

**ARTICLE IX**  
**FRANCHISE AND PUBLIC UTILITIES**

**SECTION 9.01 - POWER TO GRANT FRANCHISE**

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

**SECTION 9.02 - FRANCHISE VALUE NOT TO BE ALLOWED**

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

**SECTION 9.03 - RIGHT OF REGULATION**

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

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

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

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

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

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

#### **SECTION 9.04 - GRANT NOT TO BE EXCLUSIVE**

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

#### **SECTION 9.05 - OTHER CONDITIONS**

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

#### **SECTION 9.06 - ACCOUNTS OF MUNICIPALLY-OWNED UTILITIES**

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

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

### **SECTION 9.07 - SALES OF MUNICIPAL UTILITIES**

The Council shall have the power and authority to:

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

### **SECTION 9.08 - REGULATION OF RATES AND UTILITIES**

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

## **ARTICLE X MUNICIPAL PLANNING**

### **SECTION 10.01 - PLANNING AND ZONING COMMISSION**

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

- A. Term of Office

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

- B. Rules of Procedure

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

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

C. Vacancies

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

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

D. Powers and Duties

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

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

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

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

E. Liaison with City Council

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

## **SECTION 10.02 - PLATTING OF PROPERTY**

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

## **SECTION 10.03 - DEVELOPMENT OF PROPERTY**

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

## **ARTICLE XI RECALL OF OFFICERS**

### **SECTION 11.01 - GENERAL POWER**

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

## **SECTION 11.02 - SCOPE OF RECALL**

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

## **SECTION 11.03 - PETITION FOR RECALL**

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

## **SECTION 11.04 - FORM OF RECALL PETITION**

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

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

## **SECTION 11.05 - VARIOUS PAPERS CONSTITUTING PETITION**

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

## **SECTION 11.06 - PRESENTATION OF PETITION TO CITY COUNCIL**

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

## **SECTION 11.07 - PUBLIC HEARING TO BE HELD**

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

## **SECTION 11.08 - ELECTION TO BE CALLED**

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

## **SECTION 11.09 - FAILURE OF CITY COUNCIL TO CALL AN ELECTION**

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

## **SECTION 11.10 - BALLOTS IN RECALL ELECTION**

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

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

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

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

"Yes"



"No".

### **SECTION 11.11 - RESULT OF RECALL ELECTION**

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

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

### **SECTION 11.12 - RECALL, RESTRICTIONS THEREOF**

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

## **ARTICLE XII**

### **LEGISLATION BY THE PEOPLE, INITIATIVE AND REFERENDUM**

#### **SECTION 12.01 - GENERAL POWER**

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

#### **SECTION 12.02 - INITIATIVE**

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

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

### **SECTION 12.03 - REFERENDUM**

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

### **SECTION 12.04 - VOLUNTARY SUBMISSION OF LEGISLATION BY THE COUNCIL**

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

### **SECTION 12.05 - FORM OF BALLOTS**

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

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

#### **SECTION 12.06 - PUBLICATION OF PROPOSED AND REFERRED ORDINANCES**

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

#### **SECTION 12.07 - ADOPTION OF ORDINANCES**

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

#### **SECTION 12.08 - INCONSISTENT ORDINANCES**

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

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

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

#### **SECTION 12.10 - FURTHER REGULATION BY THE COUNCIL**

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

## **SECTION 12.11 - FRANCHISE ORDINANCES**

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