

**NOTICE OF CHARTER REVIEW COMMISSION
CITY OF TOMBALL, TEXAS**



**Monday, November 27, 2023
6:00 PM**

Notice is hereby given of a Regular meeting of the Charter Review Commission, to be held on Monday, November 27, 2023, at 6:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Charter Review Commission reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

- A. Call to Order
- B. Public Comments and Receipt of Petitions; *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law - GC, 551.042.]*
- C. New Business
 - 1. Approve the minutes of the October 23, 2023, Charter Review Commission meeting.
 - 2. Consideration and possible action regarding Proposed Amendatory Language for Certain Provisions in Articles VI – VIII of the City of Tomball Charter.
 - 3. Consideration and possible action regarding Proposed Amendatory Language for Certain Provisions in Articles IX-XII of the City of Tomball Charter.
 - 4. Consideration and possible action regarding future meetings of Tomball Charter Review Commission
- D. Adjournment

C E R T I F I C A T I O N

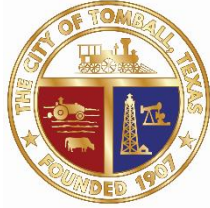
I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 22 day of November 2023 by 6:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Tracylynn Garcia

Tracylynn Garcia, TRMC, CMC, CPM
City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (281) 290-1019 for further information.

MINUTES OF CHARTER REVIEW COMMISSION CITY OF TOMBALL, TEXAS



**Monday, October 23, 2023
6:00 PM**

The Charter Review Commission of the City of Tomball, Texas, conducted the meeting scheduled for October 23, 2023, 6:00 PM, at 401 Market Street, Tomball, Texas 77375, via physical attendance and video/telephone conference.

- A. Chair T. Ross called the meeting for the Charter Review Commission to order at 6:00 p.m. and asked City Secretary Tracylynn Garcia to call the roll.

Roll Call

PRESENT:

Commissioner Browning
Commissioner Clepper
Commissioner Degges
Commissioner Fagan
Commissioner Harris (late)
Commissioner Hendrickson
Commissioner Johnson
Commissioner Kelley
Commissioner Pye
Commissioner Reidel
Commissioner Shannon
Commissioner Whisler

OTHERS PRESENT:

Loren Smith, City Attorney
Tracylynn Garcia, City Secretary

- B. Public Comments and Receipt of Petitions; *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law - GC, 551.042.]*

No public comments were received.

C. New Business

1. Approve the minutes of the September 27, 2023, Charter Review Commission meeting.

Motion made by Commissioner Clepper, seconded by Commissioner Shannon.

Motion carried unanimously.

2. Consideration and possible action regarding a request from the Charter Review Commission to the City Council for input concerning the Charter review.

Motion made by Commissioner Degges, seconded by Commissioner Kelley.

Motion carried unanimously.

3. Consideration and possible action regarding Proposed Amendatory Language for Certain Provisions in Article I-V of the City of Tomball Charter.

Motion made by Commissioner Pye, seconded by Commissioner Kelley.

Motion carried unanimously.

4. Consideration and possible action regarding Proposed Amendatory Language for Certain Provisions in Articles VI – VIII of the City of Tomball Charter.

Motion made by Commissioner Shannon, seconded by Commissioner Pye.

Motion carried unanimously.

5. Consideration and possible action regarding future meetings of Tomball Charter Review Commission

No action taken.

D. Adjournment

Motion made by Commissioner Clepper, seconded by Commissioner Kelley.

Motion carried unanimously.

PASSED AND APPROVED this 27th day of November 2023.

Tracylynn Garcia
City Secretary, TRMC, CMC, CPM

Tana Ross
Chair

ARTICLE VI THE TOMBALL CITY COUNCIL

SECTION 6.01 - POWERS OF THE CITY COUNCIL

All powers and authority which are expressly or impliedly conferred on or possessed by the City shall be vested in and exercised by the Council. The Council shall levy all taxes, apportion all funds of the City among the various departments, adopt the budget, establish special funds for special purposes, authorize the issuance of bonds, order elections, canvass the returns and declare the results, enact all ordinances of any nature, provide penalties for their violation, grant all franchises which they deem proper, set compensation for City officers and employees and have general power over the City finances, subject to the conditions and limitations imposed by this Charter.

SECTION 6.02 - NUMBER, SELECTION, AND TERM

The Legislative and governing body of the City shall consist of a Mayor and five (5) ~~Councilmen~~ Councilmembers and shall be known as the "City Council of the City of Tomball, Harris County, Texas."

- A. The Mayor shall be elected from the City at large. The ~~Councilmen~~ Councilmembers shall be elected from the City at large by positions which shall be known as Positions 1, 2, 3, 4, and 5.
- B. The Mayor shall be the presiding officer of the Council and shall be recognized as the head of the City Government for all ceremonial purposes and by the Governor for purposes of military law. The Mayor shall be allowed to vote only in case of a tie vote and shall not have the authority to veto any action of the Council.
- C. The Mayor and each ~~Councilman~~ Councilmember shall hold office for a period of three (3) years or until ~~his~~ a successor is elected and qualified. All elections shall be held in the manner provided for by this Charter and the election laws of the State of Texas.
- D. ~~There shall be no limitation of elected terms for the Office of Mayor and Councilman. A member of Council, whether the mayor or a councilmember, who has been elected to four consecutive full terms shall not be eligible for reelection to the same office without first having been off the Council for at least one term. For the purposes of this provision, the Mayor and a Councilmember are considered separate offices. For the purpose of this provision all Councilmember positions are considered one office.~~

SECTION 6.03 - QUALIFICATIONS

Each member of the Council shall be a resident citizen of the City, shall be a minimum of eighteen (18) years of age and a qualified voter of the State of Texas, and shall have been a resident citizen of Tomball for a period of not less than one (1) year immediately preceding ~~his~~ that person's election. An incumbent seeking re-election must file for the same position number. Any person

presently holding an elective office shall resign that office upon election to another elective office of profit or trust. No employee of the City shall continue in such position after election to an elective office. A citizen cannot file for an elective office if the candidate has a felony conviction except as provided by the State Election Code. The Mayor or ~~Councilman~~ Councilmember shall, if convicted of a felony while in office, immediately upon conviction thereof, forfeit said office. If the Mayor or any ~~Councilman~~ Councilmember fails to maintain the foregoing qualifications or shall be absent from two (2) regularly scheduled meetings within any six (6) month period without valid excuse, the Council must, at its next regular meeting, declare a vacancy as set forth in Section 6.09 of this Charter.

SECTION 6.04 - COMPENSATION

By ordinance, the Council shall set the compensation for its members in attendance at its meetings. The Council shall also set a monthly stipend for the Mayor. The Mayor and City ~~Councilmen~~ Councilmembers shall also be reimbursed for actual expenses incurred while on official business.

SECTION 6.05 - NEPOTISM

No officer of the City or officer of any City Board shall appoint, or vote for or confirm the appointment to any office, position, clerkship, employment or duty, of any person related with the second-degree of affinity (by marriage) or within the third-degree by consanguinity (by blood) to the person so appointing or so voting, or related to any other member of the governing body or board of the City; provided that any person who has been continuously employed in any employment for a period of six (6) months prior to the election or thirty (30) days prior to the appointment of the officer or member of a board, may be retained in such employment, as provided by state statutes.

SECTION 6.06 - HOLDING DUAL OFFICES

The Mayor and City ~~Councilmen~~ Councilmembers are prohibited by the provision of Article XVI, Section 40, of the Texas Constitution and statutes of the State of Texas, from holding more than one civil office of emolument concurrently. Violation of this Section shall constitute malfeasance in office and any officer found guilty thereof shall be subject to removal from office.

SECTION 6.07 - CONFLICT OF INTEREST IN CITY CONTRACTS

No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services except as provided by State law. Any violation of this Section shall constitute malfeasance in office, and any officer or employee guilty thereof shall be subject to removal from ~~his~~ that office or position. Any violation of this Section, with the knowledge, expressed or implied, of the person or corporation contracting with the Council may invalidate the contract involved.

SECTION 6.08 - MAYOR AND MAYOR PRO-TEM

The Mayor shall be the official head of the City government. The Mayor shall be the Chairman and shall preside at all meetings of the Council. ~~The Mayor shall see that all ordinances, bylaws and resolutions of the Council are faithfully obeyed and enforced.~~ The Mayor shall, when authorized by the Council, sign all official documents ~~such as ordinances, resolutions, conveyances, grant agreements, official plats, contracts and bonds.~~ The Mayor shall appoint special committees as ~~he~~ deemeds advisable, subject to approval by Council, or as instructed by the Council. The Mayor shall perform such other duties consistent with this Charter or as may be imposed upon the Mayor ~~him~~ by Council.

The Council, at its first meeting after ~~the an~~ election of ~~Councilmen~~ Councilmembers, shall elect one of its members Mayor Pro-Tem, and the Mayor Pro-Tem ~~he~~ shall perform all the duties of the Mayor in the absence or disability of the Mayor. The Mayor Pro-Tem shall retain ~~his~~ voting privileges when acting in the absence of the Mayor.

SECTION 6.09 ~~—~~ VACANCIES

When a vacancy occurs in the Council, the following provisions shall apply, to wit:

Any vacancy or vacancies occurring for which the unexpired term is twelve (12) months or less shall be filled by appointment of the Council. Any vacancy or vacancies for which the unexpired term is for more than twelve (12) months must be filled by a majority of voters voting in a special election called for such purpose in accordance with the Texas State Constitution.

It is further provided that in a special or regular election: The person(s) elected to fill a vacancy or vacancies shall serve only the unexpired term for that particular position.

SECTION 6.10 ~~—~~ APPOINTMENTS AND REMOVALS

Neither the Council nor any of its members shall ~~in any manner dictate the appointment or removal of any City administrative officers or employees whom the City Manager or any of his subordinates are empowered to appoint (See Section 7.01,C-1) instruct or request the City Manager or any of the City Manager's subordinate department heads to appoint or remove from office or employment any person except with respect to the offices which are to be filled with Council approval or appointment under the provisions of this Charter.~~

SECTION 6.11 - INTERFERENCE WITH ADMINISTRATION

Except for the purpose of inquiries and investigations under Section 6.16, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately.

SECTION 6.12 - MEETINGS OF COUNCIL

The Council shall schedule at least two (2) regular meetings each month and as many additional meetings as it deems necessary to transact the business of the City and its citizens. The Council shall fix the days and time of the regular meetings. All regular meetings of the Council shall be held at the City of Tomball City Hall, unless the Council votes to approve a location other than the City Hall in the event it is determined to be in the public interest. All meetings shall be open and accessible to the public; however, the Council may recess to an Executive Session only for the purposes provided by the Texas Open Meetings Act. Final action thereon shall not be taken by the Council until the matter is placed on the agenda and a vote taken in an open meeting.

The City Secretary, upon written request of the Mayor or any three (3) Council-members, shall call special meetings of the Council, notice of such special meetings shall be given to each member of the Council, which said notice shall state the date for such meeting and the subject to be considered at such meeting, and no other subject shall be thereby considered.

SECTION 6.13 - RULES OF PROCEDURE

The Council shall, by ordinance, determine its own rules and order of business and the rules shall provide that citizens of the City shall have a reasonable opportunity to be heard at any meeting in regard to any matter under consideration. The Council shall provide for the taking and recording of minutes of all meetings, and such minutes shall be a public record. Voting, except on procedural motions, shall be by roll call and the ayes, nays and abstentions shall be recorded in the minutes. A ~~Councilman~~Councilmember shall state the reason for an abstaining vote. Four (4) members of the Council~~-members~~, one of whom may be the Mayor, shall constitute a quorum for the purpose of transaction of business and no action of the Council shall be valid or binding unless adopted by the affirmative vote of three (3) or more members of the Council.

The Mayor shall have a binding vote only in case of tie votes from ~~Councilmen~~Councilmembers.

The minutes shall reflect the names of all Council members in attendance at both regular and special Council meetings, with status of absence being addressed as "Excused" or "Unexcused" by the presiding officer. Council, by resolution, shall define the guidelines for determination of absences "Excused" and "Unexcused".

SECTION 6.14 - ORDINANCES

In addition to such acts of the Council as are required by statute or by this Charter to be by ordinance, every act of the Council establishing a fine or other penalty or providing for the expenditure of funds or for the contracting of indebtedness shall be by ordinance. The enacting clause of all ordinances shall be, "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL:".

A. Procedure for Passage of Ordinances

Every ordinance shall be introduced in written or printed form and, upon passage, shall

take effect at the time indicated therein; provided that any ordinance imposing a penalty, fine or forfeiture for a violation of its provisions shall become effective not less than fourteen (14) days from the date of its passage. The City Secretary shall give notice of every ordinance under consideration, by causing the caption or summary, including the penalty, fine, or forfeiture for a violation of any such ordinance to be published in the official newspaper for the City after the first reading and at least once within fourteen (14) days after the passage of said ordinance. ~~He-The City Secretary~~ shall note on every ordinance, the caption of which is hereby required to be published, and on the record thereof, the fact that same has been published as required by the Charter, and the date of such publication, and promulgation of such ordinance; provided, that the provisions of this section shall not apply to the correction, revision and modification of the ordinances of the City for publication ~~in book or pamphlet form~~. It shall be necessary to the validity of any ordinance that it shall be read two (2) times and considered at two (2) sessions of the Council unless addressed otherwise by this Charter. ~~At the first (1st) reading, said ordinance shall be read in its entirety unless a motion is made and passed suspending the requirement of the reading of the ordinance, in which case such ordinance shall be read by caption only, followed by an explanation of the ordinance. The one (1) remaining presentation of said ordinance may be by caption only.~~ Copies of said ordinances shall be made available at the City Hall upon request. Every ordinance shall be authenticated by the signature of the Mayor and City Secretary and shall be systematically recorded in an ordinance book in a manner approved by the Council. It shall only be necessary to record the caption or title of ordinances in the minutes or journal of Council meetings. The Council shall have power to cause the ordinances of the City to be corrected, revised, codified and printed in code form as often as the Council deems advisable, and such printed code, when adopted by the Council, shall be in full force and effect without the necessity of publishing the same or any part thereof in a newspaper. However, if the ordinance is amended, it then must be published one time, by caption only, in the official City newspaper. Such printed code shall be admitted in evidence in all courts and places without further proof.

B. Emergency Ordinances

To meet a public emergency affecting life, health, property, or the public peace, the Council may adopt emergency ordinances. Such ordinances shall not levy taxes, grant or renew or extend a franchise, regulate the rate charged by any public utility for its services, or authorize the borrowing of money except to fund emergency appropriations in accordance with Article 8.15 of this Charter. An emergency ordinance shall be introduced in the form and manner generally prescribed for ordinances, except that it shall be plainly designated in the title as an emergency, with a description in clear and specific terms and with one (1) reading sufficing for its passage. Such emergency clause shall require the affirmative vote of three (3) members elected to Council. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption, the ordinance shall become effective immediately and shall be published in the official newspaper for the City of Tomball once within fourteen (14) days after the passage of such ordinance. After adoption, the ordinance shall be numbered as required for other adopted ordinances, with the designation of "E" following the number. Every emergency ordinance

so adopted, except one authorizing the borrowing of money as described herein, shall automatically stand repealed as of the sixty-first (61st) day following the day on which it became effective, but this shall not prevent re-enactment of the ordinance.

SECTION 6.15 - OFFICIAL BONDS FOR CITY EMPLOYEES

All City Officers and such employees as the Council may require, shall, before entering upon the duties of their offices or employment by the City, enter into a good and sufficient fidelity bond in a sum to be determined by the Council payable to the City and conditioned upon the faithful discharge of the duties of such persons and upon the faithful accounting of all monies, credits and things of value coming into the hands of such persons, and such bonds shall be signed as surety by some company authorized to do business under the laws of the State of Texas, and the premium on such bonds shall be paid by the City, and such bonds must be acceptable to the Council.

SECTION 6.16 - INVESTIGATIVE BODY

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

ARTICLE VII ADMINISTRATIVE SERVICES

SECTION 7.01 - CITY MANAGER

A. Appointment and Qualifications:

The Council shall appoint an administrative and executive officer of the City who shall be responsible to the Council for the administration of all the affairs of the City. ~~He~~The City Manager shall be chosen by the Council solely on the basis of ~~his~~ executive and administrative training, experience and ability. No member of the Council shall, during the time for which ~~he~~ the member of Council is elected and for one year thereafter, be appointed City Manager.

B. Term and Salary:

- (1) The City Manager shall be appointed for a term not to exceed two years by a majority vote of the entire Council. The appointment shall be secured through an explicit contractual agreement which shall protect the rights of both the Council and the City Manager.
- (2) The City Manager shall receive compensation as may be fixed by the Council.

C. Duties of the City Manager. The City Manager shall:

- (1) Be responsible to the Council for the efficient and economical administration of the City government. The City Manager shall see that all ordinances, bylaws, and resolutions of the Council are faithfully obeyed and enforced. The City Manager shall have the authority, with the approval of the Council, to appoint and remove all department heads. ~~He~~The City Manager shall have the authority to appoint and remove all other employees in the administrative service of the City. ~~He~~The City Manager may authorize the head of a department to appoint and remove subordinates in ~~his~~that respective department. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager.
- (2) Prepare the budget annually and submit it to the Council and be responsible for its administration after adoption.
- (3) Prepare and submit to the Council, as of the end of the fiscal year, a complete report on the finances and administrative activities of the City for the preceding year.
- (4) Keep the Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable.
- (5) Perform such duties as may be prescribed by this Charter or may be required of the City Manager ~~him~~ by the Council, not inconsistent with this Charter.
- (6) Prepare a written report to the Council,– first in ~~2019~~2029, and thereafter at intervals not exceeding five years as to the need for revision of the city Charter, with special attention given to conflicts, if any, between the Charter and state law and recommending such amendments to the Charter as may seem necessary for legal, administrative, or other reasons.

SECTION 7.02 - ASSISTANT CITY MANAGER

The City Manager, with the approval of the Council, may appoint an Assistant City Manager. Such Assistant City Manager shall have all of the powers and duties as delineated by ~~his~~the Assistant City Manager's job description, and in the event of the absence or disability of the City Manager, ~~he~~the Assistant City Manager shall fill all the duties of the City Manager.

SECTION 7.03 - POLICE DEPARTMENT

A Police Department is established to preserve order, to strive to secure the safety of residents, to prevent violence and to protect life and property from injury and loss within the limits and allowable jurisdiction of the City.

A. Chief of Police

The Chief of Police is the senior officer of the Police Department. ~~He~~The Chief of Police is appointed by the City Manager, with the approval of the Council, for an indefinite term. With the approval of the City Manager, ~~he~~the Chief of Police appoints and removes the employees of the Police Department. ~~He~~The Chief of Police is responsible to the City Manager for the administration of the Police Department and the performance of Council-established duties and directives.

B. Reserve Police

The Chief of Police may appoint or remove "Reserve Police Officers" in accordance with guidelines established by the Council. No other persons, except as otherwise provided by the laws of the State of Texas, shall act as "special police" within the City.

SECTION 7.04 - CITY SECRETARY

There shall be a City Secretary for the City. The City Manager, with the approval of the Council, shall appoint a City Secretary and such assistants as the Council shall deem advisable. The City Secretary, or an Assistant City Secretary, shall give notice of Council meetings, shall keep the minutes of proceedings of such meetings, and shall authenticate by ~~his~~the City Secretary's signature and record in full in a book kept and indexed for the purpose, all ordinances and resolutions, and shall perform such other duties assigned by the City Manager and those elsewhere provided in this Charter and the laws of the State of Texas.

SECTION 7.05 - FINANCE DIRECTOR

There shall be a Finance Director for the City. The City Manager, with the approval of the Council, shall appoint a Finance Director and such assistants as the Council shall deem advisable. The Finance Director shall perform the duties delegated to the Finance Director ~~him~~ by the City Manager and those which may be imposed upon ~~him~~ the Finance Director by the laws of the State of Texas.

SECTION 7.06 - CITY FIRE DEPARTMENT

The Fire Department is established for general protection from fire for the residents of the City, for fire prevention education and enforcement, for salvage and rescue operations, and for other related activities as may be assigned by the Council. The department shall consist of full-time, part-time, volunteer members or any combination thereof. All such members shall function under the Standard Operating Guidelines of the Fire Department.

A. Fire Chief

The Fire Chief is the senior officer of the Fire Department. ~~He~~The Fire Chief is appointed by the City Manager, with the approval of the Council, for an indefinite term. With the approval of the City Manager, ~~he~~the Fire Chief appoints and removes employees of the Fire Department. ~~He~~The Fire Chief is responsible to the City Manager for the administration of the Fire Department and the performance of Council-established duties

and directives.

B. Fire Marshal

A Fire Marshal shall be selected by the Fire Chief, with the approval of the City Manager and shall be responsible for enforcement of the City Fire Codes and other functions as may be assigned by the Fire Chief. ~~He~~ The Fire Marshal shall be a member of the command staff of the Fire Department, and ~~he~~ Fire Marshal may be removed from office by the Fire Chief with the approval of the City Manager.

C. Mutual Aid Agreements with Other Fire Departments

Subject to approval by the Council, the Fire Department may enter into inter-local and mutual aid agreements with other fire departments in the area by which to provide and receive assistance in emergency situation.

SECTION 7.07 - CITY ATTORNEY

The Council shall appoint ~~an attorney/attorneys or legal firm~~ legal counsel, duly licensed in the State of Texas, who shall be the City Attorney. ~~He~~ The City Attorney shall receive ~~for his services~~ such compensation as may be fixed by the Council and shall hold ~~his~~ office at the pleasure of Council. The City Attorney, or such other attorneys selected by ~~him~~ the City Attorney with the approval of the Council, shall represent the City in all litigation. ~~He~~ The City Attorney shall be the legal advisor of, attorney and counsel for, the City and all officers and departments thereof. A City Attorney shall hold no other City office or City employment during the term for which ~~he~~ the City Attorney is appointed by the Council. Should a person serving as City Attorney become a candidate in a City election, ~~he~~ that person shall resign ~~his~~ the position as City Attorney upon election to a City Office.

SECTION 7.08 - MUNICIPAL COURT

There shall be established and maintained a Court designated as a "Municipal Court" for the trial of misdemeanor offenses, with all such powers and duties as are now or hereafter may be prescribed by the laws of the State of Texas relative to Municipal or Recorder's Court.

- A. The Judge of said Court shall be appointed by the Council, and shall be a licensed attorney, and shall receive such salary as may be fixed by the Council. ~~The Judge of said Court shall hold office at the pleasure of the Council. The Judge of the Municipal Court shall serve for two (2) years. The Judge of the Municipal Court may be removed by a vote of the majority of Council for incompetency or official misconduct, after due notice and an opportunity to be heard in the Judge's defense. The Judge of the Municipal Court may also be removed from office by a Council resolution declaring a lack of confidence in the judge, provided that two-thirds of the Council vote in favor of such resolution.~~
- B. The Clerk of said Court and ~~his~~ the Clerk's deputies shall have the power to administer oaths and affidavits, make certificates, affix the seal of said Court thereto and generally do

and perform any and all acts usual and necessary by the Clerk of Courts in issuing process of said courts and conducting the business thereof.

- C. The Council shall appoint other licensed attorneys to act as Temporary Judges of said Court in case of disability or absence of the Judge of the Municipal Court. The salary of Temporary Judges shall be fixed by the Council.
- D. A ~~City~~ Judge of the Municipal Court shall hold no other City office or City employment during the term for which ~~he~~the Judge is appointed by the Council. Should a person serving as City Judge of the Municipal Court become a candidate in a City election, ~~he~~the Judge shall resign ~~his~~ the position as ~~City~~ Judge of the Municipal Court upon election to a City Office.
- E. The Mayor shall serve as Judge of the Municipal Court in the absence of the ~~City~~ Judge or ~~his~~ alternates.

SECTION 7.09 - HEALTH DEPARTMENT

To assure a high quality of health and sanitation standards for the City, the City shall utilize and adhere to all rules and regulations regarding health and sanitation standards outlined, required, and governed by the Harris County Department of Health and the State Health Department

SECTION 7.10 - DEPARTMENT OF PUBLIC WORKS

The City shall establish a Department of Public Works. The City Manager, with the approval of the Council, shall appoint a Director of Public Works who shall be the administrator of this department. The Department of Public Works shall perform such duties as maintenance of gas, water, and sewage facilities; maintenance of streets, collection of garbage; and such other duties as may be assigned by the City Manager.

SECTION 7.11 - DEPARTMENT OF COMMUNITY DEVELOPMENT

There shall be a Director of Community Development for the City. The City Manager, with the approval of the Council, shall appoint a Director of Community Development and such assistants as the Council shall deem advisable. The Director of Community Development shall oversee the city's development processes, including planning and zoning, engineering, code enforcement, and inspections, and shall perform such other duties assigned by the City Manager and those elsewhere provided in this Charter and the laws of the State of Texas.

ARTICLE VIII MUNICIPAL FINANCE

SECTION 8.01 FISCAL YEAR

The fiscal year of the City shall begin at the first day of October and shall end on the last day of September of each calendar year. Such fiscal year shall constitute the budget and accounting year.

SECTION 8.02 - BUDGET AS A PUBLIC RECORD

The budget and all supporting schedules shall be filed with the person performing the duties of City Secretary and shall be submitted to the Council. Copies of the budget and the capital program, as adopted, shall be public records and shall be made available to the public at suitable places in the City, to include the City Hall, and at two other public locations within the corporate limits of the City.

SECTION 8.03 - PREPARATION AND SUBMISSION OF BUDGET

The City Manager, between sixty (60) and one hundred twenty (120) days prior to the beginning of each fiscal year, shall submit to the Council a proposed budget, which shall provide a complete financial plan for the fiscal year and shall contain the following:

- A. A budget message which shall contain an explanation of the budget and an outline of the proposed financial policies of the City for the fiscal year; shall set forth the reasons for salient changes from the previous fiscal year in expenditures and revenue items; and shall explain any major changes in financial policy.
- B. A consolidated statement of anticipated receipts and proposed expenditures for all funds.
- C. A review and analysis of property valuations.
- D. An analysis of tax rates.
- E. The tax levies and tax collections by years for at least the immediate past five (5) years.
- F. The general funds resources in detail.
- G. The special funds resources in detail.
- H. A summary of proposed expenditures by function, department, and activity with detailed estimates of expenditures shown separately for each activity to support the summary.
- I. A revenue and expense statement for all types of bonds, time warrants and other indebtedness.
- J. A description of all bond issues, time warrants, and other indebtedness outstanding, showing rate of interest, date of issue, maturity date, amount authorized, amount issued, and amount outstanding.
- K. A schedule of requirements for the principal and interest of each issue of bonds, time warrants, and other indebtedness.
- L. The appropriation ordinance.

- M. The tax levying ordinance.
- N. The total monies in all reserves (designated, undesignated, and debt) shall not exceed the budgeted City expenditures for the fiscal year. Likewise, the total monies included in all reserves shall not be less than one quarter of the budgeted City expenditures for a fiscal year.

The total proposed expenditures shall not exceed the total of estimated resources.

SECTION 8.04 - ANTICIPATED REVENUES COMPARED WITH OTHER YEARS

In preparing the budget, the City Manager shall place in parallel columns opposite the items of revenue the actual amount of each revenue item for the last completed fiscal year, the estimated amount for the current fiscal year and the proposed amount for the ensuing fiscal year.

SECTION 8.05 - PROPOSED EXPENDITURES COMPARED WITH OTHER YEARS

In preparing the budget, the City Manager shall place in parallel columns opposite the items of expenditures the actual amount of such items of expenditures for the last completed fiscal year, the estimated amount for the current fiscal year and the proposed amount for the ensuing fiscal year. The total of proposed expenditures shall not exceed the total of estimated income.

SECTION 8.06 - NOTICE OF PUBLIC HEARING ON BUDGET

At the Council meeting at which the budget is submitted, the Council shall authorize the publishing of the Budget Hearing notice in the City's official newspaper. The notice shall set forth the time, place and date of the budget hearing and the location and times at which the citizens may inspect the proposed budget. The notice shall be published ~~at least fourteen (14) days prior to the scheduled date of the meeting~~ in accordance with state law.

SECTION 8.07 - PUBLIC HEARING OF BUDGET

The Public Hearing, as required in Section 8.06, shall give the citizens ample opportunity and time to speak for or against any and all items in the proposed budget.

SECTION 8.08 - PROCEEDINGS ON BUDGET AFTER PUBLIC HEARINGS

After the Public Hearing, the Council may insert new items or make changes in the proposed budget. Should changes be made, the same "Notice of Public Hearing on Budget" (Section 8.06) must be followed. After public hearings are completed and no changes made as a result, the Council may adopt the budget. In no case may the Council bring to a vote a budget in which expenditures are greater than the total estimated income.

SECTION 8.09 - VOTE REQUIRED FOR ADOPTION

The budget shall be adopted by a majority vote of the Council.

SECTION 8.10 - DATE OF FINAL ADOPTION

The budget shall be adopted no later than fifteen (15) days prior to the beginning of the fiscal year. Should the Council fail to adopt a new budget, the then existing budget, together with its tax levying ordinance and its appropriation ordinance, shall be deemed adopted, on a month-to-month basis, for the ensuing fiscal year. Additional budget hearings may be held with proper notice (Section 8.06), until a budget is ultimately adopted.

SECTION 8.11 - EFFECTIVE DATE OF BUDGET; CERTIFICATION; COPIES MADE AVAILABLE

Upon final adoption, the budget shall be in effect for the fiscal year. A copy of the budget as finally adopted, shall be filed with the person performing the duties of City Secretary and the County Clerk of Harris County. Copies of the final budget shall be posted for the public at the office of the City Secretary and at two other public locations within the corporate limits of the City. Copies of the budget may be obtained by the public at the City Hall.

SECTION 8.12 - BUDGETARY AMENDMENTS

From the effective date of the budget, any budgetary amendments shall be made in accordance with State and Federal laws and the Constitution of the State of Texas.

SECTION 8.13 - BUDGET ESTABLISHED AMOUNT TO BE RAISED BY PROPERTY TAX

From the effective date of the budget, the established amount to be raised by property tax shall in no event exceed the legal limit provided by State and Federal laws and the Constitution of the State of Texas.

SECTION 8.14 - ESTIMATED EXPENDITURES SHALL NOT EXCEED ESTIMATED RESOURCES

The total estimated expenditures of the general fund and debt service fund shall not exceed the total estimated resources of each fund. The classification of revenue and expenditure accounts shall conform as nearly as local conditions will permit to the uniform classification as promulgated by the Governmental Accounting Standards Board or ~~some~~ other nationally accepted classifications.

SECTION 8.15 - EMERGENCY APPROPRIATION

At any time in any fiscal year, the Council may, pursuant to this section, make emergency appropriations to meet a pressing need for public expenditure, for other than recurring requirements, to protect the public health, safety or welfare. Such appropriations shall be by

ordinance adopted at a special or regular meeting by the majority vote of the Council.

SECTION 8.16 - PURCHASE PROCEDURE

All purchases made and contracts executed by the City shall be pursuant to the laws established by the State of Texas.

SECTION 8.17 - DISBURSEMENT OF FUNDS

All checks, vouchers or warrants for the withdrawal of money from the City Depository shall be signed by the City Manager and countersigned by the Assistant City Manager, City Secretary or the Finance Director. In the absence of the City Manager or the Assistant City Manager, the Mayor, or the Mayor Pro-Tem in the absence of the Mayor, may sign.

SECTION 8.18 - POWER TO TAX

The Council shall have the power, and is hereby authorized to levy and collect an annual tax upon all real and personal property within the City not to exceed the maximum limits set by the Constitution and laws of the State of Texas.

SECTION 8.19 - PROPERTY SUBJECT TO TAX; RENDITION, APPRAISAL AND ASSESSMENT

All real, tangible and intangible personal property within the jurisdiction of the City of Tomball not expressly exempted by law, shall be subject to annual taxation. The method and procedures for the rendition, appraisal and assessment of all real and personal property within the City shall be in accordance with applicable provisions of the Property Tax Code of the State of Texas.

SECTION 8.20 - TAXES, WHEN DUE AND PAYABLE

All taxes due the City shall be payable on receipt of the tax bill and shall be considered delinquent if not paid before February 1 of the year following the year in which imposed. The postponement of any delinquency date and the amount of penalty, interest and costs to be imposed on delinquent taxes shall be in accordance with applicable ordinances of the City and the Property Tax Code of the State of Texas.

SECTION 8.21 - TAX LIENS

- A. A special lien in favor of the City is hereby created on all real, personal and mixed property in the City for all unpaid taxes. The priority of said lien shall be determined in accordance with state law.
- B. All seizure and foreclosure proceedings shall be administered in accordance with State property tax codes.

SECTION 8.22 - TAX REMISSION AND DISCOUNTS

Except as provided by State law, neither the Council or any other official of the City shall ever extend the time for payment of taxes nor remit, discount or compromise any tax legally due the City, nor waive the penalty, interest and costs that may be due thereon to or for any person, association, corporation, firm or partnership owing taxes to the City for such year or years.

SECTION 8.23 - ISSUANCE OF BONDS

The City shall have the power to issue bonds and levy a tax to support the issue for permanent improvements and all other lawful purposes.

A. General Obligation Bonds

The City shall have the power to borrow money on the credit of the City and to issue general obligation bonds for permanent public improvements or for any other public purpose not prohibited by the Constitution and laws of the State of Texas and to issue refunding bonds to refund outstanding bonds of the City previously issued. All such bonds shall be issued in conformity with the laws of the State of Texas and shall be used only for the purpose for which they were issued.

B. Revenue Bonds

The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the Constitution and Laws of the State of Texas and to issue revenue bonds to evidence the obligation created thereby, and to issue refunding bonds to refund outstanding revenue bonds of the City previously issued. All such bonds shall be issued in conformity with the laws of the State of Texas and shall be used only for the purpose for which they were issued.

C. Sale of Bonds

No bonds, other than refunding bonds issued to refund and in exchange of previously issued outstanding bonds, issued by the City shall be sold for less than par value and accrued interest. All bonds of the City having been issued or sold in accordance with the terms of this section and having been delivered to the purchasers thereof shall thereafter be incontestable and all bonds issued to refund and in exchange of outstanding bonds previously issued shall, after said exchange, be incontestable.

SECTION 8.24 - INDEPENDENT AUDIT

Prior to the end of each fiscal year, the Council shall designate a certified public accountant, who is licensed by the State of Texas, to make an independent audit of accounts and other evidences of financial transactions of the City government and submit a report to the Council within one hundred eighty (180) days from the closing date of the City's fiscal year. Notice shall be given by publication in the official newspaper of the City that the annual audit is on file at the City Hall for

inspection.

Such accountant shall have no personal interest, direct or indirect, in the fiscal affairs of the City government. The accountant shall not maintain any accounts or records of the City business, but, within specifications approved by the Council, shall post audit the books and documents kept by the Finance Director and any separate or subordinate accounts kept by any other office, department or agency of the City.

ARTICLE IX FRANCHISE AND PUBLIC UTILITIES

SECTION 9.01 - POWER TO GRANT FRANCHISE

Council shall have power by ordinance to grant, amend, renew and extend all franchises of all public utilities of every type operating within the City. All such ordinances granting, amending, renewing, or extending franchises for public utilities shall be governed by the procedures established in Section 6.14. No public utility franchise shall be granted for a term of more than twenty (20) years, nor be transferable except with the approval of the Council expressed by ordinance.

SECTION 9.02 - FRANCHISE VALUE NOT TO BE ALLOWED

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

SECTION 9.03 - RIGHT OF REGULATION

Every grant, renewal, extension or amendment of a public utility franchise, whether so provided in the ordinance or not, shall be subject to the right of the City unless Federal or State law dictates otherwise:

- A. To forfeit any such franchise by ordinance at any time for failure of the holder thereof to comply with the terms of the franchise. Such power shall be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise and setting a reasonable time for the correction of such failure, and shall be exercised after such reasonable time has expired.
- B. To impose reasonable regulations to insure safe, efficient and continuous service to the public.
- C. To require such expansion, extension, enlargement and improvement of plants and facilities as are necessary to provide adequate service to the public.
- D. To require every franchise holder to furnish to the City, without cost to the City, full information regarding the location, character, size, length and terminals of all facilities of such franchise holder in, over and under the streets, alleys and other public properties of

the City, and to regulate and control the location, relocation and removal of such facilities.

- E. To collect from every public utility operating in the City such proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping and sprinkling the streets, alleys, bridges, culverts, viaducts and other public places of the City which represent the increased cost of such operation resulting from the occupancy of such public places by such public utility, and such proportion of that cost of such operations as results from the damage to or the disturbance of such public places caused by such public utility; or to compel such public utility to perform, at its own expense, such operations as above listed which are made necessary by the occupancy of such public places by such utility or by damage to or disturbance of such public places caused by such public utility.
- F. To require every franchise holder to allow other public utilities to use its poles and other facilities, including bridges and viaducts, whenever in the judgment of the Council such use shall be in the public interest, provided that in such an event, a reasonable rental shall be paid such owner of the facilities for such use. Provided further, that inability of such public utilities to agree upon rental facilities shall not be an excuse for failure to comply with such requirement by the Council.
- G. To require the keeping of accounts in such form as will accurately reflect the value of the property of each franchise holder which is used and useful in rendering its service to the public and the expenses, receipts and profits of all kind of such franchise holder.
- H. To examine and audit at any time during business hours the accounts and other records of any franchise holder.
- I. To require reports on the operation of the utility, which shall be in such form and contain such information as the Council shall prescribe.
- J. To require that the public utility give notice to any subscriber to its service prior to the permanent or temporary discontinuance or disruption of such service by the public utility, except in cases of emergency, and to require that no officer, agent, servant or employee of the public utility nor any vehicles or equipment under their control shall make use of, go upon or across any private property in the City without first obtaining the permission of the owner or occupant of such property, except in cases of emergency, and to provide a penalty for the violation of such requirements.
- K. To impose such other reasonable regulations, restrictions, requirements and conditions as

may be deemed necessary or desirable to promote the health, safety, welfare or accommodations of the public.

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

SECTION 9.04 - GRANT NOT TO BE EXCLUSIVE

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

SECTION 9.05 - OTHER CONDITIONS

All franchises heretofore granted are recognized as contracts between the City and the grantee, and the contractual rights as contained in any such franchise shall not be impaired by the provisions of this Charter except that the power of the City to exercise the rights of eminent domain in the acquisition of any utility property is in all things reserved, and except the general power of the City heretofore existing and herein provided for to regulate the rates and services of a utility, which shall include the right to require adequate and reasonable quality of utility service to the public. Every public utility franchise hereafter granted shall be held subject to all the terms and conditions contained in the various sections of this Article whether or not such terms are specifically mentioned in the franchises. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the Council or the voters of the City in imposing terms and conditions as may be reasonable in connection with any franchise grant, including the right to require such compensation or rental as may be permitted by the laws of the State of Texas and the United States of America.

SECTION 9.06 - ACCOUNTS OF MUNICIPALLY-OWNED UTILITIES

Accounts shall be kept for each public utility owned or operated by the City in such manner as to show the true and complete financial results of such City ownership and operation, including all assets and all liabilities, appropriately subdivided by classes, depreciation reserve, other reserves and surplus; also revenues, operating expenses including depreciation, interest payment, rental and other disposition of annual income, the accounts shall show actual capital cost to the City of each public utility owned; the cost of all extensions, additions and improvements and the source of funds expended for such capital purposes. They shall show as nearly as possible the cost of any service furnished to or rendered by any such utility to any City Government Department. The Council shall cause an annual report to be made by a Certified Public Accountant giving the

information specified in this section and such other data as the Council shall deem expedient.

SECTION 9.07 - SALES OF MUNICIPAL UTILITIES

The Council shall have the power and authority to:

- A. Sell and distribute water, sell and provide sewer services, sell and distribute natural gas, provide for garbage and trash collection and disposition, and provide similar services within the Corporate limits of the City or its extraterritorial jurisdiction (ETJ).
- B. Prescribe the types of materials used within or beyond the limits of the City for such municipal services, inspect the same and require such materials to be kept in good order and condition at all times, make such rules and regulations as shall be necessary and proper and prescribe penalties for noncompliance with same.

SECTION 9.08 - REGULATION OF RATES AND UTILITIES

The Council shall have full power, after notice and hearing, to regulate by ordinance, subject to Federal and State laws, the rates of every public utility operating in the City provided that no such ordinance shall be passed as an emergency measure. The City shall have power to employ, at the expense of the Grantee, expert assistance and advice in determining a reasonable rate and equitable profit to the Grantee. This Charter does not revoke any existing City Ordinance that has waived the right of rate regulation by the City to the Public Utility Commission of the State of Texas.

ARTICLE X MUNICIPAL PLANNING

SECTION 10.01 - PLANNING AND ZONING COMMISSION

The Council shall appoint a City Planning and Zoning Commission, consisting of five (5) members, who shall be residents of the City but who shall not be employees of the City.

- A. Term of Office

The members of the Commission shall be appointed for three (3) year, staggered terms.

- B. Rules of Procedure

The Commission shall annually elect one (1) of its number Chairman and shall establish its own rules of procedure which shall include the following: A quorum shall consist of a

majority of the members of the Commission and an affirmative vote of a majority of those present shall be necessary to pass upon pending questions. All meetings shall be open to the public and a record of all proceedings shall be maintained by the person performing the duties of the City Secretary and shall be a public record.

C. Vacancies

Members of the Planning Commission shall actively participate in the activities of the Commission, and any member who is absent from three (3) consecutive meetings of the Commission without valid excuse as determined by the Commission, shall automatically be dismissed from membership. The Commission shall at once notify the Council that a vacancy in the Commission exists.

Vacancies occurring in the Commission, for whatever reason, shall be filled within thirty (30) days by appointment by the Council for the remainder of the unexpired term *if possible*.

D. Powers and Duties

The Commission shall have the power and shall be required to:

- (1) Recommend to the Council amendments, extensions and additions to the Master Plan for the physical development of the City.
- (2) Recommend to the Council the approval or the disapproval of plats of proposed subdivisions submitted in accordance with City ordinance as adopted or hereafter amended. Note: Planning and Zoning no longer recommends approval of plats to the City Council. Council has delegated approval authority to the Planning and Zoning Commission.
- (3) Recommend to the Council plans for the clearance and rebuilding of slum districts and blighted areas which may develop within the City.
- (4) Recommend to the Council the amendment, extension and revision of the Building Code, which code shall include the minimum standards of construction for building, the minimum standards for plumbing and the minimum standards for electrical and mechanical equipment. Note: I do not believe that this process is being followed. The recommendations for building code adoption or revision comes directly from the Building Official.
- (5) Submit annually to the City Manager, not less than ninety (90) days prior to the beginning of the budget year, a list of recommendations for capital improvements which, in the opinion of the Commission, are necessary or desirable to be constructed during the forthcoming five (5) years. Such list shall be arranged in

order of preference, with recommendations as to which projects shall be constructed in which year. Note: this generally comes from staff to Council.

- (6) Meet no less than once each quarter, meetings to be held at the City Hall unless prior notice of change of meeting place be given by publication in a newspaper in general circulation in the City.
- (7) Operate under the guidelines of the powers granted by the Civil Statutes of the State of Texas.

E. Liaison with City Council

The ~~City Manager or his representative~~ *Council shall appoint one of its members, who* shall attend the meetings of the Commission and shall serve as liaison between the Commission and the Council.

SECTION 10.02 - PLATTING OF PROPERTY

Every owner of any tract of land situated within the corporate limits of the City or its extraterritorial jurisdiction (ETJ), who may divide the same into two (2) or more parts for the purpose of laying out any subdivisions or any addition to the City shall comply with all applicable provisions contained in the Code of Ordinances of the City, as adopted or hereafter amended. ~~[Article 970(a), Section 4, V.A.T.S., Municipal Annexation Act.]~~

SECTION 10.03 - DEVELOPMENT OF PROPERTY

The Council shall cooperate in every manner possible with persons interested in the development of property within the corporate limits of the City or its extraterritorial jurisdiction (ETJ). No expenditure of public funds, however, shall be authorized for the development of privately-owned subdivisions situated within or beyond the corporate limits of the City, except for the extension of utilities or services to such areas.

ARTICLE XI RECALL OF OFFICERS

SECTION 11.01 - GENERAL POWER

The qualified voters of the City, in addition to the method of legislation herein provided, shall have the power of direct legislation by recall vote.

SECTION 11.02 - SCOPE OF RECALL

Any elected City official, elected to office by the qualified voters of the City, shall be subject to recall and removal from office by the qualified voters of the City on grounds of incompetency, misconduct or malfeasance in office.

SECTION 11.03 - PETITION FOR RECALL

Before the question of recall of such officers shall be submitted to the qualified voters of the City, a petition demanding such question to be so submitted shall first be filed with the person performing the duties of City Secretary; which said petition shall be signed by qualified voters of the City equal in number to at least thirty-percent (30%) of the number of votes cast at the last regular municipal election of the City, for the position in question, but in no such event less than one hundred seventy-five (175) petitioners. Each signer of such recall petition shall personally sign his name thereto in ink, and shall write after his name, his place of residence, giving name of street and number. He shall also write thereon his voter registration number, and the day, month and year his signature was affixed.

SECTION 11.04 - FORM OF RECALL PETITION

The recall petition must be addressed to the Council of the City, must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated, and if there be more than one ground, such as for incompetency, misconduct or malfeasance in office, shall specifically state each ground with such certainty as to give the officer sought to be removed notice of the matters and things with which he is charged.

One of the signers of each separate petition shall make a notarized affidavit that he, and he only, personally circulated such petition, and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be.

SECTION 11.05 - VARIOUS PAPERS CONSTITUTING PETITION

The petition may consist of one or more copies, and the several parts of copies of the petition may be filed separately and by different persons; but no signature to such petition shall remain effective or be counted which was placed thereon more than forty-five (45) days prior to the filing of such petition or petitions with the person performing the duties of City Secretary. All papers comprising a recall petition shall be filed with the person performing the duties of City Secretary on the same day, and the said City Secretary shall immediately notify, in writing, the officer so sought to be removed by mailing such notice by Certified Mail to his Tomball mailing address.

SECTION 11.06 - PRESENTATION OF PETITION TO CITY COUNCIL

Within five (5) business days after the date of the filing of the papers constituting the recall petition, the person performing the duties of City Secretary shall certify such petition or return same to petitioners for correction. After certification, the person performing the duties of City Secretary shall present such petition to the Council of the City at the next regular meeting.

SECTION 11.07 - PUBLIC HEARING TO BE HELD

The officer whose removal is sought may, within five (5) business days after such recall petition has been presented to the Council, request that a public hearing be held to permit him to present facts pertinent to the charges specified in the recall petition. In this event, the Council shall order such public hearing to be held not less than five (5) business days, nor more than fifteen (15) days, after receiving such request for a public hearing.

SECTION 11.08 - ELECTION TO BE CALLED

If the officer whose removal is sought does not resign, then it shall become the duty of the Council to order an election and fix a date for holding such recall election, in accordance with State law.

SECTION 11.09 - FAILURE OF CITY COUNCIL TO CALL AN ELECTION

In case all the requirements of this Charter shall have been met and the Council shall fail or refuse to receive the recall petition, or to order such recall election or to discharge any other duties imposed upon the Council by the provisions of this Charter with reference to such recall, then the petitioner shall have the right to file an action in an appropriate court to obtain a writ of mandamus or other relief requiring the Council to call the election.

SECTION 11.10 - BALLOTS IN RECALL ELECTION

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

- A. With respect to each person whose removal is sought, the question shall be submitted:

"Shall (name of person) be removed from the office of (name of office) by recall?"

- B. Immediately below each such question, therefore, shall be printed the following words, one above the other, in the order indicated:

"Yes"

"No".

SECTION 11.11 - RESULT OF RECALL ELECTION

If a majority of the votes cast at a recall election shall be "NO", that is against the recall of the person named on the ballot, he shall continue in office for the remainder of his unexpired term, subject to recall as before.

If a majority of the votes cast as such election be "YES", that is for recall of the person named on the ballot, he shall be deemed removed from office, and the vacancy shall be filled as vacancies in the Council are filled, as provided in Section 6.09.

SECTION 11.12 - RECALL, RESTRICTIONS THEREOF

No recall petition shall be filed against any officer of the City within three (3) months after his election nor within (3) months after an election for such officer's recall.

ARTICLE XII

LEGISLATION BY THE PEOPLE, INITIATIVE AND REFERENDUM

SECTION 12.01 - GENERAL POWER

The qualified voters of the City, in addition to the method of legislation herein before provided, shall have the power of direct legislation by initiative and referendum.

SECTION 12.02 - INITIATIVE

Qualified voters of the City may initiate legislation by submitting a petition addressed to the Council which requests the submission of a proposed ordinance or resolution to a vote of the qualified voters of the City. Said petition must be signed by qualified voters of the City equal in number to thirty-percent (30%) of the average of the highest number of votes cast at the last three regular municipal elections for council place or Mayor of the City, or two hundred fifty (250) qualified voters whichever is greater, and each copy of the petition shall have attached to it a copy of the proposed legislation. Each signer of such petition shall personally sign and print his name thereto in ink, and write his place of residence, giving name of street and number. He shall also write thereon his voter registration number and the day, month, and year his signature was affixed. The petition may consist of one (1) or more notarized copies as permitted in Section 11.05 of this Charter. Such petition shall be filed with the person performing the duties of City Secretary. Within five (5) business days after the filing of such petition, the person performing the duties of City Secretary shall certify such petition or return same to petitioners for corrections. After

certification, the person performing the duties of City Secretary shall present said petition and proposed ordinance or resolution to the Council at the next regular meeting. Upon presentation to the Council of the petition and draft of the proposed ordinance or resolution, it shall become the duty of the Council, on or before the next regularly scheduled meeting of the Council, to pass and adopt such ordinance or resolution without alteration as to meaning or effect in the opinion of the persons filing the petition to call a special election on the next uniform election date as provided by the State Election Code, at which the qualified voters of the City shall vote on the question of adopting or rejecting the proposed legislation. No ordinance shall be proposed by an initiative petition which is on the same question as an ordinance so submitted and defeated at an election held within the preceding twelve (12) months.

SECTION 12.03 - REFERENDUM

Qualified voters of the City may require that any ordinance or resolution, with the exception of ordinances or resolutions levying taxes, issuing tax or revenue bonds or relating to annexation or franchises, passed by the Council, be submitted to the voters of the City for approval or disapproval, by submitting a petition for this purpose within thirty (30) days after final passage of said ordinance or resolution or within thirty (30) days after its publication. Said petition shall be addressed, prepared, signed and certified as required for petitions initiating legislation, as provided in Section 12.02 of this Charter and shall be submitted to the person performing the duties of City Secretary. Immediately upon the filing of such petition, the City Secretary shall present said petition to the Council. The Council shall immediately reconsider such ordinance or resolution and, if it does not entirely repeal the same, shall submit it to the voters as provided in Section 12.02 of this Charter. Pending the holding of such election, such ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof.

SECTION 12.04 - VOLUNTARY SUBMISSION OF LEGISLATION BY THE COUNCIL

The Council, by majority vote, may submit to the voters any ordinance, resolution or measure for adoption, rejection or repeal in the same manner and with the same force and effect as provided in this Article. A special election may be called for this purpose, if necessary, as provided in Section 12.02.

SECTION 12.05 - FORM OF BALLOTS

The ballots used, when voting upon such proposed and referred ordinances, resolutions or measures, shall set forth their nature sufficiently to identify them and shall set forth upon separate lines, the words:

"FOR THE ORDINANCE" and
 "AGAINST THE ORDINANCE"; or
 "FOR THE RESOLUTION" and
 "AGAINST THE RESOLUTION".

SECTION 12.06 - PUBLICATION OF PROPOSED AND REFERRED ORDINANCES

The person performing the duties of City Secretary shall publish at least once in a newspaper of general circulation in the City, a caption of the proposed or referred ordinance or resolution within fifteen (15) days before the date of the election, and shall give other notices and do such things relative to such elections as are required in general municipal elections or by the ordinance or resolution calling said election. Entire and complete copies of the proposed or referred ordinance shall be made available to any citizen upon request.

SECTION 12.07 - ADOPTION OF ORDINANCES

If a majority of the qualified voters voting on any proposed ordinance, resolution or measure shall vote in favor thereof, it shall thereupon, or at any time fixed therein, become effective as a law or as a mandatory order to the Council.

SECTION 12.08 - INCONSISTENT ORDINANCES

If the provisions of two or more proposed ordinances or resolutions approved at the same election are inconsistent, the ordinance or resolution receiving the highest number of votes shall prevail.

SECTION 12.09 - ORDINANCES PASSED BY POPULAR VOTE, REPEAL OR AMENDMENT

No ordinances or resolutions which may have been passed by the Council upon a petition or adopted by popular vote under the provisions of this Article shall be repealed or amended except by the Council in response to a referendum petition or by submission as provided in Section 12.03 of this Charter.

SECTION 12.10 - FURTHER REGULATION BY THE COUNCIL

The Council may pass ordinances or resolutions providing other and further regulations for carrying out the provisions of this Article consistent herewith

SECTION 12.11 - FRANCHISE ORDINANCES

Nothing contained in this Article shall be construed to be in conflict with any of the provisions of Article IX of this Charter, pertaining to ordinances granting franchise when valuable rights shall have accrued thereunder.