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MEMORANDUM

TO: Mayor Lyle Nelson & Members of the City Council, City of Bastrop
FROM: Alan Bojorquez, City Attorney
CC: Chairman David Bragg & Members of the Charter Review Commission
DATE: July 19, 2024
RE: **Home Rule Charter Review Commission: *Status Report on Possible Amendments***

BACKGROUND

The first meeting of the Charter Review Commission was held the afternoon of Wednesday, July 17, 2024. Twelve of the thirteen members were in attendance (one remotely through videoconferencing). The Commission selected attorney David Bragg as its chairperson. The Commission met for approximately 3.5 hours. The meeting was conducted in compliance with the Texas Open Meetings Act, open to the public, and broadcast live. It was a very productive session that included a legal and procedural briefing and the consideration of specific potential amendments.

RECOMMENDATIONS

The following propositions were addressed by the Commission. The specific language of approved items is subject to change pending final approval by the Commission. The majority of the items were initially part of the 2022 ballot for the special election that was cancelled. Most propositions may be characterized as non-substantive clean-up edits. They are offered here in the order they would appear in the Charter.

ANNEXATION: ***Passed:** This amendment was **approved** by the Commission.*

Prop. A: Shall Section 2.03 of the Charter be amended to conform with state law by removing reference to the City's power to annex territory without consent of the inhabitants?

Explanation: Legislative changes to Texas statutory law have made it difficult to annex property without the consent of the property owners. See Texas Local Government Code Chapter 43. The suggested amendment has the Charter defer to state law and avoid conflicting language.

Amended Text: If approved, the section will read (in relevant part):

Section 2.03 - Annexation

The Council shall have the power by ordinance to fix the boundary limits of the City to provide for the alteration and the extension of said boundary limits, and the annexation of

additional territory lying adjacent to the City, in compliance with state law ~~with or without the consent of the territory and inhabitants annexed~~. During the annexation process, the Council shall provide an opportunity for all interested persons to be heard at public hearing(s), in conformance with state law....

RESIGN TO RUN: *Passed:* This amendment was *approved* by the Commission.

Prop. B: Shall Section 3.06(6) of the Charter be amended to conform with state law creating a vacancy on the city council when a council member announces their candidacy for certain elected offices and the unexpired term of the council member exceeds one year and thirty days?

Explanation: The Texas Constitution has a provision commonly referred to as the *Resign to Run* rule, which automatically creates vacancies in certain elected offices if the incumbent announces they are seeking another elected office. The *Resign to Run* rule applies (in relevant part) when certain candidates for other offices have 1 year and 30 days left on their current term. The current Charter provision only references the 1 year mark, but omits the additional 30 days.

Amended Text: If approved, the section will read (in relevant part):

Section 3.06 - Vacancies, Forfeiture of Office and Filling of Vacancies.

The office of a Council Member shall become vacant upon the member's death, resignation, removal from or forfeiture of that office. A Council Member shall forfeit that office if the Council Member: ...

(6) announces his/her candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of the State of Texas or the United States other than the office then held, at any time when the unexpired term of the Council Member then held shall exceed one (1) year and thirty (30) days, such announcement or such candidacy shall constitute an automatic resignation of the Council position then held, as set forth in Article XVI, Sec. 65(b) of the Texas Constitution.

TWO READINGS: *Failed:* This amendment was *not* approved by the Commission.

Prop. C: Shall Section 3.15(b) of the Charter be amended to authorize the city council to waive by an affirmative vote of four (4) or more Council Members the requirement that an ordinance be read in two separate meetings?

Explanation: State law does not require that all ordinances be read at two separate meetings before being adopted. However, the current Charter does. There are occasions when it would be expeditious and advantageous to dispense with the second reading (e.g., at the end of the year and during holiday seasons). This amendment allows waiver of the two-reading requirement if the waiver is approved by a super-majority vote of the City Council. The suggested amendment provides flexibility.

Amended Text: If approved, the section will read (in relevant part):

Section 3.15 - Ordinances in General.

(b) Procedure. An ordinance may be introduced and acted upon at any regular or special meeting of the Council. No ordinance shall be passed, except in cases of emergency, until the descriptive caption of the ordinance shall have been read in two separate meetings of the Council.

The requirement for considering ordinances and reading the descriptive caption thereof at two (2) separate meetings may be dispensed with: (1) where an ordinance relating to the immediate preservation of the public peace, health or safety is adopted as an emergency measure by a majority vote of the Council Members and such emergency ordinance shall take effect immediately upon its adoption and execution without a second consideration; or (2) when a majority vote of four or more Council Members determines through a separate motion that the first reading is sufficient for adequate consideration of the ordinance.

COPIES OF REGS: *Passed:* This amendment was *approved* by the Commission.

Prop. D: Shall Section 3.16 of the Charter be amended to reflect the fact that codes of technical regulations are available to the public digitally and free of charge?

Explanation: Technical regulations such as the *Building Bastrop Block Technical Manual* are often necessary to implement city policies regarding building and construction. State law does not require such rules to be posted online. Whether to provide technical codes online is a local policy decision. With advances in technology, it is not always necessary or feasible to print and sell hardcopy versions of the City's Code of Ordinances. Instead, the technical codes can now be accessed by the public at-will and without fees from the City's home page.

Amended Text: If approved, the section will read (in relevant part):

Section 3.16 Codes of Technical Regulations.

The Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedures and requirements governing such an adopting ordinance shall be that prescribed for ordinances generally. A copy of each adopted code of technical regulations, as well as the adopting ordinance, shall be authenticated and recorded by the City Secretary pursuant to Section 3.17.

Copies of any adopted code of technical regulations shall be made available by the City Secretary digitally without charge through the City's website ~~for purchase at a reasonable price.~~

COPIES OF ORDINANCES: *Passed:* This amendment was *approved* by the Commission.

Prop. E: Shall Section 3.17(b) of the Charter be amended to reflect the fact that ordinances are available to the public digitally and free of charge?

Explanation: Ordinances are municipal rules and regulations. State law does not require ordinances be compiled into a published collection called the Code of Ordinances (i.e., codified). Whether to codify ordinances is a local policy decision. State law does not mandate how Codes of Ordinances are published when codified. Bastrop has a Code of Ordinances. With advances in technology, it is no longer necessary or feasible to print expensive hard copy versions of the City's Code of Ordinances. Instead, the ordinances can now be accessed by the public at-will and without fees from the City's home page.

Amended Text: If approved, the section will read (in relevant part):

Section 3.17 Authentication and Recording; Codification

(b) Codification. All City ordinances having the force of law shall be codified. The general codification shall be adopted by the Council by ordinance and shall be published online in loose-leaf form and shall include this Charter and any amendments thereto. The official copy of the City Code in the office of the City Secretary shall be kept up to date and properly indexed. It shall not be necessary to repeat in this codification any technical codes adopted by reference. Copies of the City Code shall be available to the public digitally without charge through the City's website ~~furnished to City offices, placed in libraries and public offices for free public reference and made otherwise available for purchase by the public at a reasonable price fixed by the Council. Amendments to the City Code shall also be made available for purchase by the public as they become available.~~

MUNI JUDGE'S TERM: *Passed: This amendment was approved by the Commission.*

Prop. F: Shall Section 5.02 of the Charter be amended to conform with state law by stating that the term of office of municipal court judges shall be provided for by ordinance?

Explanation: State law states that the city council shall provide by ordinance for the term of office of its municipal judges. The term must be for a definite term of two or four years. Tex. Gov't Code § 30.00006(d). The Bastrop Code of Ordinances provides for a two-year term. The current Charter provision states that the term is three years. The suggested amendment brings the Charter into compliance with state law.

Amended Text: If approved, the section will read (in relevant part):

Section 5.02 - Judge of the Municipal Court.

The Municipal Court shall be presided over by a Judge(s). The Judge(s) shall be nominated by the Mayor and appointed by the Council for a term provided by ordinance of three (3) years to run concurrently with the term of the office of the Mayor, or for the portion of such unexpired term as may remain at the time of the appointment.

PETITIONS FOR INITIATIVE REFERENDUM: *Passed: This amendment was approved by the Commission.*

Prop. G: Shall Section 10.04 of the Charter be amended to conform with state law by requiring petitions calling for initiative or referendum elections to comply with the Texas Election Code?

Explanation: Texas Election Code Ch. 277 states that petitions can't be amended or supplemented (with certain exceptions) after they are filed. The current language is inconsistent with state law. The suggested amendment brings the Charter language into compliance with state law by simply referring to the applicable state statute.

Amended Text: If approved, the section will read (in relevant part):

Section 10.04 Filing, Examination and Certification of Petitions

All papers comprising a petition for initiative or referendum shall be assembled and filed with the City Secretary as one instrument.... A petition may be amended or supplemented in compliance with the Texas Election Code at any time within ten (10) days after a notice of insufficiency has been sent by the City Secretary, by filing a supplementary petition. ~~In such event, the same procedures shall then be followed by the City Secretary and Council as in the case of the original petition for the same purpose.~~

PETITIONS FOR RECALL: *Passed:* This amendment was *approved* by the Commission.

Prop. H: Shall Section 10.08 of the Charter be amended to conform with state law by requiring petitions calling for recall elections to comply with the Texas Election Code?

Explanation: Texas Election Code Ch. 277 states petitions can't be amended or supplemented (with certain exceptions) after they are filed. The current language is inconsistent with state law. The suggested amendment brings the Charter language into compliance with state law by simply referring to the applicable state statute.

Amended Text: If approved, the section will read (in relevant part):

Section 10.08 - Recall Election.

All papers comprising a recall petition shall be assembled and filed with the City Secretary. Within thirty (30) days after the petition is filed, the City Secretary shall determine its sufficiency and, if found to be sufficient, shall certify this fact to the Council at its next regular meeting. A petition may be amended or supplemented in compliance with the Texas Election Code. ~~If a recall petition is found to be insufficient, it may be amended within ten (10) days after notice of such insufficiency by the City Secretary, by filing a supplementary petition.~~

P&Z MEMBERSHIP: *Failed:* This amendment was *not* approved by the Commission.

Prop. I: Shall Section 12.01 of the Charter be amended to provide that the number of Planning and Zoning commissioners shall be established by ordinance?

Explanation: State law does not specify the membership of a Planning and Zoning Commission; thus, it is a matter of local preference. The current size of the P&Z under the Charter is 9. This amendment removes reference to the size of the P&Z from the Charter and allows the City Council to set the size of the P&Z by ordinance.

Amended Text: If approved, the section will read (in relevant part):

Section 12.01 - Planning and Zoning Commission.

There shall be established a Planning and Zoning Commission which shall consist of ~~nine (9)~~ residents, serving staggered three-year terms.

Any vacancy on the Commission shall be filled by the Council for the remainder of the unexpired term in question. Members of the Commission shall serve without compensation and may be removed by the Council at its sole discretion. The Commission shall annually elect a Chair and a Vice Chair from among its membership. A majority of members shall constitute a quorum. The Commission shall keep minutes of its proceedings and such minutes shall be of public record.

OUTDATED TRANSITIONS: *Passed: This amendment was approved by the Commission.*

Prop. J: Shall Sections 14.03 and 14.04 of the Charter be repealed in their entirety as outdated, transitional provisions that are now irrelevant?

Explanation: These provisions are surplus language included as part of the 2010 Charter amendments as an explanation regarding the implementation of that collection of modifications, which included increasing terms of office from 2 to 3 years. They no longer have any relevance to the current Charter and will not affect any future amendments.

~~Section 14.03—Submission of Charter Amendment to Election.~~

~~The City Council, in preparing these Charter Amendments, finds and declares that it is impracticable to segregate each subject so that the voter may vote "yes" or "no" on the same, for the reason that the Charter is so constructed that in order to enable it to properly function it is necessary that it should be amended as set forth on the seven (7) separate ballots presented. For this reason, the City Council directs that the ballot provisions related to these Charter Amendments be voted upon as set forth on the seven (7) ballot propositions presented, and that these amendments shall be submitted to the qualified voters of the City at an election to be held on the 2nd day of November, 2010. The various Charter Amendments approved by a majority of the qualified voters, voting at this election, shall become the Amended Charter of the City of Bastrop on the date the Council enters an order in the records of the City declaring that the various approved Charter Amendments are adopted and the Home Rule Charter is, thus, Amended to include the ballot changes approved by the voters of the City of Bastrop. No amendments to the Charter are intended nor shall same be made other than those specifically approved by the voters in the upcoming election, and as noted herein.~~

~~Section 14.04—Transitional Elections/Staggered Terms.~~

~~In order to provide for a smooth transition from the former two-year terms for all Council Members to the three-year staggered terms set forth in Charter Section 3.02, the following transitional election rules shall be applied.~~

~~(1) Staggering Terms. At the first Council meeting following the approval by the electorate of three-year terms of office pursuant to the Amended Charter, then-sitting Council Members,~~

~~including the Mayor, shall draw lots to determine which Council places and/or Mayoral position shall be subject to a transitional length term of office, in order to provide for staggering of terms, the objective being that as stated in Section 3.02; specifically that each year, two (2) Council places, including the Mayoral position, shall be up for election for 3-year terms of office.~~

~~(2) Implementation of Staggered Terms. No City Council Member shall be required to draw lots that would result in a transitional term of less than two years or exceeding four years to accomplish the staggering of terms as set forth herein.~~

~~(3) Deadline for Accomplishing Staggering Terms. The City Council shall accomplish staggering the terms of office for all Council Member places and the Mayoral position on or before the General Election that will occur in 2015.~~

GENDER-SPECIFIC TERMS: *Passed:* This *modified* amendment was *approved* by the Commission.

Prop. K: Shall the Charter be amended throughout to replace gender -specific language with gender-neutral terminology?

Explanation: The Charter is replete with gender-specific terms, including:

- his,
- his or her,
- his/her,
- him,
- him/her

The suggested amendment makes a uniform series of non-substantive edits throughout the Charter.

Amended Text: If approved, the gender-specific wording listed above will be replaced *throughout the Charter* with *his/her or him/her*, as appropriate in context.

end of Amendments contemplated in 2022
###

BOARD APPOINTMENTS: *Passed:* This amendment was *approved* by the Commission.

Prop. 1: Shall Section 3.01 of the Charter be amended to clarify that the Mayor appoints candidates to serve on boards (committees, commissions, task forces, etc.) and the Council confirms the appointment?

Explanation: Traditionally the Charter has been interpreted to grant the Mayor the authority to appoint members to boards subject to Council's confirmation. It would be useful to provide clarity given imprecise language in Sections 3.01(5) and 3.08. *In the alternative*, interest has been expressed in the notion of authorizing appointments to be made by the Mayor or two Council Members subject to confirmation by the full Council.

Amended Text: If approved, the section will read (in relevant part):

Section 3.01 - Powers and Duties.

All powers of the City and the determination of all matters of policy shall be vested in the City Council. Without limitation of the foregoing and among the other powers that may be exercised by the City Council, the following are enumerated for greater certainty. The City Council may: ...

(5) provide for such additional boards and commissions, not otherwise provided for in this Charter, as may be deemed necessary, and confirm the Mayor's appointment of ~~appoint~~ the members of all such boards and commissions. Such boards and commissions shall have all powers and duties now or hereafter conferred and created by this Charter, by City ordinance or by law; ...

MAYOR PRO TEM: *Failed:* This amendment was not approved by the Commission.

Prop. 2: Shall Section 3.01 of the Charter be amended to provide for the position of Mayor Pro Tem to alternate annually among the City Council members?

Explanation: Currently the Charter requires the City Council to select a Mayor Pro Tem annually. The Charter grants the Council the ability to appoint the same member to serve as Mayor Pro Tem continually (i.e., year after year). There has been interest expressed in requiring the position to change annually so that Council Members can have an opportunity to serve on a rotating basis.

Amended Text: If approved, the section will read (in relevant part):

Section 3.08 - Mayor and Mayor Pro Tem.

The Mayor shall preside over the meetings of the Council and perform such other duties consistent with the office as may be imposed on the Mayor by this Charter and all ordinances and resolutions passed in pursuance thereof. The Mayor may not vote, except in elections, to break a tie and as otherwise provided in this Charter. The Mayor shall have no veto power. The Mayor shall appoint members to all City boards and commissions, subject to confirmation by the Council. The Mayor shall also be recognized as the chief presiding officer of the City. The Mayor shall also be recognized as the head of the City by all courts for the purpose of serving civil processes, by the Governor for the purpose of enforcing military law and for all ceremonial purposes.

At the first meeting of the Council following the City's general election, the Council shall elect one of its members to serve a one-year term as Mayor Pro Tem of the City. In the absence or disability of the Mayor to perform the duties of that office, the Mayor Pro Tem shall perform all such duties, and while acting as Mayor Pro Tem may not vote, except in

elections and to break a tie. The position of Mayor Pro Tem shall alternate annually in a manner that provides all willing Council Members the opportunity to serve.

COUNCIL COMPENSATION: *Tabled:* This amendment remains *pending* subject to further consideration at a future meeting.

Prop. 3: Shall Section 3.07 of the Charter be amended to compensate the Mayor at a rate of \$___ per month and Council Members at \$___ per month?

Explanation: Currently the Charter specifies particular amounts of compensation for the Mayor and City Council Members. The question of a raise has arisen. An increase will not go into effect for an individual (Mayor or Council Member) until they are elected (or re-elected if an incumbent).

Amended Text: If approved, the section will read (in relevant part):
Section 3.07 - Compensation and Expenses.

The Mayor shall be compensated in the amount of ~~\$150~~ \$___? per month and each of the other Council Members shall be compensated in the amount of ~~\$75~~ \$___? per month.

Council Members may receive reimbursement for necessary expenses incurred in the performance of their duties of office, according to policies to be determined by the Council.

CHARTER REVIEW: *Passed:* This *modified* amendment was *approved* by the Commission.

Prop. 4: Shall Section 3.09 of the Charter be amended to mandate that the City Council must appoint a Charter Review Commission every six years?

Explanation: Currently the Charter requires that at least every six years the Council must consider whether the Charter needs to be revised. Interest has been expressed in the notion of going the extra step to mandate that a Charter Review Commission be appointed to conduct that assessment. Neither state law nor the Charter mandates that the Council appoint a Charter Review Commission (i.e., it's optional).

Amended Text: If approved, the section will read (in relevant part):
Section 13.09 - Charter Amendment.

Proposed amendments to this Charter shall be framed and submitted to the voters of the City in the manner prescribed by state law.

The Council shall, at intervals not to exceed six (6) years, formally consider the need for revision(s) to the Charter by appointing a citizens Charter Review Commission excluding City employees and Council Members. This review shall be based on a written report from the City Manager, with special attention given to conflicts, if any, between the Charter and state law, and recommending such amendments to the Charter as may seem necessary for legal, administrative or other reasons.

QUORUM: *Failed:* This amendment was not approved by the Commission.

Prop. 5: Shall Section 3.13 of the Charter be amended to specify that 3 members of the Council shall constitute a quorum?

Explanation: Typically, a quorum of a governing body is a *simple majority* of the entirety of the voting members. Under the Charter, the Council is comprised of five Council Members and a Mayor (who votes only in instances of a tie). Often in that situation a quorum would be three. Our Charter sets the quorum at four.

Amended Text: If approved, the section will read (in relevant part):

Section 3.13 - Rules of Procedure.

The Council shall determine its own rules of procedure and order of business. ~~Three~~ Four members of the Council shall constitute a quorum to do business, and a majority vote of those attending any meeting at which there is a quorum present shall be sufficient to adopt any ordinance or resolution, except as otherwise provided in this Charter. The vote upon the passage of all ordinances and resolutions shall be taken by "ayes" and "nays," and the vote of each Council Member present shall be entered on the minutes of the meeting.

All meetings of the Council, except for executive sessions authorized by state law, shall be open to the public, and minutes of all proceedings of such open meetings shall be kept, to which any citizen may have access at all reasonable times and which shall constitute the archives of the City.

CITY MANAGER RESIDENCE: *Passed:* This *modified* amendment was *approved* by the Commission.

Prop. 6: Shall Section 4.01 of the Charter be amended to remove the requirement that the City Manager to reside within the City Limits?

Explanation: Current and previous City Managers have reported that it is difficult to procure housing that meets their needs within the City Limits due to the limited supply. This amendment removes residency restrictions (leaving limitations [if any] to the City Council).

Amended Text: If approved, the section will read (in relevant part):

Section 4.01 - Appointment, Qualifications and Compensation of the City Manager.

The Council shall appoint a City Manager for an indefinite term, who shall be the chief administrative officer of the City. The City Manager shall be chosen by the Council by a majority vote of its entire membership and solely on the basis of executive and administrative training, experience, ability and character and without regard to political consideration.

~~The City Manager need not be a resident of the City at the time of appointment but shall reside within the City while in office.~~

The City Manager shall receive such compensation as may be fixed by the Council.

FUTURE ITEMS

In addition to Prop. 3 (Council Compensation, which was tabled), Commissioner (and former Mayor) Ken Kesselus raised the following items for consideration at the next meeting:

- Mayor's ability to vote
- Number of City Council Members

Commissioners may bring other items forward at the next meeting.

PROCEDURAL NOTE

In creating the Commission, the City Council dictated that the Commission shall comply with rules of procedure for the City Council and Boards and Commissions, except that a three-quarter (3/4) super-majority vote determines whether the motion passes or fails. See Ordinance 2024-18, Section 7. At its meeting, the Commission determined that the Council's intent was that the super-majority requirement apply to the full membership (13) not just those present (thus, 10 votes is necessary to approve a recommendation to the Council).

CONCLUSION

A second meeting of the Commission is currently being scheduled.

Additional amendments may be suggested by the Commission, City staff, or City Council.

When ordering an election on the issue of amending the Charter based on recommendations from the Commission, the City Council retains the discretion to select which propositions (*if any*) to place on the ballot for the voters.

Voters may approve or reject each proposition on the ballot.