

ORDINANCE NO. 019436

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, ORDERING A SPECIAL ELECTION FOR THE SUBMISSION OF CHARTER AMENDMENTS TO SECTION 3.1 TO ALLOW DISTRICT REPRESENTATIVES TO APPOINT AND REMOVE DISTRICT OFFICE STAFF; 3.18 TO ALLOW CITY COUNCIL TO AUTHORIZE LEASES FOR 40 YEARS OR LESS BY RESOLUTION OR ORDINANCE; SECTION 3.5A TO ALLOW COUNCIL TO RESCHEDULE MEETINGS FOR HOLIDAYS AND ALLOW THE MAYOR TO CANCEL A COUNCIL MEETING IF REQUIRED DUE TO DECLARED EMERGENCY; SECTION 3.9B, 3.10B, AND 6.1-12 TO ALIGN TO STATE LAW AND UPDATE OBSOLETE REFERENCES; SECTION 3.11 TO REMOVE THE REQUIREMENT FOR A SECOND PETITION IN INITIATIVES, AND PROVIDE A PROCEDURE FOR CITIZENS TO INITIATE CITY ORDINANCES; SECTION 6.1-4 TO AUTHORIZE THE CITY TO CREATE A POLICY REGARDING MEMBERSHIP ON THE CIVIL SERVICE COMMISSION TO REFLECT THE COMMUNITY AND CITY WORKFORCE; SECTION 6.7-1 AND 6.8-1 TO ALLOW THE CITY TO ESTABLISH MORE FLEXIBLE POLICIES IN HIRING EMPLOYEES; SECTION 6.13-11D TO ESTABLISH THE CITY CONTRIBUTION TO THE POLICE AND FIRE PENSION FUND OF NO LESS THAN 18% OF THE WAGES OF THE PARTICIPANTS, AND REMOVE THE LIMIT ON THE CITY'S CONTRIBUTION; SECTION 3.20B TO CHANGE THE REPORTING STRUCTURE FOR THE CHIEF INTERNAL AUDITOR TO REPORT DIRECTLY TO CITY COUNCIL; SUCH ELECTION TO BE HELD WITHIN THE CITY, ON MAY 6, 2023; MAKING PROVISIONS FOR THE CONDUCT OF THE ELECTION; AND AUTHORIZING A CONTRACT WITH EL PASO COUNTY TO FURNISH ELECTION SERVICES AND EQUIPMENT; PROVIDING FOR SEVERABILITY AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council appointed a nine (9) member Ad Hoc Charter Advisory Committee in January 2022 to assist in the review and to make recommendations on potential charter amendments; and

WHEREAS, the Ad Hoc Charter Advisory Committee reviewed proposed Charter Amendments approved by a majority of the City Council and the Committee met from February 2022 through May 2022 to review the City Charter and in May 2022, the Committee finalized its report of its findings in writing, and presented its proposed amendments to the City Council; and

WHEREAS, the City Council has reviewed the proposed Amendments by the Committee, made amendments to such recommendations, and the City Council of the City of El Paso, Texas has determined it appropriate to submit the proposed amendments to the existing City Charter of the City of El Paso to the qualified voters of the City for their adoption or rejection thereof pursuant to Section 9.004(a) of the Texas Local Government Code; and

WHEREAS, Section 9.004(b) of the Texas Local Government Code requires that an ordinance be approved ordering said election to be held; and

WHEREAS, Section 41.001 of the Texas Election Code establishes May 6, 2023, as a uniform election date for the purposes of conducting an election; and

WHEREAS, pursuant to Texas Local Government Code Section 9.004(e), more than one amendment may be combined in one ballot proposition as long as the amendments contain only one subject; and

WHEREAS, pursuant to the Texas Local Government Code Section 9.004 a ballot for proposed charter amendments shall be prepared so that a voter may approve or disapprove any one or more amendments without having to approve or disapprove all of the amendments; and

WHEREAS, during public meetings held on August 2, 2022, on January 31, 2023 and a public hearing to be held on February 7, 2023, the City Council considered and approved for public vote, in the form of a ballot proposition, the following Charter amendments after considering recommendations by the 2022 Ad Hoc Charter Advisory Committee; and

WHEREAS, the City Council of the City of El Paso, Texas, hereby directs City staff to publish notice of the special charter election in a newspaper of general circulation in the City on the same day in each of two (2) successive weeks, the date of the first publication to be not less than fourteen (14) days prior to the date of the May 6, 2023 election, in compliance with Section 9.004(c) of the Texas Local Government Code and to carry out other requirements related to such election.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

SECTION 1 – CHARTER AMENDMENT ELECTION CALLED

The El Paso City Council does hereby order an election to submit to the voters of the City of El Paso proposed amendments to the City Charter, to be held on Saturday, May 6, 2023. That such election shall be held at the precincts and the polling places designated in Exhibit "A" or such other locations as may be designated prior to the election by the City Council, attached hereto and made a part hereof for all purposes, and said polling places shall open at 7 a.m. and remain open until 7 p.m. on the day of the election.

That at such election, the following amendments to the Charter of the City of El Paso ("Measures") shall be submitted to the qualified voters of the City and official ballots for the election shall be prepared in accordance with the Texas Election Code so as to permit the electors to vote for or against the proposed amendment, and with such ballot language ("Proposition") to be expressed substantially as follows:

CITY OF EL PASO MEASURE A

Text of Amendment

Amending Section 3.1 of the City Charter, relating to the creation; composition; powers and duties of City Council, to read in pertinent part as follows:

Section 3.1 – CREATION; COMPOSITION; POWERS AND DUTIES

There shall be a City Council consisting of District Representatives and the Mayor. The Council shall have legislative powers, and the power and duty to select, direct, and regularly evaluate the City Manager, as well as such other and specific powers and duties as may be provided by law or this Charter. Each Representative shall have the discretion and sole authority to appoint and remove district office staff.

City of El Paso Special Election for Charter Amendment
Ballot Proposition A

Should section 3.1 of the City Charter, relating to creation, composition; powers and duties of Council be amended to allow City Council Representatives to appoint and remove district office staff?

YES ()

NO ()

CITY OF EL PASO MEASURE B

Text of Amendment

Amending Section 3.18 of the City Charter, relating to the use of ordinances, to read in pertinent part as follows:

Section 3.18 LEASE; FRANCHISE, AND CONVEYANCE.

The right of control, ownership and use of streets, alleys, parks and public places of the City is declared to be inalienable except as provided by ordinance passed by the Council and except for uses of less than thirty days which may have a separate approval process as established by ordinance.

Any authorization for the conveyance, lease, or grant of a franchise regarding the property of the City shall provide for payment to the City of a reasonable fee as consideration for that conveyance, lease, or franchise.

Any sale of City owned property in fee simple, franchise or lease for an initial term longer than forty years shall be approved by ordinance.

In addition, any authorization for a lease or franchise must provide that the City may revoke it if necessary to secure efficiency of public service at a reasonable rate, and must assure that the property is maintained in good condition throughout the life of the lease or franchise.

City of El Paso Special Election for Charter Amendment
Ballot Proposition B

Should section 3.18 of the City Charter relating to Leases, Franchises, and Conveyances be amended to authorize Council to lease City owned property for 40 years or less by Council resolution or ordinance?

YES ()

NO ()

CITY OF EL PASO MEASURE C

Text of Amendment

Amending Section 3.5 of the City Charter, relating to City Council Procedures and Rules, to read in pertinent part as follows:

Section 3.5 A CITY COUNCIL PROCEDURES AND RULES

Meetings. Regular meetings of the Council shall be held in Council chambers no less than once every other week at such times as may be prescribed by resolution, except that Council may reschedule meetings by resolution to allow for City holidays, but must have no less than two regular meetings per month. The Mayor may cancel a meeting if necessary due to a Federal, State or Local declared emergency.

City of El Paso Special Election for Charter Amendment
Ballot Proposition C

Should section 3.5A of the City Charter be amended to allow Council to reschedule meetings by resolution to allow for City holidays but shall hold no less than two regular meetings per month?

YES ()

NO ()

CITY OF EL PASO MEASURE D

Text of Amendment

Section 3.5 A CITY COUNCIL PROCEDURES AND RULES

Meetings. Regular meetings of the Council shall be held in Council chambers no less than once every other week at such times as may be prescribed by resolution, except that Council may reschedule meetings by resolution to allow for City holidays, but must have no less than two regular meetings per month. The Mayor may cancel a meeting if necessary due to a Federal, State or Local declared emergency.

City of El Paso Special Election for Charter Amendment Ballot Proposition D

Should section 3.5A of the City Charter be amended to allow the Mayor to cancel a meeting if necessary due to a Federal, State or Local declared emergency?

YES ()

NO ()

CITY OF EL PASO MEASURE E

Text of Amendment

Amending Sections 3.9B relating to Ordinances, 3.10B relating to emergency ordinances, 6.1-12 relating to civil service hearing officers to read in pertinent part as follows:

Section 3.9 ORDINANCES IN GENERAL.

B. Legislative Procedure. Except as provided in Section 3.13, an ordinance may be introduced by any Council member at any meeting of the Council. A proposed ordinance must be filed with the City Clerk in sufficient time for inclusion on the agenda for the Council meeting at which it is to be introduced. Upon such filing the City Clerk shall distribute copies to each member of the Council and to the City Manager. No ordinance shall be adopted finally except at a regular open meeting of the Council following notice, publication, and a public hearing. The notice shall contain:

1. The proposed ordinance or a brief summary thereof;
2. The places where copies of it have been filed and the times when they are available for public examination; and
3. The time and place for the public hearing. The notice shall be published by any contemporary means of information sharing, including but not limited to publication in a newspaper of general circulation in the City or placement on a website at least five days prior to the public hearing. The hearing may be held by a designated Council committee or the Council separately or in connection with any Council meeting and

may be adjourned to a specified time. All interested persons present shall have an opportunity to be heard. As soon as practicable after adoption of any ordinance, the City Clerk shall publish it again, with notice of its adoption, in abstract form, by any contemporary means of information sharing. These abstracts must state, at a minimum, the purpose of the ordinance and, where penal, the penalty provided. In any event, the publication must be written so as to be understood by an average person.

Section 3.10B EMERGENCY ORDINANCES.

Procedures. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it may be introduced on one-hour public notice, and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the emergency in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the unanimous vote of the Council members present shall be required for adoption.

Section 6.1-12 HEARING OFFICERS.

The Commission will appoint one or more compensated hearing officers to hear appeals made under Section 6.13-4. The need for hearing officers in excess of one shall be determined jointly by the Commission and the City Manager. Hearing officers will perform those duties and functions necessary to render a recommendation to the Commission on the matter in dispute.

The hearing officers will serve at the Commission’s pleasure, and will be procured through the City's procurement process.

City of El Paso Special Election for Charter Amendment
Ballot Proposition E

Shall Sections 3.9B, 3.10B, 6.1-12of the City Charter be amended to eliminate provisions which have become inoperative because they have been superseded by state law; replace obsolete references and update terminology to current legal usage?

YES ()

NO ()

CITY OF EL PASO MEASURE F

Text of Amendment

Amending Section 3.11 of the City Charter, relating to Initiatives to read in pertinent part as follows:

Section 3.11 INITIATIVE.

Any registered voter may initiate an ordinance that complies with federal, state and local law by filing with the City Clerk a statement that they intend to circulate a petition. Such statement must include the names and addresses of the petitioner, and the full text of the proposed ordinance.

The City Clerk shall place the proposed Ordinance on the City Council Agenda for introduction within thirty calendar days after receiving the statement, followed by a public hearing at the second reading. If City Council fails to adopt the ordinance, or adopts it with amendments, the City Clerk will notify the petitioners.

If the petitioners still wish to seek adoption of the ordinance after Council fails to adopt, or does not agree to Council’s amendments, it will then have 365 calendar days after notice from the City Clerk to complete the petition by gathering signatures in the form required by state law, including but not limited to original signature, printed name, residence address and date of birth or voter registration of a number of registered voters equal to at least five percent of the voters who voted in the last general City election, or 7,500, whichever number is smaller. The petition must set forth the precise content of the ordinance desired by the petitioners.

The City Clerk shall review the petition without delay, but no more than 60 City Clerk office working days, to verify if it meets all requirements, and if authenticated with the required number of signatures, must place that ordinance on the agenda of a Council meeting to be held within thirty working days of the authentication by the City Clerk, of the petition bearing the authenticated names and addresses of the petitioners. Such an item shall be treated by the Council exactly as any other proposed ordinance.

If Council does not adopt, or adopts the proposed ordinance in an amended form, the City Council thereafter must place the proposed ordinance on the ballot at one of the next two uniform elections, no later than the next citywide general election specified in State law meeting all deadlines. If the proposal receives the favorable vote of a majority of those voting in that election it shall thereupon become a City ordinance. Initiative ordinances adopted or approved by the electors shall be published and may be amended or repealed by the Council, as in the case of other ordinances; provided, however, that no ordinance adopted at the polls under an initiative may be amended or repealed by the Council within two years of adoption.

The Council is not obliged to consider the same ordinance initiated by petition, or one that is substantially the same, more often than once in: two years.

City of El Paso Special Election for Charter Amendment
Ballot Proposition F

Should section 3.11 relating to the initiative petition of the City Charter be amended to remove the requirement for a second petition, and institute a process for the public to initiate a City ordinance?

YES ()

NO ()

CITY OF EL PASO MEASURE G

Text of Amendment

Amending Section 6.1-4 of the City Charter, relating to Civil Service qualifications to read in pertinent part as follows:

Section 6.1-4 QUALIFICATIONS.

Members of the Commission must be residents of the City at the time of their appointment and remain a resident of the City throughout their term of office. No Commissioner shall be related in any manner described in Article III, Section 3.3 B to any employee of the City, the Public Service Board, or any entity that has a contract with the City to operate or manage any City facility or department, nor hold any salaried public office or other employment compensated by the City, and any violation of this provision shall be deemed malfeasance in office and cause for removal therefrom. The City should adopt rules that reflect the diversity of the community and City workforce. No more than three Commissioners may be former city employees, and any such Commissioners are not eligible for appointment until two years following separation from the City. Any commissioner may be either actively employed or retired.

City of El Paso Special Election for Charter Amendment **Ballot Proposition G**

Should 6.1-4 of the City Charter be amended to change the qualifications requirements for Civil Service Commissioners to allow for appointment of Commissioners that reflect the diversity of the community and City workforce?

YES ()

NO ()

CITY OF EL PASO MEASURE H

Text of Amendment

Amending Section 6.7-1 and 6.8-1 of the City Charter, relating to penalty for deceit in examinations, examinations and eligibility to read in pertinent part as follows:

Section 6.7-1

(Reserved.)

Section 6.8-1 EXAMINATION AND ELIGIBILITY

The Human Resources Director shall establish administrative policies and procedures for the promotion process, and eligibility, consistent with the provisions of this Article and all applicable federal and state employment laws.

City of El Paso Special Election for Charter Amendment **Ballot Proposition H**

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Should Section 6.7-1 be deleted and 6.8-1 relating to Examinations of the City Charter be amended to remove the requirement for examinations and allow the City to establish Civil Service Rules, policies and procedures for the promotion of City employees?

YES ()

NO ()

CITY OF EL PASO MEASURE I

Text of Amendment

Amending Section 6.13-11D of the City Charter, relating to pensions plans to read in pertinent part as follows:

Section 6.13-11D PENSION PLANS.

Firemen and Policemen Pension Fund of El Paso. The City shall continue to augment the Firemen and Policemen Pension Fund of El Paso in a manner consistent with the laws of Texas. To augment the Firemen and Policemen Pension Fund, the Council shall in each fiscal year beginning after May 2023, appropriate no less than eighteen percent of the total amount expended for wages of the participants, and may increase this contribution rate as allowed by the relevant state law requirements based on a qualified actuary's report; provided, however, that in the event age limits for participation in the pension fund, or any division of the fund, are increased as permitted by law and the raising of the age limits causes an increase in funding costs as determined by an actuary, the City shall appropriate an amount equal to such cost increase notwithstanding that such increased appropriation may exceed the otherwise determined percent of the total amount expended for wages of the participants. Notwithstanding the foregoing, if the City elects to pick up participant contributions to the Firemen and Policemen Pension Fund of El Paso under Section 414(h) of the Internal Revenue Code of 1986, as amended (the "Code"), then the participant contributions picked up by the City shall be derived from a corresponding reduction in participant cash salaries and treated as a contribution by the City solely for determining tax treatment of such contributions under the Code. The picked up contributions by the City shall not be considered a contribution or required contribution by the City for any other purpose, including the limitations for the total amount expended for salaries of the participants designated in this Section 6.13-11.D. Notwithstanding the foregoing, the City shall have the authority to contract with the Firemen and Policemen Pension Fund to make a one-time contribution (either in lump sum or installments) to the Firemen and Policemen Pension Fund solely for an underfunded liability as of December 31, 2003 or the date of contribution, under such conditions as the City in its sole discretion may require and provided that (a) such authority, action and/or contribution complies with the Firemen and Policemen Pension Fund plan documents and all applicable statutes, laws, rules and regulations, and (b) a binding written agreement between the City and the Firemen and Policemen Pension Fund has been reached regarding (i) the amount of such under-funded liability, if any, (ii) the amount to be contributed by the City for such under-funded liability, and (iii) procedures (including, if necessary, amendments to the Firemen and Policemen Pension Fund plan documents) for

managing the Firemen and Policemen Pension Fund on a going forward basis.

City of El Paso Special Election for Charter Amendment
Ballot Proposition I

Should section 6.13-11D relating to the police and fire pension fund be amended to establish that the City of El Paso shall contribute to the El Paso Policemen and Firemen Pension Fund no less than eighteen percent of the total amount expended for wages of the participants, and any increase to the contribution rate shall be as allowed by state law?

YES ()

NO ()

CITY OF EL PASO MEASURE J

Text of Amendment

Amending Section 3.20B of the City Charter, relating to the Chief Internal Auditor to read in pertinent part as follows:

Section 3.20B Internal Audit Function

1. The Council shall establish and create an internal audit function to ensure that appropriate internal audits will be performed in accordance with professionally recognized auditing standards of the operations of all City departments, offices, agencies and programs.
2. The function shall be staffed by a Chief Internal Auditor and such other appropriate positions as are authorized by the Council who shall report to the Chief Internal Auditor.
3. Consistent with the provisions of this Charter, the Council shall by ordinance or resolution provide for the powers and duties of the Chief Internal Auditor as needed for the performance of the function.
4. The Financial Oversight and Audit Committee shall maintain legislative oversight over the internal audit function as provided in Section 3.6 B.
5. On and after the effective date of this amendment, the Chief Internal Auditor shall be appointed and removed by, and report to the Council. The Chairman of the Financial Oversight and Audit Committee shall maintain operational oversight over the internal audit function. The City Manager shall be responsible for the implementation of any audit recommendations for changes to City administrative procedures and operations as requested by the Council.

City of El Paso Special Election for Charter Amendment
Ballot Proposition J

Should Section 3.20B of the El Paso City Charter be amended to change the reporting structure of the Chief Internal Auditor so the position reports directly to City Council?

YES ()

NO ()

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 the proposition, with the ballots to contain such provisions, markings and language as required by law, and with the proposition to be expressed substantially as set forth in section 1, above.

SECTION 3 – EARLY VOTING CLERK

Lisa Wise, El Paso County Elections Administrator, 500 E. San Antonio, Suite 314, El Paso, Texas, 79901, is hereby appointed as Early Voting Clerk. Applications for ballot by mail must be **received** no later than the close of business on April 25, 2023, sent to this address.

SECTION 4 – EARLY VOTING

Early voting by personal appearance shall be conducted at the El Paso County Courthouse, located at 500 E. San Antonio, El Paso, Texas 79901. In addition, early voting may also occur at such early voting polling places as are designated herein or otherwise designated by the El Paso County Elections Administrator and posted at City Hall by the City Clerk. The locations and hours for early voting by personal appearance shall be authorized for such election as set forth in Exhibit "A," which may be amended.

In addition, mobile voting stations may be authorized and used for early voting at publicly owned buildings in the City as established by the El Paso County Elections Administrator. The City Clerk is authorized to make corrections or revisions to the list of these mobile stations, including the respective hours for early voting by personal appearance at these stations. The City Clerk is further authorized to make corrections or revisions to the list of early voting stations as set forth above, including the respective hours for early voting by personal appearance at these stations, and revise and correct all election notices regarding the early voting locations and the mobile voting stations, and the dates and times for such voting.

For purposes of processing ballots cast in early voting, the election officers for the Early Voting Ballot Board shall be appointed and designated in accordance with the provisions of the election agreement with El Paso County.

SECTION 5 – NOTICE OF ELECTION

The City Clerk shall give notice of such election by posting a notice of such election in English and Spanish in the Office of the City Clerk as provided by law and by publishing a copy of said notice in both English and Spanish in a newspaper in the City as required by law. Additionally, in accordance with Section 9.004(c) of the Local Government Code, notice shall be published in a newspaper of general circulation in El Paso 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 amendment.

The City Clerk shall deliver notice of this election to the County Clerk and voter registrar of El Paso County no later than Tuesday, March 7, 2023, or as otherwise required by law.

SECTION 6 – ELECTION SERVICES CONTRACT AND PROCEDURAL MATTERS

The City Manager is hereby authorized to execute the necessary contract(s) and agreements, joint or otherwise, with the El Paso County Elections Administrator, or any other public entity, for the purpose of having El Paso County furnish all or any portion of the election services and equipment needed by the City Clerk to conduct the election. The contract document and election services provided therein shall conform to Chapter 31, Subchapter D, of the Texas Election Code and all other applicable statutes and laws.

The election services contract with the County shall provide (a) the type of electronic voting equipment to be used for early voting by personal appearance and on election day, (b) notification and training for election judges and clerks, (c) an estimate and final payment terms for the election services provided, (d) agreements for early voting equipment and voting machine rental, and (e) other procedures necessary to conduct the election.

Matters contained in this ordinance relating to discretionary, procedural matters may be amended by approval of the City Manager, and procedural matters not established by this ordinance will be established by resolution of City Council.

SECTION 7 – VOTING MACHINES AND ELECTION RESULTS

Voting machines used for the conduct of the election, shall be procured, maintained, operated, sealed and the votes therefrom tabulated pursuant to procedures established and authorized by the laws of the State of Texas.

The results of the election shall be certified, canvassed, and returned in the form and manner prescribed by law.

SECTION 8 – OTHER ACTION AND COMPLIANCE WITH APPLICABLE LAWS

The City Manager and City Clerk, in consultation with the City Attorney, are hereby authorized and directed to take any additional 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 9 – SEVERABILITY

That should any part, section, subsection, paragraph, sentence, clause or phrase contained in this ordinance be held to be unconstitutional or of no force and effect, such holding shall not affect the validity of the remaining portion of this ordinance, but in all respects said remaining portion shall be and remain in full force and effect.

SECTION 10 – EFFECTIVE DATE

This Ordinance shall be in force and effect from and after the date of its adoption, and it is so ordained.

APPROVED this 7th day of February, 2023.

CITY OF EL PASO
Oscar Leeser
Mayor

ATTEST:
Laura D. Prine
City Clerk

APPROVED AS TO FORM:
Kristen L. Hamilton-Karam
Senior Assistant City Attorney

| **Proposition F**

The City estimates that this proposition could cost the City between \$650,000 and \$1,012,475 if an election is required in a year that the City does not have a scheduled election.

All other propositions are not anticipated to have a fiscal impact.