



**CITY OF FAIR OAKS RANCH
HOME RULE CHARTER COMMISSION MEETING**

October 24, 2016; 2:00 p.m.

Public Safety Building - Training Room
7286 Dietz Elkhorn, Fair Oaks Ranch, TX 78015

I. ROLL CALL

II. CITIZENS and GUEST FORUM / PRESENTATIONS

To address the Home Rule Charter Commission, please sign the Attendance Roster located on the table at the entrance of the Council Chamber. In accordance with the Open Meetings Act, Council may not discuss or take action on any item which has not been posted on the agenda.

A. Citizens to be Heard

III. CONSENT AGENDA

All of the following items are considered to be routine, there will be no separate discussion on these items and will be enacted with one motion. Items may be removed by any Home Rule Committee Member by making such request prior to a motion and vote.

A. Approval of October 17, 2016 Home Rule Charter Commission Meeting Minutes.

B. Approval of City Manager Selection Criteria revision as follows:

“The City Manager shall be chosen by the City Council solely on the basis of his executive and administrative training, experience, fit for the community and ability.”

IV. CONSIDERATION/DISCUSSION ITEMS

A. Review of previously approved sections with direction to City Attorney.

B. Consideration and possible action on initiative, referendum and recall; eminent domain; general provisions

V. ADJOURNMENT

I, C. Vanzant, certify this Meeting Notice was posted on the outside bulletin board at the Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas, and on the city's website www.fairoaksranchtx.org, both places being convenient and readily accessible to the general public at all times. Said Notice was posted by 10:00 a.m., October 19, 2016 and remained so posted continuously for at least 72 hours before said meeting was convened.

MINUTES, OCTOBER 17, 2016; 1:00 P.M.
CITY OF FAIR OAKS RANCH HOME RULE CHARTER COMMISSION
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015

I. ROLL CALL

Attendees: T. Jaster, B. Sparks, C. Fothergill, D. Deleranko, F. Trapasso, B. Regan, R. Nichols, and J. McConnell

Absent: G. Maxton, J. Merritt, and D. Pearson

With a quorum present, President Nichols opened the meeting at 1:00 p.m.

II. CITIZENS/GUEST FORUM PRESENTATIONS

S. Hartpence, citizen, noted some concerns regarding the already Commission-approved City Manager Charter Section and asked that they revisit the Section (see Attachment A).

III. CONSENT AGENDA

A. Approval of October 3 and 11, 2016 Home Rule Charter Commission Meeting minutes

B. Regan and D. Deleranko noted, on last page of the October 3 minutes, that a form of action is missing from item 2 under Performance and Accountability. Commission Secretary stated no recording of the meeting was performed and as such this can't be verified. A further discussion was held on the words "shall be" and "solely" of the same item. As this Section will be revisited due to the Guest recommendation and other concerns, the Commission, by consensus, accepted the October 3 and 11, 2016 meeting Minutes.

IV. CONSIDERATION/DISCUSSION ITEMS

A. Consideration and possible action on departments and department heads; general provision including development agreements; finance; initiative, referendum and recall

D. Deleranko expressed his views that the Charter, at a minimum, should define the following departments which is needed to protect the life, security, safety and health of our citizens: Police, Finance, Public Works, and City Secretary. A discussion was held on the broadness of Public Works and whether the Council can eliminate/create other departments.

MOTION: Made by D. Deleranko, seconded by C. Fothergill that Police, Finance, Public Works and City Secretary departments shall be mandated by Charter.

VOTE: 4-3; Motion Passed (Nayes: Jaster, Regan, Sparks)

D. Deleranko referred the Commission to the City of Cibola Charter regarding the City Secretary position:

(1) The City Council shall appoint or remove without cause, the City Secretary upon the affirmative vote of a three quarters (3/4) majority of the City Council.

(2) The City Council shall fix the compensation of the City Secretary, and the City Secretary's compensation may be amended, from time to time, in accordance with the City Secretary's experience, qualifications and performance. The City Secretary shall report administratively to the City Manager but may be removed from office only by the Council.

(3) The City Secretary shall:

(A) Give notice of all official public meetings of the City Council, Commissions, and Boards in a manner consistent with this Charter and state laws;

(B) Attend all public meetings and hearings of the City Council;

- (C) Keep the minutes of the proceedings of all public official meetings and hearings of the City Council in a manner prescribed by the City Council consistent with applicable law;
- (D) Act as custodian of all official records of the City Council;
- (E) Hold and maintain the seal of the City and affix this seal to all appropriate documents;
- (F) Authenticate, by signature and seal, and record all ordinances, resolutions and proclamations of the City;
- (G) Perform such other duties, as may be required by the City Council, which are consistent with this Charter and state and federal law; and
- (H) Schedule and oversee all City elections in accordance with the Texas Election Code [Tex. Election Code, § 1.001 et seq.] and any other applicable law.

MOTION: Made by D. Deleranko, seconded by J. McConnell to approve the City Secretary position in accordance to the Cibolo Charter except item 1 should read "shall appoint or remove without cause, the City Secretary upon the affirmative vote of a simple majority of the City Council".

VOTE: 8-0; Motion Passed

B. Regan referred the Commission to the City of Bellmead Charter regarding Administrative departments: "There are hereby created the following administrative departments: Finance, police, fire, and public works, and such other departments as may be established by the council as hereinafter provided. The council may, if it deems it advisable, consolidate the departments hereby established. The council by ordinance may create, change, and abolish offices, departments, or agencies other than the offices, departments and agencies established by this charter".

MOTION: Made by B. Regan to approve the Administrative departments in accordance to the Bellmead Charter except amend departments to "Finance, Police, Public Works and Public Health".

AMENDMENT: Made by B. Regan to amend the departments to "Finance and Police"

AMENDMENT: Made by B. Regan, seconded by J. McConnell to approve the Administrative departments in accordance to the Bellmead Charter except amend the departments to "Finance, Police, and Public Works"

VOTE: 8-0; Motion Passed

B. Regan referred the Commission to pages 76 and 79 of the Blodgett paper titled, "Texas Home Rule Charters" regarding fiscal year budget and capital budget and D. Deleranko referred the Commission to the City of Bellmead Charter Section 15 regarding the Director of Finance position. The Commission discussed budgets, whether City Council or the Charter should specify the Finance Officer duties, and whether the Finance Officer should be appointed/removed by City Council or the City Manager with the city's Interim Finance Officer, L. Coones. At the conclusion of the discussion, the Commission agreed no further discussion was needed regarding the Finance Officer position.

A discussion on the termination process of certain department heads was held. Should it be the duty of the City Manager or City Council, a combination of both, or just the City Manager advising the Mayor and/or Council?

MOTION: Made by T. Jaster, seconded by J. McConnell approving "The City Manager shall notify the Mayor, in writing, upon terminating the Public Works, Finance and Police department heads"

VOTE: 3-5; Motion Failed (Nayes: Sparks, Fothergill, Deleranko, Jaster and Regan)

Commission agreed to talk about development agreements during the discussion of Planning and Zoning Section. In preparing for the discussion on initiative, referendum and recall, F. Trapasso asked the members to review the City of Boerne's Charter.

V. ADJOURNMENT

President Nichols adjourned the meeting at 3:10 p.m.

Rich Nichols, Commission President

ATTEST:

C. Vanzant, Interim City Secretary

Black text is taken from the 10/3/16 minutes; Blue text= my comments

3. The City Manager shall be chosen by the City Council solely on the basis of his executive and administrative training, experience and ability.

This rules out things like personality fit, energy level, sincerity, style, future career plans, etc. This will open us up to litigation from a rejected candidate who, on paper, is better qualified but is obviously not the best candidate. I suggest this not be used. What do we gain by having it?

14. Under the oversight of the Mayor, the City Manager is responsible for the coordination of City communication with the public and the news media including outreach initiatives to the citizens and general public through various media venues. (The Mayor to a large extent and the City Council to a lesser extent are the elected face of the city to the residents. The City Manager is appointed to reflect reflect nothing more nor less than the views of the Mayor/Council and I think it is important to make that clear).

17. The City Manager shall appoint and, when the City Manager deems it necessary for the good of the City, may suspend or remove any city employee except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter. The City Manager may authorize any employee who is subject to the City Manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.

- Giving the City Manager the power to terminate employees with no oversight would be a serious mistake. It has the potential to expose the City to huge liability from wrongful termination lawsuits. No company I have ever worked for or known of allows a single individual to terminate an employee without review which in this case should be the Mayor. That is one reason you have suspensions- to allow the employee to be removed from the workplace while careful consideration is made by more than a single person.
- Delegating the power to terminate to lower levels of supervision would be a similar, but bigger mistake.
- I strongly suggest that the Mayor review and approve all recommended terminations.

 10/17/16

Attachment A

V. – DEPARTMENTAL AND ADMINISTRATIVE ORGANIZATION

Section 5.01 - City Manager.

A. Creation of City Manager Position:

1. The municipal position of “City Manager” is hereby created.
2. The City Manager is the chief administrator of the City and shall be responsible for the proper and efficient management of the affairs and day to day operations of the City. The City Manager shall report to and shall receive policy direction from the whole of the City Council.
3. The City Manager shall be chosen by the City Council solely on the basis of his executive and administrative training, experience and ability.

B. Appointment and Removal:

1. A two-thirds (2/3) vote of the City Council is required to appoint the City Manager.
2. A majority vote of the City Council is required to remove the City Manager.
3. The City Manager shall serve at the will of the City Council.

C. Duties and Responsibilities:

1. The City Manager is responsible for implementing the ordinances and policies adopted by the City Council and for upholding State and federal laws and regulations.
2. The City Manager attends and participates in City Council Meetings but has no vote.
3. The City Manager shall supervise the preparation of agendas for all meetings of the City Council. The agendas shall be prepared in accordance with Rules and Procedures adopted by the City Council and as provided for in this Charter.
4. The City Manager provides staff support services to the Mayor and Councilmembers.
5. The City Manager has a professional obligation to provide recommendations and advice to the City Council on City policy issues.
6. The City Manager conducts research and analyses to assist the City Council in the formulation of policy.
7. The City Manager shall initiate and assist the City Council in the development of long term goals for the City and assist in the formulation of strategies to achieve such objectives and goals.
8. The City Manager shall prepare and administer the budget in accordance with state law.
9. The City Manager shall keep the City Council fully advised as to the financial condition of the City and future needs of the City.

10. The City Manager shall oversee the purchasing of all merchandise, materials, supplies and services as budgeted and shall put in place such rules and regulations governing contracts, requisitions and transactions of business between City departments and vendors of goods and services in compliance with all State procurement laws.
11. The City Manager is authorized to make all purchases on behalf of the City according to the City's financial policy.
12. The City Manager shall negotiate, sign, execute and monitor implementation of all contracts including franchise agreements entered into by the City in accordance with City Financial policy.
13. The City Manager shall prepare and present to City Council a risk management plan.
14. The City Manager is responsible for the coordination of City communication with the public and the news media including outreach initiatives to the citizens and general public through various media venues.
15. The City Manager shall make reports to the City Council and public on the affairs, finances and operations of the City as directed through Council policy.
16. Except as otherwise provided for in this Charter the City Manager shall direct and supervise the administration of all departments, offices and public utilities of the City and shall investigate or cause to be investigated as appropriate any complaints concerning the administration of the City.
17. The City Manager may appoint, suspend or remove any City employee except as otherwise provided by this Charter. The City Manager may authorize any employee who is subject to the City Manager's direction and supervision to exercise these powers with respect to subordinates in that employee's department, office or agency.
18. The City Manager shall direct and supervise the administration of all departments, officers, and agencies of the City, except as otherwise provided by this Charter or by law.
19. The City Manager shall publish and make personnel policies and procedures adopted by City Council available to all City employees.
20. The City Manager shall promote cooperation and collaboration among the Mayor, Council members, staff, community groups and individual citizens in building a sense of community.

21. The City Manager shall encourage and provide staff support for regional and intergovernmental cooperation and collaboration.
22. The City Manager shall keep a written inventory of all real property and all permanent equipment belonging to the City, said inventory to be subject to annual audit. A system shall be established to control the use and replacement of expendable items.
23. The City Manager shall perform other duties as required by the City Council and as provided for in this Charter.

D. Performance and Accountability:

The City Council shall meet with the City Manager at least once annually to evaluate the performance, orally and in writing, of the City Manager and establish performance goals and expectations for the upcoming year.

E. Compensation:

The Manager shall receive the compensation as provided and directed by the City Council.

Section 5.02 – City Attorney.

- A. The City Council shall appoint a licensed attorney of the State of Texas to be the City Attorney. The City Attorney shall receive for services such compensation as may be fixed by the City Council for regular and special duties and shall hold office at the pleasure of the City Council. The City Attorney or such other attorney's selected by the City Attorney with the approval of the City Council shall represent the City in all legal matters.
- B. The City Council shall have the right to retain special counsel at any time that it may deem necessary and appropriate.

Section 5.03 – Municipal Court.

- A. The City Council shall establish and cause to be maintained a Municipal Court. The Court shall have all the powers and duties as are now, or as may be, prescribed by the laws of the State of Texas.
- B. The City Council shall appoint, by the affirmative vote of a majority of the voting membership of the City Council, such Municipal Judges of the Municipal Court, as may be necessary, all of whom shall be competent, duly qualified attorneys licensed and practicing for at least two (2) years in the State of Texas. In the event a duly qualified attorney is not available, the City

Council shall then select a qualified person to be the Municipal Judge. The Municipal Judge(s) of the Municipal Court(s) shall be appointed to a term of two (2) years. The appointment of the Municipal Judge(s) may be terminated at any time by the affirmative vote of a two-thirds majority of the City Council, after due notice and a public hearing. The Municipal Judge(s) shall receive compensation as may be determined by the City Council.

- C. All special expenses and fines imposed by the Municipal Court(s) shall be paid into the City Treasury for the use and benefit of the City, as may be consistent with present and future laws.

Sec. 5.04. - City secretary.

- A. The City Council shall appoint or remove without cause, the City Secretary upon the affirmative vote of a majority of the City Council.
- B. The City Council shall fix the compensation of the City Secretary, and the City Secretary's compensation may be amended, from time to time, in accordance with the City Secretary's experience, qualifications and performance. The City Secretary shall report administratively to the City Manager but may be removed from office only by the Council.
- C. The City Secretary shall:
 - 1. Give notice of all official public meetings of the City Council, Commissions, and Boards in a manner consistent with this Charter and state laws;
 - 2. Attend all public meetings and hearings of the City Council;
 - 3. Keep the minutes of the proceedings of all public official meetings and hearings of the City Council in a manner prescribed by the City Council consistent with applicable law;
 - 4. Act as custodian of all official records of the City Council;
 - 5. Hold and maintain the seal of the City and affix this seal to all appropriate documents;
 - 6. Authenticate, by signature and seal, and record all ordinances, resolutions and proclamations of the City;
 - 7. Perform such other duties, as may be required by the City Council, which are consistent with this Charter and state and federal law; and
 - 8. Schedule and oversee all City elections in accordance with the Texas Election Code [Tex. Election Code, § 1.001 et seq.] and any other applicable law.

Section 5.04 - Other Departments, Offices, and Agencies.

- A. There are hereby created the following administrative departments: Police, Finance, Public Works, and such other departments as may be established by the City Council as hereinafter provided.

B. The City Council may, if it deems it advisable, consolidate the departments hereby established.
The City Council by ordinance may create, change, and abolish offices, departments, or agencies other than the offices, departments and agencies established by this charter.

I. - FORM OF GOVERNMENT AND POWERS

Section 1.01 – Form of Government.

The municipal government provided for by this Charter shall be known as the "City Council-Manager" form of government. All powers of the City shall be vested in the Council, hereinafter referred to as the "City Council," and shall appoint the City Manager. The City Manager shall answer to the City Council for the execution of the laws and the administration of the government of the City.

Section 1.02 - Powers.

- A. The City of Fair Oaks Ranch shall have the power of local self government to the fullest extent permitted by law.
- B. Except where specifically limited in this Charter the City shall have all the powers granted to cities by the Constitution and Laws of the State of Texas or other law together with all of the implied and specific powers necessary to carry into execution those powers and those express, implied and specific powers necessary for the government, interests, health, welfare and good order of the City and its inhabitants.
- C. All powers shall be exercised and enforced in the manner prescribed by the laws of the State of Texas, in this Charter and action of City Council.

II. - BOUNDARIES

Section 2.01 - Boundaries.

The boundaries of the City of Fair Oaks Ranch shall be the same as existed prior to the adoption and ratification of this Charter and as are more fully set out and described by the official city map of the City of Fair Oaks Ranch.

Section 2.02 - Extension of Boundaries—Annexation.

The City Council shall have the full power to annex territory, to extend and enlarge the city boundaries and exchange areas with other municipalities.

Section 2.03 - Contraction of Boundaries—Disannexation.

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

III. – City Council

Section 3.01 – Number, Selection, and Term.

- A. The membership of City Council (Members of City Council) shall be composed of the Mayor and six (6) Council Members. The Mayor and Council Members shall be elected from the City at large for three (3) year terms. Each Council Member shall occupy a place on the Council, such places being numbered 1 through 6. Each year two Council places shall be elected for their respective terms except as set forth in the transitional provisions hereinafter set forth.
- B. Each Member of City Council shall take office upon completing the oath of office and shall hold office until his or her successor is elected and qualified; such time period being defined as the Term of Office.
- C. No individual may run for more than one elective city office at a time.

Section 3.02 - Qualifications for Office

The Mayor and each Council Member shall:

- A. Be a qualified voter in the City and State at the time of taking office;
- B. Be a resident of the City;
- C. Have resided continuously in the corporate limits of the City for 12 months immediately preceding the date of the election or on the date of appointment, as applicable;
- D. Be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable;
- E. Not be in violation of any provision in this Charter;
- F. Satisfy any other eligibility requirements prescribed by law for the office for which they are a candidate.

Section 3.03 - Judge of Qualifications.

The City Council is the final judge of all elections and the qualifications of its members.

Section 3.04 - The Mayor

- A. The Mayor shall be the presiding officer of the City Council and shall be recognized as the head of the City government for all ceremonial purposes, for emergency management purposes, and by the governor for purposes of military law.
- B. The Mayor may debate and discuss any matters before the City Council and shall vote on all issues with the City Council.
- C. The Mayor shall, when authorized as necessary by the City Council, sign all official documents.
- D. The Mayor shall appoint, upon nomination by majority vote of the City Council, the members of citizen advisory boards and commissions.

Section 3.05 - Mayor Pro-Tem.

- A. 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.
- B. The Mayor Pro-Tem shall act as Mayor during the absence or disability of the Mayor.

Section 3.06 – Meetings

A. Meetings.

- 1. The City Council shall hold at least one regular meeting per month at City Hall or other place designated by City Council. Said meeting to be held no earlier than 6:00 pm local time.
- 2. The regular meeting times, and places shall be set by resolution.

B. Quorum. A majority of the Members of City Council shall constitute a quorum for the purpose of transacting business.

C. Vote. No action of the City Council, except as specifically provided in this Charter, shall be valid or binding unless adopted by the affirmative vote of a majority of the whole City Council.

D. Agendas.

1. A Member of City Council may place an item on an agenda. The member of City Council desiring to place an item on an agenda shall submit in writing the request to place the item on an agenda to the City Secretary. The item shall be placed on the next City Council meeting occurring on or after the 5th calendar day after receiving the request.
2. At a meeting of City Council a member of City Council may place an item on an agenda by making a motion to place the item on a future agenda. No discussion shall occur at the meeting regarding the placement of the item on a future agenda.
3. The City Manager may place any item on any City Council agenda.

E. Procedures. City Council shall, except as otherwise provided for in this Charter, create rules of procedure for all City Council workshops, regular and special meetings and public hearings by ordinance.

F. Legislation by Ordinance.

1. The City Council shall legislate by ordinance and the enacting clause of every ordinance shall be "Be it ordained by the City Council of the City of Fair Oaks Ranch, Texas. . . ."
Each proposed ordinance shall be introduced in the written or printed form required for adoption and shall not contain more than one subject, but general appropriation ordinances may contain various subjects and accounts for which monies are to be appropriated. The subject or subjects of all ordinances and resolutions shall be clearly expressed in the title. Copies of each proposed ordinance, in the form required for adoption, shall be furnished to the City Council. Copies of the proposed ordinance, in the form required for adoption, shall be available at the City offices and shall be furnished to citizens upon request to the City Secretary from and after the date on which such proposed ordinance is posted as an agenda item for a City Council meeting and, if amended, shall be available and furnished in amended form for as long as the proposed ordinance is before the City Council.
2. Except as otherwise provided for in this Charter no ordinance shall be finally adopted at the meeting of the City Council at which it is first introduced, but instead the ordinance shall be considered for adoption, and the City Council will determine whether it shall be rejected or further considered at a subsequent meeting of the City Council. If rejected,

no further action shall be required. No ordinance which has been amended in substance after its placement on the agenda for a City Council meeting may be finally adopted at such meeting. Such amended ordinance shall be placed on the agenda of a subsequent meeting of the City Council for consideration and final adoption.

3. Every ordinance shall become effective upon final adoption or at any later time(s) specified in the ordinance, except that every ordinance imposing any penalty, fine or forfeiture shall become effective only after its caption having been published twice after adoption, in a newspaper designated as the official newspaper of the City.
4. Notwithstanding the provisions of this Section if the City Council, by a vote of not less than two-thirds of the members present at the meeting at which an ordinance is first introduced, determines that an emergency exists, related to public peace, health or safety, requiring immediate action, such ordinance may then be voted upon and rejected or adopted at that meeting. Copies of each proposed ordinance, in the form adopted, shall be furnished to the City Council. Copies of the proposed ordinance, in the form adopted, shall be available at the City offices and shall be furnished to citizens upon request to the City Secretary from and after the date on which such ordinance was adopted. The reason for the emergency and a roll call of the vote shall be recorded in the ordinance and the minutes for the meeting. Such ordinance must be confirmed by a majority vote of the City Council at the next meeting of the City Council. If the ordinance is not confirmed, it is rescinded. Any ordinance adopted as an emergency and confirmed by City Council shall expire on the sixty-first (61st) day after adoption unless extended by a majority vote of the City Council.
5. Every ordinance shall be authenticated by the signature of the Mayor and the City Secretary.
6. Every ordinance shall be approved as to form and legal sufficiency by the City Attorney's office prior to adoption by the City Council.
7. The City Council shall have the power to codify ordinances of the City. All printed ordinances or codes of ordinances shall be admitted as evidence in all courts without further proof and shall have the same force and effect as did the original ordinance.

Section 3.07 - Compensation of Members.

- A. Members of City Council shall serve without pay or compensation; provided, however, they shall be entitled to all necessary expenses incurred in the performance of their official duties.
- B. The policy regulating payment of expenses incurred in performance of official duty shall be determined by the City Council.

Section 3.08 - Term Limits.

A. Office of Council Member.

No current or future elected Council Member shall serve more than two (2) consecutive three (3) year terms of office nor more than four(4) three (3) year terms of office during a lifetime. No Council Member shall be eligible to take office for a period of three (3) years from the end of a second consecutive Term of Office.

B. Office of Mayor

No current or future elected Mayor shall serve more than two (2) three (3) year terms of office in a life time.

C. Years of Service

Years or time of service that an individual serves in filling an unexpired term or a partial term of office less than two (2) years shall not be counted toward the above limitations.

D. Time Served in Office

Time served in the office of Council Member or the office of Mayor do not count towards the term limits of the other.

Section 3.09 - Vacancies; Forfeiture of Office; Filling of Vacancies.

A. Vacancies. The office of a Council Member or office of the Mayor shall become vacant upon death, resignation, removal from office by recall, or forfeiture of his/her office.

B. Forfeiture. A Council Member or the Mayor shall forfeit his/her office if he/she:

1. Fails to maintain at any time during the term of office any qualification for the office prescribed by this Charter or by law;
2. Is convicted of a misdemeanor involving moral turpitude, a violation of any state laws regulating conflicts of interest of municipal officers, a felony, or is assessed a deferred adjudication or probation for a felony or any state laws regulating conflicts of interest of municipal officers;

3. Failure to regularly attend City Council meetings without an approved absence obtained by a majority vote by City Council either before or after the absence. There shall be a presumption of failure to regularly attend when three (3) regular meetings are missed during a term year without obtaining an approved absence from City Council.
- C. If a Member of City Council violates any provision of this section and does not immediately resign, the City Council may conduct an investigation and hearing pursuant to Section 3.12 of this Charter to determine if the office holder is in violation of this section. The hearing shall be held within 60 days of the City Council, as a body, learning of the alleged forfeiture. No vote on a forfeiture of office shall be taken until after a hearing has been held pursuant to Section 3.11.
 - D. All vacancies shall be filled pursuant to state law.

Sec. 3.10. - Prohibitions.

- A. Holding other office. Except where authorized by law, no Member of City Council shall hold any other City office or employment by the City during the term for which he was elected to the City Council, and no former Member of City Council shall hold any compensated appointive city office or employment until one (1) year after the expiration of the term for which he was elected to the City Council.
- B. Appointments and removals. Neither the City Council nor any City Council Member shall in any manner dictate the appointment or removal of any city administrative officers or employees whom the City Manager or any of his subordinates are empowered to appoint, unless otherwise provided in this Charter, but the City Council may, at a properly noticed meeting, express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.
- C. Interference with administration. Except for the purpose of inquiries and investigations, unless otherwise provided in this Charter, the City Council and City Council Members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the City Council nor City Council Members shall give orders to any such officer or employee, either publicly or privately.

- D. Admission of liability. Neither the City Council nor City Council Members shall accept or admit liability or pay any claim for damages asserted against the City without first obtaining a written opinion from the City Attorney regarding the City's liability therein.

3.11 Council Investigations; Hearings; Process.

- A. *General.* In addition to any other specific authority of investigation and hearing provided for in this Charter, the City Council shall have the power to inquire into the official conduct of any department, agency, appointed boards, office, officers, employees or appointed board members of the City. For the purpose of investigations and hearings, the City Council shall have the power to administer oaths, subpoena witnesses, reasonably compel the production of books, papers, and other evidence material to the inquiry. The City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence. The City Council shall have the power to punish any such contempt in an amount not to exceed one hundred dollars (\$100.00).
- B. *Hearings Process for Forfeitures of Office and Prohibitions.*
 - 1. All hearings held under this subsection shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act;
 - 2. The officer holder subject to any investigation and/or hearing under this section shall be entitled to written notice, delivered by certified mail return receipt requested, of the allegations of forfeiture and/or the alleged violation of this Charter as applicable; delivery shall be complete on the fifth business day following upon deposit of the written notice, postpaid and properly addressed, in the mail.
 - 3. A special meeting shall be called to hold the hearing; said special meeting to be held no earlier than fourteen (14) days subsequent from the delivery of written notice and no later than ninety (90) days after delivery of written notice, unless otherwise agreed to by a majority of the City Council and the individual subject to the hearing.

4. A Member of City Council who initiated or is the subject of the investigation or hearing shall not sit at the dais and shall not participate in deliberation or vote;
5. City Council shall adopt by ordinance rules of procedures to be followed;
6. The City Council shall state the nature of the hearing and the allegations to be considered, shall be provided the results of any investigation and a presentation of the evidence against the office holder including, but not limited to testimony from individuals;
7. The individual who is subject to the hearing shall be provided a copy of the results of the investigation, including any written testimony acquired during the investigation, an opportunity to respond to the allegations and present any relevant evidence including, but not limited to, testimony from individuals;
8. City Council may ask questions of any individual giving testimony;
9. Public comment shall be allowed. Rules for public comment shall be set by City Council;
10. In the case of a violation of Section 3.09 of this Charter City Council shall vote on the forfeiture and on the affirmative vote of two-thirds of City Council declare the office of said office holder to be forfeited and vacant;
11. In the case of a violation of Section 3.10 of this Charter City Council may on the affirmative vote of a majority of the City Council may take any of the following actions: directing further investigation, requesting further information, vote to enforce a penalty pursuant to section 7.____ B. of this Charter, vote to bring an action in municipal court, take a vote of censure; or, upon the affirmative vote of two-thirds of City Council, declare the office of said office holder to be forfeited and vacant; and
12. In the case of a violation of Section 7.01 or 7.02 of this Charter by a Member of City Council or a City Official, City Council may take any of the following actions: directing further investigation, requesting further information, vote to enforce a penalty pursuant to section 7.____ B. of this Charter, vote to bring an action in municipal court, take a vote of censure; or, upon the

affirmative vote of two-thirds of City Council, declare the office of said office holder to be forfeited and vacant.

13. Any Investigation conducted pursuant to this section shall be conducted by an outside, independent third party.

IV. – CITY ELECTIONS

Section 4.01 - Elections.

- A. The regular City election shall be held annually on the uniform election date in May, or at such other times as may be authorized by State Law.
- B. The City Council shall fix the place for holding such election.
- C. The City Council may, by ordinance or resolution, order a special election, fix the date and place for holding same, and provide all means for holding such special election.
- D. Notice of elections shall be published in a newspaper of general circulation of the City of Fair Oaks Ranch, such publication to follow the requirements of the Election Code and any applicable law.
- E. Early voting shall be governed by the general election laws of the State of Texas.

Section 4.02 - Regulation of Elections.

- A. All elections shall be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and in accordance with the ordinances adopted by the City Council for the conduct of elections.
- B. The City Council shall appoint the election judges and other election officials.

Section 4.03 - Filing for Office.

- A. Any person having the qualifications set forth under Section 3.02 of this Charter shall have the right to file an application to have their name placed on the official ballot as a candidate for any elective office.
 - 1. Any such application shall be in writing, signed by such candidate, and filed with the City Secretary in accordance with the Texas Election Code and this Charter.
 - 2. An application filed in accordance herewith shall entitle such applicant to a place on the official ballot.
- B. A candidate of City Council shall specify the position and, if applicable, the place number the candidate is seeking.

Section 4.04 - Official Ballot.

The names of all candidates for office, except such as may have withdrawn, died or become ineligible, shall be placed on official ballots without party designations specifying the office, and if applicable, the council place for which each is seeking election.

Section 4.05 – Failure to Obtain Majority.

In the event no candidate for an elective office receives a majority of the votes cast for that place in the general or special election a run-off election shall be held between the two (2) candidates who received the greater number of votes.

Section 4.06 – Tie Votes.

- A. If two or more candidates for the same office tie for the number of votes required to be elected, a second election to fill the office shall be held.
- B. The tying candidates may agree to cast lots to resolve the tie. The agreement must be filed with the City Council at the office of the City Secretary. That Mayor shall supervise the casting of lots.

Section 4.07 - Taking of Office.

Each newly elected person to the City Council shall be inducted into office at the first regular City Council meeting following the canvass of the votes.

V. – DEPARTMENTAL AND ADMINISTRATIVE ORGANIZATION

Section 5.01 - City Manager.

A. Creation of City Manager Position:

1. The municipal position of “City Manager” is hereby created.
2. The City Manager is the chief administrator of the City and shall be responsible for the proper and efficient management of the affairs and day to day operations of the City. The City Manager shall report to and shall receive policy direction from the whole of the City Council.
3. The City Manager shall be chosen by the City Council solely on the basis of his executive and administrative training, experience and ability.

B. Appointment and Removal:

1. A two-thirds (2/3) vote of the City Council is required to appoint the City Manager.
2. A majority vote of the City Council is required to remove the City Manager.
3. The City Manager shall serve at the will of the City Council.

C. Duties and Responsibilities:

1. The City Manager is responsible for implementing the ordinances and policies adopted by the City Council and for upholding State and federal laws and regulations.
2. The City Manager attends and participates in City Council Meetings but has no vote.
3. The City Manager shall supervise the preparation of agendas for all meetings of the City Council. The agendas shall be prepared in accordance with Rules and Procedures adopted by the City Council and as provided for in this Charter.
4. The City Manager provides staff support services to the Mayor and Councilmembers.
5. The City Manager has a professional obligation to provide recommendations and advice to the City Council on City policy issues.
6. The City Manager conducts research and analyses to assist the City Council in the formulation of policy.
7. The City Manager shall initiate and assist the City Council in the development of long term goals for the City and assist in the formulation of strategies to achieve such objectives and goals.
8. The City Manager shall prepare and administer the budget in accordance with state law.
9. The City Manager shall keep the City Council fully advised as to the financial condition of the City and future needs of the City.

10. The City Manager shall oversee the purchasing of all merchandise, materials, supplies and services as budgeted and shall put in place such rules and regulations governing contracts, requisitions and transactions of business between City departments and vendors of goods and services in compliance with all State procurement laws.
11. The City Manager is authorized to make all purchases on behalf of the City according to the City's financial policy.
12. The City Manager shall negotiate, sign, execute and monitor implementation of all contracts including franchise agreements entered into by the City in accordance with City Financial policy.
13. The City Manager shall prepare and present to City Council a risk management plan.
14. The City Manager is responsible for the coordination of City communication with the public and the news media including outreach initiatives to the citizens and general public through various media venues.
15. The City Manager shall make reports to the City Council and public on the affairs, finances and operations of the City as directed through Council policy.
16. Except as otherwise provided for in this Charter the City Manager shall direct and supervise the administration of all departments, offices and public utilities of the City and shall investigate or cause to be investigated as appropriate any complaints concerning the administration of the City.
17. The City Manager may appoint, suspend or remove any City employee except as otherwise provided by this Charter. The City Manager may authorize any employee who is subject to the City Manager's direction and supervision to exercise these powers with respect to subordinates in that employee's department, office or agency.
18. The City Manager shall direct and supervise the administration of all departments, officers, and agencies of the City, except as otherwise provided by this Charter or by law.
19. The City Manager shall publish and make personnel policies and procedures adopted by City Council available to all City employees.
20. The City Manager shall promote cooperation and collaboration among the Mayor, Council members, staff, community groups and individual citizens in building a sense of community.

21. The City Manager shall encourage and provide staff support for regional and intergovernmental cooperation and collaboration.
22. The City Manager shall keep a written inventory of all real property and all permanent equipment belonging to the City, said inventory to be subject to annual audit. A system shall be established to control the use and replacement of expendable items.
23. The City Manager shall perform other duties as required by the City Council and as provided for in this Charter.

D. Performance and Accountability:

The City Council shall meet with the City Manager at least once annually to evaluate the performance, orally and in writing, of the City Manager and establish performance goals and expectations for the upcoming year.

E. Compensation:

The Manager shall receive the compensation as provided and directed by the City Council.

Section 5.02 – City Attorney.

- A. The City Council shall appoint a licensed attorney of the State of Texas to be the City Attorney. The City Attorney shall receive for services such compensation as may be fixed by the City Council for regular and special duties and shall hold office at the pleasure of the City Council. The City Attorney or such other attorney's selected by the City Attorney with the approval of the City Council shall represent the City in all legal matters.
- B. The City Council shall have the right to retain special counsel at any time that it may deem necessary and appropriate.

Section 5.03 – Municipal Court.

- A. The City Council shall establish and cause to be maintained a Municipal Court. The Court shall have all the powers and duties as are now, or as may be, prescribed by the laws of the State of Texas.
- B. The City Council shall appoint, by the affirmative vote of a majority of the voting membership of the City Council, such Municipal Judges of the Municipal Court, as may be necessary, all of whom shall be competent, duly qualified attorneys licensed and practicing for at least two (2) years in the State of Texas. In the event a duly qualified attorney is not available, the City

Council shall then select a qualified person to be the Municipal Judge. The Municipal Judge(s) of the Municipal Court(s) shall be appointed to a term of two (2) years. The appointment of the Municipal Judge(s) may be terminated at any time by the affirmative vote of a two-thirds majority of the City Council, after due notice and a public hearing. The Municipal Judge(s) shall receive compensation as may be determined by the City Council.

- C. All special expenses and fines imposed by the Municipal Court(s) shall be paid into the City Treasury for the use and benefit of the City, as may be consistent with present and future laws.

Sec. 5.04. - City secretary.

- A. The City Council shall appoint or remove without cause, the City Secretary upon the affirmative vote of a majority of the City Council.
- B. The City Council shall fix the compensation of the City Secretary, and the City Secretary's compensation may be amended, from time to time, in accordance with the City Secretary's experience, qualifications and performance. The City Secretary shall report administratively to the City Manager but may be removed from office only by the Council.
- C. The City Secretary shall:
 - 1. Give notice of all official public meetings of the City Council, Commissions, and Boards in a manner consistent with this Charter and state laws;
 - 2. Attend all public meetings and hearings of the City Council;
 - 3. Keep the minutes of the proceedings of all public official meetings and hearings of the City Council in a manner prescribed by the City Council consistent with applicable law;
 - 4. Act as custodian of all official records of the City Council;
 - 5. Hold and maintain the seal of the City and affix this seal to all appropriate documents;
 - 6. Authenticate, by signature and seal, and record all ordinances, resolutions and proclamations of the City;
 - 7. Perform such other duties, as may be required by the City Council, which are consistent with this Charter and state and federal law; and
 - 8. Schedule and oversee all City elections in accordance with the Texas Election Code [Tex. Election Code, § 1.001 et seq.] and any other applicable law.

Section 5.04 - Other Departments, Offices, and Agencies.

- A. There are hereby created the following administrative departments: Police, Finance Public Works, and such other departments as may be established by the City Council as hereinafter provided.

- B. The City Council may, if it deems it advisable, consolidate the departments hereby established. The City Council by ordinance may create, change, and abolish offices, departments, or agencies other than the offices, departments and agencies established by this charter.

VII. – GENERAL PROVISIONS

Section 7.01 - Conflict of Interest Prohibition.

For purposes of this Section term "City Official" means any individual subject to the requirements of Texas Local Government Code, Chapter 171.

It is hereby prohibited for Members of City Council or a City Official to violate the rules and regulations regarding conflicts of interests as set out in the Texas Local Government Code, Chapter 171.

Section 7.02 – General Prohibitions.

A. Activities prohibited.

- (1)** In appointments to and removal from any City office or employment, persons shall not be favored or discriminated against because of race, sex, political or religious opinions, or religious affiliations.
- (2)** No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.
- (3)** No City official or employee, elected or appointed, shall orally, by letter, or otherwise solicit or assist in soliciting any assessment, subscription, or contribution for any political party or political purpose whatever from any subordinate city official or employee holding any compensated City position.
- (4)** No person who holds any compensated City position shall solicit or receive any contribution to the campaign funds of any candidate for municipal office or take any part in the management, affairs, or political campaign of any municipal candidate.
- (5)** No employee of the city shall continue in such position after becoming a candidate for City Council.

- B. **Penalties.** In addition to any other penalty provided for in this Charter any person determined to have violated this Section shall be ineligible for a period of five (5) years thereafter to hold any City office or position and, if an officer or employee of the City, shall immediately forfeit his office or position.

Section 7.____ - Penalty Clause.

- A. *Criminal Penalty.* Any person who by himself or with others violates any provision of this charter shall, in addition to any other penalty, be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more \$500.00. City Council shall enact an ordinance enforcing this section.
- B. *Civil Penalty.* Upon the affirmative vote of two-thirds of the City Council any person who by himself or with others violates any provision of this charter shall be, in addition to any other penalty provided for herein, subject to a civil fine of not more than \$500.00.