

City Charter of the City of Kyle, Texas

Preamble

This Charter is dedicated to and adopted by the citizens of the City of Kyle to grant the full authority for local self government and to ensure such rights and duties to the people, to reserve to the people the powers of initiative, referendum and recall, and to encourage citizen participation in our government for the proper and efficient progress of our city. To this end we adopt and ordain this Charter as authorized by the Texas Constitution.

ARTICLE I. INCORPORATION, FORM OF GOVERNMENT AND POWERS OF THE CITY

Section 1.01. Incorporation. The inhabitants of the City of Kyle, Texas, within the corporate limits as now and as hereafter established, extended and modified, shall continue to be and are hereby constituted a body politic and corporate in perpetuity under the name of the "City of Kyle," hereinafter referred to as the "city," with such powers, privileges, rights, duties, and immunities as herein provided.

Section 1.02. Form of Government. The municipal government shall be, and shall be known as, the "council-manager" form of government. Pursuant to the provisions of, and subject only to the limitations imposed by, the state constitution, state laws, and this charter, all powers of the city shall be vested in and exercised by an elective governing body, hereinafter referred to as the "city council" or "council". The council shall enact legislation, adopt budgets, determine policies, make appointments to positions as provided herein, and appoint the city manager who shall execute the laws and administer the government of the city.

Section 1.03. Rights Reserved. All suits, taxes, penalties, fines, forfeitures, and all other rights, claims and demands, of every kind and character, which have accrued under the laws in favor of the city shall belong to and vest in the city; shall not abate by reason of the adoption of this charter; shall be prosecuted and collected for the use and benefit of the city; and shall not be in any manner affected by the taking effect of this charter; but as to all of such rights, the laws under which they shall have accrued shall be deemed to be in full force and effect. The budget and all ordinances, rules and regulations of the city shall be and remain in effect, subject to the terms of this charter and the future discretion and vote of the council. All present commissions, boards and officers of the city shall continue in office subject to the provisions of this charter, including, but not limited to, the provisions governing election and removal, and the council's exercise of the authority conferred by this charter.

Section 1.04. General Powers. The city shall possess and may exercise the full power of local self-government and shall have all powers possible and lawful for a home rule city to have under the constitution and laws of the State of Texas, as fully and completely as though each such power were specifically enumerated in this charter. The city shall not have any authority or power that conflicts with state law. It is specifically provided that:

- (a) The powers and authority of the city shall include but shall not be limited to any power and authority necessary, useful or desirable to accomplish any public or lawful purpose, or to provide for the advancement of the interest, welfare, health, morals, comfort, safety, economic well being, or convenience of the city and its inhabitants; provided that all such powers, whether expressed or implied, shall be exercised and enforced in a manner that is not inconsistent with this charter or state law, and when not prescribed herein, in such manner as is provided by ordinance or resolution adopted by the city council.
- (b) The enumeration of particular powers in this charter shall not be held or deemed to be exclusive, and, in addition to the powers enumerated herein, the city shall have all other powers which, under the constitution and laws of the State of Texas, it would be proper for this charter to specifically enumerate, including all powers of local government not clearly denied the city by state law. The city shall have and may exercise all the powers conferred upon cities of every class by the Texas Constitution or state and federal law, including all powers of local government that can be conferred on home rule cities pursuant to *Art. 11, Sec. 5, Tex. Const.*, or that are conferred by any existing or future law relating to the powers and authority of cities, together with all the implied powers necessary to carry into execution any such power.
- (c) The city may exercise any of its powers and perform any of its functions by contract with, or in cooperation with, the state government or any agency or any political subdivision thereof, or with the federal government or any agency thereof, and, to the extent not inconsistent with state law or this charter, by contract with any person, firm or legal entity.
- (d) Under the name of the city it shall be known in law and have succession and be capable of contracting and being contracted with; being sued and impleaded as authorized in this charter or by state law; suing and impleading at law or in equity and being answered to in all courts and tribunals; provided that the city shall have sovereign immunity and its officers and employees shall have qualified governmental immunity. The officers of the city are the members of the city council, the city manager, municipal judge, city attorney and members of all standing boards and commissions appointed by the city council, and the department heads and the sworn law enforcement personnel appointed by the city manager.

Section 1.05. Particular Powers. In addition to the foregoing general powers and the other powers and authority set forth in this charter, the city may use a corporate seal; own, acquire, purchase, lease, hold, manage, control, convey and sell any character of property, whether real, personal or mixed, including any charitable or trust fund, situated within, or without, the limits of the city, as the purposes of the city may require for any public purpose in fee simple or in any lesser interest or estate by purchase, gift, devise, lease or condemnation; contract with, own, lease, operate and regulate public utilities and services; assess, levy and collect taxes for general and special purposes; borrow money on the revenues and/or the faith and credit of the city, by the issuance and sale of bonds, certificates of obligation, warrants, notes or any other evidence of indebtedness or obligation of the city; appropriate city funds and monies for any public purpose; regulate and control the use, for whatever purpose, of the streets and other public places; make and enforce regulations to protect the public safety, health, welfare, interests, comfort and well being; pass such ordinances as may be expedient for the protection and maintenance of good government, for the peace, safety, welfare, comfort and quality of life of the city and its citizens, for the performance of the functions of the city and for the order and security of the city and its residents; zone and regulate the development and use of land and all other property; provide suitable penalties for the violations of any ordinance; and exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever.

Section 1.06. Power of Eminent Domain. The city shall have full power and right to exercise the power of eminent domain for any public purpose or as necessary or desirable to carry out any power conferred by this charter. The city shall have and possess the power of condemnation for any such purpose even though such power of eminent domain is not otherwise specifically enumerated in this charter or in state law. The city may exercise the power of eminent domain in any manner authorized or permitted by state law and, in those instances in which state law does not authorize, permit or establish the procedures, method of establishing value, or other requirements for condemnation and the exercise of the power of eminent domain, the city council shall by ordinance establish the process, rules and procedures for valuing the property and property interests to be condemned.

Section 1.07. Annexation and Disannexation. The council may by ordinance unilaterally annex or disannex any land, property or territory upon its own initiative, or upon a petition submitted by a majority of the voters residing within the territory being annexed or disannexed, upon petition by the owners of property, or upon a petition signed by a majority of the property owners in a platted subdivision. The council may disannex or release extraterritorial jurisdiction when in the best interest of the city. The procedure for the establishment, modification or extension of the city boundaries, and the annexation or disannexation of territory, may not be inconsistent with any applicable requirements and limitations established by state law;

provided that absent procedures being established by state law the action may be taken by ordinance adopted after two public hearings are held at least ten (10) but not more than twenty (20) days after notice of such public hearings are published in a newspaper of general circulation in the city. Upon final passage of an ordinance, fixing, establishing or modifying the boundaries of the city, or annexing or disannexing any property by any method prescribed herein, the boundaries of the city shall be so extended or modified as provided in such ordinance. Upon an ordinance annexing property into the city, the territory described in the ordinance shall become a part of the city, and the said land and its residents and future residents shall be bound by the acts, ordinances, codes, resolutions and regulations of the city.

Section 1.08. Streets and Public Property. The city shall have exclusive dominion, control, and jurisdiction, in, upon, over, and under the public streets, sidewalks, alleys, highways, public squares, public ways and public property within the corporate limits of the city. With respect to all such facilities and public property, the city shall have the power to establish, maintain, alter, abandon, or vacate the same; to regulate, establish, or change the grade thereof; to control and regulate the use thereof; and to abate and remove in a summary manner any encroachment. The city may develop and improve, or cause to be developed and improved, any and all public streets, sidewalks, alleys, highways, and other public ways within the city by laying out, opening, narrowing, widening, straightening, extending and establishing building lines along the same; by purchasing, condemning, and taking property therefor; by filling, grading, raising, lowering, paving, repaving, and repairing, in a permanent manner, the same; by constructing, reconstructing, altering, repairing, and realigning curbs, gutters, drains, sidewalks, culverts, and other appurtenances and incidentals in connection with such development and improvements; and may make or cause to be made any one or more of the kinds or classes of development and improvement authorized hereinabove, or any combination or parts thereof.

**ARTICLE II.
BOUNDARIES OF THE CITY**

Section 2.01. Boundaries. The boundaries and limits of the city shall, until changed in the manner herein provided, be the same as have heretofore been established and as exist on the date of the adoption of this charter. The boundaries and territorial limits of the city may from time to time by ordinance be fixed, decreased, modified or extended, and property may be annexed into the city or disannexed from the city, with or without the consent of any voter or of any landowner in the affected area.

**ARTICLE III.
THE CITY COUNCIL**

Section 3.01. Governing Body. The governing body of the city shall be a city council composed of six (6) councilmembers and a mayor, each elected for a term of three years. The council places

shall be designated 1, 2, 3, 4, 5 and 6, and the mayor and councilmembers for Places 1, 3 and 5 shall be elected from the city at-large. Councilmembers for Places 2, 4 and 6 shall be elected from single member districts established by ordinance for the 2002 and subsequent elections. The terms of the members of the council shall be staggered, with two councilmembers being elected each year and the mayor being elected each third year.

Section 3.02. Qualifications. On the day prior to the date of the scheduled election to be held for such office, the mayor and councilmembers shall: (i) be at least eighteen years of age; (ii) be citizens of the United States; (iii) be qualified voters of the city; (iv) have been residents of the State of Texas for at least twelve consecutive months; (v) have been residents of the city and the district for which they seek election, or an area having been annexed into the city and/or the district, for at least six consecutive months; (vi) not be delinquent on any indebtedness to the city; and (vii) meet the other qualifications for eligibility set forth in the Texas Election Code. No city employee shall be eligible to file for election as a member of the council. Also, no candidate for or member of the council shall hold any other elective public office. If any member of the council ceases to possess any of the qualifications of office, including continuous residency within the City and, as applicable, the district from which elected during the term of office, his/her office shall, upon such fact being determined by the council, immediately become vacant; provided that if the residence of a member of the council is disannexed or located in another district as a result of redistricting, the member shall serve the remainder of his or her term of office.

Section 3.03. [Reserved]

Section 3.04. Vacancies In Office. The office of mayor or councilmember shall become vacant upon the death, resignation, or removal from office of the incumbent. Any vacancy or vacancies, whether in the office of mayor or councilmember, shall be filled by special election called for such purpose. The date for special elections to fill vacancies shall be the first uniform election date after the vacancy occurs and for which there is sufficient time to call and give notice of the election as required by law; provided that, if a vacancy occurs and no such election date falls within 120 days after the date of the vacancy, the council shall, without regard for the specified uniform election dates, order such election to be held on a Saturday within 120 days from the date of the vacancy. All vacancies shall be filled by election for the remainder of the unexpired term of the office so filled. A special election is not required if the term of the vacated office expires with a general election that is held within 120 days after the date of the vacancy.

Section 3.05. City Council Judge of its Members. The council shall be the judge of the election and qualifications of its members, may determine the rules of its proceedings, and shall have power to compel the attendance of absent members and to punish

members for disorderly conduct. After due notice and opportunity to be heard, upon not less than six affirmative votes the council shall have the power to remove any elected officer for conviction of a felony, gross immorality, habitual drunkenness, corruption, misconduct or malfeasance in office, or failing to continuously reside with the city and/or the district from which elected. Officers or employees of the city appointed directly by the council may be removed by majority vote of the council at any time after notice in compliance with the open meetings laws.

Section 3.06. Quorum and Attendance. Four members of the council shall constitute a quorum for transacting business and no action of the council shall be valid or binding unless taken in an open meeting with a quorum present. Less than a quorum may adjourn any meeting, or order and compel the attendance of absent members. It shall be the duty of each member of the council to attend each regular and special council meeting and the failure of any member to attend three consecutive, regular meetings, without good and sufficient cause, shall constitute misconduct in office.

Section 3.07. Meetings. The council shall hold at least one regular meeting each month. Meetings shall be held on a schedule or dates established by the council, and as many regular or special meetings may be scheduled and held as the council deems necessary to transact the business of the city. The council shall fix the dates and times of the regular meetings, and special meetings shall be held on the call of the mayor or the city manager. If practicable no less than twelve (12) hours notice of special meetings shall be given to each member of the council. Meetings shall be open to the public and public notice shall be given in accordance with state law; provided that executive sessions closed to the public shall be permitted in accordance with the state law. The mayor or city manager shall approve meeting agendas and a councilmember may require any item related to city business to be placed on an agenda for which notice may be given.

Section 3.08. Voting. All members of the council present shall vote upon every issue, subject or matter properly before the council and requiring a council vote; provided that, if any member of the council has a conflict of interest that fact shall be stated in the minutes and such member shall abstain from discussion and voting on the issue. No ordinance, resolution, order, action, matter or issue, shall be passed, approved, adopted, taken or consented to except by a majority vote of the members of council present and voting, and not less than four affirmative votes shall be required to pass, approve, adopt, take action on, or consent to any ordinance, resolution, action, matter, issue, or motion.

Section 3.09. Compensation. The mayor shall be paid two hundred dollars per month and each other councilmember shall be paid one hundred dollars per month; provided they shall forfeit one half of such amount for each absence from a regular council meeting. They shall also be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. No staff or assistant shall be provided for any member of the city council.

ARTICLE IV.
THE AUTHORITY AND LIMITATIONS OF THE CITY COUNCIL

Section 4.01. Mayor. The mayor shall serve as the ceremonial head of the city, preside at all meetings of the council and provide the leadership necessary to good government. He or she shall work with the council to obtain legislation in the public interest and with the city manager to ensure that the same is enforced, and participate in the discussion and vote on all legislative and other matters coming before the council. The mayor shall have signatory authority for all legal contracts and commitments of the city; sign all ordinances and resolutions; recommend appointees for the boards and commissions; work and coordinate with the city manager and the council; and, to the extent provided by state law in time of declared emergency, may take command of the police and govern the city by proclamation, maintain order and enforce all laws.

Section 4.02. Mayor Pro Tem. At its first regular meeting after all the members of the council elected at a general election have taken office, or after a vacancy in the office of Mayor Pro Tem, the council shall elect one of its members to be mayor pro-tem for a one (1) year term, or to fill the unexpired term resulting from the vacancy. The mayor pro tem shall be the councilmember who receives a majority of the votes cast but not less than four votes. In the absence of the mayor, the mayor pro tem shall perform the duties of the mayor and in such capacity shall be vested with all powers conferred on such office. In the event of the failure, inability, or refusal of the mayor to act in respect to any matter or duty, the mayor pro tem shall act. In the event the office of mayor becomes vacant, the mayor pro-tem shall serve as mayor until an election is held to elect a mayor to serve the unexpired term.

Section 4.03. The City Council. The city council shall be the legislative and governing body of the city and shall have control of all the city finances, property, functions, services, affairs and programs subject only to the terms and provisions of this charter. The council shall have the power to ordain, alter, amend or repeal and enforce ordinances, resolutions, rules, orders, and regulations, for any public purpose, that are not in conflict with this charter, or federal or state law. The council shall have the power and authority to provide for any public purpose, including but not limited to recreation, the regulation and control of public property, municipal finances, the preservation of the public peace and good order, the security and protection of the public health, safety and welfare, the promotion of trade, commerce and economic development, the beautification and quality of life within the city, and any other governmental or proprietary service or program. The city, by and through its city council, shall have full and complete power of local self government to the fullest extent not in conflict with this charter and state law, including all such authorities and privileges that are now or hereafter provided to cities by state law and such power and authority both express and implied as necessary to accomplish and enforce any such duty, program or public purpose.

The council shall have all the powers necessary and incident to the proper discharge of the duties imposed upon it and is hereby vested with all powers necessary to carry out the terms and provisions of this charter; except where such powers are, by this charter, specifically reserved or conferred on some other officer.

The following powers and duties of the council are not exclusive but are enumerated for greater clarity:

- (a) Appoint, supervise and remove the city manager;
- (b) Ensure enforcement of the provisions of this charter and the ordinances of the city;
- (c) Adopt and amend the budget of the city;
- (d) Call bond elections, and authorize the issuance and sale of bonds, certificates of obligations, certificates of participation, warrants, notes and other evidences of indebtedness or obligation of the city pursuant to this charter and state law;
- (e) Provide for and control of all city finances;
- (f) Provide for boards and commissions as deemed necessary by the council, and as required by this charter, and appoint and remove all such boards and commissions upon the recommendation of the mayor; provided that, if an appointment or removal has been considered at two regular meetings and no recommendation has been made the council may take action by motion and vote;
- (g) Adopt, modify and carry out the plans proposed by the planning commission and other boards and commissions;
- (h) Adopt, modify and cause the enforcement of building codes, fire codes, and health codes, public safety codes, and all other codes and regulations deemed reasonably necessary;
- (i) Provide for all public utilities and serve as the primary regulatory agency for the rates thereof whether city owned or furnished by private utility companies;
- (j) Pass ordinances and resolutions as necessary in its judgment for any public purpose not inconsistent with this charter;
- (k) Exercise police powers for the safety of all citizens, and to protect their health, life and property, prevent and summarily abate and remove all nuisances, preserve and to enforce good government, order and security of the city;
- (l) Control and regulate the use and occupancy of the public streets, rights-of-way and all property of the city;
- (m) Make investigations into municipal affairs and subpoena

persons, documents and records, and compel the attendance of witnesses and the production of records for such purpose;

- (n) Require a fidelity bond to be provided at city expense for any officer or employee position;
- (o) For good cause, order a recall election to be held for or with respect to any member of the city council;
- (p) Appoint and remove the city attorney, the municipal judge, and the associate municipal judges;
- (q) Confirm or reject the appointment of the officers required by this charter to be confirmed by the council;
- (r) To govern the affairs of the city in conformance with this charter and the state and federal constitutions and laws, and to determine by majority vote the best and most appropriate method and manner of efficiently performing the functions and providing the services of the city, consistent with the council-manager form of government; and, except as provided in this charter with respect to certain departments that must be maintained in effect, the council may after hearing the city manager create, change, merge, or abolish offices, departments or agencies of the city, and may contract for services by interlocal agreement or otherwise as it deems advisable to improve the services or the efficiency of government; and
- (s) Call and hold special elections useful to the accomplishment of the public purposes of the city, to the fullest extent not inconsistent with state law.

Section 4.04. Duties of Officers and Employees. The council shall from time to time, after hearing the recommendations of the city manager, establish personnel policies and regulations and the duties, responsibilities and authority of each appointed officer and employee of the city, not inconsistent with this charter. The city shall be an equal opportunity employer and the service of each such officer and employee shall be at will. The council may, not inconsistent with this charter, require other and further duties of any appointed officer or employee whose duties are prescribed herein, and may define, prescribe and change the duties of any appointed officer or employee as in its judgment be best for the public interest. No person related within the second degree of consanguinity or affinity to a member of the council or the city manager, shall be or remain employed by the city; provided that such prohibition shall not apply to any person employed full-time for a period of twelve months or more prior to the member of the council or the city manager taking office. The council may require good and sufficient bond be given by appointed officers or employees handling funds of the city and may require bond of other officers or employees if considered proper or necessary. The expense of any such bond shall be paid by the city.

Section 4.05. Prohibitions. The council shall have powers only as a body meeting with a quorum present and no member shall have power to act individually except where that power may be conferred upon the member in this charter or by written council resolution; provided that each member is expected to serve his or her constituency and shall have the right to inquire through an officer appointed by the council into any matter whether or not such matter is brought before the council in order that he or she may so serve as an independent member of the council.

No member of the council shall hold any other city office or city employment during his or her term of office, and no former member of the council shall hold any city office with compensation until one (1) year after the expiration of the full term of office to which such member was appointed or elected.

No member of the council shall give orders directly to any city employee, except when empowered to do so by an emergency proclamation, and all members of the council shall, except for officers appointed by the council, deal with the non-elective officers, employees and administrative offices of the city solely through the city manager.

Section 4.06. Ordinances. The council may adopt legislation by ordinance regarding any subject or matter relating to or dealing with any public purpose, including, but not limited to, the adoption of standardized codes and regulations. An ordinance must be enacted whenever the purpose is to regulate persons and property; whenever there is imposed a penalty, fine, forfeiture, or tax; whenever the purpose is to set a rate to be paid by consumers; whenever an ordinance is required by state law or this charter; or when an ordinance is amended. The authority of the council to legislate to accomplish any public purpose shall be subject only to the following:

- (a) No ordinance or other action of the council may be inconsistent with this charter or in conflict with any applicable state or federal law;
- (b) The enacting clause of every ordinance shall be "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS.";
- (c) Except for an emergency ordinance, an ordinance making an emergency appropriation, an ordinance authorizing bonds or any other indebtedness, or an ordinance approved by seven (7) affirmative votes, no ordinance shall be finally adopted until it has been read and approved by a majority vote of the city council at two meetings, one of which is a regular meeting;
- (d) An emergency ordinance adopted at an emergency meeting held with less than 72 hours notice shall be and remain in effect only until the next regular meeting of the council, at which meeting it shall expire unless readopted by the council;
- (e) The council may by ordinance amend the budget to transfer

budgeted funds from one fund or department to another;

- (f) An ordinance that does not receive a majority vote on first reading shall not advance for consideration on second reading;
- (g) The general subject matter and caption of an ordinance shall be published prior to the second reading;
- (h) All ordinances and proposed ordinances shall be available for public examination and review, and for copying, from and after being included on an agenda that is posted for any meeting of the council or any city board.

Section 4.07. Emergency Ordinances. The city council may adopt emergency ordinances to meet an emergency affecting life, health, property, the public peace, or to prevent a material financial loss to the City. Such ordinances shall not levy taxes, grant, renew or extend a franchise, or regulate the rates or fees charged by any public utility. An emergency ordinance shall be introduced in the form and manner generally prescribed for ordinances, except that it shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance shall require the affirmative vote of at least five (5) members of the city council, and may be adopted with or without amendment or rejected at the meeting at which it is introduced. If adopted, the ordinance shall take effect immediately and the caption of the ordinance shall be published in two (2) successive issues of a newspaper of general circulation in the City. Every emergency ordinance shall automatically be repealed after sixty (60) days following the day on which it became effective. The ordinance may be reenacted.

Section 4.08. Resolutions and Minute Orders. The council may act by resolution regarding any subject or matter relating to or dealing with any public purpose or business except as provided in Section 4.06. The enacting clause of every resolution shall be "BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS." The council may further give instructions to the city manager, approve bids and contracts, and take other actions regarding the day to day business of the city by motion approved by majority vote and entered in the minutes of the council meeting.

ARTICLE V. ELECTIONS

Section 5.01. Notice and Order for Elections. City elections shall be ordered and notice thereof given as provided in the Texas Election Code, and the council shall establish the procedures and order elections except as provided therein. If not otherwise provided for by state law, all elections shall be ordered at least thirty (30) days prior to the date of election and notice shall be given by publication not more than thirty (30) days and not less than twenty (20) days immediately preceding the date of election. Notice of election shall be published in a newspaper published within the city, and if there be no such publication notice shall

be published in a newspaper of general circulation within the city.

Section 5.02. General Elections. The general city election shall be held annually on the first Saturday in May, or if such not be authorized the date nearest thereto as may be established by law. The mayor and councilmembers shall be elected by majority vote.

Section 5.03. Special Elections. The council may by ordinance call such special elections as are authorized by this charter or state law, fix the time of holding such elections, and provide all means for holding such special elections; provided that every special election shall be held on a Saturday, or a uniform election date, unless otherwise provided by law or this charter.

Section 5.04. Conduct of Elections. All elections shall be held in accordance with state law and the ordinances adopted by the council for the conduct of elections. The council shall appoint the election judges, provide for other election officials, and establish and alter the voting precincts by ordinance. In the absence of state law providing regulations for the conduct of any election the council shall provide such regulations by ordinance.

Section 5.05. Filing for Office. Candidates for office shall make application for a place on the ballot within the times prescribed by the Texas Election Code. In the absence of a filing deadline established by state law, applications for a place on the ballot shall be filed no later than 5 p.m. of the last business day that is 45 days before election day. All applications shall designate the position sought and applications for councilmember shall include the Place number. It shall be the duty of the city secretary to place the name of all qualified candidates, making timely application, on the official ballot. Each candidate for the council or any other elective office shall meet the following qualifications:

- (a) Have all the qualifications for a councilmember as described in Section 3.02 of this charter.
- (b) No candidate may file for more than one (1) office or place per election.
- (c) A candidate for Place 2, 4 or 6 must meet the residency requirements for the district to which such Place number is assigned.
- (d) Each candidate shall file such application as required by ordinance.

Section 5.06. Polling Places. The council shall establish one or more election precincts and provide polling places as necessary for city elections. Until established otherwise by ordinance, the entire city shall be one election precinct and the city hall or the city hall annex shall be the polling place for all city elections.

Section 5.07. Official Ballots.

- (a) Names on Ballot. The name of each qualified candidate for office, except those who withdraw, die or become ineligible two business days or more prior to the start of early voting, shall be printed on the official ballots without party designation or symbol in the form designated by the candidate. If two or more candidates have the same surname or surnames so similar as to be likely to cause confusion, their residence addresses shall be printed with their names on the ballot.
- (b) Order of Listing. The order on the ballot of the names of the candidates shall be determined by lot in a drawing to be held under the supervision of the city secretary.
- (c) Early Voting. Procedures for early voting shall be consistent with the Texas Election Code.
- (d) Ballots On Measures. Ballots for ordinances, bond issues, and charter amendments shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title but shall be a clear, concise statement, approved by majority of the council, describing the substance of the measure without argument or prejudice. Below the ballot title shall appear the following question: "Shall the above described (ordinance) (bond issue) (amendment) be adopted?" Immediately below or to the left of such question shall appear, in the following order, the words "Yes" and "No" each with a square in which the voter may cast his or her vote by marking a cross (X) or other mark; provided the requirements of this section may be varied, not inconsistent with state law, as necessary for use of an electronic voting system.
- (e) Write-In Votes. Procedures for write-in votes shall be consistent with the Texas Election Code.

Section 5.08. Voters and Voting. Every registered voter who has been a resident of the city for thirty days or more prior to the date of the election shall be entitled to vote in city elections. Early voting and the hours the polls are open shall be as established by state law, or, absent state law providing therefor, as established by ordinance. Write in votes shall be permitted only in compliance with the Texas Election Code.

Section 5.09. Election by Majority. The mayor and councilmembers shall be elected by majority vote. No measure shall be adopted except by a majority vote and a tie vote shall defeat the measure.

Section 5.10. Canvassing. The returns of every municipal election shall be delivered by the election judges to the city secretary at city hall not later than twelve hours after the closing of the polls. The city council shall canvass the returns in accordance with state law. The returns of every municipal election shall be recorded in the minutes of the council by totals for each candidate, or for and against each issue submitted.

Section 5.11. Run-Off Election. If no candidate for an elective office receives a majority of the votes cast for that position in the regular or special election, a run-off election shall be held between the two (2) candidates who received the greatest number of votes. Such run-off election shall be held in accordance with State election laws on the third Saturday following the election. The candidate receiving the highest number of votes cast for the office in the run-off election shall be declared elected and if the run-off results in a tie vote, the tie shall be broken in a manner that is not inconsistent with the Texas Election Code, or by lot or chance as agreed by and between the candidates.

Section 5.12. Term of Office. The mayor and each councilmember shall serve until his or her successor is elected or appointed and qualified to serve. The regular term of office of the mayor and the councilmembers shall commence on the first Tuesday following the canvass of the election at which they receive a majority vote. A member of the council elected in a run-off election shall take office on the first Tuesday following the day on which the votes for the run-off election are canvassed. The remaining term of a member of council elected at a special election shall commence on the first Tuesday after the canvass of votes for the election at which they receive a majority of the votes cast for the office.

**ARTICLE VI.
INITIATIVE, REFERENDUM AND RECALL**

Section 6.01. General. The citizens reserve the powers of initiative, referendum and recall, which may be exercised in the manner and subject to the limitations provided in this Article.

Section 6.02. Initiative. Subject only to the limitations provided in this Article, the people of the city shall have the power to propose legislation on any local government issue, except legislation appropriating money, levying taxes, affecting zoning, annexing land, or setting rates, fees or charges, and, if the council fails to adopt an ordinance so proposed, to adopt or reject the proposed legislation at an election.

Section 6.03. Referendum. The people of the city shall have the power to require reconsideration by the council of any adopted ordinance regarding any issue that would be a proper subject for an initiative, and if the council fails to repeal an ordinance so reconsidered, to approve or reject the ordinance at an election. Such power shall not extend to the budget; capital expenditures; levy of taxes; any bonds, certificates of obligation or any similar obligations; zoning; annexation; or any rates, fees and charges; provided that tax increases shall be subject to petition as provided by state law.

Section 6.04. Conflict. No initiative or referendum action shall conflict with this charter, the constitution or any state statute.

Section 6.05. Signatures. Initiative and referendum petitions must be signed by registered voters residing within the city in

number equal to twenty-five percent (25%) of the number of votes cast at the last general election of the city. The signatures to the initiative or referendum petition need not all be appended to one paper, but each signer shall sign his or her name in ink or indelible pencil and shall add or cause to be added his or her place of residence within the city by street and number, printed name and date of signature. The signatures on a petition section shall not be considered unless there is attached to the petition section a signed, notarized and dated affidavit, executed by a resident of the city who circulated the petition section, which affidavit shall include his or her printed name, the address by street and number within the city, and the date he or she signed the affidavit; stating that he or she circulated each page and section of the attached petition; that each signature thereon was affixed in his or her presence; that each signature thereon is the signature of the person whose name it purports to be; and that to the best of his or her knowledge and belief each person signing the petition section was, at the time of signing, a registered voter residing within the City of Kyle.

Section 6.06. Commencement of Proceedings. A qualified voter may commence an initiative or referendum proceeding by filing with the city secretary the complete form of a petition proposed to be circulated, including signature pages, together with a copy of the full text of the initiative ordinance, or the ordinance to be reconsidered. The ordinance set forth with the petition shall be complete and in proper form including the caption.

The city secretary shall place the time and date on the petition and documents when filed, examine the filing for sufficiency as to form and place the time and date of the certification for circulation on such petition and documents. The city secretary shall provide a certified copy of such filing as certified for circulation to the person presenting same, the city manager and the city attorney, and file a copy of such certified documents and petition in the archives of the city.

The circulated petition must be returned and refiled with the city secretary within ninety (90) days after the date the petition is certified for circulation. Signatures obtained prior to the date of such certification shall be invalid and a petition returned after the expiration of ninety (90) days shall not be considered.

Section 6.07. Examination and Sufficiency. The city secretary shall examine each signature separately and disqualify any signature not having all of the information required, or not found to be that of a qualified voter of the city, determine whether the petition contains the requisite number of valid signatures, and complete a certification as to the sufficiency of the petition signatures within fourteen (14) days following the date the circulated petition is filed with the city secretary. The petitioner shall be notified by certified mail of the sufficiency of, or any insufficiencies in, the petition.

If the petition is certified as sufficient, the city secretary

shall present a certificate to the city manager who shall cause the same to be placed on the agenda for the first council meeting that is three or more days after the date of the certification.

If the petition is certified as insufficient due to the disqualification or invalidity of signatures the petitioner shall have fourteen (14) days following the date the number of signatures is found insufficient to file a supplementary petition with additional signatures sufficient in number to equal the required number of signatures. Upon supplementary petitions being timely filed, the city secretary shall have seven (7) days from the date such supplementary petition is filed to certify the petition as sufficient or insufficient.

Section 6.08. Referendum-Suspension of Ordinance. When an authorized referendum petition is certified by the city secretary as sufficient, the ordinance sought to be reconsidered shall be suspended; and such suspension shall continue until the council repeals the ordinance or the ordinance is upheld by election.

Section 6.09. Action on Petition. Within thirty (30) days after the date an initiative petition has been certified to the council as sufficient, the council shall request a formal legal opinion from the city attorney on the legality of the proposed ordinance. If the city attorney issues a written opinion that the proposed ordinance is clearly and facially invalid, the council shall not be required to call an election on such initiative. Otherwise, within forty-five (45) days after an initiative or referendum petition has been certified to the council as sufficient, the council shall:

- (a) Adopt the proposed initiative ordinance without any change in substance; or
- (b) Repeal the referred ordinance; or
- (c) Call an election on the proposed or referred ordinance.

The election on a proposed or referred ordinance shall be held on the next available uniform election date after the date of the council's action and for which notice may be timely given in compliance with state law and this charter. Such election may coincide with a regular city election should such election fall within the specified time. However, special elections on initiated or referred ordinances shall not be held more frequently than once each six (6) months and no ordinance substantially the same as a defeated initiative ordinance shall be adopted by the council or initiated within two (2) years after the date of the election. No referred ordinance repealed at an election may be readopted by the council within two (2) years from the date of the election at which such ordinance was repealed. Copies of the proposed or referred ordinances shall be made available at each polling place.

Section 6.10. Procedure and Results of Election. Not more than thirty (30) and not less than fifteen (15) days prior to the special election, the city secretary shall cause the proposed or referred ordinance to be published in its entirety at least once in a newspaper of general circulation in the city.

The ballots used when voting upon such proposed and referred ordinances shall set forth the nature of the ordinance sufficiently to identify the ordinance and shall also set forth a proposition as provided in this charter. If a majority of the qualified voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances adopted by the council. If conflicting ordinances are approved at the same election, the ordinance receiving the greatest number of affirmative votes shall prevail.

An ordinance adopted by initiative may not be repealed or amended at any time prior to the expiration of two (2) years from the date of its adoption, except at an election held for such purpose or such amendment being approved by the council by not less than six (6) affirmative votes.

If a majority of the qualified voters on a referred ordinance vote against the ordinance, it shall be considered repealed upon certification of the election results. If a majority of the qualified voters voting on a referred ordinance vote for the ordinance, it shall be upheld and, in such event, may not again be the subject of a petition within twelve months following the date of such election.

Section 6.11. Power of Recall. The people of the city reserve the power to recall any elected city officer and may exercise the power by filing with the city secretary a petition signed by qualified voters of the city equal in number to at least fifteen percent (15%) of the number of registered voters within the city, demanding the removal of the elected officer. The petition shall be signed and verified as required for an initiative petition and a separate petition must be filed for each officer being recalled. If the council orders a recall election for any member, such election shall be held in the manner provided in this Article.

Section 6.12. Recall Election. The provisions regulating examination, certification, and amendment of initiative petitions shall apply to recall petitions. If the city secretary certifies the petition as sufficient, the city council shall, at the first meeting for which timely notice may be given, order a special election to be held at the earliest time permitted by this charter and state law, to determine whether the officer shall be recalled. If a majority of votes cast at a recall election be for the recall of the officer, the office shall be vacant.

Section 6.13. Limitation on Recall. No recall petition shall be filed against an officer within six (6) months after taking office; no officer shall be subjected to more than three (3) recall

elections during the term of office; and no officer shall be recalled at an election held less than three (3) months prior to the expiration of the term of office being served by such officer.

Section 6.14. Failure of City Council to Call an Election. If the city secretary shall certify the petition as sufficient and the city council shall fail or refuse to order such recall election, or to discharge any other duty imposed upon the council with reference to the recall, then any citizen of the city may file suit in the district courts to compel the council to order the election.

ARTICLE VII. ADMINISTRATIVE SERVICES

Section 7.01. City Manager. The council shall appoint and may remove the city manager upon the affirmative vote of five members of the council, and shall supervise the city manager by a majority vote. The city manager shall be chosen and compensated solely on the basis of his or her experience, education, training, ability and performance. The city manager may be bonded at city expense as determined by the council, and may require a bond be provided at city expense by any other employee. No member of the council shall, during the term of office for which he or she is elected or for one (1) year thereafter, be appointed city manager. The city manager need not reside in the city when appointed but shall thereafter, within a reasonable period of time established by council, reside within Hays County or an adjoining county.

The city manager shall be the chief executive and administrative officer of the city and shall be responsible to the council for the proper administration of all the affairs and business of the city.

The city manager may sign authorized contracts, and shall be required to:

- (a) Enforce all state laws and city ordinances.
- (b) Appoint, suspend or remove any officer or employee of the city, except those officers appointed by the council and as otherwise specifically provided in this charter.
- (c) Attend all council meetings except when excused.
- (d) Prepare and submit the proposed annual budget, and be responsible for the administration of the adopted budget.
- (e) Keep the council advised of the financial condition and needs of the city and make such recommendations as seem desirable.
- (e) Prepare and submit to the council at the end of each fiscal year a complete report on the finances and administrative activities of the city for such preceding fiscal year.
- (f) Make such other reports as the council may require concerning the operations of the city.

- (g) Meet, discuss and confer with and advise the mayor and or any member of the city council regarding the business of the city.
- (h) Perform such other duties as may be prescribed in this charter or required by the council.

Section 7.02. Acting Manager. The city manager may designate an officer or employee to act as city manager during the manager's absence or illness. The council may designate a qualified person to perform the duties of the office of city manager during his or her absence or disability, or when the position is vacant, and may set the compensation paid to such person during such time.

Section 7.03. Administrative Departments. There shall be such administrative departments as are required to be maintained by this charter, and as are established by ordinance, all of which shall be under the control and direction of the city manager except as herein provided. The council shall approve personnel policies and guidelines, and shall, by ordinance, have the power to establish administrative offices or departments not provided for in this charter, and to discontinue, redesignate, or combine any of the departments and administrative offices established by ordinance. No change shall be made by the council in any personnel policy, guideline, department organization, or the city organization until the city manager's recommendations have been heard by the council.

Section 7.04. Department Directors. At the head of each department there shall be a director who shall be appointed by the city manager unless otherwise provided. Department heads may be appointed and removed by the city manager without council approval. Such directors shall supervise and control their respective departments, may serve as the head of any division within their department, and may, with the city manager's approval, appoint and remove all employees of their respective department. More than one department may be headed by the same person, the city manager may head one (1) or more such departments, and a provision in this charter for the appointment of a department head does not require the department to be created or maintained.

Section 7.05. Departmental Organization. The council may establish additional departments, and the work, duties, responsibilities and organization thereof, by ordinance; provided that no such ordinance shall be adopted until the city manager shall have been heard and have made his or her recommendations with respect thereto. Pending passage of ordinances establishing departmental divisions, the city manager may establish temporary divisions or sections in any department.

Section 7.06. Police Department. There shall be a police department to preserve order and protect the residents and property. The chief of police shall be responsible for the administration of the police department and shall evaluate and supervise the department and all its employees. All such evaluations and actions shall be subject to review and modification by the city manager.

Section 7.07. Fire Department. The council may establish a city fire department consisting of a fire chief and/or other salaried personnel. The fire chief shall be responsible for the management and administration of the fire department, including all contracts, functions, equipment and property. The fire chief shall evaluate and supervise the department and all its employees. All such evaluations and actions shall be subject to review and modification by the city manager.

A volunteer fire department is authorized. The authority of and relationship between the volunteer fire department and the city shall, subject to the above paragraph, be established by contract or ordinance. The chief and/or president of the volunteer fire department will participate with the city's fire chief and/or the city manager in the annual evaluation of the relationship and any contract between the volunteer fire department and the city. The working relationship between the volunteer fire department and the city shall be coordinated by the city's fire chief and/or the city manager with approval of the council.

Section 7.08. City Secretary. The office and department of city secretary shall be established and maintained. The city secretary may appoint such assistant city secretaries as are authorized. The duties of the city secretary shall be as set forth in this charter and as established by ordinance. Such duties shall include, but not be limited to, the giving notice of all council meetings; keeping the minutes of the proceedings of council meetings and the archives of the city; authenticating by his or her signature, and recording in full in books kept and indexed for the purpose, all ordinances and resolutions; performing such other duties as shall be assigned to the position by state law; maintaining appropriate files of all contracts and other legal documents resulting from and/or having a bearing on actions of the council; and assisting the city manager in gathering of appropriate records, files and resources which pertain to city business or specific council meeting agenda items.

Section 7.09. Public Works Department. There shall be a public works department to administer, supervise and coordinate the construction and maintenance of the streets and thoroughfares, the drainage system, and all public property and equipment not the responsibility of another department. The department shall have and be responsible for other duties, projects and works as provided by ordinance or assigned by the city manager. The director of public works shall administer and manage the department.

Section 7.10. City Attorney. There shall be a city attorney who shall be appointed and may be removed by the council. The city attorney shall be a competent and duly licensed attorney and shall have not less than five (5) years experience practicing municipal law in Texas. He or she shall receive for his or her services such compensation as may be fixed by the council and shall advise the city on all legal matters and represent the city in all litigation and other legal matters. The city attorney may appoint assistant

city attorneys, and the council may retain different or additional attorneys for specific matters when it deems same to be necessary.

Section 7.11. Municipal Court. There shall be established and maintained a court, designated as the "Municipal Court" of the City of Kyle, for the trial of misdemeanor offenses, with all such powers and duties as are now, or may hereafter be, prescribed by laws of the State of Texas relative to municipal courts. The Municipal Court shall be organized and supervised as follows:

- (a) The municipal judge shall be appointed and may be removed by the council, and shall be responsible for the supervision and management of the court docket, cases and procedures. The municipal judge shall be entitled to compensation as fixed by the city council.
- (b) The council shall have the power to appoint and remove additional associate judges. The municipal judge and associate judges need not be residents of the city but shall possess the requirements for office as are prescribed from time to time by the city council.
- (c) There shall be a court clerk who shall be appointed and may be removed by the city manager.
- (d) The clerk of the municipal court and deputies shall have the power to administer oaths and affidavits for court business, make certificates, affix the seal of said court thereto, and perform any and all acts usual and necessary to be performed by the clerks of courts and conducting the business thereof.
- (e) All costs, fees, special expenses and fines imposed by the municipal court shall be paid into the city treasury for the use and benefit of the city, except as required by state law.

ARTICLE VIII. FINANCE

Section 8.01. Finance Department. The department of finance shall be established and maintained and the head of such department shall be the director of finance. The director of finance shall have knowledge of municipal accounting and experience in budgeting and financial control. Such director shall provide a bond with such surety and in such amount as the city manager may require. The premium on such bond shall be paid by the city.

Section 8.02. Powers and Duties. The director of finance shall administer all financial affairs of the city under the direction, control and supervision of the city manager. He or she shall have authority and be required to:

- (a) Maintain a general accounting system for the city and exercise financial control over all offices, departments and agencies thereof;

- (b) Certify the availability of funds for all proposed expenditures, and unless the director of finance shall certify that an unencumbered balance exists in the appropriations and funds available, no appropriation shall be encumbered and no expenditure shall be made;
- (c) Submit to the council through the city manager, not less than quarterly, statements showing the financial condition of the city; the form and content of the statements and schedule for presentation shall be approved by the city council;
- (d) Prepare, as of the end of the fiscal year, a complete financial statement and report.

Section 8.03. Fiscal Year. The fiscal year of the city shall begin on the first day of each October and end on the last day of September of the succeeding year. All funds collected by the City during any fiscal year including both current and delinquent revenues, shall be accounted for in such fiscal year; and except for funds derived to pay interest and create a sinking fund on the bonded indebtedness of the city, may be applied to the payment of expenses incurred during such fiscal year.

Section 8.04. Annual Budget. The budget shall provide a complete work and financial plan for the city, including all city funds and activities. A budget message explaining the budget both in fiscal terms and in terms of the work programs shall be submitted with the budget. It shall outline the proposed financial policies of the city for the ensuing fiscal year; describe the important features of the budget; indicate any major changes from the current year in financial policies, expenditures, and revenues, with reasons for such changes; summarize the city's debt position and include such other material as the city manager deems desirable or the council requires. The budget shall begin with a clear general summary of its contents; and shall show in detail all estimated revenues, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year.

The proposed budget expenditures shall not exceed the total of estimated funds available from all sources. The budget shall be so arranged as to show comparative figures for estimated revenues and expenditures of the current fiscal year and the actual revenues and expenditures of the preceding two (2) fiscal years, compared to the estimate for the budgeted year. It shall include in separate sections:

- (a) An itemized estimate of the expense of conducting each department, division and office.
- (b) An estimate of the revenues of the city from taxes by category for the fiscal year.
- (c) Tax levies, rates, and collections for the preceding two years.

- (d) An itemization of all anticipated revenue from utilities and all sources other than the taxes.
- (e) The amount required for interest on the City's debts, for sinking fund and for maturing bonds and other obligations.
- (f) The amounts of the city debts and other obligations, with a schedule of payments and maturities.
- (g) The total amount established for addition to reserve funds.
- (h) A capital program, which may be revised and extended each year to indicate capital expenditures pending or in process of construction or acquisition.
- (i) A provision regarding health coverage for retired employees. This provision may give consideration to the years of service of each retired employee but shall not obligate the city to any specific or continuing level of funding for such benefits.
- (j) Such other information as may be required by the council.

Section 8.05. Budget Process and Adoption. The city manager shall be responsible for the timely preparation and presentation of the budget, and shall present his or her recommended budget to the city council no later than sixty (60) days prior to October 1st of each year. The proposed budget shall become a public document and record when presented to the council. From and after its receipt of the budget, the city council shall:

- (a) At the first council meeting for which timely notice may be given, cause to be posted in city hall and published in a newspaper of general circulation in the city a general summary of the proposed budget and a notice stating the time and places where copies of the budget are available for public inspection; the time and place, not less than fifteen (15) days after such publication, of a public hearing on the budget; and such other public hearings as are necessary.
- (b) After the first public hearing the council may adopt the budget with or without amendment. The council may amend the proposed budget to add, increase, decrease or delete any programs or amounts, except expenditures required by law or for debt service; provided that no amendment shall increase the authorized expenditures to an amount greater than the total of estimated funds available from all sources.
- (c) The budget shall be finally adopted by ordinance not later than the third Thursday of September; provided that if the council takes no final action on or prior to such day, the budget as submitted by the city manager shall be deemed to have been finally adopted by the council.

Section 8.06. Administration of Budget. No payment shall be made or obligation incurred except in accordance with this charter and

appropriation duly made, and unless the director of finance first certifies that a sufficient unencumbered balance and sufficient funds are or will be available to cover the claim or meet the obligation when it becomes due and payable. If funds are not currently available to make an appropriate payment, but will become available within the fiscal year, the finance officer may request the council give authority to borrow money to make such payment provided that such money will be repaid by the end of the fiscal year or as provided by state law. Any authorization of payment or incurring of an obligation in violation of the provisions of this charter shall be void and any payment so made illegal; provided this shall not be construed to prevent the council by ordinance from making or authorizing payments or the making of contracts, for capital expenditures to be financed wholly or partly by the issuance of bonds, time warrants, certificates of indebtedness, certificates of obligation, lease-purchase, or other similar evidence of indebtedness or obligation, or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year.

Section 8.07. Amendment and Supplemental Budgets. To protect the public health, safety, welfare and resources of the city, budget amendments to fund and meet conditions not anticipated in the original budget may be authorized, upon the affirmative vote of four members of the council. Supplements and amendments shall be approved by ordinance and shall be filed with the original budget.

Section 8.08. Borrowing to Meet Funding Requirements. In the absence of available funds to meet emergency conditions and requirements, the council may authorize the borrowing of funds. In any fiscal year in anticipation of the collection of the budgeted revenues or ad valorem property tax for such year, whether levied or to be levied in such year, the council may authorize the borrowing of money by the issuance of notes, warrants or tax anticipation notes. Notes and warrants issued under this section shall be limited to the funds required for the emergency or short-fall and mature and be payable not later than the end of the fiscal year in which issued, or as otherwise provided by statute.

Section 8.09. Depository. The council shall from time to time select a depository or depositories for city funds on the basis of bids received from such institutions; provided that the council may by resolution invest reserve funds in any state or federally chartered bank or savings institution. All monies received by any person, department or agency of the city for or in connection with affairs of the city shall be promptly deposited in the city depository or depositories. All checks, vouchers, or warrants for the withdrawal of money from the city depositories shall be signed by the city manager and the director of finance. The council may authorize the use of machine imprinted facsimile signatures of such persons on such checks, vouchers and warrants.

Section 8.10. Purchase Procedure. All purchases made and contracts executed by the city shall be pursuant to a requisition from the head of the office, department or agency whose

appropriation will be charged; and no contract or order shall be binding upon the city unless the director of finance certifies there is to the credit of such office, department or agency, a sufficient unencumbered appropriation to pay for the supplies, materials, equipment, or contractual services for which the contract or order is to be issued. All contracts and purchases of every nature and kind shall be made in accordance with all applicable state law requirements for competitive bidding.

Section 8.11. Bonds and Financial Obligations. The council may by ordinance authorize the issuance of any tax or revenue bonds, refunding bonds, certificates of obligation, warrants, notes, certificates of participation, tax anticipation notes or other evidence of indebtedness or obligation, for any permanent public improvement or any emergency, or any other public purpose not prohibited by law, subject only to the following limitations:

- (a) no general obligation bonds, other than refunding bonds, shall be issued except as approved by a majority vote at an election held for such purpose;
- (b) no indebtedness or obligation shall be issued except in compliance with the requirements of state law;
- (c) no form of indebtedness other than general obligation bonds approved by public vote may be issued without public notice and a public hearing being held in compliance with state law; the published notice shall clearly summarize the relevant statutory provisions providing for a petition and election, if any; and
- (d) the authorization for bonds authorized but not issued shall expire ten years after the date of authorization.

Section 8.12. Reserve Fund. A reserve fund shall be established. Except when expended only for an emergency, the reserve fund shall over time be funded in an amount equal to at least twenty-five percent of the annual operating budget. If expended the reserve fund shall be restored as soon thereafter as practicable.

Section 8.13. Independent Audit. At the close of each fiscal year, an independent audit shall be made of all accounts of the city by a certified public accountant experienced in auditing cities. The audit shall be completed on or before March 30th of each year and shall include an audit of all non-profit organizations receiving fifty percent (50%) or more of their income from the city. The audit shall be subject to the following:

- (a) The city shall pay a percentage of the audit costs for all non-profit organizations audited, equal to the percentage of their respective total funding provided by the City;
- (b) The independent auditor shall not otherwise maintain or keep any of the accounts of the city; act as financial advisor to the city; or have any financial interest whatsoever, direct or

indirect, in any other financial affairs of the city, any member of the council, the city manager or any department head; provided that the auditor may be a resident or routinely utilize the utilities and services offered by the city, or be the owner of less than one percent (1%) of the total outstanding stock in a company contracting with the city;

- (c) The council shall not select the same auditor for more than five (5) consecutive years and the auditor selected shall not be, or have been within the immediate preceding three (3) years, a business associate of the certified public accountant or firm that performed the audit prior to such selection;
- (d) Upon acceptance of the audit, a summary thereof shall be published immediately in a newspaper of general circulation in the city and copies of the audit shall be placed on file in the city secretary's office as a public record. The summary shall include a balance sheet; an itemization of all income and expenditures by department; and an itemization of all investments and amounts of such investments pledged or encumbered for specific purposes;
- (e) The auditor shall be available to the council throughout the budget year for special projects, audits, reviews and reports.

**ARTICLE IX.
REVENUE AND TAXATION**

Section 9.01. Taxation. The city council may levy, assess and collect taxes of any type or character not prohibited by state law. The maximum ad valorem tax rate shall be as provided in the Texas Constitution and such tax rate shall be levied and assessed annually to provide for both operations and debt service.

Section 9.02. Procedures. The procedures, limitations and requirements for the levy, assessment and collection of any tax or lien therefor shall be as established by state law; provided that, if not established by state law, such procedures, limitations and requirements shall be established by ordinance.

Section 9.03. Tax Assessor-Collector. The finance director shall have the responsibility and duty for assessing and collecting taxes and the city manager may appoint an officer in such department to perform such duties; provided that the city may contract for such services at the discretion of the council.

Section 9.04. Property Taxes. All ad valorem property taxes shall be due and payable on or before the first day of February each year at the office of the director of finance, or on such other date and place as required by state law or authorized by the city council. Such taxes may be paid at any time after the tax rolls for the tax year have been approved and shall become delinquent and be subject to penalties and interest if not paid on or before the first day of February following the levy. The failure to levy or assess taxes does not relieve any owner or property from the tax liability on

any taxable property.

Section 9.05. Tax Liens and Claims. All property within the city on the first day of January each year shall stand charged with a special lien in favor of the city, and the owner of such property on that date shall be personally liable therefor, until the tax and all related penalties and interest on that property are paid. All such taxes, penalties and interest may, if not voluntarily paid, be collected by the city by:

- (a) Suit to recover personal judgment therefor without foreclosure, or by suit to foreclose its lien or liens, or to recover both by personal judgment and foreclosure; and if the property description on the assessment rolls is insufficient, the city may plead a good description of the property to prove the same, and have judgment foreclosing the tax lien or personal judgment or both, against the owners and property; or
- (b) Withholding the payment of any debt or obligation owed to such owner or person by the city; by reducing the amount of any debt owed to such owner or person by the city by an amount equal to the unpaid taxes, penalties and interest; or otherwise by counter-claim and offset in any proceeding;
- (c) No assignment or transfer of any such debt, claim, demand, account or property, after taxes are due, shall affect the right of the city to offset the said taxes, penalties and interest against the same; and
- (d) Any other method, means or procedure authorized by state law.

**ARTICLE X.
PLANNING AND DEVELOPMENT.**

Section 10.01. Purpose and Intent. It is the purpose and intent of this article to provide for and require the development of the city be undertaken and accomplished pursuant to a comprehensive plan and that the council shall establish comprehensive planning as a continuous and ongoing governmental function to promote, guide, strengthen and assist the management of future development within the city and its extraterritorial jurisdiction, to assure the most appropriate and beneficial use of land, water, natural and community resources, consistent with the public interest. Through the process of comprehensive planning and the preparation, adoption and implementation of a comprehensive plan, the city shall preserve, promote, protect and improve the public health, safety, comfort, order, appearance, convenience, economic and general welfare; prevent the overcrowding of land and avoid undue concentration or diffusion of population or land uses; facilitate the adequate and efficient provision of transportation, water, wastewater, schools, parks, recreational, housing and other facilities and services; conserve, develop, utilize and protect natural resources; and provide for and encourage economic growth.

Section 10.02. Comprehensive Plan. The council shall adopt a

comprehensive plan within two years after the effective date of this charter and thereafter all public and private development shall conform with such adopted comprehensive plan, or the applicable elements or portions thereof. The comprehensive plan may be amended at anytime and shall be reviewed and considered for amendment or revision every five years.

The comprehensive plan adopted by ordinance shall constitute the master and general plan for the development of the city. The comprehensive plan shall contain the council's policies for growth, development and beautification of the land within the corporate limits and the extraterritorial jurisdiction of the city, or for geographic portions thereof including neighborhood, community or area wide plans. The comprehensive plan shall include the following elements: (1) a future land use element; (2) a traffic circulation and/or mass transit element; (3) a wastewater, solid waste, drainage and potable water element; (4) a conservation and environmental resources element with strong emphasis on water conservation; (5) a recreation and open space element; (6) a housing element; (7) a public services and facilities element, which shall include but not be limited to a capital improvement program; (8) a public buildings and related facilities element; (9) an economic element for commercial and industrial development and redevelopment; (10) a health and human service element; and such other elements as are necessary or desirable to establish and implement policies for growth, development and beautification within the city, its extraterritorial jurisdiction, or for geographic portions thereof, including neighborhood, community, or area wide plans. The council may provide for financing of all elements contained in the comprehensive plan.

The several elements of the comprehensive plan shall be coordinated and be internally consistent. Each element shall include policy recommendations for its implementation and shall be implemented, in part, by the adoption and enforcement of appropriate ordinances and regulations governing land development, and such ordinances and regulations governing the development and use of land may be as comprehensive and inclusive as the council may, in its discretion, from time to time determine necessary, desirable and not in conflict with state or federal law.

Section 10.03. Comprehensive Plan Adoption and Amendment. The comprehensive plan, or elements or portions thereof, shall be initially prepared and drafted by personnel and/or consultants authorized by the council, under the supervision of the city manager who shall coordinate development of the plan with the planning commission and the council. A draft of the comprehensive plan shall be submitted to the planning commission which shall hold a minimum of two public hearings on such plan and make recommendations for the approval of the plan, with or without amendments. The planning commission shall then forward the proposed comprehensive plan or element or portion thereof to the city manager, who shall thereupon submit such plan, or element or portion thereof, to the council with the planning commission's and the city manager's recommendations thereon. If the proposed

comprehensive plan has not been adopted within two years from the effective date of this charter, the proposed plan as it then exists will automatically become the City's comprehensive plan.

The council may adopt, or adopt with changes or amendments, the proposed comprehensive plan or any element or portion thereof, after one or more public hearings. The council shall act on such plan, element or portion thereof, within ninety (90) days following its submission. If such plan or element or portion thereof is not adopted by the council, the council shall, with policy direction, return such plan or element thereof to the planning commission, which may modify such plan or element or portion thereof, and again forward it to the city manager for submission in like manner to the council. Amendments to the comprehensive plan may be initiated by the council, the planning commission, or the city manager; provided that all amendments shall be reviewed, considered and recommended for adoption in the same manner as for the original adoption of the comprehensive plan.

Upon the adoption of a comprehensive plan or element or portion thereof by the council, all land development regulations including zoning and map, subdivision regulations, roadway plan, all public improvements, public facilities, public utilities projects and all city regulatory actions relating to land use, subdivision and development approval shall be consistent with the comprehensive plan, element or portion thereof as adopted, except to the extent, if any, as provided by law. For purposes of clarity, consistency and facilitation of comprehensive planning and land development process, the various types of local regulations or laws concerning the alteration, development and use of land may be combined in their totality in a single ordinance or code.

Section 10.04. Planning Commission. There shall be established and maintained a planning commission which shall consist of citizens of the city who must be qualified voters and have resided within the city for six months next preceding their appointment. The number of members of the planning commission shall be established by ordinance but the number shall not be less than five (5) members, and a minimum of two-thirds of the members shall be citizens not directly or indirectly connected with real estate or land development. The members of said commission shall be appointed by the council for a term of two (2) years, with a simple majority of the members being appointed in every odd numbered year and the remaining members being appointed in every even numbered year. The planning commission shall elect a chairperson from among its membership and shall meet not less than once each month. Vacancies in an unexpired term shall be filled by the council for the remainder of the term. No member of the commission shall serve more than five consecutive years.

Section 10.05. Planning Commission Powers and Duties. The planning commission shall serve as the planning and the zoning commission of the city, and:

- (a) Review and make recommendations to the council regarding the

adoption and implementation of a comprehensive plan or elements or portions thereof prepared under authorization of the city council and under the direction of the city manager and responsible staff;

- (b) After a comprehensive plan or element or portion thereof has been adopted in conformity with this article:
 - (i) Review and make recommendation to the council on all amendments to such plan or elements or portions thereof;
 - (ii) Review and make recommendations to the council on all proposals to adopt or amend land development regulations for the purpose of establishing the relationship of such proposal to, and its consistency with, the adopted comprehensive plan or elements or portions thereof. For purposes of this article "land development regulations" includes zoning, subdivision, building and construction, environmental including water conservation, and other police power regulations controlling, regulating, or affecting the use or development of land;
- (c) Pursuant to ordinances adopted by the council, exercise control over platting and subdividing land within the corporate limits and the extraterritorial jurisdiction of the city to insure the consistency of any such plats or subdivision with the ordinances and comprehensive plan or element or portion thereof;
- (d) Pursuant to ordinances adopted by the council make recommendations to the council regarding the zoning of land and land uses within the corporate limits of the city to insure the consistency of any such land use with the adopted comprehensive plan or element or portion thereof;
- (e) May submit annually to the city manager, not less than one hundred fifty days prior to the beginning of the budget year, a list of recommended capital improvements, which in the opinion of the commission are necessary or desirable to implement the adopted comprehensive plan or element or portion thereof during the forthcoming five-year period;
- (f) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend annually to the council any changes in or amendments to the comprehensive plan as may be desired or required;
- (g) Prepare periodic evaluation and appraisal reports on the comprehensive plan, which shall be sent to the council at least once every five (5) years after the adoption of the comprehensive plan or element or portion thereof;
- (h) Obtain information relative to its duties, from the city manager;
- (i) Act as an advisory body to the council and perform such

additional duties and exercise such additional powers as may be prescribed by ordinance of the council not inconsistent with the provisions and intent of this charter.

Section 10.06. Duties. The council shall prescribe the duties of the planning commission by ordinance. The duties so established shall not be inconsistent with this charter and such duties shall include, but not be limited to, those prescribed herein.

Section 10.07. Planning and Development Department. The city council may create by ordinance such department(s) as necessary to provide technical and administrative support in the areas of planning, growth management and land development, or the city manager may assign such duties to any other department or officer of the city. The director of such department shall be appointed and removed by the city manager.

Section 10.08. Board of Adjustment. The council shall by ordinance establish a board of adjustment which shall, to the extent provided by ordinance or state law, have the power to hear and determine appeals from the refusal of building permits, appeals resulting from administrative decisions and to permit an authorized exception to or variation from the zoning regulations. Members of such board shall hold no other city office and no former member of the council shall serve as a member of the board of adjustment until one (1) year after completion of his or her council term.

Section 10.09. Capital Improvements Program. The council shall adopt a capital improvements plan and thereafter the construction and capital projects of the city shall conform with such adopted plan, as amended. The capital improvements plan may be amended at anytime and shall be reviewed and considered for amendment by the council not less often than every two years.

The capital improvements plan, or elements or portions thereof, shall be initially prepared and drafted by personnel and/or consultants under the supervision of the city manager. A draft of the capital improvements plan shall be submitted to the planning commission which shall hold one or more public hearings on such plan and make recommendations for the approval of the plan, with or without amendments. The planning commission shall then forward the proposed capital improvements plan or elements or portions thereof to the city manager, who shall thereupon submit such plan, or element or portion thereof, to the council with the recommendations of the city manager and planning commission. Not less frequently than every two years thereafter, the city manager shall cause the review and preparation of any proposed amendments to the capital improvements plan and submit such proposed amendments to the planning commission for its review, approval and recommendations as provided above for the initial plan.

Section 10.10. Subdivisions and Developments. The council shall adopt and maintain in full force and effect a comprehensive ordinance or ordinances regulating the development, subdivision and improvement of land within the city and its extraterritorial

jurisdiction. To the extent not in conflict with state law, the council shall have the authority to require for all such land that:

- (a) The owner of every tract of land who may divide the same into two (2) or more parts for the purposes of laying out any subdivision, or any addition to the City, shall comply with the provisions of the comprehensive ordinances governing the subdivision and development of land;
- (b) The subdivision and development of land shall comply with all applicable elements of the comprehensive plan of the city; and
- (c) A comprehensive site plan be required and approved for the development of or construction on any lot or parcel of land for which the owner or developer proposes a use higher than single family or two family residential.

**ARTICLE XI.
PUBLIC UTILITIES, FRANCHISES AND CONTRACTS**

Section 11.01. Public Services and Utilities. The city shall have the full power and authority to:

- (a) Buy, own, construct, lease, maintain and operate within and without the limits of the city a system or systems of gas, electricity, telephone, sewage, sanitation, water, parks, airports, swimming pools, race tracks, transportation, communications, golf course, cemeteries, cable television, or any other public service or utility.
- (b) Manufacture, produce or provide its own electricity, gas, water or any other product, good or commodity that may be required by the public for municipal purposes.
- (c) Purchase gas, electricity, or any other commodity or article required by the public for municipal purposes and to contract with any person, entity or public utility for such purchase.
- (d) Distribute and/or sell any utility, commodity or service.
- (e) Mortgage and encumber such public utility or service systems.
- (f) Regulate and control the distribution of utilities and services within the city and establish standards of service and quality of products.
- (g) Establish and enforce the rates to be paid by consumers of any utility or users of any service provided within the city, and, if provided by the city, outside of the city.

These powers shall be vested in the council and the council may exercise the power of eminent domain to acquire all or part of the property of any public utility or public service provider within the city whenever found by the council to be in the public interest for carrying out the objectives of providing utilities or

services within the city. Any such eminent domain or condemnation proceeding shall be according to the procedures and the methods of establishing the value of the property and facilities as provided by state law, and if such procedures or methods are not so provided by state law as reasonably provided by ordinance.

Section 11.02. Franchises. The council shall have the power and authority to grant franchises for the use and occupancy of streets, avenues, alleys and any and all public property belonging to or under the control of the city. Except as specifically authorized and provided otherwise by state law, no individual, organization, entity, political subdivision, corporation, public utility, or any provider of public service shall provide any service within the city requiring the use or occupancy of any street, public right-of-way or property without first being granted a franchise or permit to use such city facilities. The franchise ordinance or permit shall fully describe the terms of the agreement and, regardless of the title given, shall be subject to the terms of this Article. The terms of such agreements shall be explicit so as to protect the interests of the citizens and shall include but not be limited to the terms prescribed in this charter. No franchise ordinance or permit shall be passed except on two readings held after a public hearing for which ten (10) days notice is given.

Section 11.03. Franchise Limitations. No exclusive franchise shall ever be granted and franchises shall be transferrable only upon authorization of the council expressed by ordinance. A franchise may not be transferred except to a person, firm or entity taking all or substantially all of the franchise's business in the city. The expiration date of all franchises shall be specified and the term thereof may be extended or renewed only by ordinance.

Section 11.04. Franchise for Public Utilities. The council shall have the power to grant, amend, renew, or extend by ordinance, or to deny, the franchise of all public utilities of every character serving the city, including, but not limited to, persons or entities providing electricity, gas, water, sewage, or telephone service, or any similar commodity or utility to the public. The effective period of public utility franchises may be set by the council but shall not exceed twenty (20) years unless a longer term is specifically approved by a majority of the qualified voters at an election held for that purpose.

Section 11.05. Franchise for Public Services. The council shall have the power to grant, amend, renew or extend by ordinance, or deny, the franchises of all providers of public services to the city. Public services include, but are not limited to, ambulance services, cable television services, transportation services, any communication services, sanitation services, and any other service or business using the public streets or property within the city to provide service. The effective period of public service franchises may be set by the council but shall not exceed ten (10) years.

Section 11.06. Regulation of Franchises. All grants of franchises as authorized in this charter shall be subject to the right of the

council to:

- (a) Determine, fix and regulate the charges, rates or compensation to be charged by the person or entity granted a franchise.
- (b) Repeal the franchise by ordinance at any time upon the failure or refusal of the franchisee to comply with the terms of the franchise, this charter, or any applicable city ordinance or state law, or any valid rule of any regulatory body.
- (c) Establish standards and quality of products or service.
- (d) Require such expansion, extension and improvement of plants and facilities as are necessary to provide adequate service to all the public and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency.
- (e) Prescribe the method of accounting and reporting to the city so that the franchisee will accurately reflect the expenses, receipts, profits and property values used in rendering its service to the public. It shall be deemed sufficient compliance with this requirement if the franchisee keeps its accounts in accordance with the uniform system established by an applicable federal or state agency for such service.
- (f) Examine and audit at any time the accounts and other records of any franchisee and to require annual and other reports prescribed in the franchise ordinance.
- (g) Require such compensation, regulatory, rental and franchise fees as may not be prohibited by law.
- (h) Impose such regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare and accommodation of the public.
- (i) Require the franchisee to restore at its expense all public or private property to a condition equal to or better than that before being damaged or destroyed by the franchisee.

Section 11.07. Penalty Authorized. The council shall have the power and authority to review any franchise at anytime and to assess a penalty against the franchisee for its failure to comply with the franchise, this charter, the ordinances of the city or the laws of the State. If in the opinion of council the requirements of the franchise, charter, ordinances or state law are not being complied with, the council shall so notify the franchisee in writing stating the provisions the franchisee has failed to comply with and setting a time for a hearing and deadline for correction of the noncompliance. The council may assess and enforce a reasonable penalty based upon the facts, issues and circumstances determined at the hearing if noncompliance is found. If the franchisee does not correct the noncompliance within a reasonable time established by the council for correction, the council may repeal or cancel the franchise.

Section 11.08. Franchise Value Not to be Allowed. In determining the just compensation to be paid by the city for any public utility or public service property or facilities which the city may acquire by condemnation or otherwise, no value shall be assigned to any franchise granted by the city.

Section 11.09. Extensions. Unless provided otherwise in the franchise, or limited by a certificate of convenience and necessity held by the franchisee, franchisees shall be required to extend services to all parts and portions of the city. All extensions of any lines, conduit, pipe or systems shall become a part of the aggregate property of the public utility or service provider and shall be subject to all the obligations and rights prescribed in this charter and the franchise. The right to use and maintain any such extension shall terminate with the franchise.

Section 11.10. Other Conditions. All franchises heretofore granted are recognized as contracts between the city and the franchisee and the contractual rights as contained therein shall not be impaired by the provisions of this charter except:

- (a) The power of the city to exercise the right of eminent domain to acquire the property and assets of the utility is reserved.
- (b) The general power of the city to regulate the rates and services of a utility including the right to require adequate and reasonable extension of plant and service and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency shall be enforced.
- (c) The council shall review each franchise at its first renewal date subsequent to the adoption of this charter and shall cause the franchise, if renewed, to meet the provisions of this charter; and no rights shall be vested in the franchisee with regard to any renewal based upon the terms, conditions or limitations expressed in any such existing franchise.

Section 11.11. Election Required. No city owned electric utility, gas, water, sewer, cable television, or telecommunications system, park, swimming pool or other utility shall ever be sold or leased without authorization by a majority vote of the qualified voters of the city voting at an election held for such purpose.

Section 11.12. Contracts Concerning City Property. The council shall have the power to grant, amend, renew or extend contracts concerning the operation and management of any city owned facility, such as a civic center, parks, golf course, swimming pools, water and wastewater treatment plants and any other such property; provided that no such contract shall be let except upon opportunity for competitive bids and proposals, nor exceed a term of ten (10) years unless approved at an election held for such purpose.

**ARTICLE XII.
ETHICS AND CONFLICTS**

Section 12.01. Ethics Commission. The city council shall adopt and from time to time modify and amend an ordinance providing an ethics policy and code of conduct applicable to the officers, employees, board and commission members of the city. An ethics commission composed of seven citizens of the city shall be established to advise the council on the content and requirements of the ethics policies and ordinance, and to hear and decide complaints filed pursuant to such policies and ordinance. Each member of the council shall appoint one member of the commission, subject to the approval by vote of the council. The members of such commission shall be appointed, supervised and removed by the city council and shall meet upon a complaint or grievance being filed and at the request of the council or the city manager. The commission shall have authority and power to investigate complaints, gather and hear evidence, issue and enforce subpoenas to compel the attendance of witnesses and any evidence or documents, to decide ethics complaints based on the information and facts submitted, to issue written opinions, verbal or written reprimands and to admonish, and, in appropriate circumstances, to recommend to the city council and/or the city manager as appropriate more severe disciplinary action, including recall, termination, civil litigation or criminal charges. The ethics commission shall be advised by independent legal counsel nominated by the city attorney and appointed by the council.

Section 12.02. Acceptance of Gifts. No officer or employee of the city shall accept directly or indirectly, any gift, favor or privilege exceeding a nominal value, or employment, from any utility, corporation, person or entity having or seeking a franchise or contract with, or doing business with, the city. If any utility, corporation, person or entity contracting with the city shall make any gift, or give any favor, privilege or employment to an officer or employee in violation of this section such action shall render the contract voidable.

Section 12.03. Interest in City Contract. No officer or employee of the city shall have a financial interest direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the city, or be financially interested directly or indirectly in the sale to the city of any land, materials, supplies or services except on behalf of the city as an officer or employee; provided, however, that the provision of this section shall only be applicable when the stock owned by the officer or employee exceeds one percent of the total capital stock of the corporation. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the city shall render the contract voidable.

Section 12.04. Conflict of Interest. No officer or employee of the city shall participate in the deliberation or decision on any issue, subject or matter before the council or any board or commission, if the officer or employee has a personal financial or property interest, direct or indirect, in the issue, subject or matter, that is different from that of the public at large. An

interest arising from job duties, compensation or benefits payable by the city shall not constitute a personal financial interest.

Section 12.05. Political Contributions. No elected or appointed city official or employee shall by any means whatsoever solicit or assist in soliciting any assessment, subscription, or contribution for any political party, candidate or any political purpose whatsoever from any non-elected city official or employee holding any compensated city position or employment.

**ARTICLE XIII.
GENERAL PROVISIONS**

Section 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.

Section 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 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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 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.

Section 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.

Section 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 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.

Janet Arsenault

Jean Bales

Bob Barton, Vice Chair

Ken Burks

Ray Herrera

Esther Hicks

Debbie Jimenez

J. Pete Krug, Chair

Crescencio Martinez

Bill Neukam

Day Ryan

D. J. "Red" Simon

Lon Taylor

Glen Whitaker