



HISTORIC
FRANKLIN
TENNESSEE

ITEM #12
WRKS 02/08/2011

MEMORANDUM

February 8, 2011

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
Shauna R. Billingsley, City Attorney

SUBJECT: Resolution 2011-11 Rescinding Resolution 2011-06 and Amending the Charter to Provide for the Election of At-Large Aldermen by Position

Purpose and Background

On January 25, 2011 the Board of Mayor and Aldermen voted 4-3 to recommend to our State representatives Resolution 2011-06, which amended the Charter to allow for the election of at-large aldermen by position rather than by field. Our local delegation has typically required a two-thirds majority in order to bring a Charter change forward. Our representatives have indicated that they would take such a resolution with a vote of less than two-thirds majority if the resolution provided for ratification by referendum. Resolution 2011-11 deletes the option of ratifying by two-thirds vote of the Board and provides only for ratification by referendum.

There had been some interest on the Board in pursuing a referendum on this issue. Research has revealed that the only method through which the Board could seek a referendum is as the final approval of a City Charter amendment. If it is the desire of the Board to hold a referendum, an amended resolution clearly stating this desire would seem appropriate.

Financial Impact

There is no financial impact in adding a referendum to a regularly scheduled election, as this resolution provides. However, the referendum is required to be advertised in its entirety in local newspapers, which the Election Commission will do at the City's cost.

Recommendation

Staff feels that this decision rests solely with the Board, and therefore, makes no recommendation.

RESOLUTION 2011-11

A RESOLUTION RESCINDING RESOLUTION 2011-06 AND AMENDING THE CHARTER TO PROVIDE FOR THE ELECTION OF AT-LARGE ALDERMEN BY POSITION

WHEREAS, the Charter of the City of Franklin, Tennessee, is incorporated by Chapter 126 of the Private Acts of Tennessee for 1967, as amended, of the General Assembly of the State of Tennessee; and

WHEREAS, Resolution 2011-06 provided for an amendment to the Charter of the City of Franklin, Tennessee to provide for the election of at-large aldermen by position; and

WHEREAS, the Board of Mayor and Aldermen desire to rescind Resolution 2011-06 and propose this Resolution; and

WHEREAS, the interest of the City of Franklin, Tennessee, will be served if the Charter of the City is further amended; and now, therefore;

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE THAT:

The Honorable Charles M. Sargent, Jr. and Jack Johnson are hereby requested to introduce the following Act to the General Assembly of the State of Tennessee:

AN ACT to amend the Charter of the City of Franklin, Tennessee, being Chapter 126 of the Private Acts of Tennessee for 1967, as amended:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

Section 1. Article III shall be amended by adding a new Section 5 and renumbering the subsequent sections accordingly. Section 5 shall state:

Section 5. At-Large Aldermen.

There shall be four (4) at-large aldermanic positions known as positions A, B, C, and D. In filing for election, any candidate for at-large alderman shall select and designate the position being sought. With respect to each position, one (1) alderman shall be elected pursuant to Section 8 of this Article."

Section 2. This act shall become effective when it has been by approved by a majority of the number of qualified voters in a referendum held for the purpose of approval of the act at the next regularly scheduled election.

ADOPTED THIS ____ DAY OF _____, 2011.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

By: _____
ERIC S. STUCKEY
City Administrator

By: _____
DR. KEN MOORE
Mayor



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TO: Board of Mayor and Aldermen

CC: Eric Stuckey, City Administrator

FROM: Shauna R. Billingsley, City Attorney *SB*
Kristen Corn, Staff Attorney *KAC*

DATE: January 31, 2011

RE: Referendum Process

This office was asked to provide information regarding referendum processes and authority to hold referenda.

In 1996, the Attorney General's office was asked whether municipalities have the authority to hold either a binding or non-binding referendum without express statutory or charter authority to do so. The opinion issued by the AG's office (Tenn. Op. Atty. Gen. No. 96-095) said no. Tennessee courts have held that absent an express grant of power by the state constitution, statute, or by charter, there is no right to hold an election.

The Tennessee Constitution, in Article 11, Section 9, provides that any act of the General Assembly that is private or local in form that is applicable to a particular county or municipality in its governmental or proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds (2/3) vote of the local legislative body, or requires approval in an election by a majority of those voting in said election in the municipality or county affected. This provision applies to private acts that propose to amend municipal or county charters. This means that the Board may elect to hold a referendum after a private act has passed the legislature instead of calling for a 2/3 vote of the Board.

Interestingly, MTAS was asked in 2003 whether a citizen could force a change in a private act charter without the approval of the local governing body. It opined that although any citizen can submit a private act charter change proposal to the state legislature, it is left up to the legislator sponsoring the bill to determine whether, after its passage in the legislature, the bill would take effect after referendum or two-thirds (2/3) vote of the local governing body. It said, in short, that although it might be possible, it would be unlikely to happen. The MTAS consultant who authored the opinion stated that he could not imagine that a legislator would sponsor such a bill knowing that it is not backed by the governing body of the city it is intended to change.

I spoke with Luke at Senator Jack Johnson's office and with legislative counsel regarding referendums and private act charter amendments. Even if a charter allowed for a referendum prior to taking the proposed changes to the state (the City of Franklin does not), it would have to be supported by the local governing body by resolution prior to being accepted for presentation by a representative. Representatives want to ensure that the governing body supports the proposed changes. With that said a referendum, after passing the state legislature, is proper so long as the resolution requesting state action allowed for a referendum as an option for ratifying the matter.

Although there are statutes that provide for referenda that may be requested by certain percentages of voters (namely, local options such as wheel tax, sales tax, and alcohol issues), there are none that provide that voters may petition for a referendum to amend a private act charter or request ordinances to be passed. There is a statute that provides that for municipalities that have adopted home rule, where any question subject to local approval has



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not been approved by a two-thirds (2/3) vote of the local governing body, a petition signed by qualified voters of the municipality in a number amounting to at least ten percent (10%) of the votes cast in the last election for mayor may be filed with the appropriate election commission no later than sixty (60) days prior to the day of the next regular election to have the question placed on the ballot. However, this statute only applies to home rule municipalities, and not private act chartered municipalities like the City.

Our City Charter does not provide for any referenda. Therefore, absent another constitutional or statutory provision allowing for a referendum on a particular issue as discussed above, the City may not hold referenda.