

# THE CHARTER REVIEW PROCESS

Texas City Attorneys Association  
2016 Summer Conference

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- ❖ History of charters.
- ❖ How is a City Charter created?
- ❖ How can a City Charter be changed?
- ❖ What are some of the key issues that may be addressed?
- ❖ What are some pitfalls to be avoided?

# HISTORY OF CHARTERS

## Charters granted by Legislature

# HISTORY OF CHARTERS

## Republic of Texas

- ❖ 18 charters granted by first Congress
- ❖ Charter for City of San Augustine – any ordinance not in conflict with laws or Constitution of Republic

# **HISTORY OF CHARTERS**

## **Constitution of 1876 – current constitution**

- ❖ General law provided for incorporation of cities under 10,000
- ❖ Cities over 10,000 chartered by special act of the Legislature
- ❖ 1909 – changed to 5,000
- ❖ 1910 – 40 cities in Texas over 5,000 population
- ❖ 1911 Legislative Session – 25% of all bills involved municipal charters

# HISTORY OF CHARTERS

## Home Rule Amendment - 1912

- ❖ Article XI, Section 5 – Any City with more than 5,000 History inhabitants may adopt a charter
  - By majority vote of qualified voters
- ❖ May not be amended more often than every 2 years
- ❖ Limits property tax rate
- ❖ May not contain any provision in conflict with state law or state constitution

# HISTORY OF CHARTERS

## Quickly Adopted

- ❖ Before legislature adopted enabling legislation – 24 cities had drafted charters or amendments
- ❖ 1920 – Court found special charters by legislature unconstitutional
- ❖ By 1920 – 65 cities adopted charters
- ❖ 2010 – 351 cities are home-rule cities who have adopted charters

# HISTORY OF CHARTERS

## One Quirky Note

- ❖ In Texas, when a statute or law says “population,” the legislature has determined that it means “as determined by the most recent federal census”
- ❖ So when a law is passed that applies to cities with a “population of 5,000 or more,” it is very easy to determine which cities are covered
- ❖ The constitution says “more than 5,000 inhabitants”
- ❖ Courts have determined, therefore, that legislative construction is inapplicable



# THE HISTORY OF THE PALESTINE CITY CHARTER

## **Palestine City Charter was adopted by Legislature in 1909**

- ❖ It isn't clear if that was the first charter, but city existed before then
- ❖ Divided city into 4 wards – each elected a commissioner
  - Mayor paid \$750 per year; each commissioner \$500 per year
  - 25 years old and 3 year resident
  - Two-year terms
  - Required to meet twice per month
  - Three-fourths majority necessary for action!
  - Established four departments
    - Public Affairs, headed by Mayor
    - Receipts, disbursements and accounts
    - Streets, public improvements, and public property
    - Police and public safety
    - Each headed by a council member

# THE HISTORY OF THE PALESTINE CITY CHARTER

## **Palestine City Charter was adopted by Legislature in 1909**

- ❖ Sets out powers of city – describes problems of city
  - For example “To prohibit and punish keepers and inmates of bawdy houses and variety shows; to prevent and suppress assignation houses and houses of ill fame, and to regulate, colonize and segregate the same, and to determine such inmates and keepers to be vagrants;”

# HOW IS A CITY CHARTER CREATED?

## Selection of charter commission

- ❖ May be selected by council
  - Submitted by City Council
  - 2/3 vote required
  - Petition of 10% of qualified voters
- ❖ May be elected by voters
- ❖ May be appointed by Mayor
- ❖ May be selected at a “mass meeting”

# **HOW IS A CITY CHARTER CREATED?**

**If, however, a new charter is being proposed  
to replace an existing charter**

- ❖ Charter Commission must be elected

# **HOW IS A CITY CHARTER CREATED?**

**Charter Commission prepares a charter to  
submit to voters**

- ❖ At least 40 days prior to election
- ❖ City Council has no discretion to reject or alter recommendation
- ❖ City Secretary sends copy of proposed charter to every registered voter
- ❖ Each subject matter may be voted on separately.  
[In practice – submitted as a single document.]

# **HOW IS A CITY CHARTER CREATED?**

**Must be adopted by majority vote of  
voters who vote**

# **HOW IS A CITY CHARTER CREATED?**

**As discussed, can appoint a charter commission  
to propose a replacement charter**

- ❖ Voters must approve the creation of charter commission
- ❖ Proposed by 2/3 vote of City Council or Petition of 10% of voters

# HOW CAN A CITY CHARTER BE CHANGED?

## Amendments to Charter may be proposed

- ❖ May be proposed by City Council
  - No 2/3 vote requirement
  - In practice, Council frequently appoints a Charter Revision Commission
  - Unlike with voter-approved charter commission, however, no requirement to accept recommendations
- ❖ May be proposed by petition of 5% of qualified voters
- ❖ Notice published in newspaper
  - “Substantial copy” of amendment
  - Estimated fiscal impact
  - 2 successive weeks, first notice more than 14 days prior to election



# HOW CAN A CITY CHARTER BE CHANGED?

## Amendments to Charter may be proposed

- ❖ An amendment may not contain more than one subject
- ❖ Voters must be able to approve or disapprove each amendment

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Basic Municipal Structure

- ❖ Strong Mayor
- ❖ Council - Manager

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Governing Body

- ❖ Number of council members
- ❖ Terms of Office
- ❖ Term limits
- ❖ Single member Districts or At-large
- ❖ This may be limited by historic litigation

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Governing Body

- ❖ Qualifications for Council
  - Age
  - Residency
  - Disqualification for
    - Misconduct
    - Absences
  - Whether Council is judge of qualifications of members

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Governing Body

- ❖ Conflicts of Interest
  - Can adopt standards more strict than state law
- ❖ Frequency of meetings
- ❖ Open meetings
- ❖ Passage and publication of ordinances
- ❖ Elections
  - Plurality or Majority (run-offs?)
  - Other methods (cumulative voting)

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Mayor

- ❖ Selection of Mayor
  - By voters
  - By council
- ❖ Powers of Mayor
  - Can be largely ceremonial
  - Can be Chief Executive Officer
  - Can be somewhere in between

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Powers of the City

- ❖ Commonly the charter sets out the powers of the City in broad terms
- ❖ Current charter: “full power of local self-government”
  - Followed by 36 sections of enumerated powers
    - Some very general – to own property
    - Some basic to government – to levy and collect taxes
    - Some specific: “to regulate theatres, moving picture shows, tenpin alleys, vaudeville shows, and all places of public amusement”

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Powers of the City

- ❖ Many model charters are more general
  - Either track state law, cite provisions of law, or grant powers to the extent permitted by state law.
  - Advantage of the last option is that it is not outdated when legislature amends the statutory scheme



# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Annexation, Finance

- ❖ These are strongly controlled by statutes
- ❖ Detailed charter provisions are often preempted by state law
- ❖ Better practice is usually to have simple provisions that say “as provided in state law”

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## City Officials

### ❖ Creation of City Offices

- City Manager, City Secretary, City Attorney
  - Often, not always, selected by Council
  - Sometimes City Secretary & City Attorney selected by Manager
  - A very few cities have City Attorney an elected position
- Chief of Police, Fire Chief
  - Usually selected by Manager
  - Does selection require Council ratification?
  - Does termination require Council approval?

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## City Officials

- ❖ Creation of City Offices
  - Other Department Heads
    - Does charter specifically name those departments?
    - Does selection require council approval?
    - Does termination require council approval?
  - This discussion presumes Council-Manager system
    - With a strong Mayor system, you would have the same question with whether Mayor appoints, whether council ratifies

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Initiative, Referendum, Recall

### ❖ Definition

- **Initiative** – the proposal and adoption of an ordinance by citizens
- **Referendum** – the rejection by the citizens of an ordinance approved by the City Council
- **Recall** – the removal of a city councilmember or mayor prior to the end of the term

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Initiative, Referendum, Recall

- ❖ Biggest issue - standard
  - High enough that only issues that are of concern to significant portions of the citizenry are the subject of votes, but low enough that access to the ballot is meaningful
  - Percentages – range from 3% to 60%
  - Base
    - Registered voters?
    - Voted at last election?
    - Is it a requirement that petitioners have voted for official being recalled?

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Other Issues

- ❖ Some issues are generally “off limits”
  - Taxes
  - Appropriations
  - Utility Rates
  - Bonds
- ❖ Timing on recall
  - Grace period before recall – often 6 months
  - Grace period before election – with limited standard election days, would be useless to schedule recall on same day as re-election

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Other Issues

- ❖ Petitioning committee
  - Generally, when ordinance proposed by petition, council can avoid election by adopting the ordinance
  - Some charters provide for a committee that can negotiate with council on language of ordinance
- ❖ Grounds for recall
  - Some charters say recall for “incompetence, misconduct, or malfeasance in office”
  - Others may be for no other reason than disagreement with votes

# WHAT ARE SOME OF THE KEY ISSUES THAT MAY BE ADDRESSED?

## Other Issues

- ❖ “. . . 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.”



# PITFALLS TO BE AVOIDED

- ❖ The role of the City Attorney
  - Who are the members?
  - How experienced with boards?
- ❖ Fixing yesterday's problems

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