

2022 REFERRED ORDINANCES

INFORMATION BOOKLET

This analysis, produced by the Greater Woodland Park Chamber of Commerce, is a nonpartisan explanation of three ballot initiatives slated to appear on the Woodland Park April 5, 2022, general election ballot. All measures are referred to the voters by the Woodland Park City Council and require a simple majority vote to pass.

For each initiative, we provide nonpartisan explanations of measures on the ballot, including the ballot question, main arguments for and against, and fiscal impact. The Chamber does not judge the merits of the arguments or guarantee their validity.

A municipal charter is the basic document that defines the organization, powers, functions, and essential procedures of the city government. It is comparable to the Constitution of the United States or a state's constitution. The charter is, therefore, the most important legal document of any city.

Occasionally, a city will seek to revise its charter. There are several reasons to do so since the charter affects everything the city government does. The charter should be flexible enough to accommodate growth and demographic changes as well as evolving language use and policy changes. The Woodland Park City Charter, adopted in 1975, has undergone numerous revisions and amendments, the last changes occurring after the 2020 general election.

As you review the recommended Charter changes to the City's "constitution", you may refer to these considerations:

- Examine what the measure seeks to accomplish. Do you agree with those goals? Is the measure seeking changes that are consistent with your ideas about government?
- Is the measure written well? Is it "good government," or will it cause more problems than it will resolve?
- Does the measure create its own revenue source? Does it earmark, restrict, or obligate government revenues?
- Does the measure mandate a government program or service without addressing how it will be funded?
- Does the measure deal with one issue that can be easily decided by a YES or NO vote? Or is it a complex issue that should be thoroughly examined in the legislative arena?
- If the measure amends the Charter, consider whether it really belongs in the Charter. Could the identified issue be addressed in a more flexible ordinance or resolution? Remember that all Charter amendments require voter approval.

Careful consideration has been given to the arguments in an effort to fairly represent both sides of the issue. When appropriate, each analysis includes an estimate of the fiscal impact of the measure.

1. **SHALL ARTICLE III, SECTION 3.14 OF THE CHARTER FOR THE CITY OF WOODLAND PARK BE AMENDED TO REPEAL AND REPLACE THE CURRENT GENERAL CONFLICT OF INTEREST PROVISIONS WITH A MORE DETAILED AND COMPREHENSIVE CONFLICT OF INTEREST PROVISION?**

► **What Your Vote Means**

- A "Yes" vote means this amendment will provide a more complete definition of "conflict of interest" as it applies to the Mayor or any member of the Council.
- A "No" vote will maintain the current article and section of the Charter relevant to conflicts of interest will remain in effect.

► **Fiscal Impact: None**

► **Arguments For:**

- The Charter’s current conflict of interest provision does not define what constitutes a conflict of interest and introduces ambiguity with respect to instances where a Council member “could potentially be construed as having a conflict of interest,” The amendment cures this problem by providing definitions of “personal” and “financial” interest, as well as addressing behavior the creates an “appearance of impropriety.
- By adding definitions and clarifying that public officials may not use their position to benefit their “immediate family” the new language will facilitate fair, non-arbitrary enforcement.
- The new language contains express commitments to highest ethical standards. These declarations of intent will be helpful, should public officials try to use highly technical or novel excuses to avoid their obligation under this provision.

► **Arguments Against:**

- The language and wording of the proposed amendment add definitions that focus on what is not included, rather than listing conduct that is included; this may lead to further confusion about what is forbidden
- Multiple examples of relationships and conflict circumstances that do not constitute a conflict may provide more opportunities for an elected official to find rationale to challenge a request for recusal.
- The existing Charter addresses conflict of interest now. If an individual official fails to voluntarily recuse himself, then the Council may make that determination by majority vote.
- Municipal Charters should strive to provide simple and concise guidance for governance. This amendment (see text below) is too lengthy and detailed to be part of the Charter. The existing Charter section relevant to conflicts of interest is far more brief.

SEE BULLET ABOVE - EXPLANATION If the above question is ratified by a majority of the voters of the City at the municipal election to be held on April 5, 2022, Article III, Section 3.14 of the Charter shall be repealed and replaced to read as follows:

Section 3.14 – Conflict of Interest

Purpose and intent.

The City shall conduct its businesses, operations, and services in accordance with the law and the highest standards of business practices and ethics. The City is committed to complete honesty, utmost integrity, fair dealing, and ethical behavior as the basis of its businesses, operations, and services to the community.

It is the intent of the City that its officers and employees adhere to the highest levels of ethical conduct so that the public will have the confidence that persons who are in positions of public responsibility act for the benefit of the public. Officers and employees should comply with the letter and spirit of this section as well as strive to avoid situations which may create impropriety or the appearance of impropriety.

It is the intent of the City to establish and enforce a policy which ensures that its officers and employees are

independent, impartial, and responsible to the citizens they serve and represent. Elected officials should have a general understanding of the City's views regarding situations which create or involve conflicts of interest or the appearance of impropriety. It is the intent of this section to clarify which actions are allowed and which constitute a breach of the public trust.

Definitions. For purposes of construction of this section, the following words and phrases shall have the following meanings:

Business means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity, or entity.

Financial interest means any interest equated with money or its equivalent. Financial interest shall not include:

- the interest that an officer, employee, or member of their immediate family has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee, or immediate family member;
- the interest that an officer, employee, or member of their immediate family has as a non-salaried officer or member of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization in the holdings of such corporation, association, or organization;
- the interest that an officer, employee, or member of their immediate family has as a recipient of public services when such services are generally provided by the City on the same terms and conditions to all similarly situated citizens, regardless of whether such recipient is an officer, employee, or immediate family member;
- the interest that an officer, employee, or member of their immediate family has as a recipient of a commercially reasonable loan made in the ordinary course of business by a lending institution, in such lending institution;
- the interest that an officer, employee, or member of their immediate family has as a shareholder in a mutual or common investment fund in the holdings of such fund unless the shareholder actively participates in the management of such fund;
- the interest that an officer, employee, or member of their immediate family has as a policyholder in an insurance company, a depositor in a duly established savings association or bank, or a similar interest-holder, unless the discretionary act of such person, as an officer or employee, could immediately, definitely, and measurably affect the value of such policy, deposit, or similar interest;
- the interest that an officer, employee, or member of their immediate family has as an owner of government-issued securities unless the discretionary act of such owner, as an officer, employee, or member of their immediate family, could immediately, definitely and measurably affect the value of such securities; or
- the interest that an officer or employee has in the compensation received from the City for personal services provided to the City as an officer or employee.

Immediate family means husband, wife, son, daughter, mother, father, step-son, step-daughter, step-mother, step-father, father or mother-in-law, son or daughter-in-law, brother or sister-in-law, grandmother, grandfather, grandchildren, brother, sister, domestic partner, any person with whom he or she is cohabiting, any person

whom he or she is engaged to be married, and any person with whom he or she is engaged in an intimate relationship. The term includes any minor children for whom the person or his or her domestic partner provides day-to-day care and financial support. A “domestic partner” is an unmarried adult, unrelated by blood, with whom an unmarried officer or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

Officer or employee means any person holding a position by election, appointment, or employment in the service of the City, whether part-time or full-time, including a member of any authority, board, committee or commission of the City, other than an authority that is:

- established under the provisions of the Colorado Revised Statutes;
- governed by state statutory rules of ethical conduct; and
- expressly exempted from the provisions of this section by ordinance of the Council.

Personal interest means any interest (other than a financial interest) by reason of which an officer or employee, or a member of the immediate family of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. Personal interest shall not include:

- the interest that an officer, employee, or member of their immediate family has as a member of a board, commission, committee, or authority of another governmental entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization;
- the interest that an officer, employee, or member of their immediate family has in the receipt of public services when such services are generally provided by the City on the same terms and conditions to all similarly situated citizens; or
- the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the City.

Public body means the Council or any authority, board, committee, commission, service area, department, or office of the City.

Rules of conduct concerning conflicts of interest.

Sales to the City. No officer or employee, or member of the immediate family of such officer or employee, shall have a financial interest in the sale to the City of any real or personal property, equipment, material, supplies, or services, if:

- such officer or employee is a member of the Council;
- such officer or employee exercises, directly or indirectly, any decision-making authority on behalf of the City concerning such sale; or
- in the case of services, such officer or employee exercises any supervisory authority in his or her role as a City officer or employee over the services to be rendered to the City.

Purchases from the City. No officer, employee, or member of their immediate family shall, directly or indirectly, purchase any real or personal property from the City, except such property as is offered for sale at an established price, and not by bid or auction, on the same terms and conditions as to all members of the general public.

Interests in other decisions. Any officer, employee, or member of their immediate family who has a financial or personal interest in any matter proposed or pending before any public body of which he or she is a member, to

which he or she makes recommendations, or any officer or employee who believes that their vote on the matter will, for whatever reason, have the appearance of impropriety shall, upon discovery thereof, disclose such interest to the other members of the public body, not vote on the matter, and not attempt to influence the vote of any other member of the public body. If the Mayor or any Council member fails to declare such an interest, the remaining members of the Council shall determine by a majority vote whether such interest constitutes a conflict of interest.

Employment by the City. Neither the Mayor nor any member of the Council shall be a compensated employee of the City during their term of office.

Violations. Any contract made in violation of this section shall be voidable by the City. If voided within one (1) year of the date of execution thereof, the party obtaining payment by reason of such contract shall, if required by the City, forthwith return to the City all or any designated portion of the compensation received by such individual from the City by reason of said contract, together with interest at the lawful maximum rate for interest on judgments.

2. SHALL ARTICLE III, SECTION 3.5 OF THE CHARTER FOR THE CITY OF WOODLAND PARK BE AMENDED TO CLARIFY THE OPTIONS FOR CITY COUNCIL IN FILLING A VACANCY ON CITY COUNCIL?

► **What Your Vote Means:** What Your Vote Means:

- A “yes” vote This amendment expands the definition of eligible candidates to fill Mayoral and Council vacancies by adding the possible selection of an individual who received the second most number of votes in the most recent municipal election.
- A “no” vote means Mayor and Council vacancies will continue to be filled by appointment without an application, or with applications accompanied by Council interviews, or by special election.

► **Fiscal Impact:** None

► **Arguments For:**

- The amendment clarifies the options for the Council when determining who is eligible to fill vacancies.

► **Arguments Against:**

- The Council currently has the authority to utilize the options identified in this amendment. Thus, this amendment is unnecessary.
- Adding an arbitrary qualification for appointment consideration is not necessary and may preclude other relevant reasons for appointing an individual without an application and interview or the necessity of a special election.

If the above question is ratified by a majority of the voters of the City at the municipal election to be held on April 5, 2022, Article III, Section 3.5 of the Charter shall be amended as follows

Section 3.5 – Vacancies

A vacancy shall be filled by a majority vote of the Mayor and/or the remaining Council after such vacancy

occurs, provided there will not be a regular municipal election within ninety (90) days of such vacancy. To fill a vacancy, the Mayor and/or the remaining Council members may:

- appoint any qualified person;
- conduct an open application process;
- appoint the person who received the next highest vote total in the last municipal election should the vacancy occur within six (6) months of said election. The person appointed shall serve in that office until the next regular election.

3. SHALL ARTICLE XV, SECTION 15.16 OF THE CHARTER FOR THE CITY OF WOODLAND PARK BE AMENDED TO SPECIFY THAT ELECTED AND APPOINTED OFFICIALS MAY BE REMOVED FROM OFFICE FOR MISCONDUCT BY THE CITY COUNCIL?

► **What Your Vote Means:** What Your Vote Means:

- A “yes” vote means that five sitting Council members may remove another Council member or an appointee to any board or commission for willful violations of the provisions of the Charter.
- A “no” vote means in accordance with (IAW) the existing Charter, the City Council will retain the authority to assess misconduct of any person holding an elective office, appointive position, or City employment position and may determine penalties for such conduct.

► **Fiscal Impact:** None

► **Arguments For:**

- The current Charter has for years provided that “willful” violation of any of its provisions shall constitute “misconduct” but has provided no penalty for such misconduct. This amendment cures that defect by providing a penalty
- The new section would permit an elected official to be removed from office by a roll-call vote of five (5) Council members. This includes in the Charter an authority that Council has had under State law since at least 1975.

► **Arguments Against:**

- Passage of this initiative gives five City Council members the power to subjectively determine that a fellow Council member willfully violated the Charter and be removed. This could give five Council members the ability to overturn election results based on subjective opinions and interpretations of the Charter.
- Article III, Section 3.5 of the current Charter identifies criteria for removal from elected office as successful citizen recall, resignation, refusal to serve, ceasing to reside within the City limits, judicial declaration of mental illness, and felony conviction.
- This amendment provides no guidance or opportunity for Appeals.

If the above question is ratified by a majority of the voters of the City at the municipal election to be held on April 5, 2022, Article XV, Section 15.16 of the Charter shall be repealed and replaced as follows:

Section 15.16 – Misconduct; Removal from Office.

Any willful violation of a provision of this Charter shall constitute misconduct. By an affirmative roll call vote of at least five (5) of the members of the City Council, the Mayor, a Council member, or any appointed official may be removed from office for misconduct. No removal shall be made without notice to such elected or appointed official which contains the charge in writing and the facts upon which the charge is based and an opportunity of a hearing before the City Council, which shall be held no sooner than ten (10) days after the date the notice is given.

