



**MINUTES
SPECIAL COUNCIL MEETING
March 8, 2011
6:00 P.M.**

The City Council of the City of Forest Hill met on the above date at **6:00 P.M.** with Mayor Pro Tem Dulani Masimini presiding. The following Council Members and officials were present: Damian Dalcour, Lyndia Thomas, Gerald Joubert, Andrew Sanders, Mustafa Sami, City Manager Sheyi I. Ipaye, City Secretary Grace Edwards, Police Chief Robert Herbert, Fire Chief Ed Henderson, and City Attorney Warren Spencer. The following Council Members and officials were absent: Mayor James Gosey.

Opening Agenda:

A. Call to Order

With a quorum present Mayor Pro Tem Masimini called the meeting to order at 6:00 P.M.

B. Invocation

Invocation was delivered by Berniece Taylor Johnson, Planning and Zoning Chairperson.

C. Pledge of Allegiance to Flags

Pledge to the United States and Texas flags were recited.

D. Citizens Presentation: At this time, any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action can be taken on these items at this meeting.

Loretta Muldrew, 3300 Valley Forge Trail – Mrs. Muldrew feels that the meeting tonight is a political move by some members of City Council who have their own agenda's. She feels that these members have already made up in their minds how they are going to vote, and she feels that this is wrong.

E. Deliberation Agenda:

1. Discuss and consider possible action regarding adding an Addendum to the current Sworn Application to run for public office; the Addendum to be taken from section 10.03-Filing for Office, of the Charter of the City of Forest Hill. (Gerald Joubert, Damian Dalcour, Lyndia Thomas, Drew Sanders, Council Members)

Council Member Gerald Joubert stated that in 2003 he had to sign a form identical to this one, stating that he was not in arrears on any taxes because it was in our charter. He does not know how, why, or when it was taken out. He feels the City Council's problem is when it is convenient they follow the charter and when it is not convenient, they do not follow the charter. He has a problem with people who want to be over taxpayer's money, but we ourselves owe taxes, he comments. Council Member Joubert feels that the City Council

should be held accountable to the citizens. He further stated he strongly disagrees with the City Attorney, Warren Spencer with regard to the application 10.03 in the City Charter. He feels that the City of Forest Hill's founding fathers knew what they were doing when they put this application in the charter.

The City Attorney informed the City Council that the statement regarding tax arrears has not been removed from the Charter. It is still in the City Charter. The only issue is how it is going to be used with regard to application 10.03. The City Charter has an inconsistency, per the City Attorney. He goes on to say it (our City Charter) has an eligibility section, which speaks directly to who is eligible to run for office. There is no tax payment currently required in the eligibility section. The only place that it appears in the City Charter is in the application section. There is case law in Texas, Federal District Court holding that such a requirement; a candidate be current on tax payments cannot be used to disqualify a candidate from running for office.

The City Attorney commented that brings us up to where we are currently. Council Member Joubert reiterated what he interpreted as being the City Attorney's feelings regarding application 10.03 of the City Charter. Council Member Joubert restated in his own words what he received from the City Attorney's previous statement. Council Member Joubert states we are not trying to disqualify anyone, from the application form all we want is a disclosure, correct? The form does not say that it disqualifies anyone in arrears. The City Attorney states that what application 10.03 of the City Charter says is the application form as it appears in the charter has to be sworn to and the application form itself is what places your name on the ballot. If you do not have a completed application form, your name cannot appear on the ballot. A candidate who comes in; and is confronted with the language of the City Charter that is in arrears on his tax payment cannot swear that he is not in arrears on tax payments.

Per the City Attorney, it would work to disqualify him from having his name placed on the ballot. This would be in conflict with the federal case law that he quoted to Council Member Joubert previously. Council Member Joubert asked if there were other cases that are still outstanding. Or, are these still in the courts waiting on a decision? Conclusively, is this a final decision?

The City Attorney says that he has done quite a bit of research looking for other cases on this case matter. He (the City Attorney) shared there are not that many cases and the ones that are out there tend to be several years old. The City Attorney's sense is the issue of whether or not you can run for office with outstanding taxes has probably fallen out of favor as an eligibility requirement. The Supreme Court did speak to some issues regarding voter registration it speaks to whether only people who own property can run for office or vote.

He (the City Attorney) goes on to say the Supreme Court has said both of those disqualifiers cannot stand, in contrast with the fourteenth amendment. The idea that you are going to disqualify, the Southern District's opinion speaks to the running for office, is as equally important as voting. If you follow that courts line of reasoning, you cannot disqualify a voter for back taxes, or for not owning land in the city that he is going to vote in.

The Federal Courts reasoning is; nor can you disqualify a candidate for the same thing. The City Attorney states that he has not been able to find a case that directly states you can in fact be disqualified for having back taxes. No, he was unsuccessful in finding such a case. The City Attorney reiterates the fact he has not found a case that says that you can be disqualified for back taxes.

Council Member Thomas stated that when a few people decided to have this meeting it was not to stop anyone from running for the office that they wanted to run for. It is more or less to make sure that we are in alignment with whatever the City Charter says. That is

one of the reasons that she challenged the attorney. Basically, the two words are there that we need to be in alignment with the City Charter. She suggested that either an individual running for office could circle "am" or "am not" which ever fits the individual's circumstances. Council Member Thomas, further states she just wanted to have a disclosure to the citizens letting them know that we are not trying to hide anything. Whether any of us here are behind on our taxes or not, this form is not in her opinion trying to stop anyone from running for office. Council Member Thomas stated that we (the City Council) need to get back to the basics of what we are supposed to be doing according to the City Charter.

The City Attorney stated to Council Member Joubert; Council Member Thomas had a suggestion that we treat the language in the application section of the City Charter as more of a sworn disclosure. Her suggestion was that you issue instructions to each candidate that in that sentence. The sentence says, "I am not in arrears in the payment of any taxes, or other liability to the city." Council Member Thomas' suggestion is to assign this as a disclosure form and allow the candidate to either circle the phrase "I am in arrears" or "I am not in arrears," to treat it as a disclosure. The City Attorney stated this is a unique reading of the sentence but it is the City's Charter.

He states that he cannot find any case law that has interpreted sentences in that fashion. He further states that the down side to this suggestion would be, since it is not serving, as a disqualifier to a candidate the only objection a candidate could possibly have is that the candidate has to disclose that he or she is in arrears to the city for tax payments. Given that we had this conversation today, he (the City Attorney) has had an opportunity to see if a mere, disclosure would be enough to invoke the concerns of the fourteenth amendment that are cited by Federal Court. Since it is not operating as a disqualifier, and the other provision that we were discussing did in fact operate as a disqualifier. If you were in arrears in the city ordinance in question in that case, then you could not run.

The City Attorney stated that using Council Member Thomas' interpretation would not disqualify you it would simply require you to disclose your tax status. To take it one step further. He stated what would then have to happen Council; you would then have to make a decision as to whether or not; once that is done; any candidate refusing to complete the disclosure form, sign it, swear to it, and submit it along with their regular application, the one that is currently used from the Secretary of State Office then they would not have their name placed on the ballot; that would have to be the mechanical provision to enforce this disclosure.

Alternatively, Council could simply refuse to ignore the fact that they did not wish to complete the disclosure form and take what ever note of it they wish. The City Attorney said that in order for it to serve as a purpose other than just information the next step would be to instruct the City Secretary that if the application addendum were not completed, then the candidates name would not be placed on the ballot. The City Attorney states that could lead to; under the right circumstances lead to a lawsuit for equitable relief, asking that the City be enjoined from enforcing that interpretation of this provision of the City Charter.

Ultimately, asking that this provision of the City Charter in the application section dealing with tax payments be dealt with in the same fashion as it was dealt with in the Federal District Court case in Texas. Those are the one, or two, or three steps following whatever decision the City Council decides on tonight. The City Attorney stated that this (application 10.03) could simply go off without a hitch, and it (application 10.03) could be simply treated as a discloser statement informing the voters of the person's tax status.

If someone chose to challenge it (application 10.03) by not submitting it; then we may find ourselves in another lawsuit. Council Member Joubert stated to the City Attorney, you said something about another lawsuit and this being a case in the State of Texas. The City Attorney confirmed that the case he made reference to was in a Federal District Court in

Texas. It indeed dealt with a provision that disqualified candidates if they owed back taxes. If directly disqualified; in other words you could not have your name on the ballot if you owed back taxes. Council Member Joubert asks what has become of that Federal Lawsuit.

The City Attorney informed Council Member Joubert that the case was never appealed. It stands; it was in the Southern District of Texas. Council Member Joubert asked the City Attorney to slow down and explain what stands? The City Attorney explained to Council Member Joubert that he believes the City would have had the opportunity to appeal that decision to a Federal Appellate Court and on up the Supreme Court, without the documents in front of him, the City Attorney's recollection is that if it was not appealed then the decision stands. Again, he believes this case was never appealed. Council Member Joubert asked who won the case. The City Attorney stated that the candidates won the lawsuit. Council Member Joubert asks why the candidates won the lawsuit, was it because they were allowed to be put on the ballot, or they won the case after the election?

The City Attorney stated that he did not know the answer to that question. He would have to go back and look at the decision. The candidates did prevail, they said that the provision in the charter, he corrected himself regarding the provision being an ordinance and not a charter provision; the provision in the ordinance saying that you could not have back taxes was struck down. Council Member Joubert asked that we are talking about an ordinance provision and not a charter provision? Council Member Joubert asked which one carries more weight ordinance or charter. The City Attorney stated that an ordinance and a city charter carry equal weight. Both are enacted by the City Council. City Charters are usually treated as your (the City of Forest Hill's) constitution and they are subject to very restrictive amendment processes. Our ordinances are also passed by a legislative body (the City Council) and they are subject to constitutional challenge as well.

Council Member Joubert asks the City Attorney about Council Member Thomas' suggestion. He stated wouldn't we be changing the structure of the City Charter by adding that one word? The City Attorney gave confirmation to the question. He stated that Council Member Thomas' suggestion was not to add anything but simply break up the sentence. Council Member Thomas instructed the City Attorney to use the word "circle" rather than "break up." You have the sentence that says I am not in arrears in the payment of any taxes or other liability to the City, instead of treating as a singular statement; she is suggesting that you treat this statement as a choice.

I am in arrears, or I am not in arrears and have the candidate circle or somehow specify how they are in arrears or how they are not in arrears in regards the payment of taxes to the City of Forest Hill. Council Member Thomas stated that the reason why she made this suggestion is because she was trying to get to a win win on this matter. Council Member Thomas states simply because the City Council cannot change the City Charter in order for anything to change it has to be placed on the ballot for the citizens to vote for it, so the purpose of this meeting is not to vote on something being changed here. The City Council does not have the power to do that.

She (Council Member Thomas) feels that application 10.03 is a part of the City Charter, and we do need to address it. She further states we do need to deal with it because at some point, and she does not know at what point someone stopped adding this application into the candidate filing packets. What she is saying as a Council Member and a representative of the City of Forest Hill, is if we know that there is something that we are not doing, that we should be doing, and it is not to try to tear down anyone or stop anyone from doing something. How can we make that happen and still move forward?

This is the question that she came up with and she is trying to make it were it is a win win. Council Member Thomas stated the information is out there any way; whether we put it in this writing or whatever. An individual can go out on the internet and see how everyone (the City Council) stands with regard to this matter. Council Member Thomas' concern is who ever put this form in the City Charter put it there for a reason. She does not know

what that reason is; she believes that it (application 10.03) was put there because we (the City Council) are representatives of the City, and to make sure that we are doing what we want to do. And, again to try not to hold it against the candidates because you are in arrears. Council Member Thomas further stated that this form does not give any of us the right to stop anyone from running for office. But we do need to have that open record were people know how we (the City Council) stand.

Mayor Pro Tem Masimini stated that with City Charters as they age; there are things that are not enforced. Anything that goes against state statute or federal statute, as he stated before are not enforceable by City Charter or Ordinance if it conflicts with state statute or federal statute; and it is not uncommon for City Charters to be in conflict because they are breathing documents. Mayor Pro Tem Masimini says that in order to be safe we (the City Council) should not move forward with this matter. The City Attorney was asked by Mayor Pro Tem Masimini to share any background information with reference to any City's with similar situations; things (provisions) in city charter that might be litigious or have a conflict with state or federal statutes.

The City Attorney stated that decisions about the enforceability of provisions of ordinances and charters have to be looked at, sometimes in the case of an ordinance it can be looked at by the administrative department head that is charged with enforcing that ordinance; in the case of enforcing charter provision it usually would fall on the City Council. The City Attorney stated in this particular situation it would be something that he feels would fall in the City Council's decision making arena. However, there have been decisions even with regard to state laws that have been held unconstitutional by the U.S. Supreme Court and yet for some reason the state legislature refuses to remove them from the statute book; officers are instructed that they are not to enforce that law even though it remains on the books; it has been struck down as unconstitutional by the U. S. Supreme Court which is the final arbiter of the constitutionality of statutes, ordinances, or charter provisions.

He (the City Attorney) further stated all ordinances, charters, statutes even administrative rules are subject to review by the courts. He follows with the practice would be that when a City, or any local government are made aware that there could be a conflict, or there could be an issue with an ordinance or charter provision usually it is looked at with a eye to change it, to having it conform with the current status of law; or repealing it outright if there is no way to make it conform. The City Attorney says the issue that we have with the City Charter is that we are limited. We can only amend the City Charter every two years and we would have to more or less make a check list, and go in at that time and clean up the City Charter. Ultimately, changing out the things that are no longer enforceable. If that is what we (the City Council) believe is needed.

He (the City Attorney) goes on to say in the interim if your charter conflicts with a higher authority Supreme Court Case, perhaps a court case with controlling authority; then to enforce our charter provision in light of that ruling could lead to litigation; and certainly if there is controlling precedent then you would lose. Council Member Joubert asks the City Attorney with all that being said, do we fall into that category? Council Member Thomas interjected and asked is this form (application 10.03) unconstitutional?

The City Attorney stated that if you enforce the form as a requirement that someone has to swear that they are not in arrears on their taxes; in order to be placed on the ballot; yes. He thinks that the City is in conflict at that point with the fourteenth amendment and certainly with at least one federal court opinion in the State of Texas.

He cannot predict whether or not the City would win or lose but it can certainly be litigated. However, if the City Council treats this form (application 10.03) that is being discussed as Council Member Thomas suggested as a "disclosure." He (the City Attorney) believes that will take this issue outside of what the court was considering in that opinion; and what the courts have considered in other opinions dealing with eligibility. He advises the City Council to remember he (the City Attorney) was reviewing this document as to

whether or not it would make someone eligible or ineligible to run for office.

If they (the City Council) are wanting to interpret the charter provision in such a way to make it a disclosure, that is whether two answers are possible not just one. The City Attorney is not aware nor has he researched to see if a simple disclosure issue could bring you into conflict with case law. Council Member Thomas asks the question; about including the “I am” or “I am not” suggestion. She asks would this make it unconstitutional. The City Attorney stated that he does not know. He has not had the opportunity to look and see if a disclosure form makes it unconstitutional or not.

He (the City Attorney) assured her (Council Member Thomas) that it certainly does not have the same devastating effect, as being rendered ineligible. The City Attorney stated that it is simply a disclosure form, and it is just telling someone something about you. He further noted that Council Member Thomas had previously stated that an individual’s tax statuses are public records that anyone can access.

The City Attorney states that the individuals are not being required to disclose anything that is confidential by law, or anything that is unusually embarrassing or of a highly personal nature. He suggested that the usual concerns that you have with a disclosure of information would not seem to apply. He says this seems to be public information the person simply has to make a declaration; but again, he cannot give the City Council a definitive answer because he has not looked at that exact question.

Council Member Joubert, stated with that being said, has he (the City Attorney), Mr. Ipaye, City Manager, or Mrs. Edwards, City Secretary looked at the signed applications of past elected officials? He (Council Member Joubert) knows that in 2003 he had to sign application 10.03 in the City Charter, swearing that he was not in arrears on his city taxes.

Council Member Joubert suggested that someone look in 2005, 2006, 2007 files to locate when this form was taken out. The City Attorney asked Council Member Joubert if he is asking him (the City Attorney); if he has looked to see when the Secretary of State’s version was substituted for this version? Council Member Joubert stated “no” that was not his question. The City Attorney informs Council Member Joubert that application 10.03 has not been taken out of the City Charter. He was referring to the applications (filing applications) that past council members had signed. The City Attorney stated that he does not know at what point the candidate filing packets were changed. The City Manager stated that he would like to defer that question to the City Secretary.

City Secretary, Grace Edwards stated that she does not know when the candidate filing packets were changed, however, the previous city secretary’s did not include this form in the candidate filing packet. She further stated, Ms. Allen (former city secretary) did not use this form when she assisted her with the candidate filing packets; nor did Debbie Maness and I use this particular form in last year’s 2009 candidate filing packet either. Council Member Joubert asked after the candidates sign off on the applications what is done with past candidate filing packet information; are they disposed of? The City Secretary stated that we have to keep those records. The City Manager asks the City Secretary how long do the records have to be kept.

The City Secretary, Grace Edwards stated that she was not sure about the length of time, however, she could not give that information without referring to the library website (record retention schedule). She is aware that you have to keep the information for several years after the election process though. The City Manager, Sheyi Ipaye stated what we may have to do is to go back and see what was in the previous packets. The City Secretary stated she had already completed that process. She had looked in 2009 candidate filing packets and found no application 10.03 form. Council Member Thomas, and City Manager, Sheyi Ipaye simultaneously questioned the City Secretary how far did she go back? City Manager Sheyi Ipaye , further stated that he was referring to 2005 candidate filing packets. The City Secretary stated that she was not sure if she had 2005 candidate

filing packets, however, she would check the files.

City Manager stated ok, and that was all that he was trying to say. Council Member Sami, asked the City Council Member's the last time that they remembered filling out this form? Council Member Joubert stated that you filled the application 10.03 form out every time you ran, right? Council Member Sami stated that he did not remember filling out an application 10.03 form on several occasions since he has run for office. Council Member Joubert stated that it was all inclusive in the same packet that you have right now. Council Member Thomas stated that Council Member Joubert is trying to determine when the application 10.03 form was no longer used, because at some point it was discontinued.

Council Member Sami asks the question if we knew what that information was; what value would that bring to the situation at this point? Council Member Joubert stated that what he is saying is that if we were using it then, why are we stopping now? Mayor Pro Tem Masimini stated that this is the question that needs to be asked, he agrees; but to go back to get the information, reiterating what Council Member Sami just stated; once we get that information how are we going to use that information for value, judgment or decision? Council Member Joubert stated that he is not saying to use the information as a judgment, but we keep on doing what we been doing in the past.

He (Council Member Joubert) further states that his problem right now is the City Charter. He is wondering if the charter is going to be of no effect every time there is an issue, or are we going to follow the City Charter until we make an amendment to the City Charter? We (the City of Forest Hill) have had two City Charter Reviews and if he is not mistaken Council Member Sami served on one of the Charter Reviews as well as dozen other citizens. They went over this charter with an attorney; and a fine toothed comb. They did not see fit to take it out then. Maybe Council Member Sami can shed some light on why. Council Member Joubert stated that he is just wondering, because that was in 2008.

Council Member Sami stated that on that same review Mr. Monte Ackers was the attorney that worked with them (the Charter Review Committee) on the last review and based upon the information that he gathered this week he has a very similar opinion to what Mr. Spencer, City Attorney has. Council Member Joubert states that this came from Mr. Spencer speaking to Mr. Ackers? In terms of case law, and in terms of if you can actually enforce the disclosure as being a reason to not be eligible to run. Mayor Pro Tem Masimini made a point of clarification to Council Member Joubert. He further states that this question is from a previous question asked of the City Attorney.

When we see a conflict and we do see a conflict. We have been told of this conflict in the interim, really what do we (the City Council) do? That was one of his questions. And, the other question Council Member Joubert had was why don't we just do what we always do? Mayor Pro Tem Masimini stated that he cannot answer Council Member Joubert first question, but the second question is easy. Once we have more information we do better and we have more information. We don't want to create a situation where we create exposure for ourselves since we have that information; his (Mayor Pro Tem Masimini) comment was referenced to the second question. But, for the first question Mayor Pro Tem Masimini would still like to find out what do we do in the interim, he heard what Mr. Spencer stated when things have gone to that level, to a higher court or jurisdiction it is probably better so we don't create exposure as well. Not enforcing those things even though it is within our City Charter.

That would apply to any subject matter. Once these things have been stated we should acknowledge and take a position of defense; not making ourselves open to that type of exposure. Council Member Dalcour stated to the City Attorney that the application 10.03 has been in our City Charter for some time now, right? The City Attorney stated that he does not know, this is the first time that he has worked with the City of Forest Hill's City Charter. He is assuming that it has been there for a while. Council Member Dalcour

stated that if it is ok to say, this is what we should be abiding by?

The City Attorney stated that if he (Council Member Dalcour) was asking because it is located in the City Charter should we abide by it? The City Attorney says his answer would have to be "no." He (the City Attorney) further states that his answer is that you can have a provision in your City Charter, if it is called into question later, under some authority you do have to take into some consideration whether or not you're going to enforce it. That would be the issue that we are looking at tonight. He is not denying that it has been around for a while, and he is not questioning whether or not it might have been valid years ago when it was first placed in the City Charter. What he (the City Attorney) is saying is that at some point in the interim, some courts have called into question whether or not you can use back taxes as a basis to disqualify.

Again, we have two tracks going here, one is if we use it as an application and if an applicant does not sign it as is, then their name does not go on the ballot. Then that is in affect a disqualification for back taxes. The second track is treating it as Council Member Thomas suggested as an "I am" or "I am not" in arrears type of disclosure, on the second track the City Attorney stated that he does not have a lot of information to give the City Council on that subject. Because he has not researched that issue. But, again trying to figure out what the issue would be for a candidate; it would simply be one that he or she has to disclose an embarrassing act. Would it rise to the level where it violates some sort of constitutional protection? He (the City Attorney) is just not sure. He goes on to say he does not see it violating some sort of constitutional protection. However, he could not say with 100% certainty that it would not.

Mayor Pro Tem Masimini asks if anyone else would like to speak. Council Member Sanders directed a question to the City Attorney regarding the application 10.03. He (Council Member Sanders) states there is a deadline that is coming up pretty soon, the applicants are going to fill that (application 10.03) out to run for an office, now this is already in the City Charter the way it states, I am asking if we go along with what is printed/what's here. What do you advise us to do? He says those that are running for office fill it out as is? The City Attorney stated that right now the application packet that's being distributed by the City Secretary does not have this in it, so the question before council tonight is, do you want to make it some sort of addendum to the packet? Meaning, you (the City Council) would have to go back and contact those who have already applied and have them to fill it (application 10.03) out and attach it to their packet. Because right now it simply is not in the packet.

The City Attorney further explains that the City Council would first have to have the form completed, and then the second question and probably the more important question is how you are going to treat this form. Are you (the City Council) going to treat this form as written, as a disqualifier? If they are in arrears; or are you going to treat it as a disclosure the "I am" or the "I am not" distinction that Council Member Thomas proposed? Mayor Pro Tem Masimini had a follow up to the City Attorney's statement.

Mayor Pro Tem Masimini stated that he would lean toward a disclosure definitely, however, on page 19 of the City Charter it reads the City Secretary shall check the voter registration number against county records and shall not place the persons name on the ballot if the information contained therein shows that such registration number shows such person to have residence other than in Forest Hill for the requisite time.

This information is located on the application 10.03 form, located on page 19 of the City Charter. He is taking that to mean more than one residence in more than one place. Mayor Pro Tem Masimini further stated that he believes that this type of information stated on the application 10.03 form has also been disputed by a higher court as well. There is no doubt that we (the City Council) need to have a charter review, his concerns are that we (the City Council) need to look at going over the City Charter to try to reduce some of the conflicts, but the question tonight is one that is stated. The two options. He Mayor

Pro Tem Masimini feels that we (the City Council) should deal with those tonight.

The City Attorney stated that the information that was just cited is in fact in section 3.02 of the City Charter and is a disqualifier. The City Attorney read section 3.02 of the City Charter aloud. He states that the language is not that you have to be a property owner, just that you have to reside in Forest Hill. A renter would be able to run for office. It will not be a question of property ownership. We already know that there is a Supreme Court case on this issue. The section here that requires the City Secretary to confirm residency status would in all likelihood withstand any challenge. Because that is a tried and true established part of any elected form of government. You govern where you live. He is sure that issue would withstand challenge. Council Member Dalcour stated with that being said, he does not know if we (the City Council) have a charter committee, or what not, but maybe we could set something in place?

Mayor Pro Tem Masimini asked the City Council what they would like to do tonight. He would entertain any motions if there are any. Council Member Thomas stated to be honest with you, when she noticed, and when this was brought to her attention about this particular form (application 10.03) the question came to her, how can it be a win win; and still be in alignment with this charter without having conflict, or making it appear that you are trying to run a person down. Because anybody at any time can be in arrears on taxes.

Council Member Thomas explained this became an issue during this particular election because it was noticed that this form (application 10.03) was not placed in the candidate filing packet. She further stated, so since we cannot change the wording or change anything in the charter other than through an election.

Council Member Thomas' question to the council is how can we use this (application 10.03) and make it work? Council Member Joubert stated that he does not think we should, if we are not going to abide, or go by the charter. He stated lets just leave this thing alone. It's not like if we change the words someone will say something. He stated that the "I am not" or the "I am" suggestion; he would not be in favor of that proposal. He further stated if we (the City Council) are not going to do what the charter says to do; and if it is against state statue, referring his question to the City Attorney for confirmation of his understanding.

The City Attorney clarifies that this is not state statue. The City Attorney stated that there are cases out there that are discussing/addressing tax issues. Council Member Joubert stated that he gets confused when the City Attorney starts talking about cases discussed. He (Council Member Joubert) concludes; either this thing is already a done deal or we can proceed; if that is not the case then we can go with what the City Charter says.

The City Attorney stated that in the Southern District of Texas, in a Federal District Court in a different city than Forest Hill. In an ordinance or charter provision which ever one it was, it escapes him at the moment. The issue was addressed where it specifically said you are disqualified from candidacy if you owe back taxes; that specific provision was struck down by that court as being in violation of federal constitutional protections found in the fourteenth amendment. Council Member Joubert asks what court did this decision come from. The City Attorney stated the Southern District of Texas he does not know the number of the district court off the top of his head.

Council Member Joubert asked the City Attorney, was it small, and if this decision was in Houston, or somewhere similar to that? The City Attorney stated that actually this court is a little bit bigger than a state court because it is federal court. Texas has been divided into four districts, eastern, western, southern, and northern districts per the City Attorney. The City of Forest Hill is located in the northern district.

Council Member Thomas asked the City Attorney for confirmation that she understands, him saying not to use application 10.03 Filing for Office form according to the City Charter? The City Attorney's response was "yes." His advice to her was that she would

not want to use the provision that deals with back taxes. The current (Secretary of State) application form that we use has every other line of information with the exception of the tax statement and even in the City Charter itself, it says that you can use a form that substantially complies with the following. So, the (Secretary of State) form that we are using right now, the only piece of information omitted from it is the issue of the taxes.

Council Member Joubert stated that his only issue is in reading the information that the City Attorney provided for the City Council, it was stated that one candidate owned property within the city, and the other did not. What city was this? The City Attorney stated the name of the city was Sinton, Texas. Mayor Pro Tem Masimini asked of what value is that information. Council Member Joubert stated that he wanted to know the size, and population of the city, and why would someone go through that much trouble if it was in their City Charter.

Mayor Pro Tem Masimini stated that geographical region, location, and size are important factors in things. But judicial rulings are kind of blind to that, as well as, color and race. Council Member Joubert stated, again the City Attorney only mentioned one case. Mayor Pro Tem Masimini stated that he thought the City Attorney stated two cases. But, maybe Council Member Joubert was right?

Council Member Joubert responded that he thought they were in the same city or state? Mayor Pro Tem Masimini stated that the courts are broken down into different districts like our districts, and we would work through those channels all the way up to the Supreme Court if necessary, and usually the higher court, the lower courts will follow. Mayor Pro Tem Masimini commented that Council Member Joubert made a statement regarding if we are not going to follow the City Charter. Mayor Pro Tem Masimini did not want to leave that comment unaddressed because there are things in the United States Constitution that were originally written by our forefathers and we do not follow them. And, for good reason. Thank God we know better.

Council Member Dalcour stated that it is very clear that we have one issue with this especially if you have owed taxes or not. And, in this new application (Secretary of State Form) we have, it omits that (property tax requirement), so it is clear that someone must be owing something. Mayor Pro Tem Masimini thanked Council Member Dalcour for pointing that out. His response was what does this body want to do tonight?

Council Member Dalcour stated that he would like to speak first, he stated as leaders we are going to lead, we have to lead from affront. He further stated that there has to be some type of provisions put in place. He mentioned that he spoke to the City Manager earlier, and he does not know if we (the City Council) should do a back ground check on the candidates? He does not know if we (the City Council) should see if they owe property taxes. Or, if we should check to see how long some of these candidates have been here in the city.

He (Council Member Dalcour) feels we need to start considering some of these things before we proceed forward. Mayor Pro Tem Masimini stated that Council Member Dalcour's comments were considered. If he (Council Member Dalcour) also wanted to further discuss putting some specific qualifications in place, he (Mayor Pro Tem Masimini) would welcome that as well. Mayor Pro Tem Masimini redirected the meeting by addressing the contents on the agenda tonight; we are trying to decide what we (the City Council) are going to do with this item. Although we are hearing other items.

Council Member Thomas stated that she did not see how we could not address this issue that is in the City Charter. She does not see how we can just ignore it. She stated that she heard what the City Attorney was saying, however, she has never heard an attorney tell the individuals that they are representing to ignore the rule. Because, this is in our City Charter, and she did not understand. Council Member Thomas is not trying to be facetious or anything. She goes on to ask the question, if it is in our City Charter do we

have the right to ignore it (application 10.03 of the City Charter)?

The City Attorney gave an example by analogy, he began to speak. Council Member Thomas interjected asking the City Attorney to answer her question before giving an analogy. The City Attorney shared with Council Member Thomas that the analogy would assist him with the explanation that she requested. Mayor Pro Tem Masimini asked Council Member Thomas to please give the City Attorney time to speak, he further clarified that the City Attorney did not suggest to ignore the City Charter he (Mayor Pro Tem Masimini) wanted to make that clear; that is the way we operate as a governing body. Please let him respond.

The City Attorney stated that he believed that in the Texas Penal Code there is still a statute that makes homosexual conduct in the privacy of your home a crime; that was struck down as unconstitutional, yet it is still on our books. No police department in its right mind would continue to enforce it even though it still appears in a statute. Because they have been told that it is unconstitutional. Now, does that mean that they are ignoring? I (the City Attorney) suppose that could be one view. The other view is they are choosing to not enforce something that they think has a constitutional question attached to it.

The issue that Council Member Thomas has with regard to the City Charter and application 10.03, the City Attorney has not advised her to ignore anything of the kind. However, he stated that he has advised her that the provision in our City Charter dealing with back taxes has been called into question by at least one District Court in the State of Texas. Whether she chooses to not enforce that provision of the City Charter now falls to the City Council, but he (the City Attorney) has not counseled you or the City Council to ignore anything. He has simply told you and the City Council that that this provision has been called into question. Not our provision, the City of Forest Hill's provision, but a provision very similar to our provision.

Mayor Pro Tem Masimini asks if there was more discussion or a motion to be made by this body. Council Member Dalcour stated that he feels before we go into some kind of motion, he thinks we should research this matter further. Mayor Pro Tem Masimini asks for more comments? Mayor Pro Tem Masimini informed a resident, Bob Shanklin that he could not speak out in City Council proceedings, as we did open citizen's presentation earlier in the meeting. Mayor Pro Tem Masimini asked Mr. Shanklin to fill out a "speak before the city council form." Which would allow him an opportunity to speak regarding this matter. Mayor Pro Tem Masimini asked if there were any other comments.

Council Member Joubert stated as a Council if a citizen has something that is pertinent to what we are discussing, can't we at least hear what that citizen has to say? It might shed a little light on what we are trying to decide here. Mayor Pro Tem Masimini stated that yes a citizen can speak on an agenda item. And Mr. Shanklin has been given permission to speak. This is why he (Mayor Pro Tem Masimini) has asked Mr. Shanklin to fill out a speak before the city council form to be given to the City Secretary. Mayor Pro Tem Masimini stated as soon as he completes the form, he will call Mr. Shanklin up to speak. Council Member Joubert apologized for the misunderstanding.

Mr. Bob Shanklin, 3716 Orchard – Mr. Shanklin stated that he did research on this subject today, and by very good authority he understands that there are two court cases on this subject. One of them said that it was illegal to use unpaid taxes for approval or disapproval of candidacy. One said it was, there has been no action to the appeal courts, so therefore he feels that we as a body or you as a body should decide. Can we say that our charter is correct, because all though we cannot go against state law, we cannot do less than what state law says. But we as a body, he correct himself stating you as a body can be more astringent than what state law says. He would like to urge the City Council to continue to with the way things are done currently The candidates must be paid up in taxes to the City of Forest Hill so that they do not owe the City any money. Mr. Shanklin thanked the City Council before leaving.

Mayor Pro Tem Masimini asked if there were any more comments from Council or a motion? Council Member Dalcour asked the City Manager, Sheyi Ipaye if he would like to interject anything on his behalf. The City Manger stated that they have done very well. The truth to the matter is, all of us know what is right. He reiterated we know what is right. And he can see us dealing with a fourth grade civic question. That is what it is as far as he is concerned. And so this information right now has been given to you. The attorney has spoken and he just wanted you to know that sometimes it is difficult to run after the citizen to pay-up, when some people on the council are owing. It becomes a matter of conscious. That is all he (the City Manager) has to say.

Mayor Pro Tem Masimini instructed Coach Sanders to step up to the microphone to speak. Jimmie Sanders, 7008 Stonewall Road – Mr. Sanders stated that he was listening to a statement that was made by a council member saying that we are not here to keep someone from running for a particular seat. Mr. Sanders states that he does not see it that way. He further states that we have been here for 40 minutes, and it seems like some of us are trying to manipulate or find some kind of scheming way to get it (application 10.03) changed. The City Attorney has told them (the City Council) what our City Charter says, and what the government says. And, we are still trying to find a point where we can get it (application 10.03) the way we want it. He does not think that this will be easy to do. The time is just about running out. Your going back there doing something over night in a hurry, and it is not going to work. Because what you're trying to do, from what he (Mr. Sanders) can see, is ask the same questions over and over again.

What you're saying is what we can do to make it like I want it. I can see the way we (the Citizens) want it, or the way the Council wants it. But, we have some people who want it the way they want it. They are saying that the City Council cannot change anything that is already located in the charter. Mr. Sanders wants to know why are we still talking and trying our best to change something, without having all the information that we really need? He encouraged the City Council to go home and think about that question. You say that our City Charter is not right, and we have not used this form in years. Too many things are being said about the City Charter and he (Mr. Sanders) is thinking of our rights. There are too many things that we can be sued for. He does not see anything that needs to be changed over night. Mr. Sanders does not feel that this is the right thing to do.

Gene Pirtle, 6106 Guildford Street – Mr. Pirtle stated that the City Charter states certain things, the way things should be done. Moreover, the layout of the form (application 10.03). If the form has not been used, as it should have been in the charter. He (Mr. Pirtle) recommends, for what ever reason it got pulled out of the packet. It needs to be put back in the packet. If anyone has already filed, they need to fill that form out. Mr. Pirtle stated we need to follow the Charter, and as long as it is the Charter it is the law. Mr. Pirtle thanked the City Council.

Mayor Pro Tem Masimini asked if there were any more motions or comments from the City Council. Council Member Joubert made a motion to add the application (10.03) form to the candidate filing packet as is, seconded by Council Member Dalcour.

Mayor Pro Tem Masimini commented that he hopes the City Council does realize that if they use this form as is, and you do mix that in with someone who owes taxes, and you are making them swear to the fact that they don't owe taxes. The City Council has actually flipped the fourteenth amendment regarding discrimination. Mayor Pro Tem Masimini wanted all the City Council to be aware of this fact.

Council Member Thomas stated that if you know something that is presented to you is not true, then why would you sign it saying that it is true. Mayor Pro Tem Masimini stated that if it is part of the application process as you discussed earlier, your name would be taken off the ballot. Therefore, once we do that then we invoke discrimination. It is not that your question is not valid, it is just that your question is not a question of contention

for the court. The question for contention for the court is, if we discriminated based on arrears in taxes.

Using that form (application 10.03) as is. Which is even against your (Council Member Thomas') own suggestion as a disclosure? We (the City Council) have hit the fourteenth amendment in his opinion. Mayor Pro Tem Masimini wanted the council to be aware of that. Council Member Thomas stated that she had additional discussion. She stated that she did not understand what Mayor Pro Tem Masimini stated at the end of his comment.

She (Council Member Thomas) was just throwing an idea out there, she came up with this idea as a win win to move forward. Council Member Thomas asked Mayor Pro Tem Masimini to explain how this has affected things. Mayor Pro Tem Masimini stated that her idea was not affecting the recent motion. The recent motion was to use the form (application 10.03) as is in the charter; this would invoke the fourteenth amendment of discrimination, because their name would be taken off the ballot if they are in arrears on taxes, which the City Attorney has advised us not to include anything that would discriminate.

The City Attorney has advised us not to include any language that would discriminate or hit that fourteenth amendment. You (Council Member Thomas) said disclosure which is different then, as is. He (Mayor Pro Tem Masimini) is simply saying that this is something that he feels we should have stepped back from a long time ago, and get our heads together to make a better decision; in such a short period of time. Mayor Pro Tem Masimini stated the motion is still on the floor and it is not just a disclosure as you had stated. It is what it is. Mayor Pro Tem Masimini asks if there are any more comments. Council Member Sami stated that in 2003 this was an issue with back taxes, and it became part of the format for some dirty campaigning, in fact negative campaigning.

It was used as a tool to disqualify. Since that time we have had several elections and he is surprised that none of us really remember that the Secretary of State form is what we have used in these elections. Moreover, he (Council Member Sami) does question why we (the City Council) bring this up now. As far as, the information goes. If you want to find out who is behind on their taxes this information is still available, it is public record.

It will become part of this campaign. At this point and time Council Member Sami has some uncomfortable feelings about the City Council once again ignoring the advice of the City Attorney and deciding to take things upon ourselves, changing things around. To what value will they (the City Council) gain because we were able to sign a form or able to substitute a form that we have not used in several elections.

Council Member Dalcour stated that his (Council Member Sami's) remarks are true. Council Member Dalcour asked Council Member Sami if he was done. Council Member Dalcour stated that one good thing about advice is you don't have to take it. Second of all to remove the document out of this Charter without, letting us know about it, Council Member Dalcour stated that he felt it is wrong for number one, and for us to put it back in and apply it. He thinks that is the right thing to do, until next year comes around and we vote it out; or the citizen's vote it out.

Council Member Sami stated that the suggestion that someone deliberately took the application 10.03 form out to begin with is not quite true. The fact that he (Council Member Sami) just stated that we have not used this form for the last few elections, why are we going to conveniently put it back in the candidate filing packets now? Council Member Sami asked Council Member Dalcour did he fill out one of these forms when he ran last year. Did someone conveniently take the form out then? Council Member Dalcour responded possibly.

He (Council Member Sami) is not trying to make an excuse, but this whole meeting itself is not a good look for the City Council at all. He further stated we are beating this dead horse

to death. Council Member Sami is glad that there is a motion on the table. He has made his comment and now he is ready to vote. Mayor Pro Tem Masimini asked for the voting to be removed, until he calls for the vote.

Council Member Joubert stated that he is thinking about what Council Member Sami said. He stated that he thought about it, because every time we (the City Council) sign that statement; do you remember exactly what was read? Because they read it to us. It is not a separate piece of paper, all of it is encompassed in that document that we sign when we raise our hand and the City Secretary reads it to us. We swear that everything we are about to sign is true. Now do you remember not being in there?

Council Member Joubert's question was directed towards Council Member Sami. Council Member Sami stated that the application 10.03 was never taken out. What happened was, in 2000, we soon found out that there was state law that perhaps could be used to answer the question whether a person would be eligible to run for office if they were in arrears on their taxes.

This became a big issue and you were right in the middle of it with me, in terms of us discussing this in several ways. What took place at that time was, they (the City Council) decided to use the form that the Secretary of State provides for us, and that is the form that we have used now for several elections. Now we want to go back and ignore the Secretary of State form for the election all over the great state of Texas. Very likely they are going to be using the very same form that we filled out for several elections. That Charter in itself; and again, I did serve on the Charter Review Committee; the language is ambiguous at the time in which that Review Board was looking at those provisions, this was something that was not brought to light. I assure you that within a few months when the Charter Review meets again we will be addressing that very issue.

Again he (Council Member Sami) wants to make it very clear that that form (application 10.03) was not deliberately taken out. And he (Council Member Sami) wanted to also make it clear that all of us filled out the same form that we filled out in this year's election. So what is the big deal? Council Member Dalcour stated the big deal is having it back were it should be. Mayor Pro Tem Masimini stated that in reference to the last election this issue did not come up then, why is it coming up now? It leads to our intention, concern, and even motivation.

Mayor Pro Tem Masimini stated that he is hopeful even with all things that we have an issue with; we (the City Council) can just do what we feel to be right. Because he does not believe that anybody sitting here would duly try to hurt the City with intent. So, with everybody loving the City as much as he (Mayor Pro Tem Masimini) does personally. Mayor Pro Tem Masimini further stated in our hearts we think we are doing what is right, and I cannot change your hearts, and you cannot change mine. He does want to hear all of your comments, and he is ready to hear more, but if not there is a motion on the floor.

Council Member Joubert stated to Council Member Sanders that he has not said much. Council Member Joubert stated that he would like to hear him say something, weight in on this subject. Council Member Sanders stated the only thing that I can say is this. And that is what he has always said; he is for the right thing. Whether it was taken out intentionally or what ever, it needs to be put back in. We need to follow the charter that is written, and things that have been said regarding that issue he (Council Member Sanders) is for that. Mayor Pro Tem Masimini asked if there were any more comments.

Mayor Pro Tem Masimini apologized to the individual operating the audio/video equipment with regard to if he came across harshly when he state to remove the voting screen. Mayor Pro Tem Masimini called for the vote. Which *passed* as follows:

Ayes: Council Members: Dalcour, Thomas, Joubert, Sanders

Nays: Mayor Pro Tem Masimini, and Sami

Absent: Mayor James Gosey

Council Member Sami asked the City Secretary when the forms will be ready. She informed Council Member Sami that they would be ready tomorrow. Mayor Pro Tem Masimini asked if there were any other announcements. Council Member Sami stated that several people have already picked up there packets, and how are we going to make sure that they receive the application 10.03 form? Council Member Thomas stated that the City Secretary has all the individuals phone numbers, names, and addresses. Council Member Sami asked for specific instructions to be given from Council with regard to the completion of application 10.03 form.

Although, he (Mayor Pro Tem Masimini) does understand Council Members Sami's concerns. Mayor Pro Tem Masimini stated that the form has been passed by Council and he can not see this possibly being a problem without specifics to instruction. However, we have passed it and he thinks those in majority who have passed this form intended for Mrs. Edwards to call all current and future candidates to have them to fill out the (application 10.03) form.

Mayor Pro Tem Masimini asked the City Council if this is not the understanding, please speak at this time for clarity. With silence and no announcements the meeting was adjourned.

RECESS INTO EXECUTIVE SESSION - Pursuant to Section 551.071, Texas Government Code, the Council reserves the right to convene in Executive Session(s) from time to time as deemed necessary during this meeting for any posted agenda item, to receive advice from its attorney as permitted by law.

The City Council did not recess into executive session.

F. Reconvene into regular session.

The City Council did not recess into executive session.

G. Take any action necessary pursuant to executive session.

No action was taken.

H. Adjournment

With no further business to discuss the meeting was adjourned at 7:12 P.M.

Grace Edwards, City Secretary

Dulani Masimini, Mayor Pro Tem