

**ELK GROVE CHARTER COMMISSION
REGULAR MEETING
CITY COUNCIL CHAMBER, 8400 LAGUNA PALMS WAY
TUESDAY, November 18, 2008**

1. Call to Order / Roll Call / Pledge of Allegiance

The Regular Commission meeting of November 18, 2008 was called to order by Chair Allen at 6:19 p.m.

Present: Commissioners – Allen, Johnson, Martin, and Orrock

Absent: Commissioners – Rambo, Loveland, and Sendejas-Lopez

Also Present: City Attorney Susan Cochran and City Clerk Susan Blackston

Chair Allen led the pledge of allegiance.

2. Public Comment (on non-agenda items)

Kristy Day, Community Relations Project Manager for The Hoyt Company, announced that the contract between the City and The Hoyt Company for public outreach services was signed today. Work will begin immediately on stakeholder research, developing a database, determining which community groups to work with, developing key messages and presentations, coordinating community organization meetings, and communicating with schools regarding a logo/art contest and Constitution Day lesson plan.

3. Approval of November 4, 2008 Minutes

MOTION/VOTE:

Commissioner Johnson made a motion, Orrock second, to approve the November 4, 2008 minutes as presented. The motion carried by the following vote:

Ayes: Commissioners – Allen, Johnson, Martin, and Orrock

Noes: Commissioners – None

Absent: Commissioners – Rambo, Loveland, and Sendejas-Lopez

4. Consider Charter language as drafted to date regarding the following topics:

- a) Mayor selection
- b) Number of Council Members
- c) By-District and At-Large Elections
- d) Term Length
- e) Primary and General Elections
- f) Public Works Contracts

During discussion the Charter Commission agreed on amendments to Charter language as indicated below (*and through page 6*):

ARTICLE I. Rights, Powers, and Privileges of the City

1.01. Rights, Powers, and Privileges of the City:

The City shall have all **rights, powers, and privileges** possible for a city to have under the Constitution and laws of the State of California as fully and as completely as though they were specifically enumerated in this Charter.

A. **Preservation**. General Law **Rights, Powers, and Privileges**. Nothing in this Charter shall be construed to prevent or restrict the City from exercising or consenting to any and all rights, powers, and privileges.

B. **Authorization**. The City is hereby authorized to exercise any and all rights, powers and privileges heretofore or hereafter granted or prescribed by general laws of the state.

C. Municipal Affairs. The City **is hereby authorized to** ~~may~~ make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in this Charter and in respect to other matters subject to **all** applicable general laws. As regards municipal affairs, this Charter shall supersede all laws inconsistent therewith.

D. Intergovernmental **Rights, Powers, and Privileges**. The City **is hereby authorized** to ~~may~~ exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any **4 one** or more states and the State of California, or any state civil division or agency, or the United States or any of its agencies.

E. Construction. The powers of the City under this Charter shall be construed liberally in favor of the City. ~~and~~ The specific mention of particular powers in ~~the~~ **this** Charter shall not be construed as limiting in any way the general powers granted in this Article or by this Charter.

ARTICLE II. Mayor and City Council

2.01 City Council.

A. Number and Election. The City Council shall consist of seven (7) Council members, including the office of Mayor, elected to office in a manner provided in this Charter.

(1) Five Council (5) members shall be elected by each of the five Districts. Districts are apportioned pursuant to general law.

(2) One (1) Council member shall be elected by the voters of the City at large. The office of this Council member shall be included at a general municipal election at the same time as those Council members in even numbered districts.

(3) A candidate is elected who receives a majority of all votes cast at the primary election immediately preceding the general election. When no candidate is so elected, the two candidates who received the highest number of votes shall be the candidates at the general municipal election. Any ties in voting shall be settled by the casting of lots under the supervision of, and in such manner and place as the City Clerk decides.

B. Term. The term of office shall be four (4) years. Alternatively, and successively, odd numbered districts shall be filled at one general municipal election and even numbered districts at the next such election. The term of a City Council member shall commence on the _____ following his or her election, and he or she shall serve until his or her successor qualifies. ~~Any ties in voting shall be settled by the casting of lots under the supervision of, and in such manner and place as the City Clerk decides.~~

C. Continuity of Office. Each City Council member in office at the time this Charter takes effect shall continue in office until the end of the term for which he or she was elected or appointed subject to the right of the people to recall a City Council member from office as provided herein.

2.02 Mayor.

A. Election and Term. The Mayor shall be elected by voters of the City at large. The term of office shall be four (4) years. The office of Mayor shall be included at a general municipal election at the same time as those Council members in odd numbered districts.

B. Powers and Duties of Mayor.

(1) General Powers. The Mayor shall be the presiding officer. The Mayor shall have a voice and vote in all its proceedings. He/she shall be the official head of the City for all ceremonial purposes. He/she shall perform such other duties as may be prescribed by this Charter or as may be imposed by the City Council consistent with his/her office.

(2) Additional Powers. In addition, the Mayor shall have the following powers and duties:

(a) The Mayor shall have the power to make recommendations to the City Council on matters of policy and programs which require City Council decision; provided, that if he/she recommends any increases in the City budget, he/she shall recommend the method of financing such expenditure; and provided, further, that if he/she proposes curtailment of service, such recommendations and his/her reason therefore shall be specific. He/she may also, on his/her own

account, inform the community on matters of policy or program which he/she believes the welfare of the community make necessary.

(b) The Mayor shall preside at meetings of the City Council and shall have the vote as a member of the City Council. He/she shall have no veto power.

(c) The Mayor shall have authority to preserve order at all City Council meetings, to remove or cause the removal of any person from any meeting of the City Council for disorderly conduct, to enforce the rules of the City Council and to determine the order of business under the rules of the City Council.

(d) The Mayor shall exercise such other powers and perform such other duties as may be prescribed by the City Council, provided that the same are not inconsistent with this Charter. Nothing in this section shall be construed in any way as an infringement or limitation on the powers and duties of the City Manager as Chief Administrative Officer and head of the administrative branch of the City government as prescribed in other sections of this Charter. Except as otherwise herein provided, the Mayor shall possess only such authority over the City Manager and the administrative branch as he/she possesses as one member of the City Council.

2.03. Vice Mayor.

The City Council shall designate one of its members as Vice Mayor. The Vice Mayor shall perform the duties of the Mayor during his/her absence or disability. The Vice Mayor shall serve in such capacity at the pleasure of the City Council.

ARTICLE III. Elections

3.01 Election Procedures:

Unless otherwise provided by ordinance, all municipal elections shall be held in accordance with the provisions of the State Elections Code. ~~for the holding of municipal elections so far as the same are not in conflict with this Charter.~~ (Note: City Attorney to verify whether this language can be deleted.)

A. Special Elections. The City Council may call special elections for such purposes as the City Council may prescribe. A special election may be held on any date specified by the City Council.

B. Initiative, Referendum, and Recall. The electors of the City reserve to themselves the powers of initiative and referendum and the recall of elective officers, to be exercised in the manner prescribed by the State Elections Code.

ARTICLE IV. City Manager

ARTICLE V. Departments, Agencies and Employees

ARTICLE VI. Financial Procedures

6.01 Public Works.

A. Every project involving an expenditure of more than fifty thousand dollars ~~(\$50,000)~~ for a public work shall be let by contract to the ~~lowest~~ responsible bidder submitting the lowest responsive bid after notice by publication in the official newspaper by one or more insertions, the first of which shall be at least ten days before the time for opening bids.

B. As used in this section, "public work" means:

1. The erection, expansion, or improvement of public buildings;
2. Street or sewer work, except maintenance and repair; ~~or~~
3. Furnishing supplies for any such project, except maintenance and repair.

C. Exceptions to Bid Requirements.

1. The City Council may reject any and all bids presented and may ~~re-~~advertise notice in its discretion.

2. Force Accounts. The City Council, after rejecting bids, or if no bids are received, may declare and determine that, in its opinion, based on estimates approved by the city manager, the work in question may be performed ~~better or more~~ more efficiently, timely, or economically by the city with its own employees and after the adoption of a resolution to this effect by ~~at least XX affirmative votes (SUPERMAJORITY) a two-thirds vote~~ of the seated City Council may proceed to have said work done in the manner stated, without further observance of the provisions of this section.

3. Emergencies. Such contracts likewise may be let without ~~advertising~~ noticing for bids, if such work shall be deemed by the City Council to be of urgent necessity for the preservation of life, health, safety or property, and shall be authorized by motion passed by ~~at least five affirmative a two-thirds~~ vote of the seated City Council and containing a declaration of the facts constituting such urgency.

4. The provisions of this article shall not apply to any contract entered into pursuant to or under any special assessment proceeding wherein competitive bidding proceedings are specified by laws of the State of California.

D. (1) The City Council may authorize use of a design-build contract for projects estimated to cost one million dollars (\$1,000,000) or more when it is anticipated that this contracting method will reduce project cost, expedite project completion, or provide design features not achievable through the design-bid-build method. The City may award a design-build contract based on either the low responsible bid or best value. In the alternative, selection may be based upon a design-build competition based upon best value and other criteria set forth in the request for proposals upon a two-thirds vote of the seated City Council per City Charter Article VI.

(2) As used in this section:

- a. "Best value" means a value determined by objective criteria and may include, but is not limited to, price, features, functions, life-style costs, and other specified criteria.

b. "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

~~(3) Design-build projects shall progress as follows:~~

~~a. The City shall prepare a set of documents setting forth the scope of the project in sufficient detail to describe the City's needs and minimum requirements.~~

~~b. Based on the documents prepared in paragraph (a), the City shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the City.~~

~~c. The City shall prequalify design-build entities and may use the standard questionnaire developed by the Department of Industrial Relations.~~

~~d. The City shall establish a procedure for final selection of the design-build entity. Selection may be based on a competitive bidding process resulting in lump-sum bids by the prequalified design-build entities, with the contract to be awarded to the lowest responsible bidder. In the alternative, selection may be based upon a design-build competition based upon best value and other criteria set forth in the request for proposals upon four (4) affirmative votes of the City Council per City Charter Article VI.~~

(3) The City Manager or his/her designee is authorized to develop and implement appropriate rules and regulations necessary to carry out the intent of this Chapter. At a minimum, the rules and regulations will address the following issues: information to be included in design-build requests for proposals, procedures for evaluating design-build proposals and awarding design-build contracts, bonding and insurance requirements for design-build contractors, and subcontractor listing requirements for design-build proposals.

ARTICLE VII. General Provisions

ARTICLE VIII. Charter Amendment

ARTICLE IX. Transition/Severability

9.01 Transition/Severability Provision

~~9.02 Transition of Current Elected Officials~~

9.02 Continuity of Laws, Officers and Employees

9.01. Transition/Severability Provision:

All City ordinances, resolutions, orders and regulations which are in force when this Charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this Charter or of ordinances adopted pursuant thereto.

A. Inconsistent Acts. To the extent that the constitution and laws of the State of California permit, all laws relating to or affecting this City or its agencies, officers or employees which are in force when this Charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this Charter or of ordinances or resolutions adopted pursuant thereto.

B. Severability of Provisions. If any provision of this Charter is held to be invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstance is held invalid, the application of the Charter and its provisions or circumstances shall not be affected thereby.

~~9.02. Transition of Current Elected Officials:~~

~~At the time of the adoption of this Charter those persons serving in elected office shall continue to serve until the end of the term for which they have been elected, and until their successors have been elected and qualified. (Note: This section was found to be duplicative of 2.01 C.)~~

9.02. Continuity of Laws, Officers and Employees:

The City shall continue to own, possess and control all rights and property of every kind and nature owned, possessed or controlled by it on the effective date of this Charter, and shall be subject to all its debts, obligations and liabilities.

A. Continuation of Acts. All lawful ordinances, resolutions, and rules and regulations in force on the effective date of this Charter and not in conflict or inconsistent herewith are continued in force until repealed or amended.

B. Continuation of Officers and Employees. The present officers and employees of the City shall retain their respective offices and employments subject to the provisions of this Charter.

C. Commission Transition. The transition of membership on the Planning Commission from the method of appointment which existed prior to the adoption of this Charter and that which is established by this Charter shall be as determined by ordinance.

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In reference to Article II, 2.01, Commissioner Johnson stated that he would prefer the number of City Council Members to remain at five.

Vice Chair Orrock voiced his opinion that six City Council Members and an elected Mayor would be more responsive to the citizens of Elk Grove.

Chair Allen suggested that the draft language be left as is for the purpose of public discussion during future outreach efforts.

Commissioner Johnson recommended that initial public outreach focus on whether it is desired to have an elected Mayor, five or seven Council Members, and if they should be elected "by" or "from" districts.

Vice Chair Orrock suggested that language be added to the Charter setting a 12 year term limit for the office of Mayor. He clarified that it would be a lifetime, cumulative limit, following which the individual could run for Council Member if he/she chose to.

City Attorney Cochran stated that she would add language to the Charter regarding the transition period, explaining that if the Charter were approved, the first election would occur in 2012 and a full complement of Council Members is needed following the redistricting. The first term of the at-large Council Member would be for two years. Additionally, Ms. Cochran pointed out that the process for filling vacancies needs to be addressed in the Charter.

Discussion ensued regarding the process of filling a vacancy for the office of Mayor. There was general consensus to conduct a special election to fill a Mayoral vacancy. Agreement was reached to allow the City Council, on a two-thirds vote, to make an appointment to fill a Council Member vacancy. If a two-thirds vote could not be reached, then an election to fill the vacancy would be called.

Commissioners concurred to specify throughout the Charter when a two-thirds vote is required, that it be of the seated Council.

Vice Chair Orrock favored the Charter language as written which includes both at-large and "by" district Council Members, to which Chair Allen voiced concern about possible Voting Rights Act challenges if the process ultimately decided upon was outside the norm.

In reference to Article VI, Commissioner Johnson asked that future discussion take place regarding setting a cost of living adjustment to all the dollar figures contained within the section.

Commissioner Johnson and Chair Allen agreed that Article VI, 6.01, (2), b, "Design-build" should have an expanded definition to allow the City to take advantage of the most efficient and economically feasible opportunities available.

PUBLIC COMMENTS:

Damon Mireski recalled that the telephone survey results indicated that citizens want a seven member City Council. He believed that prevailing wages would be a significant issue in the Charter, noting that the labor community is aware of what Elk Grove is considering. He suggested that the Vice Mayor assume a vacant Mayor seat until the following election. Mr. Mireski expressed his opinion that it would be easier to unseat a Council Member that was elected "by" district, rather than "from" district.

Tom Shine agreed with the suggestion that the Vice Mayor should assume the duties of a vacated Mayor position on an interim basis until a new Mayor can be voted upon at a special election. He noted that the Council could function adequately with a limited number until an election could be held. Mr. Shine also agreed with Commissioner Johnson's recommendation that there should be a total of five City Council Members. He was opposed to Council Members being elected "by" district and believed that citizens would rebel against such a change, as they now appreciate the ability to vote for all Council representation.

Shirley Peters, representing Greater Sheldon Road Estates Homeowners Association (GRESHA), reminded the Commission that GRESHA's members voted 90% in favor of Council Members being elected "from" district. Ms. Peters explained that citizens want to be able to vote for all City Council Members, not just one representing their area. She recalled that one of the driving forces for incorporation of Elk Grove was because people no longer wanted to have only one representative on the Sacramento County Board of Supervisors, while decisions were made by the remaining members.

Connie Conley recalled that, four years ago, workshops were held on the topics of ranked choice voting and 50% plus one election processes. She stated that attendees did not understand the ranked choice system; however, they were in favor of 50% plus one through a primary and general election process. She noted that incumbents facing one challenger in a runoff election have more of a challenge. She expressed a preference for seven versus five City Council Members, because it would create more representation for the community. She surmised there would be a strong likelihood for failure of the Charter if a proposal were brought forward to decrease the districts to four (with an at-large elected Mayor).

5. New Business / General Announcements

Vice Chair Orrock mentioned that he asked Elk Grove Chamber of Commerce President/Chief Executive Officer Janet Toppenberg to introduce Charter Commissioners in attendance at any future Chamber events.

Chair Allen reported that he gave a presentation to the Chamber of Commerce Board of Directors and agreed to return with updates.

6. Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:04 p.m.

ATTEST:

/s/ Susan J. Blackston
City Clerk