

LEWISVILLE CHARTER REVIEW COMMISSION

CALLED - SPECIAL SESSION

SEPTEMBER 8, 2009

Commission Members Present:

Judy Kay Ferguson
Steve Griffin
Alvin Turner
Jeff Pelletier, Chairman
Barbara Carey

City Staff:

Claude King, City Manager
Julie Heinze, City Secretary
Ronald J. Neiman, City Attorney
Liz Plaster, Assistant City Attorney

Call to Order

(Agenda Item I)

The called - special session of the Lewisville Charter Review Commission was called to order by City Secretary Julie Heinze at 3:30 p.m. on Tuesday, September 8, 2009, in the City Council Conference Room of the Lewisville City Hall, 151 West Church Street, Lewisville, Texas.

Oaths-of-Office to Commission Members

(Agenda Item II)

City Secretary Julie Heinze administered the oaths-of-office to the Commission Members.

Election of Chairman

(Agenda Item III)

City Secretary Julie Heinze opened the floor for nominations to the position of Chairman of the Charter Review Commission.

MOTION: Upon a motion made by Commission Member Turner and seconded by Commission Member Griffin, the Commission voted five (5) “ayes” and no (0) “nays” to elect Jeff Pelletier as Chairman of the Charter Review Commission. The motion carried.

The meeting was turned over to Chairman Pelletier.

**Review and Discussion of the 2009/2010 City
Staff Recommendations**

(Agenda Item IV)

Chairman Pelletier Jeff questioned if any of the Commission Members had any questions regarding City staff's recommendations and requested that City staff review those recommendations.

City Manager King began his review with Section 3.07 of the City Charter as follows:

RECOMMENDATION: Delete clauses in section 3.07, subsection b and subsection s.

Section 3.07. Powers of the city council.

- b. Establish, create, consolidate, or abolish, administrative departments ~~and distribute the work of divisions.~~
- s. To require bonds, both special and general, of ~~all~~ contractors and others constructing or building for the city, and set up standards, rules and regulations therefor.

REASON: Subsection b contains a clause which gives the City Council the power to distribute work of divisions within the City but the City Manager, as the chief administrative officer of the City, is responsible for the distribution of work.

Subsection s contains a clause which requires a bond of all contractors, yet, in practice, such a bond is not always necessary of all contractors. Whether a bond is required depends on the specific project at issue.

City Manager King explained that from a practical perspective, this work occurs at an administrative level and if the City Council does not approve of a decision then they have the authority to handle the actions of the City Manager. He further explained that divisions can come and go depending on needs and questioned whether the City Council needed to be involved in the organizational structure, since they are rarely involved in that type of task unless it is a budgetary issue. City Manager King used the example of combining the Fire and Police Departments into a Public Safety Department versus subdividing a couple of divisions into two activities.

Review and Discussion of the 2009/2010 City

Staff Recommendations (cont'd)

(Agenda Item IV)

Commissioner Carey questioned if the City Council distributed the work to the various Department Heads. City Manager King advised that the term “distribute” gets even fuzzier because the City Council does not distribute, as they do not have a day to day roll in City operations. He further advised that the City Council decides in general how organizationally the City is set up; however, it is within the scope of the City Manager’s responsibility and duties to distribute the work load. City Manager King clarified that the City Council only gives assignments to the four appointed positions: City Manager, City Secretary, City Attorney, and Municipal Court Judge.

City Manager King advised that in regard to subsection “s” the City does not require bonds for all projects.

City Manager King then moved on to Section 3.12 as follows:

RECOMMENDATION: Delete section 3.12 in its entirety.

~~Section 3.12. Official bonds for city employees.~~

~~The city manager and the city secretary and such other city officers and employees as the city council may require shall before entering upon the duties of their office, enter into a good and sufficient fidelity bond in a sum to be determined by the city council payable to the City of Lewisville, and conditioned upon the faithful discharge of the duties of such persons, and upon the faithful accounting for all monies, credits and things of value coming into the hands of such persons, and such bonds, shall be signed as surety by some company authorized to do business under the laws of the State of Texas; and, the premium of such bonds shall be paid by the City of Lewisville; and, such bonds must be acceptable to the city council. Such bond shall be maintained in full force and effect at all times during such person's tenure of office.~~

REASON: Official bonds for the city manager, the city secretary or any other city employee are not required by law, and the finance director for the city is bonded.

City Manager King reviewed the reason City staff was recommending that this section be deleted as noted in the above reason.

City staff reviewed Section 5.07 as follows:

Review and Discussion of the 2009/2010 City

(Agenda Item IV)

Staff Recommendations (cont'd)

RECOMMENDATION: Delete last sentence in section 5.07.

Section 5.07. Conducting and canvassing elections.

The election judges and other necessary election officials for conducting all such elections shall be appointed by the city council. The election judges shall conduct the elections, determine, record and report the results as provided by the general election laws of Texas. ~~Within five (5) days or as soon as practical after an election, the city council shall meet, open the returns, canvass and officially declare the result of the election as to candidates and questions, and issue certificates of election to candidates elected, as hereinbefore provided.~~

REASON: State law sets forth specific dates for canvassing elections which override the city charter.

City Manager King reviewed the reason City staff was recommending that this section be amended as noted in the above reason.

City staff reviewed Section 7.04 as follows:

RECOMMENDATION: Add a clause in section 7.04 to address nonbinding referendum elections.

Section 7.04. Voluntary submission of legislation by the council.

The city council may, upon its own motion, and by a majority vote of its members, submit to popular vote ~~as either a binding or nonbinding referendum by designating such item as either a binding or nonbinding referendum~~ at any election, for adoption or rejection, any proposed ordinance, or resolution, or measure, or may submit for repeal, any existing ordinance, resolution or measure, in the same manner and with the same force and effect as provided in this article ~~for "submission on petition,"~~ and may at its discretion call a special election for this purpose.

REASON: Case law provides that a home-rule municipality, such as the City of Lewisville, cannot hold a nonbinding referendum election if such election is not authorized by the municipality's charter.

Staff Recommendations (cont'd)

City Manager King reviewed the reason City staff was recommending that this section be amended as noted in the above reason.

City staff reviewed Section 7.07 as follows:

RECOMMENDATION: Add a clause in section 7.07 to clarify that the city council is not bound by the results of a nonbinding referendum.

Section 7.07. Adoption of ordinances.

If a majority of the qualified voters voting on any proposed ordinance or resolution or measure shall vote in favor thereof, it shall thereupon, or at any time fixed therein, become effective as a law or as a mandatory order to the city council **unless the proposed ordinance or resolution or measure was presented to the voters as a nonbinding referendum.**

REASON: The results of a nonbinding referendum are not binding on the governing body.

City Manager King reviewed the reason City staff was recommending that this section be amended as noted in the above reason.

City staff reviewed Section 7.09 as follows:

RECOMMENDATION: Add a sentence in section 7.09 to address ordinances passed as a result of a nonbinding referendum election.

Section 7.09. Ordinances passed by popular vote, repeal or amendment.

No ordinance or resolution which may have been passed by the city council upon a petition or adopted by popular vote under the provisions of this article shall be repealed or amended, except by the city council, in response to a referendum petition, or by submission, as provided in section 7.04 of this charter. **This section is not applicable to ordinances or resolutions passed by the city council as a result of a nonbinding referendum.**

Staff Recommendations (cont'd)

REASON: Because the results of a nonbinding referendum election are not binding on the city council, this section of the charter should not apply to ordinances passed as a result of a nonbinding referendum election.

City Manager King reviewed the reason City staff was recommending that this section be amended as noted in the above reason.

City Attorney Ron Neiman reviewed Section 8:02 as follows:

RECOMMENDATION: Delete section 8.02 in its entirety.

~~Section 8.02. Development of property.~~

~~The city council shall cooperate with persons interested in the development of property within, or beyond, the city limits. No expenditure of public funds, however, shall be authorized for the development of privately owned subdivisions, situated within or beyond the corporate limits of the city; except, (where feasible for the city) for the extension of utilities or services to such areas.~~

REASON: State law addresses the expenditure of public funds for private development.

City Manager King and City Attorney Neiman reviewed the reason City staff was recommending that this section be deleted as noted in the above reason.

City Manager King reviewed Sections 9.02, 9.06 and 9.07 due to the fact they were all budget items as follows:

RECOMMENDATION: Delete the clause in section 9.02 that sets forth the time frame for the submission of the budget.

Section 9.02. Preparation and submission of budget.

The city manager shall, ~~between sixty (60) and ninety (90) days prior to the beginning of each fiscal year,~~ submit to the council a proposed budget, which shall provide a complete financial plan for the fiscal year, and shall contain the following:

Staff Recommendations (cont'd)

REASON: State law addresses the timing of the budget.

RECOMMENDATION: Delete section 9.06 in its entirety.

~~**Section 9.06. Notice of public hearing on budget.**~~

~~At the meeting of the city council at which the budget is submitted, the city council shall fix the time and place of public hearing on the budget. The public hearing on the proposed budget shall be set for a date occurring after the 15th day after the budget is filed with the municipal clerk, but before the governing body makes its tax levy, and the city council shall cause to be published in the official newspaper of the City of Lewisville, a notice of the hearing setting forth the time and place thereof at least five days before the date of such hearing.~~

REASON: State law sets forth the requirements of the public hearings on the budget.

RECOMMENDATION: Delete section 9.07 in its entirety.

~~**Section 9.07. Public hearing on budget.**~~ [old w/ redline]

~~At the time and place set forth in the notice required by section 9.06, or at any time and place to which such public hearing shall from time to time be adjourned, the city council shall hold a public hearing on the budget submitted and all interested persons shall be given an opportunity to be heard for or against any item or the amount of any item therein contained.~~

REASON: State law sets forth the requirements of the public hearings on the budget.

City Manager King advised that the items all revolve around the budget and are another example where the State's position overrides the City's position. He explained that it creates some tricky timelines because the City Charter requires certain items and then State law requires other items and difficulty in scheduling occurs. City Manager King advised City staff's opinion is that State law tells municipalities what they are supposed to do when submitting a budget that involves property taxation; however, in the event that property taxation is not involved, then State law would not apply because State law is geared toward taxation. City Manager King used the example of the FY 2009/2010 budget where there is not an increased taxation.

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(Agenda Item IV)

Staff Recommendations (cont'd)

City Manager King reviewed Section 9.14 as follows:

RECOMMENDATION: Delete section 9.14 in its entirety.

~~Section 9.14. Contingent appropriation.~~

~~Provision shall be made in the annual budget and in the appropriation ordinance for a contingent appropriation in an amount not more than three (3) percent of the total budget, to be used in case of unforeseen items of expenditure. Such contingent appropriation shall be under the control of the city manager and distributed by him, after approval of the city council. Expenditures from this appropriation shall be made only in case of established emergencies, and a detailed account of such expenditures shall be recorded and reported.~~

REASON: This contingency appropriation is unnecessary because expenditure of these funds would require city council approval. Therefore, it is more efficient to request an emergency appropriation from the city council when an emergency actually exists.

City Manager King reviewed the reason City staff was recommending that this section be deleted as noted in the above reason.

City Manager King reviewed Section 9.24 as follows:

RECOMMENDATION: Delete the clause in section 9.24 which refers to the office of the city assessor collector.

Section 9.24. Taxes; when due and payable.

All taxes due the City of Lewisville ~~shall be payable at the office of the city assessor-collector, and~~ may be paid at any time after the tax rolls for the year have been completed and approved, which shall not be later than October 1st. Taxes shall be paid before February 1st, and all such taxes not paid prior to such date shall be deemed delinquent and shall be subject to such penalty, interest and other collection costs as provided by the Texas Tax Code, Section 33.01 et seq., as it now exists or may hereafter be amended.

Staff Recommendations (cont'd)

(Agenda Item IV)

REASON: The City no longer has an office of the city assessor collector, and those activities are performed by the Denton County Appraisal District and the Denton County Tax Collector.

City Manager King reviewed the reason City staff was recommending that this section be amended as noted in the above reason.

Commissioner Carey brought up discussion regarding City Council Members receiving a raise. City Manager King recommended that if Charter Review Commission Members wanted to look at that, research could be done and brought back to the Commission. Commission Carey also questioned if the language in Section 3.01(c) (Number, selection, term) needed to remain since the change over from two year to three year terms had been completed. City Manager King advised that it was possible for it to be removed.

Set Next Meeting Date(s)

(Agenda Item V)

Chairman Pelletier opened the floor for discussion on the Commission's future meeting dates.

City Secretary Heinze explained that calendars had been included in their notebooks for the Charter Review Commission Members use in setting their meetings from now through December of 2009.

Discussion was held by the Charter Review Commission Members and the consensus was to hold the next meeting on October 13, 2009 at 3:30 p.m.

Discussion was held that action regarding the items discussed at the current meeting would be decided on toward the end of the Charter Review Commission meetings. City Attorney Neiman advised that at that time, the Commission Members would receive a final report that would be submitted to the City Council for their determination, and an election could be called based on the City Council's decision. Further discussion was held that a Charter Amendment Election would probably tie into the General Election in May. City Secretary Heinze clarified that an election could only be held on one of the uniform election dates in May or November. City Attorney Neiman advised that the City Council could move forward with all the Charter Review Commission's recommendation or just pick and choose.

Adjournment

(Agenda Item VI)

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MOTION: Upon a motion made by Commission Member Ferguson and seconded by Commission Member Turner, the Commission voted five (5) “ayes” and no (0) “nays” to adjourn the Called - Special Session of the Lewisville Charter Review Commission at 4:22 p.m. on Tuesday, September 8, 2009. The motion carried.

These minutes approved by the Lewisville Charter Review Commission on the 13th day of October, 2009.

APPROVED:

JEFF PELLETIER
CHAIRMAN, CHARTER REVIEW COMMISSION

PREPARED BY:

Julie Heinze, CITY SECRETARY