
MEMORANDUM

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: DIANE WETHERBEE
SUBJECT: CHARTER REVIEW
DATE: AUGUST 1, 2011

In the event there is a charter election, it would be appropriate to consider including a proposition to allow clean up for those provisions that are obsolete or have been preempted by state or case law. Those provisions are identified in this memo under the non-substantive section and are recommended for your consideration.

Council may also wish to consider whether there should be a proposition that amends Section 4.04 Municipal Court so that it has the necessary elements in order to be eligible to be a court of record. If the voters approve such a proposition, Council will then consider an ordinance that addresses in greater detail the operations of the court. The benefit of a court of record is that it removes the trial de novo process for cases that are appealed from the Plano Municipal Court. Under the current system, cases that are already adjudicated in the City are retried again at the County at the request of the defendant. Also, a court of record gives the authority of the City to expand the power of the judge to hear certain civil cases for the enforcement of health, safety and nuisance violations. This has been discussed and reviewed with Judge Stevenson and he concurs with this recommendation.

You received a separate memo from Di Zucco on SB 100 regarding election options some of which will require charter revisions if selected.¹ Following your direction on those matters, the proposed charter language will be provided.

All changes to the charter are provided to the voters for approval by proposition. Propositions are brief statements on the ballot that describe the proposed charter changes, addition or deletions. The proposition itself does not include the entire text of the affected provision; however, that language is generally shown in the ordinance calling the election and/or informational material that is distributed with the election. A substantive charter change (one that go beyond general “clean up” of the charter) requires a separate proposition for the changes covered by that topic.

The suggestions are divided into substantive and non-substantive changes and are referenced by section with a comparison of the current City Charter language and the proposed revised language.

¹ The discussion on SB 100 and the options for your consideration regarding elections is scheduled for discussion at your July 25th meeting. Ms Zucco has provided you a memo on the options that are available and two include a charter amendment. If you select an option that requires a charter revision, proposed ballot language will be added to the recommendations herein.

SUBSTANTIVE CHANGES

Article 3. Section 3.01 Number, selection and term.

Any decision on revising the length of term or revising the number of terms that can be served is a substantive change to section on 3.01 of the Charter but can be included in one proposition. Further, the Council should decide whether to include in the proposition if **prior terms served** shall count towards term limits if the proposition is approved by the voters. This will alleviate any confusion or conflict on how prior terms are treated. Below are the recommended charter text and the areas highlighted for your feedback on term length and term limits.

3.01 Number, selection and term.

(a) The city council shall be divided into eight (8) places known as places 1,2,3,4,5,6,7, and 8 with places on the official ballot designated as “member of council, place no. _____”, or “Member of council, mayor, place six (6), with the election for each place from the city at large, determined by a majority vote of the qualified voters voting at the election. Member of council, place no. six (6) is hereby designated as mayor. Each candidate shall designate the specific place for which he is a candidate for election.

The city shall by ordinance be divided into four (4) geographic districts based on equality of population. No person shall be eligible to be a candidate for a council representative of a geographic district unless the candidate is at that time a bona fide resident of the district during their terms of office. Candidates for at large places may reside in any portion of the city. The city council may appoint a commission to recommend establishment of district boundaries.

(b) The mayor shall preside at meetings of the council, and shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no regular administrative duties. He may participate in the discussion of all matters coming before the council and shall be entitled to vote as a member thereof, on legislative or other matters.

(c) Each person elected shall hold office for a period of **()** years and until his successor is elected and qualified. All elections shall be held in the manner provided in Article 5 of this charter. A person who has served as a member of the city council for **()** consecutive terms, shall not again be eligible for election to any place on the city council until at least one (1) year has elapsed, except such council member shall be eligible for election as mayor.

(d) The mayor, members of the city council and appointed members of every council-appointed commission, committee or study group who announces for any elective office other than that which he or she is holding at the time of announcing for office, which office is to be held in and for the City of Plano, shall resign his elective or appointive office upon announcing for such elective office. If the candidate fails to resign, the city council shall consider the office

vacant as of the date of announcement for office, in the minutes of the next regular council meeting.

Article 4

Sec. 4.04. Municipal Court.

In order to be a court of record, certain provisions under section 4.04 regarding appointment and removal of judges need to be revised. The following revisions are recommended in order to allow the appointment to comply with laws for a court of record and the removal process recommended would control over other such law and sets standards and provides the Council with the authority to remove as well as defining the event for when the City Council appoints an acting chief judge.

Recommended Change: Revise this section to comply with Section 30 (Municipal Courts of Record), *Texas Government Code*, in case municipal court is changed to court of record, but also keep sufficiently general to be consistent with either type of court.

Current Language: (recommendation to delete highlighted language)

(a) There shall be established and maintained a court designated as the “municipal court” for the trial of misdemeanor offenses, with all such powers and duties as now or hereafter may be prescribed by laws of the State of Texas relative to corporation or recorder’s courts.

(b) The judge of said court shall be appointed by the city council of the City of Plano, shall be designated as the chief municipal judge, and shall receive such salary as may be fixed by the city council, and shall hold office at the pleasure of the city council.

(c) The city council may establish and maintain from time to time one (1) or more ancillary municipal courts which shall be presided over by associate judges selected as hereinafter provided and shall exercise such ancillary jurisdiction and hear such cases as may be assigned to them by the chief municipal judge. Associate judges may be selected and appointed by the chief municipal judge to assist in carrying out the duties of the court as assigned. Appointed associate judges shall hold office at the pleasure of the chief municipal judge.

(d) The clerks of said courts shall have the power to administer oaths and affidavits, make certificates, affix the seal of said courts thereto, and generally to do and perform any and all acts usual and necessary by the clerks of courts in issuing process of said courts and conducting the business thereof.

(e) Whenever the chief municipal judge is unable to act for any reason, the city council may appoint a person meeting the qualifications for such position to sit for the chief municipal judge. Such appointee shall have all the powers and duties of the office and shall receive the same compensation as is payable to the chief municipal judge, while the appointee is so acting.

Suggested Revised Language: (recommendation to add highlighted language)

(a) There shall be established a maintained a court designated as the “municipal court” for the trial of misdemeanor offenses, with all such other powers and duties as now or hereafter may be prescribed by the laws of the State of Texas and this City.

(b) The judge of said court shall be appointed by the city council of the City of Plano, shall be designated as the Chief Municipal Judge, and shall receive such salary as may be fixed by the city council.

(c) The city council may establish and maintain from time to time one (1) or more ancillary municipal courts which shall be presided over by associate judges who shall exercise such ancillary jurisdiction and hear such cases that shall be assigned to them by the chief municipal judge. The chief and associate judges shall be selected and appointed by the city council to serve specific terms. Initial appointment and reappointment to any term is at the discretion of the city council.

(d) Unchanged.

(e) If a vacancy occurs in the office of Chief Municipal Judge during an appointed term, the City Council shall appoint a qualified person to fill the office for the remainder of the unexpired term and such appointee shall have all the powers and duties of the office and shall receive the same compensation as is payable to the Chief Municipal Judge, while the appointee is so acting and until the expiration of such term.

(f) The chief judge and associate judges may be removed during their term of office by a majority vote of all members of the city council eligible to serve. Removal may include any one or more of the following grounds: dereliction of duty, incompetency, incapacity to serve, conduct discrediting the position, or misconduct.

NON-SUBSTANTIVE CHANGES

Non-substantive changes can be presented as a single proposition on the ballot. If approved by the voters, the following sections would be changed as indicated but would not appear as separate propositions on the ballot.

Article 1

Sec. 1.02. The boundaries.

Recommended Change: Section 1.02 should be changed to provide clear boundary language and reflect where the official map of the city is located.

Current Language: The boundaries of the City of Plano shall be the same as have heretofore been established at the time of adoption of this charter.

Suggested Revised Language: (recommendation to add highlighted language)

The boundaries of the City of Plano shall be the same as have heretofore been established as of the date of the adoption of this charter and as may change from time to time by official legislative action. The City Secretary shall maintain an official map of its boundaries in accordance with Chapter 41 of the Texas Local Government Code as now or hereafter amended.

Article 2

Section 2

Sec. 2.02. General powers adopted.

Recommended Change: Section 2.02 should be changed for general clean-up purposes by eliminating the publication year of the Texas Civil Statute.

Current Language: (recommendation to delete highlighted language)

The enumeration of the particular powers in this charter shall not be held or deemed to be exclusive but in addition to the powers enumerated herein or implied hereby or appropriate to the exercise of such powers, the city shall have and may exercise all power of local self-government and all other powers which, under the constitution and laws of the State of Texas, it would be competent for this charter specifically to enumerate. The City of Plano shall have and may exercise all the powers enumerated in Article 1175, Chapter 13, Title 28, of the Revised Civil Statutes of the State of Texas of 1925 as now exists or hereafter amended.

Suggested Revised Language:

The enumeration of the particular powers in this charter shall not be held or deemed to be exclusive but in addition to the powers enumerated herein or implied hereby or appropriate to the exercise of such powers, the city shall have and may exercise all power of local self-government and all other powers which, under the constitution and laws of the State of Texas, it would be competent for this charter specifically to enumerate. The City of Plano shall have and may exercise all the powers enumerated in Article 1175, Chapter 13, Title 28, of the Revised Civil Statutes of the State of Texas as now or hereafter amended.

NOTE: THE CHANGES SHOWN FOR 3.01 ARE RECOMMENDED ONLY IF THE COUNCIL DOES NOT TAKE ANY ACTION TO CHANGE ANY TERM OF OFFICE OR REVISE TERM LIMITS AS SET OUT EARLIER IN THIS MEMO

Article 3

Sec 3.01. Number, selection and term.

Recommended Change only if the Council is not considering any substantive change to this section. Section 3.01(a) and 3.01(d) should be changed for general clean-up purposes; eliminating the year in each as unnecessary additional language. Section 3.01(c) should also be deleted since there is no election held in odd and even numbered years.

Current Language: (recommendation to delete highlighted language if there is no action to change the length of a term of office or to revise the number of terms that may be served)

The legislative and governing body of the city shall consist of a mayor and seven (7) council members and shall be known as the “council of the City of Plano.”

(a) The city council shall be divided into eight (8) places known as places 1, 2, 3, 4, 5, 6, 7, and 8, with places on the official ballot designated as “member of council, place no. _____” or “member of council, mayor, place no. six (6),” with the election for each

place from the city at large, determined by a majority vote of the qualified voters voting at the election. Member of council, place no. six (6) is hereby designated as mayor. Each candidate shall designate the specific place for which he is a candidate for election.

Commencing with the year 1994, the city shall by ordinance be divided into four (4) geographic districts based on equality of population. No person shall be eligible to be a candidate for a council representative of a geographic district unless the candidate is at that time a bona fide resident of the district. Council geographic district representatives must continuously reside in said district during their term or terms of office. Candidates for at large places may reside in any portion of the city. The city council may appoint a commission to recommend establishment of district boundaries.

(b) The mayor shall preside at meetings of the council, and shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no regular administrative duties. He may participate in the discussion of all matters coming before the council and shall be entitled to vote as a member thereof, on legislative or other matters.

(c) All present council members shall serve out their respective terms with places 2, 4, 6, and 8 being elected in each even-numbered year, and places 1, 3, 5, and 7 being elected in each odd-numbered year.

(d) **Beginning May 7, 2005**, each person elected **on or after May 7, 2005** shall hold office for a period of three (3) years and until his successor is elected and qualified. All elections shall be held in the manner provided in Article 5 of this charter. A person who has served as a member of the city council for three (3) consecutive terms, shall not again be eligible for election to any place on the city council until at least one (1) year has elapsed, except such council member shall be eligible for election as mayor.

(e) The mayor, members of the city council and appointed members of every council-appointed commission, committee or study group who announces for any elective office other than that which he or she is holding at the time of announcing for office, which office is to be held in and for the City of Plano, shall resign his elective or appointive office upon announcing for such elective office. If the candidate fails to resign, the city council shall consider the office vacant as of the date of announcement for office in the minutes of the next regular council meeting.

Suggested Revised Language:

(a) The city council shall be divided into eight (8) places known as places 1,2,3,4,5,6,7, and 8 with places on the official ballot designated as “member of council, place no. _____”, or “Member of council, mayor, place six (6), with the election for each place from the city at large, determined by a majority vote of the qualified voters voting at the election. Member of council, place no. six (6) is hereby designated as mayor. Each candidate shall designate the specific place for which he is a candidate for election.

The city shall by ordinance be divided into four (4) geographic districts based on equality of population. No person shall be eligible to be a candidate for a council representative of a geographic district unless the candidate is at that time a bona fide resident of the district during their terms of office. Candidates for at large places may reside in any portion of the city. The city council may appoint a commission to recommend establishment of district boundaries.

(b) The mayor shall preside at meetings of the council, and shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no regular administrative duties. He may participate in the discussion of all matters coming before the council and shall be entitled to vote as a member thereof, on legislative or other matters.

(c) Each person elected shall hold office for a period of three (3) years and until his successor is elected and qualified. All elections shall be held in the manner provided in Article 5 of this charter. A person who has served as a member of the city council for three (3) consecutive terms, shall not again be eligible for election to any place on the city council until at least one (1) year has elapsed, except such council member shall be eligible for election as mayor.

(d) The mayor, members of the city council and appointed members of every council-appointed commission, committee or study group who announces for any elective office other than that which he or she is holding at the time of announcing for office, which office is to be held in and for the City of Plano, shall resign his elective or appointive office upon announcing for such elective office. If the candidate fails to resign, the city council shall consider the office vacant as of the date of announcement for office, in the minutes of the next regular council meeting.

Sec. 3.02. Qualifications.

Recommended Changes: Section 3.02 should be changed because the U.S. Supreme Court has ruled that the requirement to be a landowner is unconstitutional.²

Current Language: (recommendation to delete highlighted language)

Each member of the city council shall be a resident citizen of the City of Plano, shall be an owner of taxable property therein, shall be a qualified voter of the State of Texas, shall have been such resident citizen of the City of Plano for a period of not less than twelve (12) months immediately preceding his election, and shall not be indebted to the City of Plano; provided, however, that any person with the above qualifications, except as to residence, who shall have been a resident, for a period of not less than one (1) year immediately preceding his election, of any of the territory not formerly within the corporate limits of said city, but which is annexed under the provisions of section 1.03 of this charter, shall be eligible for said office. If the mayor or any councilman fails to maintain the foregoing qualifications, or shall be absent from three (3)

² *Quinn et al. v. Millsap et al.*, 491 U.S. 95; 109 S. Ct. 2324; 105 L. Ed. 2d 74 (1989); The United States Supreme Court reversed the judgment of the Supreme Court of Missouri which ruled equal protection did not apply to a provision of the Missouri Constitution that created a real-property ownership requirement for appointees to serve on a local governmental board. However, the United States Supreme Court ruled that (i) equal protection did apply and (ii) land-ownership requirements failed equal protection scrutiny. The Court stated that an ability to understand the issues concerning one's community does not depend on ownership of real property and the work of a city board affects all citizens regardless of land ownership. Furthermore, membership on a board is a form of public service, and the equal protection clause protects the rights to be considered for public service without the burden of invidiously discriminatory disqualifications. See also, *Political Civil Voters Organizations and J.R. Roberson v. City of Terrell*, 565 F. Supp. 338 (1983) and *Turner et al v. Fouche et al.*, 396 U.S. 346; 90 S. Ct. 532; 24 L. Ed. 2d 567 (1970).

consecutive regularly scheduled meetings without valid excuse, the city council must at its next regular meeting declare a vacancy to exist and shall fill said vacancy as set forth in section 3.06 of this charter.

Suggested Revised Language:

Each member of the city council shall be a resident citizen of the City of Plano, shall be a qualified voter of the State of Texas, shall have been such resident citizen of the City of Plano for a period of not less than twelve (12) months immediately preceding his election, and shall not be indebted to the City of Plano; provided, however, that any person who shall have been a resident, for a period of not less than one (1) year immediately preceding his election, of any of the territory not formerly within the corporate limits of said city, but which is annexed under the provisions of section 1.03 of this charter, shall be eligible for said office. If the mayor or any councilman fails to maintain the forgoing qualification, or shall be absent from three (3) consecutive regularly scheduled meetings without a valid excuse, the city council must at its next regular meeting declare a vacancy to exist and shall fill said vacancy as set forth in section 3.06 of this charter.

Sec. 3.06. Vacancies.

Recommended Changes: Section 3.06 should be changed because the appointment of new council members in the event of a vacancy is prohibited according to Art. XI Sec. 11 of the Texas Constitution since council members serve a three year term.³

Current Language: (recommendation to delete highlighted language)

When a vacancy occurs in the city council the remaining members of the council shall within ten (10) days appoint a qualified person to serve until the expiration of the vacant term or until the next regular council election, whichever first occurs. If a council election occurs prior to the normal expiration of the vacated term, such election shall elect a council member for the remaining portion of the unexpired term. However, the city council shall not appoint more than one (1) council member in any council term. In case a vacancy has been filled by the city council within any council term prior to a subsequent vacancy, or if more than one (1) vacancy occurs at the same time or before a prior vacancy has been filled, the city council shall call a special election within ten (10) days from the date that the last vacancy occurred, to be held in accordance with the provisions of the Texas Election Code, for the purpose of electing the successor or successors to the office or offices vacated.

Suggested Revised Language:

When a vacancy occurs in the city council, the city council shall call a special election within one hundred and twenty (120) days from the date that the last vacancy occurred, to be held

³ Texas Constitution, Article 11, Section 11, Subsection B states that a municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality, and any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur.

in accordance with the provisions of the Texas Election Code, for the purpose of electing the successor or successors to the office or offices vacated.

Article 4

Sec. 4.07. Appointees.

Recommended Change: Remove language concerning property ownership because such requirement is impermissible by law.⁴ Simplify language regarding residency and annexation.

Current Language: (recommendation to delete highlighted language)

All appointees to City of Plano boards and commissions must be residents of the City of Plano for at least twelve (12) months (consecutively) prior to appointment to a board or commission of the City of Plano. Also, they must be owners of taxable property with any and all taxes due for previous years having been paid; provided, however, that any person with the above qualifications, except as to residence, who shall have been a resident, for a period of not less than one (1) year immediately preceding his appointment, of any of the territory not formerly within the corporate limits of said city, but which is annexed under the provisions of section 1.03 of this charter, shall be eligible for said office. No person shall be appointed to more than two (2) permanent boards or commissions of the City of Plano at any one time.

Suggested Revised Language: (recommendation to add highlighted language)

All appointees to City of Plano boards and commissions must be residents of the City of Plano for at least twelve (12) consecutive months prior to appointment to a board or commission of the City of Plano. The twelve (12) month residency requirement is waived for individuals who reside in a territory that has been annexed under section 1.03 of the charter. No person shall be appointed to more than two (2) permanent boards or commissions of the City of Plano at any one time.

Article 5

Sec. 5.01. Elections.

Recommended Change: Delete the word “resolution” in the third sentence to reflect current practice.

Current Language: (recommendation to delete highlighted language)

The general city election shall be held annually as prescribed by the Texas Election Code between the hours of 7:00 a.m. and 7:00 p.m. at which time the officers will be elected to fill those offices which become vacant that year. The city council shall fix the place for holding such election. The city council may, by resolution, order a special election, fix the place for holding same and provide all means for holding such special election. Notice of the general election shall be given in accordance with the requirements set forth in the Texas Election Code.

Suggested Revised Language: (recommendation to add highlighted language)

⁴ See footnote 1

The general city election shall be held annually as prescribed by the Texas Election Code between the hours of 7:00 a.m. and 7:00 p.m. at which time the officers will be elected to fill those offices which become vacant that year. The city council shall fix the place for holding such election. The city council may order a special election, fix the place for holding same and provide all means for holding such special election. Notice of the general election shall be given in accordance with the requirements set forth in the Texas Election Code.

Sec. 5.07. Conducting and canvassing elections.

Recommended Change: Remove reference to “open returns” in the third sentence to reflect current practice.

Current Language: (recommendation to delete highlighted language)

The election judges and other necessary election officials for conducting all such elections shall be appointed by the city council. The election judges shall conduct the election, determine, record and report the results as provided by the general election laws of Texas. In accordance with the provisions set forth in the Texas Election Code, the city council, after an election, shall meet, **open returns**, canvass and officially declare the results of the election as to candidates and questions and issue certificates of election to candidates elected as provided in the City Charter.

Suggested Revised Language:

The election judges and other necessary election officials for conducting all such elections shall be appointed by the city council. The election judges shall conduct the election, determine, record and report the results as provided by the general election laws of Texas. In accordance with the provisions set forth in the Texas Election Code, the city council, after an election, shall meet, canvass and officially declare the results of the election as to candidates and questions and issue certificates of election to candidates elected as provided by City Charter.

Article 6

Sec. 6.03. Form of recall petition.

Recommended Change: Update year numbering.

Current Language: (recommendation to delete highlighted language)

The recall petition mentioned above must be addressed to the city council of the City of Plano, must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated, and, if there be more than one ground, such as for incompetency, misconduct or malfeasance in office, shall specifically state each ground with such certainty as to give the officer sought to be removed, notice of the matters and things with which he is charged. The signature shall be verified by oath in the following form:

STATE OF TEXAS, COUNTY OF COLLIN [sic]:

I,, being first duly sworn, on oath depose and say that I am one of the signers of the above petition; and that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made,

and I solemnly swear that the same is the genuine signature of the person whose name it purports to be.

Sworn and subscribed to before me this _____ day of _____ / _____ / _____, 19_____.

Notary Public in and for Collin [sic] County, Texas

Suggested Revised Language: (recommendation to add highlighted language)

The recall petition mentioned above must be addressed to the city council of the City of Plano, must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated, and, if there be more than one ground, such as for incompetency, misconduct or malfeasance in office, shall specifically state each ground with such certainty as to give the officer sought to be removed, notice of the matters and things with which he is charged. The signature shall be verified by oath in the following form:

STATE OF TEXAS, COUNTY OF COLLIN [sic]:

I, _____, being first duly sworn, on oath depose and say that I am one of the signers of the above petition; and that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is the genuine signature of the person whose name it purports to be.

Sworn to and subscribed to before me this _____ day of _____, 20_____.

Notary Public in and for Collin [sic] County, Texas.

Sec. 6.07. Election to be called

Recommended Change: The time frame for ordering an election as stated under this section is incorrect. (See Section 203.004, *Election Code*) Language should be revised to reference the Election Code.

Current Language: (recommendation to delete highlighted language)

If the officer whose removal is sought does not resign, then it shall become the duty of the city council to order an election and fix a date for holding such recall election, the date of which election shall not be less than twenty-five (25) nor more than thirty-five (35) days from the date such petition was presented to the city council, or from the date of public hearing if one was held.

Suggested Revised Language: (recommendation to add highlighted language)

If the officer whose removal is sought does not resign, then the city council shall order an election and set the date for holding such recall election. The date selected for the recall election shall be in accordance with the Texas Election Code. If, after the recall election date is established, the officer vacates his or her position, the recall election shall be cancelled and the vacancy shall be filled in accordance with state law.

Article 7

Sec. 7.02 Initiative.

Recommended Change: Delete deadline for ordering the special election as it is inconsistent with Section 3.005, *Election Code*.⁵

Current Language: (recommendation to delete highlighted language)

Qualified voters of the City of Plano may initiate legislation by submitting a petition addressed to the city council which requests the submission of a proposed ordinance or resolution to a vote of the qualified voters of the city. Said petition must be signed by qualified voters of the city equal in number to twenty (20) per cent of the number of votes cast at the last regular municipal election of the city, or one hundred fifty (150), whichever is greater, and each copy of the petition shall have attached to it a copy of the proposed legislation. The petition shall be signed in the same manner as recall petitions are signed, as provided in section 6.02 of this charter, and shall be verified by oath in the manner and form provided for recall petitions in section 6.03 of this charter. The petition may consist of one (1) or more copies as permitted for recall petitions in section 6.04 of this charter. Such petition shall be filed with the person performing the duties of city secretary. Within five (5) days after the filing of such petition, the person performing the duties of city secretary shall present said petition and proposed ordinance or resolution to the city council. Upon presentation to it of the petition and draft of the proposed ordinance or resolution, it shall become the duty of the city council, within ten (10) days after the receipt thereof[,] to pass and adopt such ordinance or resolution without alteration as to meaning or effect in the opinion of the persons filing the petition, or to call a special election, to be held within thirty (30) days thereafter at which the qualified voters of the City of Plano shall vote on the question of adopting or rejecting the proposed legislation. However, if any other municipal election is to be held within sixty (60) days after the filing of the petition, the question may be voted on at such election.

Suggested Revised Language: (recommendation to add highlighted language)

Qualified voters of the City of Plano may initiate legislation by submitting a petition addressed to the city council which requests the submission of a proposed ordinance or resolution to a vote of the qualified voters of the city. Said petition must be signed by qualified voters of the city equal in number to twenty (20) per cent of the number of votes cast at the last regular municipal election of the city, or one hundred fifty (150), whichever is greater, and each copy of the petition shall have attached to it a copy of the proposed legislation. The petition shall be signed in the same manner as recall petitions are signed, as provided in section 6.02 of this charter, and shall be verified by oath in the manner and form provided for recall petitions in section 6.03 of this charter. The petition may consist of one (1) or more copies as permitted for recall petitions in section 6.04 of this charter. Such petition shall be filed with the person performing the duties of city secretary. Within five (5) days after the filing of such petition, the person performing the duties of city secretary shall present said petition and proposed ordinance or resolution to the city council. Upon presentation to it of the petition and draft of the proposed

⁵ Texas Election Code, Section 3.005 requires an election to be ordered not later than the 62nd day before the Election Day. This time limit is applicable to all elections. *Bagwell v. Zbranek*, 862 S.W.2d 814 (Tex. App. 1993).

ordinance or resolution, it shall become the duty of the city council, within ten (10) days after receipt thereof to pass and adopt such ordinance or resolution without alteration as to meaning or effect in the opinion of the persons filing the petition, or to call a special election in accordance with the Texas Election Code, as the same may be amended from time to time.

Article 8

Sec. 8.01 Platting of Property.

Recommended Change: Delete section entirely because the platting provisions are addressed in the City of Plano Subdivision Ordinance, Section 1.5.

Current Language: (recommendation to delete highlighted language)

(a) Hereafter, every owner of any tract of land situated within the corporate limits of the City of Plano who may divide the same in two (2) or more parts for the purpose of laying out any subdivision or any addition of the city, shall comply with the provisions of Article 974a of the Revised Civil Statutes of the State of Texas of 1925, as now or hereafter amended, and said Article 974a as now or hereafter amended is hereby adopted and incorporated herein for all purposes.

(b) The provisions of section 8.01(a) above shall apply similarly to the owner of any tract of land situated within a maximum distance of five (5) miles beyond the corporate limits of the City of Plano.

Suggested Revised Language: None

Section 8.03 Planning and Zoning Commission.

Recommended Change: Delete section entirely as it is redundant with powers of City Council addressed in Section 3.07 of the City Charter and Section 16-41 of the City Code of Ordinances.

Current Language: (recommendation to delete highlighted language)

The city council shall have the authority to appoint a city planning and zoning commission in accordance with the general laws of the State of Texas as provided for in the statutes of the State of Texas as now exist or hereafter amended.

Suggested Revised Language: None

Article 9 **Section 9.06 Notice of Public Hearing on Budget.**

Recommended Change: Change the publication date for notice of public hearing on the budget from 5 days to “in accordance with state law” which is not earlier than the 30th and not later than the 10th day before the hearing pursuant to Section 102.0065 of the Texas Local Government Code. The general language will allow flexibility in the event state law changes in this area.

Current Language: (recommendation to delete highlighted language)

The city council shall fix the time and place of a public hearing on the budget and shall cause to be published in the official newspaper of the City of Plano, a notice of the hearing setting forth the time and place thereof **at least five (5) days before the date of such hearing.**

Suggested Revised Language: (recommendation to add highlighted language)

The city council shall fix the time and place of a public hearing on the budget and shall cause to be published in the official newspaper of the City of Plano, a notice of the hearing setting forth the time and place thereof **in accordance with state law.**

Section 9.14 Estimated expenditures shall not exceed estimated resources.

Recommended Change: Change the reference to National Committee on Governmental Accounting to the more generic term of “a nationally accepted uniform classification”. The National Committee on Governmental Accounting is no longer used. The City uses the Governmental Accounting Standards Board but the more generic language will alleviate need for future change.

Current Language: (recommendation to delete highlighted language)

The total estimated expenditures of the general fund and debt service fund shall not exceed the total estimated resources of each fund (prospective income plus cash on hand). The classification of revenue and expenditure accounts shall conform as nearly as local conditions will permit to the uniform classification as promulgated by the **National Committee on Governmental Accounting** or some other nationally accepted classification.

Suggested Revised Language:

The total estimated expenditures of the general fund and debt service fund shall not exceed the total estimated resources of each fund (prospective income plus cash on hand). The classification of revenue and expenditure accounts shall conform as nearly as local conditions will permit to a nationally accepted uniform classification.

Article 10

Section 10.02 Franchise, power of city council.

Recommended Change: Change the language to reflect that City Council only has the power to regulate municipal franchises and not every franchise of every character since some utilities are currently regulated by the state. Also add that the City Council can regulate private as well as public franchises in this section and eliminate Section 10-A.02 as it is redundant in every aspect other than distinguishing between private and public franchise regulation.

Current Language: (recommendation to delete highlighted language)

The city council shall have power by ordinance to grant, amend, renew and extend, all franchises **of all public utilities of every character** operating within the City of Plano. All ordinances granting, amending, renewing, or extending franchises **for public utilities** shall be read at two (2) separate regular meetings of the city council, and shall not be finally passed until thirty (30) days after the first reading; and no such ordinance shall take effect until thirty (30) days after its final passage; and pending such time, the caption of such ordinance shall be published once

each week for four (4) consecutive weeks in the official newspaper of the City of Plano, and the expense of such publication shall be borne by the proponent of the franchise. No public utility franchise shall be granted for a term of more than twenty-five (25) years nor be transferable except with the approval of the city council expressed by ordinance.

Suggested Revised Language: (recommendation to add highlighted language)

Except for franchises issued under state or federal law, the city council shall have power by ordinance to grant, amend, renew and extend, all franchises, both public and private, operating within the City of Plano. All ordinances granting, amending, renewing, or extending franchises shall be read at two (2) separate regular meetings of the city council, and shall not be finally passed until thirty (30) days after the first reading; and no such ordinance shall take effect until thirty (30) days after its final passage; and pending such time, the caption of such ordinance shall be published once each week for four (4) consecutive weeks in the official newspaper of the City of Plano, and the expense of such publication shall be borne by the proponent of the franchise. No public or private franchise shall be granted for a term of more than twenty-five (25) years nor be transferable except with the approval of the city council expressed by ordinance.

Section 10.04 Right of Regulation.

Recommended change: Need to clarify that this provision is limited to municipal franchises whether public or private to the language.

Current Language: (recommendation to delete highlighted language)

All grants, removals, extensions, or amendment of public utility franchises, whether it be so provided in the ordinance or not, shall be subject to the right of the city council of the City of Plano:

(a) After due notice and hearing, to repeal the same ordinance at any time upon the failure of the grantee to comply with any provision of the ordinance, the franchise, the charter of the City of Plano, any applicable statute of the State of Texas or the rule of any applicable governmental body.

Suggested Revised Language: (recommendation to add highlighted language)

All grants, removals, extensions, or amendment of public or private franchises, whether it be so provided in the ordinance or not, shall be subject to the right of the city council of the City of Plano:

(a) After due notice and hearing, to repeal the same ordinance at any time upon the failure of the grantee to comply with any provision of the ordinance, the franchise, the charter of the City of Plano, any applicable statute of the State of Texas or the rule of any applicable governmental body.

Section 10.11 Regulations of rates and services.

Recommended Change: Clarify that this provision applies to public and private municipal franchises and not every franchise in that some franchises are issued and regulated by the state.

Current Language: (recommendation to delete highlighted language)

The city council shall have the power, after due notice and hearing, to regulate by ordinance the rates and services of every public utility operating in the City of Plano; and shall have power to employ at the expense of the grantee, expert assistance and advice in determining a reasonable rate and equitable profit to the grantee.

Suggested Revised Language: (recommendation to add highlighted language)

The city council shall have the power, after due notice and hearing, to regulate by ordinance the rates and services of public and private franchises operating in the City of Plano; and shall have power to employ at the expense of the grantee, expert assistance and advice in determining a reasonable rate and equitable profit to the grantee.

Section 10-A.02 Franchise ordinance-procedure

Recommended Change: Delete for redundancy in conjunction with other Section 10 revisions.

Current Language: (recommendation to delete highlighted language)

The city council shall have power by ordinance to grant, amend, renew and extend all private franchises of every character operating within the City of Plano. All ordinances granting, amending, renewing or extending franchises for private franchises shall be read at two (2) separate regular meetings of city council and shall not be finally passed until thirty (30) days after the first reading; and no such ordinance shall take affect [effect] until thirty (30) days after its final passage; and pending such time, the caption of such ordinance shall be published once each week for four (4) consecutive weeks in the official newspaper of the City of Plano and the expense of such publication shall be borne by the proponent of the franchise. No franchise shall be granted for a term of more than twenty-five (25) years nor be transferable except with approval of the city council expressed by ordinance.

Suggested Revised Change: None. (See other Section 10 changes)

Article 11

Sec. 11.01 Publicity of records.

Recommended Change: Section 11.01 should be changed to reflect the correct name of the Texas Public Information Act, which was previously known as the Texas Open Records Act.

Current Language: (recommendation to delete highlighted language)

All records of the city shall be open for inspection by any citizen or by any representative of the press at all reasonable times, subject only to the provisions and limitations of the Texas Open Records Act as now exists or hereafter amended.

Suggested Revised Language: (recommendation to add highlighted language)

All records of the city shall be open for inspection by any citizen or by any representative of the press at all reasonable times, subject only to the provisions and limitations of the Texas Public Information Act as now exists or hereafter amended.

Sec. 11.04. Provisions relating to assignment, execution and garnishment.

Recommended Change: Section 11.04 should be changed to delete the second to last sentence because the City is required to acknowledge and honor certain types of garnishment orders such as child support withholding.

Current Language: (recommendation to delete highlighted language)

The property, real and personal, belonging to the city shall not be liable to be sold or appropriated under any writ or execution or cost bill. The funds belonging to the city, in the hands of any person, firm or corporation shall not be liable to garnishment, attachment, or sequestration; nor shall the city be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. **Neither the city nor any of its officers or agents shall be required to answer any such writ or garnishment on any account whatever.** The city shall not be obligated to recognize any assignment of wager [wages] or funds by its employees, agents, or contractors.

Suggested Revised Language:

The property, real and personal, belonging to the city shall not be liable to be sold or appropriated under any writ or execution or cost bill. The funds belonging to the city, in the hands of any person, firm or corporation shall not be liable to garnishment, attachment, or sequestration; nor shall the city be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. The city shall not be obligated to recognize any assignment of wages or funds by its employees, agents, or contractors.

Sec. 11.11 Amending the charter.

Recommended Change: Section 11.11 should be changed for general clean-up purposes by eliminating the publication year of the Texas Civil Statute.

Current Language: (recommendation to delete highlighted language)

Amendments to this charter may be formulated and submitted to the voters of the city in the manner provided by Chapter 13 Title 28 of the Revised Civil Statutes of Texas, 1925, as now or hereafter amended.

Suggested Revised Language:

Amendments to this charter may be formulated and submitted to the voters of the city in the manner provided by Chapter 13 Title 28 of the Revised Civil Statutes of Texas as now or hereafter amended.

cc: Bruce Glasscock, City Manager
Di Zucco, City Secretary
Judge Stevenson

MEMORANDUM

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: DIANE WETHERBEE *DW*
SUBJECT: CHARTER AMENDMENT
DATE: AUGUST 4, 2011

Below please find an additional Charter amendment for your consideration. In an opinion issued this week, the Texas Attorney General provides that a county judge does not have the statutory or constitutional authority to order a special municipal recall election and a charter provision that imposes such duty on the county judge is not enforceable.¹ By law, the duty to call a recall election rests solely with the City Council. Courts have also taken this stance holding that a city cannot impose such duty and obligation on a county judge.² If a city council fails to order a recall election, a court can mandate the City Council to take such action.

Currently, Section 6.11 of the City Charter states that if the City Council fails or refuses to order a recall election, then the county judge shall discharge such duties. I recommend that this section be deleted. This is a non-substantive amendment as the change is required to comply with state law.

Article 6

Sec. 6.11. Failure of city council to call an election.

Recommended Change: Delete Section 6.11 as a county judge is not authorized by state law to order a special municipal recall election.

Current Language: In case all of the requirements of this charter shall have been met and the city council shall fail or refuse to receive the recall petition or order such recall election, or discharge any other duties imposed upon said city council by the provisions of this charter with reference to such recall, then the county judge of Collin [sic] County, Texas, shall discharge any of such duties herein provided to be discharged by the performing the duties of the city secretary or by the city council.

Suggested Revised Language: None.

¹ Attorney General Opinion *GA-0870 (2011)* holding that Texas law does not authorize a county judge to order a special municipal recall election;

² *Duffy v. Branch*, 828 S.W.2d 211 (Tex. App. – Dallas 1992); *Blanchard v. Fulbright*, 633 S.W.2d 617 (Tex. App. – Houston [14th District] 1982).



DATE: July 14, 2011
TO: City Manager Glasscock
FROM: City Secretary Zucco
RE: Senate Bill 100

Senate Bill 100 was brought forward for compliance with the *Military and Overseas Voter Empowerment (MOVE) Act* passed by Congress in 2009 which makes the voting process more accessible for military/overseas citizens. The General Primary Election date remains the first Tuesday in March; however, the runoff is moved to the fourth Tuesday in May (from the second Saturday). Additionally, while it retains the second Saturday in May as a Uniform Election date, county election administrators are not required to enter into contracts for even-numbered years.

Section 4 of the bill sets out the uniform election dates for the City of Plano General Election as:

- 2nd Saturday in May in odd-numbered years
- 2nd Saturday in May in even-numbered years (Collin County has indicated they will not provide services)
- 1st Tuesday after 1st Monday in November

Possible options and their impacts are included in the accompanying chart and include:

Option “A” – Retaining the current structure of holding May elections with staggered terms. This option would keep the same election cycle and require no legislative action. The City would be responsible for the administration of elections and associated costs for even-numbered years.

Option “B” – Retaining staggered terms and moving to May of odd-numbered years only. Under this scenario, Council Members would serve four-year, staggered terms with elections held in the May of odd-numbered years. (eg. Places 2,4,6,8 would be elected in 2013 and serve until 2017; Places 1,3,5,7 would be elected in 2015 and serve until 2019). This option would require a resolution describing the intended change, a charter election and utilization of a holdover provision.

Option “C” – Removing staggered terms and electing all Council Members in the May of odd-numbered years. This option would also require a resolution describing the intended change, a charter election and utilization of a holdover provision.

Option “D” – Retaining staggered terms and moving to a November election date. Because the City’s Charter does not specify a November date, this option does not require a charter election and would utilize a holdover provision.

SB 100 IMPACTS AND OPTIONS

	Option A	Option B	Option C	Option D
Election Date	May (Current 3-year staggered terms)	May in Odd-Numbered Years (Staggered 4-year terms)	May in Odd-Numbered Years (2-year terms – All Council members elected simultaneously)	November (Current 3-year staggered terms)
Entity Conducting Election	Odd-numbered years: County Even-numbered years: City or third-party administrator	County	County	County
Action	No action required	-Adopt Resolution to detail provisions -Charter Election in Nov. 2011 to alter terms Ordered by 9/7/11	-Adopt Resolution to detail provisions -Charter Election in Nov. 2011 to alter terms Ordered by 9/7/11	No action required
Approximate Costs for General Election: All costs are dependent on the number of entities participating	Odd-numbered: \$30,000 Even-numbered:\$110,000	\$30,000	\$30,000	\$100,000
Considerations	-Availability of equipment, experienced judges/clerks, and possible third-party administrator -City Secretary department impact (staffing) -Proximity to primary run-off early voting -Any reduction in polling locations would reduce costs			-Collin County has indicated local elections will be at the top of the ballot, but not legally bound. -Partisan elections -Voter fatigue -More voters -Polling locations determined by County
Council Member Terms	Elected Term Exp 2009 2012 2011 2014	-Current Council Members would be holdovers (eg. Term for those elected in 2009 would extend to 2013; 2011 to 2015. -Council determination on number of terms. Issues addressed in Charter Election.	-Current Council Members' with terms in 2009 would holdover to 2013, then begin 2-year cycle. -Those elected in 2011 may need be held over to 2015 when all members would be in sync. -Council determination on number of terms Issues addressed in Charter Election.	Utilize holdover provision to get to November Elected Term Exp 2009 2012 2011 2014

Notes: Due to the proximity of the primary run-off election in even-numbered years, County voting equipment will not be available. Under all options, Plano will begin contracting with Denton County for residents in that area in 2012 and those costs are not included. Any change in dates, locations, etc. will require Department of Justice preclearance.

**MAY ELECTIONS – OPTION “B”
4-YEAR STAGGERED TERMS – TWO-TERM LIMIT**

**Option #1
All completed terms served count toward two-term limit**

Place	Elected	Re-elected	Next Election	Next Election	Total # Years
1	05/10/08	05/14/11	Term Limited (2015)		7
2	05/09/09		2013-17	Term Limited (2017)	8
3	03/27/10	05/14/11	2015-19	Term Limited (2019)	9*
4	05/09/09		2013-17	Term Limited (2017)	8
5	05/14/11		2015-19	Term Limited (2019)	8
6	05/09/09		2013-17	Term Limited (2017)	8
7	06/18/11		2015-19	Term Limited (2019)	8
8	05/13/06	05/09/09	Term Limited (2013)		7

*Elected to fill a vacancy in 2010. Service from 2010-11 does not constitute a full term.

Note: Under the current Charter, the maximum total # of years is 9 (three, 3-year terms)

**MAY ELECTIONS – OPTION “B”
4-YEAR STAGGERED TERMS – TWO-TERM LIMIT**

**Option #2
Only four-year terms served count toward two-term limit**

Place	Elected	Re-elected	Next Election	Next Election	Total # Years
1	05/10/08	2011-15	2015-19	Term Limited (2019)	11
2	2009-13		2013-17	Term Limited (2017)	8
3	03/27/10	2011-15	2015-19	Term Limited (2019)	9*
4	2009-13		2013-17	Term Limited (2017)	8
5	05/14/11	2011-15	2015-19	Term Limited (2019)	8
6	2009-13		2013-17	Term Limited (2017)	8
7	06/18/11	2011-15	2015-19	Term Limited (2019)	8
8	05/13/06	2009-13	2013-17	Term Limited (2017)	11

*Elected to fill a vacancy in 2010. Service from 2010-11 does not constitute a full term.

Note: Under the current Charter, the maximum total # of years is 9 (three, 3-year terms)

**MAY ELECTIONS – OPTION “B”
4-YEAR STAGGERED TERMS – TWO-TERM LIMIT**

**Option #3
No terms prior to charter election included in calculation
Two-term limit begins with elections 2013 and later**

Place	Elected	Re-elected	First Election following charter amendment	Next Election	Total # Years
1	05/10/08	05/14/11	2015-19	2019-23	15
2	05/09/09		2013-17	2017-21	12
3	03/27/10	05/14/11	2015-19	2019-23	13*
4	05/09/09		2013-17	2017-21	12
5	05/14/11		2015-19	2019-23	12
6	05/09/09		2013-17	2017-21	12
7	06/18/11		2015-19	2019-23	12
8	05/13/06	05/09/09	2013-17	2017-21	15

*Elected to fill a vacancy in 2010. Service from 2010-11 does not constitute a full term.

Note: Under the current Charter, the maximum total # of years is 9 (three, 3-year terms)

MAY ELECTIONS – CURRENT TERMS

3-YEAR STAGGERED TERMS – THREE-TERM LIMIT

Name	Elected	Re-elected	Re-elected	Next Election	
Pat Miner	05/10/08	05/14/11		May 2014	Deputy MPT 2010/11 – MPT 2011/12
Ben Harris	05/09/09			May 2012	
Andre Davidson	03/27/10	05/14/11		May 2014	
Lissa Smith	05/09/09			May 2012	Deputy MPT 2011/12
Jim Duggan	05/14/11			May 2014	
Mayor Dyer	05/09/09			May 2012	
Patrick Gallagher	06/18/11			May 2014	
Lee Dunlap	05/13/06	05/09/09		May 2012	Deputy MPT 2009/10 – MPT 2010/11

Effective May 2005 Council Terms are three years.