

Office of the City Manager

City of Richland Hills, Texas

Memorandum

To: Honorable Mayor Bill Agan and members of the Richland Hills City Council
From: Curtis E. Hawk, City Manager
Date: August 6, 2013
Subject: Ordinance 1251-13, Calling November 5, 2013 Election for Amendments to the Richland Hills Home Rule Charter

City Council Action Requested:

Approve Ordinance 1251-13 Calling an Election on November 5, 2013 for Amendments to the Richland Hills Home Rule Charter.

Background Information:

Approval of this item will set the November 5, 2013 uniform election date provided in the Texas Election Code as the date for the voters in Richland Hills to decide whether or not to approve amendments to the Richland Hills Home Rule Charter. The election will bring to completion the 2-year effort by City Council and a group of citizens to update the Charter.

City Council appointed a 6-member Charter Review Committee (CRC) on July 12, 2011 to review the City's Home Rule Charter and consider whether or not provisions of the Charter should be amended, and if so to recommend proposed amendments to the City Council. The first meeting of the CRC was on August 30, 2011. The CRC met regularly for 18 months, reviewing the Charter in detail. At a special joint meeting of the CRC and City Council on February 12, 2013, the CRC presented to Council 13 proposed amendments to consider for submission to the voters.

Given the scope of the proposed amendments recommended by the CRC, on April 2, 2013 Council appointed Councilmembers Robert DeSoto and Beverly Williams to serve on an ad hoc Committee of the Council to review the CRC recommendations in greater

Memo to Council, Calling Charter Election
August 6, 2013 Council Meeting
Page 2 of 2

detail than could be done in a regular Council meeting, and to bring back to City Council a recommendation for the full Council to consider. The ad hoc Committee of the Council met with staff over a number of weeks, during which time it considered the CRC recommendations for proposed changes submitted to Council, and as well, other provisions of the Charter looked at by the CRC but not included in the proposed amendments presented to Council. The Committee of the Council completed its review on Thursday, March 30th and presented it's recommendation to the full Council during the June 4, 2013 regular meeting.

At the June 4, 2013 meeting City Council reviewed the recommendations and report of the Committee of the Council and reached consensus on recommendations for potential revisions to the City Charter to be presented to the voters. Council directed the City Attorney to prepare proposed ballot propositions to potentially present to the voters in a November election. The proposed propositions were discussed and narrowed down to the specific ballot propositions by City Council at the June 18th and July 2nd meetings.

In order to hold an election on the November 5, 2013 Uniform Election Date, Ordinance 1251-13 must be approved before August 26, 2013.

Board/Citizen Input:

Recommendations for the proposed election originated from Charter Review Committee appointed by Council.

Financial Impact:

The cost of the election has been included in the proposed FY 2013-14 Annual Budget.

Staff Contacts:

Curtis E. Hawk, City Manager
817-616-3806
chawk@richlandhills.com

ORDINANCE NO. 1251-13

AN ORDINANCE OF THE CITY OF RICHLAND HILLS, TEXAS, CALLING A SPECIAL ELECTION FOR TUESDAY, NOVEMBER 5, 2013 FOR THE PURPOSE OF AMENDING THE CITY CHARTER; MAKING PROVISIONS FOR THE CONDUCT OF THE ELECTION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Richland Hills, Texas, is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, it is the intention of the City Council to call a special election to submit proposed amendments to the City Charter to the voters in accordance with Section 9.004 of the Texas Local Government Code; and

WHEREAS, an election to submit to the voters proposed amendments to the city charter is required by law to be held on the uniform election date that occurs 30 days after the election is ordered and Section 3.005 of the Texas Election Code requires that a special election be ordered prior on or before August 26, 2013; and

WHEREAS, Section 41.001 of the Texas Election Code specifies that the November 5, 2013 is a uniform election date.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHLAND HILLS, TEXAS, THAT:

**SECTION 1.
CHARTER AMENDMENT ELECTION CALLED**

The City Council does hereby, on its own motion, order a special election to submit to the voters of the City of Richland Hills proposed amendments to the City Charter. The proposed amendments to the City Charter are set forth in Exhibit "A," attached to this ordinance and incorporated herein for all purposes and are hereby approved by the City Council for submission to the voters. The election shall be conducted according to the laws of the State of Texas, and shall be held on Tuesday, November 5, 2013 from 7:00 a.m. to 7:00 p.m.

**SECTION 2.
BALLOTS**

The official ballots for said election shall be prepared in accordance with the Texas Election Code so as to permit the electors to vote "YES" or "NO" on each

proposition, with the ballots to contain such provisions, markings and language as required by law, and with the propositions to be expressed substantially as set forth as follows:

PROPOSITION NO. 1. City Council, Terms, Duties, and Qualifications.

Shall the Richland Hills Home Rule Charter be amended to provide for three (3) year terms for the mayor and council members; to provide for a transition schedule from two year terms and provide that all references to “terms” of council members throughout the charter shall mean three year terms; to provide that the mayor and all members of the council be elected by a majority vote at an election held for that purpose; to require vacancies in three year terms be filled by election as required by the constitution or by appointment if the vacancy is for an unexpired term of less than twelve months and to revise procedures to fill vacancies in remaining two year terms; to clarify that qualifications for candidacy must be possessed on the date of election; to provide that other public offices may be held by council members if permitted by state law by revising Sections 5.01, 5.02, 5.08, 5.09?

PROPOSITION NO. 2. Term Limits.

Shall the Richland Hills Home Rule Charter be amended to eliminate term limits for the mayor and council members by deleting Section 5.12?

PROPOSITION NO. 3. Administration.

Shall the Richland Hills Home Rule Charter be amended to clarify that the city manager is the chief executive officer of the city; and by providing that the city secretary shall be appointed and removed by the city manager by deleting Section 6.02(4) and revising Section 6.06?

PROPOSITION NO. 4. Municipal Court.

Shall the Richland Hills Home Rule Charter be amended to comport with state law to provide that a municipal judge shall be appointed by the city council; to provide for procedures for removal of the judge; to delete residency requirements for the judge; to provide that the court clerk reports to the city manager; and to provide that the city attorney shall be appointed by the council by revising Sections 6.03, 6.07 and 6.08?

PROPOSITION NO. 5. Contracts and Bidding.

Shall the Richland Hills Home Rule Charter be amended by revising the procedure for authorizing contracts and providing that all purchases and contracts be let in accordance with state law by revising Section 9.03 and deleting Section 9.04?

PROPOSITION NO. 6. Eminent Domain.

Shall the Richland Hills Home Rule Charter be amended to provide that the procedures for eminent domain and acquisition of utility systems shall be governed by state law by deleting certain procedures in Sections 10.01(3), (4), (5), and (6)?

PROPOSITION NO. 7. Planning and Zoning.

Shall the Richland Hills Home Rule Charter be amended to provide that any qualified voter may serve on the planning and zoning commission; to provide that the council appoints the chairman of the planning and zoning commission; to provide for components of the master plan, and to provide that the planning and zoning commission recommends final action to the city council by revising Sections 14.01, 14.02, 14.03, and deleting 14.04?

PROPOSITION NO. 8. Initiative, Referendum, and Recall.

Shall the Richland Hills Home Rule Charter be amended to provide that no petition for recall shall be filed within six (6) months after the council person's election and by allowing citizens to seek judicial relief in district court if the council fails to act on a petition for initiative, referendum or recall by revising Sections 15.10, 15.11 and 16.02?

PROPOSITION NO. 9. Compliance with State Law and Non-Substantive Revisions.

Shall the Richland Hills Home Rule Charter be amended to provide for compliance with state law with regard to elections by revising Section 5.03, and to make non-substantive revisions to language and organization throughout the charter?

**SECTION 3.
POLLING PLACE**

The polling place for the special election shall be at the Richland Hills Community Center, 3204 Diana Drive, Richland Hills, TX 76118, between the hours of 7:00 a.m. and 7:00 p.m. on election day.

**SECTION 4.
ELECTION OFFICIALS**

The election judge, alternate election judge, and ballot board will be appointed by the Tarrant County Elections Administrator, as permitted by law. The presiding judge shall appoint elections clerks as may be necessary for the proper conduct of the election. The election judge, or the alternate election judge in the absence of the election judge, and the election clerks shall constitute the early voting ballot board. The election judge, and alternate election judge, and election clerks shall be qualified voters of the city.

SECTION 5. METHOD OF VOTING

Combined ballots may be utilized containing all of the offices and propositions to be voted on at each polling place, provided that no voter shall be given a ballot or permitted to vote for any office or proposition on which the voter is ineligible to vote. Early voting by personal appearance shall be conducted exclusively on Tarrant County's eSlate electronic voting system. On Election Day, voters shall have a choice between voting on the eSlate electronic voting system or by a paper ballot that is scanned at the polling place using Tarrant County's eScan voting system. All expenditures necessary for the conduct of the election, the purchase of materials therefore, and the employment of all election officials are hereby authorized, and shall be conducted in accordance with the Contract and the Code.

SECTION 6. EARLY VOTING

(a) Early Voting by Personal Appearance. Steve Raborn, Tarrant County Elections Administrator, is hereby appointed as the Early Voting Clerk for the election, as so indicated in the Contract. Early voting by personal appearance shall commence October 21, 2013 and shall continue until November 1, 2013. The main early voting site shall be at Richland Hills Library 6724 Rena Drive, Richland Hills, Texas 76118. Specific days, times and locations shall be designated by the Elections Administrator and included in the Contract and shall be in compliance with state law. On at least two weekdays during the early voting period, the location for early voting shall be open for at least twelve (12) hours as mandated by state law.

(b) Early Voting by Mail. The Elections Administrator shall be responsible for the Early Voting applications and ballots. Applications for early voting by mail may be delivered to Steve Raborn, County of Tarrant, Elections Administrator, 2700 Premier Street, Fort Worth, Texas, 76111, not earlier than September 6, 2013, and not later than close of business on October 25, 2013. Early voting by ballots shall be mailed to the Elections Administrator at the same address. The City Secretary is directed to forward applications and ballots she may receive to the Elections Administrator as provided in the Contract.

(c) Early Voting Ballot Board. Early voting, both by personal appearance and by mail shall be canvassed by an Early Voting Ballot Board which is hereby created. According to the Contract, Tarrant County shall appoint the Early Voting Ballot Board to process early voting results from the election.

SECTION 7. NOTICE

(a) Notice of Election. A substantial copy of this ordinance shall serve as proper notice of the special election. Said notice, including a Spanish translation

thereof, shall be posted not later than the twenty-first (21st) day before the election on the bulletin board used for posting notices of meetings of the city council and shall be published at least once, not early than the thirtieth (30th) day nor later than the tenth (10th) day before the election in a newspaper published and of general circulation in the City of Richland Hills.

(b) Publication of Amendments. Additionally, in accordance with Section 9.004(c) of the Local Government Code, notice shall be published in a newspaper of general circulation in Richland Hills on the same day, in each of two consecutive weeks, with the first publication occurring on or before the 14th day before election day. The notice shall contain a substantial copy of the proposed amendments.

SECTION 8. AMENDMENTS

Matters contained in this ordinance relating to discretionary procedural matters may be amended by resolution of the City Council.

SECTION 9. OTHER ACTION

The Mayor and City Secretary of the City, in consultation with the City Attorney, are hereby authorized and directed to take any and all action necessary to comply with provisions of the Texas Election Code or other state and federal statutes and constitutions in carrying out the conduct of the election, whether or not expressly authorized herein.

SECTION 10. CUMULATIVE CLAUSE

This ordinance shall be cumulative of all provisions of ordinances and resolutions of the City of Richland Hills, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances and resolutions are hereby repealed.

SECTION 11. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 12.
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage, and it is so ordained.

PASSED AND APPROVED ON THIS _____ DAY OF _____, 2013.

MAYOR

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY

EXHIBIT AA@

Proposition 1 - Text Change

RICHLAND HILLS CHARTER PROPOSITIONS EFFECTS

PROPOSITION NO. 1. City Council, Terms, Duties, and Qualifications.

Shall the Richland Hills Home Rule Charter be amended to provide for three (3) year terms for the mayor and council members; to provide for a transition schedule from two year terms and provide that all references to “terms” of council members throughout the charter shall mean three year terms; to provide that the mayor and all members of the council be elected by a majority vote at an election held for that purpose; to require vacancies in three year terms be filled by election as required by the constitution or by appointment if the vacancy is for an unexpired term of less than twelve months and to revise procedures to fill vacancies in remaining two year terms; to clarify that qualifications for candidacy must be possessed on the date of election; to provide that other public offices may be held by council members if permitted by state law by revising Sections 5.01, 5.02, 5.08, 5.09?

What will the effect be if Proposition No. 1 passes?

- Currently the City of Richland Hills mayor and city council serve two (2) year terms. If Proposition No. 1 passes, the mayor and all council members will serve three (3) year terms.
- The transition from two (2) year terms to three (3) year terms will be accomplished as follows:
 - The Mayor and Place 2 shall be elected for a three (3) year term at the 2014 general election and for three (3) year terms thereafter.
 - The current term of Place 4, which commenced in May of 2012, shall be extended to May of 2015. At the 2015 general election Place 4 shall be elected for a three (3) year term, and for three year terms thereafter.
 - The current terms of Place 1 and Place 5, which commenced in May of 2013, shall be extended to May of 2016. At the 2016 general election Place 1 and Place 5 shall be elected for a three (3) year term, and for three (3) year terms thereafter.
 - Place 3 shall be elected to a three (3) year term in 2015, and for three (3) year terms thereafter.

Currently only the mayor is elected by a majority vote. Majority means at least 51% of the votes cast. The council members are elected by a plurality vote, which means that the person receiving the most votes is elected. The Texas Constitution requires that terms of three (3) years be filled by majority vote. Therefore, if Proposition No. 1 is approved, all members of the city council will be elected by majority vote. Links to Relevant Provisions of the Texas Constitution:

Article 11, § 11:

<http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.11.htm#11.11;>

Article 16, § 17:

<http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.16.htm#16.17>

Article 16, §65:

<http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.16.htm#16.65>

- Currently the Texas Constitution requires that vacancies in three (3) year terms be filled by an election held within 120 days after the vacancy occurs. In the November general election, Texas voters will vote for or against a measure to amend Article XI, Section 11 of the Texas Constitution and authorize a home-rule city to provide in its charter the procedure to fill a vacancy on its city council if the unexpired term is twelve months or less. If Proposition No. 2 passes and the measure amending the state constitution is approved, a vacancy with an unexpired term of more than twelve months will be filled by special election while the council can decide whether to fill a vacancy with an unexpired term of twelve months or less by either special election or appointment. If Proposition No. 2 passes and the measure amending the state constitution fails, all vacancies must be filled by special election regardless of the length of the unexpired term. Under either scenario, a vacancy must be filled within 120 days.

Article 11, § 11:

<http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.11.htm#11.11>;

HJR No. 87

<http://www.capitol.state.tx.us/tlodocs/83R/billtext/doc/HJ00087F.doc>

- If there is one vacancy on the city council for an office with a two year term, it may be filled by special election or a person may be appointed by a majority vote of the remaining members. If there is more than one vacancy on the city council for offices with two (2) year terms, a special election must be called unless appointment is required to achieve a quorum. This provision only applies during the transition period from two year to three year terms.
- The Texas Election Code permits home rule cities to establish age and residency qualifications as of the date of the election. Currently Section 5.02 of the charter creates an ambiguity because it refers to both qualifications on the date of the application for a place on the ballot and the date of the election. If Proposition No. 1 passes, the charter will clearly provide that the qualifications must be possessed on the date of the election.
Link to Texas Election Code Section 141.003:
<http://www.statutes.legis.state.tx.us/Docs/EL/htm/EL.141.htm#141.003>
- Currently the Charter provides that no council member shall hold any public office other than a notary public or a military position. State law provides rules for dual office holding. For example, Article 16, § 40 of the Texas Constitution prohibits holding dual offices of emolument (which means compensation paid from public funds) and provides exceptions such as a notary public, military position, justice of the peace, postmaster or director of a soil or water conservation district. Courts have determined

that a police chief is not a public office under Article 16, § 40, and thus not prohibited from being a member of a city council in a different city. There is also a common law prohibition against holding two offices that are incompatible. For example, a person could not serve on the school board and be a member of the city council at the same time because there could be conflicting loyalties and competing interests.

Link to Texas Constitution Article 16, § 40:

<http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.16.htm#16.40>

PROPOSITION NO. 2. Term Limits.

Shall the Richland Hills Home Rule Charter be amended to eliminate term limits for the mayor and council members by deleting Section 5.12?

What will the effect be if Proposition No. 2 passes?

- Currently the Richland Hills Charter limits service on the city council to three (3) consecutive terms. If Proposition No. 2 passes, there will be no limit on the number of consecutive terms the mayor or council members may serve.

PROPOSITION NO. 3. Administration.

Shall the Richland Hills Home Rule Charter be amended to clarify that the city manager is the chief executive officer of the city; and by providing that the city secretary shall be appointed and removed by the city manager by deleting Section 6.02(4) and revising Section 6.06?

What will the effect be if Proposition No. 3 passes?

- The city manager will remain the chief administrative officer, charged with the day to day operations of the city.
- Currently the mayor appoints and removes the city secretary with the approval of the city council. If Proposition No. 3 passes, the city manager will appoint and remove the city secretary.

PROPOSITION NO. 4. Municipal Court.

Shall the Richland Hills Home Rule Charter be amended to comport with state law to provide that a municipal judge shall be appointed by the city council; to provide for procedures for removal of the judge; to delete residency requirements for the judge; to provide that the court clerk reports to the city manager; and to provide that the city attorney shall be appointed by the council by revising Sections 6.03, 6.07 and 6.08?

What will the effect be if Proposition No. 4 passes?

- The current charter provides that the municipal judge be elected. This has been superseded by state law, which provides that the judge shall be appointed. If Proposition No. 4 passes, the charter will comport with state law.
Link to Texas Government Code Section 30.00006:
<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.30.htm#30.00006>
- Currently the charter provides that the municipal judge may be removed in the manner provided for the removal of a county court at law judge, which involves filing suit in district court. If Proposition No. 4 passes, the council will have the authority to remove the judge after a public hearing.
Link to Texas Local Government Code provisions relating to removal of a count court of law judge:
<http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.87.htm#87.011>
Link to Texas Government Code Section relating to the removal of the judge:
<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.30.htm#30.00085>
- Currently the charter provides that the municipal judge must reside in a Tarrant County city with a population of less than 100,000. If proposition No. 4 is approved, this residency requirement will be deleted. The judge will continue to be required to be a licensed attorney in good standing who practices in Tarrant County.
- Currently the charter provides that the court clerk performs duties specified by the city council. If Proposition No. 4 passes the city manager may specify duties for the clerk as well.
- Currently the charter provides that the mayor appoints and removes the city attorney with the approval of the city council. If Proposition No. 4 is approved, the city council will appoint and remove the city attorney.

PROPOSITION NO. 5. Contracts and Bidding.

Shall the Richland Hills Home Rule Charter be amended by revising the procedure for authorizing contracts and providing that all purchases and contracts be let in accordance with state law by revising Section 9.03 and deleting Section 9.04?

What will the effect be if Proposition No. 5 passes?

- If Proposition No. 5 is approved, the council will have the authority to give the city manager authority to enter into contracts for budgeted items within limits set by the council. All contracts exceeding the set limit must be approved by the city council in compliance with state law, including laws relating to competitive bidding.
- Currently the charter contains detailed procedural steps for letting contracts and competitive bidding, some of which conflict with state law.
- State law governs competitive bidding procedures.

Link to Local Government Code Chapter 252 and Government Code Chapter 2267 related to competitive bidding:

<http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.252.htm>

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2267.v2.htm>

PROPOSITION NO. 6. Eminent Domain.

Shall the Richland Hills Home Rule Charter be amended to provide that the procedures for eminent domain and acquisition of utility systems shall be governed by state law by deleting certain procedures in Sections 10.01(3), (4), (5), and (6)?

What will the effect be if Proposition No. 6 passes?

- If Proposition No. 6 passes, detailed procedures for the acquisition of utility systems through eminent domain will be deleted and such acquisition will be governed by state law.
Link to Chapter 21 of the Property Code and Section 13.255 of the Water Code, which are examples of state laws relating to eminent domain and the acquisition of private utilities by a municipality:
<http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.21.htm>
<http://www.statutes.legis.state.tx.us/Docs/WA/htm/WA.13.htm#13.255>

PROPOSITION NO. 7. Planning and Zoning.

Shall the Richland Hills Home Rule Charter be amended to provide that any qualified voter may serve on the planning and zoning commission; to provide that the council appoints the chairman of the planning and zoning commission; to provide for components of the master plan, and to provide that the planning and zoning commission recommends final action to the city council by revising Sections 14.01, 14.02, 14.03, and deleting 14.04?

What will the effect be if Proposition No. 7 passes?

- Currently only qualified voters who own real property are eligible to serve on the planning and zoning commission, and the chairman of the planning and zoning commission is appointed by the commission.
- If Proposition No. 7 is approved, any qualified voter will be eligible to serve on the planning and zoning commission and the city council will appoint the chairman.
- It will be stated that the planning and zoning commission recommends a master plan to the city council in consultation with city staff and the city manager.
- The charter will set forth detailed minimum criteria for the contents of the master plan, including plans for comprehensive land use, parks and trails, water and wastewater and storm water.

PROPOSITION NO. 8. Initiative, Referendum, and Recall.

Shall the Richland Hills Home Rule Charter be amended to provide that no petition for recall shall be filed within six (6) months after the council person's election and by allowing citizens to seek judicial relief in district court if the council fails to act on a petition for initiative, referendum or recall by revising Sections 15.10, 15.11 and 16.02?

What will the effect be if Proposition No. 8 passes?

- Currently a recall petition may be filed three (3) months after a council member is elected. If Proposition No. 8 passes, no petition will be allowed until six (6) months after a council member is elected.
- Currently the charter is silent as to who may seek judicial relief in the event the council fails to act on a position. If Proposition No. 8 is approved, any qualified voter of the city will be authorized to seek judicial relief if the council fails to act on a petition for recall, referendum or initiative.

PROPOSITION NO. 9. Compliance with State Law and Non-Substantive Revisions.

Shall the Richland Hills Home Rule Charter be amended to provide for compliance with state law with regard to elections by revising Section 5.03, and to make non-substantive revisions to language and organization throughout the charter?

What will the effect be if Proposition No. 9 passes?

- Currently the charter provides for the general election to be held on a day not permitted by state law. State law requires that most elections be held on a uniform election day. State law controls in most aspects of conducting elections.
Link to Texas Election Code Section 41.001 establishing uniform election dates:
<http://www.statutes.legis.state.tx.us/Docs/EL/htm/EL.41.htm#41.001>