

June 9, 2023



City of Melissa

Melissa City Hall
3411 Barker Avenue
Melissa, TX 75454

Ph: 972-838-2338
Fax: 972-837-4524
www.cityofmelissa.com

Honorable Mayor Jay Northcut
Craig Ackerman, Mayor Pro Tem, Place 5
Jennifer Clark, Council Member, Place 1
Rendell Hendrickson, Council Member, Place 2
Dana Conklin, Council Member, Place 3
Joseph Armstrong, Council Member, Place 4
Sean Lehr, Council Member, Place 6

Honorable Mayor and City Council:

In March 2023, the City Council appointed a Charter Review Commission to evaluate the City Charter for possible amendments. The City Charter was first adopted in 2011 and a review by a citizen panel is required every ten years (COVID delayed the initial review in 2020/2021). The Charter Review Commission is composed of nine (9) members of the community who were recommended by the City Council. Resolution No. 2023-14 established the Charter Review Commission and appointed Dr. Steve Rodriguez as the chair.

The charge to the Charter Review Commission was to first review Staff-identified changes that, if approved, would make the Charter as useful as possible by updating and clarifying where necessary in order to comply with existing federal and state laws, as well as currently established best practices for municipal governments. The Charter Review Commission also received two specific requests by the City Council to review the pros and cons of term limits and changing to file for a place on the election ballot for Mayor/City Council positions. The Charter Review Commission was also afforded the ability to identify any other topic that the group would like to explore, although no additional topics were identified. The Charter Review Commission is recommending tweaks to the Charter and not a wholesale rewriting of the Charter since it continues to serve the citizens of Melissa.

The Charter Review Commission met on April 12, 2023, May 3, 2023, May 15, 2023, and June 7, 2023. Each of the meetings was open to the public. On June 7, 2023, the Charter Review Commission voted to recommend 13 amendments to the City Charter.

As Chair of the Charter Review Commission, I would like to commend the eight members of our community who took time away from their families in order to review the Charter and recommend amendments. Members of the Charter Review Commission were thoughtful, creative and insightful in reviewing the recommendations proposed by City staff and developing their final recommendations that are proposed to the City Council for consideration.

A copy of the Charter Review Commission's official recommended changes to the City Charter is attached, and the Commission looks forward to the Council's review and input at the July 11 City Council meeting.

Respectfully submitted,

Dr. Steve Rodriguez, Chair



CHARTER COMMISSION REPORT TO MELISSA CITY COUNCIL

June 9, 2023

Table of Contents

| | |
|---|----|
| Executive Summary..... | 2 |
| Recommendations | 2 |
| Commission Chair, Members, and Staff Support | 3 |
| City Council-Identified Provisions - Term Limits..... | 4 |
| City Council-Identified Provisions – Charging to File | 5 |
| Other Recommended Revisions to the Charter | 6 |
| Proposition 1: Charging to File..... | 6 |
| Proposition 2: Non-Substantive Changes..... | 7 |
| Proposition 3: Removing Obsolete Provisions | 8 |
| Proposition 4: Clarifying Mayoral Authority | 9 |
| Proposition 5: Qualified Voters | 10 |
| Proposition 6: Clarifying Mayor Pro Tem Selection..... | 12 |
| Proposition 7: Allowing Vacancies to be Appointed | 13 |
| Proposition 8: Allowing for Other Forms of Publication | 14 |
| Proposition 9: Removing Conflicts with State Law..... | 16 |
| Proposition 10: Clarifying Nepotism, Conflicts of Interest, and Gifts | 19 |
| Proposition 11: Clarifying Powers of Initiative and Referendum | 20 |
| Proposition 12: Specifying Number of Signatures | 21 |
| Proposition 13: Removing Filing Requirements regarding delinquencies | 22 |

Executive Summary

In accordance with Section 15.01 of the Melissa Home Rule Charter, the Melissa City Council appointed a Charter Review Commission on March 14, 2023 to review Staff-identified administrative revisions, to review Council-requested topics and to carry out the other functions of the Charter Review Commission as set forth in Section 15.01 of the Charter.

The Commission first met on April 23, 2023, and subsequently held a series of meetings to review the identified modifications and to discuss the Council-identified topics. As a matter of procedure, each meeting was a building block for the preparation of this final report with the Commission's recommendations to the Melissa City Council on those Charter Amendments that are recommended to be put before the Melissa voters in November 2023 or at another time as determined by Council, all the while understanding the City Council has the authority and responsibility to decide which propositions, if any, are brought before the voters, and when to do so.

Recommendations

The modifications recommended by the Commission fall into two major categories:

- City Council-identified topics: The City Council asked the Commission to weigh in on two specific policy points, (i) Term Limits for Mayor and City Council Positions; and (ii) Charging to File for Place on the Election Ballot and to make a recommendation to the City Council.
 - The Charter Commission did not recommend term limits for the Mayor and/or City Council positions.
 - The Commission did recommend an addition to the qualifications for elected public office for the City (Mayor and/or City Council member), being either a filing fee or a petition with signatures from Melissa voters. More detail is included in this report on these topics.
- Staff-identified revisions: The Commission is recommending a number of other changes to reflect streamlining, updating, clarification, and elimination of conflicts with State Law or other inconsistencies.

In all, the Commission is recommending 13 propositions to the City Council for their consideration.

In addition to this Executive Summary, this report details Commission Membership and staff support and provides the rationale for the recommended propositions.

Commission Chair, Members, and Staff Support

Dr. Steve Rodriquez, Chair

Lance Bauslaugh

Jenifer Branson

Stacey Heckler

Jamie Maddock

Wendy Tillman

Betty Walthall

Courtney Willis

Jessica Wright

Support Staff:

Jason Little, City Manager

Ryan Pittman, City Attorney

City Council-Identified Provisions - Term Limits

Term limits was one topic identified by the Melissa City Council for the Commission to review and make a recommendation. After review of area cities' regulations regarding term limits and a review of historical voting records in Melissa, the Commission opted to not recommend term limits.

Conceptually, the support behind a term limit is that Incumbents are a strong barrier to preventing new members from winning an elected seat. While statistics and sources vary, it appears that reputable sources show that Incumbents win their political races more than 80% of the time. In Melissa, that is not the case. Since 2011 when the Home Rule Charter was adopted and the City Council membership was expanded to seven (7) members, there have been five (5) elections where an Incumbent was challenged by a non-Council member. Of those elections, the Challenger defeated the Incumbent 60% (3 of the 5 contests) of the time.

Additionally, the Commission felt like continuity on the local elected board was a positive attribute, particularly in Melissa's high growth mode. If a majority of the Melissa citizenry does not feel local officials are acting in the best interest of the community, history has shown that voters in Melissa are willing to make a change through the ballot box.

The Commission does not recommend moving forward with revisions to the Charter to include term limits for Mayor and/or City Council Members.

City Council-Identified Provisions – Charging to File

The City Council also asked the Commission to review the possibility of charging an individual to file for a place on an election ballot for Mayor and/or City Council Membership. After a review of area city rules regarding this requirement and discussing the pros and cons to such a proposition, the Commission recommends a proposition to the Melissa City Council.

The requirement by a City to pay a non-refundable fee to file (or in lieu of a fee, the filing of a petition with a certain number of signatures of voters), is not uncommon in Texas. However, what the fee is and the petition signature requirements vary widely.

The Commission first discussed why such a proposition should even be considered by the Commission. The rationale behind the fee or petition to file is to ensure that those wanting to file for a place on a ballot are committed to the election process. When there is a contested election of any number, the City contracts with Collin County Elections to manage the election process, and that service comes with a cost. Depending on how many other entities are also holding an election, the current costs can be as low as \$10,000 for an election and as high as \$63,000. As the number of the City's registered voters grows, those costs would also rise, as costs are determined in part by the number of registered voters in a community. Melissa residents ultimately pay this bill, and Melissa has had candidates file for a place on the ballot and not run a campaign in any discernable way. The costs are still incurred, so the Commission thought a nominal fee or an achievable petition requirement was a reasonable ask of someone who is committing the City to paying for an election and ultimately stating they are committed to serving the community in this volunteer capacity should they be successful.

The Commission recommends a proposition that would require a \$100 non-refundable filing fee or a petition with 50 verified Melissa voters in lieu of the fee.

Other Recommended Revisions to the Charter

The Commission recommends that an election be called to put forward a number of proposed changes to the Charter for the community's consideration. The changes are described below, organized into 14 recommended ballot propositions. Where applicable, a redline to the current Charter is provided that reflects the proposed changes. A brief summary of the Commission's discussion follows each recommended proposition. It is important to note that the Commission did not put these propositions into any specific order and defer to the City Council should there be a preferred order of the propositions.

Proposition 1: Charging to File

Shall the City of Melissa Charter Section 5.02(1) be amended to require candidates for elective City offices to pay a nonrefundable filing fee or submit a petition in lieu of a filing fee?

Modification to Charter –

SECTION 5.02 Filing for Office

(1) Candidates for elective City offices shall file for office in accordance with the Texas Election Code. Each candidate's application for a place on the ballot must be accompanied by a nonrefundable filing fee of One Hundred Dollars (\$100.00) or, in lieu of the payment of a filing fee, a petition signed by no less than fifty (50) qualified voters of the City or one-half of one percent of the total votes received in the City by all candidates for Mayor in the most recent mayoral election, whichever is greater.

Discussion: Currently, the Charter does not require any non-refundable filing fee or any petition requirement to file for a place on the ballot for elected public office for the City. For the reasons and rationale stated previously in this document, the Commission is recommending a fee be proposed to the voters. The Texas Election Code and federal law require an option for a petition in lieu of a fee, if charged. The Commission recommends 50 valid signatures for a petition for a place on the ballot, which would be 5% of the most recent local turnout.

Proposition 2: Non-Substantive Changes

Shall the City of Melissa Charter be amended to add Section 11.08 to grant the City Council authority to make non-substantive revisions to the City Charter without obtaining separate approval of the voters in a Charter amendment election, authorizing non-substantive changes to be made to the Charter through the passage of an ordinance?

Modification to Charter –

SECTION 11.08 Non-substantive Revisions

- (1) The City Council may, without approval of the voters, adopt an ordinance that makes the following types of revisions to this Charter:
 - (A) Renumbering, revising headings and rearranging parts thereof; and
 - (B) Correcting errors in spelling, grammar, cross-references and punctuation.
- (2) A revision adopted under this section is not intended to and is not to be interpreted as making any substantive change in any Charter provision.

Discussion: The Commission recommends that a new section of the Charter be added to allow the City Council to be empowered to make non-substantive changes related to reorganizing and clarifying the Charter on an ongoing basis by ordinance rather than having to ask the voters permission in the future. To be very clear and transparent with the voters, “non-substantive” is specifically defined as the following: Renumbering, revising headings and rearranging parts thereof; and correcting errors in spelling, grammar, cross-references and punctuation.

Proposition 3: Removing Obsolete Provisions

Shall the City of Melissa Charter Sections 3.18 and 13.04 be amended to remove obsolete transitional provisions that are no longer necessary?

Modification to Charter –

SECTION 3.18 Code of Ethics

The City Council shall adopt, maintain, and enforce, by ordinance or resolution, a Code of Ethics for the purpose of, among other things, establishing and defining the bounds of reasonable ethical behavior by the City Council and all appointed City Officials.

Discussion: These sections were required when the Charter was originally adopted in 2011 to address when the provisions of the original Charter would take effect. This proposition would modify Section 3.18 and delete Section 13.04 in its entirety. It is important to restate that the amendment to Section 3.18 still requires the City Council to adopt, maintain, and enforce a Code of Ethics. The revision just removes the requirement to adopt within 180 days of the passage of the Home Rule Charter, as the original Code of Ethics was adopted within that timeframe. The Commission recommends that 3.14 be amended and 13.04 be removed in order to clean up the Charter.

Proposition 4: Clarifying Mayoral Authority

Shall the City of Melissa Charter Section 3.04(1) be amended to clarify the authority of the Mayor as it relates to the power to veto and authority to sign contracts and other legal documents on behalf of the City?

Modification to Charter –

SECTION 3.04 Mayor and Mayor Pro-Tem

(1) The Mayor shall attend and preside at meetings of the City Council. The Mayor shall participate in the discussion of all matters coming before the City Council and shall have a vote on all matters before the City Council but shall have no power to veto. The Mayor shall also represent the City in intergovernmental relationships, present an annual state of the City message, and perform other duties specified by the City Council and/or imposed by this Charter and by ordinances and resolutions passed in pursuance thereof. The Mayor 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.

Discussion: Texas State Law does not prohibit a Home Rule City from authorizing its Mayor to have the power of a veto over a City Council action. However, the city's Charter must specifically state such a power is granted to the Mayor by the voters through an approved Charter provision. Melissa's Charter is silent on the ability for a mayor to veto an action by the Council, therefore, the Mayor of Melissa does not have the power to veto. To avoid any ambiguity about the Mayor's ability to veto, the proposed revision makes it clear that the power to veto is not included in Melissa's governing standards. Additionally, the current Charter language authorizing the Mayor to sign documents on behalf of the City after being authorized by the City Council does not correspond with the typical action where the Council authorizes the City Manager to sign on behalf of the City.

Proposition 5: Qualified Voters

*Shall the City of Melissa Charter Sections 6.01, 6.02, 6.12, 6.13, 6.14 and 15.02 be amended
replace the term “registered voters” with the term “qualified voters”?*

Modification to Charter –

SECTION 6.01 Scope of Recall

Any elected City official, whether elected to office by qualified voters or appointed by the City Council to fill a vacancy, shall be subject to recall and removal from office by the qualified voters of the City on grounds of incompetency, misconduct, or malfeasance in office.

SECTION 6.02 Petitions for Recall

Before the question of recall of such officer shall be submitted to the qualified voters of the City, a petition demanding such question to be so submitted shall first be filed with the person performing duties of City Secretary, which said petition must be signed by qualified voters of the City of at least ten percent (10%) of the total number of qualified voters in the City at the last regular City election. Each signature on a recall petition shall conform to the requirements for information as set forth in the Texas Election Code, as amended.

SECTION 6.12 General Power of Initiative and Referendum

The qualified voters of the City, in addition to the method of legislation herein before provided, shall have the power of direct legislation by initiative and referendum....

SECTION 6.13 Initiative

Following a review by the City Attorney for enforceability and legality, qualified voters of the City 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 of at least ten percent (10%) of the total number of qualified voters in the City at the last regular City election. 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 this Article, and shall be verified by oath in the manner and form provided for recall petitions in this Article. The petition may consist of one (1) or more copies as permitted for recall petitions. Such petition shall be filed with the person performing the duties of City Secretary. Within twenty-one (21) 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 the City Council, it shall become the duty of the City Council, within two (2) regularly scheduled City Council meetings 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 and/or on a date allowed under the Texas Election Code, at which the qualified voters of the City 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. Any election order so issued shall comply fully with the Texas Election Code. Unless otherwise provided by law, any election for an initiative under this Charter shall be held on

the first authorized uniform election date that occurs after the sixty-fifth (65th) day after the petition was presented to the City Council.

SECTION 6.14 Referendum

Qualified voters of the City may require that any ordinance or resolution, with the exception of ordinances or resolutions appropriating money, authorizing the issuance of public securities or levying taxes, passed by the City Council be submitted to the voters of the City for approval or disapproval, by submitting a petition for this purpose within thirty (30) days after final passage of said ordinance or resolution, or within thirty (30) days after its publication...

SECTION 15.02 Petition to Amend Charter

Amendments to this Charter may be framed and submitted to the qualified voters of the City in the manner provided by the Constitution and the laws of the State of Texas; including upon the City Council's own motion or upon petition by ten five percent (5%) of the qualified voters in the City or twenty-thousand (20,000) qualified voters of the City, whichever is less, or as otherwise required by state law. Each signature on a petition to amend shall conform to the requirement for information as set forth in the Texas Election Code, as amended.

Discussion:

The Charter uses both terms (registered voters and qualified voters). The Texas Election Code also uses both terms in various chapters. In the chapter of the Election Code that governs "qualifications and requirements for voting," Section 11.002 of the Election Code defines the term "qualified voter" to mean: A person who is 18 years of age or older; is a United States citizen; has not been determined to totally or partially mentally incapacitated; has not been finally convicted of a felony; is a resident of this state; and is a registered voter. The term "registered voter" is not defined in that chapter. The Commission is recommending replacing any reference to "registered voter" with "qualified voter" because of the definition summarized above, which encompasses more than just registration to vote. A registered voter can become unqualified to vote if, for example, the voter moves outside the City or is convicted of a felony after registering to vote. This amendment would clear up any potential ambiguity that could lead to unnecessary disputes.

Proposition 6: Clarifying Mayor Pro Tem Selection

Shall the City of Melissa Charter Section 3.04(2) be amended to clarify specify the time for electing the Mayor Pro-Tem and to provide that the Mayor Pro-Tem shall serve in such capacity until a majority of the City Council votes to elect a new Mayor Pro-Tem?

Modification to Charter –

SECTION 3.04 Mayor and Mayor Pro-Tem

(2) The Mayor Pro-Tem shall be a Council Member elected by the City Council at the first regular meeting after each election of Mayor and/or Council Members or after each general election date if the City does not hold an election, except that in the event a runoff election is required for any such office, the City Council shall not elect a Mayor Pro-Tem until the runoff election is completed and the duly elected candidate(s) have been officially seated on the City Council. The Mayor Pro-Tem shall serve in such capacity until a majority of the City Council votes to elect a new Mayor Pro-Tem. The Mayor Pro-Tem shall act as Mayor during the disability or absence of the Mayor, and in this capacity shall have the rights conferred upon the Mayor.

Discussion: Currently, there are two General Election dates allowed in Texas: the first Saturday in May and the second Tuesday in November. The proposed revision attempts to make clear that the Mayor Pro Tem position is selected immediately after the General Election date that the Melissa Mayor and/or City Council Members are regularly elected. In Melissa's case, the Mayor Pro Tem would be selected in May of each year. The current language could be misinterpreted to mean the Mayor Pro Tem is selected immediately after each General election (May and November) of each year, which is not the case. The language also provides authority for Council to vote to replace the Mayor Pro Tem at any time, which arguably does not exist under the current language.

Proposition 7: Allowing Vacancies to be Appointed

Shall the City of Melissa Charter Sections 3.05(4), 3.05(5), and 3.05(6) be amended to grant the City Council authority to fill a vacancy occurring in the office of the Mayor or a Council Member if the remainder of the unexpired term of the vacated office is twelve (12) months or less, as permitted under state law?

Modification to Charter –

SECTION 3.05 Vacancies, Forfeiture and Filling of Vacancies

- (4) A vacancy in the office of Mayor shall be filled by special election within one hundred twenty (120) days after such vacancy occurs, in accordance with the Texas Constitution and the Texas Election Code, except that if the remainder of the unexpired term of the vacated office is twelve (12) months or less, then the City Council is authorized to fill the unexpired term by appointment on the affirmative vote of a majority of the full membership of the City Council.
- (5) A vacancy in the office of a Council Member shall be filled by special election within one hundred twenty (120) days after such vacancy occurs, in accordance with the Texas Constitution and the Texas Election Code, except that if the remainder of the unexpired term of the vacated office is twelve (12) months or less, then the City Council is authorized to fill the unexpired term by appointment on the affirmative vote of a majority of the full membership of the City Council. If the vacated office is that of Mayor Pro-Tem, the City Council shall elect a new Mayor Pro-Tem at the next regular meeting.
- (6) Vacancies filled by special election or by appointment shall be for the remainder of the term that was vacated.

Discussion: Under the Texas Constitution, a vacancy in the office of Mayor and/or City Council Member must be filled within 120 days of the date the vacancy occurs by the calling of an election unless: (a) the remaining term is less than 4 months, or: (b) the city's Home Rule Charter allows for a vacancy in the office of Mayor and/or City Council Member to be filled by appointment if the remaining term in 12 months or less.

Currently, Melissa cannot appoint to fill a vacancy, even if there is 12 months or less in the remaining term of a vacated office. In the event there is a vacancy and there is 12 months or less remaining on the respective term, the Commission did not feel it is rationale to ask someone to run for office and then run again in less than a year. The amendments proposed would allow for an appointment to be made by the City Council if there is 12 months or less, which is currently allowed by State law.

Added June 9, 2023: Suggestion to City Council that a process and qualifications for how a vacancy would be filled should be adopted prior to marketing the election, if the Council chooses to place this proposition on an election ballot. Staff is researching processes and qualifications for Council to review.

Proposition 8: Allowing for Other Forms of Publication

Shall the City of Melissa Charter Sections 3.13(3), 3.14(4), 3.15(1), 3.15(2), 3.15(3), 6.17, 8.01(3) and 11.02 be amended to provide for publication of certain notices by means other than publication in the official newspaper of the City or as otherwise specified, all as may be allowed by state law?

Modification to Charter –

SECTION 3.13 Passage of Ordinances in General

(3) Unless otherwise required by law, every ordinance shall become effective upon 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 having been published its entirety or summary form after adoption, in a newspaper designated as the official newspaper of the City, or by such other means as may be allowed by State law.

SECTION 3.14 Emergency Ordinances

(4) Emergency ordinances shall become effective upon adoption and shall be published or made available as soon thereafter as practicable. Every emergency ordinance so adopted, except one authorizing the borrowing of money as described herein, is automatically repealed as of the sixty-first (61st) day following the day on which it became effective. The ordinance may be re-enacted if the emergency still exists.

SECTION 3.15 Authentication, Recording, Codification, Printing and Distribution

(1) All ordinances and resolutions adopted by the City Council shall be authenticated by seal and signature of the person performing the duties of the City Secretary and numbered consecutively as adopted. They shall be properly indexed and made available for public inspection.

(2) The City Council may codify the ordinances of the City. If adopted, the codification shall be known and cited as "The Melissa City Code" and shall be in full force and effect without the necessity of such code or any part thereof being published in accordance with State law. The caption, descriptive clause and other formal parts of the ordinances of the City may be omitted without affecting the validity of such ordinances when codified. Every general ordinance enacted subsequent to such codification shall be enacted as an amendment to the code. For the purpose of this section, general ordinances shall be deemed to be those ordinances of a permanent or continuing nature which affect the residents of the City at large. Copies of the code shall be made available to the public.

(3) The City Council shall cause all ordinances and amendments to this Charter to be made available following their adoption.

SECTION 6.17 Publication of Proposed and Referred Ordinances

The person performing the duties of City Secretary of the City shall publish at least twice the official newspaper of the City, or by such other means as may be allowed by state law, the proposed or referred ordinance or resolution within fifteen (15) days before the date of the election, and shall give such other notices and do such other things relative to such election as are required by law in municipal elections and by the ordinance or resolution calling said election.

SECTION 8.01 Authority, Composition and Procedures

- (3) All boards, commissions or committees of the City shall keep and maintain minutes of any proceedings held and make them available to the City Council.

SECTION 11.02 Official Newspaper/Official Media Designation

Unless otherwise required by State Law, the City Council shall declare an official newspaper of general circulation in the City. All ordinances, notices and other matters required by this Charter, City ordinance, or the Constitution and laws of the State of Texas shall be published or made available in accordance with State Law.

Discussion: Current State Law requires public notices such as zoning changes, public hearings, etc. to be run in the newspaper of record. Since 2015 or so, various State Law proposals would have allowed a city to use its website as the primary location for those required public notices, as trends for newspaper access and readership have dwindled. Those efforts at State Law revisions have not been successful to date. The proposed changes would allow the City to use other authorized media for publications, but only if the law is changed. In the event the State Law changes to allow other sources of publication and these amendments are not approved, the City would be required to use a newspaper because the current language does not contemplate any other sources for publication than the newspaper.

Proposition 9: Removing Conflicts with State Law

Shall the City of Melissa Charter Sections 5.02(2)(F), 5.04(1), 6.11, 6.16, 6.22, 9.02(3), 9.04(3), 15.02 and 15.07 be amended to modify or eliminate provisions that conflict with state law?

Modification to Charter – *Because each topic has its own conflict with State Law, a “Discussion” statement will be added underneath each section referenced in the Proposition above.*

SECTION 5.02 Filing for Office

(2) Candidates for elective City offices shall meet the following qualifications:
(F) Reserved.

Discussion: Necessary to address change in law adopted in 2013. See [Section 150.041 of the Local Government Code](#).

SECTION 5.04 Official Results

(1) The candidate for elective office receiving a majority of the votes cast shall be declared the winner. In the event that no candidate receives a majority of all votes cast for any one place at such election, the City Council shall, upon completion of the official canvass of the ballots, issue a call for a runoff election to be held within thirty (30) days following the issuance of such call, or in accordance with the Texas Election Code. At such runoff election, the two (2) candidates receiving the highest number of votes for any one place in the first election shall again be voted for.

Discussion: A “runoff” in a local election is required when no candidate receives a majority of the votes (50.01%). In the event of a runoff, the top two candidates then hold another election where the voters choose between the two candidates. The existing language states that the runoff could occur between three individuals if the second and third place results are tied. Chapter 2 of the Election Code would not allow three individuals to proceed to a runoff. In the event the second and third place candidates are tied, State law requires a drawing of straws between the two candidates as to who competes in the runoff against the top candidate. The proposed amendment makes the provision consistent with State law.

SECTION 6.11 Failure of the City Council to Call an Election – Recall

In case that all 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 on the City Council by the provisions of this Charter with reference to such recall, then any petitioning citizen may file an application for a writ of **mandamus** with the appropriate court to require the discharge of such duties herein provided to be discharged by the person performing the duties of City Secretary or by the City Council.

Discussion: State law does not permit a District Judge to act in the absence of a properly filed application for a writ of mandamus in this context.

SECTION 6.16 Form of Ballots

The ballots used when voting upon such proposed and referred ordinances, resolutions or measures, shall set forth their nature sufficiently to identify them and shall also set forth upon separate lines the words:

“For the Ordinance” or
“Against the Ordinance” or
“For the Resolution” or
“Against the Resolution” or
“For the Measure” or
“Against the Measure”

Discussion: Change conforms to [Chapter 52 of the Election Code](#).

SECTION 6.22 Failure of the City Council to Call an Election – Initiative or Referendum

In case that all of the requirements of this Charter shall have been met and the City Council shall fail or refuse to receive the initiative or referendum petition, or order such initiative or referendum election, or discharge any other duties imposed on the City Council by the provisions of this Charter with reference to such initiative or referendum, then any petitioning citizen may file an application for a writ of mandamus with the appropriate court to require the discharge of such duties herein provided to be discharged by the person performing the duties of City Secretary or by the City Council.

Discussion: State law does not permit a District Judge to act in the absence of a properly filed application for a writ of mandamus in this context.

SECTION 9.02 Duties and Powers

(3) A vote of three-fourths (3/4ths) of the City Council is required to overrule a recommendation of the Commission that a proposed zoning amendment, supplement, or change be denied.

Discussion: Change conforms to [Section 211.006\(f\) of the Local Government Code](#).

SECTION 9.04 The Comprehensive Plan: Procedure and Legal Effect

(3) Following the adoption by the City Council of the Comprehensive Plan, and any revisions thereto, it shall serve as a guide to all future City Council action concerning land use and development regulations and expenditures for capital improvements. Any proposal which deviates from the Comprehensive Plan regarding land use and development regulations shall not be authorized until and unless the location and extent thereof shall have been submitted to and approved by the Commission. In case of denial, the Commission shall communicate its reasons to the City Council, which shall have the power to overrule such denial with a vote of three-fourths (3/4ths) of the City Council and upon such overruling, the City Council or the appropriate office, department or agency shall have authority to proceed.

Discussion: Change conforms to [Section 211.006\(f\) of the Local Government Code](#).

SECTION 15.02 Petition to Amend Charter

Amendments to this Charter may be framed and submitted to the qualified voters of the City in the manner provided by the Constitution and the laws of the State of Texas; including upon the City Council's own motion or upon petition by ~~ten~~ five percent (5%) of the qualified voters in the City or twenty-thousand (20,000) qualified voters of the City, whichever is less, or as otherwise required by state law. Each signature on a petition to amend shall conform to the requirement for information as set forth in the Texas Election Code, as amended.

Discussion: Change conforms to [Section 9.004\(a\) of the Local Government Code](#).

SECTION 15.07 Failure of the City Council to Call an Election Following Receipt of Valid Petition to Amend

In case that all the requirements of this Charter shall have been met and the City Council shall fail or refuse to receive the petition to amend, or order such election, or discharge any other duties imposed on the City Council by the provisions of this Charter or state law with reference to such election to amend, then any petitioning citizen may file an application for a writ of mandamus with the appropriate court to require the discharge of such duties herein provided to be discharged by the person performing the duties of City Secretary or by the City Council.

Discussion: State law does not permit a District Judge to act in the absence of a properly filed application for a writ of mandamus in this context.

Proposition 10: Clarifying Nepotism, Conflicts of Interest, and Gifts

Shall the City of Melissa Charter Sections 14.01, 14.08, and 14.09 be amended to incorporate and refer to State law regarding nepotism, conflicts of interest and gifts?

Modification to Charter –

SECTION 14.01 Nepotism

A City official shall comply with applicable state laws regarding the appointment or confirmation of appointment of certain close relatives.

SECTION 14.08 Conflict of Interest

A City official shall comply with applicable state laws regarding conflicts of interest and the disclosure thereof.

SECTION 14.09 No Officer to Accept Gifts, Etc.

A City official shall comply with applicable state laws regarding the acceptance, agreement to accept or solicitation of gifts and other benefits and the disclosure thereof.

Discussion: These sections cover important topics for the City that mirror the regulations currently in Texas state law (Nepotism, [Chapter 573 of the Government Code](#); Conflicts of Interest, [Chapter 171 of the Texas Local Government Code](#); and Acceptance of Gifts, [Chapter 36 of the Penal Code](#) and [Chapter 176](#) of the Texas Local Government Code). While these sections cover the same general subject matter as the referenced State laws, they did so using different language, which creates ambiguity about whether the provisions require something different than what State law requires. In order for these provisions to mirror State Law and rather than prescribing specific language that could be interpreted as being inconsistent with State law, the Commission recommends removing the Charter's detailed language regarding and incorporating and referencing the regulations of State Law so that as these laws are strengthened or modified by State Law, they apply equally and consistently to the City of Melissa, while reducing potential ambiguity.

Proposition 11: Clarifying Powers of Initiative and Referendum

Shall the City of Melissa Charter Section 6.12 be amended to specify that the power of initiative and referendum shall not extend to the budget or capital program or any ordinance or resolution relating to appropriation of money, issuing of bonds, levy of taxes, salaries of City officers or employees, the Comprehensive Plan, amendments of the Zoning Ordinance or other ordinances or resolutions not subject to initiative or referendum as provided by state law?

Modification to Charter –

SECTION 6.12 General Power of Initiative and Referendum

The qualified voters of the City, in addition to the method of legislation herein before provided, shall have the power of direct legislation by initiative and referendum. However, the power of initiative and referendum shall not extend to the budget or capital program or any ordinance or resolution relating to appropriation of money, issuing of bonds, levy of taxes, salaries of City officers or employees, the Comprehensive Plan, amendments of the Zoning Ordinance or other ordinances or resolutions not subject to initiative or referendum as provided by state law.

Discussion: This amendment consolidates the Initiative and Referendum section for clarity and to add that zoning ordinances and/or City planning documents are not eligible for Initiative and Referendum actions, as the prohibitions for what is the subject on an Initiative or Referendum question are the same.

Proposition 12: Specifying Number of Signatures

Shall the City of Melissa Charter Section 6.14 be amended to specify the number of signatures required on a referendum petition?

Modification to Charter –

SECTION 6.14 Referendum

Qualified voters of the City may require that any ordinance or resolution, with the exception of ordinances or resolutions appropriating money, authorizing the issuance of public securities or levying taxes, passed by the City Council be submitted to the voters of the City for approval or disapproval, by submitting a petition for this purpose within thirty (30) days after final passage of said ordinance or resolution, or within thirty (30) days after its publication. Said petition must be signed by qualified voters of the City of at least ten percent (10%) of the total number of qualified voters in the City at the last regular City election. Said petition shall be addressed, signed, and verified as required for recall petitions in this Article and shall be submitted to the person performing the duties of City Secretary. The person performing the duties of City Secretary shall present said petition to the City Council in the same manner as provided for a recall petition. Thereupon the City Council shall immediately reconsider such ordinance or resolution and, if the City Council does not entirely repeal the same, shall submit it to popular vote as provided in Section 6.13 of this Charter. Pending the holding of such election, each ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof. Unless otherwise provided by law, any election for a referendum under this Charter shall be held on the first authorized uniform election date that occurs after the sixty-fifth (65th) day after the petition was presented to the City Council.

Discussion: The amendment specifies the required number of petition signatures for a Referendum to be brought forward for review. The amended language makes it clear that the threshold is 10% of the total number of qualified voters in the City at the last regular City election, which mirrors the requirement in Section 6.13, Initiative. The petition requirement is a clarification that was inadvertently left out in the 2011 version.

Proposition 13: Removing Filing Requirements regarding delinquencies

Shall the City of Melissa Charter Sections 5.02(2)(D) and 14.07 be amended to remove the requirement that candidates for elective City office and persons who hold an appointive or compensative position of the City shall not be in arrears in payment of taxes or other liabilities due the City after notice of any delinquency?

Modification to Charter –

SECTION 5.02 Filing for Office

- (2) Candidates for elective City offices shall meet the following qualifications:
- (D) Reserved.

SECTION 14.07 Reserved

Discussion: This type of limitation has been the subject of litigation in Texas, with cities most often being on the losing side. The Commission recommends removing it to avoid risk of a legal challenge on Equal Protection and other grounds.