

City of Dimmitt, Texas

Charter

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PREAMBLE

We, the people of the City of Dimmitt, exercising the powers of home rule granted to us by the Constitution and Statutes of the State of Texas, in order to provide for a more progressive, efficient, adequate and economical government, do hereby ordain, adopt, and establish this Charter of the City of Dimmitt, Texas.

ARTICLE I. INCORPORATION, FORM OF GOVERNMENT, AND BOUNDARIES

Section 1.01. Incorporation.

The inhabitants of the City of Dimmitt, Castro County, Texas residing within its corporate limits as heretofore or 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 Dimmitt," hereinafter referred to as the "city" with such powers, privileges, rights, duties and immunities as are herein provided.

Section 1.02. Form of government.

The municipal government provided by this charter shall consist of a mayor and council members, elected by the people and responsible to the people, and a city manager, appointed by and responsible to the council for proper administration of the affairs of the city. Pursuant to its provisions and subject only to the limitations imposed by the state constitution and by this charter, all powers of the city shall be vested in the elected mayor and council members, who shall enact local legislation, adopt budgets, and determine policies. All powers of the city shall be exercised in the manner prescribed by this charter, or if not prescribed, then as may be prescribed by ordinance.

Section 1.03. Boundaries.

The boundaries of the city as they exist at the time this charter goes into effect shall be and remain the boundaries of the city until they are changed in a manner authorized by this charter or by general law of the state.

ARTICLE II. POWERS OF THE CITY

Section 2.01. General powers.

The city shall have all the powers granted to cities by the constitution and laws of the State of Texas together with all of the implied powers necessary to execute such granted powers. The city may use a corporate seal: may sue and be sued; may contract and be contracted with: may cooperate with the government of the State of Texas or any agency or any political subdivision thereof or with the federal government or any agency thereof,

to accomplish any lawful purpose for the advancement of the interest, welfare, health, morals, comfort, safety, and convenience of the city and its inhabitants; 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, device, 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; may pass ordinances and enact such regulations as may be expedient for the maintenance of good government, order and peace of the city and the welfare, health, morals, comfort, safety, and convenience of its inhabitants. The powers hereby conferred upon the city shall include, but are not restricted to, due powers conferred expressly in, permissively by Chapter 147, page 307, of the Acts of the 33rd Legislature, Regular Session, enacted in 1913 pursuant to the Home Rule Amendment of the Constitution of Texas, known as the Enabling Act as codified in the Local Government Code, Vernon's Annotated Civil Statutes of Texas as now 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 state constitution, the state law, and 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 Texas, the people of the city are empowered by election to grant or confer upon the city by expressly and specifically granting and enumerating the same herein.

Section 2.02. Change of boundaries and annexation of territory.

The 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 inhabitants or owners of the territory to be annexed. The 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 Chapter 160, Page 447, Acts of 1963, 58th legislature, as the same is now or may hereafter be amended, entitled the Municipal Annexation Act, as codified in Chapter 43 of the Local Government Code, Vernon's Annotated Civil Statutes of Texas; and upon the final passage of any such ordinance, the corporate limits of the city shall thereafter include the territory so annexed; and when any additional territory has been so annexed, same shall be a part of the city and the property situated therein shall bear its pro rata part of the taxes levied by the city, 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. In addition to the power to annex all additional property for all purposes, the city shall have the power by ordinance to fix, alter and extend the corporate boundary limits of the city for the limited purposes of planning and zoning and sanitation and health protection.

Section 2.03. Eminent domain.

The city shall have the full right, power, and authority to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this charter, or by the constitution or laws of the State of Texas. The city may exercise the power of eminent domain in any other manner authorized or permitted by the constitution and laws of this state, or in time manner and form that shall be provided by ordinance of the governing body of the city. The power of eminent domain hereby conferred shall include the right of the city to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes. The city shall have and possess this power for condemnation for any municipal or public purpose, even though not specifically enumerated herein or in this article.

Section 2.04. Streets and public property.

The city shall have the power to exercise exclusive dominion, control and jurisdiction in, upon, over and under the public streets, sidewalks, alleys, highways, public squares and public ways within the corporate limits of the city, and in, upon, over, and under all public property of the city. With respect to each and every public street, sidewalk, alley, highway, public square, public park or other public way within the corporate limits of the city, the city shall have the power to establish, maintain, improve, alter, abandon, or vacate the same; to regulate the use thereof including but not limited to the right to erect traffic signals, lights and signs thereon; and to abate and remove in a summary manner any encroachment thereon. The conveyance or lease or authorization of the conveyance or lease of any lands of the city shall be by ordinance.

Section 2.05. Street development and improvements.

The city shall have the power to develop and improve, or cause to be developed and improved any and all public streets or ways within the corporate limits of the city by laying out, opening, narrowing, widening, straightening, extending, lighting, and establishing building lines along the same: by purchasing, condemning and taking property therefore, by filling, grading, raising, lowering, paving, repaving, and repairing, in a permanent manner, the same; and by constructing, reconstructing, altering, repairing, and realigning curbs, gutters, drains, sidewalks, culverts, and other appurtenances and incidentals in connection with such development and improvements authorized hereinabove or any combination or parts thereof. The cost of such development and improvement may be paid partly or entirely by assessments levied as a lien against the property abutting thereon and against the owners thereof. When the city undertakes developing, improving and paving any and all public streets, sidewalks, alleys, highways and other public ways within its corporate limits, the city shall have the power and authority to proceed in accordance with Chapter 106, Page 489, Acts 1927, 40th Legislature, First Call Session, as now or hereafter amended, the same being Article 1105b of the Vernon's Annotated Civil Statutes of Texas.

Section 2.06. 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 I, Section 17, constitution of the State of Texas, the person injured, if living, or his representatives, if deceased, 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 thirty (30) days 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, thus actual residence of the claimant by street and number at the date the claim is presented, the actual residence of such claimant for six (6) 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. No action at law for damages shall be brought against the city for such death, injury, damage or destruction prior to the expiration of sixty (60) days after the notice hereinbefore described has been filed with the city manager. After the expiration of the sixty (60) days aforementioned, the complainant may then have two (2) years in which to bring an action of law.

Section 2.07. Zoning.

The council shall have full power and authority to zone the city and to pass all necessary ordinances, rules and regulations governing the same under and by virtue of the authority given to cities and legislative bodies thereof by articles 1011a through 1011 j of the 1925 Revised Civil Statutes of Texas as amended, being Acts of 1927, 40th Legislature, Chapter 283, and all amendments thereto and amendments which may hereafter be made thereto, including all applicable provisions in the Local Government Code, Vernon's Annotated Civil Statutes.

ARTICLE III. THE CITY COUNCIL

Section 3.01. Number, selection and term.

The council shall be composed of the Mayor and seven (7) Council members. The mayor and three (3) council members shall be elected from the city at-large, and the remaining four (4) council members shall be elected from single member districts as may be established by ordinance. Each district shall be numbered one (1) through four (4) consecutively. The mayor and all council members shall be elected to serve for two (2) year terms. Registered voters residing in each single council member district shall be entitled to elect one (1) individual from their district to serve as a member of the board and shall be entitled to vote for three (3) at large candidates and a mayoral candidate. A

council member who is elected to serve as a single district council member shall, during his/her term of office, reside within the district from which he/she was elected. This residency requirement shall not apply to the current term of any council member serving at the time this Charter is adopted. The candidate receiving the largest number of votes at any election held under this Charter shall be deemed to be the individual elected to the Council to hold the position for which the individual has filed as a candidate prior to the election. The At large Council positions shall be filled by the three individuals receiving the largest number of votes (by plurality). At the first general election held under this Charter and each even-numbered year thereafter, single district Council members for District 1, District 2, District 3, and District 4 shall be elected the following year and each odd-numbered year thereafter, three (3) at large Council members and the Mayoral position shall be elected.

Section 3.02. Qualifications.

In addition to any other qualifications prescribed by law, the Mayor and each Council member shall meet the conditions of Section 6.02A, items 1, 2 and 3, while in office, and shall reside within the city while in office; and, each representative of a single council member district shall reside within the district from which he/she is elected for at least twelve (12) months prior to the filing for the election to his/her office and at all times during his/her term of office.

Section 3.03. Judge of election qualifications.

The council shall be the final judge of all elections and of qualifications of its members and any other elected officials of the city.

Section 3.04. Compensation.

The council by ordinance, from time to time, may determine the salary of the mayor and other councilmen; but no such ordinance may change the salary of the mayor or any other councilman (1) for the term of office during which the ordinance is adopted nor (2) for the succeeding year when such succeeding term follows passage of the ordinance by less than six months. Such ordinance shall be published, in full, in a newspaper of general circulation within the city within ten days after its passage. The mayor and other councilmen may be reimbursed for reasonable and necessary expenses incurred in the discharge of their official functions.

Section 3.05. Mayor and mayor pro tem.

The mayor shall be the official head of the city government. He/She shall be the chairman and shall preside at all meetings of the council. The mayor shall not vote on any proposition before the council, except the mayor may vote in the event a tie vote exists among the council members voting on an issue. He/she shall see that all ordinances, bylaws and resolutions of the council are faithfully obeyed and enforced. He/she shall, when authorized by the council, sign all official documents such as ordinances, resolutions, conveyances, grant agreements, official plats, contracts and bonds. He/she shall appoint special committees as he deems advisable and as instructed by council. He/she shall perform such other duties consistent with this charter or council may impose as upon him.

The mayor pro tem shall be a council member elected by the council at the first regular council meeting following each regular city election. The mayor pro tem shall act, as mayor during the disability or absence of the mayor and in this capacity shall have the rights and duties conferred upon the mayor.

Section 3.06. Vacancies, forfeiture, filling of vacancies.

- (a) *Vacancies*: The office of a council member or office of the mayor shall become vacant upon his/her death, resignation, removal from office in any manner authorized by law, or forfeiture of his/her office.
- (b) *Forfeiture of office*: A council member or the mayor shall forfeit his office if he/she;
 - 1. Lacks at any time during his/her term of office 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. Fails to attend three (3) consecutive regular council meetings without being excused by the council.
- (c) *Filing of vacancies*: When a vacancy shall occur in an office of the City Council, the council shall, by a majority vote, within thirty (30) days following such vacancy, (1) appoint an individual to serve the unexpired term of the office in which the vacancy occurs, or (2) call an election for the first available election date as provided by the Texas Election Code. In the event the vacancy occurs in a single-council member district, the vacancy must be filled by an individual residing in and otherwise qualified to serve from such single council member district. Any individual appointed to serve the unexpired term, pursuant to this provision, shall comply with and qualify to hold the position for which they are appointed the same as if such individual were to be elected to that same position. Notwithstanding the requirement in Section 3.10 that a quorum of the council consists of four (4) members. If at any time the membership of the council is

reduced to less than four (4), the remaining members may by majority action appoint additional members to raise the membership to four (4). These appointees shall serve until the positions can be filled at the next regular or special city election.

Section 3.07. General powers and duties.

All powers of the city shall be vested in the council, except as otherwise provided by law or this charter and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.

Section 3.08. Prohibitions.

- (a) *Holding other office:* Except where authorized law, or by an ordinance of the city, no mayor or council member shall hold any other city office or city employment during his/her term as mayor or council member.
- (b) *Appointments and removals:* No member of the council acting individually, shall in any manner dictate the appointment or removal of any city administrative officer or employee, but the council, by a majority vote, may direct the manager or any department supervisor to make an appointment or to remove any city employee or officer of the city.
- (c) *Interference with administration:* No member of the council, acting individually, shall in any manner directly supervise or give orders to any city administrative officer or employee, but the council, by a majority vote, may direct the supervision and/or give orders to the manager, any department supervisor, or any other city employee or officer of the city.

Section 3.09. Meetings of Council.

The council shall hold at least one (1) regular meeting each month. All regular meetings of the council shall be held at the city hall of the City of Dimmitt. The council shall fix, by resolution, the days and times of the regular meetings. The council may hold such special meetings as it deems necessary and appropriate, which may be called for by the mayor or by four (4) members of the council. Special meetings shall be held at the city hall of the City of Dimmitt unless the council finds that holding such meetings at other locations are necessary due to special circumstances where fact finding, planning or on-site inspection is required. In no event shall a special meeting be held in any facility or at any location, which is not readily accessible to the general public. All meetings of the council shall be held in accordance with Article 6252-17, Texas Revised Civil Statutes, as amended.

Section 3.10. Rules of procedure.

The council shall, by resolution, 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 council shall provide for minutes being taken and recorded of all meetings, and such minutes shall be a public record. Voting, except on procedural motions, shall be by roll call, and the ayes and nays shall be recorded in the minutes. Four (4) council members shall constitute a quorum for the purpose of transaction of business and no action of the council, except as provided in section 3.06 above, shall be valid or binding unless adopted by the affirmative vote of four (4) or more members of the council.

Section 3.11. Ordinances in general.

- (a) *Form:* The council shall legislate by ordinance only, and the enacting clause of every ordinance shall be: "Be It Ordained by the City Council of the City of Dimmitt, State of Texas." Each proposed ordinance shall be introduced in the written or printed form required for adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title, but general appropriation ordinances may contain various subjects and accounts for which monies are to be appropriated. After adoption an ordinance shall not be amended or repealed except by the adoption of another ordinance amending or repealing the original ordinance. Except when an ordinance is repealed in its entirety, the amendatory or repealing ordinance shall set out in full the ordinance, sections, or subsections to be amended or repealed, and shall indicate matter to be omitted by enclosing it in brackets and shall indicate new matter by underscoring.
- (b) *Procedure:* Any member of council may offer any ordinance in writing that he/she desires after it has been placed on the agenda of a regular council meeting. A proposed ordinance, except those with specific adoption procedures as set forth below, shall be read at two (2) regular council meetings, with at least two (2) weeks lapsing between readings. A proposed ordinance may be amended on first reading; however, if an amendment is made to the proposed ordinance at the time designated for final reading, the final reading shall be postponed until the next regular council meeting. The procedure for adoption of an emergency ordinance shall be in accordance with section 3.12 hereof, a budget/tax ordinance with section 8.03 hereof, an ordinance relative to street development and improvement with section 2.05 hereof, and ordinances relative to borrowing for capital improvements with section 8.05 hereof.
- (c) *Effective date:* Every ordinance shall become effective upon adoption, or at any later time specified in the ordinance, except that every ordinance imposing any penalty, fine or forfeiture shall become effective after the caption, the offense and penalty clauses of the ordinance have been published in the official city newspaper.

- (d) *Reading*: the reading aloud of the title of the ordinance shall suffice as a reading, provided printed copies of the ordinance in the form required for adoption, are in front of all members of council and a reasonable number of additional copies are available to citizens present at the meeting. If four (4) council members request that the ordinance is read in its entirety it must be so read.

Section 3.12. Emergency ordinances.

To meet a public emergency affecting life, health, property, or the public peace the council may adopt emergency ordinances. Such ordinances shall not levy taxes, grant or renew or extend a franchise, or regulate the rate charged by any public utility for its services. Neither shall they authorize the borrowing of money, except as provided in section 8.04(b). An emergency ordinance shall be introduced in the form and manner generally prescribed for ordinances, except that it shall be plainly designated in the title as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. Such emergency clause shall require the affirmative vote of a majority of council members present. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced. The affirmative vote of a majority of the council members present shall be required for adoption. After adoption, the ordinance shall be numbered as required for other adopted ordinances, with the designation of "E" following the number. After adoption, the ordinance shall be published as required for other adopted ordinances and shall become effective in the same manner. Every emergency ordinance so adopted, except one authorizing the borrowing of money as described herein, shall automatically stand repealed as of the one hundred twentieth (120) day following the day on which it became effective, but this shall not prevent the reenactment of the ordinance.

Section 3.13. Codes of technical regulations.

The council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that only the copy of the adopting ordinance shall be authenticated and recorded by the city secretary pursuant to section 3.14. Copies of any adopted code of technical regulations shall be made available by the city manager, for distribution or for purchase at a reasonable price.

Section 3.14. Authentication and recording.

The city secretary shall authenticate by his/her signature and record in full in a properly indexed book kept for the purpose, all ordinances and resolutions adopted by the council. All ordinances shall be numbered numerically and consecutively in the order in which adopted. This record shall be open for public inspection.

Section 3.15. Bonds for city employees.

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

Section 3.16. Investigation by the city council.

The council may make investigations into the affairs of the city and the conduct of any city department, division, or office and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the council shall be guilty of a misdemeanor and subject to a fine, which shall have been set, by ordinance, by the council.

Section 3.17. Officials protected from financial loss.

Duly elected or appointed city council members acting in their official capacity shall be protected by the city from personal financial loss resulting from council decisions made while in official sessions as a result of law suits filed pertaining to such decisions.

ARTICLE IV. ADMINISTRATIVE SERVICES

Sec. 4.01. City Manager.

- (a) *Appointment and qualifications:* The council by majority vote of the entire council shall appoint a city manager. 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 his/her executive and administrative training, experience and ability and need not, when appointed, be a resident of the City of Dimmitt; however, during the tenure of his/her office he shall reside within the city. The city manager shall be bonded at city expense in an amount of not less than ten thousand dollars (\$10,000).
- (b) *Compensation:* The city manager shall receive compensation as may be fixed by the council according to his/her experience, education and training. The compensation should be agreed upon before appointment with the understanding that the council may change it at their discretion
- (c) *Term and removal:* The city manager shall not be appointed for a definite term

but may be removed at the discretion of the council, by vote of the majority of the entire council. The action of the 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 council.

(d) *Powers and duties:* The city manager shall be responsible to the council for the proper administration of all the affairs of the city and to that end shall have the power and be required to:

1. See that all state laws and city ordinances are effectively enforced.
2. Appoint, suspend or remove all or any one of the directors of departments with the concurrence of the council.
3. Attend all meetings of the council except when excused by council.
4. Prepare the budget annually and submit it to the council and be responsible for its administration after its adoption.
5. Prepare and submit to the 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 council advised of the financial condition and future needs of the city and make such recommendations as may seem to him advisable.
7. Perform such duties as may be prescribed by this charter or required of him/her by the council, as consistent with this charter.

(e) *Acting city manager:* The city council shall designate a qualified administrative officer of the city to perform the duties of city manager in his or her absence. In the event of long-term disability, resignation, or termination of the city manager, the council shall appoint an acting city manager for the duration of any such disability, or until appointment of a permanent city manager.

Sec. 4.02. 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 powers and duties as are now, or may hereafter be prescribed by laws of the State of Texas relative to municipal courts.
- (b) The judge of said court shall be appointed by council to serve at the discretion of the council. The appointed judge shall receive such salary as may be fixed by the council.
- (c) The judge 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 the clerks of courts, in issuing process of said courts, and conducting the business thereof.
- (d) In case of the disability or absence of the judge of the municipal court, the council

shall appoint a qualified person to act in his place.

- (e) All costs and fines imposed by the municipal court, not paid to the State of Texas, shall be paid into the city treasury for the use and benefit of the city.

Sec. 4.03. City attorney.

The council shall appoint a competent and duly qualified and licensed attorney practicing law in the State of Texas, who shall be the attorney for the city (and may also be referred to as city attorney). He/she shall receive for his/her services such compensation as may be fixed by the council and shall hold his/her office at the pleasure of the council. The city attorney shall be the legal adviser of, and attorney for, all of the offices and departments of the city, and he/she shall represent the city in all litigation and legal proceedings; provided, that the council may retain special counsel at any time they deem same appropriate and necessary. He/she shall review and concur or dissent upon all documents, contracts, and legal instruments in which the city may have an interest. The city attorney shall perform other duties prescribed by this charter, ordinance, or as directed by council.

Sec. 4.04. City secretary.

The council shall appoint a city secretary who shall act as the secretary to the council and shall hold office at the pleasure of the council. He/she shall be provided an office in the city hall sufficient to maintain the records entrusted to his/her care and shall be entitled to a seat at the council table at all official meetings.

- (a) *Duties of the city secretary:* The duties of the city secretary shall be as follows:
 - 1. Record the minutes of all official meetings of the council: provided; however, only the captions of duly enacted ordinances and resolutions shall be recorded in the minutes.
 - 2. Be the custodian of all municipal records of the council.
 - 3. Recommend to the council rules and regulations to be adopted by ordinances to protect the safety and security of the municipal records.
 - 4. Hold and maintain the city seal and affix to all instruments requiring such seal.
- (b) *Compensation:* The council shall set the compensation of the city secretary.

Sec. 4.05. Administrative departments.

There shall be such administrative departments as are established by this charter and may be established by ordinance and, excepting as otherwise provided in this charter, these administrative departments shall be under the direction of the city manager. The council shall have power by ordinance to establish administrative department or offices not

herein provided by this charter. The council may discontinue, re-designate, or combine any of the departments and/or administrative offices. No changes shall be made by the council in the organization of the administrative service of the city until the council thereon shall have heard the recommendations of the city manager. The head of each department shall be a director who shall have supervision and control over his/her department two (2) or more departments may be headed by the same individual and the city manager may head one or more departments.

Sec. 4.06. Personnel system.

- (a) *Appointments and promotions:* Appointments and promotions in the administrative service of the city shall be made according to merit and fitness. To carry out this purpose, the council shall provide by ordinance a system for the classification of employees and rules for the appointment and promotion of employees within such classifications.
- (b) *Classified service:* No officer, employee, member of a board, or other person, who is to be appointed by the council under this charter, and no department head, shall be Included within the classified service of the city, but all other persons in the administrative services of the city shall be included therein unless specifically excluded there from by the ordinance providing for a system of classified services.
- (c) *Prohibited acts:* No person employed in the administrative service of the city, or who seeks an appointment thereto, shall be appointed, promoted, reduced, removed, or in any way favored or discriminated against because of his/her race, sex, or his/her political or religious opinions or affiliations. No appointive officer or employee of the city shall make a contribution to the campaign fund of any person seeking election to a city office or to any political party supporting a candidate for election to a city office, nor shall he/she be solicited for this purpose, but his/her right to express an opinion or to cast a vote as a citizen shall not be limited. No person seeking appointment to or promotion in the administrative service of the city shall either directly or indirectly give, render, or pay any money, service or other valuable thing to any person for or on account of or in connection with his/her appointment or promotion, or any examination conducted therefore. Any person who either by himself/herself or with others willfully violates any provision of this section shall be ineligible for appointment or election to a position in the city for a period of four (4) years, and if he/she is an officer or employee of the city he/she shall immediately forfeit the office or position he/she holds.
- (d) *Employee pensions and insurance:* All rights and obligations under any plan for the payment of retirement benefits, pensions, or disability benefits to any city employee which is in force upon the effective date of this charter shall be unaffected by the adoption hereof. The council shall have the power, in its

discretion and subject to such regulations and limitations as it may deem proper, to create, operate and contract plans or insurance which will provide health, life, accident, medical and hospital benefits, or any of these, for all or any group of city employees, and to pay or contribute toward the cost of such plan or insurance out of funds available for that purpose.

- (e) *Personnel rules:* The city manager shall prepare personnel policies. The council shall adopt such policies with or without amendment, the personnel policies shall be reviewed on a regular basis by the council.

ARTICLE V. INITIATIVE, REFERENDUM, AND RECALL

Sec. 5.01. General authority.

- (a) *Initiative:* The qualified voters of the city shall have the power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, provided that such power shall not extend to the budget, or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees. Such initiative power may be used to enact a new ordinance, or to repeal or amend sections of an existing ordinance.
- (b) *Referendum:* The qualified voters of the city shall have the power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal any ordinance so reconsidered, to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program or any properly enacted emergency ordinance, ordinance relating to appropriation of money or levying of taxes or ordinance relating to the control of armed or violent insurrection, revolt, rebellion or riot.

Sec. 5.02. Initiation of proceedings; petitioners' committee; affidavit.

Any five (5) qualified voters may begin initiative or referendum proceedings by filing with the city secretary an affidavit stating they constitute the petitioners' committee and will be responsible for circulating the petition and filing it in proper form; stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or the ordinance sought to be reconsidered.

Immediately after the affidavit of the petitioners' committee is filed, the city secretary shall issue the appropriate petition blanks to the petitioners' committee.

After the affidavit of the petitioners' committee has been filed, the ordinance sought to be amended or repealed shall not be repealed, or amended or reenacted by the council unless:

- (a) The action taken by council is that which the petition requests, or
- (b) The petition has not been filed within the prescribed time limit, or
- (c) There is a final determination of the insufficiency of the petition, or
- (d) The petition is withdrawn by the petitioners' committee, or
- (e) One year has elapsed since council or voter action has been taken on the petition, or
- (f) The ordinance sought to be amended or, repealed relates to the control of insurrection or riot.

Sec. 5.03. Petitions.

- (a) *Number of signatures:* Initiative and referendum petitions must be signed by currently qualified voters of the city equal in number to at least ten (10) per cent of the total number of qualified voters registered to vote at the last regular city election.
- (b) *Form and content:* All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. To be certified, each signature shall be the same as the name of a voter appearing on the current certified list of voter registrations, shall have been personally signed by such voter in ink, and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- (c) *Affidavit of circulator:* When filed, each paper of a petition shall have attached to it an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- (d) *Time for filing petitions:* Referendum petitions must be filed within thirty (30) days after adoption by the council of the ordinance sought to be reconsidered. Initiative petitions must be filed within thirty (30) days after issuance of the appropriate petition blanks to the petitioners' committee. Additional time as specified in section 5.04(e) shall be allowed for amending petitions.

Sec. 5.04. Determination of sufficiency.

Certificate of city secretary: Within ten (10) days after the petition is filed, the city secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall immediately upon completion of certification send a copy of the certificate to the petitioners' committee by registered mail.

Sufficient petition, final determination: If the petition is certified sufficient, the city secretary shall present the certificate to the council by the next council meeting and the certificate shall then be a final determination as to the sufficiency of the petition.

Insufficient petition, final determination: If a petition is certified insufficient, and the petitioners' committee does not elect to amend or request council review under subsections (d) and (e) of this section within the time required, the city secretary shall present a certificate to the council by the next council meeting which shall be a final determination of the sufficiency of the petition.

Insufficient petition, appeal: If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it as in section 5.04(e), the committee may, within two (2) working days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition.

Insufficient petition, amending: A petition certified insufficient for lack of required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the city secretary within two (2) working days after receiving the copy of his certificate, and files a supplementary petition with additional names within two (2) weeks after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of section 5.03(b) and (c). Within five (5) days after an amended petition is filed, the city secretary shall complete a certificate as to the sufficiency of the petition as amended and shall within twenty-four (24) hours send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. The final determination as to the sufficiency of an amended petition shall be determined in the same manner as prescribed for original petitions in section 5.04(b), (c), and (d), except that no petition once amended, may be amended again.

Court review: new petition: A final determination as to the sufficiency of a petition shall be subject to review in a District Court in Castro County. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

Sec. 5.05. Action on petitions.

(a) *Action by council:* Council shall promptly consider the proposed initiative

ordinance in the manner prescribed for enacting ordinances or reconsider the referred ordinance by voting its repeal. Within sixty (60) days after the date the initiative or referendum petition has been finally determined sufficient council shall either (1) adopt a proposed initiative ordinance without any change in substance, or (2) repeal a referred ordinance, or (3) call an election on the proposed or referred ordinance, said election to be held not later than thirty (30) days from date called.

- (b) *Submission to voters:* The vote of the city on a proposed or referred ordinance shall be held not later than thirty (30) days from the date called by council, except that when a regular or special city election is to be held within one hundred twenty (120) days, but not less than thirty (30) days, after the final council vote, the vote on the ordinance shall be held at the same time as the regular or special city election. Copies of the proposed or referred ordinance shall be made available at the polls and shall also be made available at the city office for fifteen (15) days immediately preceding the election and shall be posted at the regular posting places for fifteen (15) days immediately preceding the election.
- (c) *Withdrawal of petitions:* An initiative or referendum petition may be withdrawn at any time prior to the twentieth day preceding the day scheduled for a vote of the city by filing with the city secretary a request for withdrawal signed by at least four (4) members of the petitioners' committee. Upon filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Sec. 5.06. Results of election.

- (a) *Initiative:* If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
- (b) *Limitation of council repeal:* The council may not repeal or amend the initiated ordinance for one year after the effective date and then only by the affirmative vote of four (4) members of the council.
- (c) *Referendum:* If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

Sec. 5.07. Power of recall.

The qualified voters shall have the power to initiate the election for the recall of any elected official of the city on grounds of incompetence, noncompliance with this charter, misconduct or malfeasance in office. Such power shall be exercised by filing with the city secretary a petition, signed by currently qualified voters of the city equal in number to at least ten (10) percent of the total number of qualified voters registered to vote at the last regular city election, demanding the removal of such elected official. The petition shall be signed and verified in the manner required for an initiative petition.

Sec. 5.08. Recall election.

The provisions regulating initiation, certification, amendment and withdrawal of initiative petitions shall apply to recall petitions. If the petition is certified by the city secretary to be sufficient, the council shall order an election forthwith to determine whether such officer shall be recalled.

Sec. 5.09. Results of recall election.

If a majority of the votes cast at a recall election shall be against removal of the elected official named on the ballot, he/she shall continue in office. If the majority of the votes cast at the election be for the removal of the elected official named on the ballot, the council shall immediately declare his/her office vacant and such vacancy shall be filled in accordance with the provisions of this charter for the filling of vacancies. An elected official thus removed shall not be a candidate to succeed himself/herself.

Sec. 5.10. Limitation on recall.

No recall petition shall be filed against an elected official within six (6) months after he/she takes office, and no elected official shall be subjected to more than one recall election during a term of office.

Sec. 5.11. Failure of council to call an election on recall.

In case all of the requirements of this charter shall have been met and the council shall fail or refuse to receive the recall petition, or order such recall election, or discharge other duties imposed upon said council by the provisions of this charter with reference to such recall, then the county judge of Castro County, Texas, shall discharge any such duties herein provided to be discharged by the city secretary or by the council. In addition, any qualified voter in the city may seek judicial relief in the district court of Castro County, Texas, to have any of the provisions of this charter pertaining to recall carried out by the proper official.

ARTICLE VI. NOMINATIONS AND ELECTIONS; OATH OF OFFICE; DISTRICTS

Sec. 6.01. City elections.

- (a) *Schedule*: The regular city election will be held annually on the first Saturday in May. The council shall be responsible to specify places for holding such election.
- (b) *Special elections*: The council shall provide for the holding of such special elections as may be required by law or this charter, or for such other purposes as may be deemed necessary or appropriate be the council.
- (c) *Voter eligibility list*: A certified list of voter registrants within the city, consistent with the official list prepared by the county tax assessor collector, shall be maintained current by the city secretary. If for a purpose relating only to a city election or to candidates or issues involved in such election, any organization, group or person requests a list of
- (d) qualified voters of the city, permission to copy the current list shall be granted be the city secretary.
- (e) *Conduct and regulation of elections*: All city elections shall be governed by the Constitution of the State of Texas, the Texas Election Code, this charter, and ordinances and resolutions and shall be conducted by the election officials appointed or approved be the council.

Sec. 6.02. Filing for office.

- (a) *Eligibility to file*: Each candidate for an elective city office shall meet the following qualifications:
 - 1. Shall be a qualified voter of the city.
 - 2. Shall have resided for at least twelve (12) months preceding the election within the corporate limits of the city, including territory annexed prior to the filing deadline.
 - 3. Shall not be in arrears in the payment of any taxes or other liabilities due the city.
 - 4. Shall meet the requirements stipulated in Section 6.02(b) below.
 - 5. If an Incumbent seeks a different elected office or elected position of the city other than that which he/she then holds, he/she shall submit a letter of resignation to the city council at least sixty (60) days prior to the date of election for such desired office or position. The letter of resignation shall provide for an effective date of such resignation of not later than the day immediately proceeding the day of such election.

6. No candidate may file for more than one office or position number per election.
7. No employee of the city shall continue in such position after becoming a candidate for an elective office.

(b) *Procedure and schedule for filing:* Any qualified person may have his name placed on the ballot for the election as a candidate for mayor or councilman by filing, not more than forty-five (45) days and at least thirty (30) days prior to the election, with the city secretary a sworn application to have his name placed on the ballot, specifying the office for which he is filing. Such application shall also contain a statement by the candidate that he is fully qualified under the laws of this state and this charter for the office, which he seeks.

Sec. 6.03. Ballots.

The ballots for all elections held by the city shall conform to the provisions of the Texas Election Code.

Sec. 6.04. Canvassing and election results.

- (a) *Canvassing:* The returns of every municipal election shall be delivered from the election judges to the city secretary at city hall not later than twelve (12) hours after the closing of the polls. One extra copy shall be delivered for the mayor at this time. The council shall canvass the returns in sufficient time to declare the official results of the election at the next regular council meeting after the closing of the polls. The returns of every municipal election shall be recorded in the minutes of the council, by totals for each candidate, or, for or against each issue submitted.
- (b) *Notification and taking office:* It shall be the duty of the city secretary to notify all persons elected. A candidate who is elected in the regular city election or special election shall take office and enter upon his/her duties after qualifying by taking and subscribing to his/her oath of office at the next regular council meeting after closing of the polls.

Sec. 6.05. Oath of office.

Every officer of the city, whether elected or appointed, before entering upon the duties of office, shall take and subscribe to the appropriate oath or affirmation, as may be required by the State of Texas for officials of General Law cities. All oaths and affirmations shall be filed and kept in the office of the city secretary.

Sec. 6.06. Council districts; adjustments of districts.

- (a) *Number of Districts:* There shall be four (4) city council districts.
- (b) *Powers and Duties of the Commission; Hearings, Submissions and Approval of Plan:*
 - 1. Following each decennial census, the city council shall prepare a plan for dividing the city into districts for the election of council members. In preparing the plan, the city council shall be guided by the criteria set forth in Sec. 6.06 (c). The plan shall include a map and description of districts recommended.
 - 2. The city council shall hold one or more public hearings not less than one month before it adopts the plan. The city council shall make its plan available to the public for inspection and comment not less than one week before the public hearing.
 - 3. The city council shall adopt its plan not less than 60 days before the first general election of the city council after each decennial census.
- (c) *Districting Plan; Criteria:* In preparation of its plan for dividing the city into districts for the election of four (4) council members, the city council shall apply the following criteria, which, to the extent practicable, shall be applied and given priority in the order in which they are herein set forth.
 - 1. Districts shall be equal In population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed ten (10) percent of the average population for all city council districts according to the figures available from the most recent census.
 - 2. Districts shall consist of contiguous territory.
- (d) *Effect of Enactment:* The new city council districts and boundaries as of the date of enactment shall supersede previous council districts and boundaries for all purposes of the next regular city election, including nominations. The new districts and boundaries shall supersede previous districts and boundaries for all other purposes as of the date on which all council members elected at that regular city election take office.

ARTICLE VII. TAX ADMINISTRATION

Sec. 7.01. Power to tax.

The council of the city 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 one hundred

dollars (\$100.00) assessed valuation of all property having a site within the corporate limits of the city and not exempt from taxation by the constitution and laws of the State of Texas.

Sec. 7.02. Arrears of taxes offset to debt against city.

The city shall be entitled to counterclaim and offset against any debt, claim, demand or account owed by the city to any person, firm or corporation who is in arrears to the city for taxes, in the amount of taxes so in arrears, and no assignment or transfer of such debt, claim, demand or account after the said taxes are due, shall affect the right of the city to so offset the said taxes against the same.

**ARTICLE VIII.
FINANCIAL
ADMINISTRATION**

Sec. 8.01. Fiscal year.

The fiscal year of the city shall begin on the first day of October and end on the last day of September.

Sec. 8.02. Public record.

Copies of the budget as adopted shall be public records and shall be made available to the public upon request.

Sec. 8.03. Annual budget.

- (a) *Content:* The budget shall provide a complete financial plan of all city funds and activities and, except as required by law or this charter, shall be in such form as the manager deems desirable or the 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, and 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 manager deems desirable. The budget shall begin with a clear general summary of its contents; and 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 preceding fiscal year, compared with the estimate for the budgeted 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 separate schedule for each department, indicating tasks to be accomplished by the department during the year, and additional desirable tasks to be accomplished if possible.
4. A statement of the total probable income of the city from taxes for the period covered by the estimate.
5. Tax levies, rates, and collections for the preceding five (5) years.
6. An itemization of all anticipated revenue from sources other than the tax levy.
7. The amount required for interest on the city's debts, for sinking fund and for maturing serial bonds.
8. The total amount of outstanding city debts, with a schedule of maturities on bond issue.
9. Such other information as may be required by the council.
10. Anticipated net surplus or deficit for the ensuing fiscal year of each utility owned or operated by the city 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.
11. 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:
 - i. A summary of proposed programs.
 - ii. Cost estimates, method of financing and recommended time schedules for each such improvements; and
 - iii. 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, the manager shall submit to the council a proposed budget and an accompanying message. The council shall review the proposed budget and revise as deemed appropriate prior to general circulation for public hearing.

(c) *Public notice and hearing:* The council shall post in the city hall and publish in the official newspaper a general summary of their proposed budget and a notice stating:

- i. The times and places where copies of the message and budget are available for inspection by the public, and
- ii. The time and place, not less than ten (10) nor more than thirty (30) days after such publication, for a public hearing on the budget.

- (a) *Amendment before adoption:* After the public hearing, the 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 or for estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income plus funds available from prior years.
- (b) *Adoption:* The council shall adopt its annual budget by ordinance, on one reading, by the fifteenth (15th) day of September or as soon thereafter as practical. Adoption of the budget shall require an affirmative vote of at least a majority of all members of the council. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated.

Sec. 8.04. Amendments after adoption.

- (a) *Supplemental appropriations:* If during the fiscal year the manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the council, by ordinance, may make supplemental appropriation for the year up to the amount of such excess.
- (b) *Emergency appropriations:* To meet a public emergency created by a natural disaster or man-made calamity affecting life, health, property, or the public peace, the council may make emergency appropriations. Such appropriations shall be made by emergency ordinance in accordance with the provisions of the charter. To the extent that there are no available unappropriated revenues to meet such appropriations, the council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time.
- (c) *Reduction of appropriations:* If at any time during the fiscal year it appears probable to the manager that the revenues available will be insufficient to meet the amount appropriated, he/she shall report to the council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The 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 manager may transfer any or all of any unencumbered appropriation balance among programs within a department, division, or office and, upon written request by the city manager, the council may by ordinance transfer part or all of any unencumbered appropriation balance from one department, office or agency to another.

- (e) *Limitations:* No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof.
- (f) *Effective date:* The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption of the ordinance.

Sec. 8.05. Borrowing for capital improvements.

- (a) *Borrowing:* The council shall have the power, except as prohibited by law, to borrow money by whatever method it may deem to be in the public interest.
- (b) *General obligation bonds:* The city shall have the power to borrow money on the credit of the city and to issue general obligation bonds for permanent public improvements or for any other public purpose not prohibited by the constitution and laws of the State of Texas and to issue refunding bonds to refund outstanding bonds of the city previously issued. All such bonds shall be issued in conformity with the laws of the State of Texas.
- (c) *Revenue bonds:* The city shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the constitution and laws of the State of Texas, and to issue revenue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable from the properties, or interest therein pledged, or the income therefrom, or both. The holders of the revenue bonds shall never have the right to demand payment thereof out of monies raised or to be raised by taxation. All such bonds shall be issued in conformity with the laws of the State of Texas.
- (d) *Bonds incontestable:* All bonds of the city having been issued and sold and having been delivered to the purchaser thereof shall thereafter be incontestable and all bonds issued to refund in exchange for outstanding bonds previously issued shall and after said exchange, be incontestable.
- (e) *Addition of ordinance:* The procedure for adoption of any ordinance relative to borrowing for capital improvements shall be:
 - A copy of the proposed ordinance shall be furnished to
 - 1. each member of the city council,
 - 2. the city attorney, and
 - 3. any citizen of the city upon request to the city secretary, at least three (3) days before the date of the meeting at which the ordinance is to be considered.Any ordinance relative to borrowing for capital improvements may be adopted and finally passed at the meeting at which it is introduced.

Sec. 8.06. 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 encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three (3) years pass without any disbursement from or encumbrance of the appropriation.

Sec. 8.07. Administration of budget.

- (a) *Payments and obligations prohibited:* No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the manager or his/her designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriations and that sufficient funds there from 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 payment so made illegal. Such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligations, and he/she shall also be liable to the city for any amount so paid. However, this prohibition shall not be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds, time warrants, certificates of indebtedness, or certificates of obligation, or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.
- (b) *Financial reports:* The manager shall submit to the council at its first formal meeting each month the financial condition of the city by budget item, budget estimate versus accruals for the preceding month and for the fiscal year to date. The financial records of the city will be maintained on an accrual basis to support this type of financial management
- (c) *Independent audit:* At the close of each fiscal year, and at such times as it may be deemed necessary, the 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 elected 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 and in the Rhoads Memorial Public Library for the public's information.

Sec. 8.08. Purchasing.

All purchases made and contracts executed by the city shall be made in accordance with the requirements of the constitution and statutes of the State of Texas.

ARTICLE IX. FRANCHISES AND PUBLIC UTILITIES

Sec. 9.01. Powers of the city.

In addition to the city's power to buy, construct, lease, maintain, operate and regulate public utilities and to manufacture, distribute, and sell the output of such utility operations, the city shall have such further power as may now or hereafter be granted under the constitution and laws of the State of Texas.

Sec. 9.02. Power to grant franchise.

The 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 consent of the franchise holder, to amend the same, provided however, that no franchise shall be granted for an indeterminate term, and that no franchise shall be granted for a term of more than ten (10) years from the date of the grant, renewal, or extension.

Sec. 9.03. Ordinance granting franchise.

Every ordinance granting, renewing, extending or amending a public utility franchise shall be read at three (3) regular meetings of the council. Within seven (7) days following the first reading of the ordinance, the full text of the ordinance shall be published one time in the official newspaper, and the expense of such publication shall be borne by the prospective franchise holder.

Sec. 9.04. Grant not to be exclusive.

No grant or franchise to construct, maintain or operate a public utility and no renewal or extension of such grant shall be exclusive.

Sec. 9.05. Transfer of franchise.

No public utility franchise shall be transferable except with the approval of the council as expressed by ordinance. The term "transferable" as used herein, shall not be construed in such a manner as to prevent the franchise holder from pledging said franchise as security for a valid debt or mortgage.

Sec. 9.06. Franchise value not to be allowed.

In fixing reasonable rates and charges for 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 granted by the city under this charter.

Sec. 9.07. Right of regulation.

All grants, renewals, extensions, or amendments of franchises, whether it be so provided in the ordinance or not, shall be subject to the right of the city:

- (a) To repeal the same by ordinance at any time for failure to begin construction or operation within the time prescribed or otherwise to comply with the terms of the franchise, such power to be exercised only after a 30-day notice and hearing.
- (b) To require an adequate extension of plant and service as is necessary to provide adequate service to the public, and maintenance of the plant and fixtures at the highest reasonable standard of efficiency.
- (c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.
- (d) To prescribe the form of accounts kept by each such utility. It shall be deemed sufficient compliance with this paragraph, provided that the utility shall keep its accounts in accordance with the uniform system of accounts for said utility prescribed by the National Association of Railroad and Public Utility Commissioners, the Federal Power Commission, the Federal Communications Commission, the Railroad Commission of Texas, and their successor or successors.
- (e) To impose regulations to insure safe, efficient and continuous service to the public, the franchise holder in opening and refilling of all earth openings shall relay the pavement and do all other work necessary to complete restoration of streets, sidewalks or grounds to a condition equally as good or better as when disturbed.
- (f) To require at any time such compensation and rental as may be permitted by the laws of the State of Texas.

Sec. 9.08. Extensions.

All extensions of public utilities within the city limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this charter and in any original grant hereafter made. The right to use and maintain any extension shall terminate with the original grant and shall be terminable as provided in section 9.07. In case of an extension of a public utility operated under a franchise hereafter granted, such right shall be terminable at the same time and under the same conditions as the original grant.

Sec. 9.09. Regulation of rates.

The council shall have full power after notice and hearing to regulate by ordinance the rates, charges, and fares of every franchise holder operating in the city provided that no such ordinance shall be passed as an emergency measure. Every franchise holder who shall request an increase in rates, charges, or fares shall have, at the hearing of the council called to consider such request, the burden of establishing by clear, competent, and convincing evidence the value of its investment property allowable to service in the city, and the amount and character of its expenses and revenues connected with the tendering of such service. If, upon such hearing, the council is not satisfied with the sufficiency of the evidence so furnished, it shall be entitled to call upon such franchise holder for the furnishing of additional evidence at a subsequent date to which said hearing may be adjourned. No franchise holder shall institute any legal action to contest any rate, charge, or fare fixed by the council until such franchise holder has filed a motion for rehearing with the council for a specific date setting out each ground of its complaint against the rate, charge, or fare fixed by the council and until the council shall have acted upon such motion. Such motion shall be deemed overruled unless acted upon by the council within a reasonable time, not to exceed sixty (60) days from the filing of such motion for rehearing; provided that the council may by resolution extend such time for acting on said motion for rehearing from sixty (60) days to ninety (90) days.

Sec. 9.10 Public service corporations to file annual reports.

- (a) The council shall require all public service corporations operating within the corporate limits of the city to file a sworn annual report of the receipts from the operation of the said business for the current year, how expended, how much thereof for betterments or improvements, the rate of tolls or charges for services rendered to the public, and any other facts or information that the council may deem pertinent for its use, including reports on operations within the city, in intelligently passing upon any questions that may arise between the city and the said public service corporations; said reports to be filed with the city secretary, and preserved for the use of the city council. The council to determine the

propriety of the rates being charged shall review such reports annually.

- (b) Any public service corporation, partnership, or proprietorship who shall for a thirty (30) day period willfully refuse or fail to report in the manner provided by this charter shall forfeit and pay to the city the sum of one hundred dollars (\$100.00) per day for each and every day during which it shall continue in default; or, if any such enterprise shall file any report, knowing that the same does not truly report the facts about the matters mentioned therein, it shall forfeit and pay to the city the sum of one thousand four hundred dollars (\$1,400.00) for each such willfully false report and shall be liable for submittal of a corrected report within two (2) weeks from notification by the city of any errors under the same penalty provisions as the original report.
- (c) A public service corporation, for the purpose of this charter, shall be defined as any legal entity holding a franchise with the city for the purpose of using city streets and alley-ways to furnish solid waste (garbage) collection, water supply, sewage disposal, electrical, gas, telecommunication, and/or audio-visual (TV cable) services to the citizens of the city.

Sec. 9.11. Accounts of municipally-owned utilities.

Accounts shall be kept for each public utility owned or operated by the city, in such manner as to show the true and complete financial results of such city ownership and operation, including all assets, appropriately subdivided into different classes, all liabilities subdivided by classes, depreciation reserve, other reserves, and surplus also revenues, operating expenses including depreciation, interest payments, 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 council shall annually cause to be made by a certified public accountant and shall publish a report showing the financial results of such city ownership and operation, giving the information specified in this section or such data as the council shall deem expedient

Sec. 9.12. Sales of municipal services.

The council shall have the power and authority by ordinance:

- (a) In or outside the limits of the city, to sell and distribute water, sell and provide sewer service; sell and provide garbage and trash collection and disposition; and to sell and provide other municipal services. However, the city shall not have the power to extend any city services to any property outside the city, which is not contiguous with the city limits and not subject to annexation into the city.

- (b) To establish specifications for materials and construction used within or beyond the limits of the city for such municipal services; inspect same and require such materials to be kept in good order and condition at all times; make such rules and regulations as shall be necessary and proper; and prescribe penalties for noncompliance with same.

Sec. 9.13. Franchise records.

The city shall compile and maintain a public record of franchise holders.

**ARTICLE X
TRANSITIONAL
PROVISIONS**

Sec. 10.01. Schedule.

- (a) This charter shall take effect immediately following adoption by the voters, and shall be fully operable within one year after adoption.
- (b) Upon the adoption of this charter, the present members of the council shall serve until the terms to which they were elected shall have expired and/or until their successors shall have qualified. As soon as possible after adoption of this charter, position numbers shall be assigned in accordance with section 3.01 of this charter.

Sec. 10.02. Officers and employees.

(a) Rights and privileges preserved: Nothing in this charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are city officers or employees at the time of its adoption.

(b) Continuance of office or employment: Except as specifically provided by this charter, if at the time this charter takes full effect, a city administrative officer or employee holds any office or position which is or can be abolished by or under this charter, he/she shall continue in such office or position until adoption of some specific provision under this charter directing that he/she vacate the office or position.

Sec. 10.03. Effect of charter on existing law.

All codes, ordinances, resolutions, rules and regulations in force on the effective date of this charter, and not in conflict with this charter, shall remain in force until altered, amended or repealed by the council. All taxes, assessments, liens, encumbrances and demands, of or against the city, fixed or established before such date, or for the fixing or establishing of which proceedings have begun at such date, shall be valid when properly fixed or established either under the law in force at the time of the beginning of such proceedings or under the law after the adoption of this charter.

Sec. 10.04. Pending matters.

All rights, claims, actions, orders, contracts, franchises, and legal or administrative proceedings in existence at the time of the adoption of this charter shall continue until consummation all renewals or new, rights, claims, actions, orders, contracts, franchises and legal or administrative proceedings arising after the adoption of this charter shall be conducted pursuant to this charter.

**ARTICLE XI.
GENERAL PROVISIONS**

Sec. 11.01. Public records.

All public records of every office, department or agency of the city shall be open to inspection by any citizen at all reasonable times, provided that police records, vital statistic records, records and files of the department of law, and any other records closed to the public by law, shall not be considered public records for the purpose of this section. During normal office hours, any citizen of the city or any duly authorized representative of the press or other news media shall have the right to examine any such public records belonging to the city and shall have the right to make copies thereof under such reasonable rules and regulations as may be prescribed by the council or by this charter.

Sec. 11.02. Official newspaper.

The council shall contract annually with, and by resolution designate, a public newspaper of general circulation in the city as official organ thereof and to continue as such until another is designated, and shall cause to be published therein all ordinances, notices and other matter required by this charter, by the ordinances of the city, or by the constitution and/or laws of the State of Texas to be published.

Section 11.03 Personal financial interest.

Except where permitted by Chapter 171 (171.001 et. seq.) of the Local Government Code, Revised Civil Statutes of Texas now and as hereinafter amended, no officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, or shall be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or service. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall be subject to removal from his office or position. Any violation of this section, with the knowledge, expressed or implied, of the person or corporation contracting with the council shall render the contract involved voidable by the city manager or the council.

Sec. 11.04. Nepotism.

No appointment to the service of the city shall violate the prohibitions against nepotism set forth in Article 5996 et seq., Texas Revised Civil Statutes, as amended.

Sec. 11.05. Assignment, execution, and garnishment.

The property, real and personal, belonging to the city shall not be liable to be sold or appropriated under any writ or execution or cost bill. The funds belonging to the city, in the hands of any person, firm or corporation shall not be liable to garnishment, attachment, or sequestration; nor shall the city 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 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 its employees, agents or contractors.

Sec. 11.06. Security or bond not required.

It shall not be necessary in any action, suit or proceeding in which the city is a party, for any bond, undertaking, or security to be demanded or executed by or on behalf of said city in any of the state courts, but in all such actions, suits, appeals, or proceedings same shall be conducted in the same manner as if such bond, undertaking, or security had been given as required by law.

Sec. 11.07. Separability clause.

If any section or part of section of this charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning

and effect with the section or part of section to which such holding shall directly apply.

Sec. 11.08. Amending the charter.

Amendments to this charter may be framed and submitted to the voters of the city in the manner provided by Chapter 9 (9.001 et. seq.) of the Local Government Code Revised Civil Statutes of Texas, as now or hereafter enacted.

Sec. 11.09. Charter review commission.

The council shall appoint at its first regular meeting in July of every fifth year after approval of this charter, a charter review commission of five (5) citizens of the City of Dimmitt.

(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 officer 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 recommendations it may deem desirable to insure 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 finding and present its proposed amendments, if any, to the council.

(b) Action by the council: The council shall receive and have published in the designated official public newspaper of the city the final report of the charter review commission, shall consider any recommendation made, and if any amendments be presented as part of such report, may order such amendment or amendments to be submitted to the voters of the city in accordance with the Texas Local Government Code, as amended.

(c) Term of office: The term of office of such charter review commission shall be six (6) months and at the completion of such term, a report shall be presented to the council, and all records of the proceedings of such commission shall be filed with the city secretary and shall become a public record.

Sec. 11.10. Submission of charter to 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 "no" 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, the charter commission directs that the said charter be voted upon as a whole and that it shall be submitted to the qualified voters of the City of Dimmitt at an election to be held for that purpose on May, 5 A.D. 1990. Not less than thirty (30) days prior to such election, the city council shall cause the city secretary to mail a copy of this charter to each qualified voter of the City of Dimmitt as appears from the latest certified list of registered voters. If a majority of the qualified voters voting in such election shall vote in favor of the adoption of this charter, it shall become the charter of the City of Dimmitt, 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. The secretary shall furnish the mayor a copy of said charter, which copy of the charter so adopted, authenticated and certified by his signature and the seal of the city shall be forwarded by the mayor to the Secretary of State of the State of Texas and shall show the approval of such charter by majority vote of the qualified voters voting at such election.