

**MINUTES OF THE CITY OF LAS VEGAS CITY COUNCIL SPECIAL MEETING  
ON TUESDAY JANUARY 31, 2012 AT 4:00 P.M. IN THE CITY COUNCIL  
CHAMBERS**

**MAYOR:** Alfonso E. Ortiz, Jr.

**COUNCILORS:** Tonita Gurule-Giroñ  
Diane Moore  
Andrew Feldman  
David L. Romero

**ALSO PRESENT:** Tim Dodge, City Manager  
Maire Lopez, Recorder  
Dave Romero, City Attorney  
Christian Montano, Sergeant at Arms

**CALL TO ORDER**

Mayor Ortiz Jr. called the meeting to order at 4:00 p.m.

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

Mayor Ortiz Jr. asked for a moment of silence in appreciation of life and water.

**APPROVAL OF AGENDA**

Councilor Moore motioned to approve the agenda. Councilor Romero seconded the motion.

Mayor Ortiz Jr. asked for a roll call vote. Roll call was taken and reflected the following.

Tonita Gurule-Giroñ	Yes	Diane Moore	Yes
Andrew Feldman	Yes	David Romero	Yes

Recorder Maire Lopez re-read the motion and advised the motion carried.

## **PUBLIC INPUT**

Bob Wessley spoke about the candidate forums that will be held regarding water. Mayoral candidates on Wednesday and Councilor candidates on Thursday at Memorial Middle School.

## **BUSINESS ITEMS**

### **1. Discussion on the City Charter Declaratory Judgment.**

City Attorney Dave Romero advised the governing body that the declaratory judgment would clarify whether the proposed Charter is a valid charter or whether the previous charter that is being served under is a valid charter. The primary issue is whether the proposed charter was amended or repealed, if it was repealed it needed more than 50% of the votes in order to pass and there was 56% votes for the proposed charter. If the charter was amended than 60% of the votes were needed to pass. An Administrative decision needed to be made as to whether to bring the issue forward. City Attorney Romero expressed his concern about having a constitution that could be challenged at any time, he wanted to have a courts decision to void or approve the proposed charter. There are several areas to look at in terms of protecting the city's assets and whether the City will have any difficulty with bonding for raising money for future needs or debt. There is also the potential liability during the interim of a decision being made concerning any decision being made and were they made constitutionally. The current charter provides a different form of government and essentially the proposed charter limits the powers of the Mayor and transfers the power to both the Manager and the Council, and changes the requirements for employing and terminating individuals. There is a difference between the decisions that the governing body makes as to the day to day operations that are handled administratively with consultation from the Attorney.

City Attorney Romero suggested allocating money for two attorneys, Ms. Danelle Smith who raised the question of the validity of the charter and Santiago Juarez who has thirty years expertise in constitutional law. Both attorneys have agreed to a fee of \$5,000. One of the major aspects to begin the process is there needed to be a case or controversy, until a member of the governing body was to come forward and challenge the charter, Mr. Romero stated he could not take the issue to the court for an opinion until there was a case or controversy.

City Attorney Romero explained that the problem that could arise from the proposed charter is the runoff election where the two top candidates will run against each other. This could cause the top candidate to challenge the proposed charter because under the current charter this candidate would have won. City Attorney Romero explained that he has tried to stay out of any

involvement in the charter since he had been critical during the development of the charter and did not want the perception to be that he was in favor of one approach rather than another. City Attorney Romero feels the most neutral solution would be to bring in two attorneys and seeks a determination regarding the proposed charter.

Councilor Moore expressed that City Attorney Romero and City Manager Dodge have voiced their concerns as well as Mayor Ortiz Jr. over the last year and the main concern she has is why now. Councilor Moore questioned City Manager Dodge and City Attorney Romero that if this was an administrative decision why wasn't anything done a year and half ago, she feels this has caused a lot of confusion to the people of the community and total mistrust towards the members of the governing body.

City Attorney Romero reiterated that the issue could not be brought forward to a court until there was a case or controversy which would need a member of the governing body coming forward to challenge. City Attorney Romero believes it's better for the City to lead the challenge of the charter as a way to gain better clarity and protect the assets of the city. It is possible that the issue may not be resolved by the March election; in that event the election will continue including the runoff. City Attorney Romero discussed language within the proposed charter that causes some items to be handled before the effective date of the proposed charter which is ten days after the election. The nature of the proposed charter is to seek a majority vote for the Mayor and Councilor and not have any individual pass with less than 50% of the votes.

Councilor Moore advised that all these questions could have been answered a year ago and asked City Manager Dodge if he has sought other legal opinions such as the Municipal League.

City Manager Dodge advised that they sought the opinion of other legal individuals and Mr. Randy Van Vleck, legal counsel for the Municipal League advised it was a legal charter. A Declaratory Judgment listens to both sides and then makes a determination. City Manager Dodge advised that he would like to hear from members of the governing body as well as the community on the issues and get the opinion from the governing body if they feel this is a policy issue or an administrative issue. City Manager Dodge advised that he could reconsider the issue but he understands that there may be potential risk to the City's assets and it is his responsibility to protect the City.

Councilor Feldman advised the new charter has some good provisions and he does not have a problem with the content and while the timing may appear bad there needs to be a decision on the validity of the charter. There could be several challenges that the city could face. A proposed fee of \$5,000 for each of the attorneys is reasonable and does not feel they will drag the issue for too long. As said before we could have got the Attorney General's opinion and again that is

just an opinion, Mr. Van Vleck and Mr. Remmenick while both attorneys, just opinions. Councilor Feldman advised that he wished for a vote on the issue since it does concern city money and City Manager Dodge does have budgetary authority and feels that this is an administrative issue.

Councilor Gurule-Giroń advised that she is aware of a precedent that had been set previously where a member of the governing body wished to challenge an issue it was taken to a vote and the governing body decided that the individual should pay for their representation. If Councilor Feldman wishes to challenge the charter then the citizens should not have to pay \$10,000, \$5,000 for representation of Councilor Feldman and \$5,000 for another attorney when Mr. Romero should be representing the City. Councilor Gurule-Giroń agreed with Councilor Moore and suggests that the item be brought to another meeting for a vote to approve or disapprove the challenge and then approve or disapprove the city paying for the representation.

Councilor Romero asked why now, we had plenty of time throughout the year and now during an election, no.

Mayor Ortiz Jr. advised that he has questioned the charter since taking office and followed the proceedings of those meetings and the charter was looking well and then it was brought before the Council with modifications and then approved at the last minute. There are a lot of flaws with the document and City Attorney Romeo has pointed out some of those, the City will run into problems in the future but he does not agree with the timing, the charter does need to be challenged. Mayor Ortiz Jr. advised that the challenge does not mean the City does not want the charter; it's just that if in fact the proposed charter was approved, it needs to be modified to meet the needs of the community.

City Manager Dodge asked Councilor Gurule-Giroń which challenges she was referring to.

Councilor Gurule-Giroń stated one was the recall of Councilor Gallegos and he had asked for representation from the City and the Council voted against, the other time Councilor Trujillo and another Councilor asked for representation and the Councilor voted against and they would need to pay for their own representation.

City Manager Dodge asked Councilor Gurule-Giroń if she in fact believes the charter should be challenged whether it is now or a year ago.

Councilor Gurule-Giroń agreed that yes it should have been challenged before and City Attorney Romero and City Manager Dodge had brought it before the governing body, a decision should have been made before, and feels that the governing body was given proper direction as to what they need to do from an administrative point and something should have been done before.

Mayor Ortiz Jr. advised that he feels there are several issues that could arise questioning the charter and in this case there is no personal gain for Councilor Feldman in challenging the charter. In the event that the city does have challenges in the future that could potentially lead to more cost to the city.

Councilor Moore advised that if she was posed the same question that was given to Councilor Gurule-Giroń she may not have been able to answer since it is a yes or no. Maybe it should have been challenged before but it did not need to be challenged by only a council member, any member of the community could have challenged the charter but they would have had to pay more than just \$5,000. Councilor Moore referenced minutes of March 16<sup>th</sup> in which City Attorney Romero stated that if a member of the governing body were to challenge an outside attorney would need to be employed to represent that council member with the permission of the governing body.

City Attorney Romero stated that was an option he provided to the governing body and inviting the council to participate in that situation, now is different situation and the case could go on for some time. Bringing this forward to the courts and establishing the judges' decision, any person who wishes to challenge would get the same ruling as the City receives.

Councilor Feldman advised that he does not have an issue with the new charter, but in the new charter there is language that repeals and replaces article two, three and four, it did not replace the whole charter. If you do not completely repeal the charter then there is an amendment to the current charter and by the percentage of votes it did not pass. Now if the charter was repealed and replaced and if it were a legal thing to do, then it did pass with the 56% of the voters.

Mayor Ortiz Jr. believes that the issue of the charter is being handled at the last minute and gives the community the wrong impression. Now if the administration decides to pursue or wait on the issue, after the election the newly elected officials can decide how they want to address the charter.

City Manager Dodge asked the governing body if they had any rational pro input to wait on the issue until after the election or proceeding now.

Councilor Gurule-Giroń had nothing more to say on the question.

Councilor Moore believes that not at the eleventh hour should the city be acting on the issue and should have taken action a year ago, now should the issue be taken up after the election she cannot answer as she will not be on the council at that time and that should be a decision for the new administration.

Councilor Feldman agrees the timing is bad but why not correct the matter now instead of not at all. The issue he can see is that to correct the charter later there needs to be the amendment process and have attorneys billing larger amounts. It's better to take action now and there are several different scenarios that can play out after the election.

Councilor Romero had nothing further to add.

Mayor Ortiz Jr. does not see any advantages or disadvantages to the candidates, while the City has set the parameters under the new charter for the candidates. There will be complications whether they are before or after the election.

Leith Johnson feels that proper notification was not made for the public to come and speak regarding the issue. She feels that even the City is unsure of what position it is taking on the matter and the process for the charter was not a rushed process, the committee took every available time allotted in the terms of the law for such a commission. If there was any delay it was with the governing body. Ms. Johnson feels that the attorneys that had issues with the charter had every opportunity to attend meetings and voice their concerns, Attorney Smith was asked if she had problems with the charter and she stated she would not attend a meeting unless invited, invited to special meeting just for her to attend, that she does not attend public meetings and offer her opinion. Ms. Johnson feels the City should not pay to contest a charter that the people voted for.

Joe Whiteman is offended that the City would pay \$10,000 of taxpayer money to straighten out the issue; it seems the only logical way to resolve the issue.

Edward Tysittee in his opinion that it is the governing body's responsibility to look out for the best interest of the community and Councilor Feldman is acting on behalf of the governing body should not be made to pay for representation on the challenge.

Utilities Director Ken Garcia feels that there are several issues and questions that need to be resolved and while the timing is not great the issue needs to be resolved.

Joey Herrera advised that he served on the charter commission and he feels the governing body with a three to one should end with that vote, while he feels Councilor Feldman should not have to pay out of pocket, if the other members of the governing body go along with Councilor Feldman they are giving one Councilor the authority to spend City money. The Commission created the best charter that they could put together, they welcomed input from the community, and he does not see or hear that the whole charter is bad as a whole.

Bruce McAllister feels it's time to put the issue to rest and get clarification that the issue is valid or not.

Councilor Feldman advised that he does not have an issue with the content of the charter but questions the validity of the charter.

City Manager Dodge asked Mr. Herrera if the commission amended the charter or changed the form of government.

Joey Herrera stated that yes there was a change in the form of government.

City Manager Dodge advised he does feel there was a change in the form of government and he feels that was the governing body's perception at the time as was the commission, he sat through the process and feels that members of the commission feel that was the correct process to follow.

Mayor Ortiz Jr. asked that City Manager Dodge and City Attorney Romero keep the governing body informed as to the decision that will be made.

**ADJOURN**

Councilor Feldman motion to adjourn. Councilor Romero seconded the motion.

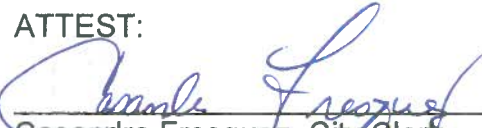
Mayor Ortiz Jr. asked for a roll call. Roll call was taken and reflected the following.

Councilor Tonita Gurule-Giroñ	Yes	Councilor Diane Moore	Yes
Councilor Andrew Feldman	Yes	Councilor David Romero	Yes

Recorder Maire Lopez re-read the motion and advised the motion carried.

  
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Mayor Alfonso E. Ortiz, Jr.

ATTEST:

  
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Casandra Fresquez, City Clerk