

AGENDA

CHARTER REVIEW COMMISSION

MAY 26, 2016

**FLOWER MOUND PUBLIC LIBRARY
PROGRAM ROOM
3030 BROADMOOR LANE**

FLOWER MOUND, TEXAS

6:00 P.M.

A. CALL MEETING TO ORDER

B. MINUTES

1. Consider approval of May 12, 2016, Minutes

C. REVIEW ITEMS OUTLINED IN RESOLUTION NO. 08-16 (COUNCIL CHARGE)

1. Discuss options for processing charter violations (Item #5 in Resolution)
2. Review and discuss provisions relating to term limits and consecutive terms for elected officials (Item #6 in Resolution)
3. Review and discuss any provisions that would improve efficiencies and/or result in a cost savings for the Town (Item #4 in Resolution)

- a) Charter Section 9.14 relative to changing the text from transfer of funds from the department level to the fund level

§9.14. Transfer of Appropriations.

During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one ~~department~~ fund to another ~~department~~ fund, and to re-estimate revenues and expenditures. If the Town Council determines it is in the best interest of the Town to apply for and accept a private, county, state or federal grant of funds for a particular purpose, the Council's action in accepting the award of said grant and any corresponding expenditures shall constitute a budget appropriation in the amount of said grant funds.

D. OTHER ITEMS OUTLINED IN RESOLUTION NO. 08-16 (COUNCIL CHARGE)

The purpose of this item is to allow commission members an opportunity to discuss the following Charter amendments previously determined by a general consensus to be recommendations that will come forward at a future meeting given they were deemed to be in the category of housekeeping or efficiency improvement.

Discuss and Review:

- a) Charter Section 9.10 regarding the procedure of filing the budget with the State Comptroller
- b) Charter Section 3.07(w) regarding the publication of ordinance captions in the newspaper

- c) Charter Section 8.04 regarding the removal of the provisions relating to the Parks, Arts, and Library Services Board (Item #7 in Resolution)

E. ITEMS INITIATED BY CHARTER REVIEW COMMISSION MEMBERS

The purpose of this item is to allow commission members an opportunity to bring forward any items for consideration relative to proposed Charter amendments.

F. PUBLIC PARTICIPATION

The purpose of this item is to allow the public an opportunity to address the Commission by providing comments on any of the agenda items or provide input relative to potential Charter amendments for future consideration.

G. PUBLIC COMMENTS

1. Discuss and review any correspondence received from the public via charter@flower-mound.com or otherwise.

H. ADDITIONAL FUTURE AGENDA ITEMS FOR CONSIDERATION

The purpose of this item is for the Commission to bring forward any agenda items for future discussion, such as any that were initiated by the public during public participation, via other communication such as charter@flower-mound.com, or otherwise.

I. COORDINATION OF CALENDARS

1. Next meeting date(s):
- Thursday, June 9, 6pm, Town Hall, 2121 Cross Timbers Rd.
 - Tuesday, June 21, 6pm, Town Hall (**Public Hearing**)
 - Thursday, June 30, 6pm, Town Hall (**Public Hearing**)
2. Discuss and consider providing an interim update report to Council at the June 6th regular meeting.

J. ADJOURNMENT

I do hereby certify that the Notice of Meeting was posted on the bulletin board in Town Hall of the Town of Flower Mound, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: May 23, 2016, at 9:45 a.m.



Theresa Scott, Town Secretary

Pursuant to Section 551.071 of the Texas Government Code, the Charter Review Commission reserves the right to consult in closed session with its attorney and to receive legal advice regarding any item listed on this agenda.

The Flower Mound Town Hall and Council Chambers are wheelchair accessible. Request for accommodations or interpretive services must be made at least 48 hours prior to this meeting by contacting the Town Secretary's Office at (972) 874-6070.

THE FLOWER MOUND CHARTER REVIEW COMMISSION MEETING HELD ON THE 12TH DAY OF MAY 2016, AT TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

The Charter Review Commission met with the following members present:

Jody Smith	Chair
Kia Mastey	Commissioner
Robert Rawson	Commissioner
Connie Smith	Commissioner
Tim Trotter	Vice Chair
Amy Wallace	Commissioner

constituting a quorum with the following members of the Town Staff participating:

Theresa Scott	Town Secretary
Rob Allibon	Town Attorney

A. CALL MEETING TO ORDER

Chair Smith called the meeting to order at 6:03 p.m.

B. SELECTION OF VICE CHAIR

Commissioner Connie Smith moved to elect Tim Trotter as vice chair of the Charter Review Commission. Commissioner Rawson seconded the motion.

VOTE ON MOTION:

AYES: MASTEY, SMITH, RAWSON, TROTTER, WALLACE

NAYS: NONE

C. MINUTES

1. Consider approval of April 28, 2016 Minutes

Commissioner Rawson moved to approve the minutes from the April 28, 2016 Charter Review Commission meeting. Commissioner Connie Smith seconded the motion.

VOTE ON MOTION:

AYES: SMITH, RAWSON, TROTTER, WALLACE, MASTEY

NAYS: NONE

D. REVIEW ITEMS OUTLINED IN RESOLUTION NO. 08-16 (COUNCIL CHARGE):

1. Review and discuss any provisions that conflict with state law or any of the Town's Ordinances (Item #3 in Resolution)
 - a. Eminent domain protection levels
 - b. Filing of budget with the State Comptroller – Charter Section 9.10

There was discussion by the Commission on this item as follows:

- a. Eminent domain protection levels
 - Amount of information received on the topic of eminent domain
 - Whether there is or is not a conflict with respect to state law and if there is a need to present a charter amendment recommendation
 - The amount of notice to the land owners in terms of days before something would come on an agenda and if a policy would be needed or not

Mr. Allibon pointed out that he handles many of the eminent domain matters on the municipalities they represent. He noted that the current charter provision does not conflict with state law in any way.

Mr. Allibon responded to questions from the Commission as follows:

- Procedures defined in state law with respect to notification requirements associated with eminent domain, which includes an initial offer letter and 30 days to respond to that letter, then a final offer letter be given and the property owner has an additional 14 days to respond to that before the Town could proceed with the matter. He further added that the Town has to authorize the use of eminent domain which is done through a resolution or ordinance that the Town would need to pass.
- Clarification as to how the notices are delivered to the land owner

Chair Smith summarized that the Town is following state procedures for eminent domain and there is potential interest by the Commission to propose a policy recommendation for a more enhanced notification process.

- b. Filing of budget with the State Comptroller – Charter Section 9.10

Chair Smith summarized that there is no legal requirement to file the budget with the state comptroller, and the recommendation would be to replace that text to include the filing of the budget with Tarrant County.

2. Review and discuss any provisions that would improve efficiencies and/or result in a cost savings for the Town (Item #4 in Resolution)
 - a. Publication of ordinance captions in the newspaper – Charter Section 3.07(w)

Ms. Scott noted there is currently not a requirement to publish the caption of approved ordinances that includes a fine or penalty clause. She also pointed out that these same ordinances are included in their entirety on the Town's website through [MuniCode](#), and the captions for all ordinances are included with the minutes as required by the Town Charter.

She also pointed out why the Town uses the Denton Record Chronicle for the official paper.

Ms. Scott responded to questions from the Commission regarding:

- Clarification that this change would not affect other legal publications
- Examples as to the types of ordinances this applies to
- If there is any type of index on a quarterly or yearly basis that you can track the history

Chair Smith summarized that the Commission was acceptable to bringing forward recommendations that result in improved efficiencies and cost savings for the Town.

3. Discuss options for processing charter violations (Item #5 in Resolution)

Chair Smith summarized the discussion to date and that at the last meeting there was some consensus to develop some type of process/procedure in the area of coming up with how to handle charter violations.

There was discussion by the Commission regarding:

- Interest in narrowing down the process or procedure instead of making it a blanket statement that a process needs to be created
- Examples from other cities regarding a more defined process
- Liked the option of having someone file for a specific violation
- Verbal and written warnings should be considered for some types of violations, but not all
- Favored how Council recently used a 3rd party to handle an investigation
- Liked how Richardson lined it out specifically in that a willful violation is considered official misconduct and then it addresses the next steps
- Interest in providing Council with enough latitude in that they have specific guidelines on how to proceed but they also have the flexibility, as opposed to just taking a vote to expel a member - that they perhaps have the option to censor a member (which could in essence be considered the formal warning)
- Reference to Carrollton's procedure where an initial written sworn complaint is required prior to looking into a charter violation by a councilmember, and might be a basis in which to work from
- Concerns regarding cost associated with using an outside investigator; however, recognition that it allows for an impartial review
- Like the idea of a public hearing element in the process

Mr. Allibon responded to questions from the Commission as follows:

- How best to convey to council concerns regarding charter violations
- A request for examples from other towns that have gone through a charter violation review to see how they proceeded with respect to guidelines, and did they bring in outside sources, and how did the process flow.

Chair Smith pointed out that the current situation is that it is not stipulated in the charter as to what happens when there is a violation of the charter. She summarized that the general consensus is that there be a very good definition

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as to what a violation of the charter is, how does it get communicated to the Council or mayor, spell out the process and any associated penalties (including things such as who would be able to initiate a grievance, public hearing component, etc.), and if there is Council action is involved, it should require a supermajority to pass.

4. Review and discuss provisions relating to term limits and consecutive terms for elected officials (Item #6 in Resolution)

Ms. Scott pointed out content in the packet relative to benchmark cities and length of terms. She also mentioned there needs to be consideration with respect to the current provision on term limits and if that should change for a member of Council that would want to run for mayor after four years, for example.

There was Commission discussion regarding:

- A longer term is a benefit to the elected official; however, it might not be for the citizenry and therefore open to review
- How the three years allows a member of Council to get past the learning curve
- The three years also allows for a political break and could make the mayor and council more productive as they are not thinking about a reelection soon after that first year
- Former council members Trotter, Smith, and Wallace (spouse of former Councilmember Mike Wallace) offered feedback relative to length of term and what a longer term would mean from an elected officials perspective
- How three years is a compromise compared to some cities having four or more years
- How the residents decide the term limits when they go to the polls
- A three year versus two year time commitment could be a factor in getting people to come forward
- Is two years an appropriate time to have influence in the community
- At large versus single member districts
- Expanding the size of Council

Ms. Scott responded to questions from Commission members or offered comments as follows:

- The financial impact relative to not having an election in a situation with three year terms.
- Logistics associated with a clock reset with respect to term limits
- Reference to a video from the last CRC on the topic of single member districts as presented by Syd Falk

Mr. Allibon pointed out there are a few rules that apply to three year terms, such as calling an election to fill a vacancy instead of appointing someone.

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5. Review and discuss removal of the provisions relating to the Parks, Arts, and Library Services Board (Item #7 in Resolution)

Chair Smith summarized that this item is more on the lines of clean up and there was consensus by the members to bring it forward for a future recommendation.

6. Identify a process for public review of proposed Charter amendments (Item #8 in Resolution)

Ms. Scott summarized that the purpose of this item is for the CRC to come up with a way to get public input as they get closer to making recommendations.

Chair Smith pointed out that based on the topics discussed to date there is most likely going to be public input. She inquired of the members with respect to any preferences.

There was Commission discussion regarding:

- Use of a committee to come up with procedures for handling charter violations

Ms. Scott responded to questions from Council regarding:

- Timing
- Past survey responses, and more specifically to on line surveys
- What can be done legally with respect to communicating to the public about Charter amendment recommendations

E. ITEMS INITIATED BY CHARTER REVIEW COMMISSION MEMBERS

Mr. Robson inquired about having language in the Charter that would allow an automatic removal of language that conflict with state law.

Mr. Allibon offered a legal explanation relative to the inability to do so and how a Charter amendment election would be needed to change it.

Ms. Scott pointed out that in the past there was a Charter amendment item to address spelling corrections without addressing each Charter reference.

F. PUBLIC PARTICIPATION

All addresses are located in Flower Mound, unless otherwise indicated.

Name	Address	Subject
Sharon Gentry	2750 Bob White Ln	1. Interest in the CRC coming up with a procedure to address charter violations for the purpose of putting it in the hands of the residents and out of the political realm 2. Against increasing the terms to 3 years
Janvier Scott	2829 Bob White Ln	Interest in making eminent domain infrequent and for public use

Paul Stone	709 Lake Bluff Dr	<ol style="list-style-type: none"> 1. Not for term limits – never have been 2. Procedures for removal of a councilmember when there is a charter violation and the CRC should come up with the recommendation 3. Getting public to participate (in response to a request from Chair Smith)
Marsha Gavitt	6501 Meadowcrest Ln	<ol style="list-style-type: none"> 1. For eminent domain appreciated the concise explanation by the Town Attorney; would like to have proof of notification and receipt by landowners 2. For charter violations she would like to define what an independent investigator means 3. For term limits don't think about expense when it comes to elections – you're always learning on the job; don't like 3 year term limits 4. Doesn't like the idea of single member districts
Bryan Webb	4112 High Rd	<ol style="list-style-type: none"> 1. Thanks to those serving 2. Pointed out that when talking about expanding the size of Council, consideration needs to be made with respect to a piece that plays into that as it relates to a supermajority and how the new number might change the dynamic of what a supermajority is

G. PUBLIC COMMENTS

Ms. Scott noted that one email has been received and it was addressed earlier in the meeting.

H. ADDITIONAL FUTURE AGENDA ITEMS FOR CONSIDERATION

There were no new items brought forward for future discussion.

I. COORDINATION OF CALENDARS

1. Vice Chair Trotter announced that the next meeting date will be Thursday, May 26, 6pm, Public Library, Community Room, 3030 Broadmoor.
2. Consider setting future meeting dates in June:

There was consensus to use June 21 and June 30 as public hearing dates. There was some discussion about having a Saturday meeting. Mr. Robson indicated he would not be available for the 6/30 meeting.

There was also consensus to reserve the date of June 9th for a CRC meeting.
3. Discuss and consider providing an interim update report to Council at the June 6th regular meeting.

There was consensus that the CRC would take up the topic at the May 26th meeting for further discussion.

J. ADJOURNMENT

Vice Chair Trotter adjourned the meeting at 8:04 on Thursday, May 12, 2016, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

THOMAS E. HAYDEN, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

DRAFT

MEMORANDUM

To: Flower Mound Charter Review Commission

From: Bryn Meredith

Date: May 23, 2016

Re: Examples of Charter Violation Incidents

At the May 12th Charter Review Commission meeting, the Commission made a request for examples from other towns that have gone through a charter violation review process while addressing procedures, investigation methods and outcomes. In reviewing appropriate case law and news articles I have identified five examples, which are summarized as follows:

1. City of El Paso

Facts: City Manager Tommy Gonzales administratively approves the issuance of a Request for Qualifications (RFQ) seeking a new financial advisor for the City of El Paso without a vote from the Council. The issuance of the RFQ does not hire a new financial advisor and merely seeks qualifications for providers. The RFQ was issued after a Councilmember, with ties to an interested financial advisor firm, expressed his desire that the City seek the services of a new firm. In response to allegations that the City Manager may have assisted the Councilmember in question with recruiting the firm with which the Councilmember has ties, the Council ordered an investigation into whether any laws were violated (including the City Charter).

Process: The City Council retains outside counsel Ross Fischer with the Gober Group, out of San Antonio, to investigate the allegations. The Council appropriates \$50,000 to fund the investigation.

Result: The investigation report concludes that “neither the Charter nor any of the resolutions addressing the authority of the City Manager limit his or her ability to initiate an RFQ...nothing requires Council approval to start the Financial Advisor RFQ (Request for Qualifications) process.”

2. City of Bryan

Facts: Councilmember Rafael Pena is accused of domestic assault and has moved out of his home to a new residence that is not located within his district. The City Charter and state law require that a member of Council

reside within his or her voting precinct/district during the entire period the member serves on Council. Councilmember Pena argues that his current living arrangement is temporary and that his permanent residence continues to be within his district.

Process: On May 10, 2016 the Council votes to refer the matter of the Councilmember's residency to Texas Attorney General's Office, the Brazos County District Attorney's Office and County Attorney's Office. Media reports also suggest that the City retained outside counsel to advise the Council in executive session on whether, under the current facts, Councilmember Pena has forfeited his office.

Result: The process is still on-going and there is no outcome as of yet.

3. City of Colleyville

Facts: City Manager Jennifer Fadden is accused of violating the City Charter by acquiring (personal) investment property at a "short sale" using "insider information" learned only as a result of her position with the City.

Process: The City Council retains the Law Office of Ted Steinke to conduct an investigation into the following three charges:

1. Does the city manager's purchase of real estate (for other than personal occupancy) in the city constitute a violation of either the city charter, city personnel policy, or state law?
2. Does a city employee's purchase of real estate (for other than personal occupancy) in the city constitute a violation of either the city charter, city personnel policy, or state law?
3. Was the city manager's purchase of real estate (for other than personal occupancy) made at arm's length based on publicly available information (i.e., not based on "insider information" she would have based on her position as city manager)?

Result: In a press release issued by the City of Colleyville styled "*Independent investigation clears city manager of conflict of interest claim,*" the following is provided:

Ted Steinke, the attorney hired to investigate allegations of conflict of interest pertaining to the real estate investments of City Manager Jennifer Fadden, gave his report to the Colleyville City Council during the public pre-council session on March 22. According to the report, all the allegations were unfounded, including the most serious charge of acting on "insider information" for personal benefit.

4. City of Richardson

- Facts:** Former Richardson Mayor Laura Maczka was accused of supporting a mixed-use development called “the Palisades” containing 1,000 apartments and at some point, engaging in a romantic relationship with one of the principals behind the development and then accepting employment with the developer of the project.
- Process:** The City Council hired attorney George Staples, Jr.¹ to conduct an investigation into whether the incidents above constitute a violation of the City’s ethics ordinance, the City Charter or other state law. All materials were also forwarded to the District Attorney’s office for consideration.
- Result:** The investigation report that was generated found no violation of law because each incident occurred after the vote to approve the Palisades development occurred. Mayor Maczka was reelected to office but resigned prior to being sworn in.

5. Town of Flower Mound

- Facts:** Flower Mound Councilmember Rick Randall is arrested for committing criminal assault by contact and assault by threat against a member of his family, both of which constitute a Class C misdemeanor. Class C misdemeanors are adjudicated by the Town’s municipal court. In this instance, the Town municipal court judge recused herself from hearing the case and the Town Council appointed an interim judge. On December 22, 1997, the cases were both heard by a jury and Councilmember Randall was found guilty on both accounts.
- Process:** At the January 5, 1998 Town Council Meeting, the Council evaluated whether the convictions violated the Town Charter. The Town Charter provides (under current section § 3.02.2.(2)) that a council person shall forfeit his office if he or she is convicted “in any court of (1) a felony, or (2) a Class A or Class B misdemeanor, or (3) a crime involving moral turpitude,....”
- Result:** The Council concluded that even though the offenses constituted Class C misdemeanors each offense was a “crime of moral turpitude.” As a result, the Council declared the office to have been forfeited and appointed Roy Marshall to fill the vacancy created by Mr. Randall’s forfeiture. Mr. Randall then sought a writ of mandamus and injunctive relief from the 362nd District Court, which was granted, and which served to: 1) enjoin and prevent Mr. Marshall from serving as a member of Council and 2) order that Mr. Randall “be counted among the quorum of council members present at any council meeting he shall attend and be allowed to vote on

¹ Mr. Staples is Of Counsel to my office and has assisted on several Town of Flower Mound projects.

all resolutions, ordinances or business of the Town Council, and to have such votes by ayes and nays counted in the official voting record....” After entry of the mandamus, the other members of Council filed an appeal to the Fort Worth Court of Appeals, which reversed the ruling of the District Court and allowed the Council’s determination of a forfeiture to stand².

² Lipscomb v. Randall, 985 S.W.2d 601 (Tex. App. 1999)

MEMORANDUM

To: Flower Mound Charter Review Commission

From: Rob Allibon

Date: May 16, 2016

Re: Texas Constitutional Requirements Regarding Three Year Council Terms

At the May 12th Charter Review Commission meeting, the Commission discussed the possibility of changing from two year council terms to three year council terms. I advised the Commission that the Texas constitution contains certain limitations/requirements for municipalities adopting a three year term for members of Council. The following is an outline of those issues to aid the Commission in any future discussion of this topic.

If three year council terms are adopted, provisions of the Texas Constitution require:

1. Article XI, Section 11, Texas Constitution, requires that a municipality providing for three year terms must elect all of the members of its governing body by majority vote of the qualified voters of the municipality. Majority vote means that a candidate has to receive more than half of the votes to be elected; where a plurality vote means the person who receives the most votes wins. This can occur when more than two candidates are running for office. If a majority vote requirement exists and more than two candidates are running for office, it is possible that a run-off election would be required if no candidate receives a majority of the votes.

2. Article XI, Section 11, Texas Constitution, also provides that if a vacancy occurs on a governing body with three year terms, the vacancy shall not be filled by appointment, but must be filled by majority vote at a special election called for such purpose within one hundred and twenty days of the vacancy. However, a municipality may provide by charter procedures for appointment if there are twelve months or less remaining on the term when the vacancy occurs. Therefore, if three year terms are to be considered, the Commission may want to propose a provision to address this vacancy issue.

3. Article XVI, Section 65, of the Texas Constitution provides that if a sitting council member announces candidacy for another office or becomes a candidate for another office at any time where there is more than one year and thirty days remaining on his or her term, such announcement will

result in the member's automatic resignation from Council. This issue is already addressed by Section 3.03.1(a) of the Flower Mound Charter, which appears to incorporate this constitutional provision. Therefore, no change would be necessary in this regard if three year terms are instituted.

I hope this information is of assistance in considering the council terms, as defined by the Charter.