

CITY OF BELLAIRE TEXAS

CHARTER REVIEW COMMISSION

MARCH 2, 2017

Council Conference Room

Regular Meeting

7:00 PM

7008 SOUTH RICE AVENUE
BELLAIRE, TX 77401



Chair

Neil Verma

Vice Chair

Jill Almaguer

Member

James P. Avioli, Sr.

Member

Doug Christians

Member

Aaron Swerdlin

Council Liaison

Trisha S. Pollard

Staff Liaison

Alan P. Petrov

Facilitator

Charles E. Zech

REGULAR MEETING – 7:00 P.M.

A Regular Meeting of the Charter Review Commission of the City of Bellaire, Texas ("CRC"), will be held at 7:00 p.m. on Thursday, March 2, 2017, in the Council Conference Room, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401-4411, for the following purpose(s):

A. Call to Order and Announcement of a Quorum – Neil Verma, Chair.**B. Public Comments.**

Note: Public Comments are limited to three (3) minutes per person.

C. Council Liaison Comments – Trisha S. Pollard, Council Member.**D. Staff Liaison Comments – Alan P. Petrov, City Attorney.****E. Commission Business:**

Discussion and possible action on the following topic(s):

1. Review of Running Compilation of Amendments as of February 21, 2017; and
2. Review of Articles X, XI, and XII.

F. New Business:

Any CRC member who wishes to bring New Business to the attention of the CRC shall do so at this time.

Note: Consideration of New Business shall be for the limited purpose of determining whether the matter is appropriate for inclusion on a future Agenda for the CRC or for referral to the staff liaison or facilitator for investigation.

G. Public Comments.

Note: Public Comments are limited to three (3) minutes per person.

H. Next Meeting:

Tuesday, March 21, 2017 – 7:00 p.m.

I. Adjourn.

CERTIFICATE

I, the undersigned authority, do hereby certify that the agenda set forth on the preceding page regarding a Regular Meeting of the Charter Review Commission of the City of Bellaire, Texas, to be held on Thursday, March 2, 2017, was posted on the City's official bulletin board located on an outside west wall of City Hall, 7008 South Rice Avenue, Bellaire, Texas, a place convenient and readily accessible to the general public at all times, and was posted on the following date at the stated time: Friday, February 24, 2017, at _____ a.m./p.m.

Tracy L. Dutton, TRMC
City Clerk
City of Bellaire, Texas

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City of Bellaire's ADA Coordinator, Yolanda Williams, at (713) 662-8270 or FAX (713) 662-8212.

CERTIFICATE OF REMOVAL

I, the undersigned authority, do hereby certify that the agenda set forth on the preceding page regarding a Regular Meeting of the Charter Review Commission of the City of Bellaire, Texas, to be held on Thursday, March 2, 2017, was removed by me from the City's official bulletin board located on an outside west wall of City Hall, 7008 South Rice Avenue, Bellaire, Texas, on the _____ day of _____, 2017, at _____ a.m./p.m. I hereby certify further that said agenda remained posted continuously for at least 72 hours preceding the scheduled time of said Regular Meeting.

Tracy L. Dutton, TRMC
City Clerk
City of Bellaire, Texas



Charter Review Commission

March 2, 2017

Agenda Packet



Charter Review Commission

March 2, 2017

Agenda Item E. 1.

**Running Compilation
of Amendments
as of February 21, 2017**

ARTICLE I. - INCORPORATION; FORM OF GOVERNMENT CORPORATE AND GENERAL POWERS

Sec. 5. - Liability of the City.

The City of Bellaire shall not be liable for personal injury or property loss or damage from any cause, including the negligence of City officials or City employees, in the performance of governmental functions, ~~including the operation of the water system, the collection and disposition of garbage, the sewer system, the fire department, or any other governmental office, department or agency created by or operating under this Charter~~ **except as set forth in the Texas Civil Practices and Remedies Code, Title 5, Governmental Liability, Chapter 101 tort claims.**

Sec. 6. - Eminent Domain.

- (a) General Provisions. The City shall have the right, power and authority to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter, or by the Constitution or laws of the State of Texas, except as provided in subsection (b) and (c). ~~In all cases where the City seeks to exercise the power of eminent domain, it may be controlled, as nearly as practicable, by the laws governing the condemnation of property by railroad corporations in this State, the City taking the position of the railroad corporation in any such case.~~ The City may also exercise the power of eminent domain in any other manner authorized or permitted by the Constitution and laws of this State, or in the manner and form that may be provided by ordinance of the governing body of the City, except as provided in subsection (b) and (c). The power of eminent domain hereby conferred shall include the right of the City to take the fee in the lands so condemned; and such power and authority shall include the right to condemn public property for such purposes.
- (b) Limitations to Eminent Domain. The City's power of eminent domain shall be limited to the taking of private property exclusively for the ownership and the use by the City, Eminent Domain shall be prohibited in those cases.
 - (1) in which the taking is motivated by economic development which involve the intent to resell any interest in the property acquired; and
 - (2) which involve a joint venture or a collaborative arrangement with a private entity.
- (c) Exceptions to Limitations. The limitations in subsection (b) of this section are not intended to apply to
 - (1) a non-adverse (or a willing and friendly) condemnation or a condemnation when the majority of partial interest owners consider the condemnation to be non-adverse; and
 - (2) a condemnation necessary to cure the cloud on title to real estate or any other condition where a condemnation is deemed necessary in lieu of the transfer of title from a willing seller.

Sec. 7. - Street Powers **and Improvements.**

The City of Bellaire shall have **exclusive dominion, control and jurisdiction in, upon, and over and under the public streets, avenues, alleys and highways of the City, and may provide for the improvement thereof by paving, re-paving, raising, draining, or otherwise and shall also include, but not be limited to, the right to supervise, regulate and otherwise control, locate, relocate, remove, or prohibit the location of, all utility pipes, lines, wires, or other property. In addition, the City shall have** the power to lay out, establish, open, alter, widen, lower, extend, grade, abandon, discontinue, abolish, close, care for, pave, supervise, maintain and improve streets, alleys, sidewalks, parks, squares, public places and bridges; and regulate and/or restrict the use thereof; and require the removal from the streets, sidewalks, alleys and other public property or places of all obstructions, trespasses and/or encroachments of every nature or character.

Sec. 8. ~~Street Improvements.~~

on file at the City Hall for inspection. Such accountant shall have no personal interest, direct or indirect, in the fiscal affairs of the city government. They shall not maintain accounts or record of the City business, but, within specifications approved by the Council, shall post-audit the books and documents kept by the Department of Finance and any separate or subordinate accounts kept by any other office, department or agency of the city government. Such accountants may make monthly checks, or a general audit at more frequent intervals as the Council may direct.

ARTICLE III. - THE CITY MANAGER

Sec. 2. - The City Manager; Powers and Duties.

The City Manager shall be the chief executive officer and the head of the administrative branch of the City government. He shall be responsible to the Council for the proper administration of all affairs of the City and to that end he shall have the power and shall be required to:

- (a) Appoint and remove all officers and employees of the City appointed by him, except as otherwise provided by this Charter, and except as he may authorize the head of a department to appoint and remove subordinates in such department;
- (b) Prepare the budget annually and submit it to the Council and be responsible for its administration after adoption;
- (c) Prepare and submit to the Council as of the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding year;
- (d) Keep the Council advised of the financial condition and future need of the City and make such recommendations as may seem to him desirable; and
- (e) Sign all documents, contracts and conveyances made or entered into by the City, and all bonds, pursuant to any relevant policy adopted by City Council, except where the City Council has authorized the Mayor to sign said document as provided for in Article II Section 4 of this Charter.**
- (ef) Perform such other duties as may be prescribed by this Charter or required of him by the Council, not inconsistent with this Charter.

ARTICLE VI. - BORROWING FOR CAPITAL IMPROVEMENTS

Sec. 1. - Power to Incur Indebtedness by Issuing Bonds, Warrants and Notes.

The City of Bellaire shall have the right and power to borrow money on the credit of the City for any lawful public purpose, including without limitation permanent public improvements, as may be determined by the City Council, and to issue bonds, warrants, notes, or other evidence of indebtedness of the City therefor **in accordance with state law.**

~~Sec. 2. - Bond Ordinance; Vote Required.~~

~~The issuance of tax bonds must be approved by a majority of the qualified voters voting at an election called for that purpose.~~

~~The City shall authorize the issuance of bonds by a "bond ordinance" passed by the affirmative votes of the majority of all members of its Council. Revenue bonds may be issued by the Council in accordance with state law.~~

~~The bond ordinance and the manner of conducting the election shall in all respects conform to this Charter and the general laws of the State.~~

~~Sec. 3. - Issuance of Bonds.~~

When an issue of bonds has been authorized, the City shall have the power to issue serial bonds or otherwise as in its opinion may seem best as provided in the ordinance authorizing their issuance, not to exceed thirty (30) years. However, all character of securities issued for street improvements shall be for a period of not exceeding twenty (20) years. All bonds shall specify on their face for what purpose they are issued, and they shall be invalid if sold for less than their par value, plus accrued interest. When any such bonds are issued by the City a fund shall be provided to pay the bonds at maturity. The regulations of this section shall likewise govern warrants, notes and other evidences of indebtedness.

~~Sec. 4. Public Sale.~~

All bonds issued under this Charter shall be sold at public sale upon sealed proposals after at least ten (10) days' notice published at least once in a publication carrying municipal bond notices and devoted primarily to financial news, and at least ten (10) days notice published at least once in the official newspaper of the City.

If no satisfactory bid is received under the above procedure, the Council may have the power to negotiate a sale at a better price within a ten-day period following the opening of bids; otherwise, the sale of bonds must be readvertised.

~~Sec. 5. Register of Bonds.~~

The City Council shall cause to be kept for and on behalf of the City a complete register and set of books showing all bonds, warrants and other evidences of indebtedness issued by the City, the date and amount thereof, the rate of interest, maturity, all bonds, warrants or other evidences of indebtedness surrendered, all transactions of the City Council having reference to the refunding of any of the indebtedness of the City, and all other information that may be desired or required. Records with reference to bonds and warrants and other evidences of indebtedness shall be kept separately. When bonds, or warrants, or other evidences of indebtedness, or their coupons, are paid, their payment or cancellation shall be noted in said register.

ARTICLE VII. - FINANCE ADMINISTRATION

Sec. 4. - Director of Finance; Powers and Duties.

Under the direction of the City Manager, the Director of Finance shall have charge of the administration of the financial affairs of the City and to that end, he shall have authority and shall be required to:

- (1) Supervise and be responsible for the disbursement of all moneys and have control over all expenditures to ensure that budget appropriations are not exceeded;
- (2) Maintain a general accounting system for the city government and each of its offices, departments and agencies; keep books for and exercise financial budgetary control over each office, department and agency; keep separate accounts for the items of appropriation contained in the city budget, each of which accounts shall show the amount of the appropriation, the amounts paid therefrom, the unpaid obligations against it and the unencumbered balance; require reports of receipts and disbursements from each receiving and spending agency of the city government to be made daily or at such intervals as he may deem expedient;
- (3) Submit to the City Council through the City Manager a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City;
- (4) Prepare, as of the end of each fiscal year, a complete financial statement and report;
- (5) Collect all taxes, special assessments, license fees and other revenues of the City or for whose collection the City is responsible and receive all money receivable by the City from the state or federal government, or from any court, or from any office, department or agency of this City;
- (6) Have custody of all public funds belonging to or under the control of the City, or any office, department or agency of the city government, and deposit all funds coming into his hands in such

depository or depositories as may be designated by the City Council, subject to the requirements of law in force from time to time as to the furnishing of bond or the deposit of securities and the payment of interest on deposits. All such interest shall be the property of the City and shall be accounted for and credited to the proper account;

- (7) Have custody of all investments and invested funds of the city government, or in possession of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the City and the receipt and delivery of city bonds and notes for transfer, registration or exchange;
- (8) Supervise and be responsible for the purchase, storage and distribution of all supplies, materials, equipment and other articles used by any office, department or agency of the city government; and
- (9) Approve all proposed expenditures; unless he shall certify that there is an unencumbered balance of appropriation and available funds, no expenditure shall be made.

~~Sec. 8. Fees Shall be Paid to City Government.~~

All fees for City services received by any officer or employee shall belong to the City Government, and shall be paid to the Department of Finance at such times as required by the Director of Finance.

~~Sec. 16. City May Carry Own Paper.~~

The City shall have the power to purchase or otherwise acquire improvement certificates and/or mechanic's lien contracts of the owners of property abutting or adjacent to public improvements authorized by the City Council and thereafter constructed in the City. Moneys from the City's general fund may be used for such purchases and/or the proceeds of bonds may be used where such proceeds could lawfully be expended directly for such improvements, or in aid thereof.

~~Sec. 17. Borrowing in Anticipation of Property Taxes.~~

In any budget year, in anticipation of the collection of the property tax for such year, whether levied or to be levied in such year, the Council may by resolution authorize the borrowing of money by the issuance of negotiable notes of the City, each of which shall be designated "tax anticipation note of the year 19_____" (stating the budget year). Such notes shall mature and be payable not later than the end of the fiscal year in which the original notes shall have been issued.

~~Sec. 18. Borrowing in Anticipation of Other Revenues.~~

In any budget year, in anticipation of the collection or receipt of other revenues of that budget year, the Council may by resolution authorize the borrowing of money by the issuance of negotiable notes of the City, each of which shall be designated "special revenue note for the year 19_____" (stating the budget year). Such notes may be renewed from time to time, but all such notes, together with the renewals, shall mature and be payable not later than the end of the fiscal year in which the original notes shall have been issued.

~~Sec. 19. Sales of Notes, Report of Sale.~~

All notes issued pursuant to this article may be sold at not less than par and accrued interest at private sale by the Director of Finance without previous advertisement, but such sale shall be authorized by the Council.

~~The City of Bellaire shall have exclusive dominion, control and jurisdiction in, upon, and over and under the public streets, avenues, alleys and highways of the City, and may provide for the improvement thereof by paving, re-paving, raising, draining, or otherwise. The provisions of Chapter 106, 40th Legislature, First Called Session, Acts of 1927, together with existing amendments and all such amendments as hereinafter may be made, are expressly adopted and made a part of this Charter. Such exclusive dominion, control and jurisdiction in, upon, over and under the public streets, avenues, alleys and highways of the City shall also include, but not be limited to, the right to supervise, regulate and otherwise control, locate, relocate, remove, or prohibit the location of, all utility pipes, lines, wires, or other property.~~

Sec. 9. - Extending and Contracting City Limits by Action of the City Council.

The City Council shall have power by ordinance to fix the boundary limits of the City of Bellaire, and to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said City, with or without the consent of the territory and/or inhabitants annexed. Upon the passage of such an ordinance by the city council one time, it shall be published in the official newspaper of the City of Bellaire one time. After at least thirty (30) days have elapsed from the date of such publication, said ordinance in original or amended form as said city council in its judgment may determine, shall be acted upon again, and if passed the territory so annexed shall thereupon become a part of the City of Bellaire, and any inhabitants thereof shall be entitled to all rights and privileges of other citizens of said City, and shall be bound by the acts, ordinances, resolutions and regulations of said City.

Any amendment to an ordinance annexing additional territory shall be advertised at least ten (10) days before final passage of the annexing ordinance, but any amendment eliminating from any such annexing ordinance property proposed to be annexed in the original ordinance or any amendment thereto need not be advertised.

Any area of the City may be disannexed pursuant to any procedure allowed under state law and whenever, in the opinion of the City Council, there exists within the corporate limits of the City a territory not suitable or necessary for City purposes, the City Council may discontinue said territory as part of the City by ordinance after conducting a public hearing on the matter.

Sec. 11. - Garbage Disposal.

The City Council shall have the right by ordinance to adopt and prescribe rules and regulations for the handling and disposition of all recycling, garbage, trash and rubbish within the City of Bellaire, and shall further have the right to fix charges and compensation to be charged by the City for the removal of recycling, garbage, trash and rubbish, and to provide rules and regulations for the collection of such charges and compensation.

ARTICLE II. - THE COUNCIL

Sec. 2. - Qualifications.

To be eligible to be a candidate for, or elected to, office as Mayor or City Councilman of the City of Bellaire, or to continue to hold any such office, a person must:

- (1) Be a United States citizen;
- (2) Be twenty-one (21) years of age or older on the first day of the term to be filled at the election;
- (3) Have not been determined mentally incompetent by a final judgment of a court;
- (4) Have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;
- (5) Have resided continuously in the State of Texas and within the corporate limits of the City of Bellaire for twelve (12) months immediately preceding the filing deadline of the regular election; and
- (6) Be a qualified, registered voter of the State of Texas, County of Harris.

In addition, all candidates or persons elected to office as Mayor or City Councilman of the City of Bellaire shall meet all other requirements for office holders as may, from time to time, be specified by the Constitution and general laws of the State of Texas. If, at any time, any person holding the office of Mayor or City Councilman of the City of Bellaire no longer possesses all of the qualifications specified in this Section or is convicted of a felony or an offense involving moral turpitude while in office, such office shall, after a public hearing and determination by City Council pursuant to Section 16 be declared immediately and automatically become vacant.

Sec. 3. - Compensation of Members of the City Council.

The Mayor shall receive as compensation for his services the sum of Seventy-five Dollars (\$75.00) per month.

Each Councilman shall receive as compensation the sum of Ten Dollars (\$10.00) for each meeting of the City Council attended by him, provided that no Councilman shall receive a greater compensation than Fifty Dollars (\$50.00) per month.

The rate of compensation may be changed by the Council; however, no increase in the rate of compensation shall take effect unless ratified by a majority of the voters in the next regular City election. The City shall pay or reimburse reasonable expenses incurred by the Mayor or Council Members in the performance of specific duties, limited to the amount appropriated for such expenses in the current budget.

Sec. 5. - Mayor Pro Tempore.

The City Council shall elect a Mayor Pro Tempore, who shall act as, and have all the powers of the Mayor during the absence or disability of the Mayor, and if a vacancy should occur in the office of Mayor, shall become act as, and have all the powers of the, Mayor until the next regular election, at which election a Mayor shall be elected to fill the full or unexpired term, as the case may be. The Mayor Pro Tempore's office shall not be considered vacant during any such time he or she is acting as the Mayor.

Sec. 6. - Vacancies in Council.

Vacancies in office of Mayor Council, the effective date of which shall be determined in accordance with the provisions of the Texas Election Code, shall be filled by a candidate possessing all of the qualifications outlined in Section 2 of this Article, at an election called for that purpose pursuant to the provisions of the Texas Constitution and the Texas Election Code.

In the event of a vacancy in the office of City Councilmember, the effective date of which shall be determined in accordance with the provisions of the Texas Election Code, if there are 365 days or more remaining on the term of the vacated office, the City Council shall call a special election to fill such vacancy. If there are fewer than 365 days remaining in the term of the vacant office, the City Council may, by majority vote of the remaining Members of City Council, at its discretion, leave the office vacant, appoint a new Councilmember to fill such vacancy or call a special election to fill such vacancy.

Sec. 11. - Council Not to Interfere in Appointments or Removals.

~~Neither the Council nor any of its members shall direct the appointment of any person to office, and such power is confided solely to the City Manager. The City Council shall have no power to remove any person appointed by the City Manager and shall have only the power to appoint and/or remove the City Manager. The Council shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.~~

Neither the City Council nor the Mayor or any Councilmember shall in any manner dictate the appointment or removal of any city administrative officers or employees whom the City Manager or any of his subordinates are empowered to appoint, unless otherwise provided in this Charter. However, the City Council may, at a properly noticed meeting, express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees. Further, except for the purpose of inquiries and investigations, unless otherwise provided in this Charter, the City Council, Councilmembers and the Mayor shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the City Council nor Councilmembers nor the Mayor shall give orders to any such officer or employee, either publicly or privately.

Sec. 13. - City Clerk.

The Council shall appoint ~~some person to serve as~~ the City Clerk of the Council who shall report to the City Council. He shall give notices of its meetings, shall keep the official copy of this Charter and the journal of the Council's proceedings, shall authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions, and shall perform such other duties as the City Manager shall assign to him.

Sec. 14. - Municipal Court.

There is hereby established a Municipal Court of the City of Bellaire. The City Council shall appoint a Municipal Court Judge to serve a term of office of two (2) years. A Municipal Court Judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the City Council, continue to serve for another term of office beginning on the date the previous term of office expired. ~~term as it shall prescribe and~~ The City Council shall appoint such other associate judge or judges as it shall determine to be necessary and appropriate, for such terms as it shall provide. Such judge(s) may be removed for incompetency, misconduct or malfeasance. The compensation for the judge(s) of the Municipal Court shall be fixed by the City Council. The City Council shall have the power to make temporary or relief appointments of Municipal Court Judges, in the event of emergencies, for shorter periods of time than provided for the term(s) of the Municipal Court Judge and associate judge(s).

All costs and fines imposed by the Municipal Court, or by any court in cases appealed from judgments of the Municipal Court, shall be paid into the city treasury for the use and benefit of the City.

~~The City Council shall, by ordinance, appoint a Clerk of the Municipal Court and as many Deputy Clerks as shall be necessary. The Clerk of said Court or any Deputy City Clerk shall have power to administer oaths and affidavits, make certificates, affix the seal of said Court thereto and generally do and perform any and all acts usual and necessary by clerks of courts in issuing process of said courts and conducting the business thereof. In the event of the absence or unavailability of the Clerk or Deputy Clerk to serve, any Judge of the Municipal Court may appoint a temporary replacement who shall have the same powers and duties as herein provided for the Clerk or any Deputy Clerk.~~

Sec. 15. - Meetings of Council.

The City Council shall meet regularly at such times as may be prescribed by its rules, but not less frequently than twice each month. All meetings of the Council shall be subject to the Texas Open Meetings Act ~~open to the public~~; special meetings shall be called by the City Clerk upon request of the Mayor, City Manager, or a majority of the members of the Council.

Four (4) members of the Council, of whom the Mayor shall be counted as one, shall constitute a quorum for the transaction of business. The affirmative vote of four (4) members shall be required for the transaction of business. A smaller number may adjourn from time to time.

Sec. 16 - Council to be Judge of Qualifications of its Members; Hearings; Process.

A. General. The Council shall be the judge of the election and qualifications of its members, and shall have the power to investigate and to remove any member for malfeasance or nonfeasance in office, after public hearing, by a two-thirds (2/3) vote of the whole Council; for such purpose it shall have power to administer oaths, subpoena witnesses, compel the production of books, papers, and other evidence material to the inquiry. The City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence. The City Council shall have the power to punish any such contempt in the manner provided by such ordinance.

B. Hearings Process for Forfeitures of Office and Prohibitions.

- 1. All hearings held under this subsection shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act;**
- 2. The office holder subject to any investigation and/or hearing under this section shall be entitled to written notice of the specific allegations made against them;**
- 3. A special meeting shall be called to hold the hearing; the office holder who is the subject of the hearing shall not sit at the dais and shall not participate in deliberation or vote; and City Council shall adopt by ordinance rules of procedures to be followed which rules shall not be amended or repealed for a particular public hearing after written notice has been provided to the office holder; except and unless, agreed to by the office holder;**
- 4. The City Council shall state the nature of the hearing and the allegations to be considered, shall be provided the results of any investigation and a presentation of the evidence against the office holder including, but not limited to testimony from individuals; the individual who is subject to the hearing shall be provided an opportunity to respond to the allegations and present any relevant evidence including, but not limited to, testimony from individuals; and City Council may ask questions of any individual; and**
- 5. No public comment shall be allowed unless agreed to by a majority vote of the members of City Council present and rules for public comment, if allowed, shall be set by City Council.**

Sec. 17. - Rules of Procedure; Journal.

The Council shall determine its own rules and order of business. ~~It shall keep a journal of its proceedings and the journal shall be open to public inspection.~~

Sec. 20. - Investigation by Council.

The Council shall have the power to inquire into the conduct of any office, department, agency, or officer of the City and to make investigations as to municipal affairs, and for the purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by fine not to exceed ~~Two Hundred (\$200.00)~~ **Three Hundred (\$300.00)** Dollars for each offense.

Sec. 21. - Independent Audit.

Prior to the end of each fiscal year, the Council shall designate a certified public accountant who, as of the end of that fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the city government, and shall submit a sworn report to the Council. Notice shall be ~~given~~ **provided** by publication in ~~on~~ the official newspaper website of the City of Bellaire that the annual audit is



Charter Review Commission

March 2, 2017

Agenda Item E. 2.

- **Articles X, XI, and XII**
- **General Election Statistics with IRR**

Articles X – XII Review and Comment

ARTICLE X

Sections 1 and 2 Initiative and Referendum Petitions

Sec. 1. - Power of Initiative.

The electors shall have power to propose any ordinance except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the same at the polls, such power being known as the initiative. Any initiative ordinance may be submitted to the Council by a petition signed by qualified electors of the City equal in number to at least twenty-five percent (25%) of the number of votes cast at the last regular municipal election; provided, however, that the petition shall contain the signatures of at least two hundred (200) qualified electors of the City. Bond elections may be initiated by petition to the City Council as above provided.

Sec. 2. - Power of Referendum.

The electors shall have power to approve or reject at the polls any ordinance passed by the Council, or submitted by the Council to a vote of the electors, such power being known as the referendum. Ordinances submitted to the Council by initiative petition and passed by the Council without change shall be subject to the referendum in the same manner as other ordinances. Within twenty (20) days after the enactment by the Council of any ordinance which is subject to a referendum, a petition signed by qualified electors of the City equal in number to at least twenty-five percent (25%) of the number of votes cast at the last preceding regular municipal election may be filed with the City Clerk requesting that any such ordinance be either repealed or submitted to a vote of the electors; provided, however, that such petition shall contain the signatures of at least two hundred (200) qualified electors of the City.

Comment:

Currently Article X Sections 1 and 2 provide that an ordinance may be initiated or referred if a "petition signed by qualified electors of the City equal in number to at least twenty-five percent (25%) of the number of votes cast at the last regular municipal election" is submitted to City Council. Using the number of votes cast at the last regular municipal election as a baseline for petition requirements results in the ease or difficulty of collecting signatures to be based on the popularity of the previous general election. It could result in wild swings in petition requirements from one election to the next. I would recommend using the number of qualified voters registered to vote at the last general City election as the baseline for the percentage calculation. Using number of qualified voters registered to vote at the last general City election provides a more stable number over time.

Sec. 8. - Submission to Electors.

Sec. 8. - Submission to Electors.

If the Council shall fail to pass an ordinance proposed by initiative petition, or shall pass it in a form different from that set forth in the petition therefor and not agreeable to the petitioners, or if the Council fails to repeal a referred ordinance, the proposed or referred ordinance shall be submitted to the electors of the City at a regular or special election to be held on the earliest possible uniform election date of the State of Texas, after the City Clerk certifies the submission to the City Council. The Council may, in its discretion, and if no regular election is to be held within such period shall, provide for a special election.

Comment:

If the Council shall fail to pass an ordinance proposed by initiative petition, or shall pass it in a form different from that set forth in the petition therefor and not agreeable to the petitioners¹, or if the Council fails to repeal a referred ordinance, the proposed or referred ordinance shall be submitted to the electors of the City at a regular or special election² to be held on the earliest possible uniform election date of the State of Texas, after the City Clerk certifies the submission to the City Council. The Council may, in its discretion, and if no regular election is to be held within such period shall, provide for a special election³.

1. This is unclear as to intent. I would revise this to read "not agreeable to the committee of the petitioners" as referenced in Section 3.
2. An initiative and referendum election are, by definition, always going to be a "special" election. I would recommend revising this section to read "the proposed or referred ordinance shall be submitted to the electors of the City at a ~~regular or~~ special election to be held on the earliest possible uniform election date . . ."
3. Elections may only be held on a uniform election date as prescribed by the Texas Elections Code which are either the first Saturday in May or the first Tuesday after the first Monday in November. State law would prohibit the City Council from calling a special election on any day other than a uniform election date. I would recommend deleting the underlined language.

Texas Elections Code Sec. 41.001. UNIFORM ELECTION DATES.

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

- (1) the first Saturday in May in an odd-numbered year;*
- (2) the first Saturday in May in an even-numbered year, for an election held by a political subdivision other than a county; or*
- (3) the first Tuesday after the first Monday in November.*

(b) Subsection (a) does not apply to:

- (1) a runoff election;*
- (2) an election to resolve a tie vote;*
- (3) an election held under an order of a court or other tribunal;*
- (4) an emergency election ordered under Section 41.0011;*
- (5) an expedited election to fill a vacancy in the legislature held under Section 203.013;*
- (6) an election held under a statute that expressly provides that the requirement of Subsection (a) does not apply to the election; or*
- (7) the initial election of the members of the governing body of a newly incorporated city.*

I Except for an election under Subsection (a) or Section 41.0011 or a runoff election following an election held under Subsection (a)(2), an election may not be held within 30 days before or after the date of the general election for state and county officers, general primary election, or runoff primary election.

(d) Notwithstanding Section 31.093, a county elections administrator is not required to enter into a contract to furnish election services for an election held on the date described by Subsection (a)(2).

Sections 14 Recall Petitions

Sec. 14. – Recall Petitions.

The recall petition to be effective must be returned and filed with the City Clerk within thirty (30) days after the filing of the affidavit required in Section 13 and it must be signed by qualified electors of the City equal in number to at least fifty-one percent (51%) of the total number of votes cast at the last general municipal election, and shall conform to the provisions of Section 3 herein. No petition paper shall be accepted as part of a petition unless it bears the signature of the City Clerk as required in Section 13 herein.

Comment:

I would recommend using the number of qualified voters registered to vote at the last general City election as the baseline for the percentage calculation as discussed in Sections 1 and 2 above.

Sections 19 District Judge May Order Election

Sec. 19. – District Judge May Order Election.

Should the City Council fail or refuse to order any of the elections as provided for in this Article, when all the requirements for such elections have been complied with by the petitioning electors in conformity with this Article of this Charter, then it shall be the duty of any one of the District Judges of Harris County, Texas, upon proper application being made therefor to order such elections and to enforce the carrying into effect of the provisions of this Article of this Charter.

Comment:

A city charter may not confer jurisdiction on or compel action by a district judge. I would recommend deleting this section.

ARTICLE XI Franchise and Public Utilities

As a general matter a city's authority to regulate franchises has slowly been eroded by the Federal and State legislatures. Some of the authority provided for in the City's Charter is simply not enforceable anymore based on the erosions of that authority.

Section 2 Franchises; Power of Council

Sec. 2. – Franchises; Power of Council.

The City Council shall have power by ordinance to grant, amend, renew and extend all franchises of all public utilities of every character operating within the City of Bellaire and for such purposes is granted full power. All ordinances granting, amending, renewing, or extending franchises for public utilities shall be read at three separate regular meetings of the City Council, and shall not be finally passed until thirty (30) days after the first reading; and no such ordinance shall take effect until sixty (60) days after its final passage; and pending such time, the full text of such ordinance shall be published once each week for four (4) consecutive weeks in the official newspaper of the City of Bellaire, and the expense of such publication shall be borne by the proponent of the franchise. No public utility franchise shall be transferable except with the approval of the Council expressed by ordinance.

Comment:

This section is quite onerous and would recommend reviewing to determine where efficiencies can be found in the granting, amending, renewing or extending franchises for public utilities.

The term "public utilities" is not clearly defined.

ARTICLE XII General Provisions

Section 2 Personal Interest

Sec. 2. – Personal Interest.

No member of the Council or any officer or employee of the City shall have a financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract or in the sale to the City or to a contractor supplying the City, of any land or rights of interests in any land, material, supplies, or service.¹ The City Council shall never authorize the expenditure of public funds for the development of any subdivision². Any willful violation of this section shall constitute malfeasance in office, and any officer or employee of the City found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge express or implied, of the person or corporation contracting with the City shall render the contract voidable by the City Manager or the Council.

1. This section is inconsistent with State law in that it creates a complete prohibition on having a financial interest in any transaction with the City. Texas Local Government Code Chapter 171, which addresses personal conflicts of interest, requires an acknowledgment of any such conflict

and a abstention from discussion and vote. This provision creates the possibility for unintended consequences.

2. This provision is vague in application. For example, does this sentence prohibit the City from contributing to a commercial development through its economic development program? Does it prohibit the City from participating in the oversize of public facilities during the subdivision process? Do these prohibitions create unnecessary inefficiencies?

Section 10 Amending the Charter

Sec. 10. – Amending the Charter.

Amendments to this Charter may be framed and submitted to the electors of the City by a Charter commission in the manner provided by law for framing and submitting a new Charter. Amendments may also be proposed and submitted by ordinance, passed by a majority vote of the full membership of the Council, or by a petition signed by not less than twenty-five percentum (25%) of the number of those who voted at the last regular municipal election; provided, however that in the latter case the petition must bear the signatures of at least ten percentum (10%) of the qualified voters of the City. When a Charter amendment petition shall have been filed with the Council in conformity with the provisions of this Charter as to petitions for initiated ordinances, the Council shall forthwith provide by ordinance for submitting such proposed amendment to a vote of the electors. Any ordinance for submitting a Charter amendment to the electors shall provide that such amendment be submitted at the next regular municipal election if one shall occur not less than sixty (60) nor more than one hundred twenty (120) days after the passage of the ordinance; otherwise, it shall provide for the submission of the amendment at a special election to be called and held within the time aforesaid. Not less than thirty (30) days prior to such election, the City clerk shall mail a copy of the proposed amendment or amendments to each qualified voter in said City as appears from the latest rolls of the tax collector. If a proposed amendment be approved by a majority of the electors voting thereon, it shall become a part of the Charter at the time fixed therein. Each amendment shall be confined to one subject; and when more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment separately.

Comment:

As discussed previously, elections may only be held on a uniform election date as prescribed by the Texas Elections Code which are either the first Saturday in May or the first Tuesday after the first Monday in November. State law would prohibit the City Council from calling a special election on any day other than a uniform election date. I would recommend deleting the underlined language.



General Election¹ Statistics

Date	Number of Ballots Cast	Number of Registered Voters	Percentage Turnout	Other Notes
2015 (November 3)	3,168 25% = 792 51% = 1,615	12,204 .06 = 732 .07 = 854 .14 = 1,708	25.96%	Mayor and Council Positions 2, 4, and 6 (2 and 4 were unopposed); and Special Election - Vacancy in Position 5.
2013 (November 5)	3,290 25% = 822 51% = 1,677	12,044 .06 = 722 .07 = 843 .14 = 1,686	27.32%	Mayor and Council Positions 1, 3, and 5 (1 and 5 were unopposed); and Special Election - Bonds for Facilities, Land, and Parks.
2011 (November 8)	1,303 25% = 325 51% = 664	11,583 .06 = 694 .07 = 810 .14 = 1,621	11.25%	Mayor and Council Positions 2, 4, and 6 (2 and 6 were unopposed).
2009 (November 3)	3,184 25% = 796 51% = 1,623	11,495 .06 = 689 .07 = 804 .14 = 1,609	27.70%	Mayor, 1, 3, and 5; and Special Election - Vacancy in Position 6.

¹ 2009, 2011, 2015 Average for Initiatives and Referendums = 794
2009, 2011, 2015 Average for Recall = 1,638