

**Notice of Meeting for the  
Charter Review Committee  
of the City of Georgetown  
April 6, 2021 at 3:00 PM  
at Virtual**

The City of Georgetown is committed to compliance with the Americans with Disabilities Act (ADA). If you require assistance in participating at a public meeting due to a disability, as defined under the ADA, reasonable assistance, adaptations, or accommodations will be provided upon request. Please contact the City Secretary's Office, at least three (3) days prior to the scheduled meeting date, at (512) 930-3652 or City Hall at 808 Martin Luther King Jr. Street, Georgetown, TX 78626 for additional information; TTY users route through Relay Texas at 711.

**This is a meeting of the Council appointed Charter Review Committee.**

**Consistent with Governor Greg Abbott's suspension of various provisions of the Open Meetings Act, effective August 1, 2020 and until further notice, to reduce the chance of COVID-19 transmission, all City of Georgetown Advisory Board meetings will be held virtually. Public comment will be allowed via teleconference; no one will be allowed to appear in person.**

**To Join Zoom Meeting**

**[https://georgetowntx.zoom.us/j/95589965197?](https://georgetowntx.zoom.us/j/95589965197?pwd=WGx4TnJWeVRvYkgzZEU5SINONXo5dz09)  
[pwd=WGx4TnJWeVRvYkgzZEU5SINONXo5dz09](https://georgetowntx.zoom.us/j/95589965197?pwd=WGx4TnJWeVRvYkgzZEU5SINONXo5dz09)**

**Meeting ID: 955 8996 5197**

**Passcode: 669411**

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**888 475 4499 US Toll-free**

**833 548 0276 US Toll-free**

**833 548 0282 US Toll-free**

**877 853 5257 US Toll-free**

**Meeting ID: 955 8996 5197**

**Citizen comments are accepted in three different formats: Submit written comments to [mayra.cantu@georgetown.org](mailto:mayra.cantu@georgetown.org) by 5:00 p.m. on the day before the date of the meeting and the Recording Secretary will read your comments into the recording during the item that is being discussed.**

**Log onto the meeting at the link above and “raise your hand” during the item.**

**Use your home/mobile phone to call the toll-free number.**

**To join a Zoom meeting, click on the link provided and join as an attendee. You will be asked to enter your name and email address (this is so we can identify you when you are called upon). To speak on an item, click on the icon labeled "Participants" at the bottom center of your PC or Mac screen. At the bottom of the window on the right side of the screen, click the button labeled "Raise Hand." Click "Raise Hand" if you want to say something in the meeting. When you are called upon by the Recording Secretary, your device will be remotely un-muted by the Administrator and you may speak for three minutes. Please state your name clearly, and when your time is over, your device will be muted again. You can lower your hand by clicking the same button, now labeled "Lower Hand."**

**The same method can be used to raise your hand in a Zoom meeting on a mobile device, simply tap "Raise Hand" at the bottom left corner of the screen. The hand icon will turn blue and the text below it will switch to say "Lower Hand" while your hand is raised.**

**Use of profanity, threatening language, slanderous remarks or threats of harm are not allowed and will result in you being immediately removed from the meeting.**

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### **Regular Agenda**

- A Call to Order - Louise Epstein, Chair
- B Review and approval of the minutes from March 16, 2021 Charter Review Committee - Louise Epstein, Chair
- C Introduction to the benchmark Home-Rule Charter cities – Skye Masson, City Attorney

- D Discussion of possible amendment of City Charter, Section 2.01, Number, Selection, and Term of Office relating to term limits - Skye Masson, City Attorney
- E Discussion of possible amendment of City Charter Section 2.02, Qualifications - Skye Masson, City Attorney
- F Discussion of possible amendment of City Charter, Section 2.03, Vacancies - Skye Masson, City Attorney
- G Discussion of possible amendment of City Charter Section 2.06, Mayor and Mayor Pro Tem - Skye Masson City Attorney
- H Discussion of possible amendment of City Charter provisions in Article IV related to petition requirements for Section 4.01, power of initiative; Section 4.02, power of referendum; and Section 4.07, Recall of City Officials; and Section 4.08, Recall Petition - Skye Masson, City Attorney
- I Discussion of agenda items for April 20, 2021 and additional charter amendments for consideration at a future meeting – Louise Epstein, Chair

### **Certificate of Posting**

I, Robyn Densmore, City Secretary for the City of Georgetown, Texas, do hereby certify that this Notice of Meeting was posted at City Hall, 808 Martin Luther King Jr. Street, Georgetown, TX 78626, a place readily accessible to the general public as required by law, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_, and remained so posted for at least 72 continuous hours preceding the scheduled time of said meeting.

\_\_\_\_\_  
Robyn Densmore, City Secretary

City of Georgetown, Texas  
Charter Review Committee  
April 6, 2021

**SUBJECT:**

Call to Order - Louise Epstein, Chair

**ITEM SUMMARY:**

**FINANCIAL IMPACT:**

**SUBMITTED BY:**

City of Georgetown, Texas  
Charter Review Committee  
April 6, 2021

**SUBJECT:**

Review and approval of the minutes from March 16, 2021 Charter Review Committee - Louise Epstein, Chair

**ITEM SUMMARY:**

**FINANCIAL IMPACT:**

**SUBMITTED BY:**

Mayra Cantu, Management Analyst

**ATTACHMENTS:**

<b>Description</b>		<b>Type</b>
	March 16, 2021 Minutes	Backup Material

**Minutes of Meeting of the  
CHARTER REVIEW COMMITTEE (CRC)  
City of Georgetown, Texas  
March 16, 2021**

The Charter Review Committee met on Tuesday, March 16, 2021 at 3:00 PM via Zoom virtual meeting.

The City of Georgetown is committed to compliance with the Americans with Disabilities Act (ADA). If you require assistance in participating at a public meeting due to a disability, as defined under the ADA, reasonable assistance, adaptations, or accommodations will be provided upon request. Please contact the City Secretary's Office, at least three (3) days prior to the scheduled meeting date, at (512) 930-3652 or City Hall at 808 Martin Luther King Jr Street for additional information; TTY users route through Relay Texas at 711.

The meeting was held with the Governor's Order, all City Buildings are following these procedures:

- Masks are recommended
- Physical distancing; 6 feet between you and anyone not in your household
- Practice good hygiene and wash your hands

**Committee Members Present:**

John Hesser  
Louise Epstein  
Bob Glandt  
Joseph Burke  
Troy Hellman  
John Marler  
Rick Vasquez  
Ben Stewart

**City Staff Present:**

Skye Masson, City Attorney  
Mayra Cantu, Management Analyst and Board  
Liaison  
Karen Frost, Assistant City Secretary

**Board Members Absent:**

**Others present:**

John Smith

## **Legislative Regular Agenda**

Louise Epstein called the meeting to order at 3:01 p.m.

**A. Review and approval of the minutes from March 2, 2021 Charter Review Committee- Louise Epstein, Chair**

Motion to approve by John Marler; Second by John Hesser. Approved 8-0.

**B. Discussion of possible amendment of City Charter, Section 2.02 Qualifications - Skye Masson, City Attorney**

Skye Masson explained the current Charter's language conflict with state law.

John Marler recommends the alternate language:

Alternatively, the Charter language could be amended to provide at most that:

- Candidates must be 21 years of age on the first day of the term to be filled
- Candidates must have been resident of the District (or City for Mayor) for 12 months preceding election day.

The alternative language is the maximum that State allows in residency and age requirements, going beyond State limits voids the language.

Discussion between the difference in age between 18 and 21 as people who are 18 have the right to vote. There is a general preference for being at least 21, but not consensus.

City of Pflugerville's and Sugar Land's language in the exhibit of the agenda packet were pointed out as a good model by the Chair and John Marler, respectively, for possible proposed language to be brought back by staff. In particular the language that reads:

"No member of council shall hold any other city office or city employment while serving as a member of council or hold any paid city employment within two (2) years thereafter." (Sugar Land)  
Question on whether the gap needs to be 2 years or 1 year.

"A city employee seeking city elective office is deemed to have resigned from city employment immediately upon filing for a place on the ballot." (Pflugerville)

Committee asked for research to be done by staff on how many cities have an 18 year age requirement, and how many of those cities have had officials under 21 years of age actually elected in Texas.

#### **C. Discussion of possible amendment of City Charter, Section 2.09, Rules of Procedure - Skye Masson, City Attorney**

Skye Masson presented the issues with current Charter language and its ambiguity detailing the majority, for example is it Council present or all Council.

John Marler asked whether quorum plus one could suffice, but it goes back to the issue of whether its Council present or all, with 3 and 4 sufficing for each as a majority.

John Hesser detailed if not all of Council is present then maybe we can have the Mayor automatically become a voter. Questions arose on when the Mayor does and does not vote, and whether we allow the Mayor to always vote. John Hesser explained that with the Mayor voting you have the opportunity for a tie far more often. Committee would like to review research on how other Cities handle the Mayor vote. How many other Cities in Texas have a Mayor that cannot vote? Staff will conduct research and survey other City's.

Preference for El Paso's Charter language in the exhibit of the agenda packet.

#### **D. Discuss agenda items for April 6, 2021 Meeting - Louise Epstein, Chair**

Chair wants to add an item moving forward on agendas for Other Business, and two other items from the original list of sections for review provided by Council and staff.

John Marler would like the Committee to review Article 4, Requirements for Petitions Section 4.03, specifically what it requires for percentage of voters and possibly adding a maximum for referendums/petitions and recall. Staff will research what other cities have written in their Charter and bring back at a later meeting.

Committee would like staff to recommend a benchmark of Home-Rule Charter Cities that are similar to Georgetown so that the Committee can review their language regularly with each section to have some consistency in review.

Chair would like to review 2.01 term limits and 2.03 vacancies in the next meeting, see item B and C for further instruction.

Troy Hellman would like to review at a later meeting the reporting structure of City Secretary, City Attorney, and Municipal Judge to Council and whether they should report to the City Manager instead. Review what other cities do.

Chair would like to review the addition of a City Auditor, and review background research.

Committee would like to review research and survey of other cities conducted by staff on section 2.02 and section 2.09. Staff will bring back an item on voting and the various sections it touches.

Motion to adjourn meeting by John Marler, second by John Hesser, approved 8-0. Meeting adjourned at 4:12 pm.

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Louise Epstein  
Committee Chair

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Date

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John Hesser  
Committee Vice Chair

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Date

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Mayra Cantu  
Board Liaison

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Date



City of Georgetown, Texas  
Charter Review Committee  
April 6, 2021

**SUBJECT:**

Introduction to the benchmark Home-Rule Charter cities – Skye Masson, City Attorney

**ITEM SUMMARY:**

**FINANCIAL IMPACT:**

**SUBMITTED BY:**

Mayra Cantu, Management Analyst

**ATTACHMENTS:**

<b>Description</b>		<b>Type</b>
	Charter Review Benchmark Cities	Presentation

City	Population	Form of Government	City Type	Charter
El Paso	679,813	Council-Manager	Home Rule	<a href="https://library.municode.com/tx/el_paso/codes/code_of_ordinances?nodeId=CH">https://library.municode.com/tx/el_paso/codes/code_of_ordinances?nodeId=CH</a>
Round Rock	124,434	Council-Manager	Home Rule	<a href="https://library.municode.com/tx/round_rock/codes/code_of_ordinances?nodeId=PTICH">https://library.municode.com/tx/round_rock/codes/code_of_ordinances?nodeId=PTICH</a>
Cedar Park	74,817	Council-Manager	Home Rule	<a href="https://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=cedarparkset&amp;collection=cedarpark&amp;docode=z2Code_z20000001">https://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=cedarparkset&amp;collection=cedarpark&amp;docode=z2Code_z20000001</a>
New Braunfels	79,438	Council-Manager	Home Rule	<a href="https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIHORUCH">https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIHORUCH</a>
Sugar Land	118,709	Council-Manager	Home Rule	<a href="https://library.municode.com/tx/sugar_land/codes/code_of_ordinances?nodeId=PTICH">https://library.municode.com/tx/sugar_land/codes/code_of_ordinances?nodeId=PTICH</a>
Fort Worth	874,401	Council-Manager	Home Rule	<a href="https://codelibrary.amlegal.com/codes/ftworth/latest/ftworth_tx/0-0-0-8">https://codelibrary.amlegal.com/codes/ftworth/latest/ftworth_tx/0-0-0-8</a>
Carrollton	135,834	Council-Manager	Home Rule	<a href="https://library.municode.com/tx/carrollton/codes/code_of_ordinances">https://library.municode.com/tx/carrollton/codes/code_of_ordinances</a>
Richardson	116,432	Council-Manager	Home Rule	<a href="https://library.municode.com/tx/richardson/codes/code_of_ordinances?nodeId=PTICH">https://library.municode.com/tx/richardson/codes/code_of_ordinances?nodeId=PTICH</a>

City of Georgetown, Texas  
Charter Review Committee  
April 6, 2021

**SUBJECT:**

Discussion of possible amendment of City Charter, Section 2.01, Number, Selection, and Term of Office relating to term limits - Skye Masson, City Attorney

**ITEM SUMMARY:**

**FINANCIAL IMPACT:**

**SUBMITTED BY:**

Mayra Cantu, Management Analyst

**ATTACHMENTS:**

<b>Description</b>		<b>Type</b>
▣	Sec. 2.01 Charter and Examples	Exhibit
▣	TML Term Limits Research	Backup Material

## **Cover Sheet**

### **Item D. Discussion of possible amendment of City Charter, Section 2.01 Number, Selection, and Term of office related to term limits**

#### **1. Current City Charter Language (no term limits):**

Sec. 2.01. - Number, selection, and term of office.

The Council shall be composed of seven (7) Councilmembers elected from single-member districts and a Mayor elected at-large, each of whom unless sooner removed under the provisions of the Charter, shall serve for three-year terms, from the first meeting of the Council following the Councilmember's election until the first meeting of the Council following the election two (2) years later, or until the councilmember's successor has been elected and duly qualified.

Four (4) members of the Council shall be elected each odd-numbered year and three (3) members and a Mayor each even-numbered year.

Councilmembers must reside in the districts from which they are elected except that Councilmembers may complete the terms to which they were elected if district boundaries are changed during their terms causing their residences no longer to be within the districts from which they were elected.

The authority to adopt council district boundaries shall reside in the council. The council may revise district boundaries from time to time and shall adopt district boundaries within one year after the publication of each United States decennial census.

Councilmembers and Mayor shall be elected for three-year terms, which shall begin with the general election to be held in 1995, and the terms shall be staggered such that three Council members are elected in one year, the Mayor and two Council members are elected in the following year and two Councilmembers are elected the last year. For the staggering of the initial three-year terms, the following procedure shall apply:

(1) In 1995, Councilmembers shall be elected for Districts 1, [3](#), [4](#) and 5. Following the election, the Councilmembers shall draw lots to serve either a three-year term (2 members) or a two-year term (2 members).

(2) In 1996, the Mayor shall be elected for a three-year term, and Councilmembers shall be elected for Districts [2](#), [6](#) and [7](#). Following the election, the Councilmembers shall draw lots to serve either a three-year term (2 members) or a two-year term (1 member).

(3) In 1997, the two Districts whose Councilmembers serve two-year terms shall elect Councilmembers for three-year terms. All succeeding elections shall be to elect Councilmembers for three-year terms in compliance with this Charter.

## 2. TML Survey of Cities:

20. Term limit applies

Both council and mayor	88	35%
Separately	12	5%
N/A	149	60%
Total	249	100%

## 3. Samples from benchmark cities:

### New Braunfels

#### [Sec. 3.01. - Number, selection and term.](#)

The legislative and governing body of the City shall consist of seven (7) Councilpersons and shall be known as the "Council of the City of New Braunfels," and who shall each serve a term of three (3) years.

The City of New Braunfels shall by ordinance be divided into six (6) districts. Each district shall to the extent reasonably possible be equally populated and the City Council shall maintain such equality of population, as from time to time deemed necessary, by ordinance. The districts shall be designated Number 1, 2, 3, 4, 5 and 6. The qualified voters of each district shall elect one (1) Councilmember for each of the six (6) districts. The six (6) Councilmembers so elected from each district shall have been a resident of the district from which the Councilmember is elected for no less than six (6) months prior to filing for office and must continue to reside in said district for his or her entire term of office.

The Mayor of the City of New Braunfels shall be elected by the qualified voters of the City at large and elections for the Mayor shall be held pursuant to Article IV, Elections, of the City Charter of New Braunfels, Texas.

Each Councilperson shall hold office until his or her successor is elected and qualified.

Candidates elected at the municipal election shall take office at the regular City Council meeting, the same being at the first regular meeting held after the meeting in which the election returns are canvassed and the result of the election is officially declared.

**No current or future elected official shall serve more than two (2) consecutive three (3) year terms of office and no more than three (3), three (3) year terms during a lifetime.**

**However, years or time of service that an elected official may serve in filling an unexpired term or a partial term of office shall not be counted toward the above limitations.**

### Sugar Land

#### [Sec. 2.01. - Election and Term.](#)

- (a) The council shall consist of a mayor and six (6) council members elected by the voters for a term of three (3) years, or until their successors have been elected and qualified.
- (b) The mayor and two (2) council members shall be elected at-large. The two (2) at-large council member positions shall be respectively designated as Position 1 and Position 2. The remaining four (4) council members shall be elected by districts, designated as Districts 1, 2, 3, and 4. The council shall modify the size, configuration, and geographic definition of the council districts as necessary to provide equal representation to all citizens of the city and to comply with state and federal law.
- (c) The council shall serve staggered three-year terms. Council elections shall be held in May on the date specified by state law. A candidate must be elected to office by majority vote. If no candidate for office receives a majority vote, a run-off election shall be held as required by state law. The council shall be the judge of the election and qualifications of its own members.
- (d) A person may not be elected in a city election to any council position more than four times in any consecutive nine-year period. For purposes of this provision, district and at-large council member positions are aggregated, while the position of the mayor is considered a separate office from other council positions.**
- (e) The city secretary shall promptly notify all persons elected to office. The persons elected shall take their oaths of office and begin their duties at the meeting at which the city council declares the results of the election.

## **Richardson**

### **Section 3.01. - Number, election, terms.**

- a. Except as otherwise provided by this charter, all powers conferred on the city shall be exercised by a city council consisting of seven (7) members comprised of a mayor and six (6) council members. The members of the city council shall each be elected by the qualified voters of the entire City to numbered places in the manner provided in this charter for a term of two (2) years and until a successor is elected and qualified. As used in this charter, unless the context clearly means otherwise, the word or phrase “city council”, “council”, “member(s) of the city council” and “member(s) of the council” means and includes the mayor and the six (6) council members. The word or phrase “councilmember(s)” or “council member(s)” means the six (6) members of the city council excluding the mayor, unless the context clearly indicates otherwise.
- b. No person elected or appointed to the city council at the May 2009 city officer election or thereafter, shall serve as a member of the city council in any place for more than six (6) consecutive terms until at least one full term shall have elapsed from the expiration of such person's last term of office.**
- c. For purposes of this section and in computing term limits:
  - i. A member of the council, who resigns or vacates office prior to the expiration of the term for which such person was elected or appointed, shall be deemed to have served a full term.
  - ii. A person appointed or elected to fill a vacancy on the council for an unexpired term shall be deemed to have served a full term if fifty percent (50%) or more of such term is remaining at the time of such appointment or election.

tricacies of city government and to learn about the problems of city agencies and programs or those parts of the city with which they may have had no prior experience.

**Three-year term:** A three-year term's principal advantage is that it lengthens the period of service before facing the voters, giving a member time to compile a record and giving a new member time to become proficient in the job. The three-year term also clearly differentiates council service from other public offices. It is a long enough time to accomplish something, but too short to feel like there is a lease on the position.

The principal disadvantage of the three-year term is that one of every two municipal elections will fall in a state or national election year. It could necessitate a separate election, producing some voter confusion. There is also some prospect that the partisanship of state and national elections would be carried over into city elections.

**Four-year term:** Most observers of governments tend to feel that four-year terms encourage those elected to them to invest more time in working on substantive and larger problems of government, rather than thinking about campaign strategy, and to become more proficient in policy issues.

Longer terms can, however, work to increase the insulation of elected officials from the electorate; although, the many arenas for direct contact with constituents in city government appear to make this a far less severe problem than it is for members of Congress or state legislatures.<sup>28</sup>

**Staggered terms:** More than 95 percent of Texas charters call for staggered terms. Charter drafters in Texas have obviously felt that it is desirable to have some continuing experience on the city council and avoid a wholesale turnover of city councilmembers. Staggered terms do tend to provide some stability on the council. On the other hand, they also thwart the will of the people to make a major change of direction. For example, with a five-member council and two-year staggered terms, three members would come up for election one year and two the next. If the council had taken or failed to take a stand on a major issue before the election year when two members were running, the vote for the

two incumbents or for two newcomers would not necessarily change the stance taken by the council prior to election.

## Term limits

Perhaps no legislative issue in many years has evolved with such gathering momentum as term limits. Originally proposed for members of the U.S. Congress and, in some states, for state-elected officials, term limits have now come to the local level. Actually, they may have started at the local level in Texas. The citizens of the North Texas city of Paris placed a two-term (four-year) limit on their city council when they adopted their first home rule charter in 1948. A few other cities adopted such provisions in the 1970s, but the real movement did not start until the late 1980s. Today, 41 percent of Texas home rule cities have limits on the number of consecutive years their mayors and city councilmembers may serve; the form of government or size of the city appears to have very little influence on voter adoption of term limits.

Arguments rage back and forth over the merits of the "term limits" movement. Opponents generally include political scientists and so-called "urban experts" who insist that voters have the ability to terminate any elected official's career by merely turning him/her out at the polls. Proponents of term limits maintain that advantages of incumbency, both in campaign finance and in name recognition, deter or block the termination vote. They argue that term limits are necessary to bring "government back to the people." Along with a widespread distrust, or at least suspicion of government, this "back to the people" plea accounts for term limit elections passing across the country with generally wide margins. Whatever the merits, term limits appear to be here to stay; thus, this book will examine the charter provisions in Texas cities and analyze the trend to 2008.

One of the obstacles to analyzing this movement is the wide variation in charter terminology. It is impossible to ascertain in a few cities whether the limits apply to combined service of one person as a mayor and councilmember or whether the two offices are meant to be considered separately. An equally formidable obstacle is the absence of any case law history and the resulting proliferation of different interpretations.

Term limits in charters are expressed in one of two ways. One way is to have separate limits for the mayor and members of the council. A typical charter with this type limit is Friendswood. That charter states: "The mayor and councilmembers shall be elected to serve for three-year terms as provided below, but no person shall be elected to serve in the capacity of councilmember for more than three consecutive three-year terms, nor shall any person be elected to serve in the capacity of mayor for more than three consecutive three-year terms."

The other way to express limits is to count service as mayor and service as a councilmember together. The charter of the City of Rockport is very straightforward. It states: “No person shall serve more than ten consecutive years on the City Council.” The statement to look for here to assure that the mayor is included in the definition of “City Council” is this additional statement found in the Rockport charter: “The legislative and governing body of the City shall consist of a Mayor and four Councilmen and shall be known as the City Council of Rockport.”

Separate limits on years of service

A total of 36 cities have separate limits for mayors and councilmembers. The most popular limit for these cities is six years for each of the offices. This includes cities that have a three-term limit on two-year terms, as well as cities that have a two-term limit on three-year terms. The full breakdown by limit in years is as follows:

Figure 9-3: Term limits in years when limits are separately applied\*

Cities in which the mayor has separate limits	Limit in years	Cities in which councilmembers have separate limits
9 <sup>a</sup>	4	7
18	6	18
9	8	10 <sup>b</sup>
2	9	2
Total Cities: 38		37

<sup>a</sup>Jacksonville and Waco have limits on mayors, but not on the council.  
<sup>b</sup>Pearland has limits on councilmembers, but not on the mayor.

\*This chart uses 1994 data, but other aspects of the recent survey indicate that the numbers are essentially the same.

The chart above considers limits in one of the two positions – mayor or councilmember. In this type of language, a councilmember could serve his/her limit of, say, six years, and then run and be elected as mayor and serve another six years. Assuming both posts carry six-year limits, one individual could legally serve 12 years.

It should be noted that these limits have been constrained in six cities by imposing “combination” limits. For example, in Graham, although the mayor and councilmembers have six-years limits individually, the charter limits any combined service in those two positions to ten years, not twelve years.

The following chart portrays the maximum number of consecutive/successive years a person could serve as council member or mayor under the separate limits category:

Figure 9-4: Maximum years service when limits separately applied\*

Limit on years of service	Number of cities
6	1
8	9
10	1
12	15
16	8
18	2
Total cities:	36

\*This chart uses 1994 data, but other aspects of the recent survey indicate that the numbers are essentially the same.

Counting service years together

Thirty cities combine mayoral and councilmember service into a single-term limit. The Rockport charter is an example: only “ten consecutive years” on the council. When examining these charter provisions, we find the following term limits:

Figure 9-5: Term limits in years when service applied together\*

Limit on years of service as member of city council, including mayor	Number of cities
4	2
6	19
8	3
9	1
10	3 (five two-year terms)
12	2
Total cities:	30

\*This chart uses 1994 data, but other aspects of the recent survey indicate that the numbers are essentially the same.

Charter language on term limits

Since “model” language has not evolved on this subject, current charter language varies widely. Many charters simply place a limit on “consecutive” or “successive” terms, leaving unanswered the question whether a person appointed or elected to a partial term loses some of the time that might otherwise be allowed. Occasionally, a charter will clearly state that “a portion of a term” does not count as a term of office



# The city council - election and service

for purposes of a limit. Some charters use the word “full term” or “regular term.” These are generally interpreted to mean that if a person comes into a partial term, the partial time will not count toward the limit.

Several cities require a person to “sit out” one year or one term before running for office again (one city requires that an individual must sit out 30 months). Whether this means that in the other cities a person reaching his/her maximum can never come back is unknown. Two cities do state that the term limit is for the “lifetime” of the individual.

Finally, a charter should make it clear whether the limits apply to current councilmembers. Several charters spell this out. Most do not at the present time.

In summary, the term limit movement is still relatively young. If a city does not have this kind of provision in its charter and desires to have a charter amendment election, officials are urged to carefully review with the city attorney the language to be used in order to avoid some of the ambiguities identified. In May 1994, Austin adopted a charter amendment limiting terms of office, but did provide that if an incumbent councilmember, when his/her limit of terms have been reached, can get a petition signed by five percent of the qualified voters in the city, his/her name shall go back on the ballot. Houston adopted such an amendment in 1991, had several councilmembers qualify under the petition route in the 1993 election, and decided at a January 15, 1994 election to rescind the petition by-pass. Thus, Houston’s term limits have no exception to them.

## AGAINST THE GRAIN

Although the trend is strong for adopting term limits, Port Neches in 1983 and Sachse in 1990 adopted charter amendments rescinding the term limits then in existence in their charters. And Schertz, in 1994, defeated two different charter amendments that would have set limits on councilmembers.

## Qualifications for office

Early Texas city charters included a detailed and lengthy list of qualifications for the prospective mayor or city councilmember. The first officeholders and voters had to be white, male, and citizens of the Republic. Several cities also had property and residence requirements. The original Galveston charter in 1840 required the mayor to own \$1,000 worth of property. A number of charters still require ownership of property within the city and no indebtedness to the city, plus three years residence in the city before filing as a candidate. Arguably unenforceable, these provisions in current charters are historical reminders of practices before state law and court cases established the controlling criteria for qualifications of all public officials.

For more than 30 years, state law has set forth requirements to run for public office in Texas and these requirements apply to candidates for the governing bodies of Texas home rule cities. In addition, federal court cases have held that a city may not require an officeholder to be an owner of property and may not refuse to seat a councilmember for being delinquent in taxes to the city.

The Election Code criteria are set out in Section 141.001. Under that section, a candidate must:

- (1) be a United States citizen,
- (2) be 18 years of age or older upon the commencement of the term to be filled at the election,
- (3) have been a resident of Texas for at least 12 months as of the deadline for filing for the office,
- (4) have resided in the city for at least six months as of the deadline for filing for the office,
- (5) not have been convicted of a felony for which he or she has not been pardoned or otherwise released from the resulting disabilities, and
- (6) not have been found mentally incompetent by a final judgment of the court.

## Exceptions for home rule cities

The Election Code authorized home rule cities to make two exceptions: (1) the charter can require council candidates to be up to 21 years of age, rather than 18, upon the commencement of the term to be filled at the election; and (2) the charter can require candidates to be residents of the city for up to 12 months, rather than six months, as of the deadline for filing for office.

Virtually every charter in the state says a candidate must be a qualified voter. This is not required by state law, but a home rule city may include this requirement in its charter.

Despite the provisions in the Election Code, some cities still amend their charters to add requirements that are not enforceable. In earlier days, charter writers might have been accused of placing unenforceable qualifications in the charter in an attempt to discourage citizens who might otherwise consider filing for office. It is believed that today’s charter writers are simply not aware of the state law limitations that supersede any charter language.

One disqualification for office that some charters have addressed is dual office-holding. There are two distinct legal barriers to holding more than one public office at the same time: (1) the Texas constitutional prohibition against dual office-holding; and (2) the common law doctrine of incompatibility.

All three of these barriers are too complex to discuss in detail in this publication. Any mayor or councilmember contemplating elective or appointive office in another

City of Georgetown, Texas  
Charter Review Committee  
April 6, 2021

**SUBJECT:**

Discussion of possible amendment of City Charter Section 2.02, Qualifications - Skye Masson, City Attorney

**ITEM SUMMARY:**

**FINANCIAL IMPACT:**

**SUBMITTED BY:**

Mayra Cantu, Management Analyst

**ATTACHMENTS:**

Description		Type
▣	Sec. 2.02 City Charter and Examples	Exhibit
▣	TML Qualifications Research	Backup Material

## Cover Sheet

### Item E. Discussion of possible amendment of City Charter, Section 2.02 Qualifications

**\*This is a follow up to the discussion at the previous meeting.**

As background:

#### 1. Current City Charter Language:

Sec. 2.02. - Qualifications.

At the time of election to office, each Councilmember and the Mayor shall be at least twenty-one (21) years of age, shall be a citizen and qualified voter of the State of Texas and the City of Georgetown and a resident of the Council District the member would be representing for a period of twelve (12) months as of the last legal date for filing. No member of the Council shall hold any other office or employment under the City Government while a member of said Council, nor hold any paid employment under the City Government within two (2) years thereafter. A member of the Council ceasing to reside in the City shall immediately forfeit that office.

#### 2. Conflict with State law:

The Election Code authorizes home rule cities to adopt age and residency requirements greater than those in state law, but such local provisions cannot require a candidate to be more than 21 on the first day of the term and cannot require residency in the District for longer than 12 months immediately preceding election day. Otherwise, the local provision is void, and the applicable statute would apply.

The current Charter language requires a candidate to be 21 at the time of election, which in turn requires the candidate to be greater than 21 years on the first day of the term (as the term will always commence after the election). Similarly, the current Charter requires a candidate to be a resident of the District for 12 months prior to the filing deadline, which in turn requires the candidate to be a resident for 15 months preceding election day (as the filing deadline is 3 months before election day). Therefore, the Charter's age and residency requirements are both void and the requirements of state law apply.

#### 3. Options to consider:

If the Charter language does not add any additional time for either age or residency will simply default to the requirements of the Election Code:

- Candidates must be 18 years of age on the first day of the term to be filled

- Candidates must have been a resident of the District (or City for Mayor) for the 6 months immediately preceding the filing deadline.

Alternatively, the Charter language could be amended to provide at most that:

- Candidates must be 21 years of age on the first day of the term to be filled
- Candidates must have been resident of the District (or City for Mayor) for 12 months preceding election day.

#### 4. TML Survey on ages:

Question 12: Minimum age for council members	Count of Cities with this Age Minimum	% of Total
18	109	50.70%
19	1	0.47%
21	82	38.14%
25	1	0.47%
minimum age for qualified voter in the State of TX	1	0.47%
no minimum age specified	21	9.77%
(blank)		0.00%
Grand Total	215	100.00%

#### 5. Potential revised charter language to consider (bolded language below currently exists):

Sec. 2.02. - Qualifications.

~~At the time of election to office, e~~Each Councilmember and the Mayor shall be at least twenty-one (21) years of age ~~as of the first day of office~~, shall be a citizen and qualified voter of the State of Texas and the City of Georgetown and a resident of the Council District the member would be representing for a period of twelve (12) months ~~as of the last legal date for filing preceding their election~~. **No member of the Council shall hold any other office or employment under the City Government while a member of said Council, nor hold any paid employment under the City Government within two (2) years thereafter.** A member of the Council ceasing to reside in the City shall immediately forfeit that office.

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#### 6. Direction requested:

1. Does the committee recommend amendment to include age and residency requirement as allowed by State Law?

2. Does the committee wish to alter bolded language in any way? Current language matches Sugar Land and Pflugerville.

# The city council - election and service

for purposes of a limit. Some charters use the word “full term” or “regular term.” These are generally interpreted to mean that if a person comes into a partial term, the partial time will not count toward the limit.

Several cities require a person to “sit out” one year or one term before running for office again (one city requires that an individual must sit out 30 months). Whether this means that in the other cities a person reaching his/her maximum can never come back is unknown. Two cities do state that the term limit is for the “lifetime” of the individual.

Finally, a charter should make it clear whether the limits apply to current councilmembers. Several charters spell this out. Most do not at the present time.

In summary, the term limit movement is still relatively young. If a city does not have this kind of provision in its charter and desires to have a charter amendment election, officials are urged to carefully review with the city attorney the language to be used in order to avoid some of the ambiguities identified. In May 1994, Austin adopted a charter amendment limiting terms of office, but did provide that if an incumbent councilmember, when his/her limit of terms have been reached, can get a petition signed by five percent of the qualified voters in the city, his/her name shall go back on the ballot. Houston adopted such an amendment in 1991, had several councilmembers qualify under the petition route in the 1993 election, and decided at a January 15, 1994 election to rescind the petition by-pass. Thus, Houston’s term limits have no exception to them.

## AGAINST THE GRAIN

Although the trend is strong for adopting term limits, Port Neches in 1983 and Sachse in 1990 adopted charter amendments rescinding the term limits then in existence in their charters. And Schertz, in 1994, defeated two different charter amendments that would have set limits on councilmembers.

## Qualifications for office

Early Texas city charters included a detailed and lengthy list of qualifications for the prospective mayor or city councilmember. The first officeholders and voters had to be white, male, and citizens of the Republic. Several cities also had property and residence requirements. The original Galveston charter in 1840 required the mayor to own \$1,000 worth of property. A number of charters still require ownership of property within the city and no indebtedness to the city, plus three years residence in the city before filing as a candidate. Arguably unenforceable, these provisions in current charters are historical reminders of practices before state law and court cases established the controlling criteria for qualifications of all public officials.

For more than 30 years, state law has set forth requirements to run for public office in Texas and these requirements apply to candidates for the governing bodies of Texas home rule cities. In addition, federal court cases have held that a city may not require an officeholder to be an owner of property and may not refuse to seat a councilmember for being delinquent in taxes to the city.

The Election Code criteria are set out in Section 141.001. Under that section, a candidate must:

- (1) be a United States citizen,
- (2) be 18 years of age or older upon the commencement of the term to be filled at the election,
- (3) have been a resident of Texas for at least 12 months as of the deadline for filing for the office,
- (4) have resided in the city for at least six months as of the deadline for filing for the office,
- (5) not have been convicted of a felony for which he or she has not been pardoned or otherwise released from the resulting disabilities, and
- (6) not have been found mentally incompetent by a final judgment of the court.

## Exceptions for home rule cities

The Election Code authorized home rule cities to make two exceptions: (1) the charter can require council candidates to be up to 21 years of age, rather than 18, upon the commencement of the term to be filled at the election; and (2) the charter can require candidates to be residents of the city for up to 12 months, rather than six months, as of the deadline for filing for office.

Virtually every charter in the state says a candidate must be a qualified voter. This is not required by state law, but a home rule city may include this requirement in its charter.

Despite the provisions in the Election Code, some cities still amend their charters to add requirements that are not enforceable. In earlier days, charter writers might have been accused of placing unenforceable qualifications in the charter in an attempt to discourage citizens who might otherwise consider filing for office. It is believed that today’s charter writers are simply not aware of the state law limitations that supersede any charter language.

One disqualification for office that some charters have addressed is dual office-holding. There are two distinct legal barriers to holding more than one public office at the same time: (1) the Texas constitutional prohibition against dual office-holding; and (2) the common law doctrine of incompatibility.

All three of these barriers are too complex to discuss in detail in this publication. Any mayor or councilmember contemplating elective or appointive office in another



governmental entity would be well advised to consult with the city attorney before making any definitive moves.

Some charters provide that city employees must resign before they can run for the city council in their own city. Provisions of this type have been struck down by the courts for city employees covered under the state fire and police civil service law.<sup>29</sup>

## WANTED: ONE BRAVE CITY MANAGER

"Any person having the qualifications set for councilmember under Section 4.02 in this charter shall have the right to file an application to have his name placed on the official ballot as a candidate for any one elective office. Such application shall be made in writing and shall include name, address, date of birth, and personal signature of each candidate. Such application shall be accompanied by his loyalty affidavit, as prescribed by Section 141.031(k) Texas Election Code; his signed affidavit indicating willingness to submit himself for substance abuse testing, within thirty (30) days, after elected and when randomly selected by the city manager, throughout the duration of his term of office."

## Financial disclosure

The Colleyville, Friendswood, and San Marcos charters each have provisions that candidates must file financial disclosure statements with the city secretary before any election in which they are a candidate. Chapter 145 of the Local Government Code, enacted in 2003, now mandates financial disclosure for certain candidates and officials in cities over 100,000 in population.

## Filing requirements

The Election Code is very specific in regard to a candidate filing for a place on the governing body of a city.

- (b) If a city charter prescribes the requirements that a candidate's application must satisfy for the candidate's name to be placed on the ballot, Section 141.031(4)(L) also applies to the application.\* The other provisions of Section 141.031 do not apply.
- (c) If a city charter requires candidates to pay a filing fee, the amount of the fee and an alternative procedure to payment of the fee shall be prescribed by the charter or by ordinance under charter authorization. However, if an ordinance prescribing an alternative procedure to payment of a filing fee is adopted before the effective date of this code without charter authorization, the ordinance, as it exists on the effective date of this code, continues in effect until the adoption of a charter provision prescribing an alternative procedure or authorizing prescription of an alternative procedure by ordinance.
- (d) For any petition required or authorized to be filed in connection with a candidate's application for a place on the ballot for an office of a home rule city, the minimum number of signatures that must appear on the petition is the greater of: (1) 25, or (2) one-half of one percent of the total vote received in the territory from which the office is elected by all candidates for mayor in the most recent mayoral general election.
- (e) If the city charter of a home rule city with a population of more than 1.8 million, that holds nonpartisan elections for its offices, requires both a petition and a \$50 fee to be filed for a candidate's name to be placed on the ballot, those requirements supersede this section.

\*Section 141.031(4)(L) referred to above requires a statement that the candidate is aware of the nepotism law, Section 573.041 of the Government Code, et seq.

**Figure 9-6: Filing requirements for city council (Section 143.005)**

- (a) A city charter may prescribe requirements in connection with a candidate's application for a place on the ballot for an office of a home rule city. This section does not authorize a city charter requirement in connection with the timely filing of an application, and any charter requirement related to an application's timely filing is superseded by Section 143.007 and other applicable filing provisions prescribed by the code.

City of Georgetown, Texas  
Charter Review Committee  
April 6, 2021

**SUBJECT:**

Discussion of possible amendment of City Charter, Section 2.03, Vacancies - Skye Masson, City Attorney

**ITEM SUMMARY:**

**FINANCIAL IMPACT:**

**SUBMITTED BY:**

Mayra Cantu, Management Analyst

**ATTACHMENTS:**

<b>Description</b>		<b>Type</b>
<input type="checkbox"/>	Sec. 2.03 Charter and Examples	Exhibit
<input type="checkbox"/>	TML Vacancies Research	Backup Material



## Cover Sheet

### Item F. Discussion of possible amendment of City Charter, Section 2.03 Vacancies

#### 1. Current City Charter Language:

Sec. 2.03. - Vacancies.

When a vacancy occurs in the Council, the vacancy shall be filled at a special election called for this purpose within one hundred and twenty (120) days after the vacancy or vacancies occur in compliance with Article XI, Section 11 of the Texas Constitution and other applicable State laws.

#### 2. Relevant State Law Provisions:

The Texas Constitution requires that all members of the City's governing body elected for a term exceeding two years must be elected by a majority vote of the qualified voters in such municipality. Any vacancy occurring must generally be filled by a special called election within 120 days of such vacancy except that by Charter a municipality provide a procedure for filling a vacancy occurring with an unexpired term of 12 months or less.

#### 3. TML Survey:

18. Filling one vacancy

Appointment	86	35%
Election	95	39%
Either election or appointment	54	22%
Other, please specify	10	4%
Total	245	100%

#### 4. Samples from other cities:

##### Round Rock

##### [Sec. 3.06. - Vacancies, forfeiture, filling of vacancies.](#)

- (a) Vacancies: The office of a Council member or office of the Mayor shall become vacant upon his or her death, resignation, removal from office in any manner authorized by law, or forfeiture of his or her office.
- (b) Forfeiture of Office: If the Mayor or any Council member:
  - (1) fails to maintain the qualifications as required in Sections 3.02 and 5.02 herein;

- (2) has been found by at least a 2/3 vote of the City Council to have violated any express prohibition of this Charter;
  - (3) is convicted of a crime involving moral turpitude; or
  - (4) fails to attend three (3) consecutive regular City Council meetings without being excused by the City Council,
- the City Council shall, at its next regular meeting, declare the office to be vacant and shall fill such vacancy as set forth in Subsection (c) below of this Section 3.06.
- (c) Filling of Vacancies:
- (1) When any vacancy shall occur on the City Council, and there remains an unexpired term of more than 12 months, a special election shall be called to fill such vacancy in accordance with Art. 11, §11 of the Texas Constitution.
  - (2) **When any vacancy shall occur on Place 1 through Place 6 of the City Council, and there remains an unexpired term of 12 months or less, the City Council by majority vote may appoint a person who meets all of the qualifications of §3.02 to fill the vacancy until the next regular City Election date. If the City Council elects not to appoint such a person to fill the vacancy, then the City Council shall call a special election to fill such vacancy in accordance with Art. 11, §11 of the Texas Constitution.**
  - (3) **When any vacancy shall occur in the office of Mayor, and there remains an unexpired term of 12 months or less, the City Council by majority vote may appoint one of the Councilmembers to fill the vacancy until the next regular City Election date. If the City Council elects not to appoint a Councilmember to fill the vacancy of Mayor, then the City Council shall call a special election to fill such vacancy in accordance with Art 11, §11 of the Texas Constitution.**

(Charter amendment approved by voters November 6, 1979; April 5, 1986; January 20, 1996; May 6, 2017)

## **Sugar Land**

### **Sec. 2.07. - Vacancies.**

If the office of mayor or a council member becomes vacant, the following provisions apply:

- (a) If, at the time of the vacancy, more than twelve (12) months remain on the term, the council shall within one hundred and twenty (120) days of the vacancy call a special election for the position.
- (b) **If, at the time of the vacancy, less than twelve (12) months remain on the term, the council shall within sixty days of the vacancy appoint a qualified person to fill the vacancy.**

(Ord. No. 1178, § 1, 6-15-99; Ord. No. 1245, § 1, 5-23-00; [Ord. No. 2054](#), § 6(Exh. A), 5-17-2016; Ord. No. [2219](#), § 1(Exh. A, §§ 4, 7), 12-15-2020)

**Editor's note**— Ord. No. [2219](#), § 1(Exh. A, § 4), adopted Dec. 15, 2020, renumbered the former § 2.07, which pertains to powers and duties of the Council, as § 2.08.



Vacancies on the council

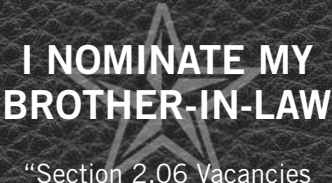
Vacancies on the council can result from resignation, death, disability, recall, or failure of a councilmember to meet the requirements of the charter. In some instances, a vacancy can occur if a member of the council announces for another elective office. For example, under Article XI, § 11, of the Texas Constitution, in cities where the term of office for councilmembers is three or four years, any councilmember who announces for another elective office is automatically removed from the council if more than one year remains in his term at the time of such announcement.

Also, some city charters with two-year terms provide that any councilmember who runs for another office automatically vacates his or her seat on the council. A city charter may provide that:

If any officer of the city shall file as a candidate for nomination or election to any public office, except to some office under this charter, he shall immediately forfeit his office.

Procedures for filling vacancies vary from charter to charter. In some instances, charters require that vacancies on the governing body be filled by appointment of the council in every case; i.e., regardless of whether a regular municipal election is imminent. The most popular provision for cities with two-year terms of office is for appointment by the council in the case of one vacancy, or special election in the case of two or more vacancies. An election to fill a vacancy must be on one of the uniform election dates specified in the Election Code, unless it is a vacancy required to be filled under the Texas Constitution.

Under Article XI, § 11, of the Texas Constitution, cities with three- or four-year terms *must* fill all vacancies by election of majority vote within 120 days of the vacancy. Finally, some cities with two-year terms require that all council vacancies must be filled by special election. Among these cities, the common practice is not to require special elections in cases where a regular municipal election is imminent; e.g., within 60 to 90 days of the time the vacancy occurred.



# I NOMINATE MY BROTHER-IN-LAW

“Section 2.06 Vacancies

A single vacancy in the Council shall be filled within thirty (30) days of the occurrence of the vacancy by a majority vote of the remaining members of the Council by selection of a person qualified for the position as described in this Charter. If the vacancy is caused by the resignation of a Councilmember who is in good standing, that Councilmember may submit a nominee for that position. This nominee must be accepted or rejected by the Council before other nominees can be considered. Once appointed, this appointee shall serve until the position can be filled at the next regular City election.”

Figure 10-4: Charter Requirements for Fulfillment of Vacancies

	Appointed	Elected	Provides for Either
1 Vacancy	36%	39%	25%
2 Vacancies	13%	67%	20%

City of Georgetown, Texas  
Charter Review Committee  
April 6, 2021

**SUBJECT:**

Discussion of possible amendment of City Charter Section 2.06, Mayor and Mayor Pro Tem - Skye  
Masson City Attorney

**ITEM SUMMARY:**

**FINANCIAL IMPACT:**

**SUBMITTED BY:**

Mayra Cantu, Management Analyst

**ATTACHMENTS:**

<b>Description</b>		<b>Type</b>
<input type="checkbox"/>	Sec. 2.06 Charter and Examples	Exhibit
<input type="checkbox"/>	TML Mayor Research	Backup Material

## Cover Sheet

### Item G. Discussion of possible amendment of City Charter, Section 2.06 Mayor and Mayor Pro Tem

#### 1. Current City Charter Language:

Sec. 2.06. - Mayor and Mayor Pro Tem.

The Mayor shall preside at all meetings of the Council and shall be recognized as head of the City government for all ceremonial purposes, for the purpose of receiving services of civil process, for emergency purposes, and for military purposes; but the Mayor shall have no regular administrative duties. The Mayor, as a member of the Council, shall be entitled to vote only in case of a tie upon all affairs considered by the Council and shall have no veto power. At its first meeting following each regular election of Councilmembers, the Council shall, by election, designate one of its number as Mayor Pro Tem, who shall serve in such capacity during the pleasure of the Council. The Mayor Pro Tem shall act as Mayor during the absence or disability of the Mayor, and shall have power to perform every act the Mayor could perform if present; provided, however, that in all cases the Mayor Pro Tem shall be entitled to vote.

#### 2. Discussion:

The Committee requested discussion on the issue of the Mayor's powers related to voting specifically. Current language only allows for the Mayor to vote in order to break a tie.

#### 3. TML Survey:

##### 5. Authority of Mayor

Top number is the count of respondents selecting the option. Bottom % is percent of the total respondents selecting the option.

	Yes	No
Appoints boards and commissions	89	142
	39%	61%
--w/approval of council	188	58
	76%	24%
Regular vote	159	87
	65%	35%
Vote only in tie	92	143

	39%	61%
No vote	12	197
	6%	94%
Enumerated ceremonial duties	179	63
	74%	26%
Martial law	101	123
	45%	55%
Enumerated emergency powers	164	74
	69%	31%
Appoint CAO	37	190
	16%	84%
Appoint department heads	15	223
	6%	94%
--w/approval of council	56	176
	24%	76%
Prepare budget	13	228
	5%	95%
Mayor veto	26	217
	11%	89%

#### 4. Samples from other cities:

##### El Paso

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

- A. The Mayor shall be recognized as head of the City government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties except as may be specifically provided in this Charter.
- 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; 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 or the City Attorney**, convene the Council in special session and perform other duties specified by the Council.

##### Round Rock

##### Sec. 3.05. - Mayor and Mayor Pro-tem.

The Mayor shall be the official head of the City government. The Mayor shall be the chairman of, and shall preside at all meetings of the City Council. **The Mayor shall vote on every proposition before the City Council, but shall have no power to veto.** The Mayor shall see that

all ordinances, bylaws, and resolutions of the City Council are faithfully obeyed and enforced. Except as provided in Section 4.01, the Mayor shall, when authorized by the City Council, sign all official documents such as ordinances, resolutions, conveyances, grant agreements, contracts, and bonds. The Mayor shall appoint special committees he or she deems advisable and as instructed by the City Council. The Mayor shall perform such other duties consistent with this Charter or as may be imposed upon him or her by the City Council.

The Mayor Pro-tem shall be a Council member elected by the City Council at the first regular City Council meeting following each regular City election. The Mayor Pro-tem shall act as Mayor during the disability or absence of the Mayor, and in this capacity shall have the rights conferred upon the Mayor.

### **Cedar Park**

#### **Section 3.05 Mayor and Mayor Pro Tem**

The Mayor shall be the official head of the City Government, and shall work with the City Manager with assistance from the City Secretary and other City staff members, as required, in preparing agendas for the Council meetings. The Mayor shall preside at all meetings of the Council, shall sign all ordinances, orders, resolutions, statements, agreements, conveyances, plats, instruments, and documents, authorized or enacted by the Council. **The Mayor shall vote on all issues, proposals, questions, and motions which require Council votes. The Mayor shall not have the power to veto or modify any ordinance adopted by the Council and shall not, in any way, neutralize or negate any action of the Council.** The Mayor shall be recognized as the head of City government for all ceremonial purposes and shall be responsible for providing initiative and guidance in the orderly management and growth of the City.

The Mayor Pro Tem shall act as Mayor during the disability or absence of the Mayor, and, in this capacity, shall have the rights conferred upon the Mayor.

### **New Braunfels**

#### **Sec. 3.05. - Mayor and Mayor Pro Tem.**

- (a) *Election of Mayor.* The Mayor of the City of New Braunfels shall be elected in accordance with Article III, [Section 3.01](#) and Article IV, [Section 4.05](#) of the Charter of the City of New Braunfels, Texas. The Mayor shall preside at meetings of the City Council, shall be recognized as head of the City government for all ceremonial purposes and by the Governor for purposes of military law, but shall have no administrative duties.
- (b) *Election of Mayor Pro Tem.* At its first regular meeting following the meeting at which the official election returns are canvassed and the results are declared of each year, the City Council shall elect from among its members a Mayor Pro Tem who shall serve at the pleasure of the City Council, and he shall perform all the duties of Mayor in the absence or disability of the Mayor.
- (c) *Emergency powers of Mayor.* Whenever the Mayor shall deem it necessary in order to enforce the laws of the City, or to avert danger, or to protect life or property, in case of



riot, outbreak, calamity or public disturbance, or when he has reason to fear any serious violation of law or order, outbreak, or any other danger to the City of New Braunfels or the inhabitants thereof, he shall summon into service as a special police force, all or as many of the citizens as in his judgment and discretion may be necessary and proper; and such summons may be made by proclamation or orders addressed to the citizens generally, or those of any ward of the City or subdivision thereof, or such summons may be by personal notification. Such summons shall be made pursuant to a proclamation by the Mayor that an emergency exists in the City of New Braunfels. During such emergency, the police department of the City of New Braunfels, and such special police as have been summoned by the Mayor, shall be subject to the orders of the Mayor, and shall perform such duties as he may require, and shall have the same power while on duty as the regular police of the City of New Braunfels. The Mayor shall have authority during the continuance of such emergency to make and enforce such rules, regulations, and orders as are necessary to preserve the public health, safety, and welfare from the threatened danger. During such emergency, such rules, regulations and orders shall have the force and effect of law.

The Mayor shall have authority in case of riot or other unlawful assemblage, to order and enforce the closing of any theater, picture show, or other place of public amusement or entertainment, ballroom, barroom, or other place of resort, or public room or building, and may order the arrest of any person violating in his presence any of the penal laws of the State, or any ordinances of the City; and he shall perform such other duties and possess and exercise such other power and authority as may be prescribed by law or by ordinance.

## **Sugar Land**

### **Sec. 2.06. - The Mayor.**

- (a) Head of City government. **The mayor shall preside at all council meetings and be deemed a council member and be entitled to vote upon all matters considered by the council.** The mayor shall be recognized as the head of the City government for all ceremonial purposes and shall perform any additional duties as provided for by Federal or State laws or regulations.
- (b) Mayor pro tem. Following each city election in May, the council shall appoint one of its members as mayor pro tem. The mayor pro tem acts as mayor during mayor's absence and has the power to perform every act the mayor could perform if present.
- (c) Acting mayor. In the event of the absence, disability or disqualification of both the mayor and mayor pro tem at any particular meeting of the council, the remaining members of the council, if a quorum be present, shall, by election, designate one of theirs members as acting mayor, and he shall act as mayor for such particular meeting and shall have the power to perform every act the mayor could perform if present.

## **Fort Worth**

## § 5 MEETINGS OF COUNCIL AND COMMITTEES OPEN TO PUBLIC; QUORUM; REGULATIONS OF PROCEEDINGS; COUNCIL TO PROVIDE RULES OF PROCEDURE.

The City Council shall hold a meeting within the city limits of Fort Worth for the purpose of canvassing the election results. The elected members of the new Council may take the oath of office at the same City Council meeting where the election results are canvassed, but all elected members shall take the oath of office no later than the next City Council meeting after the results are canvassed. Special meetings may be called by the Mayor or by any three (3) Councilmembers. Such call shall be in writing and shall state the object of the meeting, and no business shall be transacted at such meeting other than that specified in the call. The Council shall meet at such times and places as may be prescribed by ordinance or resolution but not less than forty-four (44) regular and special meetings shall be held each calendar year.

A quorum shall consist of two-thirds (2/3) of the members. All official meetings of the Council and all sessions of the Committees of the Council shall be public except as authorized by law. The ayes and nos shall be taken upon the passage of all ordinances or resolutions and entered upon the minutes of the proceedings of the Council, and every ordinance or resolution shall require on final passage the affirmative vote of a majority of all of the remaining members.

No member shall be excused from voting except on matters involving the consideration of his own official conduct, or where his financial interests are involved, or unless excused by the Council for other valid reasons by majority vote. The Council shall determine its own rules of procedure, and may punish its members for misconduct, and may compel the attendance of absent members.

### **Carrollton**

#### Sec. 2.05. - Presiding officer; the mayor.

The mayor shall preside at meetings of the council, and shall be recognized as head of city government for all ceremonial purposes and by the governor for purpose of military law, but shall have no regular administrative duties. The mayor may participate in the discussion of all matters coming before the council. **The mayor shall not be entitled to vote as a member thereof on legislative or other matters, except in case of a tie, when the mayor shall have the right to cast the deciding vote.** The council shall elect from among the council members a mayor pro tempore who shall act as mayor during the absence or disability of the mayor.

### **Richardson**

#### Section 3.02. - Mayor.

The mayor shall be the presiding officer. **The mayor shall vote on all matters coming before the council, shall have no power of veto,** shall represent the city on all ceremonial occasions and shall be known as the official head of the government.

Nevertheless, the absence of effective leadership, a citistate totally adrift, is a more frightening prospect. The nurturing of new leaders and the creation of metropolitan partnerships that open a way for those leaders to play important region-wide roles are two of the most critical challenges for American citistates in the 1990s.<sup>24</sup>

Distinct differences in mayors’ positions

There remain, however, distinctive differences between the charter authority and duties of a mayor leading a mayor-council city and a mayor leading a council-manager city.

A comparison of key elements of the mayor’s role in the three largest cities in Texas pinpoints the differences.

Figure 8-1: Differences in mayor’s positions			
Factor	Houston (Mayor-Council) Pop. - 2,208,000	Dallas (Council-Manager) Pop. - 1,240,000	San Antonio (Council-Manager) Pop. - 1,328,000
Pay	\$14,583/month	\$5,000/month	\$366/month
Appointment of city’s Department heads	Appoints, subject to City Council approval	No individual decision authority in this area*	No individual decision authority in this area*
Annual budget	Prepares for City Council approval	No individual decision authority in this area	No individual decision authority in this area

\*The City Council, with mayor voting, does appoint the city manager, city attorney, city secretary, and city auditor.

It seems obvious from the comparison in figure 8-1 that an examination of the mayor’s role demands two separate tabulations for the two forms of government. It would be useless to report that the average salary of the mayors in the three largest cities in Texas was something like \$6,649 per month. Yet, some national and state publications in the past have combined mayors of all cities into one summary tabulation.<sup>25</sup>

Charter language regarding the mayor

The pay and responsibility table displays the differences between the mayor’s position in Houston, Dallas, and San Antonio reflecting the content of the “Mayor” articles in their respective charters.

The Houston charter, and similarly the mayor-council charters of Pasadena, Bay City, and others, devote a specific article to the mayor. These articles cover such areas as the definition of the mayor’s position, general powers of the mayor, privilege of vote and veto, authority for removal of appointive officers and employees, and compensation of the

mayor. Mayor-council charters thus address the mayor as the elected head of the city and the chief executive officer. For the latter role, the provisions are similar to the city manager sections in a council-manager charter.

The Dallas charter, and many other council-manager charters, devote one section (one paragraph) to the mayor exclusively. Other sections cover the responsibilities of the mayor as a member of the entire city council.

Selection of the mayor

Mayors of all mayor-council cities in Texas are elected at-large by the voters. Although this is the practice in the great majority of council-manager cities, mayors in six percent of council-manager cities are elected as councilmembers and then selected by their colleagues as the city’s mayor.

Selection of the mayor by the council is reported in some 35 percent of council-manager cities nationwide. The Texas number at six percent is down from the nine percent of the cities in Texas reporting this method in 1994.

Compensation of the mayor

Salary of the mayor is addressed in two different ways by Texas charters. The table below shows these provisions and the number of charters, by form of government, that utilize each of these methods:

Figure 8-2: Setting the salary of the mayor				
	Mayor-Council charters		Council-Manager charters	
	1994	2008	1994	2008
Council sets pay*	46%	38%	55%	38%
Charter sets specific salary or salary range	54%	62%	45%	62%

\*These figures include charters that specifically state the city council shall set its own compensation and charters that are silent on this subject. Where a charter is silent, Section 141.004 of the Local Government Code provides that a governing body of a home rule city may establish a level of compensation for itself.

Salary is an area in which the difference between the two forms of government is very apparent, particularly in the larger cities. The average pay of the mayors in mayor-council cities is \$861.68 per month. This is virtually meaningless, however, since that figure includes not only Houston and Pasadena, but also DeLeon (pop. 2,400) and Olney (pop. 3,300) as well as a host of other smaller cities. It is important to note that 45 percent of mayors in mayor-council cities receive no compensation at all. It is more enlightening to note that the salary of mayors in cities over 50,000 using the mayor-council form of government ranges from \$14,583 on the high end (Houston) to \$50 per month on the low end (San Angelo), with an average salary of \$5,277.

Overall, the average mayoral pay of the council-manager cities is \$159 per month. The average pay for the three largest council-manager cities – Dallas, San Antonio, and Austin – is \$3,677.88. If the San Antonio mayor's salary at \$4,020 per year were omitted, the average of the other two would be \$5,333 per month.

Mayors in council-manager cities not only receive less in salary, but also the difference between the mayor's salary and the councilmembers' salary is usually small.

## Vote in council meetings

Mayor-council charters do not give mayors the unrestricted right to vote as those in council-manager cities generally do. Among the mayor-council cities, 40 percent allow mayors to have a regular vote in council meetings, while 55 percent allow the mayor to vote only in case of a tie by the council, and the remaining 5 percent allow for no vote at all. In council-manager cities, 65 percent have a regular vote, while 35 percent of the mayors vote only in case of tie. Again, these figures are not unlike national survey figures.

Deciding when a mayor votes has caused at least two Texas council-manager cities a lot of grief. Several cities have retained in their home rule charters a provision of the Type A general law municipality. State law provides that if a Type A city is not divided into wards (and many smaller home rule cities are not), the governing body shall always consist of a mayor and five councilmembers, and the mayor shall vote only in case of a tie. The two cities in question had retained this council number and the mayor's restricted vote provision when they adopted home rule charters. The city councils fired their city managers over the protest of the mayor in each city. Both mayors cited provisions in their charters that purported to give the mayors voting power in the event of a vote on dismissing the city manager. The district court in one county upheld one council's dismissal of the manager, ruling the mayor could not vote. A district court in an adjoining county reversed the council decision of the second city and reinstated the manager! The difficulty in both charters came from trying to delineate the cases in which the mayor might have a vote, other than on a tie vote by the council. Both cities have since gone to an odd number on the council and given the mayor a "regular" vote. Because of the problems of these two cities

and the difficulty of wording a charter clearly, several charter consultants recommend that councils be composed of an odd number of individuals and that mayors be given a "regular" vote just as any other councilmember—on all matters. Urban experts offer other reasons for allowing the mayor to vote on all issues. They concur that a mayor's leadership role can be enhanced by the power to vote, particularly on such critical policy issues as appointment and removal of a city manager or chief administrative officer and on bond issues, tax rates, and the adoption of the annual budget.

## Veto

The veto power of the mayor is generally another distinguishing mark of the difference between the two forms of government. Veto provisions in mayor-council charters are much more common than in council-manager charters—nationwide and in Texas. Of those communities with mayor-council charters in Texas, 32 percent provide for a mayoral veto of council actions. Usually these vetoes can be overcome only by a two-thirds or more vote of the council. But in a few cases, the council can simply reconsider the action. If it votes the action again by a majority vote, the mayor has no authority to veto the item a second time.

Only nine percent of council-manager cities provide for a mayoral veto. The denial of the veto is a reiteration of the historic background of the council-manager plan, which saw the strength of the city in a body of policymakers, not in a single individual.

## Budget role

The mayor in 25 percent of mayor-council cities prepares the budget and submits it to the city council. In some small mayor-council cities, the charter says the council shall prepare a budget.

Budget formulation and submission is one of the chief differences between the two forms of government. Only three percent of the cities under the council-manager plan provide for the mayor to prepare the budget. In the council-manager plan, the charter directs the city manager to prepare the budget for the council as a whole. Increasingly, managers are asking their city councils to give them early policy guidance on the council's priorities for the coming year. The mayor obviously can play a lead role in this priority-setting, but councilmembers are often fond of pointing out that in adoption of the final budget, the mayor has only one vote—just as the other councilmembers do. Although it is very rare, mayors are outvoted on budget matters as they are sometimes outvoted on other items in council-manager cities.

The Texas practice in both types of government parallels the national experience.

City of Georgetown, Texas  
Charter Review Committee  
April 6, 2021

**SUBJECT:**

Discussion of possible amendment of City Charter provisions in Article IV related to petition requirements for Section 4.01, power of initiative; Section 4.02, power of referendum; and Section 4.07, Recall of City Officials; and Section 4.08, Recall Petition - Skye Masson, City Attorney

**ITEM SUMMARY:**

**FINANCIAL IMPACT:**

**SUBMITTED BY:**

Mayra Cantu, Management Analyst

**ATTACHMENTS:**

<b>Description</b>		<b>Type</b>
<input type="checkbox"/>	Article IV Charter and Examples	Exhibit
<input type="checkbox"/>	TML Referendum & Recall Research	Backup Material

## **Cover Sheet**

### **Item H. Discussion of possible amendment of City Charter provisions in Article IV related to petition requirements for Section 4.01, power of initiative; Section 4.02, power of referendum; and Section 4.07, Recall of City Officials**

#### **1. Current City Charter Language:**

Sec. 4.01. - Power of initiative.

- The people of the City reserve the power of direct legislation by initiative, and in the exercise of such power may propose any ordinance, except ordinances appropriating money or levying taxes, or ordinances repealing ordinances appropriating money or levying taxes, not in conflict with this Charter, the State Constitution, or the State laws. Any initiated ordinance may be submitted to the Council by a petition signed by qualified voters of the City, equal in number to at least fifteen (15) per cent of the qualified voters of the City in the last municipal election, but not less than two hundred fifty (250) qualified voters of the City.

- Sec. 4.02. - Power of referendum.

The people reserve the power to approve or reject at the polls any legislation enacted by the Council which is subject to the initiative process under this Charter, except that ordinances authorizing the issuance of bonds (either tax bonds or revenue bonds), whether original or refunding bonds, shall not be subject to such referendum. Prior to or within thirty (30) days after the effective date of any ordinance which is subject to referendum, a petition signed by qualified voters of the City equal in number to at least fifteen (15) per cent of the qualified voters in the last municipal election but not less than two hundred fifty (250) qualified voters of the City may be filed with the City Secretary requesting that any such ordinance be either repealed or submitted to the vote of the people. When such a petition has been certified as sufficient by the City Secretary, the ordinance specified in the petition shall not go into effect, or if it shall have gone into effect, then further action thereunder shall be suspended until and unless it is approved by the voters as herein provided.

Sec. 4.07. - Recall of City Officials.

The people of the City reserve the power to recall any elected officer of the City of Georgetown, on the grounds of incompetence, misconduct, or malfeasance in office, and may exercise such power by filing a petition, as described herein, with the City Secretary.

A petition to recall the Mayor only shall be, signed by registered voters of the City equal in number to at least fifteen (15) percent of the number of all of the registered voters in the City at the time of the last regular municipal election, demanding the removal of the Mayor. The petition shall be signed and verified as required by this Charter's provisions and State law.

A petition to recall a Council member shall be signed only by the registered voters of the single member council district that the Council member represents, and the signatures must be equal in

number to at least fifteen (15) percent of the number of registered voters residing in that council district at the time of the last regular municipal election, demanding the removal of their specific Councilmember. The petition shall be signed and verified as required by this Charter's provisions and State law.

In the case of an election to recall the Mayor, any registered voter residing within the City may cast a ballot on the issue of the Mayor's recall.

In the case of an election to recall a Council member, only registered voters residing within the single member council district represented by the Council member sought to be recalled may cast a ballot on the issue of their Council member's recall.

## 2. Discussion:

The Committee requested discussion on the issue of requirements for petitions for initiative, referendum and recall.

## 3. TML Survey:

99. Charter provides for initiative

Yes	216	89%
No	24	10%
N/A	4	2%
Total	244	100%

100. If yes, percentage of

Registered	99	47%
Last vote	105	50%
Minimum names	8	4%
Total	212	10

103. Charter provides for referendum

Yes	212	88%
No	26	11%
N/A	4	2%
Total	242	100%

104. If yes, percentage of

Registered	91	45%
Last vote	104	51%
Minimum names	9	4%
Total	204	100%

108. Charter provides for recall

Yes	223	93%
No	16	7%
N/A	2	1%
Total	241	100%

109. If yes, percentage of

Registered	96	46%
Last vote	105	50%
Minimum names	7	3%
Total	208	100%



The words are used so often together, one can almost see them as one word: *initiativereferendumandrecall*! They really are three separate facets of direct democracy or direct legislation, and you generally find provisions for all three in a charter. The citizens of California helped make initiative and recall household words. The public generally hears information regarding recalls in relationship to gubernatorial recalls. California, the most infamous of the recall states, received a great deal of attention in 2003 when Gray Davis was removed from office. This led the way for Governor Arnold Schwarzenegger to be elected to the top spot in California. In the last few years, members of local governing bodies in Texas have been the subject of recall elections as well. The trend has been for a dissatisfied public to utilize their rights as provided for in the city charter.

## Introduction

All three of these actions begin with a citizen petition to the governing body, and all three can lead to a vote by the people. An initiative petition asks the city council to act on a specific issue when it has not done so previously. If the petition is valid, the council must adopt it or submit it to a vote of the people. Petitioners welcome council adoption, which is faster. A referendum petition asks the city council to reverse an action already taken or proposed. The council can rescind the ordinance or submit it to a vote of the people. A recall petition asks the city council to call an election for a vote on removal of one or more councilmembers from office. If the targeted officials resign, an election is unnecessary.

Although an election is the final possibility in all three situations, petitioners are delighted with any council or individual action that avoids an election.

## Early history of initiative, referendum and recall (I R & R)

These three tools for direct citizen participation in government are residuals of prerevolutionary debates and, particularly, of the drafting of the federal constitution.<sup>34</sup> The debate participants, our founders, argued the merits of “direct” democracy with maximum citizen participation versus the merits of “representative” democracy with elected representatives of the people as the predominant decision-makers. The direct democracy proponents, led by Benjamin Franklin and Thomas Jefferson, lost the debate to James Madison and John Adams. Thus, our U.S. Constitution and our state constitutions are instruments of representative democracy with periodic elections in which the people name the leaders to represent their interests.

State constitutions were not submitted to the people for ratification until early in the nineteenth century. Texas went directly to the voters in 1845 for a pre-annexation vote on its draft constitution, and again five years later with a referendum to determine the location of the capital.

The movement toward greater use of initiative, referendum, and recall (IR&R) at the state level gained impetus in 1892 when endorsement of initiative and referendum at the state level was included in the platform of the Populist Party at its first national convention. In 1898, states began incorporating these direct methods into law. Oregon was first, followed during the next ten years by seven more states. By 1912, a total of 15 states had adopted both initiative and referendum and three more states had adopted one or the other.

The recall also appeared early in America. The 1780 Massachusetts Constitution stipulated that delegates to the Congress of the United States could be recalled at any time within their one-year terms, and others could be chosen and commissioned in their place.<sup>35</sup>

In the late 1800s, recall was considered to be primarily a weapon against governors and the executive branch generally; whereas, initiative and referendum were being targeted to the legislative branch. Since governors at the turn of the century were more highly thought of than legislators, the recall movement did not have the impetus that the other two mechanisms had. Also, the states could not decide if members of the judiciary should or should not be included in the list of officials subject to recall. For these and other reasons, the move to adopt recall along with initiative and referendum did not materialize as quickly.

Texas, ironically, has no provision for any of the three citizen participation methods to be used at the state level, but about 100 years ago, shortly after the advent of commission government at the local level in Texas, the legislature began placing one or more of the three methods in the charters it issued. And to this day, the legislature has not enacted any law to block or even impede the use of the methods by home rule cities.

## I R & R at the local level

The circumstances surrounding the arrival and installation in 1901 of the commission form of government in Galveston may have been the instigating factor for the addition of one or more of these three “direct” citizen processes in early Texas charters. The commission form utilized a five-member elected board that served as both legislative and executive branch and was acclaimed and embraced nationwide. The short ballot (in Galveston, it was five elected members of the governing body elected at large who replaced a mayor and 16 aldermen elected by wards) appealed to citizens. Praise

was widespread for its “businesslike” approach to city government.

To offset the criticism that the new form concentrated power in too few hands, the Texas Legislature began placing one or more of three “direct” methods in almost all of the special legislative charters issued to cities, beginning in 1907. All three features were placed in the Dallas and Fort Worth special legislative charters enacted in 1907, the Amarillo and Waco charters passed in 1909, and the Austin charter in 1911. Although all five of these cities, plus a host of others, changed from commission to council-manager forms of government in the next few years, IR&R remained in their charters.

## NCL Model Charter

The eighth and latest edition of the NCL model city charter provides a comprehensive section that addresses a variety of issues regarding IR&R including: general authority, commencement of proceeding, petitions, procedures for filing, suspension of effect of ordinance, action on petitions, and the results of the election. Below is the language provided on General Authority from the NCL Model Charter:

### **General Authority for Initiative, Citizen Referendum, and Recall.**

**(1) Initiative.** The registered voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.

**(2) Citizen Referendum.** The registered voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

**(3) Recall.** The registered voters of the city shall have power to recall elected officials of the city, but no recall petition shall be filed against any official within six months after the official takes office, nor, in case of a member subjected to a recall election and not removed, until at least six months after the election.

## Charter provisions today

Today, an overwhelming number of Texas city charters call for all three, with the recall provision being the most prevalent; it is found in 93 percent of city charters. The initiative and referendum are provided for in 88 percent of charters. In virtually every charter, IR&R are the subjects of a separate article. Several cities make requirements that apply to all three items. Seguin authorizes the city secretary to use a sampling to check signatures against the voter registration list when the petition names exceed 1,000. There must be a minimum of a 25 percent sample. Several cities have provisions for a minimum turnout before the election will be declared successful, and a couple of cities require a second petition in the case of initiative and referendum. These provisions state that if the petitioners submit one petition and the city council fails to act, the petitioners must then go back and get additional signatures to force an election.

After an initiative or referendum is successful, cities provide various ways for reversing that decision. A few cities state that the council, within months, can simply reverse the decision without an extraordinary vote of any kind. But most charters provide a waiting period before the council can take any action to reverse the vote, and several charters require a majority or greater vote of the total council to reverse the action even after a waiting period. Some charters prohibit petitioners from coming forward on the same question more often than every six months.

Cities are almost evenly split over use of a petitioners' committee (usually five or ten persons). Proponents of such a committee argue that requiring a committee places clear responsibility for the undertaking of initiative or referendum proceedings. Opponents find fault, however, in the fact that such a committee is given the authority to speak for hundreds or thousands of petitioners, and may agree to a city council compromise ordinance without consulting with the petition signers.

In some instances, charter writers have tried to save a little verbiage by combining petition percentages and other common language covering all three actions into one section, stating that it is speaking for all three mechanisms at once. This can be done if handled very carefully, but several charters trying to do this have confused the requirements. Even though it means repeating some requirements, the clearest and cleanest way to state the charter requirements is to do so one at a time for each of the three. In this way, there can be no doubt about meaning.

Finally, when reading the following charts regarding the percentage of signatures required to file a valid petition, it should be remembered that many cities, in addition to requiring a certain percentage of voter signatures, require a minimum number of signatures. The charter frequently provides that the petition must contain the greater of these two: a percentage or a minimum number.

## Initiative provisions in charters

Most of the charters that provide for initiative prohibit petitions being presented to the council that address appropriating funds or authorizing the levying of taxes. Occasionally, a charter prohibits other initiated actions that the framers of the charter felt were inappropriate for citizen initiation.

Requirements on the number of required signatures vary widely. Some cities appear to purposely make it very difficult for voters to initiate ordinances; others have made it fairly easy. The actual requirements reported are:

**Figure 15-1: Signature requirements for initiative\***  
Number of cities requiring “X” percent of all registered voters or of the number voting in the most recent election

Percent:	Registered Voters		Most Recent Election	
	1994	2008	1994	2008
3%	.5	1.0	0	0
5%	2.5	2.0	.5	1.0
10%	14.0	18.0	4.0	3.0
15%	9.0	8.0	3.5	3.0
20%	7.0	9.5	15.0	13.0
25%	6.0	2.0	19.0	20.0
30%	2.5	3.0	10.0	9.0
33/33.3%	0	.5	1.0	.5
35%	1.0	.5	0	0
40%	0	.5	1.5	1.0
50%	0	.5	2.5	2.0
51%	.5	1.0	0	.5
60%	0	.5	0	0

\*Reading the chart: Using line 2 in the left-hand column, the figure means that signatures representing five percent of the voters must be secured; six cities require five percent of the registered voters; one city requires five percent of the last vote.

## Referendum provisions in charters

Many cities and court decisions have declared several areas “off limits” for referendum petitions. Many charters prohibit referendum petitions on: (1) levying taxes, (2) appropriating funds, (3) ordinances fixing rates and charges for utilities, (4) annexations, and (5) ordinances authorizing the issuance of bonds that have been authorized by a vote of the people. Some cities prohibit referendum petitions relating to personnel and administrative matters. The requirements regarding the number of signatures is usually the same as for initiative petitions.

**Figure 15-2: Signature requirements for referendum\***  
Number of cities requiring “X” percent of all registered voters or of the number voting in the most recent election

Percent:	Registered Voters		Most Recent Election	
	1994	2008	1994	2008
3%	.5	1.0	0	0
5%	2.0	1.5	.5	1.5
10%	13.5	16.0	3.0	3.0
15%	9.0	7.0	3.0	3.0
20%	6.0	11.0	16.0	12.5
25%	7.0	3.0	21.0	21.0
30%	3.0	3.0	10.0	10.5
33/33.3%	0	.5	1.0	.5
35%	1.0	.5	0	0
40%	0	0	0.5	1.0
50%	0	.5	2.5	2.0
51%	.5	1.0	0	0
60%	0	0	0	0

\*See explanation under Initiative for example of using this figure.

## Recall provisions in charters

The recall sections of charters have several provisions unique to that device. In less than 5 percent of charters, anywhere from one-tenth to one-half of all the petitioners must swear in the petition that they voted for the councilmember now the subject of their recall. In even fewer charters, candidates to replace the councilmember are listed on the ballot, so that if the citizens vote to recall the councilmember, the individual on the ballot with the most votes is elected at that same election to succeed the recalled individual.

Charters also vary as to whether accusations against a councilmember in a recall petition can be general or must list specific causes for action. North Richland Hills’ charter carries a notation immediately under Article XV on recall stating, “Note: Recall article of this charter has, by implication, been held to be invalid by a district court of Tarrant County in 1991.” According to the city attorney of North Richland Hills, the City of Lake Worth had copied the recall provision of North Richland Hills. This provision states:

Any city official elected by the people, shall be subject to recall and removal from office by the qualified voters of the city on grounds of incompetency, misconduct, or malfeasance in office.

A petition drive attempted to recall a councilmember in Lake Worth in 1991, and the court ruled that the provision was vague and unenforceable. This was a state district court decision that was not appealed. Therefore, the case’s value as precedent is minimal.

Most charter provisions on recall have a statement



that if the mayor or city council does not call a recall election when presented with a valid petition, the county judge shall discharge these duties. Still other charters attempt to place this duty on the district judge. These requirements also present problems because a city does not have the authority to prescribe duties for a county or district judge. The better remedy may be for the charter to provide that any citizen could file with the appropriate court for a writ of mandamus to force the city to call the election.

Finally, charters with recall provisions do have some restrictions on use. First, 55 percent of charters give a newly elected mayor or councilmember a few months on the job before they can be the subject of a recall petition. Our survey showed this grace period generally to be six months.

Similarly, 26 percent of charters provide that after having weathered a recall election, a councilmember may not be subjected to another recall election within a certain period of time. Our review of the charters showed an array of “waiting periods.” Again, six months was the norm, but the time frames ranged anywhere from one month to one year.

To save money on an election, 12 percent of charters make a specific provision that recall petitions will not be honored within a specified period before the person in question will come up for election. These times range anywhere from three months to one year, with three months being the most common, followed by six months.

Finally, there are Texas charters which provide that a councilmember will not be subject to a recall election more than once during a term of office. The survey results in this regard are:

**Figure 15-3: Signature requirements for referendum\***  
Number of cities requiring “X” percent of all registered voters or of the number voting in the most recent election

Percent:	Registered Voters		Most Recent Election	
	1994	2008	1994	2008
3%	0	1.0	0	0
5%	1.5	2.0	0	1.0
10%	9.0	18.0	1.0	3.0
15%	5.0	8.0	.5	2.5
16%	0	0	.5	.5
20%	6.0	9.5	7.5	13.0
25%	6.0	2.0	10.0	20.0
30%	8.0	3.0	20.0	9.0
33/33.3%	.5	.5	1.0	.5
35%	2.0	.5	2.0	0
40%	2.5	.5	2.5	1.0
50%	1.0	.5	5.0	2.0
51%	.5	1.0	8.0	.5
60%	0	.5	0	0

\*See explanation under Initiative for example of using this figure.

IR & R in action

Our survey (Appendix A), which was sent to key officials in every Texas home rule city, asked how many times each of the three provisions had been used in the last five years. We chose five years because we felt institutional memory in most cities might not extend back beyond that period of time.

Initiative results from the survey

The initiative was reported to be used in 24 cities, a total of 41 propositions were presented to the voters, resulting in 31 propositions being approved by voters, seven being turned down by the voters, and three petitions being found invalid. The subject of the measures presented by the citizens varied widely—from an ethics ordinance to no smoking ordinances, as well as funding for facilities. But the largest number of petitions dealt with freezing property taxes for senior citizens and disabled veterans (authorized by separate state law), all of which were approved.

Referendum results from the survey

Eleven cities reported use of the referendum in the past five years. A total of 15 propositions were placed on the ballot with 10 being approved, three failing, and two instances where the city council took action, thereby removing the issue from the election process. We attempted to eliminate all charter and bond issue votes; our interest was in the traditional use of the referendum petition. Here again, the diversity in subject matter represented all sorts of issues, such as the sale of alcoholic beverages in city parks.

Recall results from the survey

Twelve cities reported recall elections in the past five years, with disappointing results for petitioners. Of the 28 individuals that were subject to recall, only twelve recall elections resulted in turning out the individual involved; whereas, the remaining 16 elections resulted in a failure to recall. One city reported that while the recall election may have failed, none of the candidates subject to the recall vote were elected in subsequent elections.

Summary of survey results

Clinton Rogers Woodruff wrote words in 1911 that are still being used by advocates of the three mechanisms. He said there had been too few IR&R elections up to that time to justify a sound conclusion, and then added, “it may, however, be fairly argued that their existence constitutes a substantial, and on the whole, an effective safeguard. Their value rests in their existence, rather than in their use.”<sup>36</sup> This appears to be the case in Texas today, with only 14 percent of all home rule cities being forced into IR&R elections in the last five years.