

**MINUTES, SEPTEMBER 12, 2016; 2:00 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, D. Pearson, C. Fothergill, D. Deleranko, F. Trapasso, J. McConnell, B. Regan, J. Merritt, and R. Nichols

Absent: G. Maxton

With a quorum present, President Nichols opened the meeting at 2:00 p.m. He noted at the end of the Charter Commission process, a final review of a draft Charter will be done and encouraged members to make notes as they continue to work along.

**II. CITIZENS/GUEST FORUM PRESENTATIONS**

Steve Hartpence thanked the Commission for their work and asked the Commission to consider revisiting some of their decisions regarding the membership of the City Council, the Mayor's role, and Council terms (see Exhibit A attached).

**III. CONSENT AGENDA**

B. Regan noted a grammatical error in Section 5.02B (attorney's should be attorneys).

MOTION: August 29, 2016 minutes were approved, as amended, by Commission consensus

**IV. CONSIDERATION/DISCUSSION ITEMS**

**A. Review and provide any applicable guidance to City Attorney regarding proposed language approved by the Commission at previous meetings regarding Passage of Ordinance and City Attorney department**

D. Deleranko requested a sunset provision be added to emergency ordinances. City Attorney Zech noted, as written, emergency ordinances require one reading with confirmation at the next City Council meeting.

MOTION: Made by D. Deleranko, seconded by F. Trapasso to amend 2.06 A 4 to include: *any ordinance adopted as an emergency and confirmed by Council shall expire on the 61<sup>st</sup> day after adoption unless extended by a majority vote of the City Council*

VOTE: 9-1; Motion Passed, B. Regan opposed

**C. Consideration and possible action on Municipal Court; City Manager (appointment, powers); creation of departments (positions required to be appointed); election process and procedures; and initiative, referendum and recall**

City Attorney Zech reviewed the difference between a court of record and a non-court of record. He provided an explanation on the difference between court costs/fees and fines. Commission members proceeded with discussion of electing or appointing the Judge. D. Deleranko advised the Commission that competitive elections maybe the most democratic way to obtain municipal court judges but they rely heavily on special interest money which can result in judicial corruption as an inevitable consequence. The alternative in having the Mayor/Council appoint municipal court judges may remove the guise of judicial corruption but opens the possibility of cronyism and/or nepotism and results in a disingenuous plea for judges to disqualify (recuse) themselves from cases that involve their loyalty to various political agendas and personal allegiances to the appointing officials (i.e. Mayor/Council). He further proposed a compromise currently utilized by 2/3rds of the States and

recommended by retired U.S. Supreme Court Justice – Sandra Day O'Connor whereby a Merit Selection System be employed by a non-partisan nominating commission on which non-lawyers participate. Prospective judges submit their applications and credentials to the commission which may be viewed by the public on-line. All commission hearings would be open and public comment would be invited. The commission would then produce a short list of qualified candidates and the City Council would make the final selection. The judges would be subject to a performance evaluation annually by the City Council and a public election would be held every other year on whether to reappoint the municipal court judge for another two-year term or turn the judges out of office at that time. He requested, in the Charter, the Judge be required to inform the jury of its 'Power of Conscience' whereby reason and common sense can be used in deliberations in lieu of the standard 'Rule of Law' commonly directed by judges. This standard practice limits the due process of the jury deliberations to the strict interpretation of the letter of the law and adds significantly to government corruption and/or tyranny denying the citizens of Fair Oaks Ranch common sense and reason in a justice system that has run-a-muck. Other members felt if imposing such a system, no one would apply for the job.

MOTION: Made by B. Regan, seconded by J. Merritt to approve using the Cibolo Charter Section 4.03 (1), (2), and (3) but as follows:

*(1) 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.*

*(2) 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. ~~which shall coincide with the terms of the Mayor and may be appointed to additional consecutive terms upon completion of his/her/their term(s) of office.~~ The appointment of the Municipal Judge(s) may be terminated at any time by the affirmative vote of a ~~three fourths~~ 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.*

*(3) 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.*

VOTE: 9-1; Motion Passed, D. Deleranko opposed

A review of the current City Administrator's position was performed and a discussion ensued regarding a future City Manager's appointment, duties, compensation, performance and accountability.

MOTION: Made by B. Regan, seconded by J. Merritt to incorporate, in one document, the current city Ordinance creating the position of City Administrator and Mount Belvieu Charter's section 5.01 and to bring back at next meeting for consideration.

VOTE: 10-0; Motion Passed

V. **ADJOURNMENT**

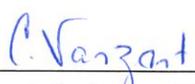
President Nichols adjourned the meeting at 4:05 p.m.



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Rich Nichols, Commission President

ATTEST:



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C. Vanzant, Assistant City Administrator

*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.*

1. Very few people choose to run for Council. In the last election, there were two vacancies with only one candidate for each position. Going back in history, this is typically the case. Adding a sixth Council position will increase the difficulty of finding willing, qualified candidates.
2. Three year terms are a good idea. It is expensive and time consuming to run, particularly if you have an opponent. We might actually attract more people to run if they didn't face the prospect of running a new campaign in two years. Assuming we have recall capability, there is no danger of having to wait to remove a bad actor from office.
3. Yearly elections would elect two alderman or one alderman and the mayor.
4. The Mayor should vote as the committee has proposed. Rarely would there be a tie vote, and if there is, it is probably a good idea to think about it some more.

*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.*

1. Good government has a healthy balance of checks and balances. As written so far, I see no check on the power of the City Manager other than the nuclear solution of termination and hiring someone new. There is far more risk to the city from an out-of-control City Manager than an out-of-control Mayor. I suggest one of two solutions:
  - a. Make the City Manager subject to recall just as the Council and Mayor will be.
  - b. Add a sentence to the sentence above stating: *In addition, the City Manager will report directly to the Mayor and the City Manager's authority will be defined by the Mayor with the concurrence of City Council.* This allows future Councils the flexibility to adjust the City Manager's role to fit changing times without a new election for Charter revisions

*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 elected official shall be eligible to take office for a period of three (3) years from the end of a second consecutive Term of Office.*

1. Term limits would be great for Congress because there are unlimited numbers of people interested in the office, there is no way to recall a bad actor between elections, Washington becomes their real home, they become addicted to big money donors, etc.
2. Term limits would not be good for Fair Oaks Ranch aldermen because:
  - a. The pool of qualified and interested residents is tiny.
  - b. City government is a complex machine and it takes a long time and hard work to get up to speed.
  - c. Very few aldermen will go beyond six years anyway.
  - d. With the power of recall, bad actors can be removed quickly.
  - e. Occasionally there will be an alderman everyone agrees is terrific and who wants to continue to serve. Term limits will make that impossible.
3. Term limits for the Mayor are a good idea. Done right, the job is time consuming and exhausting. Having a new Mayor at least every six years strikes me as a good thing.

 9/12/16

Exh. A