

CITY OF  
**SEALY**

HOME RULE CHARTER



ADOPTED  
MAY 8, 1996

AMENDED  
MAY 22, 2006  
MAY 10, 2014  
MAY 6, 2017  
MAY 7, 2022

**HOME RULE CHARTER  
FOR THE  
CITY OF SEALY, TEXAS**

**PREAMBLE**

We, the citizens of Sealy, Texas, in order to establish a home rule municipal government, provide for the future progress of our City, and obtain more fully the benefits of local self-government, do hereby adopt this Home Rule Charter in accordance with the Constitution and statutes of the State of Texas; and do hereby declare the residents of the City of Sealy in Austin County, Texas, living within the legally established boundaries of said City to be a political subdivision of the State of Texas incorporated forever under the name and style of the "City of Sealy" with such powers, rights, and duties as are herein provided.

## **ARTICLE I**

### **INCORPORATION, FORM OF GOVERNMENT AND BOUNDARIES**

#### **SECTION 1.01 - INCORPORATION**

The inhabitants of the City of Sealy in Austin County, Texas, residing within its corporate boundaries and limits as heretofore established, or as may be hereafter established, are hereby constituted and shall continue to be a municipal body politic and corporate in perpetuity under the name of the "City of Sealy."

#### **SECTION 1.02 - FORM OF GOVERNMENT**

The municipal government provided by this charter shall be known as the "Council-Manager" government. Pursuant to the provisions of this charter and subject only to the limitations imposed by the State Constitution, the statues of this State, and this charter, all powers of the City shall be vested in an elective council, hereinafter referred to as the "City Council," which shall enact local legislation, adopt budgets, determine policy, and appoint the City Manager, who in turn shall execute the laws and administer the government of the City. All powers of the City shall be exercised in the manner prescribed by this charter, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance, the State Constitution, or the statues of this State.

#### **SECTION 1.03 - BOUNDARIES**

The boundaries and limits of the City of Sealy, Texas, are hereby established and described as those boundaries heretofore established in the original incorporation proceedings of the City of Sealy, Texas, and those boundaries established and changed thereafter in all annexation ordinances and proceedings of the City of Sealy, Texas, filed in the office of the city secretary.

## **ARTICLE II**

### **POWERS OF THE CITY**

#### **SECTION 2.01 - GENERAL POWERS**

The City shall possess and exercise all powers of local self-government granted to municipal corporations by the Constitution and laws of the State of Texas, together with all the implied powers necessary to execute all such powers granted. The City may use a corporate seal; may sue and be sued;

may contract and be contracted with; may acquire property within or without its corporate limits for any municipal purpose in fee simple or in any lesser interest or estate by purchase, gift, devise, lease, or condemnation and, subject to the provisions of this charter, may sell, lease, mortgage, hold, manage, improve, and control such property as may now or hereafter be owned by it, or which it may hereafter acquire, and shall have the right to lease or let its property, whether inside or outside of the City limits; may borrow money on the faith and credit of the City by issuance and sale of bonds or other evidence of indebtedness; may borrow money on the revenue of municipally-owned utilities or other municipal enterprises by the issuance of bonds and notes or other evidences of indebtedness secured by such revenues; may assess, levy, and collect taxes for general and special purposes and all lawful subjects of taxation; may construct, own, lease, operate, and regulate public utilities; may appropriate the funds of the City for all lawful purposes; may regulate and control the use, for whatever purpose, of the streets and other public places; may make and enforce all police, health, sanitary, and other regulations; may pass such ordinances as may be expedient for the protection and maintenance of good government, peace, and welfare of the City, for the performance of the functions thereof, and for the order and security of its residents; and may provide suitable penalties for the violation of any ordinance enacted by the City. The powers hereby conferred upon the City shall include, but are not restricted to, the powers conferred expressly and permissibly by Chapter 147, page 307, Acts of the 33rd Legislature of the State of Texas, Regular Session, 1913, enacted pursuant to the Home Rule Amendment of the Constitution of Texas, known as the Enabling Act, as heretofore or hereafter amended, all of which are hereby adopted. In addition to the powers enumerated herein and subject only to the limitations imposed by the Constitution and laws of the State of Texas and by this charter, the City shall have, without the necessity of express enumeration in this charter, each and every power which by virtue of Article XI, Section 5 of the Constitution of the State of Texas, the people of the City are empowered by election to grant or to confer upon the City by expressly and specifically granting and enumerating the same. All such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this charter, or when not prescribed herein, in such manner as shall be provided by ordinance of the City Council.

## **SECTION 2.02 - CHANGE OF BOUNDARIES AND ANNEXATION OF TERRITORY**

The City Council shall have the power by ordinance to fix the boundary limits of the City and to provide by ordinance for the annexation of additional territory lying adjacent to the City, with or without the consent of the owners and inhabitants of the territory to be annexed; and upon the final passage of any such ordinance, the corporate limits of the City shall

thereafter include the territory so annexed; and the inhabitants thereof shall be entitled to all the rights and privileges of all citizens, and shall be bound by the acts and ordinances, resolutions, and regulations of the City. The City Council shall have the power to detach by ordinance any territory with or without the consent of the inhabitants or owners of such area to be detached. Such annexation or detachment of any such territory shall be in accordance with the provisions of the Texas Local Government Code, as it now exists or may be hereafter amended.

### **SECTION 2.03 - POWER TO ADOPT COMPREHENSIVE ZONING**

The City Council shall not have the power to adopt a comprehensive zoning ordinance under Chapter 211 of the Texas Local Government Code, as amended, until it has given at least one hundred twenty (120) days notice by publication in a newspaper of general circulation in the City of the proposal to adopt comprehensive zoning and, thereafter, held an election at which the proposal to adopt comprehensive zoning is approved by the qualified voters. The provisions of this section shall only apply to the determination of whether the City should initially adopt a comprehensive zoning ordinance.

## **ARTICLE III**

### **THE CITY COUNCIL**

#### **SECTION 3.01 - NUMBER, SELECTION, AND TERM**

The governing body of the City of Sealy shall be the City Council. All powers and authority which are expressly or impliedly conferred on or possessed by the City shall be vested in and exercised by the City Council, except as otherwise provided herein. The City Council shall be composed of the Mayor and six (6) Councilmembers. The Mayor and all Councilmembers shall be elected from the City at-large, and each Councilmember shall occupy a position on the City Council, such positions being numbered Position One, Position Two, Position Three, Position Four, Position Five, and Position Six. The Mayor and the Councilmembers shall be elected in the manner provided in Article V of this charter to serve for three-year terms and shall hold office until their respective successors have been elected and qualified.

#### **SECTION 3.02 - QUALIFICATIONS**

Each Councilmember and the Mayor must be at least twenty-one (21) years of age upon commencement of the term filled at their election, be a resident of the City, have resided in the City for at least twelve (12) months immediately preceding election day, and be a qualified voter.

### **SECTION 3.03 - LIMITATION OF NUMBER OF TERMS**

No person shall be elected or appointed to more than three (3) full consecutive regular three-year terms as Mayor and/or Councilmember.

### **SECTION 3.04 - MAYOR AND MAYOR PRO TEM**

The Mayor shall be the official head of the City government and shall preside at all meetings of the City Council. The Mayor shall be entitled to vote upon all matters before the City Council unless prohibited by law, but shall have no power of veto. The Mayor shall see that all ordinances, regulations, and resolutions of the City Council are faithfully obeyed and enforced. The Mayor shall, when authorized by the City Council, sign all official documents such as ordinances, resolutions, conveyances, agreements, contracts, and bonds. The Mayor shall appoint special committees which the Mayor deems advisable or as instructed by the City Council. The Mayor shall perform such other duties consistent with this charter as may be imposed by City Council.

The Mayor Pro Tem shall be a Councilmember and shall be elected by the City Council at the regular City Council meeting in June of each year. The Councilmember elected as the Mayor Pro Tem shall hold the title and serve in such capacity during the pleasure of the City Council. The Mayor Pro Tem shall act as Mayor during the absence or disability of the Mayor, and when so acting in this capacity, shall have the authority conferred upon the Mayor.

### **SECTION 3.05 - COMPENSATION**

The Mayor and Councilmembers may receive such pay or compensation, including necessary expenses incurred in the performance of their official duties, as may be prescribed and set by City Council.

### **SECTION 3.06 - PROHIBITIONS**

**A. Holding other office.** Except where authorized by law, a Mayor or Councilmember shall not hold any other City office or City employment during the term for which he or she was elected.

**B. Appointments and removals.** Neither the City Council nor any of its members shall in any manner control or demand the appointment or removal of any City administrative officer or employee whom the city manager or any subordinate of the city manager is empowered to appoint, but the City Council may express its views and fully and freely discuss with the city manager anything pertaining to the appointment and removal of such officer or employee.

**C. Interference with administration.** Except for the purpose of inquires and investigations authorized by this charter, the City Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the City Council, the Mayor, nor a Councilmember may give orders publicly or privately to any such officer or employee.

### **SECTION 3.07 - VACANCIES; FORFEITURE OF OFFICE; FILLING OF VACANCIES**

**A. Vacancies.** The office of Mayor or Councilmember shall become vacant upon death, resignation, removal, or forfeiture of office.

**B. Forfeiture of office.** The Mayor or a Councilmember shall forfeit his or her office if he or she:

- (1) lacks at any time during the term of office for which elected any qualification for the office prescribed by this charter or by law;
- (2) violates any express prohibition of this charter;
- (3) is convicted of a crime involving moral turpitude; or
- (4) files as a candidate for nomination or election to any public office as provided for in state law.

Any member of the City Council remaining absent for three (3) consecutive regular meetings of the City Council, without having first obtained a leave of absence, may have his office declared vacated by a majority vote of all the remaining members of the City Council. Any member of the City Council remaining absent for six (6) consecutive regular meetings of the council shall be deemed to have vacated his or her office.

**C. Filling of Vacancies.** When a vacancy occurs on the City Council, such vacancy shall be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy occurs, or at such other time as may be required by law, except in the event that the unexpired term is 12 months or less, City Council may appoint a person to fill the vacancy. Any person elected to fill a vacancy in the office of Mayor or Councilmember shall possess all of the qualifications herein required for the office.

### **SECTION 3.08 - COUNCIL TO BE JUDGE OF QUALIFICATIONS OF ITS MEMBERS**

The City Council shall be the judge of all elections and of qualifications of its members and for such purpose shall have power to subpoena witnesses and require the production of records, but the decision of the City Council in any such case shall be subject to review by the courts.

### **SECTION 3.09 - INVESTIGATION BY COUNCIL**

The City Council shall have the power to inquire into the conduct of any department, agency, office, officer, or employee of the City and to investigate municipal affairs, and for that purpose may administer oaths, subpoena witnesses and compel the production of books, papers, and other evidence. The City Council shall provide by ordinance penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence and shall have the power to punish any such contempt in the manner provided by such ordinance.

### **SECTION 3.10 - MEETINGS OF CITY COUNCIL**

The City Council shall hold at least one (1) regular meeting each month and as many additional special meetings as they deem necessary to transact the business of the City. Special meetings may be held on the call of the Mayor or four (4) or more Councilmembers. The City Council shall fix, by ordinance, the days and times of the regular meeting. All meetings of the City Council shall be held at the City Hall or at such other public place as may be approved by City Council and all meetings of the City Council shall be open to the public except as authorized by State law. Each member of City Council, if present, shall vote upon all matters before the City Council except when the matter involves the consideration of that member's own official conduct or where that member's participation in the vote is prohibited by state law.

### **SECTION 3.11 - RULES OF PROCEDURE**

The City Council shall by ordinance determine its own rules and order of business and the rules shall provide that citizens of the City shall have a reasonable opportunity to be heard at any meeting in regard to any matter under consideration. The City Council shall provide for minutes being taken and recorded of all its public meetings, and such minutes shall be a public record. Four (4) members of City Council shall constitute a quorum for the purpose of transaction of business, and no action of the City Council shall be valid or binding unless approved by the affirmative vote of a majority of the entire City Council. If at any meeting of four (4) or more members of the City Council



neither the Mayor nor Mayor Pro Tem is present, then those Councilmembers present shall elect one of their number to be the chairman for conducting the meeting as provided herein.

### **SECTION 3.12 - PROCEDURE TO ENACT LEGISLATION**

The City Council shall legislate by ordinance, and the enacting clause of every ordinance shall be, "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEALY, TEXAS:". Each ordinance enacted by the City Council shall be signed by the Mayor and city secretary and shall be filed with and recorded by the city secretary. In the event the Mayor fails or refuses to sign an ordinance, such ordinance shall be signed by the Mayor Pro Tem or by two (2) Councilmembers. All ordinances, unless otherwise provided by law, by the terms of such ordinance, or by this charter, shall take effect immediately upon final passage. Except as otherwise provided in this charter, no ordinance shall be finally passed until it has been considered and favorably acted on by the City Council at two (2) separate council meetings. The requirement of consideration and favorable action on an ordinance at two (2) separate council meetings shall not apply and only one (1) reading at one (1) City Council meeting shall be required for the final passage of an ordinance relating to:

- (1) The adoption of amendment of a budget;
- (2) The assessment, levy, or collection of taxes;
- (3) The calling of an election or the canvassing of the returns and declaration of the results of an election;
- (4) The incurring of indebtedness, including, specifically, the issuance or sale of bonds or certificates of obligation; and
- (5) An emergency.

In the event an ordinance is adopted as an emergency measure, the same shall be expressed in the title and the body of such ordinance. After adoption, an ordinance shall not be amended or repealed except by the adoption or another ordinance amending or repealing the original ordinance.

### **SECTION 3.13 - PUBLICATION OF ORDINANCES**

The city secretary shall give notice of the enactment of every ordinance imposing any penalty, such ordinance, or a descriptive caption thereof, to be published in the official newspaper of the City at least one time within twenty (20) days after final passage. The affidavit by the publisher filed with the city

secretary shall be conclusive proof of the legal publication and promulgation of such ordinance in all courts. Such ordinance shall take effect ten (10) days after the date of such publication, provided that any penal ordinance passed as an emergency measure shall take effect immediately upon publication.

### **SECTION 3.14 - CODE OF TECHNICAL REGULATIONS**

The City Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city secretary pursuant to Section 3.15 of this charter.

### **SECTION 3.15 - AUTHENTICATION AND RECORDING**

The city secretary shall authenticate all ordinances passed by the City Council by affixing the signature of the city secretary thereto and also shall record in full all ordinances passed by the City Council as well as all resolutions adopted by the City Council in a properly indexed book kept for that purpose. All ordinances and resolutions shall be numbered numerically and consecutively in the order in which passed and adopted.

### **SECTION 3.16 - CODE OF ORDINANCES**

Within three (3) years after the adoption of this charter, the City Council shall cause all general ordinances of the City to be compiled and printed in code form. For the purpose of this section, general ordinances shall be deemed to be those ordinances of a permanent nature which affect the residents of the City at large. Every general ordinance enacted subsequent to the original codification required above shall be enacted as an amendment to the code. After the original codification, the City Council shall have the power to cause all general ordinances to be recodified and reprinted whenever in its discretion such is deemed desirable, and it shall be mandatory upon the City Council to cause all general ordinances to be recodified and reprinted before the expiration of any ten (10) consecutive years following the last preceding codification or recodification. When adopted by the City Council, the printed codes of general ordinances contemplated by this section shall be known and cited officially as the Sealy City Code and shall be in full force and effect without the necessity of such codes or any part thereof being published in any newspaper, unless otherwise required by law. The caption, descriptive clause, and other formal parts of the ordinances of the City may be omitted without affecting the validity of such ordinances when they are published as a code. Copies of the code shall be furnished to the city officers, placed in any city library for free reference, and made available for purchase by the public at a reasonable price.

## **SECTION 3.17 - PROOF OF ORDINANCE**

An ordinance of the City may be proved prima facie by a printed code of ordinances purporting to be printed by authority of the City, or by a copy of the ordinance certified by the city secretary to be a true copy of the same, or by the city secretary's record thereof.

## **ARTICLE IV**

### **ADMINISTRATIVE SERVICES**

#### **SECTION 4.01 - CITY MANAGER**

**A. Appointment, qualification, and compensation.** The City Council, by majority vote of the entire City Council, shall appoint a city manager who shall be the chief administrative and executive officer of the City. The method of selection shall be left to the discretion of the City Council so long as the method insures orderly, nonpartisan action toward securing a competent and qualified person to fill the position. The city manager shall be chosen solely upon the basis of executive and administrative training, experience, and ability and need not be a resident of the City of Sealy when appointed; however, during the city manager's tenure of office, he or she shall reside within the City. The city manager shall receive such compensation as may be fixed by the City Council. No member of the City Council shall, during the term of office or for one (1) year thereafter, be appointed city manager.

**B. Term and removal.** The city manager shall not be appointed for a definite term but may be removed at the discretion of the City Council, by majority vote of the entire City Council. The action of the City Council in suspending or removing the city manager shall be final. It is the intention of this charter to vest all authority and fix all responsibilities of such suspension or removal in the City Council.

**C. Powers and duties.** The city manager shall be responsible to the City Council for the proper administration of all affairs of the City and to that end shall have the power and be required to:

- (1) Ensure that all State laws and City ordinances are effectively enforced.
- (2) Except as prohibited by this charter, the city manager shall appoint, suspend, or remove all or any one of the directors of

departments of the City with the concurrence of the Council; and he shall have the authority to employ, suspend, or discharge all other employees of the City.

- (3) Attend all meetings of the City Council, except when excused by City Council.
- (4) Prepare the budget annually and file it with the city secretary and be responsible for its administration after its adoption.
- (5) Prepare and submit to the City Council at the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding year.
- (6) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as he or she deems advisable.
- (7) Perform such other duties as may be prescribed by this charter or required by the City Council, not inconsistent with this charter.

**D.** In case of the absence or disability of the city manager, the City Council may designate a qualified person to perform the duties of the office of city manager during such absence or disability.

## **SECTION 4.02 - ATTORNEY FOR THE CITY**

The City Council shall appoint as the attorney for the City (referred to as city attorney) a competent and duly qualified attorney who is licensed to practice law in the State of Texas. The city attorney shall receive for services such compensation as may be fixed by the City Council and shall hold the office at the pleasure of the City Council. The city attorney shall be the legal advisor of, and the attorney for, all of the offices and departments of the City, and shall represent the City in all litigation and legal proceedings; provided, that the City Council may retain special legal counsel for any purpose and at any time it shall deem same appropriate and necessary. The city attorney shall perform other duties prescribed by this charter, ordinance, or as directed by City Council. There shall be such assistant city attorneys as may be authorized by the City Council and appointed by the city attorney and who shall receive such compensation as may be fixed by the City Council.

## **SECTION 4.03 - MUNICIPAL COURT**

A. There shall be established and maintained a court, designated as a “municipal court” for the trial of misdemeanor offenses, with all such jurisdiction, powers, and duties as are now, or may hereafter be prescribed by the laws of the state relative to municipal courts.

B. The municipal court shall be presided over by a magistrate who shall be known as the “Judge of the Municipal Court.” The City Council may, by ordinance, divide the municipal court into two (2) or more panels or divisions, one of which shall be presided over by the presiding judge. Each additional panel or division shall be presided over by an associate judge, who is a magistrate with the same powers as the presiding judge. The judge or judges for said court shall be appointed by City Council for a term of three (3) years to run concurrent with the term of the Mayor, but any judge may be removed or replaced at any time at the discretion of the City Council, with or without cause, by majority vote of the entire City Council. Each judge shall receive such salary as may be fixed by the City Council.

C. There shall be a clerk of said court and such deputy clerks as may be authorized by the City Council and appointed by the city manager.

D. The clerk and deputy clerks of said court shall have the power to administer oaths and affidavits, make certificates, affix the seal of said court thereto, and generally do and perform any and all acts usual and necessary to be performed by clerks of court in issuing process of said court, and conducting the business thereof.

E. In case of the disability or absence of the judge of the municipal court, the City Council shall appoint a qualified person to act as judge of the municipal court.

## **SECTION 4.04 - CITY SECRETARY**

There shall be a city secretary who shall be appointed by the city manager with concurrence of the City Council. There shall be an assistant city secretary if authorized by the City Council and appointed by the city manager who shall act in the absence of the city secretary. The city secretary and assistant, if any, shall act as the secretary to the City Council.

The city secretary shall:

- (1) Attend all meetings of the City Council and keep accurate records of all actions taken by the Council;

- (2) Maintain the official records and files of the City;
- (3) Administer oaths;
- (4) Attest contracts, certificates, and other legal instruments when executed by the authorized officers of the City;
- (5) Serve as the election official for all City elections; and
- (6) Perform such other duties as may be required of the city secretary by this charter, the City Council or State law.

## **SECTION 4.05 - ADMINISTRATIVE DEPARTMENTS**

There shall be such administrative departments as are established by this charter and as may be established by ordinance. Except as otherwise provided in this charter, these administrative departments shall be under the direction of the city manager.

The City Council shall have power by ordinance to establish administrative departments or offices not herein provided. The Council may discontinue, redesignate, or combine any of the departments and/or administrative offices. No changes shall be made by the City Council in the organization of the administrative service of the City until the recommendations of the city manager thereon shall have been heard by the City Council.

The head of each department shall be a director, who shall have supervision and control over his or her department. Two (2) or more departments may be headed by the same individual, and the city manager may head one (1) or more departments.

## **ARTICLE V**

### **ELECTIONS**

#### **SECTION 5.01 - MUNICIPAL ELECTIONS**

All City elections shall be held in accordance with State law regulating the holding of municipal elections and in accordance with the ordinances adopted by the City Council for the conduct of elections. The City Council shall appoint the election judges and other election officials. Voting precincts shall be established by the City Council by ordinance and may be altered from time to time in like manner and in accordance with the State law applicable to elections in municipalities.

## **SECTION 5.02 - QUALIFICATIONS OF VOTERS**

All residents of the City of Sealy who shall have qualified to vote in accordance with the provisions of the Texas Election Code shall have the right to vote in all City elections.

## **SECTION 5.03 - ELECTION OF MAYOR AND COUNCILMEMBERS**

The regular City officers' election shall be held as prescribed by state law.

**A. Elections prior to adoption of charter.** The terms of the Mayor and all Councilmembers elected to their positions prior to the effective date of this charter shall expire at the conclusion of the term for which such person was elected prior to the effective date of this charter.

**B. Election of Mayor.** The Mayor shall be elected at the general election which the City Council shall properly call to be held on the first Saturday in May, 1996, and shall serve until the general election which the City Council shall properly call to be held on the first Saturday in May, 1999, or until a successor has been elected and shall have qualified. Thereafter, elections hereunder for the position of Mayor shall be properly called by the City Council to be held on the first Saturday in May every third year thereafter. The Mayor shall serve for a term of three (3) years concluding with the election and qualification of a successor.

**C. Election of Councilmember Position One.** Councilmember Position One shall be elected at the general election which the City Council shall properly call to be held on the first Saturday in May, 1996, and shall serve until the general election which the City Council shall properly call to be held on the first Saturday in May, 1999, or until a successor has been elected and shall have qualified. Thereafter, elections hereunder for Councilmember Position One shall be properly called by the City Council to be held on the first Saturday in May every third year thereafter. The Councilmember Position One shall serve for a term of three (3) years concluding with the election and qualification of their successors.

**D. Election of Councilmember Positions Three and Six.** Councilmember Positions Three and Six shall be elected at the general election which the City Council shall properly call to be held on the first Saturday in May, 1996, and shall serve until the general election which the City Council shall properly call to be held on the first Saturday in May, 1998, or until their respective successors have been elected and shall have qualified. Thereafter, elections

hereunder for Councilmember Positions Three and Six shall be properly called by the City Council to be held on the first Saturday in May every third year thereafter. Councilmember Positions Three and Six shall serve an initial term of two (2) years and thereafter shall serve for a term of three (3) years, each such term concluding with the election and qualification of their successors.

**E. Election of Councilmember Positions Two, Four, and Five.**

Councilmember Positions Two, Four, and Five, when and after this charter becomes effective, shall be elected at the general election held on the first Saturday in May, 1997, and shall serve until the general election which the City Council shall properly call to be held on the first Saturday in May, 2000, or until their respective successors have been elected and shall have qualified. Thereafter, elections hereunder for Councilmember Positions Two, Four, and Five shall be properly called by the City Council to be held on the first Saturday in May every third year thereafter. The Councilmember Positions Two, Four, and Five shall serve for a term of three (3) years concluding with the election and qualification of their successors.

**SECTION 5.04 - SPECIAL ELECTIONS**

The City Council may by ordinance call such special elections as are authorized by State law and this charter, fix the time and places for holding such elections, and shall provide all means for holding same.

**SECTION 5.05 - ELECTION BY MAJORITY AND RUN-OFF ELECTION**

At the first election held under this charter, and thereafter at every City officer's election, the election to each office shall be by a majority of all the votes cast at such election for the respective office. In every such election each qualified voter shall vote for not more than one (1) candidate for each office to be filled. In an election to the office of Mayor or Councilmember, where no candidate receives a majority of all the votes cast for such office at such election, the City Council shall, immediately upon declaring the official results of the election, issue a call for a run-off election for every office to which no one was elected. Such run-off election shall be on such date as established by law. In such run-off election the two (2) candidates who received the highest number of votes for such office shall be voted on again, and the candidate who receives the majority of the votes for such office in the run-off election shall be elected to such office.



## **SECTION 5.06 - FILING BY CANDIDATES**

Any qualified person who desires to become a candidate for election to an office on the City Council shall file with the city secretary not later than 5:00 p.m. of the date prescribed by State Law. An application for the persons name to appear on the ballot, and therein the candidate shall clearly designate either that the candidate desires to run for Mayor or that the candidate desires to run for Councilmember; and if the candidate desires to run for Councilmember, then the candidate must clearly designate by position the office on the Council to which the candidate seeks election. A Councilmember is not prohibited by this charter from filing as a candidate for and seeking election to the office of Mayor; however, a Councilmember shall not be eligible to seek election to a council position other than the position such Councilmember occupies. No person shall be a candidate for more than one (1) elected office at the same City election. The application shall contain a sworn statement by the candidate that the candidate is fully qualified and eligible under the laws of this State and the provisions of this charter to hold the office sought. An application may not be filed earlier than the thirtieth day before the filing deadline. An application filed by mail is considered to be filed at the time of its receipt by the city secretary.

## **SECTION 5.07 - BALLOTS**

For every regular election and every special election called to fill one (1) or more vacant office on the City Council, the city secretary shall place upon the official ballot the name of each candidate, except such as may have withdrawn, died, or become ineligible, who has filed an application which complies with the Texas Election Code. The City Council offices to be filled shall be placed on the ballot in numerical or alphabetical order. The name of each candidate shall be placed on the ballot under the designated office for which the candidate shall have filed, and in such manner that the full names of the candidates for each office shall be clearly separate and distinguishable from the names of the candidates for every other council office. The order on the ballot of the names of the candidates for each respective council office shall be determined by lot in a drawing to be held under the supervision of the city secretary, at which drawing each candidate or the candidate's named representative shall have a right to be present.

## **SECTION 5.08 - CANVASSING ELECTION AND DECLARING RESULTS**

The City Council shall convene to conduct the canvass of the returns in the timeframe as set forth in state law,

## **ARTICLE VI**

### **INITIATIVE, REFERENDUM, AND RECALL**

#### **SECTION 6.01 - POWER OF INITIATIVE**

The qualified voters of the City reserve the power of direct legislation by initiative, and in the exercise of such power may propose any ordinance which is not in conflict with this charter, the State Constitution, or the laws of this State; provided, however, such power shall not extend to the budget or capital programs, ordinances relating to the appropriation of money, the levy of taxes, or the salaries of city officials or employees. Any initiated ordinance may be submitted to the City Council by a petition signed by qualified voters of the City equal in number to at least ten percent (10%) of the qualified voters of the City at the time of such submission.

#### **SECTION 6.02 - POWER OF REFERENDUM**

The qualified voters of the City reserve the power to approve or reject any ordinance enacted by the City Council which is subject to the initiative process under this charter and under the laws of this State, such power being known as the referendum. Ordinances submitted to the City Council by initiative petition and passed by the City Council without change shall be subject to the referendum in the same manner as other ordinances. Within ninety (90) days after the enactment by City Council of any ordinance which is subject to a referendum, a petition signed by qualified voters of the City equal in number to at least ten percent (10%) of the qualified voters of the City at the time of filing the petition may be filed with the city secretary requesting that any such ordinance be either repealed by the City Council or submitted to a vote of the people.

#### **SECTION 6.03 - FORM OF PETITION; COMMITTEE OF PETITIONERS**

All petitions circulating for purposes of an initiative or referendum shall be uniform in size and style. Each copy of an initiative or referendum petition shall contain the full text of the proposed ordinance, or the ordinance petitioned for referendum, including a descriptive caption, and names and addresses of the five (5) qualified voters who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. The signatures to an initiative or referendum petition need not be appended to a single copy of

the petition. Each signer of any copy of such petition shall sign only his or her name in ink or indelible pencil. For a petition signature to be valid, the petition must contain, in addition to the signature: the signer's printed name; the signer's voter registration number; the signer's residence address; and the date of signing. Attached to each copy of such petition, there shall be an affidavit of the circulator thereof that he or she, and he or she only, personally circulated the foregoing copy of such petition, that it bears a stated number of signatures, that all signatures appended thereto were made in his or her presence, and that he or she believes them to be the genuine signatures of the persons whose names they purport to be.

#### **SECTION 6.04 - FILING, EXAMINATION AND CERTIFICATION OF PETITIONS**

All copies of a petition comprising an initiative or referendum petition shall be assembled and filed with the city secretary as one instrument. Within thirty (30) days after a petition is filed, the city secretary shall determine that each copy of the petition has a proper statement of the circulator and whether the petition is validly signed by a sufficient number of qualified voters. The city secretary shall declare any copy of the petition entirely invalid which does not have attached thereto an affidavit signed by the circulator thereof. If a copy of the petition is found to be signed by more persons than the number of signatures certified by the circulator, the last signatures in excess of the number certified shall be disregarded. If a copy of a petition is found to be signed by fewer than the number certified, the signatures shall be accepted unless void on other grounds. After completing examination of the petition, the city secretary shall certify the results thereof to the City Council as its next regular meeting. If the city secretary shall certify that the petition is insufficient, the city secretary shall set forth in the certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of such finding.

#### **SECTION 6.05 - SUPPLEMENTAL PETITIONS**

An initiative petition may be supplemented once at any time within ten (10) days after the notification of insufficient signatures has been sent by the city secretary, by filing a supplemental petition as provided in case of an original petition. With regard to a referendum petition, the petitioners may file one supplementary petition by the deadline specified in Section 6.02 if the original petition contains a number of signatures that exceeds the required minimum number by ten percent (10%) or more and is received by the City Secretary not later than the 10th day before the date of the deadline. The city secretary shall, within five (5) regular business days after such supplement is filed, examine the supplemental petition, and if the petition be still insufficient, shall file his or her certificate to that effect and notify the committee of the petitioners of such

findings and no further action shall be had on such insufficient petition. The findings of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose, provided that any petition for referendum shall be filed within the time provided by Section 6.02.

## **SECTION 6.06 - EFFECT OF CERTIFICATION OF REFERENDUM PETITION**

When a referendum petition has been certified as sufficient by the city secretary, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless approved by the qualified voters of the City.

## **SECTION 6.07 - CONSIDERATION BY COUNCIL AND SUBMISSION TO ELECTORS**

When the City Council receives an authorized initiative petition certified by the city secretary to be sufficient, the City Council shall either:

A. Pass the initiated ordinance without amendment within sixty (60) days after the date of the certification to the City Council; or

B. Submit said initiated ordinance without amendment to a vote of the qualified voters of the City at a regular or special election to be held on the next authorized Uniform Election date; or

C. At such election submit to a vote of the qualified voters of the City such initiated ordinance without amendment, and an alternative ordinance on the same subject proposed by the City Council.

When the City Council receives an authorized referendum petition certified by the city secretary to be sufficient, the City Council shall reconsider the referred ordinance, and if upon such reconsideration such ordinance is not repealed, it shall be submitted to the qualified voters of the City at a regular or special election to be held on the next authorized Uniform Election date. Special elections on initiated or referred ordinances shall not be held more frequently than once each six (6) months, and no ordinance on the same subject as an initiated ordinance which has been defeated at any election may be initiated within two (2) years from the date of such election.

## **SECTION 6.08 - FORM OF BALLOT FOR INITIATED AND REFERRED ORDINANCES**

The ballot used in voting upon initiated or referred ordinances shall, as provided by the Texas Election Code, state the caption of the ordinance and to the left of the caption shall set forth on separate lines the words, "For" and "Against."

Where an initiated ordinance and an alternative ordinance proposed by the City Council are submitted, the ballot shall state the captions of each ordinance, clearly designating them "Ordinance No. 1" and "Ordinance No. 2," respectively, and shall set forth to the left of each caption on separate lines the words "For" and "Against." Any number of ordinances may be voted on at the same election in accordance with the provisions of this article. If a majority of the votes cast is in favor of a submitted ordinance, it shall thereupon be effective as an ordinance of the City.

## **SECTION 6.09 - RESULTS OF ELECTION**

If a majority of the qualified voters vote in favor of a proposed initiative ordinance, it shall thereupon be an initiative ordinance of the City. A referred ordinance which is not approved by a majority of the electors voting thereon shall thereupon be deemed repealed. If conflicting or alternative ordinances are approved by the electors at the same election, the one receiving the greatest number of affirmative votes shall prevail.

## **SECTION 6.10 - REPEALING ORDINANCES**

Initiative and referendum ordinances adopted or approved by the qualified voters may be amended or repealed by the City Council as in the case of other ordinances, provided however, that no ordinance adopted at the polls under the initiative shall be amended or repealed by the council within one (1) year of the adoption of said ordinance; and no ordinance repealed at the polls under the referendum shall be re-enacted by the Council within one (1) year of the repeal of said ordinance.

## **SECTION 6.11 - POWER OF RECALL**

The qualified voters of the City reserve the power to recall any elected official and may exercise such power by filing with the city secretary a petition, signed by qualified voters of the City equal in number to at least ten percent (10%) of the qualified voters of the City at the time of such filing, demanding the removal of such elected official. The petition shall be signed and verified in

the manner required for an initiative petition, shall contain a general statement of the grounds for which the removal is sought and one of the signers of each petition paper shall make an affidavit that the statements therein made are true.

## **SECTION 6.12 - RECALL ELECTION**

Within thirty (30) days after a recall petition is filed, the city secretary shall determine whether the same complies with the requisites of the charter and is validly signed by a sufficient number of qualified voters. The provisions of this charter regulating the validity, certification, and amendment of initiative petitions shall apply to recall petitions. If the petition is certified by the city secretary to be sufficient and the elected official whose removal is sought does not resign within five (5) days after the certification to the City Council, the City Council shall order and hold a recall election within sixty (60) days from such certification. Provided, however, if a regular City election is to be held within one hundred twenty (120) days, but not less than thirty (30) days, after such certification, the recall election shall be held at such regular election.

## **SECTION 6.13 - BALLOTS IN RECALL ELECTION**

Ballots used at recall elections shall conform to the following requirements:

- (1) With respect to each official whose removal is sought the question shall be submitted “shall (name of person) be removed from the office of (name of office) by recall?”
- (2) Immediately below each such question there shall be printed the following propositions, one above the other, in the order indicated:

“For the recall of (name of person)”

“Against the recall of (name of person)”

## **SECTION 6.14 - RESULTS OF RECALL ELECTION**

If a majority of the votes cast at a recall election shall be against the recall of the elected official named on the ballot, the official shall continue in office. If a majority of the votes cast at such an election shall be for the recall of the official named on the ballot, the official shall be deemed removed from office and the vacancy shall be filled as provided by Section 3.07 of this charter.

## **SECTION 6.15 - LIMITATION ON RECALLS**

No recall petition shall be filed against an elected official within six (6) months after such official takes office. An elected official subjected to a recall election and not removed thereby shall not be subjected to another recall election for a period of six (6) months.

## **ARTICLE VII**

### **FINANCIAL ADMINISTRATION**

#### **SECTION 7.01 - FISCAL YEAR**

The fiscal year of the City shall begin on the first day of October and end on the last day of September of each calendar year. The fiscal year established by this Section shall also constitute the budget and accounting year.

#### **SECTION 7.02 - ANNUAL BUDGET**

**A. Content.** The budget shall provide a complete financial plan of all City funds and activities and, except as required by State law or this charter, shall be in such form as the city manager deems desirable or the City Council may require. A budget message explaining the budget, both in fiscal terms and in terms of the work programs, shall be submitted with the budget. It shall outline the proposed financial policies of the City for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues, with reasons for such changes. It shall also summarize the City's debt position and include such other material as the city manager deems desirable. The budget shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year. The proposed budget expenditures shall not exceed the total of estimated income. The budget shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year, compared to the estimate for the budget year. It shall include in separate sections:

- (1) An itemized estimate of the expense of conducting each department, division and office.
- (2) Reasons for proposed increases or decreases of such items of expenditure compared with the current fiscal year.

- (3) A statement of the total probable income of the City from taxes for the period covered by the estimate.
- (4) Tax levies, rates, and collections for the preceding five (5) years.
- (5) An itemization of all anticipated revenue from sources other than the tax levy.
- (6) The amount required for interest on the City's debts, for sinking fund, and for any maturing serial bonds.
- (7) The total amount of outstanding City debts, with a schedule of maturities.
- (8) Such other information as may be required by the City Council.
- (9) Anticipated net surplus or deficit for the ensuring fiscal year of each utility owned or operated by the City, if any, and the proposed method of its disposition; subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached as appendices to the budget.
- (10) A Capital Program, which may be revised and extended each year to indicate capital improvements pending or in process of construction or acquisition, and shall include the following items:
  - a. A summary of proposed programs;
  - b. A list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
  - c. Cost estimates, method of financing, and recommended time schedules for each such improvement; and
  - d. The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

**B. Submission.** On or before the first day of August of each year, but not less than thirty (30) days before the City Council makes its tax levy for the fiscal year, the city manager shall file with the City Secretary a proposed



budget and an accompanying message.

**C. Public notice and hearing.** The City Council shall post in the City Hall and publish in the official newspaper a general summary of their proposed budget and a notice stating:

- (1) The time and place where copies of the message and budget are available for inspection by the public; and
- (2) The time and place, not less than fifteen (15) days after such publication, for a public hearing on the budget.

**D. Amendment before adoption.** After the public hearing, the City Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service.

**E. Adoption.** The City Council shall adopt the budget by ordinance on one reading on or before the thirtieth (30th) day of September of each year. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated.

**F. Failure to adopt.** If the City Council fails to adopt the budget by the first (1st) day of October of each year the amounts appropriated for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis with all items in it prorated accordingly until such time as the City Council adopts a budget for the ensuing fiscal year.

## **SECTION 7.03 - AMENDMENTS AFTER ADOPTION**

**A. Supplemental appropriations.** If during the fiscal year the City manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the City Council by ordinance may make supplemental appropriation for the year up to the amount of such excess.

**B. Emergency appropriations.** The city council may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. These amendments shall be by ordinance, and shall become an attachment to the original budget.

**C. Insufficient appropriations.** If at any time during the fiscal year it appears probable to the city manager that the revenues available will be insufficient to meet the amount appropriated, he or she shall report to the City Council without delay, indicating the estimated amount of the deficit, any remedial action taken and recommendations as to any other step to be taken. The City Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may by ordinance reduce one or more appropriations.

**D. Transfer of appropriations.** At any time during the fiscal year the city manager may transfer part or all of any unencumbered appropriations balance among programs within a department, division, or office and, upon written request by the city manager, the City Council may by ordinance transfer part or all of any unencumbered appropriation balance from one department, office, or agency to another.

#### **SECTION 7.04 - LAPSE OF APPROPRIATIONS**

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or unencumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned.

#### **SECTION 7.05 - ADMINISTRATION OF BUDGET**

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the city manager or his designee first certified that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this charter shall be void and any payments so made illegal. However, this prohibition shall not be construed to prevent the making or authorizing the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is authorized by law and approved by City Council.

#### **SECTION 7.06 - POWER TO BORROW MONEY**

The City shall have the power to borrow money on the credit of the City for any public purpose not now or hereafter prohibited by the Constitution and laws of the State of Texas, and shall have the right to issue all tax bonds, revenue bonds, funding and refunding bonds, time warrants, certificates of obligation and other evidence of indebtedness as now authorized or as may

hereafter be authorized to be issued by any City under and in accordance with the restrictions, conditions, and laws of the State of Texas. Such power shall include the authority to issue bonds, warrants, certificates of obligation and other evidence of indebtedness payable from revenues other than taxation for any purpose permitted by the laws of the State of Texas.

### **SECTION 7.07 - INDEPENDENT AUDIT**

At the close of each fiscal year, and at such times as it may be deemed necessary, the City Council shall cause an independent audit to be made of all accounts of the City by a certified public accountant. The certified public accountant so selected shall have no personal interest, directly or indirectly in the financial affairs of the City or any of its officers. Upon completion of the audit, the results thereof in a summary form shall be placed on file in the City Secretary's office as a public record.

### **SECTION 7.08 - POWER TO TAX**

The City Council shall have the power, and is hereby authorized to levy, assess, and collect annual taxes not to exceed the maximum limits set by the Constitution and laws of the State of Texas as they now exist, or as they may be amended, on each \$100 assessed valuation of all property having a situs within the corporate limits of the City and not exempt from taxation by the Constitution and laws of the State of Texas.

## **ARTICLE VIII**

### **FRANCHISES AND PUBLIC UTILITIES**

#### **SECTION 8.01 - INALIENABILITY OF CONTROL OF PUBLIC PROPERTY**

The right of control and use of the public streets, highways, sidewalks, alleys, parks, public squares, and public places of the City is hereby declared to be inalienable by the City, except by ordinance not in conflict with the provisions of this charter. No act or omission by the City Council of an officer or agent of the City shall be construed to grant, renew, extend, or amend, expressly or by estoppel or implication, any right, franchise, or easement affecting such public streets, highways, sidewalks, alleys, parks, public squares, public places, and other real property, except as provided in this charter.

#### **SECTION 8.02 - POWER TO GRANT FRANCHISE**

The City Council shall have the power by ordinance to grant, renew, and

extend all franchises of all public utilities of every character operating within the City and, with the consent of the franchise holder, to amend the same. Provided, however, that no franchise shall be granted for an indefinite term or for a term of more than thirty (30) years. No exclusive franchise shall ever be granted.

### **SECTION 8.03 - ORDINANCE GRANTING FRANCHISE**

Every ordinance granting, renewing, extending, or amending a public utility franchise shall be presented at two (2) regular meetings of the City Council and shall not be finally acted upon until thirty (30) days after the first presentation thereof. Within seven (7) days following each of the two presentations of the ordinance, a descriptive caption of the ordinance stating in summary the purpose of the ordinance shall be published one time in the official newspaper of the City, and the expense of such publication shall be borne by the prospective franchise holder.

### **SECTION 8.04 - TRANSFER OF FRANCHISE**

No public utility franchise shall be transferred by the holder thereof except with the approval of the City Council expressed by ordinance.

### **SECTION 8.05 - FRANCHISE VALUE NOT ALLOWED**

In fixing reasonable rates and charges for public utility service within the City and in determining the just compensation to be paid by the City for public utility property which the City may acquire by condemnation or otherwise, nothing shall be included as the value of any franchise by the City under this charter.

### **SECTION 8.06 - REGULATION OF FRANCHISE**

Every grant, renewal, extension, or amendment of a public utility franchise, whether so provided in the ordinance or not, shall be subject to the right of the Council:

A. To forfeit any such franchise by ordinance at any time for failure of the holder thereof to comply with the terms of the franchise. Such power shall be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise and setting a reasonable time for the correction of such failure, and shall be exercised only after hearing and after such reasonable time has expired.

B. To impose reasonable regulations to insure safe, efficient, and continuous service to the public.

C. To require such expansion, extension, enlargement, and improvement of plants and facilities as are necessary to provide adequate service to the public.

D. To require every franchise holder to furnish to the City, without cost to the City, full information regarding the location, character, size, length, and terminals of all facilities of such franchise holder in, over, and under the streets, alleys, and other public properties of the City, and to regulate and control the location, relocation, and removal of such facilities.

E. To collect from every public utility operating in the City such proportion of the expense of excavating, grading, paving, repaving, reconstructing, draining, repairing, maintaining, lighting, sweeping, and sprinkling the streets, alleys, ridges, culverts, viaducts, and other public places of the City as represent the increased cost of such operation resulting from the occupancy of such public places by such public utility, and such proportion of the cost of such operations as results from the damage to or the disturbance of such public places caused by such public utility; or to compel such public utility to perform at its own expense, such operations as above listed which are made necessary by the occupancy of such public places by such utility or by damage to or disturbance of such public places caused by such public utility.

F. To require every franchise holder to allow other public utilities to use its poles and other facilities, including bridges and viaducts, whenever in the judgment of the City Council such use shall be in the public interest, provided that in such an event a reasonable rental shall be paid such owner of the facilities for such use. Provided further, that inability of such public utilities to agree upon rental facilities shall not be an excuse for failure to comply with such requirement by the City Council.

- G. (1) To require the keeping of accounts in such form as will accurately reflect the value of the property of each franchise holder which is used and useful in rendering its service to the public and the expenses, receipts, and profits of all kind of such franchise holder.
- (2) To examine and audit at any time during business hours the accounts and other records of any franchise holder.
- (3) To require reports on the operation of the utility, which shall be in such form and contain such information as the City Council shall prescribe.

H. To require that the public utility give notice to any subscriber to its service prior to the permanent or temporary discontinuance or disruption of such service by the public utility, except in cases of emergency, and to require that no officer, agent, servant, or employee of the public utility nor any vehicles or equipment under their control shall make use of, go upon or across any private property in the City without first obtaining the permission of the owner or occupant of such property, except in cases of emergency, and to provide a penalty for the violation of such requirements.

I. To impose such other reasonable regulations, restrictions, requirements, and conditions as may be deemed necessary or desirable to promote the health, safety, welfare, or accommodations of the public.

### **SECTION 8.07 - FRANCHISE RECORDS**

Within six (6) months after the effective date of this charter every public utility operating in the City and every owner of public utility franchise within the City shall file with the City Secretary certified copies of all franchises owned or claimed or under which such utility is operating in the City. The City shall compile and maintain a public record of public utility franchises.

### **SECTION 8.08 - REGULATION OF RATES**

The City Council shall have full power after notice and hearing to regulate by ordinance the rates, charges, and fares of every public utility franchise holder operating in the City, to the extent permitted by law. Every franchise holder who shall request an increase in rates, charges, or fares shall have, at the hearing of the City Council called to consider such request, the burden of establishing by clear, competent, and convincing evidence the value of its investments properly allowable to service in the City, and the amount and character of its expenses and revenues connected with the rendering of such service. If upon such hearing, the City Council is not satisfied with the sufficiency of the evidence so furnished, it shall be entitled to call upon such public utility for the furnishing of additional evidence at a subsequent date to which said hearing may be adjourned. No public utility franchise holder shall institute any legal action to contest any rate, charge, or fare fixed by the City Council until such franchise holder has filed a motion for rehearing with the City Council for a specific date setting out each ground of its complaint against the rate, charge, or fare fixed by the City Council, and until the City Council shall have acted upon such motion. Such motion shall be deemed overruled unless acted upon by the City Council within a reasonable time, not to exceed ninety (90) days from the filing of such motion for rehearing; provided, that the City Council may by resolution extend

such time limit for acting on said motion for rehearing from ninety (90) days to one hundred eighty (180) days.

## **SECTION 8.09 - ACCOUNTS OF MUNICIPALLY-OWNED UTILITIES**

Accounts shall be kept for each public utility owned or operated by the City, in such a manner as to show the true and complete financial results of such City ownership and operation, including: assets, appropriately subdivided into different classes; all liability subdivided by classes; depreciation reserve and other reserves; surplus; revenues; operating expenses, including depreciation, interest payments, and rental; and other disposition of annual income. The accounts shall show the actual capital cost to the City of each public utility owned, also the cost of all extensions, additions, and improvements and the source of the funds expended for such capital purposes. They shall show as nearly as possible the cost of any service furnished to or rendered by any such utility to any other city or governmental department. The City Council shall annually cause to be made, by a certified public accountant, a report showing the financial condition of said public utility and the financial result of such City ownership and operations, giving the information specified in this section and such additional data as the City Council shall deem expedient.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

#### **SECTION 9.01 - PUBLIC RECORDS**

All public records of every office, department, agency or other entity of the city shall be open to inspection by any citizen at all reasonable times; provided that any records not required by law to be available for public inspection shall not be considered public records for the purpose of this section.

#### **SECTION 9.02 - OFFICIAL NEWSPAPER**

The City Council shall have power to contract with, and by ordinance or resolution designate, a public newspaper of general circulation in the City as the official newspaper thereof and to continue as such until another is designated, and shall cause to be published therein all ordinances, notices and other matters required to be published by this charter, by the ordinances of the City, or by the Constitution or laws of the State of Texas.

### **SECTION 9.03 - TORT LIABILITY**

Before the City shall be liable for damages for the death or personal injuries of any person or for damages to or destruction of property of any kind which does not constitute a taking or damaging of property under Article 1, Section 17, Constitution of the State of Texas, the person injured, if living, or his legal representatives, if deceased, or the parent or guardian of a minor child, or the owner, his agent or attorney of the property damaged or destroyed, shall give the city manager notice in writing of such death, injury, damage, or destruction, duly verified by affidavit, within six months after same has been sustained, stating specifically in such written notice when, where and how the death, injury, damage, or destruction occurred, and the apparent extent of any such injury, the amount of damages sustained, the actual residence of the claimant by street and number at the date the claim is presented, the actual residence of such claimant for six months immediately preceding the occurrence of such death, injury, damage, or destruction, and the names and addresses of all witnesses upon whom it is relied to establish the claim for damages. The failure to so notify the city manager within the time and manner specified herein shall exonerate, excuse, and exempt the City from any liability whatsoever. No act of any officer, employee or agent of the City shall waive compliance, or preclude the City from requiring compliance, with the provisions of this section as to notice.

### **SECTION 9.04 - ASSIGNMENT, EXECUTION AND GARNISHMENT**

The property, real and personal, belonging to the City shall not be liable for sale or appropriation under any writ of execution. The funds belonging to the City, in the hands of any person, firm or corporation, shall not be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the city nor any of its officers, employees or agents shall be required to answer any such writ of garnishment on any account whatever. The City shall not be obligated to recognize any assignment of wages or funds by any of its officers, employees, agents, or contractors.

### **SECTION 9.05 - SECURITY OR BOND NOT REQUIRED**

It shall not be necessary in any action, lawsuit, or proceeding, in which the City shall be a party, for any bond, undertaking or security to be executed on behalf of the City; but all actions, lawsuits, and proceedings shall be conducted in the same manner as if such bond, undertaking or security had been given. The City shall have all remedies by appeal, as provided by law, to all courts of



this State without bond or security of any kind. For all the purposes of such actions, lawsuits, proceedings, and appeals, the City shall be liable in the same manner, and to the same extent, as if the bond, undertaking or security in ordinary cases had been given and executed.

### **SECTION 9.06 - PERSONAL INTEREST IN CITY BUSINESS**

No member of the City Council or employee of the City shall personally engage in any business with the City nor shall have any financial interest, direct, or indirect, in any commercial entity doing business with the City without making disclosure thereof. Any willful violation of this section shall constitute malfeasance in office, and any such City Council member or City employee guilty thereof shall thereby forfeit his position or employment. Any violation of this section with the express or implied knowledge of the person or entity doing business with the City shall render the contract voidable by the City Council.

### **SECTION 9.07 - OFFICIAL OATH**

Before entering upon the duties of their respective offices, all officers of the City shall take and subscribe the official oath prescribed in the Constitution of the State of Texas.

### **SECTION 9.08 - BONDS**

City Council shall require bonds of all municipal officers and employees who receive or pay out any monies of the City. The amount of such bonds shall be determined by City Council and the cost thereof borne by the City.

### **SECTION 9.09 - JUDICIAL NOTICE**

This charter shall be deemed a public act; shall have the force and effect of a general law; may be read in evidence without pleading or proof; and judicial notice shall be taken hereof in all courts and places without further proof.

### **SECTION 9.10 - SEVERABILITY CLAUSE**

If any section or part of a section of this charter is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not invalidate or impair the validity, force, or effect of any other section or part of a section of this charter.

## **SECTION 9.11 - EFFECT OF HEADINGS AND NUMERATION**

All headings and numeration in this charter for its respective articles, sections, and subsections are provided for the sole purpose of convenient reference, and shall have no substantive legal effect.

## **SECTION 9.12 - CHARTER AMENDMENT**

This charter may be amended in accordance with the Constitution and laws of the State of Texas.

## **SECTION 9.13 - CHARTER REVIEW COMMISSION**

The City Council shall, at its first regular meeting in July two (2) years after adoption of this charter then every five (5) years thereafter, appoint a charter review commission of five (5) citizens of the City.

### **A. Duties of the commission.**

- (1) Inquire into the operation of the City government under the charter provisions and determine whether any such provisions require revision. To this end public hearings may be held; and the commission shall have the power to compel the attendance of any official or employee of the City and require the submission of any of the City records which it may deem necessary to the conduct of such hearing.
- (2) Propose any recommendation it may deem desirable to ensure compliance with the provisions of the charter by the several departments of the City government.
- (3) Propose, if it deems desirable, amendments to this charter to improve the effective application of the charter to current conditions.
- (4) Report its findings and present its proposed amendments, if any, to the City Council.

**B. Actions by the City Council.** The City Council shall receive and have published in the designated official newspaper of the City any report presented by the charter review commission; shall consider any recommendations made and may submit proposed charter amendments to the qualified voters of the City in the manner provided by the Texas Local

Government Code, as now or hereafter amended.

**C. Term of office.** The term of such charter review commission shall be six (6) months or a longer term if extended by City Council, and at the completion of such term a report shall be presented to the City Council, and all records of the proceedings of such commission shall be filed with the City Secretary and shall become a public record.

## **ARTICLE X**

### **TRANSITIONAL PROVISIONS**

#### **SECTION 10.01 - SCHEDULE**

A. This charter shall take effect upon adoption by the qualified voters of the City.

B. The ballot of the regular election scheduled for the first Saturday in May 1996, shall provide for the election of Mayor and Councilmember Positions One, Three, and Six. If this charter is adopted, the Mayor and the Councilmember elected to Position One shall serve three-year terms and, thereafter, the election hereunder for Mayor and Councilmember Position One shall be held on the first Saturday in May every third year. If this charter is adopted, Councilmembers elected to Positions Three and Six shall serve an initial term of two (2) years and, beginning with the regular election scheduled for the first Saturday in May 1998, the Councilmembers elected to Positions Three and Six shall serve three-year terms and, thereafter, the election hereunder for Councilmember Positions Three and Six shall be held on the first Saturday in May every third year. If this charter is not adopted, the Mayor and Councilmembers elected to Positions One and Three shall serve two-year terms and no person shall be elected to Councilmember Position Six.

C. If this charter is adopted, Councilmember Positions Two, Four, and Five shall retain their designation as Councilmember Position Two, Councilmember Position Four, and Councilmember Position Five, respectively.

D. It is provided that on the ballot of the regular election scheduled for the first Saturday in May, 1997, the ballot will provide for the election of City Councilmember Positions Two, Four, and Five. The Councilmembers elected to Positions Two, Four, and Five shall serve three-year terms and thereafter the election hereunder for Councilmember Positions, Four, and Five shall be held on the first Saturday in May of every third year.

E. The members of City Council at the time of adoption of this

charter shall have all the powers and duties granted in this charter.

F. The limitations prescribed in Section 3.03 of Article III of this charter shall apply to all persons elected or appointed to a three-year term of office in 1996 and thereafter, but will not include terms of office which began prior to the adoption of this charter or the initial two-year term of office of Councilmember Positions Three and Six.

G. All boards, commissions, and committees in existence on the effective date of this charter, and not in conflict with the provisions thereof, may continue in existence on the effective date of this charter.

**SECTION 10.02 - APPOINTIVE OFFICIALS AND EMPLOYEES**

Nothing in this charter, except as may be specifically provided otherwise, shall affect or impair the rights or privileges of persons who are appointive officials or employees of the City at the time of its adoption.

**SECTION 10.03 - EFFECT OF THE CHARTER ON EXISTING LAW**

A. All codes, ordinances, resolutions, rules, and regulations in force in the City on the effective date of this charter, and not in conflict with the provisions thereof, shall remain in force until altered, amended, or repealed by the City Council. Any code, ordinance, resolution, rule, or regulation which conflicts with the provisions of this charter is repealed to the extent that it is inconsistent or will interfere with the effective operation of this charter or ordinances enacted pursuant thereto.

B. All taxes, assessments, liens, encumbrances, and demands, of or against the City, fixed or established before the effective date of this charter, or for the fixing or establishing of which proceedings had begun prior to such date, shall be valid when properly fixed or established under the law in force at the time of the beginning of such proceedings or under the law after adoption of this charter.

**SECTION 10.04 - PENDING MATTERS**

All rights, claims, actions, orders, contracts, franchises, and legal or administrative proceedings in existence or pending on the effective date of this charter shall continue until consummation. All new or renewal rights, claims, actions, orders, contracts, franchises, and legal or administrative proceedings initiated after the effective date of this charter shall conform to the requirements and provisions thereof.

## **SECTION 10.05 - SUBMISSION OF THE CHARTER TO THE VOTERS**

The charter commission in preparing this charter concludes that it is impracticable to segregate each subject so as to permit a vote of "yes" or "not" on the same, for the reason that the charter is so constructed that in order to enable it to work and function it is necessary that it should be adopted in its entirety. For these reasons, this charter commission directs that the charter be voted upon as a whole and that it shall be submitted to the qualified voters of the City at an election to be held on May, 1996. Not less than thirty (30) days prior to that election, the City Council shall cause the City Secretary to mail a copy of this charter to each qualified voter of the City as appears from the latest certified list of qualified voters. If a majority of the qualified voters voting in the election shall vote in favor of the adoption of this charter, it shall become the charter of the City and after the returns have been canvassed, the same shall be declared adopted and the City Secretary shall file an official copy of the charter with the records of the City.