

STATE OF TEXAS §

January 30, 2007

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Meeting of the Sherman City Council was begun and held in the City Council Chambers on January 30, 2007.

COUNCIL MEMBERS PRESENT: Mayor Bill Magers.
Council Members Adami, Hughes, Markl, Smith, Wacker.

COUNCIL MEMBERS ABSENT: Deputy Mayor Terrence Steele.

CITY STAFF PRESENT: L. Scott Wall, City Manager; Giles Brown, Assistant City Manager; Doreen McGookey, City Attorney; Lisa Whitfield, Legal Assistant; Pam Cloer, Administrative Assistant; Linda Ashby, City Clerk.

PURPOSE:

- Call to Order, Quorum Determined, Meeting Declared Open**
- Other Business – Receive Briefing on the City Charter from City Attorney Doreen E. McGookey**
- Other Business – Consider Proposed Charter Amendments for the May 12, 2007 General Election**
- Executive Session**
Section 551.071 – Consultation with the City Attorney Concerning Legal Matters or Contemplated Litigation
- Open Meeting**
Reconvene into Open Meeting and consider action, if any, on items discussed in Executive Session
- Adjournment**

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

Mayor Magers called the meeting to order at 12:15 p.m., declared a quorum present, and opened the City Council Meeting.

OTHER BUSINESS

RECEIVE BRIEFING ON THE CITY CHARTER FROM CITY ATTORNEY DOREEN E. MCGOOKEY

Doreen McGookey, City Attorney, briefed the City Council on the City Charter and the powers that are derived from it. She added that it is only limited by State and Federal law. Some areas of the Charter, such as the budget, will not be covered in depth. A handout of her presentation is attached to these Minutes.

Council Member Hughes left the meeting at 12:40 p.m.

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CONSIDER PROPOSED CHARTER AMENDMENTS FOR THE MAY 12, 2007 GENERAL ELECTION

L. Scott Wall, City Manager, verified that the City Charter does not include veto powers for the Mayor like some General Law Cities do. Ms. McGookey added that General Law Cities follow State law, which Sherman has a Charter and sets their own laws. She said there may also be different interpretations of the Charter.

Mayor Magers said the Charter did not specifically state that Sherman elections would be held in May, but he verified that the City did have to follow uniform election dates set forth by the State Legislature. Ms. McGookey added that Legislative permission would be needed to change the election date from May.

Council Member Adami said the last Charter Election changed the Council terms from two consecutive two year terms to three consecutive two year terms. He felt it would be better to allow two consecutive three year terms instead. Concerns about the proposal in 2005 were that it would be hard to implement because of the staggered terms. Council Member Adami felt the longer term would be beneficial because it takes a while for a Council Member to learn how City government works and what needs to be done. **[Page 7, Article II, Section 1(a)(5) and (6)]**

Proposal – Set Council terms at two consecutive three years terms

Mayor Magers referenced the \$2,500 disbursement “to or on behalf of any elected official” saying that in the past it has been common for City Council Members to do business with the City of Sherman. He did not see a problem with that; however he suggested that from now on, if a Council Member does business with the City of Sherman, in an amount over \$2,500, then the Council should vote on the disbursement. Council Member Markl said he did not feel that reference in the Charter applied to a “vendor type” relationship. **[Page 43, Article X, Section 2(e)]**

Council Member Smith referenced **[Page 42, Article X, Section 1]** relating to “personal financial interests” adding that the prohibition is to an extent prohibited by State law. Ms. McGookey said the State law only relates to items on which a vote is taken. Therefore a Council Member is prohibited by State law from voting on an item in which they have a substantial interest. State law also requires the filing of Conflict of Interest Disclosure forms.

Mayor Magers felt everything had been done correctly, however he was concerned about appearance. He proposed that the Council enact a policy from this point forward, whether by Charter Amendment or Resolution, that if you are on the City Council and you do business with the City of Sherman, and the transaction is over \$2,500, that the Council vote on the disbursement so the public will be aware.

Mr. Wall felt it would be better to follow State law rather than add a Charter Amendment to control the situation. Ms. McGookey said currently State law only addresses items that require a vote. Since there is no State law that conflicts with **[Page 43, Article X, Section 2(e)]**, then the City is governed by the Charter provision.

Council Member Adami said if a Council Member can provide a service at a lower bid than another vendor providing the same service, he was in favor of selecting the lower bid. He did, however want to avoid the appearance of impropriety. Ms. McGookey said her opinion was that for a disbursement of \$2,500 or more going to an elected official, it must be approved by the City Council.

Mayor Magers asked the best way to make it a policy that if any Council Member does business with the City of Sherman for a transaction exceeding \$2,500, it requires a vote of the City Council. Ms. McGookey said the policy was already set out in the Charter, but the Council could adopt a motion and order stating that this rendering is adopted by the Council. Mr. Wall felt the Charter wording

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should be very clear so there is no question about interpretation. Council Member Adami agreed that there is a question in the language and it should be made easier to read.

Proposal – Clarify that in the future, if a Council Member does business with the City of Sherman in an amount of \$2,500 or more, then the Council will vote on the transaction

Mayor Magers verified that there is no prohibition on any employee or employee's spouse that does business with the City of Sherman, however they must complete a Conflict of Interest Disclosure form.

Council Member Adami felt clarification was needed at **[Page 8, Article II, Section 5(c)]** because he did not think the intent was to prevent Council Members from asking informal questions of department heads or City employees. He felt language should be added that allowed the Council to ask questions without entering into a formal investigation. He added that asking questions or getting opinions from City employees is not being involved in the day-to-day management of the City.

Proposal – Clarify wording to allow Council Members to ask questions of City employees but not give them the authority to manage the personnel

Council Member Smith said both the City Manager and the City Attorney report directly to the City Council, but the Charter also says that the City Manager shall supervise “the administration of all departments, offices, and agencies of the City.” It also says the City Attorney will coordinate and inform the City Manager of all activities of the City Attorney’s Office. He asked if there should be clarification of the language so it is clear “who reports to whom.” **[Page 17 and 18, Article IV, Section 2(d) and Section 5]**

Mayor Magers verified that the City Manager and the City Attorney report to the City Council. Ms. McGookey said her interpretation of the Charter is that there are specific departments outlined in the Charter **[Page 16, Article IV, Section 1(a)]** that are under the direction of the City Manager. The Charter **[Page 17, Article IV, Section 2(d)(3)]** also states that the City Manager shall direct and supervise the administration of all departments, offices, and agencies of the City, “except as otherwise provided by this Charter or by law.” The City Manager and the City Attorney are generally on an even keel because they both report to the City Council. The requirement to report activities of the office to the City Manager is because he is the Chief Administrative Officer of the City and should know what is going on in the office. She added that her opinion was that the City Manager does not have any supervisory control over the Legal Department.

Council Member Markl said since the City Manager is responsible for department heads, at what time would he become involved in discussions between the City Attorney and the department head. Ms. McGookey said the department heads have a responsibility to report to the City Manager, however she and Mr. Wall are currently working on a procedure for this coordination.

Ms. McGookey said she does not dictate anything to employees or to the City Council. She is a legal advisor and it is the City Manager or the City Council's decision whether or not to follow her legal advice. She added that the division to have the City Attorney report directly to the City Council is also to provide some job security if she must offer legal advice to the City Manager.

Council Member Markl said there are some good reasons for the autonomy, however the City must still remain functional and the City Manager must be kept in the loop when department heads are discussing things with the City Attorney.

Mayor Magers asked at what point the City Attorney would become involved with personnel issues. He said the Charter does not require the City Manager to report any issues to the City Attorney.

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Council Member Smith questioned whether or not the Charter was clear on the language concerning the two positions and asked if the Council wanted to make any changes. Council Member Wacker said she agreed with the structure as a whole, but added that hopefully everyone is looking out for the City's best interests and communicating where needed, whether or not it is specifically stated in the Charter. She felt the method of communication should be left up to the City Manager and the City Attorney to establish a policy or agreement for communication.

Council Member Smith said according to the Charter, both the City Manager and the City Attorney can only be removed by five affirmative votes from the City Council. He felt that should be changed to require a simple majority or four affirmative votes. **[Page 16 and 18, Article IV, Section 2(b) and Section 5]**

Council Member Markl said that change was originally made to provide some insulation from changes in the political winds. It was felt that if the Council wanted to fire one of the top two City employees, then there should be a compelling reason. Mayor Magers verified that there are some Planning and Zoning issues that require passage by a "super majority."

Mayor Magers said the City Manager has a residency requirement to live in the City limits of Sherman, but the City Attorney does not. He asked the Council if the residency requirement should also relate to the City Attorney since they both answer to the City Council. Council Member Markl did not feel that it should apply to the City Attorney. He said the City Manager is charged with implementing Council policy and the day-to-day operation of the City. Interpreting the law should be less prone to political pressure and local politics. Council Member Wacker added that many cities hire attorneys from a law firm and not requiring residency would allow for that scenario. Council Member Adami felt the City Attorney would have a vested interest in the community if they lived here. **[Page 16, Article IV, Section 2(a)]**

Mayor Magers felt that removal of the City Manager or City Attorney should be accomplished by a majority of four affirmative votes instead of a super majority of five votes, even though it should be difficult to accomplish. Several other Council Members also felt a simple majority should be the norm for a home rule City. Ms. McGookey verified that the required majority vote would be of the full City Council and not the members present and voting.

Proposal – Allow removal of the City Manager and the City Attorney by a majority vote of four instead of super majority vote of five

Council Member Wacker asked how quickly the Council needs to move on the proposed Charter Amendments. Ms. McGookey said they must move quickly and she would add the proposed amendments to the agenda for action.

Council Member Adami said he would like to see quarterly financial reports to determine where the City actually stands. He added that they are being informed and the change probably didn't need to be to the Charter, however he would like to see information presented quarterly. Mr. Wall agreed that the request could be a directive of the City Council instead of a Charter Amendment. **[Page 17, Article IV, Section 2(d)]**

Giles Brown, Assistant City Manager, added that a quarterly investment report will be on the February 5, 2007 Council Agenda, however it will not include the financial report at that time. The financial report will be on the February 20, 2007 Council Agenda. Council Member Wacker asked for an update on the Capital Improvement Projects too.

Ms. McGookey reiterated the Charter Amendments that have been proposed by the Council. Council Member Adami reminded her about the City Council terms and ask to consider wording to set the

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terms at two consecutive three year terms. Mr. Wall suggested that the wording include an effective date for the new terms.

EXECUTIVE SESSION

IN ACCORDANCE WITH CHAPTER 551. GOV. CODE, V.T.C.S., (OPEN MEETINGS LAW)

THE CITY COUNCIL WILL NOW HOLD AN EXECUTIVE SESSION PURSUANT TO THE PROVISIONS OF THE OPEN MEETINGS LAW, CHAPTER 551, GOVERNMENT CODE, VERNONS TEXAS CODES ANNOTATED, IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN THE FOLLOWING SECTIONS.

SECTION 551.071 – CONSULTATION WITH THE CITY ATTORNEY CONCERNING LEGAL MATTERS OR CONTEMPLATED LITIGATION

Ms. McGookey informed the City Council that an Executive Session was not needed at the present time.

ADJOURNMENT

There being no further business to come before the City Council, motion was duly made and approved to adjourn the Called Meeting at 1:47 p.m.

MAYOR

ATTEST

CITY CLERK