

LEWISVILLE CHARTER REVIEW COMMISSION

CALLED - SPECIAL SESSION

OCTOBER 13, 2009

Commission Members Present:

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

City Staff:

Claude King, City Manager
Julie Heinze, City Secretary
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 3:35 p.m. on Tuesday, October 13, 2009, in the City Council Conference Room of the Lewisville City Hall, 151 West Church Street, Lewisville, Texas.

**Approval of Charter Review
Commission Minutes of the September
8, 2009 Meeting**

(Agenda Item II)

MOTION: Upon a motion made by Commission Member Ferguson and seconded by Commission Member Griffin, the Commission voted four (4) “ayes” and no (0) “nays” to approve the Charter Review Commission Minutes of the September 8, 2009 meeting. The motion carried.

Review and Discussion on the City Charter

(Agenda Item III)

Chairman Pelletier directed the Commission Members to Commission Member Barbara Carey’s comments that had been included in the backup information and questioned if any of the members had any comments regarding her comments.

Chairman Pelletier reviewed Commission Member Carey’s comments as follows:

Review and Discussion on the City Charter (cont'd)

(Agenda Item III)

RECOMMENDATION: Section 3.01 c. – Eliminate the sentences 1, 2, 3 & 4. Change next sentence to read: In all city council elections all council places and the mayor shall be filled for three-year terms. The next two sentences remain the same.

Section 3.01. Number, selection and term. [old w/ redline]

The legislative and governing body of the city shall consist of a mayor, and five (5) councilmembers, and shall be known and referred to as the "City Council of the City of Lewisville, Texas." All references made in this charter to "the city council" shall mean the duly elected mayor and five (5) councilmembers. The exercise of any power granted to the city council shall require an affirmative vote of at least three (3) councilmembers, with the mayor having no vote except as provided in section 3.01b. of this charter.

- a. The mayor, and the other members of the city council, shall be elected from the city at large.
- b. The mayor shall preside at meetings of the city council, and shall be recognized as head of the city government for all ceremonial purposes, and by the governor for purposes of military law, but shall have no regular administrative duties. He may participate in the discussion of all matters coming before the council. He shall not be entitled to vote as a member thereof, on legislative or other matters, except in case of a tie, when he shall have the right to cast the deciding vote.
- c. ~~At the regular city council election in 2002 council places 3, 4 and 5 shall be filled by filling one place for a three year term and two places for two year terms. The place to be filled for the three year term shall be selected by lot. At the regular city council election in 2003 council places 1, 2 and the mayor shall be filled by electing one place for a two year term and the mayor and one place for three year terms. The place to be filled for the two year term shall be selected by lot. At the regular city council election in 2004 and i~~In all subsequent city council elections all council places and the mayor shall be filled for three-year terms. All persons elected shall hold office until one's successor is elected and qualified. All elections shall be held in the manner provided in article 5 of this charter.

Chairman Pelletier clarified with City staff that this was just clean up work since the the phasing had now been completed.

Chairman Pelletier then moved on to Commission Member Carey's next comment regarding Section 3.04 – Compensation as follows:

Review and Discussion on the City Charter (cont'd)

(Agenda Item III)

QUESTION: Section 3.04 – Should city council compensation be increased?

Section 3.04. Compensation.

The mayor and members of the city council of Lewisville shall each receive compensation in the sum of \$50.00 for each meeting of the city council which they attend; they shall also be entitled to reimbursement of and for necessary expenses incurred in the performance of their official duties, when approved by the council.

Chairman Pelletier then moved on to Commission Member Carey's next comment and City staff's response regarding Section 3.14 – Audit and examination of city books and accounts:

QUESTION: Section 3.14 – Just a question: It seems like the outside accounting audit only checks a recapitulation of all internal audits. Why is this?

ANSWER: A recapitulation of all internal audits is just one, not the only, aspect of the audit conducted by the outside auditing firm. Staff does not recommend a change to this section of the charter.

Section 3.14. Audit and examination of city books and accounts.

The city council shall cause an independent annual audit to be made of the books and accounts of each and every department of the city and may provide for more frequent audits as it deems necessary. Such audit shall be made by a certified public accountant or firm of accountants, who shall be selected by the city council, and who shall have no interest, direct or indirect in financial affairs of the city government or in any of its officers. The council may designate such accountant or firm annually or for a period not exceeding two (2) years, provided that the designation for any particular year shall be made not later than thirty (30) days before the end of such fiscal year. Nothing herein shall prevent the city council from redesignating the same accountant or firm which has previously been designated to prepare an audit. If the State of Texas makes such an audit, the council may accept it as satisfying the requirement of this section. Such accountant, so selected, shall not maintain or keep any of the city's accounts or records. Such audit shall include a recapitulation of all internal audits made during the course of each fiscal year, and all audit reports shall be filed with the city council, shall be available for public inspection, and shall be made a part of the archives of the city.

Chairman Pelletier then moved on to Commission Member Carey's next comment and City staff's response regarding Section 4.06 – Health Department as follows:

Review and Discussion on the City Charter (cont'd)

(Agenda Item III)

QUESTION: Section 4.06 – Does Lewisville have a health department?

ANSWER: State law provides that municipalities that have not established a local health department may appoint a physician as health authority to administer state and local laws relating to public health in the municipality's jurisdiction. The City has appointed Dr. Stewart Coffman as its health authority. Staff does not recommend a change to this section of the charter.

Section 4.06. Local health department.

The city council shall establish a local health department in accordance with Chapter 121, Texas Health and Safety Code, V.T.C.A. as it now exists or may hereafter be amended.

Chairman Pelletier then moved on to Commission Member Carey's next comment and City staff's response regarding Section 11.12 – Accepting gifts, etc., as follows:

QUESTION: Section 11.12 – What level of gift? What about a plaque? Should this have a dollar limit instead of being so very restrictive?

ANSWER: In general, public officials are prohibited from accepting gifts from any person subject to their jurisdiction, whether or not the gift is related to a specific official action. The law provides for several exceptions to this general rule including, but not limited to, the following: (1) an item with a value of less than \$50 (excluding cash or a negotiable instrument, such as a check); (2) a gift given by a person with whom the official has a familial, personal, business, or professional relationship, independent of the official's status or work; (3) any benefit that the official or employee is entitled to receive by law or for which the person has performed a duty independent of the person's status as a public service (for example, a jury duty fee); or (4) any political contributions as defined by Title 15 of the Texas Election Code. Furthermore, a city official may accept, as a guest, an unsolicited gift or benefit of food, lodging, transportation, or entertainment, so long as the gift is not related to a specific official action. Staff does not recommend a change to this section of the charter.

Review and Discussion on the City Charter (cont'd)

(Agenda Item III)

Section 11.12. Accepting gifts, etc.

No officer or employee of the City of Lewisville shall ever accept, directly or indirectly, any gift, favor, or privilege, from any public utility corporation, or other corporation, person or persons, enjoying a grant, contract, franchise, privilege, or easement, from or with said city, during the term of office of such officer, or during such employment of such employee; except, as may be authorized by law, resolution or ordinance. Any officer or employee of the city who shall violate the provisions of this section shall be guilty of a misdemeanor, and may be punished by any fine that may be prescribed by ordinance for this offense; and, shall, forthwith, be removed from office.

Assistant City Attorney Liz Plaster advised that how this section currently reads sufficiently covers the concern because State law will keep changing with the whims of the Legislature so this is just a big umbrella that will direct you to State law to see what can and cannot be done. She further advised that an amount does not always cover it and it is easier to just have the City Council follow State law rather than change the Charter.

Chairman Pelletier then moved on to Commission Member Carey's next comment and City staff's response regarding Section 11.23 – Retirement system and social security group insurance as follows:

QUESTION: Section 11.23 – Are the city council members considered employees and do they receive the listed benefits?

ANSWER: City council members are considered part-time employees, and as such are not eligible for coverage under the City's health, life or disability insurance or for participation in the retirement system. As for social security, the City does not participate in social security, and therefore, the council members pay 7.5% of their compensation into a FICA alternative plan.

Section 11.23. Retirement system and social security; group insurance.

The city council shall have the power to provide for coverage of its appointed officer and employees under the workmen's compensation, retirement, and social security systems provided or permitted by laws of the State of Texas, for such officers and employees of the city; and for "group insurance coverage" of such officers and employees; the city council having the power to provide for the payment of all or any part of the cost thereof.

Review and Discussion on the City Charter (cont'd)

(Agenda Item III)

Chairman Pelletier then moved on to City staff's additional recommendations regarding Section 3.11, subsection a, as follows:

RECOMMENDATION: Add a clause to Section 3.11, subsection a.

REASON: The proposed language will allow the council to pass an ordinance adopting the budget with only one reading if a majority of the council (that is, 3 members) votes in favor of its passage. As it currently reads, if only three members vote in favor of the ordinance, it must be read at three meetings. This can be unduly cumbersome because of changes in state law with regard to the timing of adopting a budget and the delays with receiving property tax information.

Section 3.11. Procedure for passage of ordinances. [old w/ redline]

- a. The city council shall legislate by ordinance, and the enacting clause of every ordinance shall be, "Be it Ordained by the City Council of the City of Lewisville, Texas:". The city attorney shall approve all ordinances adopted by the council, as to the legality thereof, or shall file with the city secretary his written legal objections thereto. Evidence of approval of an ordinance by the city attorney may be by notation on the ordinance itself, or by separate paper or instrument. Every ordinance enacted by the council shall be signed by the mayor, mayor pro-tem, or by two councilmen, and shall be filed with and recorded by the city secretary. Except as otherwise herein specifically provided, the descriptive caption of all ordinances shall be read in open meeting of the council on three (3) several days. All ordinances, shall take effect immediately upon final passage thereof. However, the requirements for reading ordinances on three (3) several days may be dispensed with, where (1) an ordinance relating to the immediate preservation of the public peace, health, safety, or public welfare is adopted by the favorable vote of 4/5 of the five (5) councilmen mentioned under section 3.01 above, qualified and serving, and contains a statement of the nature of the emergency; or (2) an ordinance relating to the adoption of the budget is adopted by a favorable vote of a majority of councilmen mentioned under section 3.01 above, qualified and serving.
- b. Except as otherwise provided by law or this charter, the city secretary shall give notice of the enactment of every ordinance imposing any penalty, fine or forfeiture for any violation of any of its provisions, and of every other ordinance required by law or this charter to be published, by causing the said ordinance, or its caption and penalty, to be published at least one (1) time within ten (10) days after final passage thereof in the official newspaper of the city. The affidavit of such publication by the publisher of such

Review and Discussion on the City Charter (cont'd)

(Agenda Item III)

newspaper taken before any officer authorized to administer oaths and filed with the city secretary, shall be conclusive proof of the legal publication and promulgation of such ordinance, in all courts. Such ordinance shall take effect ten (10) days after the date of such publication and promulgation of such ordinance passed as an emergency measure under the preceding paragraph of this article shall take effect immediately on its publication. Every ordinance shall be authenticated by the signature of the mayor and city secretary, and shall be systematically recorded and indexed in an ordinance book in a manner approved by the council. It shall only be necessary to record the caption or title of ordinances in the minutes or journal of council meetings.

- c. The city council shall have power to cause the ordinances of the city to be corrected, amended, revised, codified, and printed in code form, as often as the council deems advisable and, such printed code, when adopted by the council, shall be in full force and effect without the necessity of publishing the same, or any part thereof, in a newspaper. Such printed code shall be admitted in evidence in all courts and places without further proof.

Discussion was held regarding if there were not enough votes to pass the ordinance per the emergency clause stipulations, then it would take three meetings to read the ordinance in order for it to become effective. City Manager King advised that is normally is okay; however, when dealing with the budget, timelines get more difficult due to having to wait to receive the numbers from the Denton Central Appraisal District while still complying with State law and then in the event there was a three to two vote resulting in the three reads required, then the budget may not be passed prior to the end of the fiscal year. City Manager King advised if that occurred then the prior fiscal year budget would be adopted and following the third reading then the new fiscal year budget would supplement the prior budget.

Discussion was held regarding if an entire section was deleted from the City Charter how would the numbering of the sections be affected. City Manager King advised that the section deleted would just show as reserved.

City Manager King advised that the Commission could do a walk through one more time at their next meeting to see if anything else needs to be addressed. Chairman Pelletier questioned if additional items could be brought up at that time. City Manager King advised that they could and requested that if a Commission Member has an item they would like to bring to the next meeting, that they contact City staff prior to the next meeting so answers could be provided at that time.

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Set Next Meeting Date(s)

(Agenda Item IV)

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

City Secretary Heinze reviewed the proposed calendar and advised that the next tentative date was November 10, 2009 at 3:30 p.m.

Discussion was held by the Charter Review Commission Members and the consensus was to hold the next meeting on November 10, 2009 at 3:30 p.m.

Adjournment

(Agenda Item VI)

MOTION: Upon a motion made by Commission Member Ferguson and seconded by Commission Member Turner, the Commission voted four (4) "ayes" and no (0) "nays" to adjourn the Called - Special Session of the Lewisville Charter Review Commission at 3:53 p.m. on Tuesday, October 13, 2009. The motion carried.

These minutes approved by the Lewisville Charter Review Commission on the 10th day of November, 2009.

APPROVED:

JEFF PELLETIER
CHAIRMAN, CHARTER REVIEW COMMISSION

PREPARED BY:

Julie Heinze, CITY SECRETARY