

AN ORDINANCE 100340

ENTERING AN ORDER TO ESTABLISH THE EFFECTIVE DATE OF CHARTER AMENDMENTS APPROVED BY THE VOTERS AT THE NOVEMBER 6, 2001 ELECTION, IN RESPONSE TO THE COURT'S ORDER REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT IN *MINELLA v. CITY OF SAN ANTONIO*, CIVIL ACTION NO. SA-03-CA-246-FB IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION.

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WHEREAS, by Ordinance No. 94375 enacted August 16, 2001, the City Council called an election for November 6, 2001, for the voters to consider three separate amendments to the San Antonio City Charter (the "Charter Amendments"); and

WHEREAS, the City Council provided in Section 3 of Ordinance No. 94375 that "[p]ropositions approved by a majority of the voters voting shall become effective when the City Council enters an order stating an effective date of the propositions and states on the records of the City declaring that the Charter Amendments have been adopted" and in Section 4 of that ordinance provided that "[a]s soon as practicable after the election and the declaration by the Council that the amendments have been approved, the City Manager shall certify to the secretary of state an authenticated copy of the amendments under the City's seal showing the approval by the voters of the municipality;" and

WHEREAS, a majority of the voters voting in the November 6, 2001 election to consider the Charter amendments approved the proposed Charter Amendments; and

WHEREAS, by Ordinance No. 94956 enacted November 15, 2001, the City Council approved and adopted the report of the Bexar County Canvassing Authority; and

WHEREAS, Ordinance No. 94956 provided at Section 2 that "[i]t is therefore found and declared that the majority of the qualified voters of the municipality who voted at said Special Election voted in favor of the proposed Charter Amendments. Therefore, these Charter Amendments shall take effect when the City Council takes action by separate ordinance stating the effective date of each respective proposition;" and Section 3 of that ordinance provided that "[a]s soon as practical, the City Manager shall certify to the Secretary of State an authenticated copy of the Charter Amendments, under the City's seal, showing the approval by the voters of the municipality;" and

WHEREAS, in an order signed September 9, 2004 in litigation styled *Minella v. City of San Antonio*, Civil Action No. SA-03-CA-246-FB, in the United States District Court for the Western District of Texas, San Antonio Division (the “court order”), the court concluded one of the Charter Amendments (Proposition 3) was not yet effective because “the enabling ordinances state Proposition 3 must be implemented by city council” and the city council “did not, and has not, taken implementation action;” and

WHEREAS, the City Council respectfully disagrees with the court’s conclusion that Proposition 3 of the Charter Amendments is not effective, for reasons stated in pleadings, motions, and briefs filed by the city’s attorneys in both the *Minella* litigation and with the state district court in *Garner et al. v. City of San Antonio*, Cause No. 2003CI-11520, in the 408th Judicial District, Bexar County, and does not waive or abandon the city’s position and arguments urged before the courts by passing this ordinance; and

WHEREAS, the City Council recognizes that final judicial decisions in the *Minella* and *Garner* lawsuits, including probable appellate review, may be years in the future; and

WHEREAS, the City Council believes it is in the public interest to respond to the court order by taking the action the court has said is needed to implement the Charter Amendments, while continuing to pursue a final judicial decision that establishes the Charter Amendments were approved *and* effective on November 15, 2001; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. (a) The City Council establishes and declares that the three Charter Amendments are and have been effective beginning on November 15, 2001.

(b) Ordinance No. 94956 is amended to delete the second sentence of Section 2 of that ordinance.

(c) This Section 1 is effective only if a court declares and rules that a separate ordinance in addition to Ordinance No. 94956 is necessary to implement or establish an effective date for one or more of the three Charter Amendments.

SECTION 2. (a) This Section 2 is effective only if a court declares Section 1 of this ordinance invalid, void, or ineffective, and that a separate ordinance in addition to Ordinance No. 94956 is necessary to implement or establish an effective date for one or more of the Charter Amendments.

(b) The City Council establishes and declares the following respective effective dates for the approved Charter Amendments:

- (1) The Charter Amendment described as Proposition One on the November 6, 2001 election ballot and in Ordinance No. 94956 is and was intended to be effective January 30, 2003, the date the City Council passed and approved Ordinance No. 97120 appointing the City Auditor in accordance with the provisions of the City Charter as amended by the approval of Proposition One by the voters.
- (2) The Charter Amendment described as Proposition Two on the November 6, 2001 election ballot and in Ordinance No. 94956 is and was intended to be effective March 14, 2002, the date the City Council passed and approved Ordinance No. 95435 confirming the appointment of the City Attorney in accordance with the provisions of the City Charter as amended by the approval of Proposition Two by the voters.
- (3) The Charter Amendment described as Proposition Three on the November 6, 2001 election ballot and in Ordinance No. 94956 is and was intended to be effective September 19, 2002, the date the City Council passed and approved Ordinance No. 96399 adopting among other budget matters the FY 2002-2003 Pay Plan incorporated as Attachment IV to that ordinance, and establishing and acknowledging designated "unclassified (non-executive)" job class titles for certain licensed professionals and executive job classifications removed from Municipal Civil Service coverage in accordance with the provisions of the City Charter as amended by the approval of Proposition Three by the voters.

SECTION 3. (a) This Section 3 is effective only if a court declares both Section 1 and all or any portion of Section 2 of this ordinance invalid, void, or ineffective, and that a separate ordinance in addition to Ordinance No. 94956 is necessary to implement or establish an effective date for one or more of the Charter Amendments.

(b) The City Council establishes and declares January 27, 2005 as the effective date for one or more of the Charter Amendments if an effective date is not otherwise established by Section 1 or Section 2 of this ordinance.

SECTION 4. Sections 1, 2, and 3 are intended to be alternative and severable provisions effective only as provided in each section. This ordinance is adopted to establish an effective date for one or more of the Charter Amendments as declared necessary in the court order entered September 9, 2004, in *Minella v. City of San Antonio*, No. SA-03-CA-246-FB in the United States District Court for the Western District of Texas, San Antonio Division. This ordinance is not intended and shall not be construed to waive or abandon the city's position that the Charter Amendments were effective November 15, 2001, the date the City Council passed the election canvass ordinance and declared the Charter Amendments had been approved by a majority of the voters.

SECTION 5. This ordinance is effective immediately if passed by the vote of eight or more members of the City Council.

Item # 16
1/27/05

PASSED AND APPROVED on the 27th day of January, 2005.



M A Y O R
EDWARD D. GARZA

ATTEST: *Leticia M. Rice*
City Clerk

APPROVED AS TO FORM: *Andrew Martinez*
City Attorney