

## **City of Austin Staff Proposed Charter Amendments**

On March 9, 2023, the City Council directed the City Manager to establish a Charter Review Commission under [Resolution 20230309-25](#). The commission was tasked with issuing a report on topics including, but not limited to, initiative, referendum, and Charter amendment petition and election requirements.

Through a parallel process, City staff performed an exhaustive review of the charter and recommend the following revisions for Council consideration. Many of these revisions are a non-substantive, routine harmonizations of language such as: 1) deletion of legacy and transitional text that addresses interim matters solely relevant to the timing of the charter provision's original adoption; 2) updates to legal citations; 3) updates for compliance with changes in the law; 4) references to controlling state law; and 5) recommendations based on current practices due to advances in technology and practice since the charter's adoption. Substantive changes have been summarized by topic below.

### **Disposition of City Property (Article I, § 3)**

The city currently holds possession of goods that may be damaged or have no value for the purposes for which the goods were originally intended, known as salvage property. The city also obtains property that is not necessary or valuable for the city's needs, or surplus property.<sup>1</sup> Under the city's current practice, these items are indefinitely kept in storage without a procedure for disposition.

This recommendation adds language to the charter to allow the city to implement procedures for the disposition of the city's salvage or surplus property. If adopted, the specific procedure for disposition would be developed and set out in an ordinance subject to council review and approval at a later date.

### **Annexation (Article I, § 6 and § 7)**

References to landowner consent have been removed to remain consistent with HB 347, which revised the municipal annexation process. HB 347 became effective in May 2019 at the conclusion of the 86<sup>th</sup> Legislature.

Notice and hearing requirements for limited purpose annexations are also recommended to be removed given the controlling state law, addressing notice and hearing requirements for both limited and full purpose annexations.<sup>2</sup> The city will continue to follow such requirements to ensure interested members of the public have the opportunity to be heard.

### **Redistricting (Article II, § 3)**

#### **Independence & Timing (Article II, § 3(B) & (G))**

A new definition is recommended to clarify what is meant by the word "independent" in the context of the Independent Citizens Redistricting Commission (ICRC or commission). While

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<sup>1</sup> See, TEX. GOV'T CODE § 2175.001 (defining the terms "salvage property" and "surplus property.").

<sup>2</sup> Local Gov't Code §§ 43.063, 43.0673, 43.0683, 43.0693

the ICRC is independent from the Council, this does not limit the commission's ability to rely on City staff and other City resources. In addition, commissioners must comply with City ethics rules and other regulations, such as the Texas Open Meetings Act (TOMA).

Further clarification was added to Article II, § 3(B) to include an additional exception to the prohibition on drawing district lines at any time other than the year following the national decennial census. In addition to redrawing district lines because of a judicial ruling invalidating the existing district map, or if the city election date is moved, the staff proposes adding an exception to allow the commission to redraw districts, if necessary, due to annexation or disannexation.

Article II, § 3(G) of the Charter does not include deadlines for the certification and effective date of the ICRC's final plan describing district boundaries for each of the Council districts. City staff proposes a revision giving the ICRC 30 days after the final plan's adoption for the commission to certify the final plan to the City Council. Staff recommends an effective date that is the same as the certification date. Including effective date language will allow the public and Council to have clarity on the most accurate constituent information.

#### **ICRC Selection & Vacancies (Article II, § 3(I-K))**

The staff recommends updates to the commission selection process addressed in Article II, § 3(I). Currently, the charter allows the applicant review panel to select a pool of 60 applicants from among qualified applicants for the ICRC. City staff recommends increasing the number to an applicant pool of 75 qualified applicants. The increase will help ensure flexibility in the event of a vacancy or resignation while also increasing representation in the applicant pool for Council selection.

Regarding fulfillment of vacancies, whether by removal, resignation, or absence, the city staff proposes a distinct approach depending upon whether the vacancy occurs before or after the adoption of the final plan. As outlined in Article II, §3(J), if the vacancy occurs *before* the final plan is adopted, staff recommends the standard process already contemplated in the current Charter (i.e., the vacancy shall be filled within 15 days after the vacancy occurs). However, if the vacancy occurs *after* the adoption of the final map, a revised process is recommended whereby the vacancy is filled by the commission at the next regularly or special called meeting after the vacancy occurs.

Article II, § 3(K) of the charter currently prohibits commission members and staff from communicating or receiving information about redistricting matters from anyone outside of a public hearing. In the past, this has caused confusion regarding the commission staff's access to information and counsel. The proposed removal of this prohibition would allow commission members and staff to have access to resources and communications about redistricting matters. Open meeting requirements would still apply to ICRC members.

#### **Election Date; Council Terms; Election By Majority And Run-Off Elections (Article III, §2)**

HB 3163 (2023) amended Chapter 21, Local Government Code, by adding Section 21.006, providing that all members of the governing body of a municipality that is divided into districts must be up for re-election after redistricting. Our Charter is currently silent on what

happens after redistricting, but does provide that half or as near as half as practical is elected at each election. Staff recommends language be added to the Charter to provide that all council members will be elected after redistricting and that council members shall draw lots to determine which members shall serve two-year terms and which shall serve four-year terms, in order to reset the stagger.

### **Special Elections for Council Vacancies (Article II, § 6)**

The current draft of the charter states that a special election to fill a council vacancy should be held on the next available state uniform election date. Article XI, Section 11(c) of the Texas Constitution requires a special election to fill a municipal governing body's vacancy to be held within 120 days after the vacancy occurs. City staff recommends revising language regarding the process for filling Council vacancies by pointing to state law, which puts in place the 120-day limit.

### **Meetings of the Council (Article II, § 12)**

The current charter language states that council will meet weekly, however that is no longer consistent with current practice. City staff recommends removal of this language to reflect that council meets based on the cadence prescribed by ordinance.

### **Elections (Article III)**

#### **§ 4. Filing of Candidates**

The Charter sets out that candidates shall file a ballot application 45 days prior to the election day with the city clerk. Section 143.007(c) of the Election Code has deadlines for filing for a place on the ballot, and the revision points to the statute for the appropriate deadlines for the city clerk's office to follow and provide as guidance to candidates.

#### **§ 8(A) Limits on Contributions to Candidates**

The charter's current version states that the amount of the contribution limit will be modified each year with the adoption of the budget, to increase or decrease in accordance with the most recently published federal government Bureau of Labor Statistics Indicator, Consumer Price Index U.S. City Average. Because annual budget adoption occurs in August, staff proposes changing this language to allow the contribution limits to be modified each year by January 1 or as otherwise provided in state law. This would allow for more accurate candidate education in the City Clerk's candidate brochures and ensure clarity for candidates throughout the calendar year, avoiding mid-year changes in the contribution limit.

#### **§ 8(F) Restrictions on Candidate Fundraising**

References to temporal restrictions for general elections as well as disgorgement language regarding distribution of campaign balances are being removed to comply with the 5<sup>th</sup> Circuit Ruling in *Zimmerman v. City of Austin*, 881 F.3d 378 (5th Cir. 2018).

### **Municipal Court (Article VI, § 2)**

The Texas Constitution’s “resign-to-run” provision<sup>3</sup> states that officers including county judges, justices of the peace, and county attorneys automatically resign their current office upon announcing candidacy or becoming a candidate for another office if they have an unexpired term exceeding one year and 30 days.

Article VI § 2 of the charter states that municipal judges automatically resign upon becoming a candidate for another office if their unexpired term exceeds one year. Staff recommends amending the charter to one year and 30 days for consistency with the Texas Constitution.

## **Finance (Article VII)**

### **§ 3 Fiscal Year**

Current Charter language states that current and delinquent revenue belongs to the fiscal year in which it is collected, however this is inconsistent with the City’s methods for the recognition of revenue based on generally accepted accounting principles (GAAP). Revenue is recognized based on the type of fund in question. For example, governmental funds, which include the General fund, are budgeted on a modified accrual basis and revenue is recognized as soon as it is measurable and available. The City considers revenue available if it is collected within 60 days of the end of the current fiscal period. The amendment reflects a deletion of language inconsistent with GAAP principles.

### **§ 7 Work Programs & Allotments**

This section addresses department-level work programs, which include the requested appropriations by month for the fiscal year. The Finance Department no longer requires departments to provide work programs with allotments for spending authorizations on a monthly basis. Instead, departments are given access to the full appropriation for the year to manage. Because this process is no longer utilized, city staff recommends removing this language. Under current practices, the city manager still has the opportunity to reconsider appropriations to departments and make revisions. The amendment reflects current practices.

### **§ 15 Purchase Procedure**

The staff recommends revisions to the purchase procedures in this section to reflect best practices in contract execution authority and competitive bidding procedures. The procedures are consistent with state law for local government procurement. The revisions will also create efficiencies in City procurement. These changes include increasing the city manager’s authority to execute and amend contracts with a value of \$150,000 or less.

## **Personnel (Article IX, § 1)**

### **§ 1 Classified Civil Service**

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<sup>3</sup> TEX. CONST. ART. 16, § 65.

City staff recommends removing appointees and employees of the office of the city auditor from the classified civil service outlined in Article IX § 1. This revision will add to the list of exceptions to the classified civil service to uphold the integrity of the auditing and investigative independence of the office of the city auditor.

### **§ 5 Employees' Retirement System**

The amendment simplifies existing Charter language by referring to controlling state law. These statutes establish municipal, police, and firefighter retirement systems as well as the methodology for their administration.<sup>4</sup>

### **General Provisions (Article XII § 3)**

#### **§ 3 Notice of Claims**

The suggested changes to the City's claims process eliminate the requirement for a notarized affidavit, as that requirement creates equity issues for individuals who lack access to or financial resources for such a document. The amendment also aligns the claims notice deadline with the 180-day deadline under state law.

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<sup>4</sup> VERN. ANN CIV. STAT. §§ 6242, 6243.