

**CITY OF SAN ANTONIO
CITY ATTORNEY'S OFFICE
INTERDEPARTMENTAL CORRESPONDENCE**

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

COPIES TO: Terry M. Brechtel, City Manager

SUBJECT: Proposals for Charter Amendments

DATE: February 25, 2004

Summary

Attached is proposed ballot language and the underlying charter revisions for charter amendment proposals forwarded by the Citizen's Charter Review. I have also provided two other charter amendment proposals discussed by the Governance Committee: to create the Ethics Review Board as an independent enforcement agency for ethics, lobbyist regulations, and campaign finance, and to authorize direct hiring of Council assistants as "at will" city employees.

Also included is draft language to address a number of different proposals discussed in general terms at the Governance Committee. This attachment was forwarded by email to you this past Saturday.



Andrew Martin
City Attorney

APPROVED:



Terry M. Brechtel
City Manager

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

RECOMMENDATIONS OF THE CITIZENS CHARTER REVIEW COMMITTEE

The following draft propositions accomplish the recommendations of the Citizen's Charter Review Committee:

- repeal the "lifetime ban";
- extend the council terms from two years to three years, and term limits from two terms to three terms; and
- increase compensation provided to the City Council to an annual salary equal to 75% of the San Antonio median family income published by the U.S. Census Bureau in the last decennial census (currently \$30,998.25), and 100% of the San Antonio median family described above for the Mayor (currently \$41,331.00), adjusted every ten years, to be effective for the City Council beginning on June 1, 2005.

The committee discussed but made no recommendation on whether the proposed changes to terms and term limits should or should not be applied to permit additional terms of office by current members of the City Council. The draft language provided in this section thus does not address that issue, but will need to include appropriate language once a policy decision on the issue is made.

Each proposition is worded to be answered "yes" or "no" and is independently effective.

Ballot Language to repeal "lifetime ban":

Shall the City Charter be amended to repeal the "lifetime ban" from election to a city office after a person has served a specified number of full terms in the office?

Actual Charter amendment to repeal "lifetime ban":

Section 21. Additional nonconsecutive full terms authorized.

The limitation on terms of office established by this charter does not apply to a person who did not hold that office for any portion of the immediately preceding term of office.

Ballot Language for 3 year terms and 3 term limit:

Proposition ____: Shall the City Charter be amended effective June 1, 2005, to lengthen the term of office for all members of the city council from two years to three years and to revise term limits to prohibit a mayor or a member of the city council from serving more than three full terms of office?

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

**RECOMMENDATIONS OF THE
CITIZENS CHARTER REVIEW COMMITTEE**

Charter amendments 3 year terms and 3 term limit:

Sec. 5. Terms of office.

The terms of office of all members of the council elected at a regular municipal election shall be for three ~~two~~ years beginning on the first day of June next following their election.

Sec. 8. Vacancies.

~~Vacancies on in the council other than in the last place (mayor) arising from any cause shall be filled by a majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty days after such vacancy or vacancies occur. remaining members for the unexpired term only and provided the successor shall possess all qualifications required for the office. In the event of a vacancy in the office of the mayor, the remaining council members shall elect from among themselves, by majority vote, a person to serve as mayor for the unexpired term and the person elected shall take over the last place on the council.~~

Sec. 8. Vacancies.

~~Vacancies on in the council other than in the last place (mayor) arising from any cause shall be filled by a majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty days after such vacancy or vacancies occur. remaining members for the unexpired term only and provided the successor shall possess all qualifications required for the office. In the event of a vacancy in the office of the mayor, the remaining council members shall elect from among themselves, by majority vote, a person to serve as mayor for the unexpired term and the person elected shall take over the last place on the council.~~

Sec. 20. Limitation on terms of office.

No person shall be eligible to hold any elected office for more than three ~~two~~ full terms, and shall not be placed on the ballot for election to any term if service for the full term would constitute a violation hereof. For the purpose of this section, the office of Mayor shall be considered a separate office from other Council places.

TEMPORARY SECTION FOR PROPOSITION _____.

(a) This temporary section applies to the charter amendment proposed as Proposition [INSERT NUMBER] in Ordinance ??????, enacted February 26, 2004, and expires [DATE TO BE INSERTED BASED ON DECISIONS FOR SUBSECTION (C) BELOW]. This temporary section may be deleted from any compilation or codification of the Charter prepared after [DATE TO BE INSERTED BASED ON DECISIONS FOR SUBSECTION (C) BELOW].

(b) The amendments to Section 5 (Terms of Office) and Section 8 (Vacancies) of the San Antonio City Charter take effect June 1, 2005.

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

**RECOMMENDATIONS OF THE
CITIZENS CHARTER REVIEW COMMITTEE**

(c) [THIS SUBSECTION WOULD ESTABLISH THE EFFECTIVE DATE FOR REVISED TERM LIMITS, AND THUS MUST ADDRESS APPLICABILITY OF THIS CHANGE TO CURRENT MEMBERS OF THE CITY COUNCIL.]

Ballot Language for Increased Compensation:

Proposition ____: Shall the City Charter be amended to increase compensation for members of the City Council to an annual salary equal to 75% of the San Antonio median family income determined and published by the U.S. Census Bureau for the most recent decennial census (\$30,998.25 per year, based on the 2000 census), and to an annual salary for the Mayor equal to 100% of the San Antonio median family income as determined above (\$41,331.00 per year, based on the 2000 census), and authorize members of the City Council to participate in health insurance programs available to city employees?

Charter amendments to implement Proposition ____:

Sec. 6. Compensation.

~~Each member of the council shall receive as compensation for his services as such member the sum of twenty dollars (\$20.00) for each meeting of the council attended, provided that the total of such compensation shall not exceed one thousand forty dollars (\$1,040.00) per annum.~~

(a) Each member of the Council shall receive as compensation for services on the Council an annual salary equal to 75% of the San Antonio median family income determined and published by the U.S. Census Bureau for the most recent decennial census; except the Mayor shall receive as compensation an annual salary equal to 100% of the San Antonio median family income as determined above. The salary authorized by this section shall be paid periodically on the same frequency as if the member of the Council were a city employee. Each member of the Council is authorized to participate in any health insurance programs available to city employees, on the same terms and conditions as if the member of the Council were a full-time city employee.

(b) The City Council may provide in an ordinance enacted to compel the attendance of absent members that no compensation established by this section shall be paid for a week during which a member of the Council fails to attend each meeting of the council scheduled by ordinance.

Sec. 9. Mayor and mayor pro tem.

Par. 1. The person elected to the last place on the council shall serve as and be the mayor during his term of office.

~~The mayor shall be the presiding officer of the council and shall receive, in addition to compensation as a member of the council, the sum of three thousand dollars per annum.~~

Par. 2. The mayor pro tem shall act as mayor during the absence or disability of the mayor. Should a vacancy occur in the office of the mayor, the mayor pro tem shall act as mayor until the

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

**RECOMMENDATIONS OF THE
CITIZENS CHARTER REVIEW COMMITTEE**

mayor's position has been filled as provided in Section 8 above. While serving as mayor, the mayor pro tem shall receive the same compensation as the mayor.

Par. 3. The mayor, the mayor pro tem and any member of council may be paid such expenses in connection with their official duties as may be provided by the council.

TEMPORARY SECTION FOR PROPOSITION _____.

(a) This temporary section applies to the charter amendment proposed as Proposition [INSERT NUMBER] in Ordinance ??????, enacted February 26, 2004, and expires June 2, 2005. This temporary section may be deleted from any compilation or codification of the Charter prepared after June 2, 2005.

(b) The amendments to Section 6 (Compensation) and Section 9 (Mayor and mayor pro tem) of the San Antonio City Charter take effect June 1, 2005.

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

PROPOSALS DISCUSSED BY THE GOVERNANCE COMMITTEE

Although the Governance Committee did not vote to forward a recommendation to the City Council, two other proposals to amend the City Charter were discussed at several meetings.

The first proposal creates an Ethics Review Board as an independent board with jurisdiction to enforce ethics, lobbyist regulations, and campaign finance ordinances, as recommended by the Mayor's Committee on Integrity and Trust in Public Government

Ballot Language for Ethics Review Board:

Proposition ____: Shall the City Charter be amended to establish an Ethics Review Board with independent jurisdiction to enforce and sanction violations of ordinances relating to ethics, lobbying, and campaign finance?

Charter amendments for Ethics Review Board:

ARTICLE XIII

ETHICS REVIEW BOARD

Section	<u>166. ORGANIZATION</u>
	<u>167. JURISDICTION AND POWERS</u>
	<u>168. APPEAL</u>

Section 166. ORGANIZATION.

(a) The City Council shall appoint an Ethics Review Board, to exercise the powers and duties established by this Charter. The Ethics Review Board shall consist of eleven members. The Mayor and each member of the City Council shall nominate one member of the Board. Each nominee shall be confirmed by a majority vote of the City Council. Nomination and confirmation of Board members shall be conducted at separate open meetings of the City Council. Initial board appointments shall be made so that terms are staggered, with six members to serve an initial term of two years and five members to serve an initial term of three years, determined after appointment by lottery. Subsequent appointments shall be for a term of two years beginning on the day after the expiration of the preceding full term. No member of the Board shall serve for more than three full terms.

(b) Members of the Board shall have good moral character and shall be residents of the city. No person appointed to the Board may be: a salaried city official or employee; an elected public official; a candidate for elected public office; an officer of a political party; or a person required by ordinance to register as a lobbyist. A member of the Ethics Review Board may be removed from office for cause by a majority vote of the City Council after a public hearing at which the member is provided the opportunity to be heard. Grounds for removal are: a failure to satisfy or to continue to satisfy the qualifications set forth in this section; a substantial neglect of duty; gross misconduct in office; inability to discharge the powers or duties of office; a violation of any provision of the ethics ordinance; or a conviction of a felony or crime of moral turpitude.

(c) The City Council shall fill any vacancy on the Board by a person who will serve the remainder of the unexpired term. The nomination to fill a vacancy shall be made by the member of the City

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

PROPOSALS DISCUSSED BY THE GOVERNANCE COMMITTEE

Council (or his or her successor) who had nominated the person whose successor is to be selected to fill the vacancy.

Section 167. JURISDICTION AND POWERS.

Paragraph 1. Jurisdiction. The Ethics Review Board shall have jurisdiction to investigate and make findings and conclusions concerning:

- (1) an alleged violation of an ethics code enacted from time to time by ordinance;
- (2) an alleged violation of regulations governing lobbying enacted from time to time by ordinance;
- (3) an alleged violation of local campaign finance regulations enacted from time to time by ordinance.

Paragraph 2. Termination of City Official or Employee's Duties. The termination of a city official's or employee's duties does not affect the jurisdiction of the Ethics Review Board with respect to alleged violations occurring prior to the termination of official duties.

Paragraph 3. Powers. The Ethics Review Board has the power:

- (1) to establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with ordinances;
- (2) to meet as often as necessary to fulfill its responsibilities;
- (3) to designate panels with the power to render decisions on complaints or issue advisory opinions on behalf of the Board;
- (4) to request from the City Manager the assignment of staff necessary to carry out its duties;
- (5) to review, index, maintain on file, and dispose of sworn complaints;
- (6) to make notifications, extend deadlines, and conduct investigations, both on referral or complaint;
- (7) to compel the production of sworn testimony, witnesses and evidence;
- (8) to recommend cases for prosecution by appropriate authorities and agencies;
- (9) to enforce its decisions by assessing civil fines and other sanctions authorized by ordinance;
- (10) to request the City Attorney to provide an independent counsel to advise and represent the Board, when appropriate or necessary to avoid a conflict of interest;
- (11) to provide assistance in the training and education of city officials and employees with respect to their ethical responsibilities;
- (12) to prepare an annual report and to recommend to the City Council needed or desirable changes in ordinances under its jurisdiction; and
- (13) to exercise such other powers and duties as may be established by ordinance.

Section 168. APPEAL.

A decision of the Ethics Review Board is final unless the person aggrieved by the decision appeals to the state district court in Bexar County no later than thirty days after the date the Board renders the decision. An appeal of a Board decision is initiated by filing a verified petition setting forth the specific points of error alleged. The District Court shall review an appeal under this section under the substantial evidence rule and shall base its decision on the court's review of the record of the hearing before the Board. The District Court will affirm the findings and decision of the Ethics Review Board and may not substitute its judgment for that of the board unless the Board's decision was arbitrary, capricious, unlawful, or not supported by substantial evidence. If the decision of the Ethics Review Board is not supported by substantial evidence, the District Court may reverse or affirm the Board's decision in whole or in part, or may modify the

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

PROPOSALS DISCUSSED BY THE GOVERNANCE COMMITTEE

Board's decision if substantial rights of the aggrieved person have been prejudiced. The procedures and remedies of said appeals will be governed by the rules and regulations promulgated by the ordinance. Costs of an appeal may not be assessed against the Board, individual board members, or the City of San Antonio.

The second proposal discussed by the Governance Committee authorizes direct hiring of council assistants by a member of the City Council as an "at will" city employee.

Ballot Language for Council assistants:

Proposition ____: Shall the City Charter be amended to permit individual members of the City Council to hire assistants who will serve as "at will" employees of the individual member not part of the classified civil service or administrative service of the city, but who in all other respects are subject to the prohibitions, obligations, and benefits established for city employees?

Charter amendments for Council assistants:

Section 9a. Assistant to Council Member.

A member of the council may employ assistants as authorized by the budget and other applicable ordinances. An assistant to a member of the council is hired by and serves at the will and pleasure of that member during the member's term of office, and is not a member of the classified civil service or the administrative service of the city. In all other respects, an assistant to a member of the council shall be subject to the prohibitions, obligations, and benefits established for city employees by this charter and city ordinance.

Sec. 69. Establishment.

There shall be a classified civil service which shall include all appointive offices and employments in the administrative service and in other agencies and offices of the City, and all persons receiving compensation from the City for personal services, except the following:

- (a) Members of the Council, and assistants employed by a member of the council, as specifically authorized by this charter;
- (b) Persons who are appointed or elected by the Council pursuant to this Charter;
- (c) The City Manager, Deputy City Manager, the Assistant City Managers and Assistants to the City Manager, if any; and the secretary to the City Manager;
- (d) The directors of departments;
- (e) All assistant directors of departments;
- (f) All executive secretaries;
- (g) Architects, attorneys, assistant auditors, dentists, doctors, engineers, psychologists and veterinarians employed by the city;
- (h) Any other managerial or professional employees as designated by the City Manager and approved by the City Council;
- (i) Part-time, temporary and seasonal employees; and
- (j) Persons, firms, corporations, associations, foundations or other organizations whose services may be specifically engaged for professional, investigative, consultative, or other special services, and all employees or agents performing such services for such person, firm, corporation, association, foundation or of organization so specially engaged.

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

OTHER OPTIONS DISCUSSED AT GOVERNANCE COMMITTEE

Proposed Ballot Language to repeal lifetime ban, establish [3 or 4] year terms, but leave 2 term limit unchanged:

Proposition ____: Shall the City Charter be amended effective June 1, 2005, to lengthen the term of office for all members of the city council from two years to **[three or four]** years and to revise term limits to restrict a mayor or a member of the city council to two consecutive full terms of office?

Charter Amendments to repeal lifetime ban, establish [3 or 4] year terms, but leave 2 term limit unchanged:

Sec. 5. Terms of office.

The terms of office of all members of the council elected at a regular municipal election shall be for [three or four] ~~two (2)~~ years beginning on the first day of June next following their election.

~~If a member of the council shall file to become a candidate for nomination or election to any public office, other than that of member of the council, he or she shall vacate immediately his or her place on the council and the vacancy thereby created shall be filled in the same manner as any other vacancies.~~

Sec. 8. Vacancies.

~~Vacancies on in the council other than in the last place (mayor) arising from any cause shall be filled by a majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty days after such vacancy or vacancies occur remaining members for the unexpired term only and provided the successor shall possess all qualifications required for the office. In the event of a vacancy in the office of the mayor, the remaining council members shall elect from among themselves, by majority vote, a person to serve as mayor for the unexpired term and the person elected shall take over the last place on the council.~~

Sec. 20. Limitation on terms of office.

No person shall be eligible to hold any elected office for more than two consecutive full terms, and shall not be placed on the ballot for election to any term if service for the full term would constitute a violation hereof. For the purpose of this section, the office of Mayor shall be considered a separate office from other Council places.

TEMPORARY SECTION FOR PROPOSITION.

(a) This temporary section applies to the charter amendment proposed as Proposition [INSERT NUMBER] in Ordinance ??????, enacted February 26, 2004, and expires June 2, 2005. This temporary section may be deleted from any compilation or codification of the Charter prepared after June 2, 2005.

(b) The amendments to Section 5 (Terms of Office) and Section 8 (Vacancies) of the San Antonio City Charter take effect June 1, 2005.

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

OTHER OPTIONS DISCUSSED AT GOVERNANCE COMMITTEE

(c) The amendment to Section 20 (Limitation on terms of office) of the San Antonio City Charter takes effect on the date the official canvass of election returns is approved.

Proposed Ballot Language to extend terms from two to three years, repeal the "lifetime ban" and allow three full terms, effective June 1, 2005, but prohibit any current councilmember from being elected to a third consecutive term in 2005 or 2008:

Proposition ____: Shall the City Charter be amended effective June 1, 2005, to lengthen the term of office for all members of the city council from two years to three years, revise term limits to allow a mayor or a member of the city council to serve three consecutive full terms of office, but prohibit the Mayor or any current member of the city council from being elected to a third consecutive term in 2005 or 2008?

Charter Amendments to extend terms from two to three years, repeal the "lifetime ban" and allow three full terms, effective June 1, 2005, but prohibit any current councilmember from being elected to a third consecutive term in 2005 or 2008:

Sec. 5. Terms of office.

The terms of office of all members of the council elected at a regular municipal election shall be for three ~~two (2)~~ years beginning on the first day of June next following their election.

~~If a member of the council shall file to become a candidate for nomination or election to any public office, other than that of member of the council, he or she shall vacate immediately his or her place on the council and the vacancy thereby created shall be filled in the same manner as any other vacancies.~~

Sec. 8. Vacancies.

~~Vacancies on in the council other than in the last place (mayor) arising from any cause shall be filled by a majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty days after such vacancy or vacancies occur remaining members for the unexpired term only and provided the successor shall possess all qualifications required for the office. In the event of a vacancy in the office of the mayor, the remaining council members shall elect from among themselves, by majority vote, a person to serve as mayor for the unexpired term and the person elected shall take over the last place on the council.~~

Sec. 20. Limitation on terms of office.

No person shall be eligible to hold any elected office for more than two consecutive full terms, and shall not be placed on the ballot for election to any term if service for the full

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

OTHER OPTIONS DISCUSSED AT GOVERNANCE COMMITTEE

term would constitute a violation hereof. For the purpose of this section, the office of Mayor shall be considered a separate office from other Council places.

TEMPORARY SECTION FOR PROPOSITION.

(a) This temporary section applies to the charter amendment proposed as Proposition [INSERT NUMBER] in Ordinance ??????, enacted February 26, 2004, and expires June 2, 2005. This temporary section may be deleted from any compilation or codification of the Charter prepared after June 2, 2005.

(b) The amendments to Section 5 (Terms of Office), Section 8 (Vacancies), and Section 20 (Limitation on terms of office) of the San Antonio City Charter take effect June 1, 2005.

(c) Notwithstanding any provision of this charter to the contrary, a person elected as Mayor or a member of the city council for a term beginning June 1, 2003, shall not be placed on the ballot for election to a term that begins in 2005 or 2008 if that term would constitute a third consecutive term in that office.

At the February 18 meeting of the Governance Committee, there was discussion about the definition of a "full term" for purposes of term limits. The questions raised the issue of how the current (and proposed) language of Section 20 of the Charter would be construed to apply to a person who resigned his or her office before completing a full term, and whether that person could then run in the next election for a term that would otherwise be a prohibited additional full term. I offered to work on clarifying language. The following subsection could be added as a new subsection (b) to Section 20 to address this concern:

Sec. 20. Limitation on terms of office.

(a) No person shall be eligible to hold any elected office for more than **[leave at two, or change to three]** full terms, and shall not be placed on the ballot for election to any term if service for the full term would constitute a violation hereof. For the purpose of this section, the office of Mayor shall be considered a separate office from other Council places.

(b) A person elected to an office at a regular municipal election and who qualifies for the office shall be deemed to have held that office for a full term, even if the person vacates the office before the expiration of the term. A person elected at a special municipal election to fill a vacant office shall be deemed to have held that office for a full term if the person serves in that office for more than 50% of the full term.

At the Governance Committee meeting on February 4, the committee heard a presentation from Thomas F. Brereton about unimplemented "clean up" and proposed charter amendments from the 1990-93 Charter Review Committees. The committee asked that I review those proposals and visit with Dr. Brereton. He and I met February 18 to discuss the proposals included in his April, 2003 report to the Citizens Charter Review Committee. At the February 18 meeting of the Governance

DRAFT FOR DISCUSSION PURPOSES

February 22, 2004

OTHER OPTIONS DISCUSSED AT GOVERNANCE COMMITTEE

Committee, I reported that a number of the non-substantive “clean up” proposals could be offered as a single ballot proposition, if the City Council decided that would be in the public interest. A proposed ballot proposition could be offered to the voters as follows:

Proposition ____: Shall the City Charter be amended to make non-substantive revisions to the Charter by deleting obsolete transition language, make certain provisions consistent with controlling state law, correct identified editorial or typographical errors, and replace gender-specific words with words that are gender neutral?