

**REPORT
OF THE
COLLEYVILLE CITIZENS' CHARTER
REVIEW COMMITTEE
JULY 28, 2016**

Respectfully submitted,

**Frank Carroll, Chair
Michael Muhm, Vice Chair
Claudia Bevill
Vince Hawkins
Rich Hendler
David Medlin
Shirley Schollmeyer
Nelson Thibodeaux
Steve Walters
Tim Weymouth**

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**REPORT
OF THE
COLLEYVILLE CITIZENS' CHARTER
REVIEW COMMITTEE**

Honorable Richard Newton, Mayor and Members of the City Council

The following Report of the Colleyville Citizens' Charter Review Committee ("CRC" or "Committee") is respectfully submitted in accordance with Resolution R-16-4007¹ unanimously adopted by the Colleyville City Council on June 21, 2016.

In summary, this Report outlines the meetings of the CRC, summarizes the Committee's discussions and rationale for certain of its proposals and for additional matters considered, contains the proposed amendments to the Charter of the City of Colleyville ("Charter") as unanimously adopted by the Committee and makes additional recommendations for matters to be considered by the Mayor and the City Council.

On behalf of the entire Committee, we wish to thank Mayor Newton and the members of the City Council for the opportunity to serve on the Committee and to provide representative citizen input regarding the fundamental governing document for our City, the Charter.

The Committee also wishes to express its special thanks to Assistant City Manager Michael Holder for his assistance in facilitating the Committee's completion of its assigned tasks. The Committee would also like to express its thanks to City Manager Jennifer Fadden, Project Coordinator James Hubbard and City Secretary Amy Shelley for their assistance. Finally, the Committee expresses its thanks to Mayor Newton, Councilman Lindamood and Councilwoman Nakamura for taking time to attend the meetings of the Committee.

I. BACKGROUND

On July 21, 2016 the City Council of the City of Colleyville unanimously adopted Resolution R-16-4007 appointing a Colleyville Citizens' Charter Review Committee. The Resolution appointed ten Colleyville citizens as members.

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¹ A copy of Resolution R-16-4007 is included in the Appendix, App. A.

The Resolution also set a specific and very compressed timetable for the Committee to complete its assigned tasks directing that the Committee's recommendations should be finalized and presented to the City Council by July 29, 2016.

II. ITEMS COVERED BY APPOINTING RESOLUTION

The Resolution directed the Committee to consider amendments to Sections 3.01, 3.09(C), 7.02, 7.03(A), 7.04(A), 7.05, 7.06 and 14.02(K) of the Charter of the City of Colleyville. Although the sections proposed for review were considered and voted on by the Committee individually, the proposed revisions to various subsections of Section 7 of the Charter are substantially identical and are discussed in this Report as a single group.

In addition to the items specifically listed in the Resolution, the Committee determined that certain other sections of the Charter were in need of revision. Consequently, in addition to the sections listed in the Resolution, this Report proposes minor additional amendments to Sections 7.02 and 7.06, the deletion of Article XIII and amendments to Section 14.02(F). Although these sections were not specifically mentioned in the Resolution, the Resolution does not prohibit, and appears to contemplate, that the Committee may consider other possible revisions to the Charter. Section 5 of the Resolution provides that the Committee responsibilities "may include" the specific listed items, but by using the permissive term does not preclude other matters from being considered by the Committee.

Due to the compressed time frame, the Committee elected not to venture beyond the general scope of the Charter Sections included in the Resolution, with the exception of Article XIII. In that respect, the Committee's deliberations and this Report should not be construed as taking any position on whether the Charter should be subject to a more wide-ranging review or whether there exist other Charter sections which should be amended or repealed.

III. MEETINGS OF THE COMMITTEE

A. July 6, 2016 – First Meeting

Although the Committee had planned to conduct up to four meetings, if necessary, the Committee was able to complete its work in only two meetings.

The first meeting was held on July 6, 2016.² The first meeting was attended by 9 of the 10 Committee members and lasted approximately two hours.

The Chair of the Committee presented drafts of proposed amendments to all of the sections of the Charter identified in the Resolution. He then generally described the nature, content and impact of each of the draft amendments.

² A copy of the July 6, 2016 Agenda is included in the Appendix, App. B.

The Chair then advised that the purpose of this first meeting was to engage in a general discussion of the draft amendments, respond to questions regarding the drafts, and consider possible recommendations for any other sections of the Charter which any member of the Committee wished to have considered. To encourage discussion and the exchange of ideas, the Chair stated that this first meeting was to be an informal discussion session and that Robert's Rules of Order would not be applicable.

As reflected by the very detailed and precise minutes prepared by City Secretary Shelly,³ there was extensive discussion of the identified sections of the Charter as well as other sections thought worthy of consideration by Committee members.

In summary, the Committee suggested the following changes, additions, deletions or substitutions to the draft amendments:

1. Section 3.01(A) Limitations on Terms was to be revised to clarify the application of the 12 consecutive year limitation.
2. Section 7.02 City Secretary was to be modified to add the phrase "for an indefinite term."
3. Section 7.06 Department of Finance was to be modified to add the phrase "for an indefinite term."
4. A proposal was to be prepared which would repeal Article XIII Transitional Provisions.
5. Section 14.02(F) was to be added to the other proposed revisions to Section 14.02 to clarify the time frame in which a citizen could file a complaint regarding a violation of Section 14.02 Personal Financial Interest.

The Chair of the Committee was charged with revising the draft and submitting them to the Committee prior to the meeting scheduled for July 14, 2016. The revised draft of proposed amendments was submitted to the Committee members on July 11, 2016.

B. July 14, 2016 – Second Meeting

The Committee met for the second time on July 14, 2016.⁴ The Chair indicated that it was his intention to proceed to vote individually on each of the proposed amendments, and if possible, to complete all voting by the conclusion of the meeting. The Chair further advised that this meeting would be conducted in accordance with Robert's Rules of Order.

It should be noted that two members who had been present at the first meeting were unable to attend the second meeting. After being advised at the first meeting of the two

³ A copy of the July 6, 2016 Minutes is included in the Appendix, App. B.

⁴ A copy of the July 14, 2016 Agenda is included in the Appendix, App. C.

members' inability to attend, the Chair requested the Assistant City Manager to inquire of the City Attorney as to the ability of the two members to attend by telephone conference and vote either orally or by written proxy. The City Attorney advised the Assistant City Manager that a member must be in actual attendance to be able to cast a recorded vote.

Although the vote could not be officially counted, the Chair emailed all Committee members stating the foregoing and offering to present any comments an absent member might wish to make on the drafts and their unofficial vote both to the other Committee members and to the City Council. Unfortunately, neither absent member was able to participate in the manner suggested.

At the meeting and after discussion, a roll call vote was taken individually on each of the proposed amendments. All of the proposed amendments were adopted unanimously by the Committee, with no abstentions, as reflected by the minutes.⁵

IV. COMMITTEE DISCUSSIONS AND RATIONALES

The discussions of the Committee were virtually unanimous in agreeing on the rationales and need for the proposed amendments. The minutes of the meetings reflect the almost universal agreement on the exact amendments now being presented by the Committee to the Mayor and City Council. However, a summary of the Committee discussions and reasoning may be useful in understanding the unanimous result of the Committee's deliberations and votes.

A. Voting Procedures.

The amendment to Section 3.09(C) to clarify voting methods was adopted with little discussion. It was the opinion of the Committee that it should be made clear that "aye or nay" votes were not required on procedural notions and/or nominations to City boards, commissions or committees.

The Committee believes the amendment makes clear that the traditional practice of voting by name on each candidate is not prohibited by the Charter. Likewise the Committee was of the opinion that electronic voting should be authorized at such time as the City had that capability.

B. City Positions Created in the Charter, Council Approval.

The Resolution proposed to add the requirement that for the major City positions designated in the Charter (City Secretary, Chief of Police, Fire Chief, Director of Public Works and Head of the Department of Finance) the City Council must be presented with and approve the proposed employment of those persons.

The Committee discussed the fact that such required approval had been originally in the Charter and that it was unclear to the Committee as to why the approval requirements had been

⁵ A copy of the July 14, 2016 Minutes is included in the Appendix, App. C.

removed. Nevertheless, the Committee was of the opinion that for such public, powerful and important City positions the citizens' elected representatives should approve the initial hiring.⁶

C. Financial Disclosures.

The Resolution proposed to add a new Section (K) to Section 14.02 to be entitled Personal Financial Interest. The purpose of the addition was to require elected, appointed, or hired personnel, as well as candidates for election or appointment, to disclose financial interests that might be impacted or give rise to an appearance of conflict by virtue of the person's position with the City of Colleyville.⁷

The Committee was of the opinion that such financial disclosure requirements should apply to the Mayor and members of the City Council, Planning and Zoning Commission, Zoning Board of Adjustment and candidates for any of those positions. Also, the Committee was of the opinion that such disclosure requirements should include the department heads who would be appointed pursuant to the proposed amendments to Section 7 of the Charter and which would, if adopted, require City Council approval for appointment. Finally, the Committee was of the opinion that these disclosure requirements should apply to the City Manager and all of the City Manager's senior staff. Because job titles change it was thought appropriate not to further define "senior staff," but it was the Committee's intent to include, at a minimum, persons with the power to act in the City Manager's absence, the power to legally bind or commit the City to contracts, and those authorized to take official positions on behalf of the City.

Amendments to Section 14.02 beyond those suggested in the Resolution were also considered and adopted by the Committee. Those amendments will be discussed in a subsequent section of this Report.⁸

D. Term Limits.

The Resolution directed the Committee to consider an amendment to the Charter that would impose a two term limit on a person serving in the Office of Mayor or as a member of the City Council. The Committee was unanimous in its discussions and recommendations that term limits were needed and that a two term limit on service in the office of Mayor or as a member of City Council was an appropriate time period . The Committee also unanimously concurred in recommending a one full term interruption in continued service before a candidate was eligible to run again for the same office.

The Committee did consider three possibilities for implementing the proposed term limits. One possibility would be to implement the limitation immediately upon passage of the amendment. The impact of this would be that any sitting Mayor or City Council member who had already served more than two consecutive terms or 12 consecutive years in the combined

⁶ The minor additional amendments to Sections 7.02 and 7.06 are discussed, infra, at paragraph V of this Report.

⁷ Financial disclosures had previously been regulated by ordinance. Those ordinances, and the need for their possible revision or repeal, is discussed infra at paragraph V.

⁸ See infra at paragraph V.

office of Mayor and City Council would be deemed to have automatically resigned or had been automatically removed from office.

Members of the Committee inquired as to whether this could be done retroactively. The Chair advised that both the Texas Supreme Court and the Texas Attorney General had concluded that there was no legal barrier prohibiting the citizens, by charter amendment, from imposing term limits on sitting members of the City Council.⁹

The second alternative considered was to implement the proposed amendment at the next city election. Such would not require the removal or resignation of any sitting Mayor or City Council member but would apply to all sitting members making ineligible any person who had served two consecutive terms as Mayor or a City Council member, or more than 12 consecutive years in the combined office of Mayor and City Council.

The third alternative considered was to grant special dispensation to some or all persons currently sitting as Mayor or as a City Council member thereby exempting them from the impact of the amendment if adopted by the citizens of Colleyville.

Although several Committee members indicated a strong interest in applying the amendment retroactively to remove sitting members who had exceeded term limits, after discussion, it was unanimously agreed that such was not the best course for the City. First, it might impact the ability of the City Council to perform its scheduled duties until a replacement was appointed, if appropriate, for any term limited person, or a special election was held to fill the vacancy if required. The Committee also considered the cost of holding a special election and the need to conserve taxpayer funds.

The Committee also rejected, the vote being unanimous,¹⁰ the suggestion that any sitting member be given an exemption or special dispensation from the application of a Charter amendment adopted by the citizens of the City of Colleyville. It was the opinion of the Committee that there should be no special treatment given to any person and that the new charter provision should apply immediately to all office seekers at the next election.

The only rationale suggested for giving certain sitting members an exemption was that having experienced members would provide “an institutional memory.” The Committee

⁹ Copies of the two Texas Supreme Court opinions and the two Texas Attorney General opinions are included in the Appendix, Apps I-L. Pertinent portions of the same have been highlighted. The Texas Supreme Court held in *Corpus Christi People's Baptist Church, Inc. v. Nueces County Appraisal Dist.*, 904 S.W. 2d 621, 626 (Texas 1995) that “unless vested rights are destroyed or impaired, a law is not invalid even though retroactive in operation.” Further, the Texas Supreme Court held in *Tarrant County v. Ashmore*, 635 S.W. 2d 417, 422 that a public officer “has no vested right in the office held by him.” Finally, the referenced Attorney General’s opinions make clear that public officer positions may be changed “even though terms of some incumbent trustees will be shortened.” Atty. Gen. Op. GA-0356 at p. 3. “If a city charter term limit provisions applies to service as a city officer prior to its adoption, it does not impair a vested right and therefore is not a ‘retroactive law’ prohibited by Article I, section 16 of the Texas Constitution.” *Id.*

¹⁰ At the first meeting, one member of the Committee, who was unable to attend the second meeting, expressed the view that the amendment should not apply to sitting members.

concluded that because the terms of office are staggered and the City Manager and staff provide any necessary “institutional memory,” the amendment should apply in the next City election.

The Committee therefore determined that between the two poles of retroactive application and deferral for 6 years, the best, fairest and middle ground compromise would be to not immediately remove someone from office or give someone a six year pass on compliance. Rather it was the unanimous vote of the members of the Committee adopting the proposed amendment to apply it to all persons running in the next and all future city elections.¹¹

V. ADDITIONAL RECOMMENDATIONS OF THE COMMITTEE

The Committee, as permitted by the Resolution, also considered several other amendments not specifically identified in the Committee’s charge. Most of the amendments were of a housekeeping or clarification nature and were unanimously approved by the Committee.

A. Section 7.02 and 7.06.

These two sections did not contain the language “for an indefinite term” as contained in all of the other subsections of Section 7 being proposed for amendment to add the phrase “with the approval of City Council.” As a housekeeping matter and to insure consistency the Committee proposes that the phrase “for an indefinite term” be added to Sections 7.02 and 7.06 of the Charter.

B. Article XIII Transitional Provisions.

As another housekeeping matter the Committee proposes that Article XIII Transitional Provisions be repealed since Article XIII concerns matters occurring during the expired transition period in which the City converted from a 5 to 6 person City Council and the Mayor was authorized to vote only in limited circumstances.

C. Section 14.02.

In addition to adding subsection (K) discussed above, which was included in the Committee’s charge, the Committee also proposes to amend subsection 14.02(F) and add subsection 14.02(L). The amendment to subsection (F) adds language which gives a citizen more time to file a complaint regarding a violation of Section 14.02’s disclosure requirement. If a violation occurs by virtue of a vote or a decision (e.g. signing a contract) then the violation is objectively determinable by a citizen. However, if the violation is not objectively determinable because it is not public or is concealed, then a citizen has 15 days after he “knew or reasonably should have known of the violation” to file a complaint.

Finally, the Committee was of the opinion that the addition of subsection (L) makes clear that the disclosure requirements of new subsection (K) apply to the entirety of Section 14.02 and all of the matters covered therein.

¹¹ The complete text of the proposed amendment as adopted by the Committee is included in the Appendix, App. D.

D. Miscellaneous

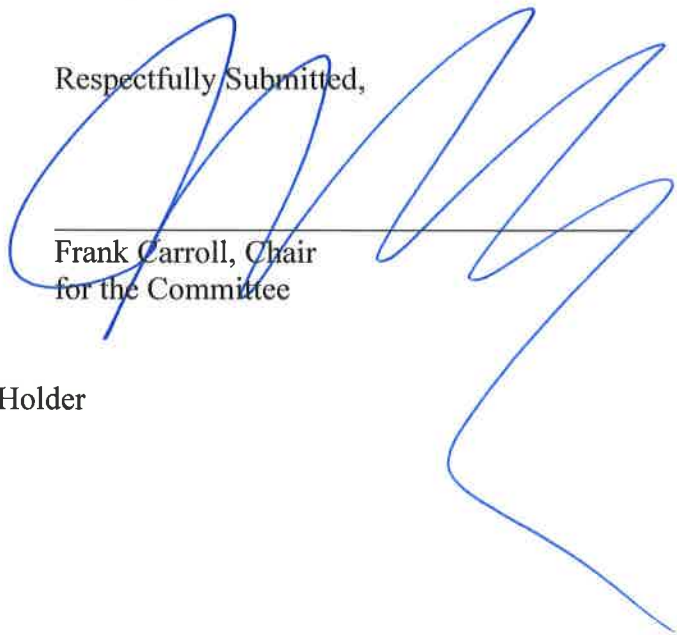
Although not contained in the text of the proposed amendments, the Committee would also recommend the following two additional items for consideration by the Mayor and City Council.

1. Implementation of Section 14.02. The Committee would recommend that the City Manager be charged with the preparation of draft forms, to be approved by the City Council, which accomplish the initial, supplemental and annual disclosures required by new Section 14.02(K).
2. Review, Amendment or Repeal of Possibly Conflicting or Redundant City Ordinances. As noted in the discussion of the proposed amendments to Section 14.02, the City has previously regulated such matters by ordinance. In particular ordinances O-02-1322 and O-13-1896 regulate the same subject matter as proposed Section 14.02.¹² To the extent such ordinances conflict, overlap or are superfluous, the Committee recommends their repeal, in whole or in part.

VI. CONCLUSION

Absent further direction, this concludes the work of the CRC. On a point of personal privilege, I would like to thank my Vice Chair, Mike Muhm, and all of the members of the Committee for their diligence, preparation, contribution, preparation and service. It has been a pleasure working with all of you.

Respectfully Submitted,



Frank Carroll, Chair
for the Committee

7/28/2016
Date

- c: Mayor Richard Newton
Assistant City Manager Michael Holder
Michael Muhm, Vice Chair
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¹² The ordinances are included in the Appendix, Apps M-N.