



MEMORANDUM

To: Chairman Bruce Arfsten
Members of the Addison Charter Review Commission

CC: Wes Pierson, City Manager

From: Brenda N. McDonald, City Attorney

Re: Requirements for Terms of Office Exceeding Two Years

Date: December 12, 2019

Question Presented

If the term of office for Mayor and Councilmembers is increased beyond two years, will additional Charter amendments be required?

Short Answer

If the term of office for Mayor and Councilmembers is increased to more than two years, the Texas Constitution requires:

- each officer to be elected by a majority vote;
- vacancies must be filled by special election; and
- an automatic “resign to run” provision applies if the remainder of the term currently held exceeds one year and 30 days.

The Addison Charter would need to be amended to incorporate the additional requirements regarding election by a majority vote and the filling of vacancies by special election. The current Charter contains a “resign to run” provision that satisfies the constitutional requirement.

Explanation

The Addison Charter currently provides for 2-year terms of office and a plurality election system for the offices of Mayor and Councilmember (Sec. 8.04). Under the plurality system, the candidates, equal to the number of vacancies to be filled, who receive the most votes are elected.

Candidates are not required to receive a majority of the votes cast to be elected. Further, Section 8.05 of the Charter contains Addison's "resign to run" provision that requires a member of the Council, including the Mayor, to resign their office if they become a candidate for elected public office other than for the office currently held.

If the terms of office are increased to three or four years, Texas Constitution, Article XI, Section 11- "Term of Office Exceeding Two Years in Home Rule and General Law Cities; Vacancies" dictates the manner in which Council offices are elected and vacancies are filled:

Sec. 11. TERM OF OFFICE EXCEEDING TWO YEARS IN HOME RULE AND GENERAL LAW CITIES; VACANCIES. (a) A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote of the qualified voters voting at an election called for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby; provided, however, that such officers, elective or appointive, are subject to Section 65(b), Article XVI, of this Constitution, providing for automatic resignation in certain circumstances, in the same manner as a county or district officer to which that section applies.

(b) A municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality.

(c) Any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur except that the municipality may provide by charter or charter amendment the procedure for filling a vacancy occurring on its governing body for an unexpired term of 12 months or less.

Article XVI, Section 65(b) reads as follows:

Sec. 65. AUTOMATIC RESIGNATION ON BECOMING CANDIDATE FOR ANOTHER OFFICE. (a)

(b) If any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one year and 30 days, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

Because Article XI, Sec. 11 requires that members be elected by majority vote, it appears that a place system, Places 1 through 6, or some similar system would have to be adopted that requires candidates to run for a specific office.

The specific amendments necessitated by the constitutional provisions set forth above would be drafted after a decision is made regarding a change in the terms of office. Below is a sample of Charter amendments used in another of the Firm's client cities to transition to 3-year terms:

(1) Composition. The City Council shall be composed of a Mayor and six (6) Council members elected under the Place system, with there being places 1, 2, 3, 4, 5, and 6. The Mayor and each Council member shall be elected at large.

(2) Terms. Council members and the Mayor shall be elected for ~~two (2)~~ three (3) year terms or until their successors have been elected and qualified, unless sooner removed under the provisions of this Charter. ~~Council members for Places 2, 4, and 6 shall have terms that expire in even numbered years.~~ Beginning with the election in 2015, Council members for Places 1, 3, and 5 shall have terms that expire in odd numbered ~~be elected for a three (3) year term and an election shall be held for those places thereafter every three (3) years. Beginning with the election in 2015, the Council member for Place 3 shall be elected to a two (2) year term and thereafter an election shall be held for Place 3 every three (3) years. Beginning with the election in 2016, the Mayor and Councilmembers for Places 4 and 6 shall be elected for a three (3) year term and an election shall be held for those places thereafter every three years. The Mayor shall be elected in an even numbered year~~ current term for the Place 2 councilmember shall be changed to three (3) years to expire in 2017 and thereafter an election shall be held for Place 2 every three (3) years.

In addition to a provision similar to the above, Addison would need to assign place numbers to current council members. Please let me know if you have additional questions regarding this matter.