

ORDINANCE NO 95-3

AN ORDINANCE OF THE CITY OF COMMERCE, TEXAS, CALLING A SPECIAL ELECTION FOR MAY 6, 1995, FOR THE PURPOSE OF AMENDING THE CITY CHARTER; APPROVING CHARTER AMENDMENTS TO BE PLACED BEFORE THE VOTERS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; DECLARING AN EMERGENCY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Commerce, 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, the City Commission has determined that it is in the best interest of the city 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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF COMMERCE, TEXAS, THAT:

SECTION 1.

The City Commission hereby approves the proposed amendments to the City Charter of the City of Commerce that are included in EXHIBIT A, attached to and incorporated in this ordinance for all purposes.

SECTION 2.

The City Commission hereby ratifies its order calling a special election to submit to the voters of the City the proposed amendments to the City Charter as set forth in EXHIBIT A. The election shall be conducted according to the laws of the State of Texas, and shall be held on May 6, 1995, from 7:00 a.m. to 7:00 p.m.

SECTION 3.

The official ballots for the election shall be prepared in accordance with the Election Code so as to permit the voters 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 in EXHIBIT B, attached to and incorporated in this ordinance for all purposes.

SECTION 4.

This ordinance shall be cumulative of all provisions of ordinances and resolutions of the City of Commerce, 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provisions of such ordinances, in which event the conflicting provisions of such ordinances and resolutions are hereby repealed.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 5.

It is hereby declared to be the intention of the City Commission 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 Commission without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

That an emergency exists necessitating the suspension of any rule requiring multiple readings of this Ordinance and all multiple readings of this Ordinance are hereby waived; this Ordinance shall take effect immediately upon its passage.

SECTION 7.

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

PASSED AND APPROVED ON THIS 21st DAY OF March, 1995.

ATTEST:

Carol Roberts

Carol Roberts, City Secretary

(seal)

CITY OF COMMERCE

Marna Martinez

Marna Martinez, Mayor

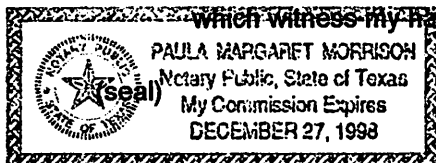
I, Carol Roberts, Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an ordinance, and that the same has not been repealed and is in full force and effect.

(seal)

Carol Roberts

City Secretary
City of Commerce, Texas

Sworn to and subscribed before me, on this the 28 day of March, 1995, to certify which witness my hand and seal of office.



Paula Margaret Morrison
Notary Public, State of Texas

EXHIBIT A
AMENDMENTS TO THE CITY CHARTER

The following amendments to the City Charter of the City of Commerce are proposed to the voters of the city.

Part I. Name of the Governing Body

The City Charter of the City of Commerce is amended so that in each instance that

(1) the words "commission" or "commissioners" appear, the word "council" shall be substituted;

(2) the word "commissioner" appears, the words "council member" shall be substituted.

Part II. Amendments to Specific Provisions

The City Charter of the City of Commerce is amended by amending Sections 8, 18, 19, 21, 43, 47, and 50, and adding a new Section 18.1 and a new Article 5A to read as follows:

Sec. 8. Franchises.

Franchises heretofore granted by the City of Commerce shall not be effected by the adoption of this charter. The city council, by ordinances, may grant permission to any person, or association of persons, to construct and operate a public utility within its corporate limits for a period not to exceed twenty (2) years, subject to the following conditions and restrictions:

- (1) No franchise shall become valid until the same has been publicized by posting notices at three (3) places in the City of Commerce, including the city hall, and provided further that if a petition be signed by ten (10) per cent of the voters participating at the last preceding general city election, and is presented to the city commission requesting that such ordinance be submitted to the people for their approval or rejection, then it shall become the duty of the city council to provide for such election to be held on the next uniform election date that is not less than forty-five days from the date of the petition requesting such election. The city council will then be governed by the result of such election.
- (2) No public utility franchise shall be transferable to any person except upon the approval of the city council, expressed by an ordinance.

- (3) Every franchise granted after the adoption of this charter shall provide that the City of Commerce may take over the plant and properties of the grantee upon the payment therefor at its fair value.
- (4) Every franchise granted shall require the grantee to furnish the city council a certified annual statement which shall reflect accurately the investments and earnings of the grantee's properties within the City of Commerce.

Sec. 18. The city council.

Except as otherwise provided in the charter, all powers of the City of Commerce shall be vested in the city council of five (5) members, consisting of the mayor and four other council members. The members of the city council shall:

- (1) be elected from the city at large;
- (2) except for the mayor, be elected by place number;
- (3) serve without compensation; and
- (4) serve for two-year terms.

Sec. 18.1. Committee Members, Officers, and Employees Running for Office.

If a member of a city board, committee, or commission appointed by the city council or any other appointive officer of the city, becomes a candidate for election to the city council, that person's position with the city shall be immediately forfeited. As used in this section, "candidate" has the definition provided in the Texas Election Code.

Sec. 19. Organization of the city council.

In each odd-numbered year city council members in Place One and Place Three shall be chosen for a term of two (2) years, and in each even-numbered year the mayor and the city council members in Place Two and Place Four shall be chosen for a term of two (2) years.

Sec. 21. The mayor pro tempore.

The city council shall meet at the city hall at the first regular city council meeting following the regular city election, and the members thereof shall choose one of its number to serve as mayor pro tempore for a term of one year. In the absence or inability of the mayor, the mayor pro tempore shall act in the mayor's place.

Sec. 43. Sale of city real property.

Before the City of Commerce may make a sale of its real property valued in excess of one hundred thousand dollars (\$100,000), the city shall submit the sale of such property to a vote of the people, and if the qualified voters show by an affirmative vote that they favor such sale, the city council shall proceed to sell the same at the highest market value.

Sec. 47. Right to regulate public utilities.

All grants, renewals, and extensions of and amendments to public utility franchises shall be subject to the rights of the City of Commerce to repeal the same for misuse or nonuse, or failure otherwise to comply with the terms prescribed. The city may impose such regulations as shall safeguard all property rights of other resident persons and may be conducive to the safety, welfare, and accommodation of the public. The city shall have the power to regulate charges made by public utilities on services to residents of the city as permitted by state and federal law. The city shall also have the power to impose such regulations upon all transportation agencies operating within the city as it may find to be in the interest of public safety and convenience and as permitted by state and federal law.

Sec. 50. Depository.

All monies received by any department or agency of the city shall be deposited promptly with the city depository. The city council shall designate the depository banking institution in accordance with state law.

ARTICLE 5A. RECALL OF COUNCIL MEMBERS

Sec. 51. Power of recall.

(a) **Removal of council member.** A member of the city council, including the mayor, may be recalled and removed from office by the qualified voters of the city as provided in this article.

(b) **Exception.** A council member is not subject to recall:

- (1) within six (6) months of the council member's election to office; or
- (2) within twelve (12) months of the council member's own recall election.

Sec. 52. Petition required.

(a) **Signatures.** Before the question of recall of a council member may be submitted to the qualified voters of the city, a petition requesting a recall election must be filed with the city secretary. The petition must contain the signatures of at least 15 percent

of the qualified voters of the city, but not less than 250. To be counted, a signature must be in indelible ink and comply with Section 277.002, Texas Election Code, or its successor law.

(b) **Recall committee.** Petition forms may be obtained from the city secretary by a recall committee composed of five citizens who are registered voters and were qualified to vote in the preceding general city election.

(c) **Information on the petition.** The following information must be contained on each page of the petition:

(1) names of the recall committee members;

(2) the date the petition was obtained from the city secretary; and

(3) a statement, prominently placed on the page, printed or in type written form not smaller than 12 point type, that it is a petition for the recall of a named member of the city council.

(d) **Form of the petition.** A separate petition is required for the recall of each council member. The petition may consist of one or more copies of the form obtained from the city secretary, circulated separately. The person who circulates each page shall make an affidavit that each signature to that page of the petition is the genuine signature of the person whose name appears on the petition.

Sec. 53. Return of the Petition.

(a) **Time for return.** Within thirty (30) days after the recall committee obtains the petition from the city secretary, the petition with signatures, must be filed with the city secretary. A petition not returned within thirty (30) days is void and may not be used for recall of a council member.

(b) **Duties of the city secretary.** Upon receipt of a recall petition within the required thirty (30) days, the city secretary shall immediately notify, in writing, the council member sought to be removed. Within fifteen (15) working days after the date of receiving the petition, the city secretary shall examine the petition and ascertain whether it contains the valid signatures of the requisite number of qualified voters. Upon making a determination, the city secretary shall attach a certificate to the petition showing the result of the examination. If the certificate shows the petition to be insufficient, the petition is void.

(c) **Valid petition.** If the certificate shows that the recall petition is in order, the city secretary shall submit the petition to the city council no later than its next regular meeting after the completion of the examination.

Sec. 54. Public Hearing.

The council member whose removal is sought may, within five (5) days after the day the petition is presented to the city council, request that a public hearing be held to permit the council member to respond to the petition. Upon receiving this request, the city council shall set the public hearing for a date that is within ten (10) days of the request.

Sec. 55. Recall Election.

(a) **Election to be called.** If the council member whose removal is sought does not resign, the city council shall order a recall election and set a date for the election that is not less than thirty (30) nor more than forty-five (45) days from the date the petition was presented to the city council.

(b) **Ballot.** The ballot used for the recall election shall be in the following form:

- (1) For each person whose removal is sought, the question shall be submitted: "Shall (Name of Person) be removed from the office of (Name of Office) by recall?"
- (2) Immediately below each question there shall be printed the following, in the order indicated:

"FOR the recall of (Name of Person)."

"AGAINST the recall of (Name of Person)."

- (3) The manner of indicating the voter's preference shall be in accordance with the Texas Election Code.

(c) **Results of Recall Election.** If a majority of the votes cast at a recall election are against the recall of the person named on the ballot, the person shall continue in office for the remainder of the unexpired term subject to recall as provided in Section 51. If the majority of the votes cast at a recall election are for the recall of the person named on the ballot, the person, regardless of any technical defects in the recall petition, shall be removed from office and the vacancy filled as other vacancies on the city council are filled.

(d) **Failure of city council to act.** The receipt of the recall petition, calling the election, preparation of ballots, holding of the election, and the canvass of votes are ministerial functions, and if the city council fails to discharge these functions in accordance with the provisions of this charter, any district court of Hunt County, Texas, may require the performance of the functions.

EXHIBIT B

PROPOSITION NO. 1

Name of the governing body.

Shall the City Charter of the City of Commerce be amended to provide that the name of the governing body of the city is changed from the "city commission" to the "city council"; amending all sections referencing the city commission or commissioners?

PROPOSITION NO. 2

Election of the governing body and mayor

Shall the City Charter of the City of Commerce be amended to provide that four members of the governing body are elected at large by place number, and the mayor is elected at large by the voters rather than appointed by the governing body; amending Sections 18, 19, and 21?

PROPOSITION NO. 3

Recall of members of the governing body.

Shall the City Charter of the City of Commerce be amended to provide that the members of the governing body may be recalled and removed from office by the initiative of the qualified voters of the city; adding Article 5A?

PROPOSITION NO. 4

Sale of real property.

Shall the City Charter of the City of Commerce be amended to require the city to submit the sale of real property to a vote of the people if the real property to be sold is valued in excess of \$100,000; amending Section 43?

PROPOSITION NO. 5

Compliance with state and federal law.

Shall the City Charter of the City of Commerce be amended to comply with requirements of state and federal laws regarding election dates, rates charged by utilities, and selection of a city depository; amending Sections 8, 47, and 50?

PROPOSITION NO. 6

Forfeiture of city position to become a city candidate.

Shall the City Charter of the City of Commerce be amended to require that any city board or committee member, appointed officer, or employee who becomes a candidate for election to the governing body, immediately forfeits the member's, officer's, or employee's position with the city; adding Section 18.1?