



**NOTICE OF MEETING  
OF THE  
HOME RULE CHARTER REVIEW COMMITTEE  
OF BUDA, TEXAS**

*An agenda information packet is available for public inspection  
In the Buda Public Library.*

This notice is posted pursuant to the Texas Open Meetings Act. Notice is hereby given that a **Regular Home Rule Charter Review Committee Meeting** of the City of Buda, Texas, will be held on **Thursday, November 10, 2011 at 7:00 PM.** in the City Hall Council Chambers at 121 Main Street, Buda, Texas 78610, at which time the following subjects will be discussed:

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. PLEDGE OF ALLEGIANCE**

**D. PUBLIC COMMENTS** At this time, comments will be taken from the audience on non-agenda related topics for a length of time not to exceed three minutes per person. To address the Home Rule Charter Review Committee, please submit a Citizen's Comment Form to the City Secretary **prior** to the start of the meeting. *No action may be taken by the City Council during Public Comments*

**E. CONSENT AGENDA**

1. Approval of the Home Rule Charter Review Committee meeting minutes, dated October 20, 2011.

*Toni Milam, City Secretary*

**F. REGULAR AGENDA ITEMS**

1. Deliberation and possible action regarding Article X - General Provisions, Article XI - Legal Provisions, Article XII – Transitional Provisions.

*Kenneth Williams, City Manager/Ross Fischer, City Attorney*

**G. HOME RULE CHARTER REVIEW COMMITTEE REQUESTS FOR FUTURE AGENDA ITEMS**

*No deliberation or discussion may take place by the City Council during this agenda item*

**H. ADJOURNMENT**

City Hall is wheelchair accessible and accessible parking spaces are available. Requests for accommodations must be made 48 hours prior to the meeting. Please contact the City Secretary at (512) 312-0084, or FAX (512) 312-1889 for information or assistance.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Governing Body of the City of Buda, was posted on the bulletin board in front of Buda City Hall, which is readily accessible to the public at all times, by 7:00 p.m. on Monday, November 7, 2011

  
Toni Milam, City Secretary, TRMC

I hereby certify that the above shown notice was removed from the posting location at the Buda City Hall, 121 Main Street, Buda, Texas 78610, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2011 and satisfies the 72-hour posting requirement.

\_\_\_\_\_  
Toni Milam, City Secretary, TRMC

City of Buda  
Home Rule Charter Review Committee Meeting Minutes  
October 20, 2011 – 7:00 p.m.

**A. CALL TO ORDER**

Chairman Brinkley called the meeting to order at 7:03 p.m.

**B. ROLL CALL**

Mark Brinkley - Present  
Michael Britton - Absent  
Benita Gunn - Present  
John White - Absent  
Jose Montoya - Present  
Carolyn Fees - Present  
Stephen Cooper – Present  
Colin Strother – Absent  
Tommy Poer – Present

*Those in attendance from City Staff:*

City Manager – Kenneth Williams  
City Attorney – Ross Fischer  
City Secretary – Toni Milam  
Interns – Laura DelaGarza  
                  Jean Dykstra

**C. PLEDGE OF ALLEGIANCE**

- D. PUBLIC COMMENTS**      At this time, comments will be taken from the audience on non-agenda related topics for a length of time not to exceed three minutes per person. To address the Home Rule Charter Review Committee, please submit a Citizen's Comment Form to the City Secretary **prior** to the start of the meeting. *No action may be taken by the City Council during Public Comments*  
**No public comments.**

**E. CONSENT AGENDA**

1. Approval of the Home Rule Charter Review Committee meeting minutes, dated September 8, 2011.  
*Toni Milam, City Secretary*  
Motion by Member Fees, with a second by Member Cooper to approve the minutes as presented. Motion approved, with Member Gunn abstaining.

**F. REGULAR AGENDA ITEMS**

1. Deliberation and possible action regarding Article IX – Initiative, Referendum and Recall as outlined in the Buda Home Rule Charter including discussion as it related to *re: Jim Hollis, Christopher Juusola, Civil Action vs. The City of Buda.*  
*Kenneth Williams, City Manager/Ross Fischer, City Attorney*

U. T. Law Students Laura De La Garza and Jennifer Dykstra gave a presentation going through the different options for consideration under the Article IX – Initiative, Referendum and Recall.

Motion by Member Montoya, with a second by Member Gunn to change the language on election dates and to comply with SB 100 that any election for an initiative under the Charter shall be held on “one of the next two uniform election dates that occur after the seventieth (70<sup>th</sup>) calendar day after the City Council’s decision to submit the ordinance to the voters for a recall, referendum, and initiatives.

Motion by Member Cooper, with a second by Member Montoya to change the language in Section 9.05 to read “A petition must: (1) be addressed to the City Council of Buda; (2) consist of papers uniform in size and assembled as one document for filing, and; (3) comply with each provision of this Charter and state law governing the preparation and signing of petitions. Motion approved

Motion by Chairman Brinkley, with a second by Member Fees to eliminate Section 9.04 the sentence “Each signer of such recall petition shall personally sign their name thereto in ink or indelible pencil and shall write after their name their place of residence, giving the name of the street and the number, and shall also write thereon the day, the month and the year their signature was affixed” and replace with “that signatures comply with the Election Code”. Motion approved.

Motion by Member Montoya, with a second by Member Cooper, in Section 9.05 that the sentence “If there be more than one (1) ground, said petition shall distinctly and specifically state each ground upon which such petition for removal is predicated and shall distinctly and specifically state the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the official that warrant the charges as to give the officer sought to be removed notice of the matter(s) and thing(s) with which the officer is charged” and be replaced with “The petition shall be addressed to the City Council of the City and the content shall distinctly and specifically point to each ground upon which such petition for removal is predicated. Further, said petition shall state distinctly and specifically the alleged action(s) and the factual circumstance(s) surrounding such action(s) take by the official that warrant the charge as to give the officer sought to be removed notice of the matter(s) and thing(s) with which the officer is charged.” Motion approved.

Motion by Member Fees, with a second by Member Montoya to add and append to Section 9.06(c) “If the petition is certified sufficient, the City Secretary shall at the next regular Council meeting present such petition and certificate to the Council”. Motion approved.

Public Comment from Mr. Carl Urban: Citizens in 2002 approved a Comprehensive Plan. Mr. Urban stated the citizens were not protected.

## **G. HOME RULE CHARTER REVIEW COMMITTEE REQUESTS FOR FUTURE AGENDA ITEMS**

*No deliberation or discussion may take place by the City Council during this agenda item*  
Articles X, XI, and XII. Next meeting to be held on November 10, 2011.

## **H. ADJOURNMENT 8:20 p.m.**

Motion by Member Montoya, with a second by Member Fees. Motion approved.

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Toni Milam, City Secretary, TRMC

**MEMORANDUM**

**TO:** City of Buda Charter Review Committee

**FROM:** Laura de la Garza, Student  
Legislative Counsel

**RE:** Article X of the Buda City Charter

**DATE:** November 8, 2011

**FILE NO:** 128001A

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The Charter Review Committee has asked for a legal analysis of the provisions in Article X of the City Charter in order to update and revise the provisions to comply with state law. This memo is prepared to aid the Committee's consideration of issues relating to the General Provisions of the City Charter. Article X is fully in compliance with state law, and so in this memo I will simply outline provisions of the charter that incorporate state law, not suggest any revisions.

*Section 10.01 Personal Financial Interest*

This section requires all City Council members and City Officials to comply with Chapter 171 of the Local Government Code. In that chapter, a local public official commits a Class A misdemeanor if he:

- fails to file an affidavit stating the nature and extent of his interest in a business entity or in real property, or fails to abstain from a vote or decision on any matter involving the business or property, if the action on the matter will have a special economic effect on the business or property
- acts as surety for a business entity that has work, business, or a contract with the governmental entity, or
- acts as surety on any official bond required of an officer of the governmental entity.<sup>1</sup>

An official may serve on the board of directors of a private, nonprofit corporation if he receives no compensation.<sup>2</sup>

*Section 10.02 Prohibitions*

This section lists prohibited activities for people in an appointed office and those seeking an appointed office. No person shall be appointed to or removed from office, or in any way favored or discriminated against, because of race, national origin, sex, political or religious opinion or affiliation. No person shall wilfully make any false statement or otherwise commit fraud in regard to the personnel provisions of the Charter. No person seeking appointment may bribe any person in connection with his seeking office. The Charter prohibits persons related within the second degree by affinity or within the third degree by consanguinity to an elected City official from being appointed to office; that includes a City official's: parent, child, brother, sister, grandparent, grandchild, great-grandparent, great-grandchild, parent's brother, parent's sister, brother's child, and

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<sup>1</sup> TEX. LOC. GOV'T CODE ANN. §§ 171.003, 171.004 (West 2008).

<sup>2</sup> *Id.* § 171.009.

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sister's child, as well as the City official's spouse, spouse's parent, spouse's child, spouse's brother, spouse's sister, spouse's grandparent, and spouse's grandchild.<sup>3</sup>

The Texas Government Code also contains nepotism prohibitions that apply to all public officials, including municipal officers. The state law nepotism provisions apply to a person related within the second degree by affinity or within the third degree by consanguinity (or just "related" for this section), which is the same degree of relation in the Buda City Charter.<sup>4</sup> As with other, similar matters, the Buda City Charter may contain provisions that are more stringent than state law because of Buda's home-rule status.

State law prohibits any public official from appointing a related individual to a position that is paid with public funds, and the law prohibits a public official who is a member of a board from appointing an individual to a position, if that individual is related to another member of the board.<sup>5</sup> The law also prohibits a candidate for office from taking affirmative action to influence an employee of the office for which the candidate is running, regarding the appointment or employment of a related individual.<sup>6</sup> A public official cannot appoint a related individual to a position under the public official's direction that is paid from public funds, nor can the public official appoint an individual in consideration for another public official appointing the related individual.<sup>7</sup> A public official cannot approve the compensation of an ineligible individual if the official knows the individual is ineligible.<sup>8</sup> The Buda City Charter also prohibits any individual related to an elected officer of the City or to the City Manager from being appointed to any paid office or position.

These nepotism prohibitions do not apply to an individual if the individual is employed in the position in question immediately before the election or appointment of the related public official, and if that individual's prior employment is continuous for at least

- a) 30 days if the related public official is appointed,
- b) six months if the related public official is elected at an election other than the general election for state and county officers, or
- c) one year if the related public official is elected at the general election for state and county officers.<sup>9</sup>

In contrast, the Buda City Charter requires the prior employment of a related individual for two years before the election or appointment of a public official. State law requires that if the related individual continues in that position, the public official may not participate in any deliberation or voting on any matter regarding the individual's employment if that action applies only to the individual, but the public official may vote or deliberate on such a matter if it is taken regarding a bona fide class or category of employees.<sup>10</sup>

<sup>3</sup> TEX. GOV'T CODE ANN. §§ 573.023, 573.024, 573.025 (West 2004).

<sup>4</sup> *Id.* § 573.002

<sup>5</sup> *Id.* § 573.041

<sup>6</sup> *Id.* § 573.042

<sup>7</sup> *Id.* § 573.044

<sup>8</sup> *Id.* § 573.083

<sup>9</sup> *Id.* § 573.062

<sup>10</sup> *Id.*

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Under state law, an individual who violates these provisions commits an offense involving official misconduct and will be removed from his position.<sup>11</sup> An offense under this section is a misdemeanor punishable by a fine not less than \$100 or more than \$1,000.<sup>12</sup> The Buda City Charter further provides that any person who violates the provisions in the Charter is guilty of misconduct and will immediately forfeit his office or position.

*Section 10.03 Charter Review Committee*

The City Council will appoint a Charter Review Committee every six years after this year, since this is the third year after the Charter was adopted. The Charter Review Committee consists of nine citizens who determine whether any provision of the Charter requires revision, propose recommendations, report their findings to the City Council, and file a copy of the report with the City Secretary. Once the final report is filed, it will be published in the official newspaper of the City, and the City Council will consider the recommendations made and can submit any recommendations to the voters of the City. The City Council can appoint a Charter Review Committee at any time, but the Texas Constitution prohibits charters from being altered or amended more often than every two years.<sup>13</sup>

*Section 10.04 Regulation of Alcohol*

The charter prohibits the sale of liquor and beer in all residential areas of the City. State regulation allows cities to prohibit by their charters the sale of liquor and beer in residential areas.<sup>14</sup>

*Section 10.05 Official Newspaper*

The City Council will declare an official newspaper each year, and all ordinances, notices, and other matters required to be published by the charter or by state law will be published in that newspaper. While no state law requires a municipality to have an official newspaper, the Local Government Code requires that an ordinance or a caption that summarizes the ordinance be published in the municipality's official newspaper if the municipality doesn't otherwise provide for a method of publication.<sup>15</sup> This statute implies that either an official newspaper, or some other method of publication established in the charter, is required. The current Buda Charter complies with this statute.

*Section 10.06 Oaths*

The Charter requires all elected and appointed City officers to take and sign the oath of office in the Texas Constitution. All municipal officers are required to take this oath.<sup>16</sup> Additionally, the City Council can require "any additional oath that the [City Council] considers best calculated to secure faithful performance of the officer's duties."<sup>17</sup> The Constitutional oath is:

<sup>11</sup> *Id.* § 573.081

<sup>12</sup> *Id.* § 573.084

<sup>13</sup> Tex. Const. art. XI, § 5.

<sup>14</sup> TEX. ALCO. BEV. CODE ANN. §§ 109.31, 109.32 (West 2007).

<sup>15</sup> TEX. LOC. GOV'T CODE ANN. § 52.013 (West 2008).

<sup>16</sup> *Id.* § 22.005.

<sup>17</sup> *Id.*

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I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.<sup>18</sup>

Furthermore, all officers must subscribe to the following written declaration, to be filed with the official records of that office:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.<sup>19</sup>

#### *Section 10.07 Amendment*

Amendments to the Charter will be adopted in compliance with state law. Chapter 9 of the Local Government Code, governs adoption of amendments to charters. The City Council may submit a charter amendment to the voters of the City, or voters may require the City Council to submit a charter amendment through a petition signed by at least five percent of the qualified voters of the City.<sup>20</sup> The election for the amendment must be held on the first uniform election date or on the date of the next municipal election, whichever is earlier.<sup>21</sup> Notice of the election must be published in a newspaper of general circulation in the City, and must 1) include a substantial copy of the proposed amendment, 2) include an estimated of the anticipated fiscal impact to the City if the amendment is approved, and 3) be published on the same day in each of two successive weeks, with the first publication occurring before the fourteenth day before the election.<sup>22</sup> An amendment may only contain one subject, and the ballot must be prepared so that a voter can approve or disapprove of any single amendment without having to approve or disapprove of all the amendments.<sup>23</sup>

A proposed amendment is adopted if it is approved by a majority of voters, and it takes effect when the City Council enters an order in the records of the City declaring the amendment is adopted.<sup>24</sup> Voters can adopt charter amendments at the same election as one to elect officers.<sup>25</sup> Once a charter is amended, the mayor shall certify to the Secretary of State an authenticated copy of the amendment under the City's seal, and the Secretary of State will file and record the certification.<sup>26</sup>

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<sup>18</sup> Tex. Const. art. XVI, § 1.

<sup>19</sup> *Id.*

<sup>20</sup> TEX. LOC. GOV'T CODE ANN. § 9.004 (West 2008).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* § 9.005

<sup>25</sup> *Id.* § 9.006

<sup>26</sup> *Id.* § 9.007

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The City Secretary must record in the secretary's office a charter amendment-adopted by the voters in a book kept for that purpose, or on microfilm.<sup>27</sup> These recorded amendments are public acts.<sup>28</sup>

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<sup>27</sup> *Id.* § 9.008

<sup>28</sup> *Id.*

**MEMORANDUM**

**TO:** City of Buda Charter Review Committee      **FROM:** Jennifer Dykstra, Student Legislative Council

**RE:** Article XI of the Buda City Charter      **DATE:** October 31, 2011

**FILE NO:** 126001K

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**Background**

*Introduction*

The Charter Review Committee has asked for a legal analysis of the provisions in Article XI of the City Charter in order to update and revise the provisions to comply with state law. This memo sets out to analyze each provision of Article XI and make recommendations to language based on any changes to the law that have occurred since its original passage.

*Article XI Generally*

Article XI is the section of the Charter that encompasses the legal provisions. These provisions act as a guideline for the City Council for certain legal issues that may arise under the guise of the City as a whole. Broadly, the issues covered are lawsuits, bonds, and the interpretation of the charter itself. Because state law is quiet in most of these areas, the Committee has wide latitude on recommendations.

*Texas Tort Claims Act*

Much of Article XI is governed directly by the Texas Tort Claims Act, which is found in Chapter 101 of The Civil Practice & Remedies Code. Generally, the State of Texas and its governmental units have immunity from lawsuits, unless the governmental entity has waived that immunity.<sup>1</sup> However in 1985, the legislature passed the Texas Tort Claims Acts, which statutorily waived that immunity in certain narrow circumstances, which are defined in the statute.<sup>2</sup> Most of the applicable provisions are also laid out in the Charter and expanded in so much as case law has allowed.

**Section-by-Section Analysis**

Section 11.01 Assignment, Execution and Garnishment

*Current text*

(1) Property, real and personal, belonging to the City shall not be liable to be sold or appropriated under any writ of execution or cost bill. 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, attachment or sequestration; nor

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<sup>1</sup> *Texas Dept. of Transp. v. Able*, 35 S.W.3d 608 (Tex. 2000).

<sup>2</sup> *Id.*

Memorandum to City of Buda Charter Review Committee *Re* Article XI of the Buda City Charter  
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shall the City be liable to garnishment on account of any debt it may owe or funds or property it may have on hand 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 whatsoever.

(2) The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents or contractors, except as provided by the laws of this State or the United States of America.

*Analysis*

Writ of executions, bills of cost, garnishment, attachments and writ of sequestrations are all court orders for the prevailing party of a lawsuit to aid in the collection of their remedy, whether it be property or costs. Section 51.076 of The Texas Local Government Code gives home rule cities the authority to provide that property owned by the city is not subject to any kind of execution.

*Recommendation*

There are no laws or cases that have impacted this Section and no recommendations are being made at this time.

Section 11.02 Security and Bond

*Current Text*

It shall not be necessary in any action, suit or proceeding in which the City is a party for any bond, undertaking or security to be demanded or executed by or on behalf of the City. All such actions shall be conducted in the same manner as if such bond, undertaking or security had been given as required by law.

*Recommendations*

There are no laws or cases that have impacted this Section and no recommendations are being made at this time.

Section 11.03 Notice of Claim

*Current Text*

The City shall not be held liable on account of any claim for the death of any person or injuries to any person or damage to any property unless the person making such complaint or claiming such damages shall, within one hundred-twenty (120) days after the time at which it is claimed such damages were inflicted upon such person or property, file with the City a written statement, under oath, stating the nature and character of such damages or injuries, the extent of the same, the place where same happened, the circumstances under which same happened and the condition causing same, with a detailed statement of each item of damages and the amount thereof, giving a list of any witnesses known by affiant to have seen the accident.

Memorandum to City of Buda Charter Review Committee *Re* Article XI of the Buda City Charter  
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*Analysis*

The text of this Section comes from the Texas Tort Claims Acts, with additional requirements coming from the city.<sup>3</sup> The statute only requires that a person provide a description of the damage or injury claimed, the time and place of the incident and the incident.<sup>4</sup> It is worth noting that there is additional text in the statute that reads: “The notice requirements. . . do not apply if the governmental unit has actual notice that death has occurred, that the claimant has received some injury, or that the claimant's property has been damaged.”<sup>5</sup>

*Recommendations*

There are no laws or cases that have impacted this Section and no recommendations are being made at this time.

Section 11.04 Power to Settle Claims

*Current Text*

The City Council shall have the power to compromise and settle any and all claims and lawsuits of every kind and character, in favor of, or against, the City, including suits by the City to recover delinquent taxes.

*Analysis*

The law is clear that the City, and the entity they delegate the power to, shall have the right to settle its own cases, but does have the additional language that the compromise must be in the best interest of the governmental unit.<sup>6</sup> Also, the language “to compromise and settle” is redundant, so I am recommending that “compromise” be struck.

*Recommendation*

There are no laws or cases that have impacted this Section and no recommendations are being made at this time, however, you do have the option of including the language that the lawsuit must be settled in the best interest of the city:

The City Council shall have the power to [~~compromise and~~] settle any and all claims and lawsuits of every kind and character, in favor of, or against, the City, including suits by the City to recover delinquent taxes if the City Council determines that the settlement is in the best interest of the City.

<sup>3</sup> Tex. Civ. Prac. & Rem. Code Ann. § 101.101 (Vernon 2005)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Tex. Civ. Prac. & Rem. Code Ann. § 101.105 (Vernon 2005)

Memorandum to City of Buda Charter Review Committee *Re* Article XI of the Buda City Charter  
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### Section 11.05 Service of Process Against the City

#### *Current Text*

All legal process against the City shall be served upon the City Manager.

#### *Analysis*

This section is in compliance with state law. The Texas Tort Claims Act does specify “if the administrative head of the governmental unit is not available, the court in which the suit is pending may authorize service in any manner that affords the governmental unit a fair opportunity to answer and defend the suit.”<sup>7</sup>

#### *Recommendations*

I recommend that the Committee address the person who should be served in case the City Manager is unavailable, unless you would like the Court to still be the determining body. I have chosen the City Secretary as my option, but any person would be acceptable under the law.

All legal process against the City shall be served upon the City Manager, or if the City Manager is unavailable, the City Secretary shall be served.

### Section 11.06 Judicial Notice

#### *Current Text*

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 provided that the City Secretary certifies the most current City Charter with any amendments.

#### *Analysis*

This section of the Charter is governed directly by State Law – as long as a charter has been certified by the Secretary of State, they are deemed public acts and the Court shall take judicial notice.<sup>8</sup> However, there is no harm leaving this provision in the charter.

#### *Recommendations*

There are no laws or cases that have impacted this Section and no recommendations are being made at this time.

### Section 11.07 Property Not Exempt From Special Assessments

#### *Current Text*

No property of any kind, by whomsoever owned or held or by whatsoever institution, agency, political subdivision or organization, owned or held, whether in trust or by non-profit organization, or corporation, or by foundation, or otherwise, (except property of the City), shall be exempt in any way from any of the special taxes, charges, levies and assessments, authorized or permitted by this Charter, for local improvements, for the public welfare except where provided by state law.

<sup>7</sup> Tex. Civ. Prac. & Rem. Code Ann. § 101.102 (Vernon 2005)

<sup>8</sup> Tex. Loc. Govt Code Ann. § 9.008(b) (Vernon 2008) (“Recorded charters or amendments are public acts. Courts shall take judicial notice of them, and no proof is required of their provisions.”)

Memorandum to City of Buda Charter Review Committee *Re* Article XI of the Buda City Charter  
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### *Analysis*

The Texas Constitution gives home rule cities the authority to levy taxes, provided that they do not exceed 2.5% in a year.<sup>9</sup> State law says that “home-rule municipality may levy special or general property taxes for lawful purposes.”<sup>10</sup>

### *Recommendations*

There are no laws or cases that have impacted this Section and no recommendations are being made at this time.

### Section 11.08 City Council May Require Bonds

#### *Current Text*

In addition to any provisions contained herein, the City Council may require any City official, department director, or City employee, before entering upon his/her duties, to execute a good and sufficient bond with a surety company doing business in the State of Texas and approved by the City Council. The premium of such bond shall be paid by the City.

#### *Analysis and Recommendation*

There are no laws or cases that have impacted this Section and no recommendations are being made at this time.

### Section 11.09 Disaster Clause

#### *Current Text*

In case of disaster when a legal quorum of the elected City Council cannot otherwise be assembled due to multiple deaths or injuries, the surviving persons of the City Council, or highest surviving City official, if no elected official remains, must, within twenty-four (24) hours of such disaster, request the highest surviving officers of the local Economic Development Corporation and the County Judge of Hays County to appoint a commission to act during the emergency as the City Council and call a City election within fifteen (15) days of such disaster, or as provided in the Texas Election Code, for election of a required quorum, if for good reasons it is known a quorum of the present City Council will never again meet.

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<sup>9</sup> Tex. Const. art. XI, § 5.

<sup>10</sup> Tex. Tax Code Ann. §302.001 (Vernon 2008)

Memorandum to City of Buda Charter Review Committee *Re* Article XI of the Buda City Charter  
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### *Analysis*

This section of the Charter seems to conflict with Article 11, Section 11 of the Texas Constitution, which states:

(b) A municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality, **and any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur.**<sup>11</sup>

It is unclear from statute or case law whether someone can be appointed to “act” on behalf of the City Council, but it would be advisable to err on the side of constitutionality. Furthermore, mandating an election within 15 days can be problematic in situations where there is a true emergency and an election cannot be assembled within 15 days.

Chapter 616 of the Texas Government Code controls circumstances specifically in case of an enemy attack on the United States for state and local government. It would be helpful to cite to this so it is at hand.

### *Recommendations*

In case of disaster when a legal quorum of the elected City Council cannot otherwise be assembled due to multiple deaths or injuries, the surviving persons of the City Council, or highest surviving City official, if no elected official remains, must, within twenty-four (24) hours of such disaster [~~request the highest surviving officers of the local Economic Development Corporation and the County Judge of Hays County to appoint a commission to act during the emergency as the City Council and call a City election within fifteen (15) days of such disaster~~] call an election to be held on the earliest feasible date, or as provided in the Texas Election Code, for election of a required quorum, if for good reasons it is known a quorum of the present City Council will never again meet. If no City official is available, the Hays County Judge shall have the authority to call a City election. In case of enemy attack, Chapter 616 of the Texas Government Code controls succession.

### Section 11.10 Construction of Charter

#### *Current Text*

The Charter shall not be construed as a mere grant of enumerated powers, but shall be construed as a general grant of power and as a limitation of power on the government of the City of Buda in the same manner as the Constitution of Texas is construed as a limitation on the powers of the Legislature. Except where expressly prohibited by this Charter, each and every power under Article XI, Section 5 of the Constitution of Texas, which it would be competent for the people of the City of Buda to expressly grant to the City, shall be construed to be granted to the City by this Charter.

### *Analysis and Recommendation*

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<sup>11</sup> Enhancement added by author

Memorandum to City of Buda Charter Review Committee *Re* Article XI of the Buda City Charter  
November 8, 2011; page 7

There are no laws or cases that have impacted this Section and no recommendations are being made at this time.

Section 11.11 Severability Clause

*Current Text*

If any section or part of a section of this Charter shall be ruled invalid by a Court of competent jurisdiction, such holding shall not affect the remainder of this Charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part to which such holding shall directly apply.

*Analysis and Recommendation*

There are no laws or cases that have impacted this Section and no recommendations are being made at this time.

Section 11.12 Wording Interpretation

*Current Text*

The gender of the wording throughout this Charter shall always be interpreted to mean either sex. All singular words shall include the plural and all plural words shall include the singular. All references to the state law or laws of the State of Texas, however expressed in this Charter, shall mean “as presently enacted or as may be amended or superseded.” The use of the word “City” in this Charter shall mean the City of Buda City, Texas, and the use of the word “Charter” shall mean this Home Rule Charter. The term “qualified voter” shall mean a person who meets all legal requirements of state law and this Charter for becoming a registered voter and is also registered to vote.

*Analysis and Recommendation*

There are no laws or cases that have impacted this Section and no recommendations are being made at this time.

**ARTICLE X**

**GENERAL PROVISIONS**

**SECTION 10.01      Personal Financial Interest**

The City Council and City Officials shall follow the rules and regulations regarding personal financial interests as set out in the Texas Local Government Code, Chapter 171.

*Buda*

## **SECTION 10.02      Prohibitions**

### **A.      Activities Prohibited:**

1.      No person shall be appointed to or removed from or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, national origin, sex, political or religious opinions or affiliations.
2.      No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the personnel provisions of this Charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provision, rules and regulations.
3.      No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.
4.      No person related within the second degree by affinity, or within the third degree by consanguinity to any elected officer of the City, or to the City Manager, shall be appointed to any office, position, or clerkship or other service of the City for which remuneration is paid, but this prohibition shall not apply to officers or employees who have been continuously employed by the City for not less than two (2) years prior to the election or appointment of the officer related in the prohibited degree.

**B.      Penalties.** Any person who by himself or with others willfully violates any of the provisions of paragraphs one (1) through four (4) shall be guilty of misconduct and shall be subject to immediate forfeiture of his office or position.

## **SECTION 10.03      Charter Review Committee**

**A.**      The City Council shall appoint a Charter Review Committee in the third (3<sup>rd</sup>) year after this Charter is adopted and every sixth (6<sup>th</sup>) year thereafter. The Charter Review Committee shall consist of nine (9) citizens of the City who shall:

1.      Inquire into the operation of the City government under the Charter and determine whether any provision requires revision. To this end public hearings may be held. The Committee may request the attendance of any officer or employee of the City the production of any City records that may be needed;

2. Propose any recommendations it deems desirable to insure compliance with the Charter; and
3. Report its findings and present its recommendations to the City Council in the form of a report; and
4. File a copy of its report with the office of the City Secretary where it shall be a public record.

B. The term of office of the Charter Review Committee shall be for not more than nine (9) months.

C. Upon finalization of the Charter Review Committee's report the City Council shall receive the report and have published in the official newspaper of the City public notice that a copy of the report is available in office of the City Secretary.

D. City Council shall consider any recommendations made and may order any recommendations be submitted to the voters of the City in the manner provided by state law.

E. Nothing in this section prohibits the City Council from forming a Charter Review Committee at any time or from submitting any amendments to the Charter to election on its own initiative as provided by Section 10.07 of this Charter at any time in compliance with state law.

#### **SECTION 10.04 Regulation of Alcohol**

The sale of liquor and beer is prohibited in all residential sections or areas of the City, as designated by any zoning ordinance or Comprehensive Plan of the City. The City Council may enact any and all other regulations regarding the sale, consumption, distribution, etc. of alcoholic beverages, as permitted by law.

#### **SECTION 10.05 Official Newspaper**

The City Council shall declare annually an official newspaper of general circulation in the City. All captions of ordinances, notices and other matters required by this Charter, City ordinance, or the Constitution and laws of the State of Texas shall be published in the official newspaper.

#### **SECTION 10.06 Oaths**

All elected and appointed officers of the City shall take and sign an oath of office based on those prescribed for state elective and appointive offices, respectively, in the Constitution of the State of Texas.

**SECTION 10.07      Amendment**

Amendments to this Charter may be framed, proposed, and adopted in the manner provided herein by the laws of the State of Texas.

**ARTICLE XI**

**LEGAL PROVISIONS**

**SECTION 11.01      Assignment, Execution and Garnishment**

- (1) Property, real and personal, belonging to the City shall not be liable to be sold or appropriated under any writ of execution or cost bill. 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, 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 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 whatsoever.
- (2) The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents or contractors, except as provided by the laws of this State or the United States of America.

**SECTION 11.02      Security and Bond**

It shall not be necessary in any action, suit or proceeding in which the City is a party for any bond, undertaking or security to be demanded or executed by or on behalf of the City. All such actions shall be conducted in the same manner as if such bond, undertaking or security had been given as required by law.

**SECTION 11.03      Notice of Claim**

The City shall not be held liable on account of any claim for the death of any person or injuries to any person or damage to any property unless the person making such complaint or claiming such damages shall, within one hundred-twenty (120) days after the time at which it is claimed such damages were inflicted upon such person or property, file with the City a written statement, under oath, stating the nature and character of such damages or injuries, the extent of the same, the place where same happened, the circumstances under which same happened and the condition causing same, with a detailed statement of each item of damages and the amount thereof, giving a list of any witnesses known by affiant to have seen the accident.

**SECTION 11.04      Power to Settle Claims**

The City Council shall have the power to compromise and settle any and all claims and lawsuits of every kind and character, in favor of, or against, the City, including suits by the City to recover delinquent taxes.

**SECTION 11.05      Service of Process Against the City**

All legal process against the City shall be served upon the City Manager.

**SECTION 11.06      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 provided that the City Secretary certifies the most current City Charter with any amendments.

**SECTION 11.07      Property Not Exempt From Special Assessments**

No property of any kind, by whomsoever owned or held or by whatsoever institution, agency, political subdivision or organization, owned or held, whether in trust or by non-profit organization, or corporation, or by foundation, or otherwise, (except property of the City), shall be exempt in any way from any of the special taxes, charges, levies and assessments, authorized or permitted by this Charter, for local improvements, for the public welfare except where provided by state law.

**SECTION 11.08      City Council May Require Bonds**

In addition to any provisions contained herein, the City Council may require any City official, department director, or City employee, before entering upon his/her duties, to execute a good and sufficient bond with a surety company doing business in the State of Texas and approved by the City Council. The premium of such bond shall be paid by the City.

**SECTION 11.09      Disaster Clause**

In case of disaster when a legal quorum of the elected City Council cannot otherwise be assembled due to multiple deaths or injuries, the surviving persons of the City Council, or highest surviving City official, if no elected official remains, must, within twenty-four (24) hours of such disaster, request the highest surviving officers of the local Economic Development Corporation and the County Judge of Hays County to appoint a commission to act during the emergency as the City Council and call a City election within fifteen (15) days of such disaster, or as provided in the Texas Election Code, for election of a required quorum, if for good reasons it is known a quorum of the present City Council will never again meet.

## **SECTION 11.10 Construction of Charter**

The Charter shall not be construed as a mere grant of enumerated powers, but shall be construed as a general grant of power and as a limitation of power on the government of the City of Buda in the same manner as the Constitution of Texas is construed as a limitation on the powers of the Legislature. Except where expressly prohibited by this Charter, each and every power under Article XI, Section 5 of the Constitution of Texas, which it would be competent for the people of the City of Buda to expressly grant to the City, shall be construed to be granted to the City by this Charter.

## **SECTION 11.11 Severability Clause**

If any section or part of a section of this Charter shall be ruled invalid by a Court of competent jurisdiction, such holding shall not affect the remainder of this Charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part to which such holding shall directly apply.

## **SECTION 11.12 Wording Interpretation**

The gender of the wording throughout this Charter shall always be interpreted to mean either sex. All singular words shall include the plural and all plural words shall include the singular. All references to the state law or laws of the State of Texas, however expressed in this Charter, shall mean "as presently enacted or as may be amended or superseded." The use of the word "City" in this Charter shall mean the City of Buda City, Texas, and the use of the word "Charter" shall mean this Home Rule Charter. The term "qualified voter" shall mean a person who meets all legal requirements of state law and this Charter for becoming a registered voter and is also registered to vote.

# **ARTICLE XII**

## **TRANSITIONAL PROVISIONS**

### **SECTION 12.01 Existing Ordinances and Resolutions**

At the time of initial adoption of this Charter, all existing ordinances, resolutions, regulations, and other prior actions of the City Council, without exception, shall remain in effect without being subject to the provisions of this Charter for referendum.

### **SECTION 12.02 Officers and Employees**

A. **Rights and Privileges Preserved.** Nothing in this Charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are City officers or employees at the time of its adoption.

**B. Continuance of Office or Employment.** Except as specifically provided by this Charter, if at the time this Charter takes full effect, a City administrative officer or employee holds any office or position which is or can be abolished by or under this Charter, he shall continue in such position or office until the taking effect of some specific provision under this Charter directing that he vacate the office or position.

#### **SECTION 12.03 Pending Matters**

All rights, claims, actions, orders, contracts and legal administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the City department, office, or agency appropriate under this Charter.

#### **SECTION 12.04 Manner of Submission to Electors**

In preparing this Charter, the Charter Commission finds and decides that it is impractical to segregate each subject so as to permit a vote of "yes" or "no" on the same, for the reason that the Charter is so constructed that in order to enable it to work and function, it is necessary that it should be adopted in its entirety.

#### **SECTION 12.05 Transitional Elections**

**A.** In order to provide for a smooth transition between a five-member council elected for two-year terms and a six-member council elected for three-year terms, the following rules shall be applied.

**B. Existing Terms and Establishment of Places.** The Council Members in office when the Charter is adopted shall remain in office for the remainder of the term for which they were elected. At the first council meeting following the adoption of the Charter then current sitting Council Members shall draw lots to determine Places as follows:

Places One (1) and Two (2) – Council Members whose current terms end in 2008.

Places Three (3), Four (4) and Five (5) – Council Members whose current terms end in 2009.

Place Six (6) shall be the new council seat created by this Charter.

**C. Election Year 2008 -** The Mayor and Place Six (6) shall be elected for three year terms. Places One (1) and Two (2) shall be elected for two (2) year terms.

**D. Election Year 2009 -** Places Three (3) and Four (4) shall be elected for a three (3) year term. Place Five (5) shall be elected for a two (2) year term.

**E. Election Year 2010 -** Places One (1) and Two (2) shall be elected for three (3) year terms.

**F. Election Year 2011 -** Place Five (5) shall be elected for a three (3) year terms.

G. Exhibit 12.05 attached hereto is a work sheet demonstrating how §§ B. Through F. above shall work.

# EXHIBIT 12.05

|      | Mayor       | Place 1     | Place 2     | Place 3     | Place 4     | Place 5     | Place 6     |
|------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 2007 |             |             |             |             |             |             |             |
| 2008 | 3 year term | 2 year term | 2 year term |             |             |             | 3 year term |
| 2009 |             | 3 year term | 3 year term | 3 year term | 3 year term | 2 year term |             |
| 2010 |             |             |             |             |             |             |             |
| 2011 | Election    |             |             |             |             | 3 year term | Election    |
| 2012 |             |             |             | Election    | Election    |             |             |
| 2013 |             | Election    | Election    |             |             |             |             |
| 2014 | Election    |             |             |             |             | Election    | Election    |
| 2015 |             |             |             | Election    | Election    |             |             |
| 2016 |             | Election    | Election    |             |             |             |             |
| 2017 | Election    |             |             | Election    | Election    | Election    | Election    |
| 2018 |             |             |             | Election    | Election    |             |             |

# City of Kyle – General Provisions

## **ARTICLE XIII. - GENERAL PROVISIONS**

- Sec. 13.01. - Oath of Office.
- Sec. 13.02. - Notice of Claim Against City.
- Sec. 13.03. - Reservation of Defenses.
- Sec. 13.04. - Settlement of Claims.
- Sec. 13.05. - Community Service Organizations.
- Sec. 13.06. - Public Records.
- Sec. 13.07. - Succession.
- Sec. 13.08. - Charter Review.
- Sec. 13.09. - Severability.

### **Sec. 13.01. - Oath of Office.**

All officers of the City shall, before entering upon the duties of their respective offices, take and subscribe to the official oath prescribed by the Constitution of the State of Texas. The oath shall be administered by the Mayor, the City Secretary, Notary Public, or other person authorized by law to administer oaths.

### **Sec. 13.02. - Notice of Claim Against City.**

Except as provided for by the state constitution or a statute in conflict herewith, the city shall not be liable for any damages, attorneys fees, costs of court, or other monies regarding any matter whatsoever, unless notice shall have first been given the city in compliance with this section, as follows:

(a)

Before the city shall be liable for any damage, claim or suit, attorney fees or costs of court, arising out of or for any personal injury, damage to property, or violation of any statutory right or duty, the person who is injured or whose property has been damaged, or someone on his or her behalf, shall give the city manager or the city secretary notice in writing duly certified within ninety (90) days after the date of the alleged damage, injury or violation of statutory duty or right, stating specifically in such notice when, where and how the injury or damage was sustained, setting forth the extent of the injury or damage as accurately as possible, and giving the names and addresses of all witnesses known to the claimant upon whose testimony the claimant is relying to establish the injury or damage. In case of injuries resulting in death, the person or persons claiming damage shall within ninety (90) days after the death of the injured person give notice as required above.

(b)

Before the city shall be liable for any damages, attorney fees, court costs or monies whatsoever, whether arising out of any action authorized by statute, for declaratory judgment, or for equitable remedy, or for any damage, claim or suit arising out of contract, the person who seeks such remedy, relief or damage, or someone on his or her behalf, shall:

(i)

Give the city manager or the city secretary notice in writing not less than thirty (30) days prior to the filing of such claim, suit or cause of action, stating specifically the allegations of and basis for such claim, suit or request for remedy, the facts, contract provisions or circumstances

# City of Kyle – General Provisions

supporting the same, the specific remedy or damages sought, the names of all city officers and employees complained of, and giving the names and addresses of all witnesses known to the claimant upon whose testimony the claimant is relying to establish the injury or damage; and

(ii)

Upon request of the city manager or the city council meet, confer and negotiate with the city for the purpose of reaching an acceptable compromise and settlement.

## **Sec. 13.03. - Reservation of Defenses.**

Nothing contained in this charter or in any ordinance or contract of the city shall be construed to mean the city waives any rights, privileges, defenses or immunities provided under common law, or the Constitution and laws of the State of Texas. No such right, privilege, defense or immunity may be waived except by the city council acting in a public meeting to settle or compromise a claim, dispute or lawsuit.

## **Sec. 13.04. - Settlement of Claims.**

The council shall have the authority to compromise and settle any and all claims and lawsuits of every kind and character in favor of or against the city, except suits by the city to recover delinquent taxes; provided that the city attorney shall have the authority to settle on behalf of the city any and all matters pending in municipal court, or in the county courts on appeal from the municipal court.

## **Sec. 13.05. - Community Service Organizations.**

A written contract for services shall be executed prior to any non-profit, community service organization receiving city funds. Such contracts shall establish the terms, conditions and services to be provided, and shall require an annual audit of the non-profit organization.

## **Sec. 13.06. - Public Records.**

All public records of every office, department, or agency of the City shall be open to inspection by the public at all reasonable times in which such records are not subject to a privilege against disclosure that is recognized by state or federal law, provided that records that may be closed to the public pursuant to State law, are attorney client privileged, regard a competitive bid or proposal that has not been finally awarded, regard the active negotiation of a contract or pending acquisition of property, or that include information that is protected by a right of privacy established by statute or constitution, shall not be considered public records for the purpose of this section. During normal office hours, any person shall have the right to examine any such public records belonging to the City and shall have the right to make copies thereof under such reasonable rules and regulations as may be prescribed by the City Council or by this Charter. All written applications for public records shall be stamped with a city seal and a copy of the application shall be provided to the applicant.

## **Sec. 13.07. - Succession.**

If four or more positions on the city council become vacant at any time due to disaster or an event that results in the death or inability to serve of four or more members, the mayor, mayor pro-tem, majority of the surviving members of council or, if there be but one, any surviving member, may call a special election to fill the vacant positions. In such event, pending the election, if there are three (3) surviving members of the city council they shall constitute a quorum. If there are not at least three surviving members the following officers of the city in the order listed shall serve with the surviving members of the council on an interim basis as necessary to result in a four member quorum: (1) the chair of the planning and zoning commission; (2) the vice chair of the planning and zoning

# City of Kyle – General Provisions

commission; (3) the city manager; (4) the chief of police; (5) the city secretary; and (6) the director of public works. If such surviving officers not be sufficient in number to constitute a quorum, the remainder shall constitute a quorum until the officers elected at the special election take office.

## Sec. 13.08. - Charter Review.

The council shall review the charter every two years to determine if any amendment should be considered. The council shall appoint a charter review commission, consisting of seven (7) qualified voters of the city, not less often than every fifth year. The term of each charter review commission shall be six (6) months and such commission shall review, hold hearings upon, and make recommendations for the amendment, if any, of this charter. Any resulting charter elections shall be noticed and held in compliance with state law.

## Sec. 13.09. - Severability.

It is hereby declared that the sections, paragraphs, sentences, clauses and phrases of this charter are severable and, if any word, phrase, sentence, paragraph or section of this charter should be declared invalid by a final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs or sections of this charter, since the same would have been enacted without the incorporation of any such invalid word, phrase, clause, sentence, paragraph or section. If any provision of this charter shall be adjudged by a court of competent jurisdiction to be invalid or to conflict with state law, the invalidity or inconsistency shall not affect any other provision or application of this charter which can be given effect without the invalid or inconsistent provision, and to the fullest extent possible this charter shall be construed and read in a manner to give effect to the original intent and meaning of this charter as modified only by the deletion of such invalid word, phrase, clause, provision or section, and to this end the provisions of this charter are declared to be severable.

## ORIGINAL CHARTER COMMISSION CERTIFICATION

### TO THE CITY COUNCIL and CITIZENS OF THE CITY OF KYLE, TEXAS

The Charter Commission finds and decides it is impracticable to aggregate each subject so as to permit a vote of "YES" or "NO" on the same, for the reason that this Charter is so written that, for it to be workable and usable, it is necessary that it be adopted in its entirety.

For this reason the Charter Commission directs that this Charter be voted upon as a whole and that it be submitted to the qualified voters of the City of Kyle at an election to be held for that purpose on the 7th day of November 2000. If a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter, it shall become the Charter of the City of Kyle and, after the returns have been canvassed, the same shall be declared adopted and the City Secretary shall file an official copy of the Charter among the records of the City. The City Secretary shall furnish the Mayor a copy of said Charter so adopted, authenticated and certified by her signature and seal of the City, showing the approval of such Charter by a majority vote of the qualified voters voting at such election, which the Mayor shall forward to the Secretary of State of the State of Texas.

Not less than thirty (30) days prior to such election the City Council shall cause the City Secretary to mail a copy of this proposed Charter to each registered voter in the City as their names appear on the official records of the registered voters.

We, the undersigned members of the Charter Commission of the City of Kyle, having been heretofore duly appointed to prepare a Charter for the City of Kyle, Texas, DO HEREBY CERTIFY that the above and foregoing constitutes a true copy of the proposed Charter of the City of Kyle, Texas, which we have prepared. We the remaining members of the Charter Commission, completed the

# City of Kyle – General Provisions

writing of this Charter, and, unanimously recommend this Charter to the citizens of the City of Kyle,  
Texas.

Respectfully submitted this 15th day of August 2000.

# City of Round Rock

Round Rock, Texas, Code of Ordinances >> PART I - CHARTER >> ARTICLE 14. - GENERAL PROVISIONS >>

## **ARTICLE 14. - GENERAL PROVISIONS**

- Sec. 14.01. - Publicity of records.
- Sec. 14.02. - Publication requirements.
- Sec. 14.03. - Nepotism.
- Sec. 14.04. - Personal financial interest.
- Sec. 14.05. - Assignment, execution and garnishment.
- Sec. 14.06. - Power to settle claims.
- Sec. 14.07. - Notice of claim against City.
- Sec. 14.08. - Prohibitions.
- Sec. 14.09. - Separability.
- Sec. 14.10. - Submission of Charter to voters.
- Sec. 14.11. - Amendment of Charter.
- Sec. 14.12. - Charter Review Commission.
- Sec. 14.13. - Rearrangement and renumbering of Charter provisions.
- Sec. 14.14. - Security or bond not required.
- Sec. 14.15. - Drilling operations.

### **Sec. 14.01. - Publicity of records.**

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

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference—** Local Government Records Act, V.T.C.A., Local Government Code ch. 201.

### **Sec. 14.02. - Publication requirements.**

The City Council shall cause to be published all ordinances, notices and other matter required by the constitution and/or laws of the state of Texas to be published. The City Council may by ordinance establish additional publication requirements not in conflict with this Charter.

*(Charter amendment approved by voters January 20, 1996; May 10, 2008)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

### **Sec. 14.03. - Nepotism.**

No person related, within the second degree by affinity or within the third degree by consanguinity, to the Mayor or any member of the City Council or City Manager shall be employed or appointed to any office, position or clerkship of the City. This prohibition shall not apply, however, to

# City of Round Rock

any person who shall have been employed by the City at least two (2) years prior to and at the time of the election or appointment of the officer related in the prohibited degree.

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference—** Degrees of relationship, nepotism prohibitions, V.T.C.A., Government Code ch. 573.

## **Sec. 14.04. - Personal financial interest.**

No member of the City Council or employee of the City shall have a financial interest, direct or indirect, in 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 any 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 one percent (1%) of the corporation stock or as falls within the scope of V.T.C.A., Local Government Code § 131.903 as now or hereafter amended. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee of the City found guilty thereof shall thereby forfeit his or her office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the City shall render the contract voidable by the City Manager or the City Council.

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference—** Conflicts of interest of local government officers, V.T.C.A., Local Government Code ch. 171.

## **Sec. 14.05. - Assignment, execution and garnishment.**

The property, real and personal, belonging to the City shall not be liable to be sold or appropriated under any writ or execution or cost bill. The funds belonging to the City, in the hands of any person, firm or corporation, shall not be liable to garnishment, attachment, or sequestration; nor shall the City be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City nor any of its officers or agents shall be required to answer any such writ of garnishment on any account whatever. The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents or contractors.

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference—** Garnishment, V.T.C.A., Civil Practice and Remedies Code ch. 63; garnishment of municipal funds, V.T.C.A., Local Government Code ch. 101.

## **Sec. 14.06. - Power to settle claims.**

The City Council shall have the authority to compromise and settle any and all lawsuits of every kind and character in favor of or against the City, except suits by the City to recover delinquent taxes.

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

## **Sec. 14.07. - Notice of claim against City.**

Before the City shall be liable to damage, claim, or suit for personal injury, or damage to property, the person who is injured or whose property has been damaged or someone in such

# City of Round Rock

person's behalf shall give the City Manager or the City Secretary notice in writing under oath within forty-five (45) days after the date of the alleged damage or injury stating specifically in such notice when, where and how the injury or damage was sustained, setting forth the extent of the injury or damage as accurately as possible, and giving the names and addresses of all witnesses known to claimant upon whose testimony claimant is relying to establish the injury or damage. In case of injuries resulting in death, the person or persons claiming damage shall within forty-five (45) days after the death of the injured person give notice as required above. Provided that nothing herein contained shall be construed to mean the City waives any rights, privileges, defenses or immunities in tort actions which are provided under the common law, the constitution and laws of the state of Texas.

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference—** Notice of claims for death or personal injury, V.T.C.A., Civil Practice and Remedies Code § 101.101.

## **Sec. 14.08. - Prohibitions.**

(a)

### **Activities Prohibited.**

(1)

No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, sex, political or religious opinions or affiliations.

(2)

No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.

(3)

No City officer or candidate for City office shall orally, by letter or otherwise solicit or assist in soliciting any assessment, subscription or contribution for any candidate or for any political party or political purpose whatever from any person holding any compensated City position.

(4)

No officer or employee of the City who receives compensation as such shall make, solicit or receive any contribution to the campaign funds of any candidate or of any political party to be used in a City election or for or against any candidate for City office or take any part in the management, affairs or political campaign of any political party in a City election, but such officer or employee may exercise all rights as a citizen to express opinions and to cast his or her vote. Nothing in this paragraph is intended to prohibit said person from participating in school district, special district, county, state, or national campaigns, elections, and political parties.

(b)

**Penalties.** Any person who either individually or with others willfully violates any provisions of the foregoing Section 14.08(a) shall be ineligible for appointment or election to a position in the City for a period of four (4) years, and if such person is an officer or employee of the City at the time of such violation, he or she shall immediately forfeit the office or position such person holds.

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*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference**— Restrictions on contributions and expenditures, V.T.C.A., Election Code ch. 253; employment discrimination, V.T.C.A., Labor Code ch. 21.

## **Sec. 14.09. - Separability.**

If any section or part of a section of this Charter is held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not invalidate or impair the validity, force or effect of any other section or part of a section of this Charter.

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

## **Sec. 14.10. - Submission of Charter to voters.**

The Charter Commission in preparing this Charter concludes that it is impracticable to segregate each subject so as to permit a vote of "yes" or "no" on the same, for the reason that the Charter is so constructed that in order to enable it to work and function, it is necessary that it should be adopted in its entirety. For these reasons, the Charter Commission directs that the said Charter be voted upon as a whole and that it shall be submitted to the voters of the City at an election to be held for that purpose on August 13, 1977. Not less than thirty (30) days prior to such election, the City Council shall cause the City Secretary to mail a copy of this Charter to each registered voter of the City as appears from the latest certified list of registered voters. If a majority of the registered voters voting in such election shall vote in favor of the adoption of this Charter, it shall become the Charter of the City of Round Rock, and after the returns have been canvassed, the same shall be declared adopted and the City Secretary shall file an official copy of the Charter with the Records of the City. The Secretary shall furnish the Mayor a copy of said Charter, which copy of the Charter so adopted, authenticated and certified by signature and the seal of the City, shall be forwarded by the Mayor to the Secretary of the state of Texas and shall show the approval of such Charter by majority vote of the registered voters voting at such election.

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

## **Sec. 14.11. - Amendment of Charter.**

Amendments to this Charter may be framed and submitted to the voters of the City in the manner provided by V.T.C.A., Local Government Code ch. 9, as amended.

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference**— Charter amendments, V.T.C.A., Local Government Code § 9.004.

## **Sec. 14.12. - Charter Review Commission.**

The City Council shall appoint at its first regular meeting of 1979 and not later than every fourth year thereafter, a Charter Review Commission of seven (7) citizens of the City.

(a)

The duties of the Charter Review Commission are as follows:

(1)

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inquire into the operation of the City Government under the Charter provisions and determine whether any such provisions require revision. To this end public hearings may be held; and the Commission shall have the power to compel the attendance of any officer or employee of the City and require the submission of any of the City records which it may deem necessary to the conduct of such hearing;

(2)

propose any recommendations it may deem desirable to insure compliance with the provisions of the Charter by the several departments of the City government;

(3)

propose, if it deems desirable, amendments to this Charter to improve the effective application of the Charter to current conditions; and

(4)

report its finding and present its proposed amendments, if any, to the City Council.

(b)

Action by the City Council. The City Council shall receive and have published in the official newspaper of the City any report presented by the Charter Review Commission, shall consider any recommendations made, and if any amendments be presented as of such report, may order such amendment or amendments to be submitted to the voters of the City in the manner provided by V.T.C.A., Local Government Code ch. 9, as amended.

(c)

Term of Office. The term of office of such Charter Review Commission shall be six (6) months, or sooner if a report is presented to the City Council prior to said term of office. If during such six (6) month term no report is presented to the City Council, then all records of the proceedings of such Commission shall be filed with the person performing the duties of the City Secretary and shall become a public record.

*(Charter amendment approved by voters November 6, 1979; January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference—** Charter commission, V.T.C.A., Local Government Code § 9.002.

## **Sec. 14.13. - Rearrangement and renumbering of Charter provisions.**

In order to preserve unity, the City Council shall have the power, by ordinance, to renumber and rearrange all articles, sections, and paragraphs of this Charter or any amendments thereto, and upon the passage of any such ordinance, a copy thereof, certified by the City Manager, shall be forwarded to the Secretary of State for filing.

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

## **Sec. 14.14. - Security or bond not required.**

It shall not be necessary in any action, suit or proceedings in which the City shall be a party for any bond, undertaking or security to be executed in behalf of the City, but all actions, suits, and proceedings shall be conducted in the same manner as if such bond, undertaking or security had been given. The City shall have all remedies of appeal provided by law to all courts without bond or security of any kind. For the purposes of all such actions, suits, proceedings and appeals, the City shall be

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liable in the same manner and to the same extent as if the bond undertaking or security has been executed and given.

*(Charter amendment approved by voters November 6, 1979)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference**— Cities exempt from security for court costs, V.T.C.A., Civil Practice and Remedies Code § 6.002.

## **Sec. 14.15. - Drilling operations.**

The City Council may, by ordinance, prohibit the drilling of water wells for commercial, industrial and agricultural purposes, and may provide regulations for the drilling and use of water wells for commercial, industrial, agricultural and domestic purposes.

*(Charter amendment approved by voters November 6, 1979)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

**State law reference**— Water wells and drilled or mined shafts, V.T.C.A., Water Code ch. 28.

## **ARTICLE 15. - TRANSITIONAL PROVISIONS**

**Sec. 15.01. - Schedule.**

**Sec. 15.02. - Officers and employees.**

**Sec. 15.03. - Effect of Charter on existing law.**

**Sec. 15.04. - Pending matters.**

### **Sec. 15.01. - Schedule.**

**(a)**

This Charter shall take effect immediately following adoption by the voters, and shall be fully operable within one (1) year after adoption, except as provided in "(c)" of this Section.

**(b)**

Upon the adoption of this Charter, the present members of the City Council filling elective offices will continue to fill those offices for the terms to which they were elected. If this Charter is adopted, the City Council shall, by a majority vote, at its first regular meeting after the adoption of this Charter, appoint one additional Council member to serve for a term to coincide with the term of the Council members who are elected in even numbered years, or until successor is elected and qualified. Thereafter the City Council shall be elected as provided in Section 3.01 of this Charter. Persons, who on the date this Charter is adopted are filling appointive positions with the City which are retained under this Charter, may continue to fill these positions for the term for which they were appointed, unless removed by the City Council or by other means provided for in this Charter.

**(c)**

Conversion of the accounting system from a cash basis to an accrued cost basis shall occur at the beginning of the second fiscal year after adoption of this Charter.

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

### **Sec. 15.02. - Officers and employees.**

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(a)

Rights and Privileges Preserved. Nothing in this Charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are City officers or employees at the time of its adoption.

(b)

Continuance of Office or Employment. Except as specifically provided by this Charter, if at the time this Charter takes full effect a City administrative officer or employee holds any office or position which is or can be abolished by or under this Charter, he or she shall continue in such office or position until adoption of some specific provision under this Charter directing that such officer or employee vacate the office or position.

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

## **Sec. 15.03. - Effect of Charter on existing law.**

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

*(Charter amendment approved by voters January 20, 1996)*

*(Section renumbered pursuant to Ordinance No. G-04-06-24-16B1)*

## **Sec. 15.04. - Pending matters.**

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

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## ARTICLE XIII GENERAL PROVISIONS

### **Section 13.01 Personal Interest in City Contracts**

No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee violating this section shall forfeit his/her office or position. Any violation of this section, with the knowledge expressed or implied of a person or corporation contracting with the City, shall render the contract involved voidable by the Council.

### **Section 13.02 Nepotism**

No person related within the second degree by affinity or the third degree by consanguinity to a member of the Council or to the City Manager shall be appointed to any paid office, position or other service of the City. This prohibition shall not apply, however, to any person who shall have been employed by the City prior to and at the time of the election of the Council member, or appointment of the City Manager, so related to him/her, in accordance with state law.

### **Section 13.03 Oaths of Office**

Every person elected or appointed to any office of the [City] shall, before entering upon the duties of that office, take and subscribe to the oath of office prescribed by state law.

### **Section 13.04 Prohibited Activities and Penalties**

No person shall be appointed to, removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, gender, age, handicap, religion, country of origin or political affiliation.

No person seeking appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his/her test, appointment, promotion or proposed promotion.

Any person convicted of a violation of this section shall be ineligible for a period of five (5) years following such conviction to hold any City office or position and, if an officer or employee of the City at the time of the violation, shall immediately forfeit his/her office or position. The Council may establish by ordinance such further penalties for such violations as it may deem appropriate.

### **Section 13.05 Claims Against the City**

Before the City shall be liable for damages, for personal injury of any kind, or for damage to property, the person who is injured or whose property is damaged or someone on behalf of that

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person shall give the City Manager notice of the alleged claim in writing within six (6) months after the date of the alleged injury or damage. The notice shall state specifically when, where, and how the injury or damage was sustained, setting forth the extent of the injury or damage as accurately as possible. The party also shall, whenever possible, give the names and addresses of all witnesses known to the claimant and upon whose testimony claimant is relying to establish the injury or damage. In case of injury resulting in death, the person or persons claiming damage shall within six (6) months after the death of the injured person give notice as required above. Failure to notify the City of such a claim within six (6) months from the date of the claim shall exonerate, exempt and excuse the City from any liability whatever. Nothing in this section shall be construed to mean the City waives any rights, privileges, defenses or immunities in tort action, or otherwise, which are provided under common law and state law.

## **Section 13.06 Liens, Assignment, Execution and Garnishment**

The real and personal property belonging to the City shall not be liable for sale or appropriation under any writ or execution or cost bill, and no lien of any kind shall ever exist against any such property owned by the City except that the lien be created or authorized by this Charter or by state law.

The funds belonging to the City in the hands of any person, firm or corporation shall not be liable to garnishment, attachment or sequestration. The City shall not 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 or 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 except by court order or as otherwise required by state law.

## **Section 13.07 References to State Law**

Wherever in this Charter reference is made to "state law," unless explicitly provided otherwise, such reference shall mean state law currently in effect and shall not be limited to state law as it existed at the time of adoption of this Charter, or any relevant portion hereof.

## **Section 13.08 Separability**

If any section or part of this Charter is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not invalidate or impair the validity, force or effect of any other section or part of a section of this Charter.

## **Section 13.09 Charter Amendment**

Proposed amendments to this Charter shall be framed and submitted to the voters of the City in the manner prescribed by state law.

The Council shall, at intervals not to exceed six (6) years, formally consider the need for revision(s) to the Charter. This review shall be based on a written report from the City Manager,

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with special attention given to conflicts, if any, between the Charter and state law, and recommending such amendments to the Charter as may seem necessary for legal, administrative or other reasons.

## **ARTICLE XIV TRANSITIONAL PROVISIONS**

### **Section 14.01 Effect of Charter Amendments on Existing Officers and Employees**

Nothing in this Charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are City officers or employees at the time of its amendment.

From and after the date of adoption of the Charter amendment, the persons then filling elective offices that are retained under this Charter will continue to fill those offices for the terms to which they were previously elected. Nothing in the Charter Amendment shall be interpreted to amend or alter the application of 3.02(c) related to term limits or the applicability of same to Council Members, including the Mayor, holding places or positions at time of Amendment, with the exception of terms that may be required to accomplish staggering of terms, in the event staggered three-year terms are approved by the voters.

Persons, who on the date the Charter amendment is adopted are filling appointive positions with the City, which are retained under this Charter, shall continue to fill these positions for the term for which they were appointed, unless removed by the Council or by other means provided for in this Charter.

(Sec. 14.01 amnd. by Ordinance 2010-32 adopted 12/14/10)

### **Section 14.02 Effect of Charter on Existing Laws**

All City ordinances, rules and regulations in force at the time of adoption of this Charter and not in conflict with it shall remain in force until altered, amended or repealed by the Council. All rights of the City under existing franchises and contracts are preserved in full force and effect.

Any ordinances, rules or regulations inconsistent with this Charter are repealed as of the date of adoption of the Charter.

### **Section 14.03 Submission of Charter Amendment to Election**

The City Council, in preparing these Charter Amendments, finds and declares that it is impracticable to segregate each subject so that the voter may vote "yes" or "no" on the same, for the reason that the Charter is so constructed that in order to enable it to properly function it is necessary that it should be amended as set forth on the seven (7) separate ballots presented. For this reason, the City Council directs that the ballot provisions related to these Charter Amendments be voted upon as set forth on the seven (7) ballot propositions presented, and that

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these amendments shall be submitted to the qualified voters of the City at an election to be held on the 2nd day of November, 2010. The various Charter Amendments approved by a majority of the qualified voters, voting at this election, shall become the Amended Charter of the City of Bastrop on the date the Council enters an order in the records of the City declaring that the various approved Charter Amendments are adopted and the Home Rule Charter is, thus, Amended to include the ballot changes approved by the voters of the City of Bastrop. No amendments to the Charter are intended nor shall same be made other than those specifically approved by the voters in the upcoming election, and as noted herein. (Sec. 14.03 amnd. by Ordinance 2010-32 adopted 12/14/10)

## **Section 14.04 Transitional Elections/Staggered Terms**

In order to provide for a smooth transition from the former two-year terms for all Council Members to the three-year staggered terms set forth in Charter Section 3.02, the following transitional election rules shall be applied.

(1) *Staggering Terms.* At the first Council meeting following the approval by the electorate of three-year terms of office pursuant to the Amended Charter, then sitting Council Members, including the Mayor, shall draw lots to determine which Council places and/or Mayoral position shall be subject to a transitional length term of office, in order to provide for staggering of terms, the objective being that as stated in Section 3.02; specifically that each year, two (2) Council places, including the Mayoral position, shall be up for election for 3-year terms of office.

(2) *Implementation of Staggered Terms.* No City Council Member shall be required to draw lots that would result in a transitional term of less than two years or exceeding four years to accomplish the staggering of terms as set forth herein.

(3) *Deadline for Accomplishing Staggering Terms.* The City Council shall accomplish staggering the terms of office for all Council Member places and the Mayoral position on or before the General Election that will occur in 2015.

(Sec. 14.04 added by Ordinance 2010-32 adopted 12/14/10)