the proposed financial policies for the ensuing fiscal year, with explanations of any substantive change from the previous year in expenditures and any major changes of policy, along with a complete statement regarding the financial conditions of the City.

Section 8.04 Budget. The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year. It shall contain all items and contents required by State law. The total of proposed expenditures shall not exceed the total of estimated income plus any accumulated surplus. The budget shall indicate at least:

- a) An estimate of all revenue from taxes and other sources, including the present and proposed tax rate and the estimated property evaluation for the ensuing year;
- b) A carefully itemized list of proposed expenses by office, department and agency for the budget year, as compared to actual expenses of the last ended fiscal year and the present year-to-date;

- c) A description of all outstanding bond indebtedness, showing amount, purchaser, date of issue, rate of interest and maturity date, as well as any other current indebtedness of the City;
- d) A statement proposing any capital expenditures deemed necessary to undertake during the ensuing budget year and recommended provisions for financing.

Section 8.05 City Council Action on Budget. At the Council meeting when the proposed budget is submitted, the Council shall call a public hearing for a set time, date and place. Notice of such public hearing shall be published in a newspaper of general circulation in the city and such notice shall include the date, time, place and subject thereof. The notice shall be published at least ten (10) days before the date of the public hearing, and, at the hearing, interested citizens may express their opinions concerning items of expenditure, giving their reasons for wishing to increase or decrease any item of expense. After the public hearing, the Council may adopt the proposed budget with or without amendment. In amending the proposed budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income plus any accumulated surplus. The Council shall adopt the budget by ordinance. If it fails to adopt the budget by September 30th, the budget proposed by the City Manager shall go into effect until such time as the Council adopts a budget.

Section 8.06 Amendments after Adoption. If during the fiscal year, the City Manager certifies there are available for appropriation revenues in excess of those estimated in the budget, the Council by ordinance may make supplemental appropriations for the year up to the amount of such available funds. To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency appropriations. The Council shall have the power to borrow money on the credit of the City and to issue certificates of obligation, time warrants, notes or other evidence of debt in order to cover any emergency. If at any time during the fiscal year it appears probable to the City Manager that the revenues available will be insufficient to meet the amount appropriated, the City Manager shall report to the Council without delay, indicating the estimated amount of the shortfall, any remedial action taken and recommend any other steps to be taken. The Council shall then take such action as it deems necessary to prevent or minimize any deficit, and for that purpose it may by ordinance reduce one or more appropriations. At any time during the fiscal year, the Council may, by ordinance, transfer part or all of the unencumbered appropriation balance from one department to the appropriation for other departments or purposes. The City Manager may transfer part or all of any unencumbered balances among programs within a department and shall report such transfers to the Council in writing in a timely manner.

Section 8.07 Lapse of Appropriations. Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until expended, revised or repealed; but the appropriation shall expire if three (3) years pass without any disbursement from or encumbrance of the appropriation.

Section 8.08 Capital Improvement Program. The City Manager shall prepare and submit to the Council a five (5) year Capital Improvement Program ("CIP") at the same time each year as he/she submits the proposed budget. The CIP shall specify Year 1 as and in conjunction with the proposed annual operating budget and carry plans forward through the subsequent years. The following budget year, Year 2 of the CIP (with or without amendment) becomes Year 1 and the plan is extended out another year to maintain the five year horizon. The Capital Improvement Program shall include:

- a) A clear general summary of its contents;
- b) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five (5) years next ensuing, with appropriate supporting information as to the necessity for each;
- c) Cost estimates and recommended time schedules for each improvement or other capital expenditure;
- d) The method of financing proposed for each capital project expenditure;
- e) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired; and
- f) Any capital improvements contemplated in any proposed annexation or the Annexation Plan.

The CIP shall be revised and extended each year with regard to capital improvements pending or in process of construction or acquisition.

Section 8.09 Public Records. Copies of the budget, capital improvements program and appropriation and revenue ordinances shall be public records and shall be made available to the public at suitable places in the City.

Section 8.10 Bonds and Other Financial Obligations. The Council shall have the power to borrow money on the credit of the City and to issue bonds, certificates of obligation, warrants, notes or other evidences of indebtedness for permanent public improvements or for any other public purpose not prohibited by state law or this Charter. Notwithstanding any other provision of this Charter to the contrary, ordinances authorizing the issuance of bonds, certificates of obligation, warrants, notes or other evidences of indebtedness, or ordinances authorizing the levy of taxes or the pledge of revenues to secure payment of indebtedness, shall require one reading only and shall not be subject to referendum. The issuance of bonds, certificates of obligation, warrants, notes or other evidences of indebtedness shall be subject only to the following limitations:

- a) No general obligation bonds, other than refunding bonds, shall be issued except as approved by a majority vote of the citizens voting at an election held for such purpose;

- b) No indebtedness or obligation shall be issued except in compliance with the requirements of state law;
- c) No form of indebtedness other than general obligation bonds approved by public vote may be issued without a public hearing being held;
- d) Prior to the required public hearing notice of such hearing shall be published once a week for three consecutive weeks in a newspaper of general circulation in the City;
- e) The published notice shall clearly summarize the relevant statutory provisions providing for a petition and election; give the time, date and place at which the public hearing will be held, and the time, date and place at which the issuance of the indebtedness is planned to be authorized; and the manner and funding source proposed for the payment of the debt obligations; and
- f) The authorization for bonds authorized but not issued shall expire ten years after the date of authorization.

Section 8.11 Issuance of Tax Obligations; Petition and Election. Regardless of any other sources for payment of bonds, certificates of obligation, warrants, notes or other evidences of indebtedness, if any such obligation pledges ad valorem taxes, the debt instruments may not be issued unless the City publishes notice of its intention to issue these debt instruments. The notice shall be published as required by state law, and if not required by state law it shall comply with this section. The notice must be published once a week for two consecutive weeks in a newspaper, as defined by Subchapter C, Chapter 2051, Government Code, as amended, that is of general circulation within the City, with the date of the first publication to be before the 14th day before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates. The notice shall state the:

- a) Time and place tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates or obligations;
- b) Maximum amount and purpose of the certificates or other obligations to be authorized; and
- c) Manner in which the debt instruments will be paid for, whether by taxes, revenues, or a combination of the two.

Unless provided otherwise by state law, if before the date tentatively set for the authorization of the obligations or the authorization, the City Secretary receives a petition, signed by qualified voters equal in number to at least ten (10) percent of the number of registered voters in the City at the time of the last general city election, protesting the issuance of the debt instruments, the City may not authorize the issuance of the obligations unless the issuance is approved at an election ordered, held and conducted in the manner provided for bond elections under Texas law.

Section 8.12 Issuance of Revenue and General Obligation Bonds. The City shall have power to borrow money for the purpose of constructing, purchasing, improving, extending, or repairing public utilities, recreational facilities, or facilities for any other self-liquidating municipal function not now or hereafter prohibited by state law, and to issue revenue bonds to evidence the obligation thereby created. Such bonds, when issued, shall be a charge upon and payable solely from the properties acquired or interest therein and the income there from, and shall never be debt of the City. The Council shall have authority to provide for the terms and form of any purchase agreement, contract, mortgage, bond or document desired or necessary for the issuance of revenue bonds and the acquisition and operation of any such property or interest.

Section 8.13 Compliance with State law. The City shall have the power to borrow money on the credit of the city and to issue general obligation bonds for permanent public improvements or for any other public purpose not prohibited by state law, and to issue refunding bonds to refund outstanding bonds of the City previously issued. All bonds shall be issued in conformity with the state law.

Section 8.14 Interest and Sinking Fund. The Council shall levy an annual tax sufficient to pay the debt service and maintain the required interest and sinking fund on all outstanding general obligation bonds of the City, and all other bonds as required by state law or bond covenant. The interest and sinking fund for each such bond issue shall be deposited in a separate account and shall not be diverted to or used for any other purpose during the time that any such bond is outstanding, other than to pay the interest and principal on such bonds. The interest and sinking fund maintained for the redemption of any debt may be invested in any interest bearing bond of the United States of America, the State of Texas, or any other investment authorized by law.

Section 8.15 Independent Audit. At the close of each fiscal year and at such other times as it may be deemed necessary, the Council shall cause an independent audit to be made of all accounts of the City by a certified public accountant. The certified public accountant shall have no personal interest, directly or indirectly, in the financial affairs of the City or any of its officers. Upon completion of the audit, the auditor shall make a public report to the Council and the audited financial statement shall be filed with the City Secretary.

Section 8.16 Purchasing and Contracts. All sales of City property, purchases made, and contracts executed by the City shall be made in accordance with the applicable state law governing competitive bids. If state law does not govern and regulate purchasing and competitive bidding by home-rule cities, the Council shall provide such regulations by ordinance.

ARTICLE IX TAXATION

Section 9.01 Powers of Taxation. The Council shall have the power to levy all types of taxes that are not inconsistent with state law, including, but not limited to, motel/hotel occupancy taxes, occupational taxes, use taxes, alcohol taxes, and ad valorem taxes on all real, personal and mixed property within the City that is not exempt from taxation.

Section 9.02 Procedures. The procedures, limitations and requirements for the levy, assessment and collection of any tax or lien therefore shall be as established by state law; provided that, if not established by state law, such procedures, limitations and requirements shall be established by ordinance.

Section 9.03 Tax Lien and Liability. All taxable property within the City on the first day of January each year shall stand charged with a special lien in favor of the City for ad valorem taxes, and the owner of such property on that date shall be personally liable therefore, until the tax and all related penalties and interest on that property are paid. All such taxes, penalties and interest may, if not voluntarily paid, be collected by the City as authorized by state law, or by the City withholding the payment of any debt or obligation owed to such owner or person by the City; by reducing the amount of any debt owed to such owner or person by the City by an amount equal to the unpaid taxes, penalties and interest; or otherwise by counter-claim and offset in any legal proceeding.

Section 9.04 Collection of Taxes. The City may contract with the Travis County Tax Assessor-Collector or any other qualified entity to collect taxes for the City. The Council may create a city office or a department with the duties of tax collection. If created, the city manager shall appoint an individual as City Tax Collector to collect taxes and to perform such other duties as assigned. The Tax Collector shall give a fidelity bond, the cost to be borne by the City. The amount of such bond shall be set by the Council, but shall not be less than the amount of tax collections under his or her control at any one time. All taxes due the City shall be payable at such place as authorized by state law or the City Council. All taxes due the City shall be due and payable when and as provided by state law or ordinance. Ad valorem taxes may be paid at any time after the tax rolls for the year have been completed and approved. . If the due date for ad valorem taxes is not set by state law or ordinance, the due date shall be the 1st day of February following the levy, and all such taxes not paid on or before the due date shall be deemed delinquent and shall be subject to such penalty and interest as provided by law. The City Council may provide further by ordinance that all delinquent taxes due the City may be paid in installments. Failure to levy and assess taxes shall not relieve the persons, firm, corporation or property so omitted from obligation to pay such current or past-due taxes, and all such persons, entities and property shall be and remain liable for the taxes that would have been assessed for any prior or current year had the property been rendered or the taxes levied and assessed.

ARTICLE X FRANCHISES AND PUBLIC UTILITIES

Section 10.01 Public Services and Utilities. The City shall have the full power and authority to:

- a) Buy, own, construct, lease, maintain and operate within and without the limits of the City a system or systems of gas, electricity, telephone, sewage, sanitation, water, parks, airports, swimming pools, race tracks, transportation, communications, golf courses, cemeteries, cable television, or any other public service or utility;

- b) Purchase, manufacture, produce, sell or provide its own electricity, gas, water or any other product, good, article or commodity that may be required or desired by the public for municipal purposes, and contract with any person, entity or utility to accomplish any such purpose;
- c) Distribute and/or sell any utility, commodity or service, and mortgage, encumber and operate any public utility or public service system;
- d) Regulate and control the distribution of utilities and services within the City and establish standards of service and quality of products;
- e) Establish and enforce rates to be paid by consumers and users of any utility or service provided within the City, and, if provided by the City, outside of the City.

These powers shall be vested in the Council and the Council may exercise the power of eminent domain to acquire all or part of the property of any public utility or public service provider within the City whenever found by the Council to be in the public interest for carrying out the objectives of providing utilities or services within the City. Any such eminent domain or condemnation proceeding shall be according to the procedures and the methods of establishing the value of the property and facilities as provided by state law, and if such procedures or methods are not so provided by state law as reasonably provided by ordinance.

Section 10.02 Franchises. The Council shall have the power and authority to grant franchises for the use and occupancy of streets, avenues, alleys and any and all public property belonging to or under the control of the City. No individual, organization, entity, political subdivision, corporation, public utility, or any provider of public service shall provide any service within the City requiring the use or occupancy of any street, public right-of-way or property without first being granted a franchise or permit to use such City facilities. The franchise ordinance or permit shall fully describe the terms of the agreement and, regardless of the title given, shall be subject to the terms of this Article. The terms of such agreements shall be explicit so as to protect the interests of the citizens and shall include but not be limited to the terms prescribed in this Charter. No franchise ordinance or permit shall be granted prior to a public hearing for which ten (10) days notice is given.

Section 10.03 Franchise Limitations. No exclusive franchise shall ever be granted, unless specifically provided for by state law, and franchises shall be transferable only upon authorization of the Council expressed by ordinance. A franchise may not be transferred except to a person, firm or entity taking all or substantially all of the franchise's business in the City. The expiration date of all franchises shall be specified and the term thereof may be extended or renewed only by ordinance.

Section 10.04 Franchises for Public Utilities. The Council shall have the power to grant, amend, renew or extend by ordinance, or to deny, the franchise of all public utilities of every character serving the City, including, but not limited to, persons or entities providing electricity, gas, water, sewage, or telephone service, or any similar commodity or utility to the public. The effective period of public utility franchises may be set by the Council but shall not exceed twenty (20) years unless such extended term is specifically approved by a majority of the qualified

voters at an election held for that purpose.

Section 10.05 Franchises for Public Services. The Council shall have the power to grant, amend, renew or extend by ordinance, or deny, the franchise of all providers of public services to the City. Public services include, but are not limited to, ambulance services, cable television services, transportation services, sanitation services, and any other service or business using the public streets or property within the City to provide service. The effective period of public service franchises may be set by the Council but shall not exceed ten (10) years.

Section 10.06 Regulation of Franchises. All grants of franchises as authorized in this Charter shall be subject to the right of the Council to:

- a) Determine, fix and regulate the charges, rates or compensation to be charged by the person or entity granted a franchise;
- b) Repeal the franchise by ordinance at any time upon the failure or refusal of the franchisee to comply with the terms of the franchise, this Charter, or any applicable City ordinance or state law, or any valid rule of any regulatory body;
- c) Establish standards and quality of products or service;
- d) Require such expansion, extension and improvement of plants and facilities as are necessary to provide adequate service to all the public and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency;
- e) Prescribe the method of accounting and reporting to the City so that the franchisee will accurately reflect the expenses, receipts, profits and property values used in rendering its service to the public. It shall be deemed sufficient compliance with this requirement if the franchisee keeps its accounts in accordance with the uniform system established by an applicable federal or state agency for such service;
- f) Examine and audit at any time the accounts and other records of any franchisee and to require annual and other reports prescribed in the franchise ordinance;
- g) Require such compensation, regulatory, rental and franchise fees as may not be prohibited by law;
- h) Impose such regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare and accommodation of the public;
- i) Require every franchise holder to allow other franchise holders to use its facilities if the Council considers such joint use to be in the public interest. In the event of joint use, reasonable terms of use may be imposed by, and a reasonable rental paid to the owner for the use of the facility. If the franchise holders are unable to agree on terms and / or rentals for the joint use of facilities, the Council shall, after notice and hearing, set reasonable terms and fix a reasonable rental

application to such joint use;

- j) Require the franchisee to restore at its expense all public or private property to a condition equal to or better than that before being damaged or destroyed by the franchisee.

Section 10.07 Penalty Authorized. The Council shall have the power and authority to review any franchise at anytime and to assess a penalty against the franchisee for its failure to comply with the franchise, this Charter, the ordinances of the City or the laws of the State. If in the opinion of Council the requirements of the franchise, Charter, ordinances or state law are not being complied with, the Council shall so notify the franchisee in writing stating the provisions the franchisee has failed to comply with and setting a time for a hearing and deadline for correction of the noncompliance. The Council may assess and enforce a reasonable penalty based upon the facts, issues and circumstances determined at the hearing if noncompliance is found. If the franchisee does not correct the noncompliance within a reasonable time established by the Council for correction, the Council may repeal or cancel the franchise.

Section 10.08 Franchise Value not to be Allowed. In determining the just compensation to be paid by the City for any public utility or public service property or facilities which the City may acquire by condemnation or otherwise, no value shall be assigned to any franchise granted by the City.

Section 10.09 Extensions. Unless provided otherwise in the franchise, or limited by a certificate of convenience and necessity held by the franchisee, franchisees shall be required to extend services to all parts and portions of the City. All extensions of any public utility lines, conduit, pipe or systems shall become a part of the aggregate property of the public utility and shall be subject to all the obligations and rights prescribed in this Charter and the franchise. The right to use and maintain any such extension shall terminate with the franchise.

Section 10.10 Other Conditions. All franchises heretofore granted are recognized as contracts between the City and the franchisee and the contractual rights as contained therein shall not be impaired by the provisions of this Charter except:

- a) The power of the City to exercise the right of eminent domain to acquire the property and assets of the utility is reserved;
- b) The general power of the City to regulate the rates and services of a utility including the right to require adequate and reasonable extension of plant and service and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency shall be enforced;
- c) The Council shall review each franchise at its first renewal date subsequent to the adoption of this Charter and shall cause the franchise, if renewed, to meet the provisions of this Charter; and no rights shall be vested in the franchisee with regard to any renewal based upon the terms, conditions or limitations expressed in any such existing franchise.

Section 10.11 Election Required. No City owned electric utility, gas, water, sewer, cable television, or telecommunications system, park, swimming pool, or other utility shall ever be sold or leased without authorization by a majority vote of the qualified voters of the City voting at an election held for such purpose.

Section 10.12 Contracts Concerning City Property. The Council shall have the power to grant, amend, renew or extend contracts as follows:

- a) When not detrimental to the public interest and there will be no inconvenience or expense to the public, the Council may grant a license to occupy a small area of property for any purpose for which licenses are commonly used by Texas cities;
- b) For the operation and management of City owned facilities such as swimming pools, civic centers, parks, golf courses, water and wastewater treatment plants and any other such property; provided that no such contract shall be let except upon opportunity for competitive bids and proposals, not to exceed a term of five (5) years unless approved at an election held for such purpose.

ARTICLE XI GENERAL PROVISIONS

Section 11.01 Oath of Office. All officers of the City shall, before entering upon the duties of their respective offices, take and subscribe to the official oath prescribed by the state constitution. The oath shall be administered by a person authorized by state law to administer oaths.

Section 11.02 Bonds for City Employees. The Council may require good and sufficient bond or equivalent be given by appointed officers or employees handling funds of the city, and may require bond of other officers or employees in its discretion. The expense of any such bond shall be paid by the City.

Section 11.03 Public Records. All public records of the City shall be open to inspection and copying by the public, subject to rules, regulations and exceptions provided by state law and the Council. However, records permitted to be closed to the public by state law shall not be considered public records for the purposes of this section. The Council may, by ordinance, provide for the accurate and permanent copying or reproduction of public records by microfilm or other photographic process.

Section 11.04 Conflicts of Interest and Standards of Conduct. No City official or employee, either elected, appointed or employed, shall have any personal financial interest, direct, indirect or otherwise in any City contract or transaction or by reason of ownership or stock in any corporation or contract with the City; provided, however, that the provision of this section shall only be applicable when the stock owned by the officer or employee exceeds one percent of the total capital stock of the corporation. Willful violation of this section by the person or corporation contracting with the City shall render the contract void. Furthermore, breach of this section shall constitute malfeasance in office, resulting in forfeiture of office or position, by any officer or employee that has an interest in any such contract and participates in the award of any

the contract. The Council shall by ordinance establish rules, procedures and methods of enforcement and penalties relative to conflict of interest and equal treatment.

Section 11.05 Ethics Policy and Code of Conduct. The Council shall adopt and from time to time modify and amend an ordinance providing an ethics policy and code of conduct applicable to the officers, employees, boards and commission members of the City. The ethics policy and code of conduct may provide penalties for violations, up to and including removal from office, on the concurrence of the Council or the City Manager, as applicable.

Section 11.06 Acceptance of Gifts. No officer or employee of the City shall accept directly or indirectly, any gift, favor, privilege or employment from any utility, corporation, person or entity having a franchise or contract with, or doing business with, or seeking to do business with the City. This section shall not be interpreted to include any pen, pencil, calendar, cap or similarly valued item distributed by any such company for advertising purposes.

Section 11.07 Notice of Claim Against City. Except as provided for by the state constitution or a statute in conflict herewith, the City shall not be liable for any damages, attorney fees, costs of court, or other monies regarding any matter whatsoever, unless notice shall have first been given the City in compliance with this section, as follows:

- a) Before the City shall be liable for any damage, claim or suit, attorney fees or costs of court, arising out of or for any personal injury or damage to property, or violation of any statutory right or duty, the person who is injured or whose property has been damaged, or someone on his or her behalf, shall give the City Manager or the City Secretary notice in writing duly certified within ninety (90) days after the date of the alleged damage, injury, or violation of statutory duty or right, stating specifically in such notice when, where, and how the injury or damage was sustained, setting forth the extent of the injury or damage as accurately as possible, and giving the names and addresses of all witnesses known to the claimant upon whose testimony the claimant is relying to establish the injury or damage. In case of injuries resulting in death, the person or persons claiming damage shall within ninety (90) days after the death of the injured person give notice as required above.
- b) Before the City shall be liable for any damages, attorney fees, court costs, or monies whatsoever, whether arising out of an action authorized by statute for declaratory judgment or similar relief, or for equitable remedy, or for any damage, claim or suit arising out of contract, the person who seeks such remedy, relief or damage, or someone on his or her behalf, shall give the City Manager or the City Secretary notice in writing not less than thirty (30) days prior to the filing of such claim, suit or cause of action, stating specifically the allegations of and basis for such claim, suit or request for remedy, the facts, contract provisions or circumstances supporting the same, the specific remedy or damages sought, the names of all City officers and employees complained of, and giving the names and addresses of all witnesses known to the claimant upon whose testimony the claimant is relying to establish the injury or damage; and upon request of the City Manager or the City Council meet, confer and negotiate with the City for the purpose of reaching an acceptable compromise and settlement.

Section 11.08 Exemption from Execution and Garnishment. All property and assets of the City shall be exempt from execution and shall not be liable for sale or appropriation by writ of execution. All funds of the City, possessed by any person, firm, or corporation or other entity, shall be exempt from execution and not be liable to garnishment, attachment or sequestration, on account of any debt the City may owe or funds or property it may have on hand owing to any person. The City and its officers and agents shall not be required to answer a writ of garnishment of City property on any account whatever. The City shall not be obligated to recognize any withholding or assignment of wages or funds by its employees, agents or contractors except as required by state law.

Section 11.09 Power to Settle Claims. The Council shall have the sole authority to compromise and settle any and all claims and all suits of every kind and character in favor of or against the City, except suits by the City to recover delinquent taxes.

Section 11.10 Bribery Prohibited. No person who seeks appointment, employment or promotion with respect to any City office or employment shall, directly or indirectly, give or pay any money or other thing of value, or render any service, or offer to so give, pay or render, any valuable thing to any person for or in connection with his/her proposed or actual appointment, hiring or promotion.

Section 11.11 Political Activities of City Officers and Employees. No City officer or employee, who receives wages or a salary from the City, shall in any manner solicit or assist in soliciting any assessment, subscription or contribution for any political purpose whatever from any City officer or employee, nor shall such person receive any contribution to the campaign fund of any other candidate for City office, or participate in the management of the campaign fund of any other candidate for City office. No member of, or candidate for, the council shall in any manner request or solicit any salaried officer or employee of the City to make a political contribution to any candidate for an elective office.

Any person who by himself or with others violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of \$500. Any person convicted under this Section shall be ineligible to hold any City office or position for a period of five (5) years after conviction; and shall immediately forfeit his City office, employment or position.

Section 11.12 Separability. It is hereby declared that the sections, paragraphs, sentences, clauses and phrases of this Charter are severable and, if any word, phrase, sentence, paragraph or section of this charter should be declared invalid by a final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs or sections of this Charter, since the same would have been enacted without the incorporation of any such invalid word, phrase, clause, sentence, paragraph or section. If any provision of this Charter shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect any other provision or application of this Charter which can be given effect without the invalid provision, and to the fullest extent possible this Charter shall be construed and read in a manner to give effect to the original intent and meaning of this Charter as modified only by the deletion of such invalid word, phrase, clause, provision or section, and to this end the provisions of this Charter are declared to be severable.

Section 11.13 Charter Amendment. Amendments to this Charter must be formulated and submitted to the voters of the City in the manner prescribed by state law.

Section 11.14 Charter Review. The Council shall appoint a Citizens Review Committee comprised of residents of the City to periodically review the Charter after its adoption. Charter reviews shall be conducted at least every four (4) years. The Council shall appoint a minimum of three (3) members and no more than six (6) members to serve for a twelve (12) month term, and such term may be extended by the Council. The Committee shall inquire into the operations of the City government as related to the Charter and review the Charter to determine if amendments should be recommended. Public hearings may be held and the Committee shall have the power to compel the attendance of City officers or employees and may require the submission of the City records necessary to review. The Charter Review Committee shall make a written report of its findings and recommendations to the Council, including any proposed amendments.

Section 11.15 Construction of Charter. The powers and authority granted in this Charter shall be liberally construed as general grants of power, and the limitations on the powers of the Council and City government specifically set forth in this charter shall be liberally construed in the same manner as the Constitution of Texas is construed as a limitation on the powers of the Legislature. Except where expressly prohibited by this Charter, each and every power which would be competent for the people of the City to expressly grant to the City under the Constitution of Texas shall be construed to have been granted to the City by this Charter. Consistent with the intent of this Charter that the City have full power of self-government, the listing or inclusion of specific powers and authority in this Charter shall never be interpreted or construed as a limitation of the City's powers, or as excluding any power or authority not specifically listed. And, to that end, when this Charter refers to grants or limitations on the powers of the City as provided by state law, the term "state law" shall include "federal law" unless the context clearly shows otherwise.

Section 11.16 Reservation of Defenses. Nothing contained in this Charter or in any ordinance or contract of the City shall be construed to mean the City waives any rights, privileges, defenses or immunities provided under common law, or state or federal law. No such right, privilege, defense or immunity may be waived except by the City Council acting in a public meeting to settle or compromise a claim, dispute or lawsuit.

Section 11.17 Applicability of General Laws. In addition to the powers conferred by the Constitution of the State of Texas and statutes applicable to home-rule cities, as now or hereafter enacted, and by this Charter and the ordinances enacted pursuant hereto, the City shall also have the power to exercise any and all powers conferred by the laws of the State of Texas upon any other kind of City, town or village, not contrary to the provisions of said home-rule statutes and this Charter. However, no limitation or restriction applicable to general law cities shall extend to the City, and the exercise of any such powers by the City shall be optional in the discretion of the City Council.

Section 11.18 Submission of Charter to Voters. The Charter Commission, in preparing this Charter, concludes that it is impractical to segregate each subject so as to permit a vote of "yes" or "no" on the same, because the Charter is so constructed that in order to enable it to work and function it is necessary that it be adopted in its entirety. For this reason, the Charter Commission

directs that said Charter be voted upon as a whole and that it shall be submitted to the qualified voters of the City at an election to be held for that purpose on November 02, 2004. Not less than thirty (30) days prior to an election, the Council shall cause the City Secretary to mail a copy of this Charter to each qualified voter of the City as appears from the latest certified-list of registered voters.

If a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter, it shall become the Charter of the City of Lago Vista. After the returns have been canvassed, the same shall be declared adopted; and the City Secretary shall file an official copy of the Charter with the records of the City. This Charter shall take effect immediately following adoption by the voters and shall be fully operable within one (1) year after adoption.

The City Secretary shall furnish the Mayor a copy of said Charter, which copy of the Charter so adopted, authenticated and certified by his signature and seal of the City, shall be forwarded by the Mayor to the Secretary of State of the State of Texas and shall show the approval of such Charter by majority vote of the qualified voters voting at such election.

**Charter Commission Certification
To the City Council and citizens of the City of Lago Vista**

This Charter Commission in preparing this Charter finds and decides that it is impracticable to aggregate each subject so as to permit a vote of “Yes” or “No” on the same, for the reason that this Charter is so written that in order for it to be workable and useable it is necessary that it be adopted in its entirety.

For these reasons the Charter Commission directs that this Charter be voted upon as a whole and that it be submitted to the qualified voters of the City of Lago Vista at an election to be held for that purpose on the 2nd day of November, 2004. If a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter, it shall become the Charter of the City of Lago Vista and, after the returns have been canvassed, the same shall be declared adopted and the City Secretary shall furnish the Mayor a copy of said Charter so adopted, authenticated and certified by his/her signature and seal of the City, showing the approval of such Charter by a majority vote of the qualified voters voting at such election, which the Mayor shall forward to the Secretary of State of the State of Texas.

Not less than thirty (30) days prior to such election the City Council shall cause the City Secretary to mail a copy of this proposed Charter to each registered voter in the City as their names appear on the official records of the registered voters.

We, the undersigned members of the Charter Commission of the City of Lago Vista, having been heretofore duly appointed to prepare a Charter for the City of Lago Vista, Texas DO HEREBY CERTIFY that the above and foregoing constitutes a true copy of the proposed Charter of the City of Lago Vista, which we have prepared.

Jarred Dean, who was an original member of this Charter Commission, moved from the City while the preparation of this Charter was in progress. The remaining members of the Charter Commission, as listed below, completed the writing of this Charter, and, unanimously recommend this Charter to the citizens of the City of Lago Vista, Texas

Respectfully submitted this ---- day of August, 2004

Russell L. Allen
Co-Chair

Michael G. Thornton
Co-Chair

Roy W. Bell

Scott Cameron

Orval (Dick) Dickenson

Jim Henson

Darrel R. Hunt

Sandy Khan

Susanne Kolodzy

Thomas F. Martin

Jo Anne Molloy

Anne C. Ochoa

Kathy Rogers

Paul V. Thomas

Ken Schodde

MEETING DATE: June 1, 2015

AGENDA ITEM: Overview by City Attorney of actions taken to get the City in this position.

Comments:

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Bradley _____ ; **Helm** _____ ; **Raley** _____ ; **Townsend** _____ ;

Wilhow _____ ;

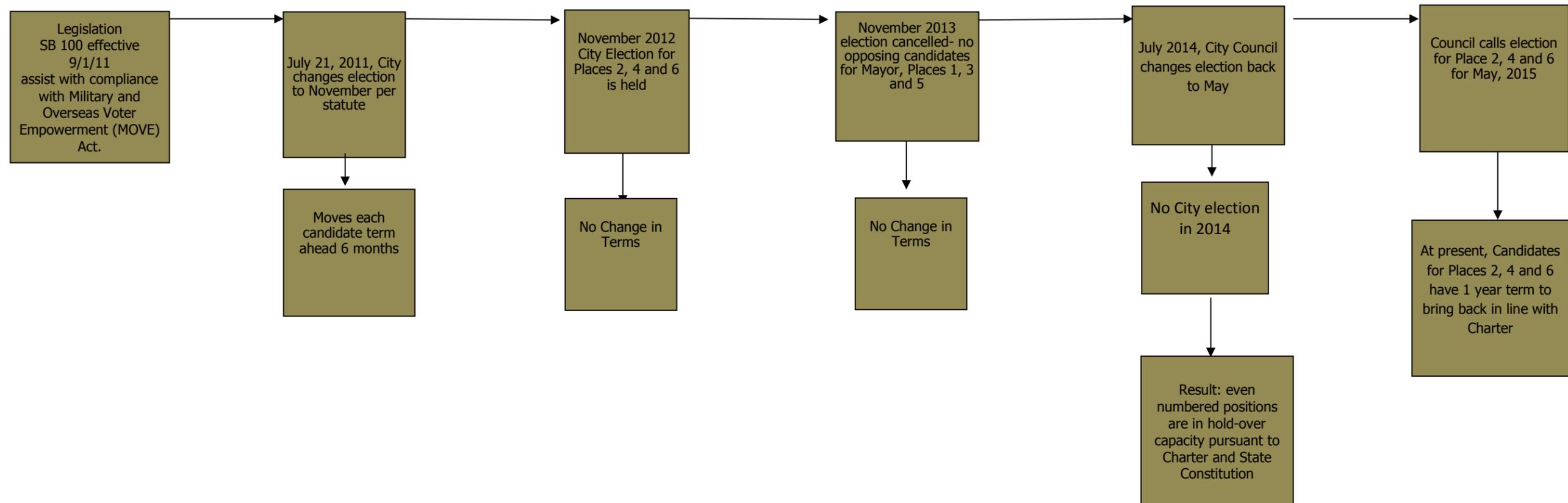
Motion Carried: Yes _____ ; **No** _____



The City of Lago Vista

To provide and maintain a healthy, safe, vibrant community, ensuring quality of life.

Lago Vista Election Chart - Years 2011 - 2015





The City of Lago Vista

To provide and maintain a healthy, safe, vibrant community, ensuring quality of life.

Bullet Points for the City of Lago Vista Elections

2011 to 2015

1. In 2011, all cities were encouraged to move their elections to November to assist with the Military and Overseas Voter Empowerment Act. The City followed such encouragement.
2. June 5, 2014, the City Council received an update from the Charter Review Committee during its workshop portion and had discussions regarding the recommendations within that document. Item 5 informed the Council that the Charter still required the elections to be held in May and noted that the reasons that may have required them to be moved to November, no longer seemed to exist. Its recommendation was that the City's general elections revert back to May in accordance with the Charter at the earliest possible time or amend Section 5.01 to reflect when elections are to be held.
3. In July, 2014, the City Council, in response to various concerns expressed about continuing to hold elections in November, as well as the Charter Review Committee's recommendation received in June, 2014, voted to return the elections back to May and bring such elections in line with the City's Charter provisions, Section 5.01, which at the time most believed was a good thing.
4. Unfortunately a plan to cleanly transition placeholders of the offices that would have been elected in November, 2014 was not drafted so when it called the election in 2015 for Places 2, 4 and 6, it brought the elections in line with the month, but not the year called for in the Charter. In calling for these places, its main thought was to call for those positions that would have been up for election in 2014 and the need to call those first. Unfortunately, what resulted was that even numbered positions were called for an election in an odd numbered year.
5. After discussion with legal counsel, the City Council has been informed that the current office holders for Places 2, 4 and 6 are currently "hold-overs" as their 2 year term would have been up in November 2014 and therefore, the election called for May, 2015 is for the completion of the current term which will be up in 2016.
6. In light of these discussions the City Council sees a need to have the Charter Review Commission review and advise the Council as to the transitional nature of changing back to May election cycles, as well as any other provisions deemed to be necessary.
7. Additionally, the City Council will also independently and jointly undertake further discussions as to the best path to transition the remaining positions back to the current Charter provisions, including the possibility of calling future councilmember elections or elections involving Charter amendments.

Knight & Partners

Attorneys at Law

Tel: (512) 323-5778
Fax: (512) 323-5773
www.cityattorneytexas.com
attorneys@cityattorneytexas.com

Executive Office Terrace
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

Partners
Barney L. Knight
Paige Harbison Sáenz
Bradford E. Bullock
Barbara Boulware-Wells
Jeffrey T. Ulmann

CONFIDENTIAL MEMORANDUM

TO: Charter Review Commission, City Manager

FROM: Barbara Boulware-Wells, City Attorney

DATE: May 29, 2015

RE: Change of Election Date

A request was made in July, 2014 for the Council to be able to consider changing the election date for the municipal elections back to May, effective with the November's elections. Such action occurred and resulted in no elections being held in November. When the election was called for May, it was called as the general election. Unfortunately, pursuant to the Charter, elections for places 2, 4 and 6 were to be held in even numbered years and places 1, 3 and 5 as well as the Mayor were to be held in odd numbered years.

At the time a question was also raised as to any question of authority or concerns from a legal standpoint concerning changing the elections back to May. I will start the answer with note that I was unable to locate any other City who has actually done this or cases whereby it was challenged. However, a question to the Attorney General and a Q&A from TML were important, as was a discussion with the Secretary of State's Office.

Findings:

41.0052, Texas Election Code has been established and the date being changed for a number of years. Each time, a new date was picked, the latest of which was December, 2012 for a decision to be made as to whether a City adopted the Resolution authorized pursuant to SB 100. Not astoundingly, the AG and the Secretary of State's office both indicate that when a deadline is established, it is intended to be a final date by which action can be taken. *See, GA-0342, attached.*

In context, section 41.0052(a) reveals an intent to establish a broadly applicable deadline for political subdivisions to change their respective election dates, not to override a political subdivision's established process for making such a change. Nor do we discern

an intent to make home-rule municipalities the sole political subdivisions that are not subject to the deadline, and then only if the deadline is changed pursuant to a voter-initiated election. Rather, we believe a harmonious and reasonable result is reached if the term “governing body,” as used in section 41.0052(a) is construed to mean legislative authority which, as it pertains to home-rule cities, includes both the city council and the citizenry. Whether exercised by its citizens or its city council, a municipality’s self governance is nevertheless limited by conflicting provisions of the state’s constitution and statutes. See TEX. CONST. art. XI, § 5. Thus, we conclude that the current statutory deadline in section 41.0052(a) also precludes the citizens of the City from now amending the City Charter to alter the standing date of its general elections.

If the deadline bound only the city council, citizens could amend the charter after the deadline and disrupt the orderly conduct of elections mid-cycle. The confusion to voters, candidates, and election officials resulting from such a change is precisely the confusion we believe section 41.0052(a) seeks to prevent.

Tex. Atty. Gen. Op. No. GA-0342 (2005) at 6.

see also Tex. Atty Gen. Op. No. GA-0025 (2003) at 3 (citing Secretary of State’s conclusion based in part of section 1.002(b), Election Code, that the Election Code “preempts with ‘unmistakable clarity’ contrary home-rule municipality charter provisions and ordinances”).

Even when asked at different times and involving different cities or circumstances, the Secretary of State has unwaveringly held that once changed, it cannot be “unchanged.”

However, please also review TML’s Q&A which followed the passage of SB 100 in 2011. As noted therein, and pursuant to the Texas Constitution, the ONLY way a City’s Charter can be changed is through an election. Since the City did not have an election following passage of the Resolution changing the dates of the election, an argument could be made that the Charter is still in full force and effect. Certainly the AG and Secretary of State, as well as the authors of SB 100 have attempted to provide for that by adding the provision:

(c) A home-rule city may implement the change authorized by Subsection (a) or provide for the election of all members of the governing body at the same election through the adoption of a resolution. The change contained in the resolution supersedes a city charter provision that requires a different general election date or that requires the terms of members of the governing body to be staggered.

However, as TML notes, there is case law that indicates that no statutory action of the Legislature overrides the Constitution. As TML opines, the only way for the action of passage by Resolution to be effective, and pursuant to the Constitution, is to have it ratified and approved at a subsequent Charter election. That did not occur in Lago Vista.

Perhaps some would wonder then, whether the election held since adoption of the Resolution is invalid. The passage of the Resolution was done in reliance on the directives of the State

Legislature with the understanding, as opined clearly in the AG opinion, that is was proper. Certainly, any and all home rule cities that passed the Resolution but failed to follow-up with a Charter election are in the same boat. Thus, one can approach this as the first opportunity for the City to have a Charter election to ratify, or consider reversing the action of the governing body and not have to have the election held in May.

All that said, I do not dismiss the AG's opinion or the Secretary of State's conclusion and while convoluted in arriving at his desired result, the Attorney General, without contrary legal cases or clear legislative action, holds sway. However, the AG's office has very clearly supported the position that home rule cities can do anything unless they have clearly been told no, or it is clearly pre-empted by law. While the only authority for holding elections is the Texas Election Code, it does not even address that once made, the decision can never be changed, either by action of a governing body or the electorate.

Sec. 41.0052. CHANGING GENERAL ELECTION DATE. (a) The governing body of a political subdivision, other than a county, that holds its general election for officers on a date other than the November uniform election date may, not later than December 31, 2012, change the date on which it holds its general election for officers to the November uniform election date.

However, interestingly, the Attorney General adds, almost as a footnote, the following paragraph:

Since adding section 41.0052 to the Election Code and imposing a deadline by which any changes to general election dates must be made, the legislature has regularly extended the deadline. *See supra* p. 4. With the passage of House Bill 57 [passed during the 79th Leg. Session in 2005], this pattern continues. Until House Bill 57 becomes effective on October 1, 2005, the current deadline in section 41.0052(a) terminates any continuing right of a municipality to change the general election date.

Conclusion:

There was and is a risk because the AG has issued an opinion and the Secretary of State certainly ascribes similarly, to going contrary and changing the date from November back to May. While there is legislation (SB 733) which would change the date in Section 41.0052 from 2012 to 2016, a careful reading of such Section pertains only to those cities that hold their elections on a date other than the November uniform election date. It is quite probable that the Attorney General would opine, if asked, that such language would preclude a return to a May election date.

Please let me know if you need further information or advice.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2005

The Honorable Michael S. Wenk
Hays County Criminal District Attorney
Hays County Justice Center
110 East Martin Luther King
San Marcos, Texas 78666

Opinion No. GA-0342

Re: Whether a home-rule city may change the city's date for general elections through an amendment to the city's charter (RQ-0312-GA)

Dear Mr. Wenk:

In your recent letter you inquire:

If the date for a home rule city's general elections is set in the city's charter, can the citizens of the city change the date for the city's general elections to another authorized uniform election date through an amendment to the city's charter, or does TEX. ELEC. CODE ANN. § 41.0052(a) preempt such a change?¹

By way of background, you inform us that San Marcos ("City") is a home-rule municipality.² See Request Letter, *supra* note 1, at 1; see also SAN MARCOS, TEX., CITY CHARTER §§ 1.01 (incorporation), 2.01 (home-rule authority) (2004). You also inform us that the standing date for the City's general elections is established by the City Charter as the "second uniform election date of the calendar year as provided by state law." Request Letter, *supra* note 1, at 1 (quoting City Charter,

¹Letter from Honorable Michael S. Wenk, Hays County Criminal District Attorney, to Honorable Greg Abbott, Texas Attorney General (Jan. 21, 2005) (on file with Opinion Committee, also available at <http://www.oag.state.tx.us>) [hereinafter Request Letter].

²A home-rule municipality is a municipality organized pursuant to the home-rule amendment ("home-rule amendment") to the Texas Constitution, which provides in pertinent part:

Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters. . . . The adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature, and no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.

TEX. CONST. art. XI, § 5. Through the home-rule amendment, "the Legislature conferred upon Home Rule cities the 'full power of local self-government.'" *Bennett v. Brown County Water Improvement Dist. No. 1*, 272 S.W.2d 498, 506 (Tex. 1954) (Wilson, J., dissenting) (citations omitted).

section 5.01). The current second uniform election date is the “first Saturday in May.” TEX. ELEC. CODE ANN. § 41.001(a)(2) (Vernon Supp. 2004-05). In December 2004, pursuant to section 41.0052(a) of the Election Code, the San Marcos City Council adopted an ordinance changing the standing date for the City’s general elections to the first Tuesday after the first Monday in November. *See* Request Letter, *supra* note 1, at 2; San Marcos, Tex., Ordinance 2004-93 (Dec. 13, 2004); *see also* TEX. ELEC. CODE ANN. § 41.001(a)(4) (Vernon Supp. 2004-05). You state that in connection with the City Council’s decision to change the date for the City’s general elections there was discussion “over whether the change could later be reconsidered by the citizens of [the City] through a proposed amendment to the Charter.” Request Letter, *supra* note 1, at 2. We assume this discussion motivates your question.

I. Home-Rule Authority

Home-rule municipalities such as San Marcos have governmental authority to govern without the legislature authorizing each governmental action, but remain subject to limitations enacted by the legislature. *See* TEX. LOC. GOV’T CODE ANN. § 51.072 (Vernon 1999) (Home-Rule Act); TEX. CONST. art. XI, § 5 (“[N]o charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws . . . of this State.”); *see also In re Sanchez*, 81 S.W.3d 794, 796 (Tex. 2002). Though broad, a city’s discretionary power is nevertheless limited to the extent that it is “inconsistent with the Constitution . . . or . . . general laws” of the State. TEX. CONST. art. XI, § 5. Our office has consistently construed this limitation to mean that “[a] city is preempted from regulating in a field if the city’s regulation is expressly prohibited, if the legislature intended state law to exclusively occupy that field, or if the city regulation conflicts with the state law even if state law is not intended to occupy that field.” Tex. Att’y Gen. Op. No. JM-737 (1987) at 2 (quoting Tex. Att’y Gen. Op. No. JM-619 (1987) at 1); *see also City of Lubbock v. South Plains Hardware Co.*, 111 S.W.2d 343, 345 (Tex. Civ. App.—Amarillo 1937, no writ) (citing *City of Beaumont v. Fall*, 291 S.W. 202 (Tex. 1927)) (“[C]ities [are] prohibited from enacting local laws which are directly in conflict with statutory or constitutional provisions, [and] from entering a field of legislation which has been occupied by general legislative enactments.”); Tex. Att’y Gen. Op. No. JM-994 (1988) at 2; Tex. Att’y Gen. LO-92-030, at 3. Both Texas courts and this office recognize that the “mere fact that the legislature has enacted a law addressing a subject does not mean the complete subject matter is completely preempted. [A] general law and a city ordinance will not be held repugnant to each other if any reasonable construction leaving both in effect can be reached.” *Dallas Merch’s & Concessionaire’s Ass’n. v. City of Dallas*, 852 S.W.2d 489, 492 (Tex. 1993) (citations omitted); *see, e.g.,* Tex. Att’y Gen. Op. No. GA-0110 (2003) at 1. Because of that recognition, before holding a statute and a charter provision repugnant to each other a court must determine that the legislature, “with unmistakable clarity,” withdrew the subject matter from a city’s domain. *See City of Sweetwater v. Geron*, 380 S.W.2d 550, 552 (Tex. 1964); *see also Tyra v. City of Houston*, 822 S.W.2d 626, 628 (Tex. 1991); *City of Santa Fe v. Young*, 949 S.W.2d 559, 560-61 (Tex. App.—Houston [14th Dist.] 1997, no writ); *City of Euless v. Dallas/Fort Worth Int’l Airport Bd.*, 936 S.W.2d 699, 704 (Tex. App.—Dallas 1996, writ denied).

As we turn to your question, we point out that our opinion addresses only whether section 41.0052(a) preempts San Marcos citizens from now amending the City Charter in light of the fact

that the City Council changed the election date pursuant to that provision.³ See Request Letter, *supra* note 1, at 1-2, 6; see also SAN MARCOS, TEX., CITY CHARTER § 12.11 (2004) (providing for charter amendment according to state law); TEX. LOC. GOV'T CODE ANN. § 9.004(a) (Vernon 1999) (charter amendments).

II. Texas Election Code, Section 41.0052(a)

A. **Deadline**

Pursuant to a 2003 amendment, Texas Election Code section 41.0052(a) currently provides that “[t]he governing body of a political subdivision other than a county may, not later than December 31, 2004, change the date on which it holds its general election for officers to another authorized uniform election date.”⁴ TEX. ELEC. CODE ANN. § 41.0052(a) (Vernon Supp. 2004-05).

³In December 2004, the City Council adopted an ordinance changing the City’s general election date to the November uniform election date. See Request Letter, *supra* note 1, at 2; San Marcos, Tex., Ordinance 2004-93 (Dec. 13, 2004). Texas law requires that “[a]ny ordinance or resolution adopted by a home-rule city must also be consistent with the city charter.” Tex. Att’y Gen. Op. No. JC-0225 (2000) at 3 (citing *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641, 643-44 (Tex. 1975)). While this office will consider to what extent municipal ordinances and charters conflict with state law, Tex. Att’y Gen. LO-93-042, at 1, it does not construe questions regarding possible conflicts between a city charter and a city ordinance. See Tex. Att’y Gen. Op. No. GA-0082 (2003) at 3; Tex. Att’y Gen. LO-94-022, at 1. You state that “for a home rule city such as San Marcos in which the date for general elections is set in the charter, [Election Code 41.0052(a)], by authorizing the *governing body* of a city to change the city’s regular election date, preempts the usual requirement for voter approval of a charter amendment to change the election date.” Request Letter, *supra* note 1, at 5. You assume that section 41.0052(a) preempts the requirement that city charters be modified through charter amendment, see TEX. LOC. GOV’T CODE ANN. §§ 9.004, .005 (Vernon 1999), and do not ask us to consider the question. Therefore, we do not address it.

⁴The Election Code contains two versions of section 41.0052(a). The text as amended in 2003 by House Bill 1777 is:

(a) The governing body of a political subdivision other than a county may, not later than *December 31, 2003*, change the date on which it holds its general election for officers to another authorized uniform election date. An election on the new date may not be held before the uniform election date in May 2004.

Act of May 28, 2003, 78th Leg., R.S., ch. 1074, § 1, 2003 Tex. Gen. Laws 3099, 3099 (emphasis added). Section 41.0052(a) was also amended in 2003 by House Bill 1549, which states:

(a) The governing body of a political subdivision other than a county may, not later than *December 31, 2004*, change the date on which it holds its general election for officers to another authorized uniform election date.

Act of May 28, 2003, 78th Leg., R.S., ch. 1315, § 15, 2003 Tex. Gen. Laws 4819, 4823 (emphasis added). This is the version you cite in your request. See Request Letter, *supra* note 1, at 1. The term “political subdivision” includes a municipality. See TEX. ELEC. CODE ANN. § 1.005(13) (Vernon 2003).

Where two amendments to the “same statute are enacted at the same session . . . , one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the
(continued...)

In construing a statute, we begin with the plain language. See *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999). In addition, regardless of whether the statute is ambiguous, we may consider, among other things: the object sought to be attained; the circumstances of the statute's enactment; the legislative history; and the consequences of a particular construction. See TEX. GOV'T CODE ANN. § 311.023 (Vernon 2005); see also Tex. Att'y Gen. Op. No. JM-906 (1988) at 10 ("The contemporary circumstances out of which legislation arose and the legislative history may be consulted in interpreting a statute."). By its current plain language, section 41.0052(a) imposes December 31, 2004 as a deadline by which a political subdivision may change its general election date. Section 41.0052(a) was added to the Election Code in 1993 as part of a legislative effort to eliminate confusion over procedures in the Election Code that had "taken [a] toll on candidates, election officials and voters across the state." SENATE RESEARCH CENTER, BILL ANALYSIS, Tex. H.B. 75, 73d Leg., R.S. (1993). House Bill 75 established December 31, 1993 as a deadline by which a political subdivision (other than a county) may change its general election date.⁵ In 1997, that deadline was changed to December 31, 1997.⁶ The legislature changed the deadline again in 1999 to December 31, 1999.⁷ In 2003 the deadline was extended from December 31, 1999, to December 31, 2004.⁸ Recent legislation, which becomes effective on October 1, 2005, changes the date to December 31, 2005.⁹ Moreover, the prior versions of section 41.0052 prohibited an election from being held on the new date in the same year the change was made.¹⁰ Pursuant to its plain language and when read in its original context of eliminating confusion, especially voter confusion, and considering the restriction on using the new election date, we believe section 41.0052(a) is designed to impose a deadline after which changes to a political subdivision's general

⁴(...continued)

amendments are irreconcilable, the latest in date of enactment prevails." TEX. GOV'T CODE ANN. § 311.025(b) (Vernon 2005). The date of enactment "is the date on which the last legislative vote is taken on the bill enacting the statute." *Id.* § 311.025(d). When the "journals or other legislative records fail to disclose which . . . is the latest in date of enactment, the date of enactment . . . is considered to be, in order of priority: (1) the date on which the last presiding officer signed the bill; or (2) the date on which the governor signed the bill, . . ." *Id.* § 311.025(e). We believe the different deadlines in the two bills make them incompatible. The date of enactment for both House Bill 1777 and House Bill 1549 is May 28, 2003. See H.J. OF TEX., 78th Leg., R.S., 4622 (House Bill 1777), 4518 (House Bill 1549) (2003). Similarly, both bills were signed by the last presiding officer on the same date, May 31, 2003. See *id.* at 4362. The Governor signed House Bill 1777 on June 20, 2003, see *id.* at 6672, and House Bill 1549 on June 22, 2003, see *id.* at 6673. Therefore, House Bill 1549 is the later-enacted bill and prevails.

⁵See Act of May 28, 1993, 73d Leg., R.S., ch. 728, § 11, 1993 Tex. Gen. Laws 2845, 2847 (effective Sept. 1, 1993).

⁶See Act of May 31, 1997, 75th Leg., R.S., ch. 1219, § 4, 1997 Tex. Gen. Laws 4681, 4682 (effective June 20, 1997).

⁷See Act of May 26, 1999, 76th Leg., R.S., ch. 1068, § 1, 1999 Tex. Gen. Laws 3920, 3920 (effective Sept. 1, 1999).

⁸See Act of May 28, 2003, 78th Leg., R.S., ch. 1315, § 15, 2003 Tex. Gen. Laws 4819, 4823 (effective Jan. 1, 2004); see also *supra* note 4.

⁹See Act of May 24, 2005, 79th Leg., R.S., H.B. 57, § 3 (to be codified at TEX. ELEC. CODE ANN. § 41.0052(a)).

¹⁰See *supra* notes 5-7.

election date may not be made in order to allow candidates, election officers, and the voting populace time to adjust to a new election date and all the concomitant election schedule changes.

Perhaps in anticipation of this determination, you point out that section 41.0052(a) limits only the *governing body's* authority to change the election date. See Request Letter, *supra* note 1, at 5-6. Thus, you argue that section 41.0052(a) does not limit the power of the *citizens* to amend the charter. See *id.* Your argument is predicated on a construction of “governing body” that is limited to the city council. However, in this instance, we are not convinced that such a limited construction is appropriate.

B. Municipal Legislative Authority

The self-rule authority is exercised by the city council through the adoption of ordinances. See Tex. Att’y Gen. Op. Nos. JC-0218 (2000) at 2 (“[t]he powers of a home rule city include the police power to regulate . . . by ordinance”); JM-994 (1988) at 3 (a city asserts its police power by local ordinance); JM-279 (1984) at 1-2; H-969 (1977) at 2. However, a home-rule municipality’s citizenry also exercises its self-rule authority through adoption and amendment of a charter. See TEX. LOC. GOV’T CODE ANN. § 9.004(a) (Vernon 1997); see also Tex. Att’y Gen. Op. Nos. JM-279 (1984) at 2 (“No home rule charter or ordinance passed under the home rule statutes may contain any provision inconsistent with the general laws of the state.”); H-969 (1977) at 2 (stating that “home rule cities are authorized to amend their charters and adopt ordinances, subject only to the limitation that neither charter nor ordinance may be inconsistent with the Constitution or with general law”). Additionally, the San Marcos City Charter expressly provides for direct legislation by voter initiative. See SAN MARCOS, TEX., CITY CHARTER § 6.01 (2004) (“The people of the city reserve the power of direct legislation by initiative . . .”). Seeing no real distinction between home-rule authority as exercised by the governing body and home-rule authority exercised by the voters in a taxation context, our office recently said:

[w]hen the people exercise their rights and powers under the initiative provisions of a city charter they are acting as and become in fact the legislative branch of the municipal government. Thus, if the governing body of a home-rule municipality does not have the authority to adopt an ordinance, the voters of the municipality may not do so through the initiative process.

Tex. Att’y Gen. Op. No. GA-0222 (2004) at 3 (citing *City of Hitchcock v. Longmire*, 572 S.W.2d 122, 127 (Tex. Civ. App.—Houston [1st Dist.] 1978, writ ref’d n.r.e.)); see also *Glass v. Smith*, 244 S.W.2d 645, 651 (Tex. 1951) (“There can be no right or power existing in the people of [the city] to adopt an ordinance through the initiative process if the power to adopt it is not lodged in the City Council in the first instance.”). Consequently, various aspects of the City’s legislative authority are vested in both the city council and the citizenry. See *Blum v. Lanier*, 997 S.W.2d 259, 262 (Tex. 1999) (“Citizens who exercise their rights under initiative provisions act as and ‘become in fact the legislative branch of the municipal government.’”) (quoting *Glass*, 244 S.W.2d at 649).

Section 41.0052(a) is contained within the Election Code which governs all elections in Texas. See TEX. ELEC. CODE ANN. § 1.002 (Vernon 2003). Because it applies to all political

subdivisions and directs the conduct of elections for each respective political subdivision, *see id.*, it is drafted with a broad scope. We understand the “governing body of a political subdivision other than a county” to include general-law cities, home-rule cities, water districts, school districts, and all other special districts in Texas that hold elections. *See id.* §§ 41.0052(a) (Vernon Supp. 2004-05), 1.005(13) (Vernon 2003) (defining political subdivision). With the exception of home-rule cities, all of these political subdivisions exercise legislative authority through one vehicle – an elected board or council composed of a limited number of persons. By contrast, a home-rule city exercises its legislative authority through an elected body, and to the extent given in the charter, through its citizenry. *See Blum*, 997 S.W.2d at 262.

As we consider whether section 41.0052(a) precludes the citizens from exercising their legislative authority as permitted by the charter, we are cautioned to construe harmoniously if “any reasonable construction leaving both in effect can be reached.” *Dallas Merch’s & Concessionaire’s Ass’n*, 852 S.W.2d at 491. In context, section 41.0052(a) reveals an intent to establish a broadly applicable deadline for political subdivisions to change their respective election dates, not to override a political subdivision’s established process for making such a change. Nor do we discern an intent to make home-rule municipalities the sole political subdivisions that are not subject to the deadline, and then only if the deadline is changed pursuant to a voter-initiated election. Rather, we believe a harmonious and reasonable result is reached if the term “governing body,” as used in section 41.0052(a) is construed to mean *legislative authority* which, as it pertains to home-rule cities, includes both the city council and the citizenry. Whether exercised by its citizens or its city council, a municipality’s self governance is nevertheless limited by conflicting provisions of the state’s constitution and statutes. *See* TEX. CONST. art. XI, § 5. Thus, we conclude that the current statutory deadline in section 41.0052(a) also precludes the citizens of the City from now amending the City Charter to alter the standing date of its general elections.

We believe a contrary conclusion that the citizens could amend a city charter on a date subsequent to the statutory deadline in section 41.0052(a) would undermine its effectiveness. We cannot presume the legislature intended a meaningless act. *See Ex parte Tucker*, 977 S.W.2d 713, 716-17 (Tex. App.—Fort Worth 1998), *pet. dismissed, improvidently granted*, 3 S.W.3d 576 (Tex. Crim. App. 1999) (“We will not presume that the Legislature did a useless or vain thing by enacting language that was mere surplusage or that was not intended to be effective.”); *see also* Tex. Att’y Gen. Op. Nos. GA-0105 (2003) at 4, JC-0300 (2000) at 6. If the deadline bound only the city council, citizens could amend the charter after the deadline and disrupt the orderly conduct of elections mid-cycle. The confusion to voters, candidates, and election officials resulting from such a change is precisely the confusion we believe section 41.0052(a) seeks to prevent. *See* SENATE RESEARCH CENTER, BILL ANALYSIS, Tex. H.B. 75, 73d Leg., R.S. (1993); *see also supra* pp. 4-5. We believe section 41.0052(a), as part of the Texas Election Code that prevails over conflicting law, is a general legislative enactment intended to occupy the field with respect to when a political subdivision may change its election date. *See South Plains Hardware Co.*, 111 S.W.2d at 345 (prohibiting cities from entering a field of legislation which has been occupied by general legislative enactment); TEX. ELEC. CODE ANN. § 1.002(b) (Vernon 2003) (“This code supersedes a conflicting statute outside this code unless this code or the outside statute expressly provides otherwise.”); *see also Vela v. State*, 572 S.W.2d 128, 130 (Tex. Civ. App.—Corpus Christi 1978, no writ) (stating legislature enacted “election code which controls the manner in which municipal . . . elections are

conducted”); *State ex rel. Edwards v. Reyna*, 333 S.W.2d 832, 833 (Tex. 1960) (“[C]onduct of elections is primarily a matter for legislative regulation and control.”); *see also* Tex. Att’y Gen. Op. No. GA-0025 (2003) at 3 (citing Secretary of State’s conclusion based in part of section 1.002(b), Election Code, that the Election Code “preempts with ‘unmistakable clarity’ contrary home-rule municipality charter provisions and ordinances”).

Since adding section 41.0052 to the Election Code and imposing a deadline by which any changes to general election dates must be made, the legislature has regularly extended the deadline. *See supra* p. 4. With the passage of House Bill 57,¹¹ this pattern continues. Until House Bill 57 becomes effective on October 1, 2005, the current deadline in section 41.0052(a) terminates any continuing right of a municipality to change the general election date.

III. Conclusion

As section 41.0052(a) currently provides, a municipality had until the December 31, 2004 deadline to change its general election date. *See* TEX. ELEC. CODE ANN. § 41.0052(a) (Vernon Supp. 2004-05). Subsequent changes to the deadline in section 41.0052(a), either in this or subsequent legislative sessions, would extend that deadline and give municipalities additional time to alter their general election date. Until such a change is made to section 41.0052(a), however, we conclude that after December 31, 2004, a municipality either through its city council or citizenry may not change the date on which it holds its general elections. Now that the legislature has again extended the deadline, the City will be free to change its general election date by council or citizen action as otherwise authorized by law.

¹¹The new deadline in section 41.0052(a) contained in House Bill 57 is December 31, 2005. *See* Act of May 24, 2005, 79th Leg., R.S., H.B. 57, § 3 (to be codified at TEX. ELEC. CODE ANN. § 41.0052(a)). House Bill 57 also entirely eliminates the February and September uniform election dates. *See id.* § 1 (to be codified at TEX. ELEC. CODE ANN. § 41.001(a)). We note here that once the amended section 41.0052(a) becomes effective on October 1, 2005, the second uniform election date contemplated by the City Charter, *see* SAN MARCOS, TEX., CITY CHARTER § 5.01 (2004), would be the November date.

S U M M A R Y

Section 41.0052(a) of the Texas Election Code clearly establishes a deadline after which a home-rule municipality may not change the standing date for its general elections. As currently written, section 41.0052(a) imposes a December 31, 2004 deadline, and a charter amendment changing the date of the election enacted after that statutory deadline conflicts with state law and is, therefore, preempted by the statute. Because we construe the term “governing body,” as used in section 41.0052(a) and as it pertains to home-rule cities, to include the legislative authority of the citizenry as provided for by the city charter, this deadline also precludes the citizens of the City from changing the date through a charter amendment. As it has done in the past, the Seventy-ninth Legislature extended the section 41.0052(a) deadline. When House Bill 57 becomes effective on October 1, 2005, a municipality is again free to change its general election date by council or citizen action as authorized by law.

Very truly yours,


GREG ABBOTT
Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney General

DON R. WILLETT
Deputy Attorney General for Legal Counsel

NANCY S. FULLER
Chair, Opinion Committee

Charlotte M. Harper
Assistant Attorney General, Opinion Committee

By: Fraser
(Workman)

S.B. No. 733

Substitute the following for S.B. No. 733:

By: Fallon

C.S.S.B. No. 733

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of certain political subdivisions to
3 change the date of their general elections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 41.0052(a), Election Code, is amended to
6 read as follows:

7 (a) The governing body of a political subdivision, other
8 than a county or municipal utility district, that holds its general
9 election for officers on a date other than the November uniform
10 election date may, not later than December 31, 2016 [~~2012~~], change
11 the date on which it holds its general election for officers to the
12 November uniform election date.

13 SECTION 2. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2015.

MEETING DATE: June 1, 2015

AGENDA ITEM: Election schedule and timeline to report to the City Council

Comments:

A copy of the November election schedule from the Secretary of State is attached.
Election day is November 3, 2015.

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Bradley _____ ; **Helm** _____ ; **Raley** _____ ; **Townsend** _____ ;

Wilhow _____ ;

Motion Carried: Yes _____ ; **No** _____

The more detailed [link will go here when available] is available on the Elections homepage and on the Conducting Your Elections pages.

Authority conducting elections	County Elections Officer/Local political subdivisions
Deadline to post notice of candidate filing deadline	Thursday, June 25, 2015 Saturday, July 25, 2015 for local political subdivisions that do not have a first day to file for their candidates
First Day to File for Place on General Election Ballot ¹	Saturday, July 25, 2015
Last Day to Order General Election or Election on Measure	Monday, August 24, 2015
Last Day to File for Place on General Election Ballot	Monday, August 24, 2015 at 5:00 P.M.
First Day to Apply for Ballot by Mail	Friday, September 4, 2015 (does not apply to FPCA)
Last Day to Register to Vote	Monday, October 5, 2015
First Day of Early Voting	Monday, October 19, 2015
Last Day to Apply for Ballot by Mail (Received, <u>not</u> Postmarked)	Friday, October 23, 2015 (regular ABBM) Tuesday, October 27, 2015 (FPCA)
Last Day of Early Voting	Friday, October 30, 2015
Last day to Receive Ballot by Mail	Tuesday, November 3, 2015 (election day) at 7:00 p.m. (unless overseas deadline applies)

MEETING DATE: June 1, 2015

AGENDA ITEM: Other Charter language the Committee would like to look at.

Comments:

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Bradley _____ ; **Helm** _____ ; **Raley** _____ ; **Townsend** _____ ;

Wilhow _____ ;

Motion Carried: Yes _____ ; **No** _____

TO: Mayor, City of Lago Vista
City Council, City of Lago Vista

FROM: 2014 Citizens Charter Review Committee (Clara Hammonds, Bob Bradley,
Mike Beal)

DATE: June 5, 2014

SUBJECT: UPDATE OF CHARTER REVIEW COMMITTEE'S RECOMMENDATIONS
PRESENTED TO THE CITY COUNCIL IN A WORK SESSION

Our Committee appreciates the opportunity to come before the Council in work session to preview our recommendations and receive feedback.

Some of the Committee's recommendations below are to make no change to applicable sections of the Charter. They are included here because it is our understanding that these Charter sections may have been previously discussed with one or more Council members resulting in an impression that a recommendation for amendment will be forthcoming. It is our intent that the following will correct any misconceptions.

Where we have recommended that the Council consider amending a Charter Section, we have not suggested ballot language.

1. Section 3.08 Removal from Office

Discussion. This Charter Section provides for removal of a City Council member for specific reasons. The Charter does not prohibit a removed Council member from filing to enter the next election to fill a Council vacancy.

Recommendation: The Committee recommends that Charter Section 3.08 be amended to prohibit a removed Council member from serving on the Council for a period of at least one year from the date of his or her removal. Both the City Attorney and Secretary of State have advised us that this is an appropriate period of time.

2. Section 3.09 Filling Vacancies

Discussion. This Charter Section outlines a procedure and line of succession for filling vacant Council seats with Committee Chairs under certain extraordinary circumstances. It is our belief that the framers of the Charter desired to provide a means to reconstitute a quorum of the Council in the (although unlikely) event that a

quorum was permanently no longer available to serve. It is also our understanding that you may have been previously informed that our recommendations will include deleting the Chairs of the Roads and Grounds Committee and Building Committee from this section. This is not our recommendation. To recover from a worst case scenario the Charter should designate at least four temporary Council replacements to create a quorum.

Recommendation. No change is recommended to Charter Section 3.09. Also, please note the recommendations for Sections 7.05 and 7.06.

3. Section 3.16 Procedure to Enact Legislation

Discussion. This Charter Section requires the City Secretary to record in an "ordinance book" certain details of all ordinances and resolutions passed by the Council. This requirement appears to be archaic compared to current information technology and document management practices.

Recommendation. The Committee recommends that Section 3.16 be amended to allow ordinances and resolutions be recorded and filed in a Council approved manner consistent with State law and accepted document management and information technology practices.

4. Section 3.21 Investigative Body

Discussion. This Charter Section requires the City Council to establish by ordinance the procedures applicable to its ability to conduct investigations as well as the ability to impose penalties for failure to comply. It is our understanding that no such ordinance has been enacted by the Council and the Council is, therefore, not in compliance with this Charter Section. While every possible scenario and situation that the Council may choose to investigate cannot be covered in a single ordinance, the Committee does see a benefit to having at least the framework of basic investigation powers, i.e., subpoenas, fines, etc., in place before an investigation becomes necessary.

Recommendation. The Committee recommends that the Council pass an ordinance in accordance with Charter Section 3.21. If this is not possible, then amend Section 3.21 to reflect what is possible or remove Section 3.21 from the Charter.

5. Section 5.01 City Elections

Discussion. This Charter Section requires the City to hold general elections in the month of May. While the Committee is aware that unusual external circumstances

may have existed at one time to force moving the general election to November, it is also our understanding that these circumstances no longer exist. Regardless of the reasons, the City is in conflict with Charter Section 5.01. If there are compelling reasons to permanently hold general elections at a time other than in May, the Charter should be amended.

Recommendation. The Committee recommends that City general elections revert back to May in accordance with the Charter at the earliest possible time. If that is not going to happen, the Committee recommends amending Section 5.01 to reflect what election schedule(s) will be followed.

6. Section 7.02 Qualifications and Terms of Office

Discussion. This Section specifies the qualifications for an individual to be appointed to a City board or commission. Under Charter Section 3.09, the Chairs of the Planning and Zoning Commission, Board of Adjustment, Roads and Grounds Committee and Building Committee could, under certain circumstances, be elevated to serve as temporary members of the City Council even though their qualifications are significantly less than that of an elected Council member.

Recommendation. The Committee recommends that Section 7.02 be amended to require that the Council appoint Chairs of the Planning and Zoning Commission, Board of Adjustment, Roads and Grounds Committee and Building Committee that have the same qualifications as elected Council members as specified in Charter Section 3.02.

7. Section 7.05 Roads and Grounds Committee

Discussion. The Committee has concluded that this Section was placed in the Charter to establish this committee to perform valuable services for the City and to insure that a qualified Committee Chair was identified in the event that he or she was needed to fulfill a Council member obligation under Section 3.09. The recent abolishment of the Roads and Grounds Committee is in conflict with current Charter requirements. It is our understanding that the Council may have been briefed that our recommendations would include the removal of this Section. We are not making that recommendation.

Recommendation. The Committee recommends that Charter Section 7.05 not be deleted and that a new Road and Grounds Committee be appointed with useful and constructive responsibilities that will benefit the City.

8. Section 7.06 Building Committee

Discussion. The Committee has concluded that this Section was placed in the Charter establish this committee to perform valuable services for the City and to insure that a qualified Committee Chair was identified in the event that he or she was needed to fulfill a Council member obligation under Section 3.09. It is our understanding that the Council may have been briefed that our recommendations would include the removal of this Section. We are not making that recommendation.

Recommendation. The Committee recommends that Charter Section 7.06 not be deleted and that the Building Committee be assigned useful and constructive responsibilities that will benefit the City.

9. Section 11.14 Charter Review

Discussion. This Charter Section requires that the Council appoint at least every four years a Citizens Review Committee to review the Charter, look into the operations of the City as it relates to the Charter, and make recommendations to the Council about the Charter. The last (and only previous) Citizens Charter Review Committee was appointed six years ago in 2008.

Recommendation. The Committee does not recommend any amendment to this Section. The Committee does recommend that the next Citizen Review Committee be appointed not later than 2016 (twelve years after the Charter was adopted) and that the City permanently return to a four year review cycle in accordance with the Charter.

Thank you for your attention and consideration. Your input will be greatly appreciated.

Respectfully submitted,
2014 Citizens Charter Review Committee

Clara Hammonds

Bob Bradley

Mike Beal

Melissa ByrneVossmmer

From: Barbara Boulware-Wells <bbw@cityattorneytexas.com>
Sent: Thursday, May 28, 2015 2:19 PM
To: Melissa ByrneVossmmer
Subject: RE: Election Question

What appears to be referred to is the "resign to run" provision which is set out in the Texas Constitution - Article XI, section 11(a) applies the article XVI, section 65(b) automatic resignation proviso to elected or appointed municipal officers whose term in office has been extended by charter **beyond two years**. See id. art. XI, § 11(a); Tex. Att'y Gen. Op. No. M-586 (1970) at 4.

As the current terms are only 2 years, that provision is inapplicable. I did an additional search of the Charter for Mayor, resign and forfeit in addition to simply reviewing the matter for any other trigger points and was unable to locate anything. I also search the Attorney General opinions and they are consistent with the above interpretation (must be beyond 2 years).

I did locate the Attorney General's opinion GA-0217 which states, interestingly:

Nor have we located any statute that would preclude a home-rule city from providing for automatic resignation of a mayor or council member serving a two-year term of office. Rather the Local Government Code grants a home-rule municipality general authority to:

- (1) create offices;
- (2) determine the method for selecting officers; and
- (3) prescribe the qualifications, duties, and tenure of office for officers.

Tex. Loc. Gov't Code Ann. § 26.041 (Vernon 1999). Aside from this provision, "the legislature has remained silent on the issues of removal from or forfeiture of office in home-rule cities. Thus, it is generally recognized that the authority for a home-rule city council to remove one of its members must be found in the city's charter." *Lipscomb v. Randall*, 985 S.W.2d 601, 605 (Tex. App.-Fort Worth 1999, pet. dismissed) (citing *Garza v. Garcia*, 785 S.W.2d 421, 422 (Tex. App.-Corpus Christi 1990, writ denied)). Appellate courts have held that a home-rule city charter may provide for the automatic forfeiture of office upon conviction of a crime involving moral turpitude or for failure to attend city council meetings. See id. (holding that, under the home-rule charter, city council member had automatically forfeited his seat on the town council when he was convicted in municipal court of two crimes involving moral turpitude); see also *City of Alamo v. Garcia*, 960 S.W.2d 221, 226 (Tex. App.-Corpus Christi 1997, no pet.) (holding that trial court lacked authority to interfere with self-enacting city charter provision providing for office forfeiture by city council member for failure to attend meetings). Similarly, we believe a court would conclude that a home-rule city with two-year terms may provide in its charter that a mayor or council member who becomes a candidate for another office automatically vacates the current office.

Thus, this matter could be an item for a future Charter Amendment.

Please let me know if you need any further information.

Barbara Boulware-Wells, Partner

MEETING DATE: June 1, 2015

AGENDA ITEM: Scheduling of next meeting

Comments:

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Bradley _____ ; **Helm** _____ ; **Raley** _____ ; **Townsend** _____ ;

Wilhow _____ ;

Motion Carried: Yes _____ ; **No** _____

MEETING DATE: June 1, 2015

AGENDA ITEM: Adjourn

Comments:

Motion by: _____

Seconded by: _____

Content of Motion: _____

Vote: Bradley _____ ; **Helm** _____ ; **Raley** _____ ; **Townsend** _____ ;

Wilhow _____ ;

Motion Carried: Yes _____ ; **No** _____