

## **Potential Charter revisions for the May 2013 Ballot**

### **Proposal: Move Regular City elections to November and Revise Processes to Conform with State Law.**

#### **ARTICLE II NOMINATIONS AND ELECTIONS.**

##### **Section 2.1 CITY ELECTIONS.**

**A. Regular Elections.** The regular City elections to be held in 2015 and 2017 shall be held on the uniform date established in the Texas Election Code during the month of May with a run-off election to be held on the earliest date practicable in accordance with the law. ~~All~~ These terms of elected office to commence on the last Tuesday in June or the Tuesday following the canvass of a run-off election, whichever is later. Beginning in 2018, the regular City elections shall be held on the uniform date established in the Texas Election Code during the month of November with a run-off election to be held on the earliest date practicable in accordance with the law. All terms of elected office beginning with the November 2018 election to commence on the first Tuesday in January following the election or the Tuesday following the canvass of a run-off election, whichever is later.

**B. Officers Elected.** The qualified voters of El Paso shall, as necessary to fill expired terms, elect the following officers at each regular election: A Mayor, eight District Representatives, and Judges of the Municipal Courts: Each Representative shall be elected from a district and the Mayor and other officers shall be elected from the City at large. The Judges of the Municipal Courts, the Mayor, and the District Representatives from districts numbers 2, 3, 4 and 7 taking office in June 2013 shall serve four year terms. Commencing in June ~~2017~~ ~~2005~~ the Judges of the Municipal Courts, the Mayor, and the District Representatives from districts numbers 2, 3, 4 and 7 shall be elected to terms greater than three years but less than four years that conform to the change made in subsection A to the start of the term and the new election date beginning in November 2020 and they shall thereafter be elected to four-year terms. Commencing in June ~~2015~~ ~~2005~~, the District Representatives from districts numbers 1, 4, 5 and 8 shall be elected to terms greater than three years but less than four years that conform to the change made in subsection A to the start of the term and the new election date beginning in November 2018 and be elected to two-year terms, and commencing in June 2007, they shall thereafter be elected to four-year terms. Each officer shall hold office during the term for which elected and established herein and until the election and qualification of a successor, unless sooner removed in any manner provided in this Charter.

**Note: Under Article 11, Section 11, Texas Constitution, a home rule city has no authority to extend a term beyond four years. Thus, if it is desired to move the elections from May to**

November, the terms must be shortened. The starting date of the terms could be moved up to the last Tuesday in December or delayed to the second Tuesday in January if one of those days is preferred over the first Tuesday in January.

Also, if this provision goes forward, a corresponding change may be desired for the provision resetting the starting date of the terms of the CSC Commissioners. (FYI—one proposed revision in Article VI is to create a uniform term starting and ending dates for the CSC Commissioners.).

**E. Petition for Candidacy.** In lieu of the payment of a filing fee, any person qualified for an elective office may become a candidate by petition of 25 qualified voters who are eligible to vote for that candidate or such other greater number of qualified voters as may be required by state law. The signed petitions shall be filed with the City Clerk at the time of filing for candidacy. Each signer next to his signature shall indicate voter registration number, date of signing and place of residence. Within five days after the filing of a nominating petition, the City Clerk shall notify the candidate and the person who filed the petition, if other than the candidate, whether it satisfies the requirements prescribed by this Charter. If a petition is found insufficient, the City Clerk shall return it immediately to the person who filed it with a statement certifying wherein it is insufficient. Within the regular time for filing petitions a corrected petition may be filed for the same candidate.

Note: this change is needed so that the provision conforms to state law—there are times when the Election Code requires more than 25 signatures on the petition.

**F. Scheduling of Elections.** Elections shall be scheduled in accordance with State law. Notwithstanding any other provision of this Charter, the City Council may defer the holding of a special election required by this Charter to such date permitted under state law when the special election will be conducted by the El Paso County Elections Administrator.

This provision will allow for an option to move some special elections when they would ordinarily need to be set in May of even years—a date when the El Paso County Elections Administrator can refuse to hold the election.

## **Proposal: Revise Council Processes, Procedures and Appointments**

### **ARTICLE III THE CITY COUNCIL.**

#### **Section 3.5 CITY COUNCIL PROCEDURES AND RULES.**

A. **Meetings.** Regular meetings of the Council shall be held in Council chambers a minimum of one time per week at such times as may be prescribed by resolution. Provided however, that the Council by resolution may cancel one or more regular meetings, ~~not to exceed three meetings during each calendar year,~~ provided that the Council may not cancel more than two regular meetings in a row such canceled meetings are not consecutive. Special meetings and informal work sessions of the Council shall be called by the Mayor or a majority of the entire Council by giving written notice to the City Clerk. All meetings of the Council and of any committees thereof shall be held as permitted by the Texas Open Meeting Act.

Note: The NCL Model Charter has this language: “The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule.”

### **Section 3.6 LEGISLATIVE COMMITTEES.**

The Representatives may resolve themselves into committees, both standing and special, when this is convenient for the conduct of legislative business, including the investigative powers described in Section 3.8. The Council shall establish a legislative committee consisting of at least three Representatives to provide legislative oversight of the finance and internal audit functions of the City. Rules governing the organization and procedures of these committees shall be made by the Council, and the Mayor shall have no power to veto any of those rules except upon grounds of illegality.

### **Section 3.9 ORDINANCES IN GENERAL.**

B. **Legislative Procedure.** Except as provided in Section 3.13, an ordinance may be introduced by any Council member at any meeting of the Council. A proposed ordinance must be filed with the City Clerk in sufficient time for inclusion on the agenda for the Council meeting at which it is to be introduced. Upon such filing the City Clerk shall distribute copies to each member of the Council and to the City Manager. A reasonable number of copies shall be available in the office of the City Clerk, and be made available for examination by interested persons through any contemporary means of information sharing at such other public places as the Council may designate, ~~for examination by interested persons.~~ No ordinance shall be adopted finally except at a regular open meeting of the Council following notice, publication, and a public hearing. The notice shall contain:

1. The proposed ordinance or a brief summary thereof;
2. The places where copies of it have been filed and the times when they are available for public examination; and
3. The time and place for the public hearing. The notice shall be published by any contemporary means of information sharing, including but not limited to, publication in a newspaper of general circulation in the City or placement on a web site at least five days prior to the public hearing. The hearing may be held by a designated Council committee or the Council separately or in connection with any Council meeting and may be adjourned to a specified time. All interested

persons present shall have an opportunity to be heard. As soon after as practicable after adoption of any ordinance, the City Clerk shall publish it again, with notice of its adoption, in abstract form, by any contemporary means of information sharing. These abstracts must state, at a minimum, the purpose of the ordinance, and where penal, the penalty provided. In any event, the publication must be written so as to be understood by an average person.

**C. Actions Requiring Ordinances.** The Council may exercise the following powers by ordinance only:

1. Authorize the conveyance of any City real property except as provided in section 3.18;
2. Adopt or amend any administrative code and establish, abolish, alter or combine any City departments, so long as such action is not in conflict with this Charter;
3. Amend, extend, or repeal any ordinance previously adopted;
4. Prescribe a fine or penalty or establish any rule or regulation for the violation of which a fine or other penalty is imposed;
5. ~~Adopt Civil Service Rules.~~

**Note:** A broader exemption for conveyances is drafted in section 3.18. The language in #2 (now #1) is identical language to what is in the NCL model charter.

### **Section 3.18 LEASE, FRANCHISE, AND CONVEYANCE.**

The right of control, ownership and use of streets, alleys, parks and public places of the City is declared to be inalienable except as provided by ordinance passed by the Council; provided however, the council shall have the right by resolution to grant a lease of public property, or grant a temporary use of a street, alley, public way or public property for a period not to exceed years, by resolution and/or may establish ~~except for uses of less than thirty days which may have a separate approval process for such temporary uses of a street, alley, public way or public property of less than thirty days as established~~ by ordinance.

Any ordinance or resolution providing for the conveyance, lease, or grant of a franchise regarding the property of the City shall provide for payment to the City of a reasonable fee as consideration for that conveyance, lease, or franchise. In addition, any ordinance or resolution providing for the lease or franchise shall provide that;

1. At the termination of the lease or franchise, the property involved, together with any improvements thereto, made or erected during the term of the lease or franchise, shall (either without further compensation or upon payment of a fair valuation therefore as determined by the terms of the ordinance or resolution), become the property of the City; and
2. Every lease or franchise may be revoked by the City if necessary to secure efficiency of public service at a reasonable rate, or to assure that the property is maintained in good order throughout the life of the grant.

Note: The above revision is based on language contained in San Antonio's ordinance. San Antonio's charter states two years as the cut-off date for using a resolution rather than an ordinance for a temporary use such as a special privilege.

**Section 3.14 AUTHENTICATION AND RECORDING; CODIFICATION; PRINTING.**

A. All ordinances and resolutions of the Council shall be authenticated by the City Clerk and recorded in an indexed public record.

B. The Council shall provide for the preparation of a general codification of this Charter and its amendments, and of those ordinances selected by the Council. This codification shall be known and officially cited as the **El Paso City Code**. Copies of the Code shall be produced as required by State law and the City Clerk shall make the Code available to the public by any contemporary means of information sharing. furnished to City officers and places in libraries and public offices within the El Paso City limits, for free public reference.

Note: State statute presently requires that one copy of the code be printed.

**Section 3.19. PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES IN RESIDENTIAL SECTIONS OF THE CITY.**

The sale of beer and liquor is hereby prohibited in residential areas of the City. For purposes of this section, property within the City limits zoned under a smart code for a mixed use style of development is not a residential area except for the properties or portions of properties that are designed for residential use or specifically designated as residential.

**Section 3.20 ETHICS.**

**A. Ethics Review Commission.** The Council shall, by ordinance, establish an independent ethics review commission to administer and enforce the ethics section of the City Code. To the extent permitted by Texas law, the Council shall authorize the commission to issue advisory opinions, conduct investigations, request witness testimony and production of evidence, make determinations on whether a violation has occurred, and issue decisions and appropriate sanctions. The ethics review commission shall have the power to enforce its decisions by assessing civil fines and other sanctions authorized by ordinance. The Council shall provide sufficient resources to the commission to enable it to perform the duties assigned to it under the Charter and City Code.

**B. Interest in City Contracts Prohibited.** No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any **land**, materials, supplies or service, except on behalf of the City as an officer or employee. An officer or an employee of a bank that serves as the city's depository bank shall be deemed not to have a financial interest in the city's contract. Any willful violation of this section shall constitute malfeasance in office, and any

officer or employee guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, expressed or implied, of the person or corporation contracting with the council shall render the contract involved voidable by the city manager or the council.

Note: Section B is a proposal that has been requested by Rep. Byrd during several council meetings in the last two years.

Note: if you include land as part of this proposal, it would be necessary to proceed to eminent domain to acquire any land from a City official or employee, even if it is just a small piece needed for a large project consisting of several parcels. This would add to the expense and to the time needed to acquire property for a project. Accordingly, you may wish just to exclude land or draft some type of exception, such as requiring the Council to make a finding that there is no reasonable alternative to the acquisition of the particular property or that the property is essential to the successful completion of a project prior to proceeding with the purchase.

Section A is the text from Section 2.2 G which is moved to this location to be under the new section titled Ethics and is amended to add authority to impose civil fines, as authorized by an ordinance. San Antonio has a similar provision in their charter granting this type of authority..

## **Proposal: Revisions to the Appointment and Removal Process of Board and Commission Members**

### **ARTICLE III THE CITY COUNCIL.**

#### **Section 3.7 APPOINTMENTS.**

**A. The City Attorney.** Whenever a vacancy in the position of City Attorney or any Assistant City Attorney occurs, the City Council by a majority vote of its total membership shall appoint a City Attorney or Assistant City Attorney. ~~Mayor shall appoint a successor with a majority vote of the entire Council.~~ The City Attorney shall be appointed solely on the basis of legal experience and qualifications. Candidates for this position may be nominated by any member of the Council. The City Attorney or any Assistant City Attorney may be removed by ~~the Mayor~~ with a majority vote of the entire Council.

**B. Boards and Commissions.** Except where otherwise provided in this Charter, or by the laws of Texas, or of the United States, appointments to and removals from standing or special public boards, commissions or committees of the City shall be made by the Council. The Council is required to ensure that the ability to submit nominations for appointments are distributed uniformly among Representatives and the Mayor.

## **ARTICLE IV THE MAYOR.**

### **Section 4.1 POWERS OF THE MAYOR.**

B. The Mayor shall be a member of and preside over the City Council, having the power to propose legislation; represent the City in intra-governmental and intergovernmental relationships; make appointments as provided in Section 3.7 B and as provided by federal or state law ~~appoint with the consent of the Council the members of citizen advisory boards and commissions~~; make appointments and perform duties pursuant to federal and state law; present an annual state of the City message, break tie votes, veto legislation except for any City Council action which removes the City Manager, convene the Council in special session and perform other duties specified by the Council.,

**Note:** The revisions to the above two sections more clearly state the existing practice for making appointments to the boards and commission.

### **Proposal: Revisions to the Citizen Action Provisions:**

## **ARTICLE II NOMINATIONS AND ELECTIONS.**

### **Section 2.1 CITY ELECTIONS.**

**C. Recall.** Any elected officer of the City may be removed from office, for stated reasons, by those voters who are qualified to vote for a successor to such office. A completed petition under this section shall be signed by a number of registered voters equal to at least [redacted] percent of the registered voters who were entitled to vote at the last election for the officer whose recall is sought.

The Council shall enact, within sixty days of the adoption of this Charter, an ordinance providing for:

1. The general conduct of recall election.
2. Receipt, by the City Clerk, prior to the conduct of any recall election of a petition bearing authentic signatures of a number of registered voters ~~equal to at least twenty percent of the total number of votes cast in the election of the officer whose recall is sought;~~
3. Completion of a recall petition with sixty days of filing notice with the City Clerk of intent to circulate a petition for recall; and
4. Recall petitions to specify the reasons for which recall is sought.

The time periods established for the duties and responsibilities of the City Clerk within the ordinance required under this section shall be construed to mean the working days of the city.

In specifying the reasons for a recall and removal on the petition, the petition shall set forth distinctly and specifically grounds showing or tending to show some ground of incompetency or unfitness for or misconduct or malfeasance in the office.

No recall petition shall be filed against any elected officer within six months after taking office, nor within twelve months of the end of the elected officer's term of office, nor in case of an officer who was the subject of an unsuccessful recall election, until six months after that election. Should the elected officer, whose recall is sought, resign, no recall election shall be held.

Recall provisions—NCL model charter and other cities:

San Antonio: requires 10% of qualified voters at the time of the last regular election.

Dallas: requires 15% of voters who were entitled to vote at the last election.

Ft. Worth: 20% of the persons entitled to vote for successor.

Austin: requires 10% of qualified voters. Austin has a provision stating that no council member shall be subject to more than one election during a term of office.

Houston: requires 25% of those voting at the Democratic primary election. Houston requires grounds be stated: "petition shall set forth distinctly and specifically grounds showing or tending to show some ground of incompetency or unfitness for or misconduct or malfeasance in the office".) Houston also limits recall elections to one in any calendar year.

The NCL Model Charter states that recall petitions are usually signed by registered voters of the city equal in number to at least 10 to 20 percent of the total number of registered voters to vote at the last regular election.

### **ARTICLE III THE CITY COUNCIL.**

#### **Section 3.11 INITIATIVE.**

Whenever a number of registered voters equal to at least                      ~~five percent of the voters who voted in the last general City election~~ sign a petition setting forth the precise content of an ordinance desired by the signers, the Council must place that ordinance on the agenda of a Council meeting to be held within thirty working days of the receipt, by the City Clerk, of the petition hearing the authenticated names and addresses of the petitioners. Such an item shall be treated by the Council exactly as any other proposed ordinance.

Should an ordinance proposed by such petition not be enacted by the Council, or should it be enacted in an amended form, a second petition, signed by a number of registered voters equal to at least                      ~~five percent of the voters who voted in the last general City election~~, may be submitted to the City Clerk and that official shall have twenty working days in which to authenticate the signatures and thereafter must place the proposed ordinance on the ballot at the next general election specified in State law, if the proposal received the favorable vote of a majority of those voting in that election it shall thereupon become a City ordinance.

The council is not obligated to consider the same ordinance initiated by petition, or one that is substantially the same, more often than once in two years.

**Initiative provisions—NCL model charter and other cities:**

**San Antonio:** requires 10% of qualified voters at the time of the last regular election. San Antonio (and Houston) have provisions that state that if conflicting ordinances are approved by the electors at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict. No second petition is required—automatically goes to the voters if not approved.

**Dallas:** requires 10% of qualified voters at the last election. Dallas requires a committee of 5 qualified voters to register and file intent to circulate initiative. No second petition is required—automatically goes to the voters if not approved.

**Ft. Worth:** 20% of registered voters. No second petition is required—committee submitting initiative can demand that initiative go to voters if not passed or passed in amended form.

**Austin:** requires 10% of qualified voters. No second petition is required—automatically goes to the voters if not approved.

**Houston:** requires 15% of those voting at the Democratic primary election. No second petition is required—automatically goes to the voters if not approved.

The NCL Model Charter states that initiative petitions are usually signed by registered voters of the city equal in number to at least 5 to 10 percent of the total number of registered voters to vote at the last regular election.

**Proposal: Revisions to civil service provisions.**

**Article VI CIVIL SERVICE.**

See separate proposal document—to be discussed after review by the Civil Service Commission provides their review and comments.

**Proposal: Revisions to finance provisions.**

**Article VII PUBLIC FINANCE.**

**Section 7.4 CASH RESERVE FUND.**

The A cash reserve fund in the general operating fund of the City shall be maintained in an amount no less than five percent (5%) of the prior year's adopted general fund operating expenditure

~~budget equal to its existing balance at the date of adoption of this Charter.~~ The cash reserve fund shall be maintained or reported as restricted under applicable Governmental Accounting Standards Board rules a separate accounting entity and must be invested in accordance with the laws of Texas. Short term borrowing from the cash reserve fund shall be for a period of no more than one calendar year and must be approved by the Council. Annual income from the cash reserve fund may be used only for capital improvements. “Capital improvements” shall be construed to include acquisition, construction, reconstruction, or improvement of facilities, equipment, or land for use by the City and all expense incidental thereto.

Note: Information from the City Comptroller shows that the current \$16 million reserve fund balance has ranged from 4.97% to 5.68% of the general fund operating expenditure budget from 2007 to the present.

### **Section 7.7 DEPOSITORIES.**

All monies received by any person, in connection with the business of the City, shall be deposited promptly in a City depository and, whenever possible, within one business day after its receipt.

All City bank accounts shall be carried in the name of the City, with such additional designations as are required to distinguish accounts for special purposes.

~~The City’s investments shall be governed by a City Investment Policy which shall be adopted and reviewed as provided by state law, but in no event, shall the policy be adopted or reviewed by the council less frequently than annually. Council may, from time to time, authorize transfer from a depository for the purpose of purchasing direct interest bearing obligations of the United States government, or may authorize withdrawal for investment otherwise in any other manner permitted by the laws of Texas, provided the purchase or investment shall not deny the City the use of such funds when required.~~

Note—presently state law requires an investment policy and that it be reviewed annually. (Chapter 2256, Govt Code) This language would provide for an annual review in the event state law were to be changed.

## **Proposal: Clean up Article VIII**

### **Article VIII ADOPTION AND TRANSITION**

#### **Section 8.1**

~~This Charter shall be submitted to the qualified voters of the City at an election to be held for that purpose on the 21st day of January, 1984. The Council shall provide the form of ballot and conduct the election as required by law. The Charter Commission, in preparing this Charter,~~

~~finds that by reason of the form of government provided herein and the nature of the provisions relating thereto, it is not practical to segregate each subject or article so as to permit a separate vote of "yes" or "no" thereon; and that it should be adopted in its entirety. Therefore, the Charter Commission directs that this Charter be voted upon as a whole. If a majority of those voting in such election are in favor of this Charter, it shall become the Charter of the City of El Paso, and after the returns have been canvassed, the Charter shall be declared adopted, at which time the existing Charter shall be repealed. Reserved.~~

## **Section 8.2**

~~Any person holding elective office under the Charter in force prior to the adoption of the preceding Articles shall continue in office until the expiration of the prescribed term, unless sooner removed under the laws of Texas or as prescribed in the above Articles. Reserved.~~

## **Section 8.7 TRANSITIONAL PROVISION TO THE 2004 2013 AMENDMENTS.**

Amendments to this Charter that are approved at an election on February 7, 2004, create a new system of government that requires an orderly transition. Accordingly, the following transitional provisions shall apply:

A. ~~Amendments to Articles III, IV, V, VI and VII relating to a Council Manager form of government shall take effect on September 1, 2004. Until such amendments become effective, the provisions of Articles III, IV, V, VI, and VII of the City Charter shall remain in effect. All other amendments approved take effect as provided by law.~~

B. ~~On September 1, 2004, the position of Chief Administrative Officer shall be abolished and the person appointed to that position shall be automatically removed, provided however, that on and after September 1, 2004 and until such time as the Council appoints a City Manager or other Interim City Manager, the person serving as Chief Administrative Officer on August 31, 2004 shall serve as Interim City Manager and shall have the powers and duties of the City Manager. Upon the appointment of the City Manager, the Interim City Manager shall be automatically removed.~~

C. ~~Notwithstanding any other provision of this section, n~~No amendment that is approved at the election on February 7, 2004 May 11, 2013 shall be effective unless and until the Voting Rights Section of the Civil Rights Division of the United States Department of Justice issues a letter interposing no objection to the implementation of the amendment, if voting rights review is required for the amendment. In the event that an objection is interposed to the amendments made in Section 2.1 A and B, the provisions of Section 2.1 A and B establishing the terms of office, as approved at the election on May 12, 2007, shall remain in force and effect.