



Memorial City Plaza II
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MEMORANDUM

TO: Chris Whittaker
FROM: Judith El Masri
THRU: J. Grady Randle
RE: Legal review of Angleton City Charter provision:
"Article 3 The City Council, Section 3.01 *Number, selection, and term.*"
DATE: December 29, 2022

Brief History on Angleton Charter Amendment 2021-2022

In 2021 the Charter Commission made recommendations regarding charter amendments to Article 3, and the City Council approved some of the recommendations. The May 2022 ballot contained nine (9) amendments to "Article 3 *The City Council*".

The City Council did not accept or approve any modification to Article 3, Section 3.01 despite recommendations from the Charter Commission. The council considered the proposed amendments at the 12/14/2021 city council meeting and had a workshop on 1/18/22 but minutes reflect no council action, only discussion. On 2/8/22 the council discussed charter amendments and voted on the amendments to be placed on the ballot.

In the 2/8/22 meeting city council voted to include all amendments to the city charter excluding three provisions, "Section 3.01 term limits", "Section 4.01 powers of city manager" and the transition provision that would have aided should term limits been voted on¹. (The import of the transition provision would have been that the mayor serve until 2024 rather than 2023 and Cecil Booth inquired on that specific point).

The inadvertent result of the City Council rejection of modifications to Section 3.01, is that Section 3.01(8) was not on the ballot and remained in the Charter as originally written. In 1995 Ordinance 2346 was adopted by the city council approving "Section 3.01 Number, selection and term" subsections (5), (6), (7), (8) to be placed on the ballot for the May 6, 1995 election. The city council minutes from the May 16, 1995 council meeting reflect the canvass of the results and adoption of the charter amendment by popular vote. Section 3.01(8) was therefore effective on May 16, 1995 and the intent of city council was that term limits and the provisions of 3.01(8) were to be applied in 1995. The 1995 Ordinance and city council meeting minutes are attached.

¹ To confirm I watched the video of the city council meeting.

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In August 2021, the Charter Commission decided that Section 3.01(8) be removed in its entirety. Section 3.01(8) states:

“Persons in the positions of Mayor and/or councilmember elected at the time this amendment is approved by the voters or thereafter shall be deemed to be serving in their first terms of office. Specifically, the term limit shall be applicable and commence with the taking of the oath of office after term limits are approved by the voters with such date serving as the beginning of their first term of office.”

As an aid to interpret the charter section titled: “Article 3, *The City Council* “of the Charter in its entirety, I have set forth the nine (9) amendments to “Article 3 *The City Council* “that were on the ballot and approved by popular vote.

1. Proposition H regarding amendment to Section 3.02 to define the 6-month residency requirement for Angleton citizens to run for city council
2. Proposition I regarding amendment to Section 3.05A deletion of vacancy in office of Mayor due to provisions superseded by state law
3. Proposition J regarding amendment to Section 3.06 Vacancies generally which was deleted and revised to eliminate inoperative provisions and to add language regarding a disaster
4. Proposition K regarding amendment to Section 3.07 Powers of the city Council deleted in part and revised to replace obsolete references and update terminology to current legal usage to vest all powers of self-government in the city council
5. Proposition L regarding amendment to Section 3.08 Meetings of City Council to replace obsolete references and update terminology and to add language permitting council to place items on the agenda at city council meetings
6. Proposition M regarding amendment to Section 3.09 Rules of Procedure deleting in part and revising to update to define a quorum as 4 members of city council and to define Mayor as a member of City Council.
7. Proposition N regarding amendment to Section 3.10 Procedure for Passing of Ordinances which was deleted in its entirety as it was superseded by state law.
8. Proposition O regarding amendment to Section 3.12 Investigation by the City Council eliminate inoperative provisions and update terminology and correct the fine amount for violation dictated by current state law.
9. Proposition P regarding amendment to Section 3.13 Audit and examination of accounts to be deleted in its entirety

Home Rule Charter Interpretation

The Angleton City Charter is the fundamental law for Angleton. The Texas Constitution, Art. XI, Section 5 grants the power of self-government and authorizes home rule municipalities by a majority vote of the qualified voters of the city to amend its charter. Through this Constitutional amendment “the Legislature conferred upon Home Rule cities the full power of self-government.” *Bennett v. Brown County Water Improvement Dist. No. 1*, 272 S.W.2d 498, 506 (Tex. 1954)(Wilson, J. dissenting).

The Angleton City Charter is to be interpreted and read as a whole, and all provisions must be harmonized “considering every word, phrase, and expression as if each had been deliberately

chosen and used for a purpose”. *Hammond v. City of Dallas*, 712 S.W.2d 496, 498 (Tex. 1986). The City Council is responsible for interpreting its charter. The attorney general has opined a city attorney bears primary responsibility for interpreting a city’s charter for the purpose of whether there are limits imposed by the Texas Constitution and Texas statute on self-government. *See* Tex. Att’y Gen. Op. No. JM-805 (1987), at 1 n. 1. In this review we have determined there are no such state law or constitutional provisions imposing limitations on Section 3.01(8).

Application of the plain meaning rule (see research item 2 below) when interpreting Charter Section 3.01(8) leads to one possible interpretation as follows:

At the time the charter amendments were placed on the ballot and voted on (2022), *the elected officials not on the ballot for election in May 2022 are serving their first term*. The elected officials not on the 2022 ballot seeking (re)election were Mayor Jason Perez, Councilman Travis Townsend and Councilman Cecil Booth. This interpretation is altered by a review of the history of the charter amendment in which Section 3.01(8) was adopted.

Decisions by Texas courts (see research item 2 below) reflect this interpretation is accurate, unless a contrary intention is apparent from the context, or such a construction leads to absurd results. Using this interpretation and applying the “plain meaning rule” means Perez, Townsend and Booth would in fact be serving their first term.

In 2011, the Texas Supreme Court decided that a court’s primary objective in construing an ordinance is to ascertain and give effect to the enacting body’s intent. *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432,439 (Tex. 2011). In order to “give effect to the enacting body’s intent” a review of the acting body’s action is required. City council action on Angleton charter amendments is normally reflected by city ordinance and the 1995 Ordinance reflects the action.²

It appears the “enacting body’s intent” is reflected in the 1995 Ordinance and 5/16/1995 city council minutes, however, the responsibility for the interpretation of (a) intent, and (b) the meaning of Section 3.01(8) falls upon the current Angleton City Council.

Conclusion:

The Charter language in Section 3.01(8) was inadvertently overlooked by the city council when they decided to exclude it from the amendments to be placed on the ballot and go to the voters. The charter commission deleted the provision. The provision remains and is valid and the interpretation of the provision is the responsibility of the City Council. The City Attorney is responsible for interpreting whether a charter provision is limited or exceeds the limits of state law, and a legal review reflects neither.

One possible interpretation and the interpretation that is reasonable and based on city council action in 1995, is that the intent of the authors (city council in 1995) of Section 3.01(8) was that following the charter amendment election, the citizens of Angleton by popular vote imposed term limits on the elected officials, and those particular elected officials not on the ballot in 1995 were to serve in their first term.

² According to Municode the Angleton City Charter was amended in 1969, 1971, 1973, 1975, 1979, 1981, 1983, 1985, 1989, 1995, 2003, 2005, 2007, 2010, 2015, 2018.

Another possible interpretation is that after the Charter was amended in 2022 the elected officials in office (not on the ballot in 2022) are serving their first term, similar to the elected officials on the 2022 ballot that are serving their first term. Regardless of the City Council interpretation, the Code Construction Act of Texas requires that a just and reasonable result is intended, and the public interest is favored over any private interest (see research item 5 below).

Research on rules of construction:

1. Courts use the same rules to construe statutes as municipal ordinances. *Mills v. Brown*, 159 Tex. 110, 316 S.W.2d 720, 723 (1958).
2. Courts use definitions prescribed by the Legislature and any technical or particular meaning the words have acquired. Tex. Gov't Code Ann. § 311.011(b). Otherwise, courts must construe the statute's words according to their plain and common meaning, *Texas Department of Transportation v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex.2004), unless a contrary intention is apparent from the context, *Taylor v. Firemen's & Policemen's Civil Serv. Comm'n of City of Lubbock*, 616 S.W.2d 187, 189 (Tex. 1981), or unless such a construction leads to absurd results. *Texas Dept. of Protective & Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004) (noting that when statutory text is unambiguous, courts must adopt the interpretation supported by the statute's plain language unless that interpretation would lead to absurd results).
3. *Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59-64 (Tex. 2019); see also *State v. T.S.N.*, 547 S.W.3d 617, 620-622 (Tex. 2018) stating that the Texas Supreme Court's analysis of a statute is limited to the text of the statute unless the only possible interpretation leads to absurd results.
4. When construing an ordinance, we presume "*the ordinance is intended to be effective, a just and reasonable result is intended, a result feasible of execution is intended, and the public interest is favored over private interest.*" And a court's primary objective in construing an ordinance is to ascertain and give effect to the enacting body's intent. *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432,439 (Tex. 2011).
5. Code Construction Act, Texas Government Code Sec. 311.021 *Intention in Enactment of Statutes*. Presumption that: per Sec. 311.021 (3) a just and reasonable result is intended and per Sec. 311.021(5) public interest is favored over any private interest.

AN ORDINANCE TO PROVIDE FOR THE SUBMISSION OF PROPOSED AMENDMENT TO THE HOME RULE CHARTER OF THE CITY OF ANGLETON, TEXAS, BY AMENDING THE LANGUAGE OF SECTION 3.01 OF THE HOME RULE CHARTER OF THE CITY OF ANGLETON TO INCLUDE SUBSECTIONS (5), (6), (7) AND (8) TO LIMIT TERMS OF THE MAYOR AND COUNCIL MEMBERS; AS PRESENTED IN THIS ORDINANCE, PROVIDING FOR THE SUBMISSION OF THE PROPOSED AMENDMENT TO THE HOME RULE CHARTER OF THE CITY OF ANGLETON, TEXAS, TO THE QUALIFIED VOTERS OF SAID CITY AT THE NEXT REGULAR ELECTION, MAY 6, 1995, AND DIRECTING THAT NOTICE THEREOF BE GIVEN.

WHEREAS, the Home Rule Charter Revision Commission of the City of Angleton recommended to the City Council of the City of Angleton to submit to the voters a proposal to amend the Home Rule Charter to provide for term limits for the Mayor and City Council members, and

WHEREAS, the Council of the City of Angleton deems it proper and in the best interest of the citizens of Angleton to submit the proposed amendment to the qualified voters of said City; therefore,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANGLETON THAT:

SECTION 1. The following proposed amendment to the Home Rule Charter of the City of Angleton shall be submitted to the qualified voters of the City for adoption or rejection, at a regular City election to be held on Saturday, May 6, 1995:

PROPOSITION NO. 1

Shall Section 3.01 of Article 3 of the Home Rule Charter of the City of Angleton be amended by adding subsections (5), (6), (7) and (8) as follows:

Section 3.01. Number, selection and term.

(5) A person who has served three (3) terms as Councilmember shall not be eligible to serve in such office thereafter for a period of twelve (12) months, at which time that person's eligibility to serve another three (3) terms shall be restored.

(6) A person who has served three (3) terms as Mayor shall not be eligible to serve in such office thereafter for a period of twelve (12) months, at which time that person's eligibility to serve another three (3) terms shall be restored.

(7) A person who is elected Mayor or Councilmember at any city election or who is appointed or elected to serve an unfinished term of office of more than one (1) year shall be deemed to have served one term. A person who is appointed or elected to serve an unfinished term of office of one (1) year or less, shall not be deemed to have served one (1) term.

(8) Persons in the positions of Mayor and/or Councilmember elected at the time this amendment is approved by the voters or thereafter shall be deemed to be serving in their first terms of office. Specifically, the term limit shall be applicable and commence with the taking of the oath of office after term limits are approved by the voters with such date serving as the beginning of their first term of office.

SECTION 2. The polling places, presiding officers and judges at said election shall be designated by Ordinance No. 2345 dated February 21, 1995, passed by the Council of the City of Angleton, calling a City Officer Election for May 6, 1995.

SECTION 3. This election shall be held under the provisions of the Home Rule Amendment to the Constitution of the State of Texas and the provisions of Chapter 13, Title 28, Revised Civil Statutes of Texas, 1925 and any and all amendments thereto, and the laws of this State regulating such elections, and all duly qualified resident electors of the City of Angleton, Texas, shall be qualified to vote.

SECTION 4. The form of ballot to be used at said election shall be substantially as follows:

PROPOSITION NO. 1

Do you vote to amend the Home Rule Charter of the City of Angleton by amending Section 3.01 of Article 3 by limiting to three the number of terms a person may serve as City Councilmember; by limiting to three the number of terms a person may serve as Mayor; such person then becoming ineligible to serve in such office for a period of 12 months.

VOTE: YES NO

SECTION 5. All voters desiring to vote for the adoption of the proposed amendment shall mark the word "YES" on their ballot, and those voters desiring to vote against the adoption of the proposed amendment shall mark the word "NO" on their ballots.

SECTION 6. Notice of the election shall be given by publishing this ordinance in the Angleton Times, a newspaper of general circulation published in the City of Angleton, the same day in each of two successive weeks, the date of the first publication to be not later than the 16th day of April, 1995, which date is not less than fourteen (14) days prior to the date set for election.

SECTION 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict only.

SECTION 8. If for any reason any section, paragraph, subdivision, clause, phrase, word, or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

PASSED AND APPROVED this 6 day of March - 1995.

CITY OF ANGLETON

By: 
ROY GARDNER, Mayor

ATTEST:


DAVID EMSWILER, City Secretary

State of Texas

County of Brazoria

City of Angleton

The Angleton City Council conducted a Special Meeting at 6:00 p.m., Tuesday, May 9, 1995 at City Hall, 121 S. Velasco, with the following present:

	Roy Gardner	Mayor
	Rudy Santos	Mayor Pro Tem
	Robyn Cochran	Councilwoman
	Matt Sebesta	Councilman
	Ronnie Slate	Councilman
	J. Patrick Henry	Councilman
Others Present	Ruth Hertel	City Administrator
	David Emswiler	City Secretary
	Roger Collins	Councilman Elect.
	and those listed on the guest register.	

CALL TO ORDER

CANVASS RESULTS OF MAY 6, 1995 GENERAL ELECTION

Mayor Roy Gardner read the results of the May 6, 1995 General Election.

Mayor		
* Roy Gardner	692 votes	100. percent
(No opponent)		
<i>Total</i>	<i>692 votes</i>	<i>100. percent</i>
Council Position 2		
* J. Patrick Henry	621 votes	100. percent
(No opponent)		
<i>Total</i>	<i>621 votes</i>	<i>100. percent</i>
Council Position 4		
* Sarah Shepherd Bostick	230 votes	25.99 percent
* Roger D. Collins	541 votes	61.13 percent
* Timm D. Martin	114 votes	12.88 percent
<i>Total</i>	<i>885 votes</i>	<i>100 percent</i>

Proposition No. 1

Do you vote to amend the Home Rule Charter of the City of Angleton by amending Section 3.01 of Article 3 by limiting to three the number of terms a person may serve as City Councilmember, by limiting to three the number of terms a person may serve as mayor; such person then becoming ineligible to serve in such office for a period of 12 months.

	575 yes votes	72.60 percent
	217 no votes	27.40 percent
<i>Total</i>	<i>792 votes</i>	<i>100 percent</i>

Following Mayor Roy Gardner report the following action was taken:

Motion: Councilman Slate
Second: Councilman Sebesta

That the City Council accept the Canvass of the General Election and Proposition No. 1 conducted May 6, 1995, as read. Motion passed with 6 voting for; 0 against.

CONSIDER BIDS; DOWNING - HOSPITAL DRIVE TO BRUSHY BAYOU

The City Council considered bids on grading, paving Downing Road from Hospital Drive to Brushy Bayou. Baker and Lawson Engineers recommended that Ramos Industries, Inc. be award the low bid at the total bid amount of \$431,052.10.

Motion: Councilman Slate
Second: Councilwoman Cochran

That the City Council accept the low bid of \$431,052.10 from Ramos Industries for the grading, paving of Downing Road from Hospital Drive to Brushy Bayou. Motion carried with 6 voting for; 0 against.

EXECUTIVE SESSION

The City Council entered an Executive Session in accordance with Article 6252 - 17, Section 2 (g) personnel in regards to interviews for Municipal Judge position.

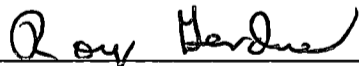
Action coming from Executive Session in Open Session:

Motion: Councilman Sebesta
Second: Councilwomen Cochran

That the City of Angleton appoint David Bonnen to serve as the City of Angleton's Municipal Judge replacing Forest Smith who has resigned. Motion carried with 6 voting for; 0 against.


Adjournment

PASSED AND APPROVED this the 16th day of May, 1995.



Roy Gardner, Mayor

ATTEST:



David Emswiler, City Secretary