



CITY OF BAY CITY

MINUTES • MAY 24, 2018

Council Chambers

Workshop – City Council

5:30 PM

1901 5TH STREET
BAY CITY, TX 77414

I. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Mark A. Bricker	Mayor	Present	
William Cornman	Mayor Pro-Tem	Present	
Becca Sitz	Councilwoman	Present	
Chrystal Folse	Councilwoman	Present	
Jason Childers	Councilman	Present	
Julie Estlinbaum	Councilwoman	Excused	

II. APPROVAL OF AGENDA

The agenda was unanimously approved by motion, as written. The motion was made by Councilman, Jason Childers and seconded by Chrystal Folse.

III. FUTURE ACTION ITEMS

1. Policy

~DISCUSS, CONSIDER AND/OR TAKE ACTION REGARDING THE BAY CITY HOME RULE CHARTER.

Mayor, Mark A. Bricker

Council members and Mayor discussed the possible 2017 - 2018 Charter propositions, including the idea of a City Manager.

Council members and Mayor discussed the pros and cons of placing the City Manager proposition on the ballot in November 2018.

A motion was made to place the City Manager form of government on the ballot in the November 2018 election. The motion was made by Councilman, Bill Cornman and seconded by Councilman, Jason Childers. The motion passed.

RESULT:	APPROVED [3 TO 1]
AYES:	Sitz, Folse, Childers
NAYS:	Cornman
EXCUSED:	Estlinbaum

Enacted and approved this 24th day of May, 2018, at Bay City

IV. ITEMS/COMMENTS FROM MAYOR AND COUNCIL MEMBERS

Council members requested another Charter Workshop for Wednesday, May 30, 2018, 6PM.

V. ADJOURNMENT

AGENDA NOTICES:Action by Council Authorized:

The City Council may vote and/or act upon any item within this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code Section 551.071, to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The City Attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

Attendance By Other Elected or Appointed Officials:

It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

Executive Sessions Authorized:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

This is to certify that the above notice of a Workshop was posted on the front window of the City Hall of the City of Bay City, Texas on Monday, May 21, 2018 before 5:30 p.m. Any questions concerning the above items, please contact Mayor Mark A. Bricker at (979) 245-2137.

David Holubec
City Secretary



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 05/24/18 05:30 PM
Department: City Secretary
Category: Policy
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 3142

ADOPTED

AGENDA ITEM (ID # 3142)

**~DISCUSS, CONSIDER AND/OR TAKE ACTION REGARDING
THE BAY CITY HOME RULE CHARTER.**

COMMENTS - Current Meeting:

Council members and Mayor discussed the possible 2017 - 2018 Charter propositions, including the idea of a City Manager.

Council members and Mayor discussed the pros and cons of placing the City Manager proposition on the ballot in November 2018.

A motion was made to place the City Manager form of government on the ballot in the November 2018 election. The motion was made by Councilman, Bill Cornman and seconded by Councilman, Jason Childers. The motion passed.

RESULT:	APPROVED [3 TO 1]
AYES:	Becca Sitz, Chrystal Folsie, Jason Childers
NAYS:	William Cornman
EXCUSED:	Julie Estlinbaum

2012 CHARTER REVIEW COMMISSION
PROPOSED CHANGES
TO THE
CITY OF BAY CITY
HOME RULE CHARTER

Approved by Charter Review Members
November 28, 2012
Presented to City Council
December 11, 2012

Commission Members

John Vance
Rosemary Rodriguez
Will Duncan
Mena Collins
James Starks

Mike Griffith
Tim Bell
John Woolsey
Joe Lozano- disqualified
for residency

HOME RULE CHARTER FOR CITY OF BAY CITY, TEXAS

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HOME RULE CHARTER FOR CITY OF BAY CITY TEXAS

PREAMBLE

We, the citizens of Bay City, Texas, do HEREBY adopt this Home Rule Charter pursuant to the laws of the State of Texas and:

- Take pride in the sense of *community* which exists,
- Enjoy the *diversity* of our population,
- Emphasize the importance of continual means of *communication*,
- Encourage *economic growth and development*, and
- Plan a better *environment* in which to live, work, and recreate.

ARTICLE I

INCORPORATION, FORM OF GOVERNMENT, AND BOUNDARIES

Section 1.01 – Incorporation

The residents of the City of Bay City (situated in Matagorda County, Texas) living within its legally established boundaries are incorporated forever as a political subdivision of the State of Texas under the name of the "CITY OF BAY CITY, TEXAS" (referred to hereafter as the "City") with all the powers, privileges, rights, duties, and immunities which are provided in this Charter, **City Ordinances and Texas State law.**

Section 1.02 – Form of Government

The municipal government provided by this Charter is the ~~Mayor-Council~~ **Council-Manager** Form of Government. All powers of the City shall be exercised as stated in this Charter, or if not stated, then as provided by **City** Ordinance or **Texas** State law.

Section 1.03 – The Boundaries

The boundaries of the City shall be the same as now exist and are hereafter established in annexation and detachment ordinances and proceedings.

Section 1.04 – Boundary Changes

The boundaries of the City may be changed as follows:

~~(a) Petition by Owners and/or Qualified Voters to Annex~~

- ~~(1) Unoccupied Land – All owners of unoccupied land or land on which less than three qualified voters reside, contiguous and adjacent to the City, may by written petition to the Council request the annexation of said land, describing it by metes and bounds.~~
- ~~(2) Occupied Land – A majority of the qualified voters (if three or more) residing on land contiguous and adjacent to the City may, by written petition to the Council, request the annexation of said land describing it by metes and bounds.~~
- ~~(3) Not Against Quota – Any annexation of territory initiated at the request of the landowners and/or voters shall not be charged against the City's annual annexation quota pursuant to Section 43.055 of the Local Government Code.~~

~~(b) Petition by City to Annex~~

~~To Annex Land for All Purposes – The Council may, by ordinance, annex territory lying adjacent to the City, with or without the consent of the inhabitants in such territory and/or its owners.~~

~~(c) Deannexation of Territory~~

~~Territory laying both within the boundary limits of the City and also adjoining the outer boundary of the City may be detached from the City, by ordinance, following a petition by both a majority of the owners and majority of the registered voters residing in the territory or, by ordinance, following public notice. However, any deannexed territory shall be liable for its pro-rata share of any debts incurred while it was a part of the City, and the City shall continue to levy and collect taxes on the property within the territory until the indebtedness has been discharged. (43.142 Local Government Code)~~

~~(d) Public Hearing – The Council shall hear arguments for and against the annexation or deannexation, and in the Council's sole discretion, grant or refuse the proposed boundary change. Actual annexation and deannexation will be by ordinance passed by affirmative vote of three Councilmembers. (Sec. 43.028 (3) Local Government Code)~~

~~(e) Annexed Territory to Become Part of the City – All annexed territory shall become a part of the City, and its residents and future residents shall be entitled to all the rights and privileges of other citizens of the City and shall be bound by the acts, ordinances, resolutions, and regulations of the City.~~

The City shall have the power to change its' boundaries by annexing territory for full or limited purposes, or by deannexing territory, as may be authorized by, and in the manner and form prescribed by any general law of Texas. Annexation or deannexation may be initiated by the City, with or without the consent of the territory's inhabitants. Annexation may also be initiated by petition of a landowner of unoccupied, or sparsely occupied land, or by petition of the residents of a territory. All annexations or deannexations shall be accomplished by ordinance acted upon after a public hearing.

ARTICLE II

POWERS OF THE CITY

Section 2.01 – General Powers

Without the necessity of express enumeration in this Charter, and in addition to the powers enumerated in this Charter, the City shall have all powers now or hereafter granted to municipal corporations by the Constitution and laws of the State of Texas, together with all the implied powers necessary to carry into execution such granted powers.

Section 2.02 – Specific Powers

The City may:

- (a) use a corporate seal;
- (b) sue and be sued by action of its Council, may implead and be impleaded in all courts in all matters;
- (c) contract and be contracted with;
- (d) cooperate with the government of the State of Texas (or its political subdivisions) and the Federal Government;
- (e) own or acquire property within or without its boundaries for any municipal purpose in fee simple or in any lesser interest or estate, by purchase, gift, devise, lease, or condemnation; and may sell, lease, hold, manage, control, and police any property now owned by it or which it may later acquire whether within or without the City limits;
- (f) pass and enforce ordinances, not inconsistent with this Charter and State law, upon any subject expedient for the life; general welfare; health; morals; comfort; safety; amusement; quiet; prosperity; and convenience of the City, its inhabitants, and property; and may provide suitable penalties for the violations of any ordinance;
- (g) prevent, summarily abate, or remove nuisances;
- (h) construct, own, lease, operate, and regulate all public utilities;
- (i) assess, levy, and collect taxes for general and special purposes on all lawful subjects of taxation;
- (j) borrow money on the faith and credit of the City by the issuance and sale of bonds, certificates of obligation, warrants, or notes of the City; or secured by the revenue of municipally owned utilities or other municipal enterprises;
- (k) appropriate the funds of the City for all lawful purposes;
- (l) create and administer a park trust fund for the purchase of land and capital improvements for municipal parks. Any funds and interest from sale or lease of any municipal park shall be promptly placed in the park trust fund;

- (m) create and establish improvement districts as authorized by Local Government Code No. 372.041;
- (n) control the speed and excessive noise of railroad cars; the construction and grade of railroad tracks, turnouts and switches; and the erection of signal lights and safety devices at street crossings.

Section 2.03 – Eminent Domain

The City shall have full authority to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter, State law, or City ordinance. The City may take the fee in the lands so condemned, or take a lesser estate or interest in land, and its authority shall include the right to condemn public property for such proposes.

Section 2.04 – City Property and Streets

- (a) The City shall have exclusive control of all its property. Property is defined as including, but not limited to, streets, highways, sidewalks, bridges, parks, recreational facilities, squares, city buildings, airports, landfills, undeveloped land, utility, and/or drainage easements. The City may layout, establish, open, alter, widen, lower, raise, extend, grade, drain, pave, repave, supervise, maintain, care for, construct, remodel, abandon, discontinue, abolish, lease, or sell its property. The foregoing list of City property is intended to illustrate the types of City property and is not intended to vest the City with title to any private property.
- (b) City property shall include all oil, gas, and other minerals not reserved by predecessors in title, and all included waterways not subject to prior or superior authority.
- (c) The City may remove or require the removal of all obstructions and encroachments affecting any City property and V.A.T.S, 1175 is expressly adopted in this Charter. Exclusive control shall also include, but not be limited to, the right to regulate, locate, relocate, remove, or prohibit the location of all utility pipes, lines, poles, wires, or other property; and to remove tree limbs, bushes, or other plant growth extended onto or over City property.
- (d) Assessments for Improvements. The City may provide, by ordinance, that the cost of making improvements shall be paid for by the property owners owning property in the territory specifically benefitted, but not in excess of the enhanced value by reason of the improvements; and a personal charge shall be made against the property owners, as well as a lien, by special assessment against the property.

The Council, or its appointed commission, may set and levy a special assessment and issue assignable or negotiable certificates covering the costs in deferred payments bearing a reasonable rate of interest.

Section 2.05 – Tort Liability and Mandatory Written Notice

- (a) Before the City shall be liable for damages for the death or personal injuries of any person or for damages to or destruction of property of any kind (which does not constitute a taking or damaging of property under Article 1, Section 17, Constitution of the State of Texas), the person injured (if living), or his representatives (if deceased), or the parent or guardian of a minor child, or the legal guardian of a person declared non

compos mentis, or the owner or his agent or attorney of the property damaged or destroyed, shall give the Mayor or City Secretary written notice of such death, injury, damage, or destruction within six months after it has been sustained.

- (b) The written notice shall state specifically when, where, and how the death, injury, damage, or destruction occurred; the apparent extent of the injury, damages, or destruction; the dollar amount of damages sustained and claimed; both the mailing address and the actual residence of the claimant by street number and name, town, state, and zip code on the date the claim is presented; the actual residence of the claimant by street number and name, town, state, and zip code for six months immediately preceding the occurrence of such death, injury, damage, or destruction; and the names and complete addresses of all witnesses upon whom it is relied to establish the claim for damages.
- (c) The failure to so notify the Mayor or City Secretary within the time and manner specified shall release the City from any liability. No act of any officer or employee of the City shall waive compliance, or estop the City from requiring compliance, with the provisions of this Section as to notice.
- (d) The notice requirements of this section will not apply, if State law mandates that actual notice to the City is sufficient that a death has occurred, the claimant has received some injury, or the claimant's property has been damaged.

ARTICLE III

THE MAYOR ADMINISTRATIVE SERVICE

Section 3.01 – Head of City Government City Manager

3.01 (a) Appointment and qualifications:

The City Council by a majority vote shall appoint a City Manager. The method of selection shall be established by Ordinance to insure orderly, nonpartisan action toward securing a competent and qualified person to fill the position. The City Manager shall be chosen solely upon the basis of such person's executive and administrative training, experience and ability. The City Manager shall be bonded at City expense in the amount of not less the \$10,000.

(b) Compensation

The City Manager shall receive compensation fixed by the City Council according to his or her experience, education and training. The compensation shall be agreed upon before appointment with the understanding that the City Council may change it at their discretion.

(c) Term and Removal

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

(d) Powers and Duties

The City Manager shall be the Chief Administrative Officer of the City, and shall be responsible to City Council for proper administration of all the affairs of the City and to that end shall have the power and shall be required to:

1. To exercise control over departments and divisions of the City and to supervise all officers and employees of the City.
2. See that all state laws and City Ordinances are effectively enforced;
3. Appoint, suspend or remove all or any of the directors of departments, except as otherwise provided in this charter;
4. Attend all meetings of the City Council except when excused by the City Council, and shall have the right to take part in the discussions;
5. Prepare the budget annually and submit it to the City Council and be responsible for its administration after its adoption;
6. Prepare and submit to the City Council at the end of each fiscal year a complete report on the finances and administrative activities of the City for the preceding year;
7. Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem advisable;
8. Make other such reports as the City Council may require concerning the operations of City departments, offices and agencies subject to his or her discretion and supervision; and
9. Perform such other duties as may be prescribed by this charter or required by the City Council, as consistent with this charter.

(e)Assistant City Manager

The City Manager, within 60 days after taking office, shall designate by letter filed with the City Secretary, a qualified administrative officer of the City to perform the duties of the City Manager in his or her absence or disability. Such designation shall be subject to perform the same powers and duties as the City Manager while acting in the City Manager's place. No member of the City Council or the Mayor shall serve as Assistant City Manager. From time to time the City Manager may remove and appoint another Assistant City Manager.

Section 3.02 Administrative Departments

The City Manager shall recommend administrative departments and organizations with Council approval.

~~The Mayor shall be the chief administrator and executive officer of the City, and shall be responsible for the proper administration of its affairs. The Mayor shall preside at all meetings of the Council, and shall be recognized as the head of the city government for ceremonies, receiving civil process, emergency measures, and military purposes.~~

Section 3.02 – Qualifications

~~The Mayor shall be a citizen of the United States of America and a qualified voter of the State of Texas; shall have resided for at least one year preceding the election within the corporate limits of the City or for one year within territory which has been annexed by the City; shall have~~

attained the age of at least twenty-five years on the first day of the term to be filled; and shall not at the same time hold any other elective or appointive public office of emolument.

Section 3.03 – Term

The Mayor shall be elected in 1989 and every third year thereafter by a majority vote of the qualified voters voting at the election. His term of office shall be three years or until his successor has been elected and qualified.

Section 3.04 – Compensation

The Council shall annually in the budget adopt the compensation and expense account for the Mayor and offer the Mayor any fringe benefits available to other full-time employees including, but not limited to, health insurance and retirement.

Section 3.05 – Vacancy and Forfeiture

- (e) Vacancy – The office of the Mayor shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.
- (f) Forfeiture of Office – The Mayor shall forfeit his office if he:
 - (1) lacks at any time during his term of office any qualification for the office prescribed by this Charter or by State law, or
 - (2) violates any express prohibition of this Charter, or
 - (3) is convicted of a felony or a crime involving moral turpitude, or
 - (4) is absent from three consecutive regularly scheduled Council meetings or any six regularly scheduled Council meetings within any consecutive twelve month period following each general election date for municipal officers, without valid excuse as determined by affirmative vote of three Councilmembers. With at least thirty days notice and opportunity for Mayor to be heard (at a regular meeting or in Executive Session, at the Mayor's option), the Council shall by three affirmative votes declare the position to be vacant or not vacant. In case of a tie, the Mayor shall retain his office, or
 - (5) commits any act allowing the removal of a Mayor or Alderman from office under Chapter 21 of the Local Government Code.
- (c) Vacancy During Unexpired Term – The Mayor Pro Tem shall act as Mayor until a successor to the office of Mayor has been elected and duly qualified under Article II, Section II, of the Texas Constitution. During the time he acts as Mayor under these circumstances, but only under these circumstances, the Mayor Pro Tem shall be entitled to receive the compensation of the Mayor.
- (d) The procedure for removal or forfeiture shall be the same as prescribed in Chapter 21 of the Local Government Code.

Section 3.06 – General Powers of the Mayor

The Mayor shall exercise such powers, prerogatives, and authorities as are implied or expressly conferred on him by State law, this Charter, or the Council, by ordinance.

Section 3.07 – Tie Vote

The Mayor shall only be entitled to vote in the case of a tie. The Mayor may not vote if this Charter requires three affirmative votes of Councilmembers.

Section 3.08 – Power of Veto

The Mayor shall have the power to veto any ordinance or resolution passed by the Council, except those ordinances or resolutions which are not subject to the initiative or referendum process under the provisions of this Charter. To be effective, the veto must be in writing, setting forth the Mayor's reason and filed with the City Secretary within five calendar days of the passage of the ordinance or resolution. The City Secretary shall deliver the Mayor's veto message to each Councilmember immediately upon receipt.

Section 3.09 – Removal of Appointed, Non-Paid Advisory Person by Mayor

Except as may be otherwise provided by law, by ordinance, or by this Charter, the Mayor shall be the exclusive authority to remove all non-paid advisory persons. The action of the Mayor shall be final with consent of a majority vote of Council.

Section 3.10 – Other Duties and Powers

Unless otherwise provided by State law, ordinance, or this Charter, the powers and responsibilities of the Mayor shall include, but shall not be limited to, the following:

- (a) To appoint, subject to the prior consent of the Council, all officers and department heads of the City and the members of all boards, commissions, committees, and agencies of the City.
- (b) To exercise control over all departments and divisions of the City and to supervise all officers and employees of the City.
- (c) To recommend to the Council such measures, resolutions, and ordinances as he may deem necessary and proper.
- (d) To keep the Council fully advised as to the financial condition and needs of the City.
- (e) To perform such other duties as may be prescribed by this Charter or required of him by ordinance.

Section 3.11 – Mayor Pro Tem

At the first regular meeting following the induction of newly elected Councilmembers, the Council shall, by three affirmative votes of Councilmembers, elect one Councilmember as Mayor Pro Tem for a one-year term. The Councilmember elected as Mayor Pro Tem shall have had prior tenure as Councilmember of the City of Bay City. The Mayor Pro Tem shall act as

~~Mayor during the absence, disability, or disqualification of the Mayor, and shall have the power to perform every act the Mayor could perform if present.~~

Section 3.12 – Acting Mayor

~~In the event of absence, disability, or disqualification of both the Mayor and the Mayor Pro Tem at any particular meeting of the Council, the remaining members of the Council shall, by majority vote, designate one of their members as Acting Mayor for that particular meeting; and the Acting Mayor shall have the power to perform every act the Mayor could perform if present.~~

Section 3.13 – Retention of Voting Privileges

~~While performing the duties of Mayor, the Mayor Pro Tem or Acting Mayor may still vote as a Councilmember.~~

ARTICLE IV

THE COUNCIL AND THE MAYOR

Section 4.01 – Number, Selection, and Term of Office, and Term Limits of The Council

The Council shall be composed of five Councilmembers. ~~each serving a two year term. Councilmembers No. 3, 4, and 5 shall be elected in May of odd years. Councilmembers No. 1 and 2 shall be elected in May of even years.~~ All Councilmembers to be selected at large. Councilmembers shall be elected to staggered three-year terms with Councilmembers No.1 and 2 elected one year and Councilmembers No. 3, 4, and 5 elected the following year with no elections for council taking place every third year. No Councilmember shall be elected to serve for more than three consecutive three-year terms.

Section 4.02 – Qualifications

A Councilmember shall be a citizen of the United States of America and a qualified voter of the State of Texas; shall have resided for at least one year preceding the election within the corporate limits of the City or for one year within territory which has been annexed by the City; shall have attained the age of at least ~~twenty one~~ ~~twenty one~~ ~~twenty five~~ years on the first day of the term to be filled; and shall not at the same time hold any other elective or appointive public office of emolument.

Section 4.03 – Powers of the Council

All powers and authority which are expressly or impliedly conferred on or possessed by the City in Article II of this Charter shall be vested in and exercised by the Council; however, the Council may not exercise powers which are conferred exclusively on other city officers by this Charter.

Section 4.04 – Compensation

The Council shall annually in the budget adopt the compensation for Councilmembers for attendance at meetings and for other duties and may offer each Councilmember any group health insurance available to full-time City employees at the Councilmember's expense.

Section 4.05 – 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; 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 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 in the manner provided by such ordinance. No member of the Council shall ever vote upon any matter involving the consideration of his own official conduct.

Section 4.06 – Meetings of Council

- (a) Regular Council Meetings – The Council shall have no less than two regular meetings each month, and as many additional meetings as necessary, to transact the business of the City. The Council shall fix, by ordinance, the days and time of the regular meetings. All meetings of the Council shall be held at the City Hall of Bay City and shall be open to the public, unless State law allows or requires otherwise.
 - (1) The Mayor or Councilmembers, individually or by motion, may place items on the agenda prior to the next agenda being posted.
 - (2) Any interested party may request, in writing, for an item that falls within the City's legal jurisdiction to be placed on the agenda, with a Councilmember's or the Mayor's sponsorship. The agenda item shall be scheduled as soon as possible, but no later than thirty days from the date of written request.
- (b) Special Meetings – Special meetings shall be called and posted by the City Secretary at the request of the Mayor or by a majority of the Councilmembers.
- (c) Minutes – Minutes of all regular and special open meetings of the Council shall be recorded as public record.
- (d) Executive Sessions – The Council may recess to an executive session for any purpose permitted by State law. The general subject matter for consideration shall be expressed in the agenda or the motion calling for the session. Final action shall not be taken by Council until the matter is placed on the agenda and a vote taken in an open meeting.
 - ~~(1) The Mayor or Councilmembers, individually or by motion, may place items on the agenda prior to the next agenda being posted.~~
 - ~~(2) Any interested party may request, in writing, for an item that falls within the City's legal jurisdiction to be placed on the agenda. The agenda item shall be scheduled as soon as possible, but no later than thirty days from the date of written request.~~
- (e) Rules of Procedure – The Council shall, by ordinance, determine its own rules and order of business. A majority of the Council shall constitute a quorum for all meetings.

Section 4.07 – Council Voting

- (a) Council Action – The Council, which includes the Mayor, may legislate and act only by ordinance, resolution, or motion. Each member of Council and the Mayor, if present,

may vote upon all matters before Council. However, a Councilmember ~~or the Mayor~~ shall abstain when the matter involves the consideration of the Councilmember's or ~~Mayor's~~ official conduct or when required by State law.

- (b) Majority Vote – A majority vote of a quorum present may transact City business and procedural matters, ~~and the Mayor may vote in a tie~~. However, to be effective, the following actions must be by at least three affirmative votes of Councilmembers and the Mayor ~~may not vote~~: ordinances, annexations and deannexations, legal matters, contracts in excess of the state bidding limits, removing and reinstating city officers and employees, creating and changing city positions and departments, changing the personnel policy, ~~matters involving the Mayor's official conduct or financial interest~~, and declaring any office vacant.
- ~~(c) Override of Mayor's Veto – At any meeting of the Council held not less than seven or more than thirty days after the Mayor has vetoed any ordinance or resolution, the Council may override such veto by four affirmative votes. The ordinance or resolution shall be considered final on the day it was passed and shall not be subject to further veto.~~

Section 4.08 – Councilmembers and Administrative Divisions

- ~~(a) The following Administrative Divisions are created:

 - ~~(1) Parks and Recreation and Airport~~
 - ~~(2) Finance, Safety and Insurance, Records Management, and City Hall~~
 - ~~(3) Police, Fire, Municipal Court, and Fire Marshal~~
 - ~~(4) Public Works, Public Utilities, Inspections, and Maintenance~~~~
- ~~(b) The City Council may create, change, abolish, or consolidate the Administrative Divisions.~~
- ~~(c) Each Councilmember shall serve as the liaison officer, on behalf of the Council, for one Administrative Division for a one year term. In June 1989, each Councilmember shall begin with the same Administrative Division as his place number and rotate down numerically one Administrative Division each succeeding year.~~
- ~~(d) Each Councilmember shall have equal responsibility for every division in the City regardless of whether he is the designated liaison officer.~~

Section 4.09 4.08– Finance Committee

- (a) A Finance Committee is created to review all expenditures of the City, including regular budgeted salary payments and review all financial policies. City Council shall appoint a Finance Chairman and Assistant Chairman, which may include the Mayor, to serve a one-year term.
- (b) The Finance Committee shall meet at least once a quarter to review expenditures and polices as necessary.
- (c) At least once a quarter, Council shall vote to approve the City expenditures made since the last Council approval.
- ~~(d) A Finance Committee is created to review all expenditures of the City, from all funds, including regular budgeted salary payments. Each Councilmember shall serve as~~

~~chairman of the a Finance Committee Chairman and Assistant Chairman to serve a one-year term. for a six-month term on a rotating basis by place number, beginning with Councilmember No. 3 in June 1989, and advancing by Council place number each succeeding six-month period.~~

- ~~(e) Other Councilmembers shall serve as assistant Finance Chairman on a one-month rotating basis.~~
- ~~(f) Both the Finance Chairman and Assistant Finance Chairman shall review all indebtedness incurred by the City prior to payment. At least once a month, Council shall vote to approve the City expenditures made since the last Council approval.~~

Section 4.10 4.09– Vacancies, Forfeiture, and Removal

- (a) Vacancies – The office of a Councilmember shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.
- ~~(b) Forfeiture of Office – A Councilmember shall forfeit his office if he:~~
 - ~~(1) lacks, at any time during his term of office, any qualification for the office prescribed by this Charter or by State law, or~~
 - ~~(2) violates any express prohibition of this Charter, or~~
 - ~~(3) is convicted of a felony or a crime involving moral turpitude, or~~
 - ~~(4) is absent from three consecutive regularly scheduled Council meetings or any six regularly scheduled Council meetings within any twelve consecutive month period following each general election date for municipal officers without valid excuse as determined by three affirmative votes of the remaining Council. After at least thirty days notice and opportunity for affected Councilmember to be heard (at the regular meeting or Executive Session, at the option of the affected Councilmember), the Council shall by three affirmative votes declare the position to be vacant or not vacant. In case of a tie vote, the Councilmember shall retain his office.~~
- ~~(5) commits any act allowing the removal of a Mayor or Alderman from office under Chapter 21 of the Local Government Code.~~
- (b) Forfeiture of Office – A councilmember shall forfeit his/her office if, during a term of office, he or she:
 - (1) Is no longer a US citizen or qualified voter of the city or lacks any qualification for the office prescribed by this Charter or by other law;
 - (2) Violates any express prohibition of this Charter;
 - (3) Is convicted of a felony or is convicted of a crime involving moral turpitude; or
 - (4) Fails to attend three (3) consecutive regular meetings of the council without being excused by the council. When any member of the council no longer possesses all of the qualifications specified in this section, the office shall immediately and automatically become vacant. The council shall be the judge of the qualifications of its members and for these purposes shall have the power to conduct a tribunal, subpoena witnesses and require the production of records. The council shall, by an affirmative vote of a majority of the entire membership, be the final judge in matters involving forfeiture of office by a councilmember. A Councilmember shall forfeit his office if he:

- (c) Filling Unexpired Term – The Council, ~~which includes the Mayor~~, by three affirmative votes, may, but is not required to, appoint a person to fill the vacated Council position until a successor is elected at the next regular or municipal election to fulfill the unexpired term.
- (d) ~~The procedure for removal or forfeiture shall be the same as prescribed in Chapter 21 of the Local Government Code.~~

~~Section 3.01~~ 4.10 – The Mayor

~~The Mayor shall be the chief administrator and executive officer of the City, and shall be responsible for the proper administration of its affairs. The Mayor shall preside at all meetings of the Council, and shall be recognized as the head of the city government for ceremonies, shall represent the city in intergovernmental relationships, shall appoint members of citizen advisory boards and commissions (with the advice and consent of council), shall assign agenda items to committees, shall facilitate communication and understanding between elected and appointed officials, and assist the council in setting goals and priorities and advocating policy decisions, and shall be responsible for emergency measures and management. receiving civil process, emergency measures, and military purposes.~~

~~Section 3.02~~ 4.11 – Qualifications of the Mayor

The Mayor shall be a citizen of the United States of America and a qualified voter of the State of Texas; shall have resided for at least one year preceding the election within the corporate limits of the City or for one year within territory which has been annexed by the City; shall have attained the age of at least ~~twenty one~~ ~~twenty-five~~ years on the first day of the term to be filled; and shall not at the same time hold any other elective or appointive public office of emolument.

~~Section 3.03~~ 4.12 – Selection, Term and Term Limit of the Mayor

~~The A~~ Mayor shall be elected in 1989 and every third year thereafter by a majority vote of the qualified voters voting at the election. His term of office shall be three years or until his successor has been elected and qualified. ~~No one person shall be elected in the capacity of mayor for more than three consecutive three year terms.~~

~~Section 3.04~~ 4.13 – Compensation of the Mayor

The Council shall annually in the budget adopt the compensation and expense account for the Mayor and offer the Mayor any ~~group health insurance fringe benefits~~ available to other full-time employees including, but not limited to, health insurance and retirement ~~at the Mayor's expense.~~

Section 3.05 4.14 – Vacancy and Forfeiture of the Mayor

(a) Vacancy – The office of the Mayor shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.

(b) Forfeiture of Office – The Mayor shall forfeit his/her office if, during a term of office, the Mayor:

(1) Is no longer a US citizen or qualified voter of the city or lacks any qualification for the office prescribed by this Charter or by other law;

(2) Violates any express prohibition of this Charter;

(3) Is convicted of a felony or is convicted of a crime involving moral turpitude; or

(4) Fails to attend three (3) consecutive regular meetings of the council without being excused by the Council. When the mayor no longer possesses all of the qualifications specified in this section, the office shall immediately and automatically become vacant. The council shall be the judge of the qualifications of its members and for these purposes shall have the power to conduct a tribunal, subpoena witnesses and require the production of records. The council shall, by an affirmative vote of a majority of the entire membership, be the final judge in matters involving forfeiture of office by the Mayor. ~~The Mayor shall forfeit his office if he:~~

~~(1) lacks at any time during his term of office any qualification for the office prescribed by this Charter or by State law, or~~

~~(2) violates any express prohibition of this Charter, or~~

~~(3) is convicted of a felony or a crime involving moral turpitude, or~~

~~(4) is absent from three consecutive regularly scheduled Council meetings or any six regularly scheduled Council meetings within any consecutive twelve month period following each general election date for municipal officers, without valid excuse as determined by affirmative vote of three Councilmembers. With at least thirty days notice and opportunity for Mayor to be heard (at a regular meeting or in Executive Session, at the Mayor's option), the Council shall by three affirmative votes declare the position to be vacant or not vacant. In case of a tie, the Mayor shall retain his office, or~~

~~(5) commits any act allowing the removal of a Mayor or Alderman from office under Chapter 21 of the Local Government Code.~~

Section 3.06 4.15 – General Powers of the Mayor

The Mayor shall exercise such powers, prerogatives, and authorities as are implied or expressly conferred on him by State law, this Charter, or the Council, by ordinance.

Section 3.07 4.16 – Tie Vote by the Mayor

~~The Mayor shall only be entitled to vote in the case of a tie. The Mayor shall have the same voting privileges as the individual Council members, and will comply with the rules and restrictions specified in Section 4.07 of this Charter. The Mayor may not vote if this Charter requires three affirmative votes of Councilmembers.~~

Section 3.08 4.17 – Power of Veto by the Mayor

~~The Mayor shall have the power to veto any ordinance or resolution passed by the Council, except those ordinances or resolutions which are not subject to the initiative or referendum process under the provisions of this Charter. To be effective, the veto must be in writing, setting forth the Mayor's reason and filed with the City Secretary within five calendar days of the passage of the ordinance or resolution. The City Secretary shall deliver the Mayor's veto message to each Councilmember immediately upon receipt.~~

Section 3.09 4.18 – Removal of Appointed, Non-Paid Advisory Person by Mayor

Except as may be otherwise provided by law, by ordinance, or by this Charter, the Mayor shall ~~be the exclusive~~ have authority, with consent of a majority vote of Council, to remove all non-paid advisory persons. ~~The action of the Mayor shall be final with consent of a majority vote of Council.~~

Section 3.10 4.19 – Other Duties and Powers of the Mayor

Unless otherwise provided by State law, ordinance, or this Charter, the powers and responsibilities of the Mayor shall include, but shall not be limited to, the following:

~~To appoint, subject to the prior consent of the Council, all officers and department heads of the City and the members of all boards, commissions, committees, and agencies of the City.~~

~~(a) To exercise control over all departments and divisions of the City and to supervise all officers and employees of the City.~~

(a) To recommend to the Council such measures, resolutions, and ordinances as he may deem necessary and proper.

~~To keep the Council fully advised as to the financial condition and needs of the City.~~

(b) To perform such other duties as may be prescribed by this Charter or required of him by ordinance.

Section 3.11 4.20 – Mayor Pro Tem

At the first regular meeting following the induction of newly elected Councilmembers, the Council shall, by three affirmative votes of Councilmembers, elect one Councilmember as Mayor Pro Tem for a one-year term. The Councilmember elected as Mayor Pro Tem shall have

had prior tenure as Councilmember of the City of Bay City. The Mayor Pro Tem shall act as Mayor during the absence, disability, or disqualification of the Mayor, and shall have the power to perform every act the Mayor could perform if present.

Section 3.12 4.21 – Acting Mayor

In the event of absence, disability, or disqualification of both the Mayor and the Mayor Pro Tem at any particular meeting of the Council, the remaining members of the Council shall, by majority vote, designate one of their members as Acting Mayor for that particular meeting; and the Acting Mayor shall have the power to perform every act the Mayor could perform if present.

Section 3.13 4.22 – Retention of Voting Privileges by the Mayor Pro Tem or Acting Mayor

~~While performing the duties of Mayor, the Mayor Pro Tem or Acting Mayor may still vote as a Councilmember.~~

ARTICLE V ORDINANCES

Section 5.01 – Ordinances

- (a) Enacting Clause – The enacting clause of every ordinance shall be, "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS".
- (b) One Subject – All ordinances, resolutions, and motions shall be confined to one subject which is clearly expressed in the title. Appropriation ordinances shall be confined to that subject alone.
- (c) Proposing An Ordinance – The Mayor, or any Councilmember, may place a proposed written ordinance on the agenda of any Council meeting, but only after the City Attorney has approved it as to form.
- (d) Legal Approval as to Form – Before any ordinance shall be adopted, the City Attorney shall either approve it by signature as to form or shall file detailed written legal objections with the City Secretary. The Council may pass an ordinance in spite of legal objections.
- (e) Reading by Caption Allowed – It shall not be necessary to the validity of any ordinance that it be read by caption more than one time or considered at more than one session of the Council. If read by caption, the full printed ordinance shall be provided to the Council and available to the public at City Hall prior to vote.
- (f) Mayor's Signature – ~~Unless vetoed, e~~ Every ordinance passed shall be signed by the Mayor (or the Mayor Pro Tem in the Mayor's absence) to signify his approval. However, the failure or refusal of the Mayor to sign an ordinance shall not prevent the ordinance from going into effect.
- (g) Authentication and Recording – All ordinances and resolutions shall be numbered numerically and consecutively in the order in which passed. The City Secretary shall

authenticate by his signature, all ordinances and resolutions passed by the Council and record them in full and properly index, as a public record.

- (h) Effective Date – Every ordinance shall become effective upon date of the Council's affirmative vote, ~~or vote overriding Mayoral veto~~, or at any later time specified in the ordinance.
- (i) Publication of Ordinance Providing Penalties – Any ordinance imposing a penalty, fine, or forfeiture shall become effective only after the caption has been published in the City's official newspaper at least one time within ten days after passage. The City Secretary shall note on every ordinance that must be published, and in the Council minutes, the date and medium of publication and attach the relative Publisher's Affidavit. Such notation shall be prima facie evidence of compliance with the requirements of this section.
- (j) Amendment and Repeal – After adoption, an ordinance shall not be amended or repealed except by the adoption of another ordinance amending, repealing, or recodifying the original ordinance.
- (k) Proof of Ordinance – An ordinance may be proved prima facie by a printed code of ordinances purporting to be printed by authority of the City, or by a copy of the Ordinance certified by the City Secretary.

Section 5.02 – Code of Technical Regulations

The Council may adopt any standard code of technical regulations by ordinance.

Section 5.03 – Code of Ordinances

- (a) It shall be mandatory upon the Council to cause all general ordinances to be totally recodified and reprinted before the expiration of any ten consecutive years after the last preceding full recodification. General ordinances are those ordinances of a permanent nature which affect the residents of the City at large. Every general ordinance enacted after the original codification required above shall be enacted as an amendment to the code. ~~Council shall update and codify all general ordinances at least annually.~~ **Council shall codify all general ordinances passed during the preceding fiscal year at least annually.**
- (b) The printed code of general ordinances adopted by Council shall be cited officially as the Code of Ordinances, City of Bay City, Texas, and shall be effective without the necessity of any part of the code being published in any newspaper, unless otherwise required by law. The caption, descriptive clause, and other formal parts of the ordinances of the City may be omitted without affecting the validity of the ordinances when they are published as a code.
- (c) A code and all updates shall be given to the Bay City Public Library and High School Library, furnished to City officers and departments, and available in the Mayor's and City Secretary's offices for public reference. The Code may be purchased by the public at a reasonable price fixed by the Council.

ARTICLE VI

NOMINATIONS AND ELECTIONS

Section 6.01 – Elections

The City Council, by ordinance, shall order all elections and set the date, polling place, hours, and any other necessary details. Notice of elections shall be published in the official newspaper of the City not less than thirty days before each regular election and not less than ten days prior to any run-off election.

Section 6.02 – Regulation of Election

- (a) Elections shall be held in compliance with the State Election Code, this Charter, and City ordinance.
- (b) The Council shall appoint the election judges and other election officials.
- (c) Voting Precincts – City elections shall be held at the voting place designated in the ordinance calling an election. When the total number of qualified voters justifies it, Council may subdivide the City into two or more convenient, well-defined voting precincts containing approximately the same number of qualified voters in each. The qualified voters actually residing in such a voting precinct shall vote in that precinct in all City elections.

Section 6.03 – How to Get Name on Ballot

~~Any qualified voter of the City (who is otherwise qualified to hold elective office under this Charter) may have his name printed upon the official ballot for a particular office at any election by:~~ Any qualified voter of the City who meets the qualifications of a mayoral candidate (Section 4.11) or a city council candidate (Section 4.02) may have his or her name printed upon the official ballot for a particular office at any election by:

- (a) Filing his sworn application and loyalty affidavit with the City Secretary at least forty-five days prior to the election.
- (b) Simultaneously with the application, a Councilmember candidate shall file a petition signed by 150 qualified voters residing in the City and endorsing the candidate or provide a cash filing fee of \$150.00. A Mayoral candidate shall file a petition signed by 300 qualified voters residing in the City and endorsing the candidate or provide a \$300.00 cash filing fee.

Section 6.04 – Mayor and Councilmember Ballots

The names of all candidates for the office of Mayor or Councilmember (except such as may have withdrawn, died, or become ineligible) shall be printed on the official ballot without political party designations. The order of the names of candidates for places on the ballot shall be determined by lot.

Section 6.05 – Election of Mayor and Councilmember by Majority

The regular, run-off, or special election of a Mayor and/or Councilmember shall be by majority vote of the qualified voters voting at such election.

Section 6.06 – Canvassing Election Returns

Immediately after each election, the election officials shall deliver all original returns to the City Secretary for safekeeping. ~~Within one week after each election,~~ The Council shall canvass the returns and declare results of the election ~~in the time period prescribed by state law.~~

Section 6.07 – Recount

The Council shall canvass any recount ~~as soon as possible after within two days of~~ receiving the Recount Commission report and declare results of the recount.

Section 6.08 – Induction of Council into Office, Meeting of Council

At the first regular Council meeting in June, or as soon thereafter as practicable, the newly elected Mayor and/or Councilmembers shall take the oath of office, assume their respective duties, and be issued certificates of office.

Section 6.09 – Council to be Judge of Election Qualifications

- (a) The Council shall be the judge of the election and qualifications of its own members and the Mayor; and for such purposes, shall have power to subpoena witnesses and require the production of records. The decision of the Council shall be subject to judicial review in the proper court.
- (b) No informalities in conducting a City election shall invalidate it, if the election is conducted fairly and in substantial compliance with applicable State law, this Charter, and City ordinances.

ARTICLE VII

ADMINISTRATIVE

Section 7.01 – Compensation, Benefits, Employment

- (a) Compensation – The ~~Council~~ **City Manager with prior Council approval** shall set the compensation and benefits, if any, of all officers, department heads, and employees of the City.
- (b) Benefits – The Council shall have the power, but shall not be required, to provide for all or any group of City employees benefits including but not limited to: (1) a retirement plan; (2) health, life, and accident insurance, or any of these. Except as required by State law, the City may or may not contribute toward the cost of any benefit.
- (c) Employment – ~~Only the Mayor~~ **The City Manager** with prior council approval or the Council has authority to propose any employment contract for a specific period of time or

terms of employment other than those provided for in the Bay City Personnel Policy. To be valid, such an employment contract will have to be in writing, signed by both the employee and the Mayor, and approved by affirmative vote of at least three Councilmembers.

Section 7.02 – Conditions of Employment

As a condition of employment, all non-elected officers and employees of the City shall:

- (a) Personnel Policy – Conform to the general procedures in the Bay City Personnel Policy and within their specific department. The personnel policy is a general, but non-comprehensive, guideline for procedures between the City and its employees. The personnel policy is for information and is not an employment contract.

The Council, in its sole discretion, may unilaterally amend the personnel policy at any time with or without notice, and for any reason it deems appropriate. The Council may administer the policy substantially in whole, in part, **and shall periodically update the policy as needed.** ~~or elect to not have any written personnel policy.~~

Section 7.03 – Bond for City Employees

All municipal officers and employees who receive or payout any City monies shall be bonded before they enter office. The Council shall set the amount of each bond and the City shall pay the expense.

Section 7.04 – Nepotism

No person related within the second degree by affinity, or within the third degree by consanguinity, to the **City Manager**, Mayor or any elected officer of the City, shall be appointed to any office, position, clerkship, or other service of the City. This prohibition shall not apply; however, to any person who shall have been continuously employed by the City for a period of six months prior to the election of any city official so related to him or for thirty days prior to the appointment of any City officer related to him.

Section 7.05 – City Officers and Administrative Departments

- (a) City Officers – City officers are: **City Manager**, Mayor, Councilmembers, City Secretary, City Attorney, City Treasurer, Municipal Judges, and Chief of Police.
- ~~(b) Organization – By ordinance, the Council may create, discontinue, redesignate, or combine any of the departments appointed officers, City positions, deputies, assistant officers, and assistant department heads. The Mayor shall have an opportunity to make written recommendations to the Council prior to any vote to change administrative organization. Any ordinance changing administrative organization shall require a two-thirds majority, or four of five affirmative votes, of Council.~~
- (c) Supervision of Departments – The head of each department shall be a director or officer who shall have supervision and control over his department. Two or more departments may be headed by the same individual. The ~~Mayor~~ **City Manager** may head one or more departments. ~~but only on a temporary basis not to exceed sixty days.~~

- ~~(d) Appointment — City officers and directors of departments shall be appointed by the Mayor with the consent of the Council (unless this Charter specifies appointment by the Council only) within or a maximum of one hundred twenty (120) days. Appointment shall be within sixty (60) days after vacancy occurs. Each appointee shall not take office until his appointment is approved by Council.~~

~~Consent of the Council shall be by three affirmative votes of Councilmembers as an agenda item at a regular or special Council meeting within sixty days of nomination.~~

~~Should the Council vote to deny consent to an appointment, the Mayor shall name a new nominee for Council consideration and consent within thirty days of date the first nominee was not confirmed. The Council may reconsider a negative vote once as a regular agenda item, but only within thirty days of original vote denying consent.~~

~~If the Council does not consent to the Mayor's first or second nominee, any two Councilmembers may nominate a new nominee, but appointment shall only be upon four affirmative votes of Councilmembers. (No Councilmember may nominate more than one nominee at a time.) If no Council nominee is confirmed within thirty days of vote not confirming the Mayor's last nominee, then the nomination process shall begin again under this Section 7.05(d) with the Mayor's next nominee.~~

- ~~(e) Interim — Interim City officers and directors of departments shall be appointed by the Mayor with the consent of Council for a maximum of sixty days. A permanent City officer or department head shall be nominated and submitted to Council for approval within sixty days of a vacancy occurring in the permanent position.~~

- ~~(f) Removal — Department Heads and non-elected officers of the City appointed by the Mayor may be suspended by the Mayor, with or without pay, and/or removed by the Mayor with the prior consent of the Council. Other employees of the City shall be removed by their respective department head with the consent of the Mayor.~~

~~However, all non-elected City officers and any employees may be suspended with or without pay and/or removed by four affirmative votes of the Council, with or without the recommendation of the Mayor, as an agenda item at a regular or special Council meeting.~~

- ~~(g) Appeal~~

~~(1) The suspension and/or removal shall permanently terminate the officer's or employee's appointment or employment with the City unless the Council shall provide for an appeals hearing at City Hall.~~

~~(2) Following the hearing, a majority of the Council may remove the suspension and reinstate the officer or employee to his office or position of employment with or without all wages and benefits lost during the time of his suspension. If not reinstated, the officer's or employee's termination shall be effective as of the date of his suspension. The action of the Council shall be final on the question of termination or removal of the suspension and reinstatement.~~

- ~~(h) Reorganization — By ordinance, the Council may create, discontinue, redesignate, or combine any of the departments, appointed officers, City positions, deputies, assistant officers, and assistant department heads. The Mayor shall have an opportunity to make written recommendations to the Council prior to any vote to change administrative organization.~~

Section 7.06 – City Secretary

The City Secretary shall be provided an office in the City Hall sufficient to maintain official City records. The City Secretary may appoint, with Council's consent, such deputy city secretaries as may be authorized by Council.

(a) Duties of City Secretary or Deputy City Secretaries

- (1) Be present at and record the minutes of all official meetings of the Council.
- (2) Be the custodian of all municipal records; authenticate and catalogue by subject and chronological order all ordinances and resolutions; legally index, certify, and keep the originals of deeds, liens, releases, insurance policies, contracts, and other legal documents of the City.
- (3) Make available to the public the City records required by State law, City ordinance, and any current Personnel Policy.
- (4) Affix the City Seal to all instruments requiring the Seal.
- (5) Perform any and all other acts and duties as may be required by the City Manager, Mayor, Council, or this Charter.

Section 7.07 – Fire Marshal and Volunteer Fire Department

- (a) Fire Marshal – The ~~Mayor~~ City Manager, with consent of Council, ~~shall~~ may appoint a Fire Marshal. The Fire Marshal shall be responsible for the enforcement of ordinances pertaining to building codes and general protection of City residents from fire.
- (b) Volunteer Fire Department – Authority is hereby granted to maintain a volunteer fire department. The members in good standing of the volunteer fire department shall set their own rules and regulations for membership and organization, and shall elect a Fire Chief as their chief administrative officer and as a liaison with the Mayor and Council.

ARTICLE VIII

LEGAL AND JUDICIAL

Section 8.01 – Attorney for the City

- (a) The City Attorney shall be appointed by the Mayor upon confirmation by three affirmative votes of Councilmembers. The City Attorney shall have been licensed to practice law at least three years in the State of Texas.
- (b) The City Attorney shall be the legal advisor of, and the attorney for, the City, Mayor, Councilmembers, and all of the officers and departments of the City. He shall represent the City in all litigation and legal proceedings; however, the Council may retain special legal counsel for any purpose and at any time it deems appropriate and necessary.
- ~~(c) The City Attorney shall draft, review, approve, or file his written legal objections to every ordinance before it is acted upon by the Council. He shall review and concur or dissent by signature upon all documents, contracts, and legal instruments in which the City may have an interest.~~

(c) The City Attorney shall approve, every ordinance, as to form, before it is acted upon by the Council.

(d) The Council may authorize Assistant City Attorneys to be appointed by the City Attorney with the consent of the Council.

Section 8.02 – Municipal Court

A Municipal Court of the City shall be established and maintained for the trial of misdemeanor offenses, and shall have all powers prescribed by State law.

Section 8.03 – Judges of Municipal Court

(a) The Presiding Judge and any Associate Judges of the Court shall be appointed by

(b) the Mayor upon confirmation by three affirmative votes of Councilmembers.

(c) The presiding Judge and all Associate Judges shall be a citizen of the United States of America and a qualified voter of the State of Texas; shall have resided for at least one year preceding his appointment within the corporate limits of the City or for one year within territory which has been annexed by the City; shall have attained the age of at least ~~twenty-one~~ **twenty-five** years on the first day of his appointment. **Said appointment shall be for a term of three years.**

(d) The Presiding Judge shall be the Administrative Judge and responsible for the administration of the Municipal Court and the legality of its procedures.

Section 8.04 – Municipal Court Procedure

(a) The City Attorney or an Assistant City Attorney shall serve as City Prosecutor in the Municipal Court.

(b) A Municipal Court Clerk and any Deputy Clerks of the Court shall be authorized by the Council, appointed by the Presiding Judge with the consent of the Council, and be under the direction of the Presiding Judge.

(c) The Municipal Court Clerk or any Deputy Clerks shall have the power to administer oaths and affidavits, make certificates, affix the seal of the Court thereto, and ~~generally~~ perform all acts in issuing ~~process~~ **processes** and conducting the business of the Court.

(d) The Council shall determine what costs, if any, shall be charged for proceedings in and processes issued by the Court. All costs and fees imposed by the Municipal Court shall be paid into the City Treasury for the use and benefit of the City.

(e) All jurors shall be residents of the City, possess the qualifications of a juror in State District Court, and be summoned as a juror in Justice Court is summoned.

ARTICLE IX

DEPARTMENT OF FINANCE

Section 9.01 – Creation and Purpose of the Department of Finance

~~A Department of Finance is created which shall:~~ **A Department of Finance may be created by Ordinance as determined by City Council upon prior consultation with the Chief Administrative Officer. The City shall maintain a Purchasing Policy by Ordinance.**

- ~~(a) Supervise and be responsible for the receipt and disbursement of all City money;~~
- ~~(b) Have control over all expenditures to insure budget appropriations are not exceeded; and~~
- ~~(c) Make information concerning the current status of City finances available to all City officials and the public.~~

Section 9.02 – City Treasurer

- ~~(a) There shall be a City Treasurer who shall head the Department of Finance. The City Treasurer shall have knowledge of municipal accounting, banking, and municipal bonds; and shall have had at least three years experience gained through employment in budgeting, accounting, taxation, and/or financial control.~~
- ~~(b) The City Treasurer shall be appointed by the affirmative vote of not less than three Councilmembers. The City Treasurer may be removed and discharged from office only at a regular meeting of the Council by affirmative vote of at least three Councilmembers. The City Treasurer may exercise any right of appeal then available to other suspended or terminated employees.~~

Section 9.03 – Personnel of Department of Finance

~~The City Treasurer shall have the authority to:~~

- ~~(a) Appoint, subject to approval of a majority of the Council, any deputies, assistants, and employees in the department as the Council may authorize.~~

Section 9.04 – Powers and Duties of City Treasurer

~~The City Treasurer shall administer and supervise all financial affairs of the City and shall:~~

- ~~(a) Have custody of, and be responsible for, all monies belonging to or under the control of the City or any of its offices, departments, or agencies; and shall promptly deposit all monies received into the City depository or depositories. The Council shall designate a depository prior to City funds being deposited there.~~
- ~~(b) Submit to each Councilmember a monthly budget statement and monthly trial balance statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City.~~
- ~~(c) Prescribe the forms of receipts, purchase orders, bills, claims, bookkeeping, and computer data entry procedures to be used by all offices and departments of the City.~~

- ~~(d) Prior to execution, examine all contracts, orders, and other documents by which the City government incurs financial obligations, and ascertain that money has been appropriated and will be available when the obligation becomes due and payable.~~
 - ~~(e) Assist the Mayor and all department heads in the preparation of the budgets for all departments.~~
 - ~~(f) Compile estimates of revenues and expenditures for the budget as required by the Mayor, Councilmember, or any department head.~~
 - ~~(g) Approve all bills, invoices, payrolls, utility expenses, and other evidence of claims, demands, or charges against the City before payment.~~
 - ~~(h) Prepare a written itemized statement of all bills and claims payable by the City and make the statement available to the Council at City Hall at least twenty-four hours prior to the Finance Committee meeting at which the bill or demand will be considered for payment.~~
 - ~~(i) Invest all funds in excess of current needs in the manner authorized by State law. Current needs are defined as expenditures to be made within a given ninety-day period.~~
 - ~~(j) Have custody of all City investments, invested funds, bonds, notes, warrants, depreciation reserves, and funds in the possession of the City in a fiduciary capacity.~~
- ~~Be responsible for the destruction of redeemed, paid, and canceled bonds; warrants; and notes.~~
- ~~(k) Supervise and be responsible for the preparation of a sequential list of all checks issued by the City. The list shall include the name of payee, amount of payment, and nature of the payment. The list shall be kept current weekly. One or more copies of the list shall be available in the office of the City Treasurer for public inspection during normal office hours.~~
 - ~~(l) See that every check, voucher, or warrant for the withdrawal of money from any City depository is personally signed by the Mayor and personally countersigned by the City Treasurer. In the event the City Treasurer is absent for a period of time which will not permit him to conduct his duties as outlined in this Article, then each check, voucher, or warrant shall be countersigned by another official in the Department of Finance to be designated by a majority vote of Councilmembers.~~
- ~~The Council may, by ordinance, authorize the use of machine imprinted facsimile signatures of the Mayor and City Treasurer on all or only some City checks, vouchers, and warrants.~~
- ~~(m) Maintain proper accounting systems for the City government and each of its offices, departments, and agencies; keep books for and exercise financial budgetary control over each office, department, and agency; keep separate bookkeeping accounts for the items of appropriations contained in the city budget and each account shall show the amount of the appropriations, the amount paid there from, the unpaid obligations against it, and the unencumbered balance; require reports of receipts and disbursements from each receiving and spending office, department, or agency of the City to be made daily or at such intervals as directed by the City Treasurer.~~
 - ~~(n) Perform any other duties and powers authorized by ordinance.~~

Section 9.05 – Purchases

~~All purchases made and contracts executed by the City shall be as required by State law.~~

Section 9.06 – Purchase Procedure

~~All purchases made and contracts executed by the City shall be pursuant to a purchase order from the head of an office, department, or agency whose appropriation will be charged. No contract or order shall be binding on the City unless the City Treasurer certifies that there is a sufficient unencumbered appropriation balance to pay for the supplies, materials, equipment, or contractual services for which the contract or order is to be used.~~

Section 9.07 – Bids

~~All City expenditures involving an outlay of over Five Thousand Dollars shall be based upon specifications approved by the Mayor and Council, and then let for competitive bids or proposals in accordance with State law. The contract shall be let to the lowest responsible bidder. In every advertisement for bids, the City shall reserve the right to reject any and all bids.~~

~~However, the Council may contract for professional services and other items exempted by State law without a bid.~~

ARTICLE X**BUDGET****Section 10.01 – Fiscal Year**

The fiscal year of the City shall begin on the 1st day of October and end on the last day of September of the succeeding year. All funds collected by the City during any fiscal year, including both current and delinquent revenues, shall belong to that fiscal year and may be applied to the payment of expenses incurred during that fiscal year. (Excepted are funds to pay interest and create a sinking fund for the City's bonded indebtedness.)

All revenues uncollected at the end of any fiscal year, and any unencumbered funds actually on hand, shall become resources of the next succeeding fiscal year.

By ordinance, and for good cause, the Council may change the fiscal year if the City's finances are not jeopardized.

Section 10.02 – Preparation and Submission of Budget

~~The Mayor shall submit a proposed budget containing a complete financial plan for the next fiscal year.~~ A proposed budget shall be submitted containing a financial plan for the next fiscal year. It shall be submitted to Council by July 1st in advance of each fiscal year and shall contain the following:

- (a) A budget message outlining the proposed financial policies and priorities of the City for the fiscal year **and the impact those policies and priorities will have on future years.** ~~The Mayor's~~ **The** message shall explain any significant changes in financial policies, **debt,** and revenue as compared to the previous fiscal year, **any factors affecting the ability to raise resources through issuance of debt and include such other issues as deemed desirable.**
- (b) A consolidated statement of anticipated receipts and proposed expenditures for all funds, departments, and tax income.
- (c) Parallel columns opposite each revenue and expenditure line item shall show:
 - (1) for prior fiscal year – amount budgeted and amount actually collected or spent;
 - (2) for current fiscal year – amount budgeted, amount actually collected or spent by June 1st, and estimated deficit or excess; and
 - (3) for next fiscal year – proposed budget amount.
- (d) A summary estimate of deficits and excess funds for each department and the City as a whole for the current fiscal year.
- (e) Bonds and loans – An individual schedule of requirements for all bond issues and loans outstanding, showing rates of interest, date of issue, maturity date, amount authorized, amount issued or spent, principal paid and due, interest paid and due, and purpose for the bond or loans.
- (f) Capital Improvements – Each capital improvement shall be a line item with parallel columns opposite showing:
 - (1) for all past fiscal years appropriate – the amount budgeted, amount actually spent, source of funds (i.e. depreciation reserve, grant, bond, etc.), deficit or excess amount over budget;
 - (2) for current fiscal year – amount budgeted, amount actually spent by June 1st, source of funds, and estimated deficit or excess;
 - (3) for next fiscal year – amount to be budgeted, source of funds.
- (g) General fund and special fund resources in detail.
- (h) Property valuation analysis.
- (i) Tax rate analysis.
- (j) Tax levies and tax collections by year for the last five years.
- (k) The proposed appropriation ordinance.
- (l) The proposed tax levying ordinance.
- (m) Objectives as established by Council.
- (n) Goals to meet objectives of Council.
- (o) Methods to measure milestones, outcomes, and performance related to the goals.

Section 10.03 – Proposed Budget and Budget – A Public Record

All proposed and final budgets and all supporting schedules shall be a public record. They shall be filed with the City Secretary and submitted to each Councilmember. The Mayor shall provide copies for distribution to all interested persons and to the Bay City Public Library.

Section 10.04 – Workshops and Council Changes to the Proposed Budget

- (a) Workshops – The Mayor, or Council, shall schedule as many public workshops as necessary to review and revise the proposed budget.
- (b) Council Changes – The Council may, by majority vote, add, delete, and/or alter any proposed line item and amount at any workshop and/or Council meeting. The **Chief Administrative Officer** ~~Treasurer~~ shall incorporate all Council changes in the proposed budget prior to the next Council workshop or meeting at which the budget will be considered.

Section 10.05 – Public Hearing on Proposed Budget

The Council shall fix the time and place for one or more public hearings on the proposed budget.

Section 10.06 – Proceedings on Proposed Budget after Public Hearing

After the conclusion of any public hearing, the Council may increase or decrease the items of the proposed budget, except items in proposed expenditures fixed by law. If the Council increases the total proposed expenditures, it shall also provide for an increase in the total anticipated revenue at least equal to proposed expenditures.

Section 10.07 – Contingent Appropriation

~~Provisions shall be made in the annual budget, and in the appropriation ordinance, for a contingent appropriation not to exceed three percent of the total budget to be used for unforeseen expenditures. Expenditures from this appropriation shall be made only with Council approval, and a detailed account of all expenditures shall be recorded and reported.~~ **Provision shall be made in the annual budget for a contingent appropriation in an amount not more than seven (7) percent of the total budget to be used in case of unforeseen items of expenditures. Such contingent appropriation shall be under the control of the Chief Administrative Officer and distributed by him/her after approval by the city council. Council, with recommendation from the Chief Administrative Officer, may adjust the percentage of the contingency appropriation for cause.**

Section 10.08 – Estimated Expenditures Shall Not Exceed Estimated Resources

The total estimated expenditures of the general fund, available utility fund, and debt service fund shall not exceed the total estimated resources (prospective income plus cash on hand). The classification of revenue and expenditure accounts shall conform as nearly as local conditions will permit to the uniform classification as promulgated by the American Institute of Certified Public Accountants or some other nationally accepted classification.

Section 10.09 – Adoption of Budget

The budget shall be adopted, by ordinance, by a majority vote of Councilmembers.

Section 10.10 – Effective Date of Adoption

The budget shall be adopted in final form not sooner than five days after the last public hearing on the proposed budget and not later than ten days prior to the beginning of the fiscal year. If the Council fails to adopt a budget, the then existing budget together with its tax-levying ordinance and its appropriation ordinance, shall remain in effect month-to-month on a pro rata basis until a new final budget is adopted.

Section 10.11 – Effective Date of Budget, Certification, Copies made Available

Upon final adoption, the budget shall be in effect for the fiscal year and effective as of the first day of the fiscal year. A copy of the budget, as finally adopted, shall be filed with the City Secretary, the County Clerk of Matagorda County, and the Bay City Public Library. Copies of the final budget shall be made available for the use of all City officers, department heads, departments, committees, and for the use of interested persons and civic organizations.

Section 10.12 – Budget Establishes Appropriations

From the effective date of the budget, the proposed expenditures shall be appropriated to the line item as stated.

Section 10.13 – Budget Establishes Amount to be Raised by Taxation

From the effective date of the budget, the total amount budgeted shall be a determination of the amount of levy for the City in the corresponding tax year. **In no event shall property tax levy exceed the legal limit provided by the laws and the constitution of the state of Texas.**

Section 10.14 – Budget Amendments after Adoption

- (a) Supplemental Appropriations – If, during the fiscal year, the City Treasurer certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council, by ordinance, may make supplemental appropriations for the fiscal year up to the amount of the excess.
- (b) Emergency Appropriations – To meet a public emergency created by a natural disaster or man-made calamity affecting life, health, property, or the public peace, the Council may make emergency appropriations not to exceed ten per cent of the current fiscal year's budgeted receipts. Those appropriations may be made by an emergency ordinance. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may, by emergency ordinance, authorize the issuance of emergency notes payable not later than the last day of the fiscal year.
- (c) Reduction of Appropriations – **Estimated Expenditures shall not exceed Estimated Resources** - ~~If, at any time during the fiscal year, it appears probable to the City Treasurer that the revenues available will be insufficient to meet the amount~~

~~appropriated, he shall report to the Mayor and Council without delay, indicating the estimated amount of the deficit.~~

~~The Mayor and City Treasurer shall immediately report to the Council any remedial action taken and their recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit, and for that purpose, it may, by budget amendment, reduce one or more appropriations. The total estimated expenditures of the general fund and debt service fund shall not exceed the total estimated resources of each fund (prospective income plus cash on hand). The classification of revenue and expenditure accounts shall conform as nearly as local conditions will permit to the uniform classification as promulgated by the National Committee on Government Accounting or some other nationally accepted classification.~~

- (d) Transfer of Appropriations – At any time during the fiscal year, the Council, by budget amendment, may transfer part or all of any unencumbered appropriations balance among programs within a department or from one department, office, or agency to another.
- (e) Effective date – Any appropriations authorized by this section may be made effective immediately upon adoption of the budget amendment.

Section 10.15 – Capital Program

(a) Submission to Council - On a yearly basis, a five (5) year Capital Program shall be prepared and submitted to Council prior to the final date for submission of the budget defined in Section 10.02.

(b) Contents – The Capital Program shall include the following: (1) A clear general summary of its contents; and (2) a list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity of such improvements (at councils discretion, other capital purchases, such as equipment, may be included); (3) cost estimates, method of financing, and recommended time schedules for each such improvement; and (4) goals, milestones and measurements in sufficient detail as to define the performance of each capital improvement.

Section 10.16 – Council Action on Capital Program

The Council shall give notice of a public hearing on the proposed Capital Program and shall hold said hearing in the same manner as provided for the annual budget. The hearing for the proposed Capital Program and the notice of same may be in conjunction with the annual budget. The Council shall, by resolution, adopt the Capital Program with or without amendment after the public hearing and not later than 10 days before the beginning of the fiscal year.

ARTICLE XI

TAX

Section 11.01 – Department of Taxation

~~There may be established a Department of Taxation to collect taxes, the head of which shall be the City Tax Collector. The City Tax Collector shall give a surety bond for faithful performance of his duties, including compliance with all controlling provisions of the State law bearing upon the functions of his office, in a sum which shall be fixed by the City Council at not less than \$25,000.00.~~

Section 11.02 – Power to Tax

~~The Council shall have the power to levy, assess, and collect an annual tax upon real and personal property within the City as now or hereafter provided by State law. The Council shall also have the power to levy any additional taxes as now or hereafter may be authorized by State law.~~

Section 11.03 – Approval of the Assessment Roll

~~The Council shall approve the assessment rolls as returned to it by the Matagorda County Appraisal District and adopt them for tax collections for the appropriate fiscal year.~~

Section 11.04 – Taxes: When Due and Payable

~~All taxes due the City shall be payable at the office of the City Tax Collector, or any other place designated by ordinance, at any time after the tax rolls for the City have been completed and approved or as soon thereafter as possible. Taxes shall be paid before February 1, following the year which assessed. All taxes not paid before that date shall be deemed delinquent and shall be subject to penalty and interest. Failure to levy and assess taxes through omission on the tax roll shall not relieve the party omitted for taxes for the years in question.~~

Section 11.05 – Tax Liens and Liabilities

(a) Tax Lien

~~All property, having a situs within the City limits on the first day of January of each year, shall stand charged with a special lien in favor of the City from said date for taxes due on it. Any lien shall be superior to all other liens, except other prior tax liens, regardless of when the other liens were created. All persons purchasing any of that property on or after the first day of January in any year shall take it subject to those liens.~~

(b) Personal Liability

~~In addition to the liens provided above, on the first day of January of any year the owner of property subject to taxation by the City shall be personally liable for the taxes due on it for that year. The City shall have power to sue for and recover personal judgment for~~

~~taxes without foreclosure, or to foreclose its lien or liens, or to recover both personal judgment and foreclosure.~~

~~(c) Insufficient Legal Description~~

~~In any suit where it appears that the description of any property on the City assessment rolls is insufficient to identify the property, the City shall have the right to plead a good description of the property to be assessed, to prove it, and to have its judgment foreclosing the tax lien and/or for personal judgment against the owners for those taxes.~~

Section 11.06 – Joint Interest in Property

~~The City Tax Collector shall not be required to make separate assessments of joint or conflicting interest in any real estate.~~

Section 11.07 – Arrears of Taxes Offset to Debt against City

~~The City shall be entitled to counterclaim and offset a party's tax arrearage against any debt, claim, demand, or account owned by the City to that party. No assignment or transfer of that debt, claim, demand, or account after the taxes are due, shall affect the right of the City to so offset.~~

Section 11.08 – Tax Remission, Discount, and Compromise

~~Except as herein provided, neither the Council nor 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 and interest. However, the Council may compromise any tax lawsuit.~~

Section 11.09 – Other Rules and Stipulations

~~The Council may provide, by ordinance, procedures and penalties to enforce the collection and payment of taxes to the City Tax Collector.~~

Section 11.10 – Tax Suits: Evidence, Limitations

~~A certified statement made by the City Tax Collector shall be prima facie evidence of the truth of all recitations and facts shown by City tax rolls, and shall be sufficient proof (subject to rebuttal only by pleading and proof by defendant) of the following facts, viz:~~

- ~~(a) That the person, partnership, association, or corporation therein shown to be a taxpayer was such; owned the property listed; the property was subject to taxation in the City; and was rendered by said party or agent at the value placed on the tax rolls.~~
- ~~(b) That the taxes due upon such property were legally levied for the purposes shown on such rolls, and that the same are valid and unpaid.~~
- ~~(c) That all acts and proceedings required by law or by ordinance of said City for rendering, appraising, and fixing values upon said property, and the giving of all notices to such taxpayers have each and all been performed and complied with at the time and in the manner and form required; that all things that might be~~

~~construed as conditions precedent to the lawful demand upon such taxpayers to pay the amount of taxes on those rolls have been performed at the time and in the manner required by law.~~

Section 11.01 - Taxation

The Council shall have the power to levy, assess, and collect taxes within the jurisdiction of the City for any municipal purpose. The tax rate shall be calculated, publicized, and adopted in accordance with State of Texas Law.

Except as otherwise provided by law or this Charter, the Council shall have the power to establish by way of ordinance or resolution such rules, regulations, and procedures to enforce and facilitate the collection and payment of all taxes due to the City as it may deem expedient, and may provide such penalty and interest as prescribed by State of Texas law for the failure to pay such taxes.

ARTICLE XII

BORROWING, BONDS, AND AUDIT

Section 12.01 – Borrowing

The Council shall have the power, except as prohibited by law, to borrow money by whatever method it may deem to be in the public interest, including Certificate of Obligation.

Section 12.02 – 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 lawful public purpose, and to issue refunding bonds to refund outstanding bonds of the City previously issued.

Section 12.03 – Revenue Bonds

The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending, or repairing public utilities, recreational facilities, or any other lawful self-liquidating municipal function, and to issue revenue bonds to evidence the obligation created by them. Those bonds shall be a charge upon and payable solely from the properties, interest pledged, and/or income from both the property and/or interest. The holders of the revenue bonds shall never have the right to demand payment out of monies raised or to be raised by taxation.

Section 12.04 – Sale of Bonds, Bonds Incontestable

No bond (other than refunding bonds) issued by the City shall be sold for less than par value and accrued interest. All bonds of the City, having been issued, sold, and delivered to the

purchaser, shall then be incontestable. All refund bonds issued in exchange for outstanding bonds previously issued shall be incontestable after the exchange.

Section 12.05 – Use of Bond Proceeds

The proceeds of all bonds sold by the City shall be used only for the purpose for which issued. A property tax paying resident citizen may prevent the diversion or anticipated diversion of bond proceeds to an unauthorized purpose by injunction and/or any other legal remedy.

Section 12.06 – Definitions

- (a) Bonds are defined as bonds, certificates of obligation, or any other obligation creating or evidencing the indebtedness of the City.
- (b) Refunding bonds are defined as (1) bonds issued in exchange for and in lieu of outstanding bonds of the City; and (2) bonds sold and the proceeds used to redeem outstanding bonds; and (3) the issuance of bonds to redeem outstanding bonds of the City in advance of their stated maturity; and (4) refunding bonds issued in any manner allowed by the general law of the State.

Section 12.07 – Sinking Fund

It shall be the duty of the Council to levy an annual tax sufficient to pay the interest on and provide the necessary sinking fund required by law on all outstanding general obligation bonds of the City. The interest and sinking fund shall be deposited in a separate account and shall not be diverted to or used for any other purpose than to pay the interest and principal on such bonds. The sinking fund maintained for the redemption of any debt may be invested in any interest bearing bonds of the United States government, the State of Texas, or any other lawful investments.

Section 12.08 – Audit and Examination of City Books and Accounts

At the close of each fiscal year, a complete audit of all City finances and utilities shall be made by a licensed Public Accountant, who shall be selected by the Mayor with approval of Council. The audit accountant shall not regularly maintain or keep any of the City's accounts or records.

The audit shall include a recapitulation of any audits made during the fiscal year. All audit reports shall be filed with the City Secretary and available for public inspection, made a part of City archives, and a copy given to the Bay City Public Library.

The Council shall annually publish a condensed one page summary of the certified audit in the City's official newspaper.

ARTICLE XIII

FRANCHISES AND PUBLIC UTILITIES

Section 13.01 – Inalienability of Public Property

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

Section 13.02 – Power to Grant Franchise

The Council shall have the power, by ordinance, to grant, renew, and extend all franchises of all public utilities operating within the City (including cable television), and, with consent of the franchise holder, to amend them as provided herein or required by Federal or State law.

Section 13.03 – No Indeterminate Term, No Exclusive Franchise

No franchise shall be granted for an indeterminate term, nor shall any franchise be granted for a term of more than twenty years. No franchise shall be exclusive unless permitted by State or Federal Law.

Section 13.04 – City's Right to Purchase Franchise Assets

No franchise shall be granted, renewed, extended, or amended, except on condition that the City shall have the right at any time within five years of the expiration of the term, to purchase the property of the franchise holder at a price to be determined according to the method agreed upon in the ordinance granting, renewing, extending, or amending the franchise.

Section 13.05 – Ordinance Granting Franchise

Every ordinance granting, renewing, extending, or amending a public utility franchise shall be considered at two regular meetings of the Council, and shall not be adopted in final form until thirty days after the first consideration. Within five days following each consideration of the ordinance, the full text of the ordinance shall be available to the public at City Hall and the caption published once in the official newspaper of the City. The ordinance shall not become effective until sixty days after the date of its adoption in final form by the Council.

Section 13.06 – Transfer of Franchise

If a public utility franchise is transferred, the City shall have the right to terminate said franchise unless the City has given prior approval of the transfer.

Section 13.07 – Regulation of Franchise

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

- (a) Forfeit any franchise, by ordinance, at any time, for failure of the holder to comply with the terms of the franchise, but only after notice and hearing.
- (b) Impose reasonable regulations to insure safe, efficient, and continuous service to the public.
- (c) Require expansion and extension of plants and facilities necessary to provide adequate service to the public.
- (d) Require every franchise holder to furnish to the City, without cost to the City, full information regarding the location, character, extent, and condition of all facilities of the franchise holder in, over, and under the streets, alleys, and other public property of the City; and to regulate the location, relocation, and removal of facilities.

(e) **Maintenance Shared Pro Rata**

Collect from every public utility operating in the City its fair and just proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping, and sprinkling the portions of the alleys, bridges, culverts, viaducts, and other public places and ways of the City as may be occupied or used in whole or in part by the utilities; or to compel the public utility to perform its just share of these acts at its own expense.

(f) **Shared Usage of Poles, Etc.**

Require every franchise holder to allow other public utilities to use its tracks, poles, wires, pipes, or other facilities, including bridges and viaducts, if Council finds the use to be in the public interest. Provided that Council shall fix a reasonable rental to be paid to the owner of the facility for usage, after notice to the interested parties and a hearing of the facts.

(g) **Accounts, Audit, and Records**

- (1) Examine and audit at any time the accounts and other records of any franchise holder.
- (2) Require annual and other reports, including reports on the local operations of the utility, in the form, and with the information required by Council.

(h) Require and collect any lawful compensation and rental.

Section 13.08 – Regulation of Rates

The Council may, by ordinance, after notice and hearing, regulate the rates of every public utility franchise holder operating in the City, provided that no ordinance shall be passed as emergency measure. The Council shall employ, at the expense of the franchise holder, a professional rate consultant to conduct investigations, present evidence, and advise the Council.

At no time, in fixing rates and charges for utility services with the City, shall there be included any part of the value of any franchise granted by the City. Any franchise holder requesting an increase in its rates shall have the burden of establishing by clear and convincing evidence the

value of its investments and the amount and character of its expenses and revenues.

No legal action to contest any rate fixed by the Council shall be instituted by the public utility or holder of a utility franchise, until the holder or utility has filed a motion for rehearing with the Council, setting out specifically each ground of its complaint against the rate fixed by the Council, and until after Council has acted on the motion or had a period of sixty days within which to act upon the motion for rehearing.

Section 13.09 – Sale of Electricity, Water, Sewer Services, and Any Other Utilities

- (a) The City may purchase, construct, or operate a utility system inside or outside the municipal boundaries, and may regulate the system in a manner that protects the interests of the City. The City may own land inside or outside its boundaries for these purposes.
- (b) The City may extend the lines of its utility systems outside the municipal boundaries and may sell water, sewer, gas, or electric service to any person outside its boundaries. The City may contract with persons outside its boundaries to permit them to connect with those utility systems on terms the Council considers to be in the City's best interest. This subsection does not authorize the extension of electric lines into the corporate limits of another municipality.
- (c) If the City owns and operates a utility system, the City may prescribe the kind of water or gas mains, sewer pipes, and electric appliances that may be used inside or outside the City limits. The City may inspect those facilities and appliances, require that they be kept in good condition at all times, and prescribe the necessary rules, which may include penalties, concerning them.

Section 13.10 – Accounts of Municipally Owned Utilities

Accounts shall be kept for each public utility owned and operated by the City, in a manner which shows the true and complete financial results of City ownership and operation (including all assets appropriately subdivided into different classes; all liabilities subdivided by classes; depreciation reserve, other reserves, and surplus; revenues; operating expenses including depreciation, interest payments and rental; and any other disposition of annual income).

The accounts shall show the actual capital cost to the City of each public utility owned; the cost of all extensions, additions, and improvements; and the source of funds spent for capital purposes. They shall show as nearly as possible the cost of any service furnished to or rendered by any utility to any other city or governmental department.

The Council shall require and publish an annual report showing the financial results of City ownership and operation, giving the information specified in this section, or required by Council.

ARTICLE XIV

PLANNING COMMISSION

Section 14.01 – Establishment and Organization

The City Council is hereby authorized to ~~shall~~ establish a ~~permanent~~ Planning Commission for the City with the number, qualifications, terms, and meetings of the members thereof to be determined by ordinance.

The Commission shall be responsible to the Mayor and Council.

Section 14.02 – Power and Duties

The powers and duties of the Planning Commission shall be determined, by ordinance, and may include the following:

- (a) Make and/or amend a Master Plan for the physical development of the City;
- (b) Review plats for subdividing land within the City's corporate limits and extra territorial jurisdiction;
- (c) Submit to the Mayor a list of recommended capital improvements by priority which in the opinion of the Commission are necessary or desirable;
- (d) Consult with department heads ~~and the Chief Administrative Officer~~ concerning planning for their areas;
- (e) Perform such additional duties and powers as may be prescribed by ordinance.

Section 14.03 – The Master Plan

The Master Plan for the physical development of the City shall contain the commission's recommendations for development and beautification of the City. A copy of the Master Plan, or any part or amendment, shall be filed with the Mayor and each Councilmember. Any minority opinion of the Commission may be attached.

The Mayor shall promptly submit such plan to the Council with his recommendations. Recommendations affecting the Master Plan may be made to the Council by any City department through its department head.

At least one public hearing must be held before the Council may adopt any of such recommendations.

ARTICLE XV

INITIATIVE, REFERENDUM, AND RECALL

Section 15.01 – In General

- (a) The time table and the petition procedure for initiative, referendum, and recall shall be the same throughout this article.
- ~~(b) Should the Council fail or refuse to order any of the elections as provided for in this article, when all the requirements for such election have been complied with by the petition of qualified voters, then upon proper application it shall be the duty of any District Judge of Matagorda County to order such election and to enforce its result.~~

Section 15.02 – Initiative

- (a) Limitation on Initiative Ordinance – The citizens of the City shall have power to "initiate" any ordinance, not in conflict with this Charter or State law, except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject it at the polls.
- (b) Signatures Required – Any initiative ordinance may be submitted to Council by a petition signed by the greater number of one thousand qualified voters of the City or ten percent of qualified voters who voted at the last regular municipal election.
- (c) Public Hearing – A public hearing on the proposed initiative shall be scheduled by the Mayor within fifteen days of the City Secretary's certification of the initiative petition.
- (d) Election – An election to adopt or reject the initiative ordinance or action shall be ordered by Council and held ~~on the next practical uniform election day that is prescribed by state law within sixty days of certification of the initiative petition.~~ If the ordinance proposed by initiative is enacted by Council before the election, then there will be no election.
- (e) Results of Initiative Election – If a majority of the qualified voters voting in the initiative election adopt the ordinance, the ordinance shall become effective from date of election, or if different, the effective date specified in the initiative ordinance.
- (f) Limitation on Initiative – The Council shall not consider an ordinance or action on the same subject within twelve months of date of a successful initiative election on that subject.

Section 15.03 – Referendum

- (a) Limitation on Referendum – The citizens of Bay City may call a referendum election to rescind any Council ordinance or Council vote except those affecting personnel and appropriation ordinances.
- (b) Signatures Required – Any referendum ordinance may be submitted to Council by a petition signed by the greater number of one thousand qualified voters of the City or ten percent of the qualified voters who voted at the last regular municipal election.

- (c) Public Hearing – A public hearing on the proposed referendum shall be scheduled by the Mayor within fifteen days of the City Secretary's certification of the referendum petition.
- (d) Election – An election to adopt or reject the referendum ordinance or action shall be ordered by Council and held on the next practical uniform election day that is prescribed by state law ~~within sixty days of certification of the referendum petition~~. If the ordinance questioned by referendum is retracted by Council before the election, then there will be no election.
- (e) Results of Referendum Election – If a majority votes to uphold the ordinance and/or Council action in question, the ordinance and/or Council action shall be effective as of the date the Council initially voted. If a majority votes to revoke the ordinance and/or Council action in question, that ordinance and/or Council action shall be null and void from the effective date of the certification of the petition.
- (f) Limitation on Referendum – The Council shall not consider an ordinance or action on the same subject within twelve months of date of a successful referendum election on that subject.

Section 15.04 – Recall

- (a) Limitation on Recall – Only one petition may be filed for each elected official whose removal from office is demanded. No recall petition shall be filed against an office holder within the first six months after he takes office or within the six months immediately preceding the date of the next regular election for his office. No office holder shall be subjected to more than one recall election during a single elective term of office.
- (b) Signatures Required – The citizens of Bay City may recall any elected city official, with or without cause, by filing with the City Secretary a petition signed by the greater number of one thousand five hundred qualified voters of the City or twenty percent of the qualified voters who voted at the regular municipal election.
- (c) Reason for Recall – The petition shall contain a general statement of the reason for removal, but neither the office holder, nor the City Secretary, nor the Council, shall have any power to question or contest the sufficiency of the general statement.
- (d) Public Hearing on Recall Petition – After certification of the recall petition, the affected office holder may resign and/or request a public hearing to be held at a regular or specially called Council meeting within fifteen days of date the recall petition was certified.
- (e) Recall Election – The Council shall order and hold one recall election for all certified petitions on the next practical uniform election day that is prescribed by state law. ~~within not less than forty days or more than sixty days of date first petition was certified~~. If the affected office holder resigns prior to date of recall election, no recall election will be held for that office holder.
- (f) Results of Recall Election – If a majority of the votes cast at a recall election shall be against the recall and removal of the office holder, he shall continue in office. If a majority of the votes cast at the election be for the recall and removal of the office holder, the Council shall declare the office vacant effective as of date of official canvass. The Council shall officially canvass the votes no earlier than two days or later

than six days after the recall election. The vacancy shall be filled in accordance with this Charter. An office holder thus recalled and removed shall be ineligible to hold any office in the City for a period of thirty-six months after the date of the recall election.

Section 15.05 – Petition

- (a) Time Limit – Any petition under this article must be completed, filed with the City Secretary, and certified within sixty days of date of the first signature or the petition will be invalid.
- (b) Petition Committee – The five initial signers of the petition shall be the Petition Committee and shall designate two of themselves as the chairperson and co-chairperson of the petition. The Petition Committee shall act as liaison with the signers, circulators, Mayor, Council, and City Secretary.
- (c) Affidavit of Circulators of Petition – Signatures may be on separate petition papers. Attached shall be an affidavit of the circulator that he, and he only, personally circulated that petition paper, that each signature appended was made in his presence, and that he believes each signature to be the genuine signature of the person whose name purports to be, and the date of the first signature, and date of last signature.
- (d) Signatures – Each qualified voter shall personally write the following items in ink or indelible pencil and on the same line: his signature, his printed name, his City voting precinct number, his resident address by street and number or other description sufficient to identify his residence, and, optionally, his telephone number for clarification of information by the City Secretary.
- (e) Filing of Recall Petition – All papers comprising a petition shall be assembled and filed as one instrument with the City Secretary. Within ten days after an initial petition is filed and within five days after any supplemental petition is filed, the City Secretary shall determine whether the petition is signed by the requisite number of qualified voters and he shall certify or not certify the petition accordingly.
- (f) Disallowance of Signature – The City Secretary has absolute discretion to disallow a signature if it and/or the identifying data is illegible or insufficient. The City Secretary shall declare void any petition paper which does not have an affidavit attached as required in this article. The City Secretary shall write an "X" in red ink opposite the names of signers found not qualified to vote or disallowed.
- (g) Supplement to Petition – The City Secretary shall immediately notify the chairperson filing the petition if the number of qualified signatures is less than the required number. The petition may be supplemented by filing supplemental petition papers bearing additional qualified signatures, but only if the supplemental petition can be filed before the fifty-fifth day after the first signature on the initial petition.
- (h) Certification of Petition – The City Secretary shall report the results to the Council at its next regular meeting after a certification or non-certification, stating the number of persons found on the petition that are qualified to vote and the number of persons found on the petition who are not qualified to vote or are disallowed. All petitions filed shall immediately be a public record.
- (i) Limitation to Refiling – If the petition, as supplemented, is found to have total signatures of qualified voters in a number less than required, the City Secretary shall promptly return the petition as supplemented to the chairperson filing it. Once the sixty days

have elapsed, a new petition for the same purpose shall not be filed within six months of date the original petition was filed.

ARTICLE XVI

AMENDMENT AND REVIEW

Section 16.01 – Amending the Charter

Amendments to this Charter may be framed and submitted to the voters of the City in the manner provided by State law.

Section 16.02 – Charter Review Commission

Council shall appoint a Charter Review Commission of nine qualified voters in June of the second year after approval of this Charter and every fifth June thereafter. Council shall serve on the Commission as ex-officio, voting members. The City Secretary shall serve as secretary to the Commission in a non-voting capacity. The City Attorney shall serve on the Commission in a non-voting, legal advisory capacity.

(a) **Duties of the Commission:**

- (1) Inquire into the operation of the City Government and determine whether any Charter provisions require revision. The Commission shall have the power to hold public hearings, compel the attendance of any officer or employee of the City, and compel the production of any City records.
- (2) Propose recommendations for City departments to insure compliance with this Charter.
- (3) Propose Charter amendments, if any, to the Council.

(b) **Term of Office:**

The term of office of this Charter Review Commission shall be six calendar months from appointment date. Prior to the end of the term, a written report shall be presented to Council, and all Commission records shall be filed with the City Secretary as a public record.

(c) **Action by the Council:**

Upon receipt of any written report from the Commission, the Council shall within ten days, make copies available to the public at City Hall and publish a synopsis of the report in the official City newspaper. The Council shall consider the report at a public hearing within thirty days of receiving it. The Council may, in its sole discretion, order any amendments recommended by the Commission and/or the Council to be submitted individually to the voters of the City in an election as provided by State law within six months after the term of the Charter Review Commission expires.

ARTICLE XVII

GENERAL PROVISIONS

Section 17.01 – Personal Interest

No officer, official, or employee of the City shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in land, materials, supplies, or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than 1% of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer, official, or employee of the City found guilty thereof shall forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the City shall render the contract voidable by the ~~Mayer~~ Chief Administrative Officer and/or the City Council.

Section 17.02 – Assignment, Execution, and Garnishment

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

Section 17.03 – Security or Bond Not Required

It shall not be necessary in any suit or proceeding in which the City is a party for any bond, undertaking, or security to be executed by the City. The City shall have all remedies of appeal provided by law at all courts in this State without bond or security of any kind, but shall be liable as if such bond, undertaking, or security had actually been executed or given.

Section 17.04 – Effect of Charter on Existing Law, Contracts, and Assessments

All City ordinances, resolutions, rules, and regulations, now in force and not in conflict with the provisions of this Charter, shall remain in force until altered, amended, or repealed by Council after this Charter takes effect. All rights of the City under existing franchises, special assessments, contracts, and all existing authority for the issuance of bonds, not in conflict with the provisions of this Charter, shall be preserved in full force and effect.

Section 17.05 – Judicial Notice

This Charter shall be deemed a public act, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places.

Section 17.06 – Severability Clause

If any section, subsection, paragraph, sentence, or clause of this Charter is held to be invalid or unconstitutional by a court of competent jurisdiction, the same shall not invalidate nor impair the validity of the remaining Charter.

Section 17.07 – Rearrangement and Renumbering

The Council shall have the power, by ordinance, to renumber and rearrange all articles, sections, and paragraphs of this Charter or any amendments. Upon the passage of any such ordinance, a copy certified by the City Secretary shall be forwarded to the Secretary of State for filing.

Section 17.08 – Interim Municipal Government

The Mayor, and the five Councilmembers in office at the time of the adoption of this Charter or any amendments thereto, shall continue to serve under this Charter until the expiration of their terms of office or until their successors have been elected and qualified for their respective offices under this Charter. All benefits presently in effect shall continue until the end of the affected person's current term.

Section 17.09 – Publicity of Records

All public records required by law, or this Charter, to be open for public inspection shall be made available at such reasonable times and places as may be established by the Council.

Section 17.10 – Grammatical Clarifications

The use of any gender herein shall be applicable to all genders. The present or past tense shall include the future. The singular and plural number shall each include the other, unless otherwise expressly provided. Council may, by ordinance, make any grammatical or typographical corrections to this Charter so long as such corrections do not affect the intent of the Charter.

Section 17.11 – Federal and State law

This Charter and all present and future City ordinances, resolutions, and rules are intended to be in conformity with all applicable Federal and State law as now enacted or hereafter amended. This Charter will be automatically amended to conform to mandatory State and/or Federal law on the effective date of the new Federal and/or State law.

Section 17.12 – Official Newspaper of the City

The Council, by resolution, shall designate the official newspaper of the City for required publications of notice.

Section 17.13 – Definitions

Council – the five Councilmembers of Bay City, Texas, transacting City business in compliance with State law and this Charter.

L.G.C. – abbreviation for Local Government Code of Vernon's Texas Codes Annotated.

Majority vote of a Council Quorum – a majority of at least three Councilmembers present and casting positive votes. A majority can be two positive votes of three Councilmembers, or in a tie, a positive vote of the Mayor and one Councilmember.

Majority vote of Council – requires at least three positive votes from three Councilmembers present, and the Mayor may not vote in a tie, if this Charter requires three affirmative votes of Councilmembers.

May – means the action is optional at the discretion of the party authorized to act.

Person – shall include more than one person, a firm, a corporation, and the plural of these.

Qualified voter – in this charter is a person who is: (1) qualified to vote under the Texas Election Code, Section 11.002; (2) is registered to vote in Matagorda County, Texas; and (3) resides within the City limits of Bay City, Texas.

Shall – means the action is mandatory by the party authorized to act.

State law – the Constitution and Statutes of the State of Texas.

Utility system – means a water, sewer, gas, or electrical system.

V.A.C.S. – abbreviation of Vernon's Annotated Civil Statutes.

V.A.T.S. – abbreviation for Vernon's Annotated Texas Statutes.