

CHARTER FOR THE CITY OF PEARSALL



PREAMBLE

We the people of the City of Pearsall, under the constitution and laws of the State of Texas, in order to secure the benefits of local self-government and to provide for an honest and accountable council-manager government do hereby adopt this charter and confer upon the city the following powers, subject to the following restrictions, and prescribed by the following procedures and governmental structure. By this action, we secure the benefits of home rule and affirm the values of representative democracy, professional management, strong political leadership, citizen participation, and regional cooperation.

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ARTICLE 1 - INCORPORATION AND TERRITORY

Section 1.01. CORPORATE NAME.

All inhabitants of the City of Pearsall, Frio County, Texas residing within the boundaries and limits of said City as herein established or may hereafter be established, shall be a municipal body politic, incorporated under, and shall continue to be a municipal body politic, incorporated under, and to be known by, the name and style of the “City of Pearsall,” hereinafter referred to as the “City,” and by that name shall have perpetual succession and succeed to all the rights, property of every kind or class, and have with such powers, rights, and duties as herein provided.

Section 1.02. BOUNDARIES.

The bounds and limits of the city shall be those as established and described in ordinances previously passed or which may be duly passed by the City Council of the City in accordance with state law. The City Clerk shall at all times keep a correct and complete map that shows the boundaries of the City, together with recent annexations or de-annexations. The bounds and limits of the City on the date of the adoption of this home rule charter are as follows: All of those bounds and limits of the City of Pearsall as more fully described in an instrument marked as Exhibit “A” attached to this Charter and expressly incorporated in this Charter by reference at this point as though set out here in full.

Section 1.03. ADDITIONAL TERRITORY.

The City may from time to time alter its boundaries by annexing any territory adjoining its present or future boundaries or denuding any territory within its bounds and limits in the size, shape and amount, as may be authorized by and in the manner and form prescribed by state law. The City may annex additional territory lying adjacent to the City with the consent of the territory and the inhabitants of the territory annexed, where the same is not inconsistent with the state law. The City may annex area only in its extraterritorial jurisdiction unless the City owns the area. Such annexations or de-annexations shall be accomplished by ordinance. The additional territory annexed shall be a part of the City and the property situated therein shall bear its pro rate part of the taxes levied by the City as provided by state law. The inhabitants thereof shall be entitled to all rights and privileges of all citizens and shall be bound by the acts, ordinances and resolutions of the City.

Section 1.04. DEFINITIONS.

As used herein this Charter, these terms or phrases shall have the following meaning:

- (1) “candidate” means any person seeking elective office having satisfied all the legal requirements to have their name placed on the ballot;
- (2) “crime of moral turpitude” means any criminal offense that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence;
- (3) “eligible to vote” means legally qualified under state or federal law to cast a vote;
- (4) “disability” means a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (5) “majority of Council” means the majority of members of Council present to vote.
- (6) “reside” means to live permanently or continuously in one’s residence.
- (7) “residence” means domicile, that is, one’s home and fixed place of habitation to which one intends to return after any temporary absence. A person does not lose the person’s residence by leaving the person’s home to go to another place for temporary purposes only. A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person’s home.
- (8) “suspension” means a short leave of one’s job or position as a form of punishment;
- (9) “total membership of Council” means only the total members of Council eligible to vote; and
- (10) “uniform election date” means the election dates set forth under section 41.001 of the Texas Election Code.

ARTICLE 2 - POWERS OF THE CITY

Section 2.01. POWERS OF THE CITY.

The City shall have all powers possible for a City to have under the Constitution and laws of the State as fully and completely as though they were specifically enumerated in this charter.

Section 2.02 CONSTRUCTION.

The powers of the City under this Charter shall be constructed liberally in favor of the City, and the specific mention of particular powers in the Charter shall not be constructed as limiting in any way the general power granted in this article.

Section 2.03 INTERGOVERNMENTAL RELATIONS.

The City may participate by contract or otherwise with any governmental entity of this state or any other state or states in the United States in the performance of any activity which one or more of such entities has the authority to undertake.

ARTICLE 3 - CITY COUNCIL

Section 3.01. CREATION, COMPOSITION AND POWERS.

There is hereby created as the governing body of the City, a City Council to be composed of seven (7) members, plus the Mayor, nominated and elected in the manner hereinafter provided. Subject to the provisions of this Charter, the City Council shall have and exercise all powers now or hereafter conferred on the City; shall succeed to all powers previously vested in any former governing body of the City; shall have the general care, management and control of the City, its property and finances, and shall enact, alter, modify or repeal all ordinances and resolutions to be consistent with this Charter and the Constitution and laws of the state of Texas. For purposes of this Charter, the terms "City Council" or "Council" include the Mayor, unless otherwise specified.

Section 3.02. CITY COUNCIL MEMBER TERMS, ELECTION, AND OTHER MATTERS.

The seven- (7) members of the City Council shall be elected at large, by place, by the qualified voters of the entire City, for three-year terms, and in no event shall each be elected for more than two consecutive 3-year terms (i.e., 6-year period of service) at a time and/or until a successor is elected and qualified. Any member of the City Council who serves two consecutive 3-year terms may file to become a candidate for election to the City Council after sitting out one year. There is no limitation on the number of 6-year periods of service a person may serve as long as there is a 1-year waiting period in between each possible 6-year period of service. The term limitations specified herein shall begin to apply to candidates elected to the City Council on or after the May 2022 election without regard to the number of prior terms served.

Section 3.03. MAYOR – TERM, ELECTION, OTHER MATTERS.

The Mayor shall be the presiding officer of the City Council. The Mayor shall be elected by the qualified voters of the entire city for a term of three years. In no event shall any person be elected to the position of Mayor, or Councilmember, or a combination of both positions, for more than two consecutive 3-year terms at a time (i.e., 6-year period of service). Any person, who has served as Mayor, or Councilmember, or a combination of both for two consecutive 3-year terms, may file to become a candidate for Mayor of the City after sitting out one year. There is no limitation on the number of 6-year periods of service a person may serve as long as there is a 1-year waiting period in between each possible 6-year period of service. The Mayor shall be the presiding officer of the City Council meetings, but shall not participate in any vote except in the case of a tie vote. The Mayor shall not have any veto power. The Mayor shall be elected in odd-numbered years. If the Mayor shall become a candidate for nomination or election to any public office, other than Mayor, he or she shall vacate immediately his or her place as Mayor and the vacancy thereby created shall be filled as provided in Section 3.09. The term limitations specified herein shall begin to apply to candidates elected as Mayor of the City on or after the May 2023 election without regard to the number of prior terms served.

Section 3.04. MAYOR PRO TEM.

The City Council shall elect one of its members as Mayor Pro Tem, who shall perform the duties of Mayor in case of the absence or temporary inability of the Mayor to perform the duties of office, and who shall for such time be vested with all the powers belonging to the Mayor. In case of the

absence of both the Mayor and the Mayor Pro Tem, the remaining Councilmembers shall select one of their members to act in the place of the Mayor. The Mayor Pro Tem shall be selected after each election and shall serve a period of one (1) year, subject to removal as Mayor Pro Tem at any time by a majority of the City Council

Section 3.05. COMPENSATION AND REIMBURSEMENTS.

No member of City Council nor the Mayor shall receive compensation. All justifiable, necessary, accountable expenses incurred by members of the City Council and the Mayor in the performance of their official duties shall be paid by the City.

Section 3.06. NO INTERFERENCE.

Neither the Mayor, the City Council, nor any of its committees or members, shall dictate or attempt to dictate the appointment of any person to, or removal from, office or employment by the City Manager or any of the City Manager's subordinates, or in any way interfere in the appointment of officers and employees in the departments of administrative service vested in the City Manager by this Charter. Except for the purpose of inquiry, the Mayor, the City Council and its members shall deal with the part of the administrative service for which the City Manager is responsible, solely through such City Manager, and neither the Mayor, the City Council, nor any member thereof, shall give orders to any of the subordinates of the City Manager in said departments, either publicly or privately.

Section 3.07. COUNCIL MISCONDUCT.

Willful violation of any provision of this Charter by the Mayor and/or any member of the City Council shall constitute official misconduct, and shall authorize the Council, by a vote of two-thirds of the total membership of the Council, to expel such offending member Mayor and/or City Councilmembers from the City Council, if found to be in willful violation after a public hearing, and thereby create a vacancy in the place held by such member.

Section 3.08. FORFEITURE OF OFFICE.

The Mayor and any member of the City Council who ceases to possess the required qualifications for office; or who is convicted, while in office of a felony or misdemeanor involving a crime of moral turpitude shall forfeit his or her office, which forfeiture shall be declared and enforced by a vote of a majority of the total membership of the Council. The Mayor and any member of the City Council who fails to attend three (3) consecutive regular, special and/or emergency called meetings of the City Council shall forfeit his or her office unless excused by the unanimous vote

of the City Council, the vote being taken at the beginning of the fourth (4th) meeting after providing the absent Councilmember an opportunity to present his or her excuse or extenuating circumstances to the City Council. The Mayor or any member of the City Council who files for another elective office shall forfeit their office without any action required by council.

Section 3.09. VACANCIES.

Vacancies in the City Council and the position of Mayor, where the same do not exceed two at any one time, shall be filled by majority vote of the remaining Councilmembers and shall serve only until the next general City Council election. A vacancy filled as in the case of an original election shall be only for the unexpired period of the term of the Mayor and/or Councilmember whose office is to be filled. Where more than two vacancies shall develop at any one time, then a special election shall be called to elect their successors to fill their unexpired terms on the first authorized uniform election date as provided by state law occurring on or after the 30th day after the date the election is ordered; provided, that if such vacancies shall occur within 180 days before a general city Council election, then no special election to fill such vacancies shall be called, but in that event the remaining members of the Council shall, by a majority vote, fill such vacancies, and the persons so selected shall serve only until the next general City Council election, when such vacancies shall be filled, as in the case of an original election.

Section 3.10. REGULAR MEETINGS.

On the day the Mayor and Councilmembers take office, and on each and every meeting of the Council thereafter, the City Council shall meet within the corporate city limits at such places and such times as may be prescribed by ordinance or resolution; but not less than one regular meeting shall be posted as authorized by, and in the manner an form prescribed by state law.

Section 3.11. SPECIAL AND EMERGENCY MEETINGS.

Special and emergency meetings shall be called by the City Clerk, upon the written consent of the Mayor, the City Manager, or three members of the City Council. Any such notice shall be posted in advance of the meeting and shall state the subject to be considered at the special or emergency meeting as authorized by, and in the manner and form prescribed by, state law. No other subject shall be considered.

Section 3.12. OPEN MEETINGS.

All meetings of the City Council and all committees thereof shall be open to the public, and the rules of the Council shall provide that citizens of the City shall have a reasonable opportunity to

be heard at any such meetings, in regard to any matter there considered. Any such meetings shall comply with all applicable laws of the state of Texas.

Section 3.13. QUORUM.

A quorum shall consist of five members: Mayor and four Councilmembers, or five Councilmembers, except where the number of Councilmembers, due to vacancies, is reduced to less than five, in which event a quorum shall consist of all of the remaining Councilmembers; but a number less than a quorum may adjourn from time to time and compel the attendance of absent members in such manner, and under such penalties, as shall be prescribed by ordinance.

Section 3.14. VOTING AND RULES OF PROCEDURE.

The “yes” or “no” votes shall be taken on the passage of all ordinances or resolutions and entered in the minutes of the proceedings of the Council, and every ordinance or resolution shall require for final passage the affirmative vote of a majority of the members present. No member shall be excused from voting, except on matters involving the consideration of the member’s own official conduct, or where such member has a substantial interest (as defined by law) in a business entity or in real property that is involved with a matter under consideration by the City Council, or is related in the first degree of consanguinity or affinity to a person who has a substantial interest (as defined by law) in a business entity or in real property that is involved with a matter under consideration by the City Council, in which case the interested Mayor and/or Councilmember shall file an affidavit stating the nature and extent of such interest as required by state law. Any provision in the City Charter that calls for passage upon a vote of the “total membership of the Council” or similar provision shall be construed to include only votes by the 7 members of the City Council and to exclude the Mayor.

Section 3.15. COUNCIL RULES.

The City Council shall determine its rules and order of business and keep minutes of its proceedings. It shall have power to compel the attendance of absent members. The City Council, by a vote of not less than four members, may expel a member from a Council meeting for disorderly conduct or the violation of its rules. The Mayor and each member of the City Council shall be personally responsible for becoming familiar with the City’s affairs as soon as possible after their election to office in order to be able to carry out their duties and obligations as Mayor or City Councilmember.

Section 3.16. COUNCIL EVALUATION OF CITY MANAGER.

The City Council shall adopt a policy setting out the procedures for evaluating the performance of the City Manager and shall periodically review the performance of the City Manager.

**ARTICLE 4 - NOMINATION AND ELECTION OF
MAYOR AND CITY COUNCILMEMBERS**

Section 4.01. DESIGNATED PLACES.

The places of the seven (7) Councilmembers shall be designated as Place No. 1, 2, 3, 4, 5, 6 and 7. All seven (7) Councilmembers shall be elected at large, by place, by a vote of the qualified voters of the City.

Section 4.02. QUALIFICATIONS.

Each member of the City Council and the Mayor shall, in addition to the other qualifications prescribed by law, be a resident of the City for one year previous to the date of election, be at least 21 years of age on the date of the election and must reside in the City during his or her term of office and shall not be in arrears in the payment of any ad valorem taxes or other obligations, such as utility payments, citations or permits, due to the City. The Mayor and each member of the City Council shall have a period of seventy-two (72) hours from time of notification to either satisfy any outstanding payment or to file a protest in accordance with the standard City procedures for protesting said arrearage.

Section 4.03. ELECTION DATE.

The City Council General Election shall be held annually in the City on a permissible uniform election date selected by the City Council by ordinance. Councilmembers designated Place No. 1, 2, 3, and 4 shall be elected in even-numbered years, while the Mayor, as well as Councilmembers designated Place No. 5, 6 and 7 shall be elected in odd-numbered years.

Section 4.04. FILING OF CANDIDATES.

Any qualified person who desires to become a candidate for Mayor and City Council shall file with the City Clerk a sworn application that meets the requirements imposed by state law and file same on or before the filing deadline imposed by state law.

Section 4.05. OFFICIAL BALLOT.

The City Clerk shall make up the official ballots by Place numbers from the names of candidates who have filed applications. During odd-numbered years, the official ballot shall also include the position of Mayor, running on an at-large basis, from the names of candidates who have filed applications. The order, in which the names of the candidates for Mayor and/or each Place on the Council shall appear on the ballot, shall be determined by lot, in a drawing held under the supervision of the City Clerk. The election shall be held in conformity with the election laws in the City and the State of Texas, or with those that may be hereafter enacted. The City Clerk shall have the general responsibility for, and supervision of, the preparation of all election supplies, forms, ballots and equipment, and shall be generally charged with the duty of arranging for, and holding of all elections. All members of the City Council shall be elected at large, by place, by a vote of the qualified voters of the City. The Mayor shall be elected at large by a vote of the qualified voters of the City. All qualified voters in the City shall be entitled to vote for candidates for Mayor and Councilmember for each Place number.

Section 4.06. ELECTION BY PLURALITY.

The candidate for Mayor or Councilmember receiving the largest amount of votes cast as provided in the Charter hereof, for the position of Mayor or Councilmember under the position or Place number under which that person's name appears shall be declared the duly elected Mayor or Councilmember to hold said position.

Section 4.07. RETURNS AND CANVASS THEREOF.

The returns of an election shall be made in triplicate. The presiding officer of each election precinct shall deliver one copy to the City Clerk, one copy to the Mayor or Mayor Pro Tem, and shall retain one copy. The City Council shall canvass the returns and declare the results of an election no earlier than the third day, or later than the eleventh day, following such election.

Section 4.08. TIE ELECTION AND RUNOFF ELECTION.

(a) In the event of a tie between two or more leading candidates in a vote for the same office at the general election, the Mayor, or in his/her absence or temporary inability to act, the Mayor Pro Tem of the City shall, according to state law, issue a call for a second election (i.e., runoff election), unless the tying candidates agree to cast lots to resolve the tie. Any such agreement must be in writing and filed with the City Clerk, who shall supervise the casting of lots.

(b) Ballot – The official ballot to be used at the runoff election shall be prepared by the City Clerk. The names of the tying candidates only, shall be printed on the ballot for the run-off election.

Write-in votes are not permitted. The order in which the names of the candidates shall appear on the runoff ballot shall be determined by lot in a drawing held under the supervision of the Mayor, or in his absence or inability to act, the Mayor Pro Tem, in accordance with law.

(c) Withdrawal – A candidate for any election may withdraw from any election provided the withdrawal occurs within the time prescribed by State law. If any candidate shall decide to withdraw, that candidate shall make a written request to the City Clerk, as specified by State law. If a runoff candidate withdraws, the remaining candidate is considered to be elected and the runoff election for that Place shall not be held. If there is more than one remaining candidate, the run-off election shall continue to be held as scheduled.

(d) In the event a tie vote makes it impossible to determine the winning candidate or candidates in a run-off election, such tie shall be decided in accordance with state law.

ARTICLE 5 - RECALL OF MAYOR AND CITY COUNCILMEMBERS

Section 5.01. RECALL OF MAYOR AND CITY COUNCILMEMBERS.

The Mayor and/or any Councilmember of this City may be recalled and removed from office by the electors qualified to vote.

Section 5.02. PROCEDURE.

(a) A recall petition demanding the recall of the Mayor and/or any Councilmember shall be filed with the City Clerk, provided that such petition shall contain a general statement of the grounds for which the removal is sought. A separate recall petition shall be circulated with respect to each person, whether Mayor and/or Councilmember, whose removal is sought.

(b) The recall petition shall be signed by qualified voters equal in number to at least fifteen (15) percent of the entire number of persons entitled to vote in the City, as appears on the County Clerk's rolls.

(c) Notice shall be given in writing to the City Clerk by five (5) qualified voters on the first day that such recall petition is circulated, and the total signatures of qualified voters required must be secured, and the recall petition filed within thirty (30) days thereafter.

(d) The signatures to the recall petition need not all be appended to one (1) recall petition paper and may be duplicated and assembled. For a recall petition signature to be valid, a recall petition paper must contain, in addition to the signature, the signer's printed name, signer's voter registration number, residential address, date of signing, and otherwise comply with any other applicable requirements prescribed by law.

(e) All recall petition papers comprising the recall petition shall be assembled and filed with the City Clerk as one recall petition instrument. At all times, thereafter, the recall petition papers shall be held in the care, custody and control of the City Clerk. Within ten (10) days from the filing of such recall petition instrument, the City Clerk shall verify the signatures, and from the list of qualified voters, ascertain whether or not the recall petition is signed by the requisite number of qualified voters, in accordance with state law. The City Clerk shall attach to the recall petition a certificate showing the result of such examination.

(f) If by the City Clerk's certificate the recall petition is shown to be insufficient, it may be amended by filing a supplementary recall petition instrument upon presentation of additional recall petition papers to the City Clerk, within ten (10) days from the date of said certificate. The City Clerk shall, within ten (10) days after such supplementary recall petition instrument is filed, in the event one is filed, make like examination of the amended recall petition, and if the certificate shall show the amended recall petition to still be insufficient, it shall be returned to the person filing same, and the City Clerk shall take no further action upon the insufficient amended recall petition. The finding of the insufficiency of a recall petition, or an amended recall petition, shall not prevent the filing of a new petition on the same general grounds.

(g) If the recall petition, or amended recall petition, is found to be sufficient, the City Clerk shall without delay submit it, and the certificate declaring the petition to be sufficient, to the City Council. The City Council, in the event that the Mayor and/or any Councilmember elects not to resign, shall order and set an election to be held on the next permissible uniform election date after the submission of the sufficient recall petition.

(h) If the Mayor and/or any Councilmember subject to the recall petition resign, no recall election shall be necessary, and the vacancy shall be filled by the City Council as in other cases of vacancies, or as otherwise provided for in this Charter.

Section 5.03. APPEAL.

Should the City Council fail or refuse to order an election as herein provided for the recall of the Mayor and/or any Councilmember, when all the requirements for such recall election have been complied with by the petitioning citizens in conformity with this article of the Charter, then any one of the District Judges of Frio County, Texas, may, upon proper application being made therefore, order such recall election to enforce the carrying into effect of the provision of this article of the Charter.

Section 5.04. BALLOTS IN RECALL ELECTION.

Ballots used in recall elections shall read regarding the Mayor and/or each Councilmember whose removal is sought as follows: “Shall (name of person) BE REMOVED [AS MAYOR]/[AS CITY COUNCILMEMBER] BY RECALL?” Below such question there shall be printed the following as to each member:

“For the recall of (name of person.)”

“Against the recall of (name of person).”

Section 5.05. RESULT OF RECALL ELECTION.

If a majority of the votes cast are against recall of the Mayor and/or any Councilmember, the Mayor and/or Councilmember(s) shall continue in office for the remainder of the Mayor’s and/or Councilmembers’ term, but subject to recall as before. If a majority of such votes are for the recall of the Mayor and/or any Councilmember(s), the Mayor and/or Councilmember(s) shall be deemed removed from office and a successor shall be appointed.

Section 5.06. LIMITATIONS ON RECALL PETITIONS.

No recall petition shall be filed against the Mayor and/or any Councilmember within three months after he or she takes office nor, in respect to the Mayor and/or any Councilmember subjected to a recall election and not removed thereby, until at least six months after such recall election.

ARTICLE 6 - CITY MANAGER

Section 6.01. APPOINTMENT & REMOVAL.

The City Council, by majority of Council present and eligible to vote, shall appoint a City Manager, who shall be the chief administrative and executive officer of the City. The City Manager may be appointed without a fixed term for service, or the City Council may choose to enter into a contract with the City Manager for a period not to exceed two (2) years. Whether appointed or engaged by contract, the City Manager shall be removable at the will and discretion of the Council by a majority vote of the entire Council. The City Manager shall receive such compensation as may be fixed and periodically amended by the City Council. The City Manager serves at the pleasure of the City Council and may be removed at the discretion of the City Council by a majority vote of the total membership of the Council.

Section 6.02. QUALIFICATIONS.

The City Manager shall be chosen by the City Council on the basis of the job description and qualifications set forth in the City of Pearsall Personnel Manual. The City Manager shall, not later than the City Manager's term of employment, reside within a 100 mile radius of the municipal corporate limits of the City. No member of the City Council shall, during the time for which elected and one year thereafter, be eligible to serve as City Manager.

Section 6.03. ABSENCE, DISABILITY OR SUSPENSION.

In case of the absence, disability, or suspension of the City Manager, the City Council may designate some other qualified administrative official of the City to perform the duties of the office during such absence, disability, or suspension, for a period not to exceed three months.

Section 6.04. POWERS AND DUTIES.

The exclusive powers and duties of the City Manager shall be as follows:

- (a) To make certain that all laws and ordinances are enforced.
- (b) To appoint, promote and remove all directors of City departments and all subordinate officers and employees of the City except as otherwise provided in this Charter; all appointments, promotions and removals to be based upon merit, performance and qualifications, or lack thereof, alone. All appointments are to be subject to other applicable provisions of this Charter

and to the rules concerning prohibition of nepotism set out in TEX. LOC. GOV'T CODE ANN. Chapter 171 and TEX. GOV'T CODE ANN. Chapter 573, and as they may be from time to time amended.

- (c) The City Manager shall appoint a City Clerk who shall keep the records of the Council and of the City, and who shall perform such other duties as may be required by this Charter, a City ordinance or the City Manager.
- (d) To exercise administrative supervision and control over all departments and subdivisions thereof created by the Charter, or that may hereafter be created by the Council.
- (e) To assure that all terms and conditions imposed in favor of the City or its inhabitants in any public utility franchise contract are faithfully upheld and performed, and upon knowledge of any violation thereof, to call the same to the attention of the City Attorney, whose duty it shall be to pursue proper remedies as may be necessary to enforce the same.
- (f) To attend all meetings of the City Council, with the right to take part in the discussion, but having no vote. The City Manager shall be entitled to notice of all regular, special and emergency meetings.
- (g) To recommend to the City Council and Mayor for adoption such measures as the City Manager may deem necessary or expedient.
- (h) To keep the City Council and Mayor at all times fully advised as to the financial condition and needs of the City.
- (i) To prepare, or cause to be prepared by other professionals, and submit to the City Council and Mayor the annual budget in the form and by the procedure prescribed by law, and to act as the chief budget officer.
- (j) To make certain that the City operates within its annual budget.
- (k) To require any municipal officer or board to furnish information necessary to prepare the budget.
- (l) To execute deeds and to make and execute all contracts or other legal documents on behalf of the City when authorized by ordinance, resolution, or motion of the city council.
- (m) To file a proposed budget with the City Clerk before the 30th day before the date Council makes its tax levy for the fiscal year.
- (n) Recommend to the City Council and Mayor the contractual engagement or termination of architectural, engineering, medical, legal and other consultants needed to carry out the powers, duties, and functions of the City and/or protect the City.

- (o) To provide the City Council and Mayor with all information deemed necessary (and permitted by state law to be disseminated) to allow the Mayor and the members of the City Council to carry out their duties and obligations as Mayor and City Councilmembers.
- (p) To perform such other duties as may be prescribed by this Charter or by ordinance or resolution of the City Council, or any State law. Failure by the City Manager to perform all duties as may be prescribed by this Charter, or by ordinance or resolution of the City Council, or any state law, may be considered by the City Council as grounds for removal as provided herein.

Section 6.05. RESPONSIBLE TO THE COUNCIL.

The City Manager shall be responsible to the City Council for the proper execution and administration of all City affairs and shall to that end appoint, employ and remove all directors of departments and other employees not otherwise provided for in this Charter, or by Ordinance. Appointments by the City Manager shall be made on the basis of the appointee's executive and administrative experience, ability, training, qualifications and efficiency to perform the work, which the appointee is to administer. All directors of departments shall be responsible to the City Manager and may be removed by the City Manager at any time.

Section 6.06. NO INTERFERENCE WITH APPOINTMENTS OR REMOVALS.

Neither the Mayor, the City Council, nor any of its committees or members, shall dictate or attempt to dictate the appointment of any person to, or removal from, office or employment by the City Manager, or any of the City Manager's subordinates, or in any way interfere in the appointment of officers and employees in the departments of administrative service vested in the City Manager by this Charter. Except for the purpose of inquiry, the Mayor, the City Council and its members shall deal with the area of administrative service for which the City Manager is responsible solely through such City Manager, and neither the Mayor, the City Council, nor any member thereof, shall give orders to any of the subordinates of the City Manager in said departments, either publicly or privately. Any violations of the foregoing provisions by the Mayor and/or any member of the City Council, or any of its committees or members, shall constitute official misconduct, and shall authorize the Council by a vote of two-thirds of its total membership to expel such offending Mayor and/or any City Councilmember, or any of its committees or members, from the City Council, or any of its committees, if found in violation hereof after a public hearing, and declare the office vacant and appoint a successor.

Section 6.07. BOND OF CITY MANAGER.

The City Council shall require the City Manager, before assuming the duties of the office, to obtain and maintain at all times a bond with a solvent surety company licensed to conduct business in the State of Texas, and approved by the City Council, as surety thereon; said bond to be in such reasonable amount as the Council may demand, payable to the City, and conditioned upon the faithful and lawful performance of the City Manager’s duties of office; the annual premium of such bond to be paid by the city. Failure to maintain such a bond at all times shall be grounds for suspension or removal.

Section 6.08. INVESTIGATIONS.

The City Council, the City Manager or any person or committee authorized by either or both of them shall have power to inquire into the conduct of any department, agency, or office of the City; to make investigations as to City affairs, and for that purpose compel the appearance of persons, testimony of persons under oath, and production of books, papers and other evidence material to said inquiry. The City Council shall establish any ordinance penalties for contempt in refusing to obey such mandates and subpoenas or for failure to produce books, papers and other evidence, and shall have the power to punish any such contempt in the manner provided by ordinance.

Section 6.09. INPUT FROM CITIZENS, CITY EMPLOYEES AND CITY OFFICIALS.

The City Manager shall implement a system of procedures for receiving, documenting and reviewing complaints, suggestions, comments or other types of input from citizens, city employees and city officials or any other person about city services, projects or any other matter involving the City. The City Manager shall develop a form(s) to document all such input. These forms shall be available at all city offices or buildings.

ARTICLE 7 - ADMINISTRATIVE DEPARTMENTS

Section 7.01. CREATION AND CONTROL.

The following administrative departments are hereby created and placed under the control of the City Manager: (a) Finance, (b) Police, (c) Public Works, (d) Parks and Recreation, (e) Planning & Community Development, (f) Library and (g) City Records. In addition to the administrative

departments created hereby, the Council shall have power by ordinance to establish, combine, discontinue or re-designate other administrative departments or offices. The City Council may combine any two or more of the departments and/or administrative offices created by this Charter. No functions or duties assigned by this Charter to a particular department or office shall be abolished except as otherwise provided by this Charter, but such functions or duties may be assigned by ordinance to other administrative departments or offices of the City. No administrative department or office shall be established, combined, discontinued or re-designate until the recommendation of the City Manager shall have first been heard by the City Council. Such departments and offices as may hereinafter be created shall be also placed under the control of the City Manager.

Section 7.02. ADMINISTRATIVE CODE.

The City Manager shall prepare and submit to the Council for its approval and adoption an Administrative Code, and such amendments, from time to time, as are necessary to maintain the Administrative Code current with regard to the organization, functional operation and such other definitions and delineations of the organization of the City as are required. The Administrative Code shall include and provide for departments and offices as required by this Charter and other departments and offices created by ordinance. The Administrative Code shall provide for a director, or other designated officer for each department, and the duties and responsibilities of such director or officer, and such. Other matters as shall be necessary for the proper control and management of each department or office of the City. Each director or officer so designated and not appointed by the City Council as provided in the Charter, shall be appointed by the City Manager, and shall serve until removed by the City Manager. The Administrative Code shall define the organizational structure and reporting responsibility of each department or office, whether to the City Manager, Deputy or Assistant City Manager, or other director or officer of the City, as set out in said Administrative Code. The Administrative Code shall also include the development of a personnel management system, including, but not limited to, a system for evaluation of city employees, departmental policies, employment policies, salary and wages. Notwithstanding the foregoing, each city employee shall be an employee at will of the city.

Section 7.03. RESPONSIBILITY OF DEPARTMENT DIRECTORS.

The directors of departments appointed by the City Manager shall be immediately responsible to the city manager for the administration of their departments, and their advice in writing may be required by the City Manager on all matters affecting their departments. The department directors shall have supervision and control over their respective departments subject to approval by the City Manager, except as otherwise specifically provided by this Charter. They shall prepare departmental budget estimates, which shall be open to public inspection, and they shall make all their reports and recommendations concerning their departments at stated intervals, or when requested, by the City Manager.

Section 7.04. DEPARTMENT DIVISIONS.

The work of each department shall be distributed among such divisions thereof as may be established by ordinance; provided, however, that no division shall be established unless the City Manager shall have been given an opportunity to have been heard thereon; provided, further, that pending the passage of an ordinance or ordinances distributing the work of the departments under the supervision and control of the City Manager among specific divisions thereof, the City Manager may establish temporary divisions.

Section 7.05. FINANCE DEPARTMENT.

- (1) Director of Finance; Qualifications. The Director of the Finance Department shall be the head of such department and shall have knowledge of and experience in municipal accounting, taxation, bonds, utilities and franchises and shall have had experience in budgeting and financial control. The Director shall provide a bond with such surety and in such amount as the Council may require. The City shall pay the annual premium on said surety bond.
- (2) Finance Department; Powers and Duties. The Finance Department shall have the authority and be required to:
 - (a) Administer the financial affairs of the City in accordance with ordinances enacted by the Council.
 - (b) Prepare the budget for the city Manager and assist the Manager in his administration, after authorization by the City Council, as required by this Charter.
- (3) Maintain accounting control over the finances of the City government, and perform such other duties pertaining to the financial affairs of the City as the City Council may require.
- (4) Control the procurement, storage and distribution of all supplies, materials, equipment, and contractual services now or hereafter required by City Council.
- (5) Provide for the assessment of all property subject to taxation by the City.
- (6) Collect, have custody of, and disburse all funds belonging to the City, subject to the provisions of this Charter and ordinances enacted there under; have custody as fiduciary of all funds of the City; keep a record of investments; have custody of all bonds and certificates of City indebtedness, including bonds and certificates unissued or cancelled; and the receipt and delivery of City bonds and certificates of transfer, registration and exchange. The

Finance Department shall exercise such additional powers and perform such additional duties as may be prescribed by ordinance.

Section 7.06. POLICE DEPARTMENT.

- (1) Chief of Police. The Chief of Police shall be the Director of the Police Department and shall have knowledge of, and experience in, operating and managing a law enforcement organization.

- (2) Authority and Duties of Policemen. The officers and policemen of the Police Department shall have all the powers and authority given to them as peace officers under the laws of Texas, this Charter, and all other powers and authority that may lawfully be conferred on them by the Council. Such officers and policemen may exercise their powers and authority within the corporate limits of the City, and within the limits of any property owned, leased or otherwise subject to the control of the City, which lies outside the corporate limits of the City and within any other area allowed by state law. It shall be the duty of each officer and policeman to use his best skills and judgment to attempt to prevent the commission of offenses against the laws of the State and the ordinances and regulations of the City; to observe and enforce all such laws, ordinances and regulations; to detect and arrest offenders against the same; to preserve the good order of the City and to attempt to secure the inhabitants thereof from violence, and the property therein from damage, theft, or loss. Such officers and policemen shall execute any criminal warrant or warrants of arrest, or any writ subpoenas, or other process that may be placed in their hands by the duly constituted authorities of the City. No officer or policeman shall receive any fee or other compensation for any service rendered in the performance of his duty other than the salary and benefits paid him by the City. The Police Department shall exercise such additional powers and perform such additional duties as may be prescribed by ordinance.

Section 7.07. PUBLIC WORKS DEPARTMENT.

- (1) Director of Public Works: Head of Department. The Director of Public Works shall be the head of the department and shall have knowledge of, and experience in, operating and managing a public works operation.

- (2) Public Works Department; Powers and Duties. The Department of Public Works shall have charge of the planning, opening, construction, maintenance and repair of all streets, alleys, sidewalks, bridges, rivers, water-courses, creeks, ditches and public ways; of the operation of the water production, treatment, storage, transmission and distribution system; of the operation of the wastewater collection, transmission, treatment and disposal system; of the operation of the gas production, storage transmission and distribution system; of the

operation of the storm water collection, transmission and disposal system; and operations of other city owned utility systems; of the construction, maintenance, repair and operation of all public buildings and properties belonging to, or used by, the City, of building, electrical and plumbing inspection; and the issuance of building, electrical, and plumbing permits and other building or construction type permits; of the collection and disposal of solid waste by the City or others. The Public Works Department shall exercise such additional powers and perform such additional duties as may be prescribed by ordinance.

Section 7.08. PARKS AND RECREATION DEPARTMENT

- (1) Director of Parks and Recreation; Head of the Department. The Director of Parks and Recreation shall be the head of the department and shall have knowledge of, and experience in, operating and managing a parks and recreation operation.

- (2) Parks and Recreation Department; Powers and Duties. The Parks and Recreation Department shall have charge of the management and maintenance of public parks, playgrounds, and all other public recreational facilities, including civic centers, other community centers and programs. The management, operation and maintenance of parks and playgrounds, and of all other public recreational facilities and programs, shall be deemed to be done in the governmental capacity of the City. The Parks and Recreation Department shall exercise such additional powers and perform such additional duties as may be prescribed by ordinance.

Section 7.09 PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT.

- (1) Director of Planning and Community Development. The Director of Planning and Community Development shall be the head of such department and shall have knowledge of, and experience in, municipal planning, platting, zoning, annexation, land use, transportation, public improvements and facilities planning matters.

- (2) Powers and Duties. The Department of Planning and Community Development shall carry out the platting, zoning, annexation, general planning, land use, transportation, public improvements and facilities planning functions of the City, as well as assist the City Planning and Zoning commission with its obligations, goals and objectives.

Section 7.10. LIBRARY DEPARTMENT.

- (1) Director of the Library. The Director of the Library shall be the head of such department and shall have knowledge of and experience in, the operation and management of a public library.

(2) Powers and Duties. The Library Department shall operate and maintain the library (ies) of the City.

Section 7.11. CITY RECORDS DEPARTMENT.

- (1) City Clerk. The City Clerk shall be the director and-head of such department and shall have knowledge of, and experience in, the maintenance of City records.
- (2) Powers and Duties. The City Records Department shall keep and maintain all documents and records of the City, including the records of the City Council and other City boards, commissions and committees. All legal civil process to the City shall be served upon the City Clerk. All notice of claims for injury or death to persons and damage to property for which the claimant alleges City responsibility must be timely filed with the City Clerk in accordance with state law and any ordinances adopted by the City Council governing notices of claims.

Section 7.12. EMPLOYEE REIMBURSEMENTS.

All Justifiable, necessary, accountable expenses incurred by employees of the City in the performance of their duties shall be paid by the City.

ARTICLE 8 - CITY ATTORNEY

Section 8.01. CITY ATTORNEY.

The City Council shall appoint, by a majority vote, a competent attorney licensed by the State Bar of Texas, and who has been practicing Law in the State of Texas for a minimum of (2) two years, who shall be the City Attorney. The City Attorney shall receive compensation for professional legal services rendered as may be fixed, approved, and periodically amended by the City Council, and shall serve at the pleasure of the City Council. The City Attorney may be appointed without a definite term of service or, the City Council may choose to enter into a written contract with the City Attorney for a period not to exceed two (2) years. The City Attorney shall be removable at the will and discretion of the Council by a vote of the majority of the entire Council. The City Attorney, and/or other duly licensed practicing attorneys in the United States selected by the City Council as Special Counsel, shall represent the City in all legal matters and litigation, and shall serve as legal advisors of, and attorneys and counselors for the City. Any and all legal actions and

appearances shall be brought or entered in the name of the City Attorney and acting by or through the City Attorney.

ARTICLE 9 - MUNICIPAL COURT – MUNICIPAL JUDGE – MUNICIPAL PROSECUTOR

Section 9.01. MUNICIPAL COURT.

There shall be established and maintained by the City Council, a court designated as a Municipal Court, with all powers and duties as are now, or hereafter may be, prescribed by the laws of the State of Texas relating to Municipal Courts and state courts in general.

Section 9.02. MUNICIPAL COURT JUDGE.

The Judge of the Municipal Court shall be appointed by a majority vote of the City Council for a term of two years, subject to removal by the City Council at any time by a majority vote of the total membership of the City Council. While in office, the Judge of the Municipal court shall be a bona fide resident of the city. In the event the Judge of the Municipal Court is temporarily unable to act, the City Council may appoint, by a majority vote a Temporary Judge to serve in the Municipal Court Judge's place' during such temporary period not to exceed two years. The City Council may remove the Municipal Court Judge. The City Council shall appoint, by majority vote, a person to fill a vacancy in the office of Municipal Court Judge only for the remainder of any unexpired term of office.

Section 9.03. MUNICIPAL COURT PROSECUTOR.

The Prosecutor of the Municipal Court shall be the City Attorney or his deputy. Any and all legal actions and appearances shall be brought or entered in the name of the City Attorney and acting by or through the City Attorney.

Section 9.04. COMPENSATION.

The Judge, Temporary Judge and Prosecutor shall receive compensation as is approved by the City Council.

Section 9.05. MUNICIPAL COURT CLERKS.

The City Manager shall appoint the Clerk of the municipal court and the Deputy Clerks, subject to removal by the City Manager at any time. Said Clerks shall each qualify as a Notary Public and shall have the power and duties to administer oaths and affidavits, make certificates, affix the seal of the Court thereto, issue process, and generally do and perform any and all duties for the municipal court that a county clerk performs for a county court.

Section 9.06. GENERAL LAWS – ACT CUMULATIVE OF.

The foregoing sections are hereby declared to be cumulative of any laws that may now or thereafter be passed by the Legislature regulating or increasing the jurisdiction of Municipal Courts in cities of the grade and size of the City, and state courts in general.

ARTICLE 10 - BOARDS AND COMMISSIONS

Section 10.01. CREATION.

The following Boards and Commissions are hereby recognized:

- (a) Planning and Zoning Commission
- (b) Parks and Recreation Commission
- (c) Board of Adjustment
- (d) Library Board
- (e) Ethics Commission
- (f) Historical Landmarks Preservation Commission
- (g) Youth Advisory Group Committee
- (h) Tax Increment Reinvestment Zone Board

The City Council shall have power by ordinance to create, establish, and abolish such other Boards and Commissions as the City Council shall determine are necessary and desirable. Such ordinance shall, as a minimum, include:

- (a) Title of the Board or Commission
- (b) Purpose and duties

- (c) Number of persons comprising ‘membership
- (d) Terms of office.
- (e) Appointment of Chairperson and Vice Chairperson
- (f) The City Council by ordinance may create Boards, Commissions or Committees to assist in only an advisory capacity, the directors or chiefs of municipal departments in the performance of their duties. The members of any such Boards, Commissions or Committees shall be appointed by the City Council on recommendation of the City Manager, or members of the City Council, and shall receive no compensation from the City.

Section 10.02. APPOINTMENTS.

The City Council shall, by majority vote, appoint members to all Boards and Commissions, selecting from persons who are qualified voters of the City, who have been residents of the state of Texas for at least one (1) year, and residents of the City for at least six (6) months unless otherwise required by law. Appoint to all Boards or commissions shall be for a term of two years, subject to removal by city Council as set forth in this Charter. No person shall be appointed to serve on a board or commission for more than three (3) consecutive two (2) year terms (i.e., 6-year period of service). All Board and Commission members shall serve without compensation. All justifiable, necessary, accountable expenses incurred by members of Boards or Commissions in the performance of their official duties shall be paid by the City. There is no limitation on the number of 6-year periods of service a person may serve as long as there is a 2-year waiting period in between each possible 6-year period of service.

Section 10.03. REMOVAL AND VACANCIES.

The City Council may, upon the affirmative vote of *the majority* of the City Council, remove members of any Board or Commission for cause only after proper notice and opportunity for public hearing has been given to the member. If an individual appointed to a Board or Commission shall cease to possess any qualification for appointment, or shall be convicted while on the Board or Commission of a felony or misdemeanor involving a crime of moral turpitude, such individual shall forfeit his or her appointment on the Board or Commission without the need to have the forfeiture declared by a vote of the City Council and such appointment shall be deemed vacant. Vacancies in the appointive Board or Commission, whether by resignation, death, removal, or other cause, shall be filled by City Council appointment only for the unexpired term of that vacant position.

Section 10.04. MEETINGS.

All meetings shall be open to the public unless otherwise provided by law. Written minutes shall be kept and attendance, subject matter and voting shall be recorded. Any notice of a public meeting shall comply with all applicable state laws.

Section 10.05. QUORUM.

A majority of Board or Commission members shall constitute a quorum.

Section 10.06. VOTING.

No member of a Board or Commission shall be excused from voting except on matters involving the consideration of the member's own official conduct, or where such member has a substantial interest (as defined by law) in a business entity or in real property that is involved with a matter under consideration by a Board or Commission, or is related in the first degree by consanguinity or affinity to a person who has a substantial interest (as defined by law) in a business entity or in real property that is involved with a matter under consideration by a Board or Commission, in which case the interested Board or Commission member shall file an affidavit disclosing and stating the nature and extent of such interest as required by state law.

Section 10.07. CITY PLANNING AND ZONING COMMISSION.

(1) Purpose. The Planning and Zoning commission shall exercise all powers granted by the City council and shall make recommendations to the City council, and exercise the powers granted thereto on all matters affecting the physical development of the City, including the preparation, or amendment of a comprehensive plan or plans and their implementation; on all matters affecting land use, zoning, zoning regulations and modifications and changes thereto; on all matters regarding public improvements to be constructed, including civic improvements; on all matters regarding city planning, opening, widening and changing of streets; on all matters regarding location of public utilities, including extensions thereof; on all matters regarding controlling and regulating traffic upon the public streets and ways of the City; and such other matters as the Planning and zoning Commission and the City Council may deem beneficial to the City.

(2) Powers. The Planning and Zoning Commission shall have any and all powers granted to planning and zoning commissions by the statutes of the State of Texas, this Charter, and such other duties and further powers as are delegated to it by Ordinance of the City Council of the City.

(a) Planning. The Planning and Zoning Commission shall have the power to review and pass upon all proposed plans which may ultimately be considered by the City Council in final form relating to public improvements, as well as land use and transportation matters. It shall be the duty of the City staff and City Council, as far as practicable, to submit such preliminary plans governing public improvements, as well as land use and transportation matters, involved under the terms of this Charter, to the Planning and Zoning Commission, and to obtain its advice with reference thereto. The City council may thereafter adopt the -means and methods which may be deemed most advisable by the City Council; provided, however, that any public improvement undertaken hereunder, or otherwise, or any decision made regarding land use or transportation matters, by the City Council shall never be deemed invalid because the Planning and Zoning Commission has not been first consulted, or because the City Council has failed to submit its preliminary plans thereof, for consideration by the Planning and zoning commission. The Planning and Zoning commission shall further have the power to review and render its recommendation to the City Council on the submission for approval of any subdivision plats within the City and its extraterritorial jurisdiction, in accordance with the provisions of the City's subdivision ordinance.

(b) Zoning. For the purpose of promoting the public health, safety, order, convenience, prosperity and general welfare, the City Council of Pearsall shall have the power to divide the City into zones or districts for the purpose of regulating and controlling (a) the size, number of stories, height and bulk of buildings and other structures, – (b) the percentage of a lot that may be occupied; (c) the size of yards, courts and other open spaces; (d) population density; and (e) location and use of buildings, other structures and land for business, industrial, residential or other purposes within such zones or districts and may exercise any other powers necessary to fully effectuate and accomplish the purpose of the powers herein conferred, subject to the notice and hearing requirements of state law. The Planning and Zoning Commission shall recommend boundaries for the original Zoning districts and appropriate zoning regulations for each district, in accordance with a comprehensive plan adopted by the City Council. The Planning and Zoning commission shall further review and render its recommendation to the City Council on any changes to the districts, their boundaries or the regulations.

(3) Membership and Terms. The Planning and Zoning Commission shall consist of (5) five members, who shall be appointed for two (2) year terms. The members may be removed in accordance with the provisions of Section 10.03.

(4) Procedures. The Planning and Zoning Commission shall itself appoint and designate from its members a Chairperson and Vice Chairperson to preside over commission actions. The commissioners shall meet at least once monthly, or more as required. Guidelines, rules, regulations and other duties and powers shall be prescribed by ordinance.

Section 10.08. PARKS AND RECREATION COMMISSION.

(1) Purpose. The Parks and Recreation commission shall act in an advisory capacity to the City Council in all matters pertaining to Parks and Recreation, and shall exercise such other duties and further powers as are delegated to it by ordinance.

(2) Membership and Terms. The Parks and Recreation Commission shall consist of (5) five members who shall be appointed for two (2) year terms. The members may be removed in accordance with the provisions of Section 10.03.

(3) Procedures. The Parks and Recreation Commission itself shall appoint and designate from its members a Chairperson and Vice Chairperson to preside over Commission actions. Meetings shall be held monthly or as required. Guidelines, regulations and responsibilities shall be prescribed by ordinance.

Section 10.09. BOARD OF ADJUSTMENT.

(1) Purpose. The Zoning Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning ordinance that are consistent with its general purpose and intent, and in accordance with any applicable rules contained in the zoning ordinance.

(2) Creation of the Board of Adjustment. There is hereby created a Board of Adjustment consisting of five (5) members and four (4) alternate members to be appointed by the City Council. This Board shall have all powers and obligations vested in it by state law. The Zoning Board of Adjustment is not an advisory board.

(a) Terms, removal of members. All regular and alternate members of the Board of Adjustment shall be appointed for a term of two (2) years and shall be removable for cause by the City Council upon written charges and after public hearing. The members may be removed in accordance with the provisions of Section 10.03.

(b) Vacancies. Vacancies in the regular or alternate membership of the Board of Adjustment shall be filled by the City Council only for the unexpired term.

(c) Minimum of four members at hearings. The alternate members of the Board of Adjustment shall serve in the absence of one (1) or more regular members, when requested by the Mayor or, in his absence or temporary inability to act, by the Mayor Pro Tem or by the City Manager, so that all cases heard by the Board of Adjustment will always be heard by a minimum of four (4) members.

(d) Minutes; records. The Board of Adjustment shall keep minutes of its proceedings indicating the vote of each member on each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official action, all of which shall be immediately filed in the office of the Board of Adjustment and shall be a public record.

(e) Meetings. The Board of Adjustment may have monthly meetings, or at the call of the chairman, or in his absence the acting chairman, and at such other times as the Board may determine. The Chairman, or acting chairman, may administer oaths and compel the attendance of witnesses. All Board of Adjustment meetings shall be open to the public.

(f) Rules. The Board of Adjustment shall adopt rules in accordance with any ordinance adopted under this Charter and state law.

(3) Powers. The Board of Adjustment shall have the following powers:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Section, or of any ordinance adopted pursuant thereto;

(b) To hear and decide special exceptions to the terms of the zoning ordinance when the ordinance requires the Board of Adjustment to do so;

(c) To authorize, in specific cases, a variance from the terms of the zoning ordinance, if the variance is not contrary to the public interest, and due to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance shall be observed, and substantial justice done.

(4) Appeals. The decision of Board of Adjustment may be appealed as provided by state law.

Section 10.10. LIBRARY BOARD.

(1) Purpose and Powers. The Library Board shall act in an advisory capacity to the City Council in all matters pertaining to the Library, and shall exercise such other duties and further powers as are delegated to it by ordinance.

(2) Membership and Terms. The Board shall consist of five (5) members who shall be appointed for two (2) year terms. The members may be removed in accordance with the provisions of Section 10.03.

(3) Procedures. The Board itself shall appoint and designate from its members a Chairperson and Vice Chairperson to preside over the Board actions. Meetings shall be held monthly or as required. Guidelines, regulations and responsibilities shall be prescribed by ordinance.

Section 10.11. ETHICS COMMISSION.

(1) Purpose. The Ethics Commission shall act in an advisory capacity to the City Council in all matters pertaining to the ethical conduct of the City's officials and staff, and shall exercise such other duties and further powers as are delegated to it by ordinance. At minimum, the role of the Ethics Commission is to investigate, and make recommendations concerning any allegations or complaints concerning violation of any ethics law enacted by the City council.

(2) Membership and Terms. The Commission shall consist of seven (7) members who shall be appointed for two (2) year terms. The members may be removed in accordance with the provisions of Section 10.03.

(3) Procedures. The commission itself shall appoint and designate from its members a Chairperson and Vice Chairperson to preside over the Commission actions. Meetings shall be held monthly or as required. Guidelines, regulations and responsibilities shall be prescribed by ordinance.

(4) City Council Action. The city council shall, after adoption of this charter, adopt an ordinance adopting standards of conduct for city officers and employees, stating the city's policy on ethical conduct, setting forth the Commission's duties and responsibilities, adopting a code of ethics, adopting any other requirements deemed necessary and adopting sanctions for violation of the ordinance.

ARTICLE 11 - FINANCIAL MANAGEMENT

Section 11.01. FISCAL YEAR.

The fiscal year of the City shall begin on October 1 of each calendar year and will end on September 30 of the following calendar year. The fiscal year will also be established as the accounting and budget year.

Section 11.02. PREPARATION AND SUBMISSION OF BUDGET.

The City Manager, on or before August 1 of each year, shall prepare and submit the budget, covering the next fiscal year, to the City Council. In preparing this budget, each employee, officer, board and department shall assist the City Manager by furnishing all necessary information.

The City Manager's budget message shall include:

- (a) an outline of the proposed financial policies for the next fiscal year with explanations of any changes from previous years in expenditures, any major changes of policy, and a complete statement regarding the financial condition of the City;
- (b) the outstanding obligations of the City;
- (c) the cash on hand to the credit of each fund;
- (d) the funds received from all sources during the preceding year;
- (e) the funds available from all sources during the ensuing year;
- (f) the estimated revenue available from taxes and other sources, including the present tax structure rates and property evaluations for the ensuing year to fund the proposed budget;
- (g) a carefully itemized list of proposed expenditures by fund, service type, object of expenditure, and project for which expenditures are set up, and the estimated amount of money allocated in the budget for each project for the ensuing budget year, as compared to actual expenditures of the last ended fiscal year, and an estimate of final expenditures for the current fiscal year;
- (h) a statement proposing any capital expenditures deemed necessary to undertake during the next budget year and recommended provision for financing;
- (i) the estimated tax rate required to cover the proposed budget.

Section 11.03. BUDGET AS A PUBLIC RECORD.

The budget, and all supporting schedules, shall be filed with the City Clerk when submitted to the City Council and shall be available for public inspection. The budget shall be filed with the City Clerk before the City Council makes its tax levy for the fiscal year in accordance with state law.

Section 11.04. PUBLIC HEARING.

At the Council meeting when the budget is submitted, the City Council shall name the date, time and location of a public hearing. The hearing shall be set for a date before the date the City Council makes its tax levy in accordance with state law. Public notice of the time, date and location of such hearing shall be published before the hearing in accordance with state law. At this hearing, citizens of the City may attend and participate by expressing their opinion concerning items of expenditure and revenue.

Section 11.05. PROCEEDING ON ADOPTION.

After the public hearing, the Council shall analyze the budget, making any additions or deletions which they consider warranted by the law or by the best interest of the city's taxpayers, and shall, by ordinance, then adopt the budget by a majority vote of all members of the Council.

Section 11.06. BUDGET APPROPRIATION: TAX LEVY.

On final adoption, the budget shall be in effect for the budget year. Final adoption of the budget by the City Council shall constitute the official appropriations for the current year, and shall constitute the basis of the official levy of the property tax as the amount of tax to be assessed and collected for the corresponding tax year, in accordance with the budget. Estimated expenditures for operating purposes will in no case exceed proposed revenues, plus reserved fund balance, and other financing sources. Unused appropriations may be transferred to any item required for the same general purpose.

Section 11.07. TRANSFER OF APPROPRIATIONS.

The City Council may at any time transfer an unencumbered balance of an appropriation of general funds made for the use of one department, division, or purpose. The City Council may authorize the transfer of any non-general fund monies to the general fund if allowed by state law.

Section 11.08. UNALLOCATED RESERVE FUND.

When recommended by the City Manager and at the discretion of the City Council, the budget may contain a sum set aside as an unreserved fund balance to meet unexpected and unforeseen contingencies in current operating costs of any service or project.

Section 11.09. AMENDING THE BUDGET.

In case of grave public necessity, emergency expenditures to meet unusual and unforeseen conditions, which could not, through the use of reasonable diligent thought and attention, have been included in the original budget, may be authorized by the City Council as amendments to the original budget. These amendments shall be by ordinance, and shall become an attachment to the original budget. If the City Council amends the original budget to meet an emergency, the governing body shall file a copy of its ordinance amending the budget with the City Clerk and the City Clerk shall attach the copy to the original budget.

Section 11.10. CERTIFICATION: COPIES MADE AVAILABLE.

After adoption of the budget or a budget amendment, the City Manager shall provide for the filing of a true copy of the approved budget or budget amendment with the City Clerk, the County Clerk of Frio County and the Pearsall Public Library. The final budget shall be printed, photocopied or otherwise reproduced and sufficient copies shall be made available for the use of all offices, agencies and for the use of interested persons and civic organizations.

Section 11.11. INDEPENDENT AUDIT.

The City Council shall provide for an independent annual audit of all City records, accounts, and other evidences of the financial transactions of the City, and shall have an annual financial statement prepared based on the audit. The City Council may provide for more frequent audits, as it deems necessary. Such financial audits and statements shall be conducted and prepared by a Certified Public Accountant or firm of certified public accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City or of any of its officers. The City Council shall require competitive professional service proposals for selection in which cost, experience, years of practice, and other factors deemed necessary by the City Council shall be considered by the Council in selecting such accountant or firm. All competitive proposals shall comply with this charter and any other state law. Such audit contract shall be awarded to the accountant or firm whose proposal is determined to be the most advantageous to the City, considering the relative importance of fees, experience and other factors as determined by the City Council. The term of the contract may be annual or for a period not to exceed three (3) years. The annual financial statement including the auditor's opinion on the statement shall be submitted and reported to the City Council. A copy of the annual audit after acceptance by the City Council shall be filed with the City Clerk no later than 180 days after the last day of the City's fiscal year and shall be available for public inspection.

Section 11.12. DEFECT SHALL NOT INVALIDATE TAX LEVY.

Errors or defects in the form or preparation of the budget or the failure to perform any procedural requirements shall not nullify the tax levy or the tax rate.

Section 11.13. PROPERTY TAXES.

All property, real, personal or mixed, lying and being within the corporate limits of the City on the first (1st) day of January of each year, including all “choses in action”, franchise rights and privileges having a situs in the City, though the owners thereof be non-residents, and excepting such property as may be exempt from taxation under the United States Constitution, Constitution of the State of Texas, and laws of the United States and the State of Texas, shall be subject to taxation.

Section 11.14. POWER TO LEVY AND COLLECT TAXES.

The City Council shall have such power and authority as is granted by this Charter and the Constitution and laws of the State of Texas, to provide by ordinance such rules, regulations and procedures as are necessary for the value appraisals of real, personal or mixed property and the assessment, levy and prompt collection of all taxes assessed and imposed pursuant to and consistent with this Charter, and the Constitution and laws of the State of Texas and/or allowable under the Constitution and laws of the State of Texas and United States.

Section 11.15. TAXES. METHOD OF PAYMENT. PENALTIES.

The taxes herein and hereby authorized to be levied shall become due and payable the year assessed, and shall be payable in cash to the public officials and at the public place designated by the City Council. The City Council may by ordinance provide for split payments of taxes, and may authorize the payment of taxes in two (2) or more equal installments.

Taxes are hereby deemed to become delinquent if not paid in full prior to the year following assessment, unless the City Council shall by ordinance provide for split payments, in such event such taxes shall become due and payable as provided in said ordinance. The City Council may by ordinance provide for penalty and interest to be assessed on all delinquent taxes in such amounts as may be authorized by law.

Section 11.16. TAX LIEN.

A lien is hereby created on all property, personal, real and mixed, in favor of the City, to secure the payment of all City taxes, ad valorem or otherwise. Said lien shall exist from assessment, in

each year, until such taxes are fully paid. Such lien shall be prior to all other claims, unless United States law gives the federal government lien priority; and no gift, sale, assignment or transfer of any kind, or judicial writ shall defeat such lien except as may be provided by the laws of the United States and the State of Texas. The City may pursue, or cause to be pursued, such property, and whenever found, may seize and sell enough thereof to satisfy such taxes as are owed to the City as provided by the laws of the State of Texas.

Section 11.17. POWER AND AUTHORITY BY STATE LAW.

In addition to the powers herein conferred with reference to the assessment and collection of taxes, the City shall have, and may exercise, all powers and authority now conferred, or that may hereafter be conferred, upon cities having a population of more than five thousand inhabitants, by the laws of the State of Texas.

ARTICLE 12 – FRANCHISES

Section 12.01. FRANCHISE POWER OF THE CITY.

The ownership, right of control and use of the streets, highways, alleys, parks, public places and all other real property of the City is hereby declared to be inalienable by the City, except by ordinances passed by vote of the majority of the City Council of the City, as hereinafter provided. The City shall have the power by ordinance, subject to the terms and provisions hereof, to confer upon any person, firm or corporation the franchise, privilege or right to use the property of the City, as defined herein, for the purpose of furnishing to the public any general public service and utility service, including, but not limited to, water, wastewater, refrigerated water, steam, natural gas, electricity, cable television, telegraph, telephone, street railway, interurban railway, steam railway, solid waste collection and the carrying of passengers for hire (whether over designated routes or not, within the City or its suburbs), over the streets, highways and property of the City, or for any other purpose, whereby a general service is to be furnished to the public for compensation or hire, to be paid to the franchise holder, whereby a right to, in part, appropriate or use the public streets, highways or other property of the City is necessary or proper. The provisions hereof with reference to public utilities shall not apply to any of those owned, or to be owned, by the City. No franchise, right or privilege shall ever be valid, unless expressly granted and exercised in compliance with the terms hereof, and as governed by the ordinances granting the same. No act or omission of the City, its City council, officers or agents shall be

construed to confer or extend by estoppel or indirection, any franchise, right or privilege not expressly granted by a lawfully passed and approved ordinance.

Section 12.02. LIMITATIONS ON FRANCHISE POWER.

No exclusive franchise, right or privilege shall ever be granted. A franchise, right or privilege shall commence at any time after the effective date of the ordinance granting same but shall lapse upon the expiration of six (6) months after the effective date of the ordinance granting the same if such franchise, right or privilege is not exercised prior to the expiration of the six (6) months. No franchise, right or privilege shall be directly or indirectly extended beyond the term originally fixed by the ordinance granting same unless by specific ordinance granting an extension for the purpose of renegotiating such franchise. An application for the renewal of a franchise, right or privilege or the granting of a new one, may be considered and acted upon prior to the expiration date of the current franchiser right or privilege so that the new franchise, right or privilege may take effect upon the expiration date of the other; provided, however, that the procedure prescribed herein for the original granting of such franchise, right or privilege is followed in all particulars. No ordinance granting a franchise, right or privilege shall pass except by a vote of the majority of the City Council and such ordinance shall take effect upon its adoption; provided, however, the ordinance shall be subject to referendum as provided by this Charter, or as hereafter may be provided, by the general laws of Texas.

Section 12.03. ORDINANCES GRANTING FRANCHISE.

Ordinances granting a franchise, right or privilege shall be subject to the terms hereof, and shall contain such terms and conditions, as the City Council shall see fit to impose. All franchises, rights or privileges shall be exercised in accordance with the terms of the ordinance granting the same as may be amended, and of this Charter, which may be amended. If such franchises, rights or privileges shall not be exercised in substantial accordance with the terms hereof, and of the ordinance granting the same, then after notice and reasonable hearing to the holders thereof, such franchise, right or privilege may be cancelled or annulled. The City Council shall, by ordinance, adopt reasonable rules and regulations for such notice and hearing.

Section 12.04. CONDITIONS OF FRANCHISES.

Each franchise, right or privilege granted by the Council shall at minimum provide:

(1) For the compensation to be paid to the City for the use and occupancy of the public property, which said compensation may be a fixed fee, or may be measured by gross receipts, or some

other method mutually agreeable to the parties. Such compensation may be changed from time to time by mutual consent and ordinance amendment.

(2) For the length of time that such franchise, right or privilege shall continue in effect; provided, however, that no franchise, right or privilege shall be granted for a period longer than (20) twenty years, except those franchises designated indeterminate franchises granted by the City pursuant to Section 12.05 of this Charter.

(3) That no franchise right or privilege shall be transferred or assigned without the written consent of the City Council, which consent shall be evidenced by an ordinance. Such consent when given shall not operate as the granting of a franchise, right or privilege or as a new franchise, right or privilege.

(4) That the procedure to be followed by the City in ordering the implementation of extensions, enhancements or permanent improvements of the service or considering applications by the holder of the franchise, right or privilege for permission to make extensions, enlargement or enhancements, be prescribed.

(5) That no rate of return shall exceed a fair return upon the fair value of the non-public property used in rendering the public service.

(6) Each franchise, right or privilege shall provide for a method of accounting applicable to the particular business conducted by the holder of the franchise, right or privilege.

(7) Shall be made in each franchise, right or privilege for the maintenance of sufficient depreciation reserves so that the integrity of the public and non-public property used and useful in rendering the public service may be maintained. Each franchise, right or privilege shall specify the purposes for which the depreciation reserves may be used. In determining the amount and character of reserves required, it shall be proper to resort to current common practices applicable to the particular utility concerned.

(8) Each franchise, right or privilege shall provide for a recapture provision whereby the City shall have the right to cancel the franchise, right or privilege and purchase the nonpublic property of the holder of the franchise, right or privilege at a price to be determined according to the formula or method agreed upon in the franchise, right or privilege when granted.

(9) That the holder of the franchise, right or privilege may be required by the City, at the franchise holder's expense, to timely conform and realign its installations in the streets, alleys, and public ways to any changes of grade elevation made by the City without claim back against the City for compensation.

Section 12.05. INDETERMINATE FRANCHISES.

In addition to the powers conferred to grant franchises, rights or privileges for a fixed term not to exceed twenty (20) years, the City shall have power to grant indeterminate franchises. The term “indeterminate franchise” as used in this Charter, shall mean and embrace every franchise, right or privilege granted directly or indirectly by the City which shall have no fixed or determinate duration. An indeterminate franchise shall continue in force only until such time as the City shall exercise an option to terminate, to be provided for in the ordinance granting any such franchise. Such ordinance shall give the City in express terms the right to purchase the non-public property of the franchise holder or cause a purchaser to buy such non-public property. Such ordinance shall also fix the time or times when such right may be exercised or terminated.

Section 12.06. COMPENSATION FOR FRANCHISES.

All persons, firms, or corporations to whom a franchise, right or privilege may hereafter be granted, or their heirs, legal representatives, successors or assigns shall compensate the City for the use and occupancy of public property, which said compensation may be a fixed fee, or measured by the gross receipts of the business pursued by the holder of the franchise, right or privilege earned for service rendered inside the municipal corporation boundaries of the City or some other method mutually agreeable to the parties. Such compensation may be changed from time to time by mutual consent and ordinance amendment.

All sums required to be paid by the holder of any franchise, right or privilege under the terms of this section shall be due and payable quarterly as shall be set out in the agreement or ordinance, and shall be exclusive of, and in addition to, all ad valorem taxes upon the value of the franchise, right or privilege and other property of the holder thereof and all lawful occupation taxes imposed upon the occupation or calling of the holder thereof; and the amount of such compensation may be changed from time to time as in the opinion of the City Council may be just and reasonable, to the extent and upon such terms and conditions as may be fixed in the ordinance granting such franchise.

Section 12.07. ANNUAL REPORTS AND STATEMENTS REQUIRED OF FRANCHISE HOLDERS.

Every person, firm or corporation holding a franchise, right or privilege through, under or from the City shall be required to prepare and file annually with the City Council, within sixty (60) days after the close of a fiscal year, a true, full and correct statement based upon the financial condition of the franchisee at the close of such fiscal year and the transactions for the current year which shall exhibit:

- (1) The amount of all stock issues of such corporation and the divisions thereof.
- (2) An itemized statement of indebtedness, its nature and division, whether floating or bonded, and the interest payable on each item thereof.
- (3) An itemized statement of income and the amounts derived from each source of income.
- (4) An itemized and detailed statement of expenditures.
- (5) An itemized statement of all non-public property of every kind owned and used in rendering the public service, wherever situated and the location and fair market value of each item thereof.

The annual statement shall be verified by oath of the person, a member of the firm or a duly authorized officer or agent of the corporation, and upon its filing shall become a part of the permanent records of the City.

If any person, firm or corporation required to file such report shall fail to do so as herein provided, such failure shall be grounds for forfeiture of the franchise, right or privilege and it shall be the duty of the City Attorney, or his designate, after due notice to the holder of the franchise, right or privilege of such intention, to bring suit within a reasonable time in the Frio County District Court (or other court of appropriate jurisdiction) to forfeit the franchise, right or privilege granted. If a state district court in Frio County (or other court of appropriate jurisdiction) determines that such person, firm or corporation has willfully failed to make such report, such determination shall operate to cause a forfeiture of such franchise, right or privilege and of all rights accruing thereunder.

Section 12.08. RIGHT TO FIX RATES AND PRESCRIBE THE KIND AND MANNER OF SERVICE.

The City, acting through its City Council, has the power to determine, fix and regulate the charges, fares or rates of any holder of a franchise, right or other public privilege in Pearsall, and to prescribe the kind of service to be furnished and the manner in which it shall be rendered. The City has the power to alter or change such rules, regulations, and compensation, from time to time by ordinance; provided that in adopting such regulations and in fixing or changing such compensation, or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless proof that the same have been actually issued by the corporation for money paid and used for the development of the corporate property, labor done or property actually received in accordance with the laws and Constitution of Texas applicable

thereto. In order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable charge, fare, rate, rule or regulation, the City Council shall have full power to inspect the books and compel the attendance of witnesses for such purpose.

Section 12.09. CHANGES AND EXTENSIONS.

The City Council shall have the power, by ordinance or resolution, and without reference to the other franchise, right or privilege provisions of this Charter, to grant the right and to require utility companies and all other companies or individuals enjoying a franchise, right or privilege from the City, now or hereafter, to make and furnish necessary changes in or to any portion of the City property subject to the franchise, right or privilege, and to make extensions of service provided by the holder of the franchise, right or privilege, as in the judgment of the City Council may be necessary. The changes to public property or extensions of service are subject to the terms and conditions of the franchise, right or privilege then enjoyed by such holder of the franchise, right or privilege in connection with which the change or extension is to be made, and under such further terms and conditions as the city Council may deem proper. The City Council shall have the power to prevent the making of unnecessary or unprofitable extensions by the franchise holder.

Section 12.10. DISCRIMINATION FORBIDDEN.

Every Public Service Corporation shall furnish and provide equal and uniform service alike to all persons, firms and corporations in the City. It shall be unlawful, and a sufficient ground for the forfeiture of any franchise, right or privilege, for any such person, firm or corporation to grant free-service or to furnish service for a lower price or rate, (service delivery conditions or quantity of service to be considered), to any person, firm or corporation, than to any other person, firm or corporation or, to otherwise discriminate in accordance with state or federal law. Any such public service corporation may, however, from time to time, with the consent and approval of the City Council, adopt schedules governing rates, (service delivery conditions or quantities of service considered), and allow applicants to choose between alternative schedules. No such schedule shall be operative, nor shall service be furnished in accordance therewith, until timely filed and lawfully approved by the City Council of the City.

Section 12.11. AUTHORIZATION OF RAILWAY COMPANIES AND TRANSIT SYSTEMS.

The City Council shall have the power to authorize railway companies and transit systems operating within the City and operating their lines from the City to other towns and cities beyond the City's corporate boundaries, to lawfully lay their tracks and establish their switches on and over the streets and other public property of the City, or such parts thereof as the City Council

may see fit, subject to the terms of the Charter, applicable State and federal laws and regulations, and to such other conditions as may be imposed by ordinance of the City Council.

Section 12.12. RAILWAY AND TRANSIT OPERATIONS.

The City shall have the following powers by ordinance or otherwise:

- (1) To regulate, if legally possible, the speed of trains, subways, monorails, or any other engines and locomotives within the limits of the City;
- (2) To require railway companies and transit systems to keep the streets over which they run properly drained and to require railway companies and transit systems to pay all or any part of the paving, grading, drainage and repair along all of the streets so used by such railway companies or transit systems.
- (3) To require railway companies and transit systems to safely and properly illuminate streets over which they run wherever deemed necessary by appropriate regulatory authority or deemed advisable by the City Council.
- (4) To require railway companies and transit systems to construct and keep in repair from curb to curb, bridges and drainage crossings crossed by them, and to construct and maintain drains and culverts where crossed by any line of said railway companies or transit systems beneath streets over which they run;
- (5) To direct and control the laying and construction of railway and transit system tracks, turnouts and switches, and to regulate the grade of same, and to require them to conform to the grade of the streets of the City as they may hereafter be, or are now, established;
- (6) To require that any of said tracks, turnouts and switches be so constructed and laid out as to minimize interference with the ordinary pedestrian and vehicular travel using the streets;
- (7) To require any or all railway companies and transit systems operating any track(s) upon or across any public streets of the City to lower such track(s) below, or elevate such track(s) above, the existing or proposed level of the streets intersected or occupied by such track(s), and to require the company or companies owning or operating such track or tracks to provide necessary and proper crossing for public travel and alignment of intersecting streets; all such work to be done in the manner required by the city.
- (8) The portion of the street occupied by a railway company and transit system shall be deemed to be the space between the tracks and twenty-four inches on the outside of each of the rails and all

the space between any double tracks, turnouts and switches. Should any railway company and transit system propose to lay a track on any street or portion of a street which shall have been improved under the provisions of this Charter, it shall become liable for such portion of the cost of such improvement as the City Council may direct, or as is fixed by this Charter.

Section 12.13. ABUTTING PROPERTY.

The City Council shall have the power and complete discretion by ordinance, to grant to any owner of property abutting upon the streets or other property of the City, the use thereof, or to go over or under the same in any manner which may be necessary or proper to the enjoyment of said abutting property by the owner; provided, however, that such use not be inconsistent with or does not unreasonably impair the public use to which said street or other public property may be dedicated and provided further that such use is not an attempt to circumvent the necessity for a franchise by a utility company as determined by the City Council in order to use the City's public streets, alleys or other public ways for its utility services. The City Council shall fix the terms and conditions of any such grant and the time for which the same shall exist. The right is expressly reserved to the City, acting through said City Council to terminate such grant to the abutting property owner when deemed inconsistent with the public use of the property of the City, or when the resulting private use of the public property by the abutting property owner may become a nuisance.

Section 12.14. SHARED USE.

The City Council shall have the power to require any person, firm, corporation or transit system holding a franchise from the City to allow the use of-its tracks, poles and wires by any other person, firm, corporation or transit system to which the City may grant a franchise, right or privilege, upon payment of a reasonable rental therefore to both the City and the prior holder of the franchise, right or privilege, all to be finally approved by the City Council.

Section 12.15. REVOCABLE PERMITS.

Permits unconditionally revocable at the will of the City Council for minor, temporary or emergency privileges or licenses to conduct work and activities in the streets, alleys, public ways and public places of the City may be granted and revoked by ordinance from time to time, and such permits shall not be deemed franchises, rights or privileges as those terms are typically used in this Charter.

Section 12.16. PUBLIC SERVICES; EMINENT DOMAIN.

The City shall have the power to purchase, acquire, construct, own, maintain and operate a system of potable water works, sanitary wastewater works, storm water runoff works, solid waste collection and disposal system, gas or electric plants, telephone, telegraph and cable television delivery systems and or any other public service, utility service or enterprise in accordance with the provisions of this Charter and any related ordinance; and may demand and receive compensation for such services furnished for private purposes, and shall have power to lawfully acquire through power of eminent domain, pursuant to the provisions of Article 18 of this Charter, the property of every kind or class, (whether real, personal, or mixed, corporeal or incorporeal, tangible or intangible, choate or inchoate, movable or immovable, and whether wholly or partially vested or contingent and all fixtures, improvements and appurtenances connected with or related to said property, of any person, firm, or corporation for the purpose of operating and maintaining any such utility, and for distributing such service throughout the City or any portion thereof, but in such eminent domain proceedings no compensation allowance shall be made to the holder of the franchise, right or privilege for the value of any franchise, right or privilege and only the actual physical, non-public assets of the holder of the franchise, right or privilege, shall be purchased by the City.

ARTICLE 13 - ORDINANCES

Section 13.01. ORDINANCES, RULES AND REGULATIONS VALIDATED.

All ordinances, resolutions, rules and regulations of the City previously ordained, passed or enacted, that are in force at the time this Charter or any amendment thereto becomes effective, and which are not in conflict with such Charter, shall remain in full force and effect until altered, amended or repealed by the City Council after such Charter or any amendment thereto takes effect.

Section 13.02. ACTION IS REQUIRING AN ORDINANCE.

The following acts of the City Council shall be by ordinance:

- (1) Adopt or amend an administrative code or establish, alter or abolish any City Department, office or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;

- (3) Levy taxes, except as otherwise provided in Article 11 with respect to the property tax levied by adoption of the budget;
- (4) Grant, renew or extend a franchise;
- (5) Authorize the borrowing of money;
- (6) Establish, increase or decrease all rates, changes and fees for any city service;
- (7) Convey or lease or authorize the conveyance or lease of any lands of the City;
- (8) Annexation and disannexation of territory.

Any other acts of the City requiring an ordinance as mandated by this Charter or state law.

Section 13.03. PUBLICATION.

Every ordinance imposing any penalty, fine, imprisonment or forfeiture for a violation of its provision shall, after passage thereof, be published at least twice in a newspaper generally circulated in the City; in lieu of publishing the full text of the ordinance, the City Council may direct that a descriptive caption or title stating in summary the purpose of the ordinance and the penalty for violation thereof may be published at least twice in a newspaper generally circulated in the City. All ordinances, except as herein otherwise provided, shall, after passage thereof, be published at least twice in a newspaper generally circulated in the City; in lieu of publishing the full text of the ordinance, the City Council may direct that a descriptive caption or title of the ordinance stating in summary the purpose of the ordinance may be published at least twice in a newspaper generally circulated in the City. All ordinances published in a newspaper generally circulated in the City shall contain a brief description of the results of the City Council vote on the ordinance, including the record of how each member of the Council (including the Mayor when applicable) voted by name, with the appropriate designation “For”, “Against”, or “Absent” for each council member.

Section 13.04. STYLE.

The style of every original ordinance document shall be, “Be It ordained by the City Council of the City”, but such caption may be administratively omitted when said ordinances are published in book form or are revised and digested under the order of the Council.

Section 13.05. CODIFICATION.

The City Council shall have power to adopt by ordinance a codification of its ordinances containing civil and criminal penalty provisions. The City Council may print a copy of the code authenticated and approved by the Mayor's signature and attested by the City Clerk. On adoption of the code by the City Council, the City Clerk shall record the code in the City's ordinance records and publish the ordinance adopting the code of ordinances at least twice in a newspaper generally circulated in the City.

Section 13.06. VALID AND EFFECTIVE.

The passage of an ordinance by the City Council shall include the full text of the ordinance in writing and the publication of the same at least twice in a newspaper generally circulated in the City when so required, shall be all that is necessary to make such ordinances valid and effective. The signature of the Mayor and City Clerk shall be affixed to each ordinance.

Section 13.07. ENROLLMENT.

Each ordinance passed by the City Council shall be enrolled by the City Clerk within five (5) days after its passage, or as soon thereafter as is practicable. The enrolled ordinance document shall be carefully compared by the City Clerk with the original ordinance document and all amendments thereto passed by the City Council. If errors exist therein, they shall be corrected only by the City Clerk or returned to the City Council for review in open session. If found correct, or after the correction of errors by the City Clerk, if any exist, the City Secretary shall endorse on the margin thereof the words "Correctly Enrolled" and give the date thereof, and subscribe the City Clerk's name thereto.

ARTICLE 14 - INITIATIVE AND REFERENDUM

Section 14.01. INITIATIVE.

The electors shall have the right to initiate any ordinance, including the right to adopt or reject the same at the polls, except for those ordinances appropriating money, levying a tax, granting a franchise, or fixing public utility rates. Any initiated ordinance may be submitted to the City

Council by a petition signed by the qualified voters of the City equal in number to at least ten (10) percent of the persons entitled to vote in the City, as appear on the County Clerk's rolls.

Section 14.02. REFERENDUM.

The electors shall have the right to approve or reject at the polls, any ordinance passed by the City Council, except ordinances necessary to operate the City including, but limited to, those ordinances appropriating money, levying a tax, or fixing public utility rates. The electors shall also have the power to approve or reject at the polls any ordinance submitted to a vote of the electors by the City Council on its own initiative, ordinances submitted to the City Council by initiative petition, and passed by the city council, shall be subject to the referendum in the same manner as other ordinances. Within thirty (30) days after the enactment by the City Council of any ordinance which is subject to a referendum, a petition signed by the qualified voters of the City equal in number to at least ten (10) percent of the persons entitled to vote in the City, as appear on the County Clerk's rolls, may be filed with the City Clerk, requesting that any such ordinance be either repealed or submitted to a vote of the electors.

Section 14.03. FORM OF PETITION.

All petition papers circulated for the purpose of an initiative or referendum shall be uniform in size and style. Initiative petition papers shall contain the full text of the proposed ordinance. The signatures to the petition need not all be appended to one petition paper, and may be duplicated and assembled. For a petition to be valid, a petition must contain, in addition to the signature, the signer's printed name, signer's voter registration number, residential address, date of signing and otherwise comply with any other applicable requirements prescribed by law.

Section 14.04. EXAMINATION OF PETITION.

All petition papers comprising the petition shall be assembled and filed with the City Clerk as one petition instrument. Within ten (10) days from the date of filing such petition instrument, the City Clerk shall verify the signatures, and from the list of qualified voters, ascertain whether or not said petition is signed by the requisite number of qualified electors according to the method provided by the Texas Election Code. The City Clerk shall attach to said petition a certificate showing the result of such examination. The City Clerk shall certify the result of its examination to the City Council at its next regular meeting. If by the City Clerk's certificate, the petition is shown to be insufficient, it may be amended by filing a supplementary petition instrument, upon presentation of additional petition papers to the City Clerk, within ten (10) days from date of said certificate. The City Clerk shall, within ten (10) days after such supplementary petition instrument is filed, in the event one is filed, and make a similar examination of the amended petition. If the City Clerk's certificate shall show that the amended petition is still insufficient, it

shall be returned to the person filing the same, and the City Clerk shall take no further action upon the insufficiently amended petition. The finding of an insufficient petition, or an insufficiently amended petition, shall not prevent the filing of a new petition for the same purpose. The City Attorney shall review the petition to determine whether or not it addresses a proper subject and is in proper form. If the petition, or amended petition, is found to be sufficient, the City Clerk shall, without delay, submit it, and the certificate declaring the petition to be sufficient, to the City Council.

Section 14.05. EFFECT OF CERTIFICATION ON REFERENDUM OR INITIATIVE PETITION.

When a referendum petition, or amended petition, has been certified as sufficient, further action under the existing ordinance shall not be suspended unless the ordinance is repealed by the City Council or, until and unless the referendum is approved by the electors, when an initiative petition, or amended petition, has been certified as sufficient, the ordinance specified in the petition shall not go into effect until and unless approved by the electors.

Section 14.06. CONSIDERATION BY CITY COUNCIL.

Whenever the City Council receives a petition from the City Clerk, it shall be immediately considered. A proposed initiative ordinance shall be read, and provision shall be made for a public hearing. The City Council shall take final action on the ordinance not later than sixty (60) days after the date on which such ordinance was submitted to the City Council by the City Clerk. A referred ordinance shall be considered, and the City Council shall within thirty (30) days, vote upon the question, "Shall the ordinance be repealed?"

Section 14.07. SUBMISSION TO ELECTORS.

If the Council shall fail to pass an ordinance proposed by initiative petition, or shall pass it in a form different from that set forth in the petition therefore, or if the City Council fails to repeal a referred ordinance, the proposed or referred ordinance shall be submitted to the electors at the next general election date after submission of the petition.

Section 14.08. FORM OF BALLOT FOR INITIATED AND REFERRED ORDINANCES.

Ordinances submitted to a vote of the electors in accordance with the initiative and referendum provisions of this Charter shall be submitted by ballot title. The ballots developed shall contain a clear, concise statement, without argument, of the substance of such ordinance, and shall contain

the words “For the ordinance”, and “Against the Ordinance”. Any number of proposed ordinances may be voted at the same election, in accordance with the provisions of this section of the City Charter.

Section 14.09. RESULTS OF ELECTION.

If a majority of the persons entitled to vote in the City and voting on said proposed initiative ordinance, shall vote in favor thereof, such ordinance shall thereupon become a valid and binding 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 ordinances are approved by the electors at the same election, the one receiving the greatest number of affirmative votes shall prevail, to the extent of such conflict.

Section 14.10. REPEAL PROVISION; PUBLICATION.

Initiative and referendum ordinances adopted or approved by the electors shall be published in a newspaper generally circulated in the City and 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 or referendum procedures shall be amended or repealed by the City Council within six (6) months of adoption.

ARTICLE 15 – PUBLICATIONS

All formal actions voted on by the City Council shall be authenticated, recorded, and published at least twice in a newspaper of general circulation in the City and as the City Council may additionally provide from time to time by ordinance. However, any items regarding a public hearing relating to City fiscal budgets shall be published in such a newspaper not more than thirty (30) days nor but not less than ten (10) days, before the public hearing. All formal actions voted on by the City Council which are directed to be published by the City Council, or are required by law to be published, shall contain a brief description of the results of the City Council vote, including the record of the name of each City Council member (including the Mayor, when applicable) and how each member voted with the appropriate designation “For”, “Against”, or “Absent” for each Councilmember.

ARTICLE 16 - RESERVED

ARTICLE 17 - STREETS AND SIDEWALKS AND IMPROVEMENTS

Section 17.01. POWERS.

The City has exclusive dominion, control, and jurisdiction in, over and under the public streets, avenues, alleys, highways and boulevards, and public grounds of the City and the right to provide for the improvement of any public street, alleys, highways, avenues or boulevards by paving, repaving, raising, grading, filling, draining, widening, narrowing, straightening or otherwise improving the same and to charge the cost of making such improvement against the abutting property, by fixing a lien against the same, and a personal charge against the owner thereof according to an assessment specially levied therefore in an amount not to exceed the special benefit any such property received in enhanced value by reason of making such improvement, and to provide for the issuance of assignable certificates covering the payments for said cost, provided that the cost to be paid by the property owners cumulatively shall not exceed two thirds (2/3) of the cost and the amount to be paid by the City shall not exceed one third (1/3) of the cost, and provided further, that all street railways, steam railways, or other railways, shall pay the cost of improving the said street between the rails and tracks of any such railway companies and for two feet on each side thereof. The City has the power to provide for the construction and building of sidewalks and charge the entire cost of constructing of said sidewalks, including the curb and gutter, against the owner of abutting property, and to make a special charge against the owner for such cost and to provide by special assessment a lien against such property for such cost; to have the power to provide for the improvement of any such sidewalk or the construction of any such curb and gutter by penal ordinance and to declare defective sidewalks to be a public nuisance.

Pursuant to an incidental to these powers, the City shall also have the right to construct, maintain, repair, relocate, realign and remove sidewalks, curbs, culverts, gutters, drains, water lines and other related facilities, sanitary and storm sewers, conduits, lines, poles, wires and any other public appurtenances and incidentals to any of such improvements that are located in, over and under public streets, avenues, alleys, highways, boulevards and other public grounds of the City.

The City shall also have the power to compel private property owners originally developing or redeveloping private properties adjacent to public streets, avenues, alleys, highways, and

boulevards and public grounds to properly install and repair sidewalks, curbs, culverts, gutters, drains, water lines and other related facilities, sanitary and storm sewers and any public appurtenances and incidentals thereto in accordance with current state law, City ordinances, city building codes, City subdivision codes and City construction specifications.

Such exclusive dominion, control and jurisdiction in, upon, over and under the public streets, avenues, alleys, highways, and boulevards, and public grounds of the City shall also include, but not be limited to, the power through ordinance and/or contract to regulate, locate, relocate, repair, remove, or prohibit the location of, all utility facilities, including, but not limited to pipes, ducts, conduits, lines, poles, wires, conveyance systems or other personal property or fixture of any public or private utility.

As one method for filling, grading, raising, paving or repaving in a permanent manner any highway, including any street, avenue, alley or public place or square or portion thereof, dedicated to public use, or for the construction or reconstruction of sidewalks, curbs and gutters, or for widening, narrowing or straightening the same, and to construct necessary appurtenances thereto, including sewers and drains and under certain conditions, sanitary sewers, the provisions of Articles 1086 et seq. of the Texas Revised Civil Statutes and other applicable state law relating to street improvements and levying assessments to defray the cost thereof, are hereby adopted, and the method therein prescribed may be followed by the City in its discretion.

Section 17.02. ALTERNATE METHOD FOR STREET IMPROVEMENTS AND LEVYING ASSESSMENTS.

As another method for filling, grading, raising, paving, repaving, and repairing in a permanent manner any highway including any street, avenue, alley, boulevard, drive, public place, square, or any portion or portions thereof, including any portion that may have or may be left wholly or partly unimproved in connection with other street improvements heretofore or hereafter made, and for constructing, reconstructing, repairing and realigning curbs, gutters, and sidewalks and for widening, narrowing and straightening, and by constructing appurtenances and incidentals to any such improvements including drains and culverts, the provisions in Article 1105b of the Texas Revised Civil Statutes relative to street improvements and levying assessments to defray the cost thereof, are hereby adopted, and the method therein prescribed may be followed by the City in its discretion.

Section 17.03. OPENING AND WIDENING OF STREETS.

The City has the right to open, extend, straighten, widen any public street, alley, avenue or boulevard and for such purpose to acquire the necessary lands and to appropriate the same under the power of eminent domain and to provide that the cost of improving any such street, alley, avenue or boulevard by opening, extending and widening the same shall be paid by the owners

of property specially benefitted whose property lies in the territory of such improvement and to provide' that the cost shall be charged by special assessment and that a personal charge shall be made against any owner for the amount due by him and to provide for the appointment by the county judge or other officer exercising like or similar powers, of three special commissioners for the purpose of condemning the said lands and for the purpose of apportioning the said cost, which apportionment of said cost shall be specially assessed by the City Council against the owners and the property of the owners lying in the territory so found to be specially benefitted in enhanced value by said special commissioners. The City shall pay such portion of such cost as may be determined by the said special commissioners, provided the same shall never exceed one third (1/3) the cost, and the property owners and their property shall be liable for the balance of the same as may be apportioned by said commissioners and allowed under state law. The City has the right to issue assignable certificates for the payment of any such cost against such property owners and may provide for the payment of any such cost in deferred payments, to bear interest at such rate as may be determined by the City Council to be in the best interest of the City and not to exceed the percentage allowed by law.

Section 17.04. CONDEMNATION-FOR HIGHWAYS AND LEVYING ASSESSMENTS.

As an alternative method to lay out, open establish, widen, straighten, or extend any highway, including any street, avenue, boulevard, alley, public place or square, dedicated or to be dedicated to public use (“cumulatively referred to as “highway”) and that will involve some assessment, the provisions of Chapter 17 of Title 28 of the Texas Revised Civil Statutes, Articles 1201 et seq., relative to condemnation for highways and the levying of special assessments to defray the cost thereof, are hereby adopted, and the method therein prescribed may be followed by the City in its discretion.

Section 17.05. ASSESSMENT PERIOD.

In all proceedings providing for assessments against property and the owners thereof for special benefits received under the provisions of this Article and the laws of the State of Texas, the City Council is hereby authorized to provide, wherever the same is practicable, or wherever the same may be done under the law, for the payment of said assessments in annual installments not to exceed the maximum number allowable under state law, extending over a period not to exceed the maximum number of years allowable under state law and with interest not to exceed the maximum allowable by state law.

Section 17.06. IMPROVEMENT DISTRICTS.

All of powers conferred by Section 372.041 of the Local Government Code of the State of Texas, as it may be amended, and by any other general law of the State relating to improvement districts, are hereby adopted and made a part of this Charter, and the power is conferred upon the City, in connection therewith to issue assignable or negotiable certificates and to appoint special commissioners for the making or levying of special assessments on the property specially benefited in enhanced value by the improvements, and the City Council may make such rules and regulations concerning the same as may be deemed advisable, including requiring the property owners to make deferred payments to retire the certificates, with interest on such deferred interest not to exceed the maximum allowable by law.

Section 17.07. CONTROL OF OBSTRUCTIONS ON STREET; STREET CLOSURE.

The City has the right to control, regulate and remove all obstructions or other encroachments or encumbrances on any public street, alley or ground, and to narrow, alter, widen or straighten any such streets, alleys, avenues or boulevards, and to vacate and abandon and close any such streets, alleys, avenues or boulevards, and to regulate and control the moving of buildings or other structures over and upon the streets or avenues of such city.

Section 17.08. BUILDING LINES.

The City shall have the power, for the purpose of promoting the public health, safety, order, convenience, prosperity and general welfare, acting through its City Council by ordinance, establish building lines on the streets of the City. The ordinance must describe the street affected and location of the building line, and provide a period within 25 years after the line is established during which structures extending into the area between the street and the building line must be brought into conformance with the line.

ARTICLE 18 - CONDEMNATION

Section 18.01. PURPOSE.

The City shall have the power of eminent domain whenever deemed necessary or desirable by the City Council for public purposes', to execute any power conferred upon it by this Charter or by the constitution or laws of Texas to condemn and appropriate private or public property, whether in or out of the corporate limits of the City, upon payment of fair compensation for the property taken. The City may condemn the fee or any lesser interest in the property taken, including, but not limited to, water rights and may condemn for any public purpose whether specifically stated herein or not. The City shall follow the procedural requirements of Chapter 21 of the Texas Property Code in condemning property, except as otherwise allowed or required by state law.

Section 18.02. PROCEEDINGS BY ORDINANCE OR RESOLUTION.

When the City Council shall determine to proceed hereunder, it shall so declare by resolution or ordinance, in which it shall describe the parcel or parcels of land proposed to be taken or condemned by any description substantially identifying the same by lot and block number, or the number of front feet, or the name of the property owner,, or if owned by an estate, the name thereof, or as otherwise required by law. Notice of such proposed resolution or ordinance shall be posted for public inspection in accordance with state law. No mistake or omission of said resolution or ordinance shall invalidate it, and its passage shall be conclusive of the public use and necessity of the proposed improvement.

Section 18.03. CONDEMNATION OF REAL PROPERTY.

To the extent that provisions of state law prescribing procedures for the taking of property by eminent domain are applicable, all such provisions, including but not limited to those provisions of the Texas Property Code concerning eminent domain set out therein in Chapter 21, TEX. PROP. CODE ANN. §§21.001 through 21-065 (Vernon 1984), as amended at the date of the adoption of this Charter or as they may be from time to time amended hereafter are hereby adopted by reference as though fully set out and reproduced at this point.

Section 18.04. CONDEMNATION OF PERSONAL PROPERTY.

To the extent procedures for the taking of personal property are not specified by the statutes cited above in Section 18.03 of this Charter, the following procedures shall apply:

(a) These procedures shall apply to the taking by eminent domain of personal property of every kind or class, whether personal or mixed with real property in such a way as might not be covered by the statutory procedures cited above, and whether corporeal or incorporeal, tangible or intangible, choate or inchoate, moveable or immovable, whether wholly or partially vested or contingent and, to the further extent not covered by the statutory procedures cited above, all fixtures, improvements and appurtenances connected with or related to said property, whether located inside or outside the municipality, so condemned, if the City Council expresses the intention to do so by ordinance.

(b) District Courts and County Courts at Law shall have concurrent jurisdiction in eminent domain cases involving property of the kind described above in Section 18.04(a) of this Charter.

(c) In an eminent domain case involving property of the kind described above in Section 18.04(a) of this Charter which is pending in a County Court at Law, if the court determines that the case involves any issue that cannot be fully adjudicated in said County Court at Law, the judge shall transfer that case to a District Court.

(d) A District Court may determine all issues, including the authority to condemn property of the kind described above in Section 18.04(a) of this Charter and the assessment of damages in any case in which the City is a party and which involves a claim for property of said kind or for damages to property of said kind taken or used by the City under the City's power of eminent domain or for an injunction to prevent the City from taking or using the property of the kind described above in Section 18.04(a) of this Charter.

(e) To the extent not otherwise governed by those provisions of the Texas Property Code concerning eminent domain set out therein in Chapter 21, TEX. PROP. CODE ANN. §§21.001 through 21.065 (Vernon 1984), as amended at the date of the adoption of this Charter or as they may be from time to time amended hereafter, the exercise of the eminent domain authority in all cases in connection with taking of property of the kind described above in section 18.04(a) of this Charter is governed by Section 18.04(f) through (ab) of this Charter.

(f) (1) If the City is unable to agree with the owner of property of the kind described in Section 18.04(a) of this Charter, on the amount of damages for the taking from the owner by the City of said property, the City may begin a condemnation proceeding by filing a petition in the proper court.

(2) If the property described in Section 18.04(f) (1) of this Charter above is owned by the same owner together with real property of that owner which is required by the City, it shall be permissible for the City to file a condemnation proceeding including both types of property in the same cause of action. 70 the extent Possible the condemnation procedures outlined in

Chapter 21, TEX. PROP. CODE ANN. §21.001 through 21.065, modified to the extent necessary for the taking of that Portion of the Property being condemned as may be of the kind described in Section 18.04(a) of this charter shall be followed.

(g) The Petition concerning property of the kind described in Section 18.04(a) must:

- (1) describe the property to be condemned;
- (2) state the purpose for which the City intends to Use the property;
- (3) state the name of the owner of the property if the owner is known; and
- (4) state that the City and the property owner are unable to agree on the damages.

In a condemnation proceeding-involving property of the kind described in Section 18.04(a) of this Charter:

(1) The venue of such a condemnation Proceeding is the county in which the owner of the property described in Section 18.04(a) being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located.

(2) Except where otherwise provided by law when the City initiates a condemnation proceeding in a county in which there is one county court at law with Jurisdiction, it must file the petition with the judge of that court or if there is more than one county court at law with jurisdiction, with the County Clerk.

(3) When the City initiates a condemnation proceeding in a county in which there is not a county court at law with jurisdiction, it must file the condemnation petition with the District Judge or, if there is more than one district court in the county, with the District Clerk.

(4) If, in addition to the property described in Section 18.04(a) there is also real property owned by the same owner as that of the property described in Section 18.04(a) which is the subject of a Condemnation Proceeding, the venue of the City's Proceeding combining the taking of both the real property and the property described in section 18.04(a) of this Charter owned by said owner shall be in the county where the real property therein described is situated.

(5) District and County Clerks shall assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the clerk services.

(h) (1) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall appoint three disinterested freeholders who reside in the county as special commissioners to assess the damages of the owner of property of the kind described above in Section 18.04(a) of this Charter being condemned. The judge appointing the special

commissioners shall give preference to persons agreed on by the parties. If a person fails to serve as a commissioner, the judge may appoint a replacement.

(2) The special commissioners shall swear to assess damages fairly, impartially, and according to the law.

(3) Special commissioners may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt in the same manner as a county judge.

(i) (1) The special commissioners in an eminent domain proceeding involving property of the kind described above in Section 18.04(a) of this Charter shall promptly schedule a hearing for the parties at the earliest practical time and at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

(2) After notice of the hearing has been served, the special commissioners shall hear the parties at the scheduled time and place or at any other time or place to which they may adjourn the hearing.

(j) (1) Each party in an eminent domain proceeding involving property of the kind described above in Section 18.04(a) of this Charter is entitled to written notice issued by the special commissioners informing the party of the time and place of the hearing.

(2) Notice of the hearing must be served on a party not later than the 11th day before the day set for the hearing. A person competent to testify may serve the notice.

(3) A person who serves a notice shall return the original notice to the special commissioners on or before the day set for hearing. The person shall write a return of service on the notice that states how and when it was served.

(4) Notice may be served:

(a) By delivering a copy of the notice to the party or to the party's agent or Attorney;

(b) If the property being condemned belongs to a deceased's estate or to a minor or other legally disabled person and the person or estate has a legal representative, by delivering a copy of the notice to the legal representative; or

(c) If the property being condemned belongs to a nonresident of this state and there has been no personal service on the owner, if the identity or the residence of the property owner is unknown, or if the property owner avoids service of notice by hiding, by publication in the same manner

as service of citation by publication in other civil cases in the district courts or county courts at law.

(k) (1) The City, whenever it is a party to a suit covered by TEX. PROP. CODE ANN. §21.003 (1984) as amended at the time of the adoption of this Charter or as such statute may subsequently be amended, may, by petition, cross-bill, or plea of intervention assert a claim to property of the kind described above in Section 18.04(a) of this Charter, or, alternatively seek to condemn such property.

(2) A plea under this subsection is not an admission of an adverse party's title to the property in controversy.

(l) (1) A party to a condemnation proceeding involving property of the kind described above in Section 18.04(a) of this Charter may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court.

(2) If a party in such a proceeding files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil causes.

(m) (1) Whenever the City files a condemnation petition involving property of the kind described above in Section 18.04(a) of this Charter, the City may move to dismiss the proceedings, and the court shall conduct a hearing on the motion. However, after the special commissioners has made an award, in an effort to obtain a lower award, the City as condemnor may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner.

(2) A court that hears and grants a motion to dismiss a condemnation proceeding made by the City as condemnor under Section 18.04 (m)(1) of this Charter as set out above shall make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing.

(3) A court that hears and grants a motion to dismiss a condemnation proceeding involving property of the kind described above in Section 18.04 (a) of this Charter made by a property owner seeking a judicial denial of the right to condemn or that otherwise renders a judgment denying the right to condemn may make an allowance to the property owner for

reasonable, and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing or judgment.

(n) If the City moves to dismiss a condemnation proceeding concerning property of the kind described above in Section 18.04(a) of this Charter and subsequently files a petition to condemn substantially the same property interest from the same property owner, the court may not appoint new special commissioners but shall enter the award of the special commissioners in the first proceeding as the award in the second. The court shall award the property owner triple the amount of the expenses that were allowed the property owner prior to the dismissal of the first proceeding.

(o) After the special commissioners have made an award in a condemnation proceeding involving property of the kind described above in Section 18.04(a) of this Charter, the City may take possession of the condemned property pending the results of further litigation if the City pays to the property owner the amount of damages and costs awarded by the special commissioners or deposits that amount of money with the court subject to the order of the property owner.

(p) Laws that formerly governed the performance of functions by county clerks and judges in eminent domain proceedings are applicable to the clerks and judges of district courts and county courts at law.

(q) As the basis for assessing actual damages to a property owner from a condemnation involving property of the kind described above in Section 18.04(a) of this Charter, the special commissioners shall admit evidence on:

- (1) the value of the property being condemned;
- (2) the injury to the property owner;
- (3) the benefit to the property owner's remaining property; and
- (4) the use of the property for the purpose of the condemnation.

(r) (1) The special commissioners shall assess damages in a condemnation proceeding involving property of the kind described above in Section 18.04(a) of this Charter according to the evidence presented at the hearing.

(2) If all of the property of the kind described above in Section 18.04(a) of this Charter is condemned, the damage to the property owner is the market value of the property at the time of the special commissioners' hearing.

(3) If a portion of the property of the kind described above in Section 18.04(a) of this Charter is condemned, the special commissioners shall determine the damage to the property owner

after estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation on the value of the property owner's remaining property.

(4) In estimating injury or benefit under Subsection (3) of Section 18.04® of this Charter, the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular property of the kind described above in Section 18.04(a) of this Charter, but they may not consider an injury or benefit that the property owner experiences in common with the general community.

(s) (1) If a court finally determines that the City, having taken possession of property of the kind described above in Section 18.04(a) of this Charter, pending litigation did not have the right to condemn the property, the court may award the property owner the damages that resulted from the temporary possession.

(2) The court in a case involving property of the kind described above in Section 18.04(a) of this Charter, may order the payment of damages awarded under this section from the award or other money deposited with the court. However, if the award paid to or appropriated by the property owner exceeds the court's final determination of the value of the property, the court shall order the property owner to return the excess to the City.

(t) An interest acquired by the City is not lost by the forfeiture or expiration of the City's charter and is subject to an extension of the charter or the grant of a new charter without a new condemnation.

(u) (1) Special commissioners may adjudge the costs of an eminent domain in a proceeding involving property of the kind described above in Section 18.04(a) of this Charter, against any party. If the commissioners award greater damages than the City offered to pay before the proceedings began, or if the decision of the commissioners is appealed and a court awards greater damages than the commissioners awarded, the City shall pay all costs. If the commissioners award or the court's determination of the damages is less than or equal to the amount the City offered before proceedings began, the property owner shall pay the costs.

(2) The City shall pay the initial cost of serving a property owner with notice of a condemnation proceeding involving property of the kind described above in Section 18.04(a) of this Charter. If the property owner is ordered to pay the costs of the proceeding, the City may recover the expense of notice from the property owner as part of the costs.

(3) A court that has jurisdiction of an eminent domain proceeding involving property of the kind described above in Section 18.04(a) of this Charter may tax \$10 or more as a reasonable fee for each special commissioner as part of the court costs of the proceeding.

(v) After the special commissioners in an eminent domain proceeding involving property of the kind described above in Section 18.04(a) of this Charter have assessed the damages, they shall:

(1) make a written statement of their decision stating the damages, date it, sign it, and file it and all other papers connected with the proceeding with the court on the day the decision is made or on the next working day after the day the decision is made; and

(2) make and sign a written statement of the accrued costs of the proceeding, naming the party against whom the costs are adjudged, and file the statement with the court.

(w) The judge of a court hearing a proceeding involving property of the kind described above in Section 18.04 (a) of this Charter shall inform the clerk of the court as to a decision by the special commissioners on the day the decision is filed or on the next working day after the day the decision is filed. Not later than the next working day after the day the decision is filed, the clerk shall send notice of the decision by certified or registered United States mail, return receipt requested, to the parties in the proceeding, or to their attorneys of record, at their addresses of record.

(x) If no party in a condemnation proceeding involving property of the kind described above in Section 18.04(a) of this Charter files timely objections to the findings of the special commissioners, the judge of the court that has jurisdiction of the proceeding shall adopt the commissioners findings as the judgment of the court, record the judgment in the minutes of the court, and issue the process necessary to enforce the judgment.

(y) If the City in a condemnation proceeding involving property of the kind described above in Section 18.04(a) of this Charter has taken possession of the property pending litigation and the court finally decides that the City does not have the right to condemn the property, the court shall order the City to surrender possession of the property and issue a writ of possession to the property owner.

(z) (1) The appeal of a judgment in a Condemnation Proceeding involving property of the kind described above in Section 18.04(a) of this Charter is as in other civil cases.

(2) A court hearing an appeal from the decision of a trial court in a Condemnation Proceeding involving property of the kind described above in Section 18.04(a) of this Charter may not suspend the judgment of the trial court pending the appeal.

(aa) (1) A court hearing a suit covered by Subsection (11) of Section 18.04(a) of this Charter may grant injunctive relief under the rules of equity.

(2) Instead of granting an injunction under this subsection, a court may require the City to provide security adequate to compensate the property owner for damages that might result from the condemnation.

(ab) A judgment of a court under Section 18.04 of these Charter vests a right granted to the City.

ARTICLE 19 - ISSUANCE AND SALE OF BONDS, WARRANTS AND OTHER OBLIGATIONS

Section 19.01. AUTHORITY TO ISSUE BONDS, WARRANTS AND OTHER OBLIGATIONS.

The City shall have power to borrow money on a short term and long term basis on the credit of the City and to issue bonds, warrants and other obligations, including, but not limited to, certificates of obligation and commercial paper (cumulatively referred to as “obligations”) for any public purposes and in the manner and form now or hereafter authorized by law and to fund or refund any indebtedness created through the issuance of bonds, warrants and other obligations.

Section 19.02. REVENUE BONDS, WARRANTS AND OTHER OBLIGATIONS.

The City shall have power to issue revenue bonds, warrants and other obligations, including, but not limited to, certificates of obligation and commercial paper (cumulatively referred to as “obligations”) for any public purposes and in the manner and form now or hereafter authorized by law and to fund or refund any indebtedness created through the issuance of revenue bonds, warrants and other obligations. The City shall also have power to issue revenue bonds, warrants and other obligations for the acquisition of any other utility or property for public use and to enlarge, improve, extend or equip the same, and to issue its revenue bonds, warrants and other obligations for any other lawful public purpose, provided such funding or refunding revenue bonds” warrants and other obligations shall never be a debt of the City and shall be a charge upon and payable solely from the properties or interest acquired and the income there from and shall never be considered in determining the power of the City to issue any bonds for any purpose.

Section 19.03. USE OF BONDS FOR PAYMENT OF CURRENT EXPENSES.

No bonds, warrants and other obligations shall be issued to fund any overdraft or indebtedness incurred for current expenditures of the City Government or any subdivision thereof, except as otherwise provided by law.

ARTICLE 20 - GENERAL PROVISIONS

Section 20.01. NOTICE OF DAMAGE OR INJURY.

The City shall never be liable for any (a) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment; and (b) personal injury and death so caused by a condition or use of tangible personal or real property, except as provided by state law, and unless the City receives a notice of a claim against it not later than six (6) months after the day that the incident giving rise to the claim occurred. The written notice of a claim shall be filed with the City Manager or City Clerk stating specifically in such notice the damage or injury claimed, the times and place of the incident and the incident.

Section 20.02. NO LIENS ON PUBLIC PROPERTY.

No lien of any kind, including, but not limited to a mechanic's or materialman's lien, can ever exist against the real, personal or mixed property of the City.

Section 20.03. EXECUTION AND GARNISHMENT.

No execution shall be issued or levied by virtue of any judgment that may be recovered against the City, but the City Council shall provide for the payments of judgments in the levying of taxes next after the final recovery of such judgments from the City. All assets of the City, including lands, houses, moneys, debts due the City, real, personal or mixed property, and assets of every description belonging to the City, shall be exempt from execution and sale, but the City shall make provisions, by taxation or otherwise, for the payment of any and all indebtedness incurred by the City. No writ of garnishment shall issue against the City to subject or seize any debt to any person or corporation, or any claim or demand upon any fund in the possession of said City or any of its officers; nor shall the City or any of its officers or agents, be required to answer any writ of garnishment.

Section 20.04. ASSIGNMENTS.

The City shall not recognize transfers or assignments of salaries or wages, nor shall any officer of the City receive or honor any drafts or order drawn by any person against his salary or wages, but the warrant or money shall in every instance be delivered or paid to the person entitled thereto according to the City's accounts; nor shall any officer of the City issue any certificates of indebtedness. Nothing herein contained shall prevent the holder of a warrant from transferring it. If the Council so declared by ordinance, a warrant for the total amount of any payroll may be drawn in favor of the person paying such payroll, and such warrant shall have the same legal standing and effect as any other warrant.

Section 20.05. OATH OF OFFICE.

Every person elected or appointed to office in the City, shall, before entering upon the duties of his office, take and subscribe the official oath prescribed by the State Constitution and shall give such bond and security for the faithful discharge of his duties as may be required by ordinance.

Section 20.06. QUALIFICATION OF ELECTIVE OFFICERS.

All elective officers of the City shall qualify within ten (10) days after election and failure to do so, except in case of sickness, shall vacate said office, and an election shall be immediately called to fill such vacancy.

Section 20.07. PROHIBITIONS ON CANDIDATES FOR OFFICE OR EMPLOYMENT.

It shall be unlawful for any candidate or any person who may become a candidate for any office or employment under the government of the City, directly or indirectly, to offer or promise to any person or persons any office or employment under the City government or any benefit to be derived there from in the event of the election or appointment of such candidate to any such office or employment; or to promise or agree to use his or her influence to obtain for any person any office or employment under the government of the City. Any violation of any of the provisions of this section shall be a misdemeanor and shall be grounds for removal from office or employment.

Section 20.08. PERSONAL FINANCIAL INTEREST.

No officer or employee of the City, or Board or Commission of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale by the City of any land, materials, supplies or services except on behalf of

the City as an officer or employee. Any willful violation of this section shall constitute malfeasance in office and any officer or employee guilty thereof shall thereby forfeit such person's office or position. Any violation of this section, with knowledge, expressed or implied, of the person or corporation contracting with the City Council shall render the contract involved voidable by the City Manager or the City Council.

Section 20.09. CITY CONTRACTS – APPROPRIATIONS AND SPECIFICATIONS.

No contract shall be entered into by the City Council until after an appropriation has been made therefore, nor in excess of the amount appropriated, and all contracts shall be in writing and made upon specifications. No contract shall be binding upon the City unless it has been signed by the City Manager and attested by the City Clerk, and the expense thereof charged to the proper appropriation; and whenever the contract charged to any appropriation equals the amount of said appropriation, no further contracts shall be executed. All contracts involving an expenditure of more than the amount authorized by Section 252.021 of the Texas Local Government Code or other provisions of state law, shall be subject to the competitive sealed bidding or proposal requirements before they are awarded except those contracts which are exempt from the competitive seal bidding or proposal requirements under Texas law. Where such contract is for less than the amount authorized by Section 252.021 of the Texas Local Government Code or other provisions of state law and is to be let on the basis of competitive seal bids or proposals and the item(s) is one provided for in the budget, the City Council, by ordinance, may authorize designated City officials to approve and execute the contract without Council approval after such public notice and competition as may be provided in the ordinance.

Section 20.10. COMPETITIVE SEALED BIDS AND PROPOSALS.

If the competitive sealed bidding requirement applies to the contract, the City shall provide notice of the time and place at which the contract will be let as required by state law. If the competitive sealed proposal requirement applies to the contract, the City shall provide notice of the request for proposal as required by state law. The City shall also comply with any other notice requirements prior to awarding any contract as required by state law.

If the competitive sealed bidding requirement applies to the contract, the contract must be awarded to the lowest responsible bidder. The governing body may reject any and all bids.

If the competitive sealed proposals requirement applies to the contract, the contract must be awarded to the responsible offer or whose proposal is determined to be the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

The City has the right to require performance and payment bonds when required by state law unless otherwise provided by state law.

Section 20.11. ACQUISITION OF LAND FOR PARKS.

The City shall establish and maintain a park or parks within the City free to the residents of the City and to cooperate with any person, firm or corporation under such terms the City Council may prescribe for the establishment of such park or parks, and to that end the City Council shall appropriate annually out of the general revenue of the City a fund for the support and maintenance of the park or parks.

Section 20.12. PUBLIC LIBRARY.

The City shall establish and maintain a public library or libraries within the City free to the residents of the City and to cooperate with any person, firm or corporation under such terms the City Council may prescribe for the establishment of such public library or libraries, and to that end the City Council shall appropriate annually out of the general revenue of the City a fund for the support and maintenance of the public library.

Section 20.13. BUILDING AND OTHER RELATED PERMITS.

The City shall have power to prohibit the erection or construction of any building or structure of any kind with the City without permits first having been issued by the City for the construction or erection of such building or structure, as well as the installation of plumbing, electrical, gas, air conditioning/heating and other related building or structural systems, and may authorize a fee to be charged for such permits, and in pursuance of said authority may authorize the inspection by the City of all buildings or structures, as well as plumbing, electrical, gas, air conditioning/heating and other related building or structural systems, during the progress of their construction and installation and may require that all buildings and related structural systems shall be constructed in conformity with the building regulations which exist in said City or which shall hereafter be passed.

Section 20.14. BONDS OF ANY CITY OFFICIAL, EMPLOYEE OR DEPARTMENT DIRECTOR.

In addition to any bonding provision herein provided, the City Council may require any City official, department director or City employee, before entering upon such person's duties, to execute a good and sufficient bond with a surety company doing business in the State of Texas, and approved by the City Council, as surety thereon, said bond to be in such amount as the Council may demand, payable to the City, and conditioned for the faithful performance of the duties of the office; the annual premium of such bond to be paid by the City.

Section 20.15. SALE OF PUBLIC PROPERTY.

The sale of all public property shall be conducted in accordance with state law, as amended.

ARTICLE 21 - EFFECTIVE DATE AND EFFECTS OF ADOPTION

Section 21.01. EFFECTIVE DATE.

The provisions of this Charter, and any amendments hereto, shall be in effect, from and after their approval by the electors of the City, and the entering of an official order upon the records of the City, by the City Council, declaring the same adopted.

Section 21.02. EFFECT ON PRESENT CITY COUNCIL.

The duly elected City Council serving at the time of the adoption of the Charter, or amendment hereto, shall continue to be, serve as, and to constitute, the City Council of the City until the next regular election. Upon adoption of this Charter, the sections pertaining, affecting, or referring to City Council members shall apply to all such members, either newly elected, continuing, or otherwise.

Section 21.03. CHARTER AMENDMENT.

This Charter may be amended when necessary. Amendments to this Charter may be proposed:

- (1) By action of the City Council submitting a proposed amendment to the voters for approval, or
- (2) By report of a Charter Review Commission created by the Charter to be submitted to the voters for approval, or
- (3) By the voters, consistent with State law. Proposal of an amendment by the voters of the City shall be by petition containing the full text of the proposed amendment and shall be governed by State law.

All amendment proposals must be authorized by ordinance and shall be decided on the first authorized uniform election date prescribed by state law. Notice of the election must be published in a newspaper of general circulation in the city as provided by state law.

Section 21.04. CHARTER REVIEW COMMISSION.

The City Council shall appoint at its first regular meeting in May of every fifth year after approval of this charter, a charter review commission of seven (7) citizens of the City.

(1) Duties of the commission:

(a) 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.

(b) Propose any recommendations it may deem desirable to insure compliance with the provisions of the charter by the several departments of the city government.

(c) Propose, if it deems desirable, amendments to this charter to improve the effective application of the charter to current conditions.

(d) Report its findings and present its proposed amendments, if any, to the council.

(2) Action by the council: The council shall receive and have published in a newspaper of general circulation in the city, the final report of the charter review commission, shall consider any recommendations 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.

(3) 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 Clerk and shall become a public record.

Section 21.05. SEVERABILITY.

If any provision of this Charter is held invalid, illegal or unenforceable, the other provisions of the Charter shall not be affected thereby. If the application of the Charters or any of its provisions to any person or circumstance is held invalid, illegal or unenforceable, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby. If any provision of this Charter is in conflict with existing federal and/or state law, the applicable existing federal and/or state law shall govern and shall be reconciled with the remaining applicable Charter provisions.

Section 21.06. CONTINUATION.

All rights, actions, penalties and forfeitures in suits or otherwise which have accrued prior to adoption of this Charter shall be vested in and possessed by the City and no suit pending shall be affected by the passage of this Charter, but the same shall be prosecuted or defended, as the case may be, by the City.

Section 21.07. SUBMISSION OF CHARTER TO ELECTORS.

The Charter Commission in preparing this Charter, finds and decides 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 at an election to be held for that purpose on the 7th day of May, A.D., 1994. 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, and after the returns have been canvassed, the same shall be declared adopted and the City Clerk shall file an official copy of the Charter with the records of the City. The Clerk 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. In not less than thirty (30) days prior to such election, the Council shall cause the City Clerk to mail a copy of this Charter to each qualified voter of the City.