

CITY OF LEON VALLEY



Home Rule Charter Commission Meeting
Leon Valley City Council Chambers
6400 El Verde Road, Leon Valley, Texas 78238
Wednesday, November 19, 2014

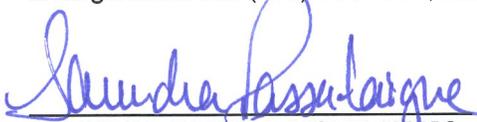
AGENDA

1. **6:00 p.m.** Call to order and announcement of a quorum.
 2. Adopting the minutes of the November 5, 2014 Home Rule Charter Commission Meeting.
 3. Discuss, consider and approve Article III Mayor and City Council.
 4. Discuss, consider and approve Article IV Elections.
 5. Discuss, consider and possible action on Initiative, Referendum and Recall.
 6. Adjournment.
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Attendance by Other Elected or Appointed Officials:

It is anticipated that members of City Council and other City boards, commissions and/or committees may attend the meeting in numbers that may constitute a quorum. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of any other boards, commissions and/or committees of the City, whose members may be in attendance in numbers constituting a quorum. These members of City Council and other City boards, commissions, and/or committees may not deliberate or take action on items listed on the agenda. [Attorney General Opinion – No. GA-0957 (2012)].

I hereby certify that the above NOTICE OF PUBLIC MEETING AND AGENDA OF THE LEON HOME RULE CHARTER COMMISSION were posted on the Bulletin Board at City Hall, 6400 El Verde Road, Leon Valley, Texas, on November 13, 2014 at 2:30 p.m. and remained posted until after the meetings hereby posted concluded. This notice was likewise posted on the City website at www.leonvalleytexas.gov. This building is wheelchair accessible. Any request for sign interpretive or other services must be made 48 hours ahead of the meeting. To make arrangements call (210) 684-1391, Ext. 216.


SAUNDRA PASSAILAIGUE, TRMC
City Secretary



Item 2

CITY OF LEON VALLEY



Home Rule Charter Commission Meeting Leon Valley City Council Chambers 6400 El Verde Road, Leon Valley, Texas 78238 Wednesday, November 5, 2014

MINUTES

The Home Rule Charter Commission of the City of Leon Valley, Texas met on the 5th day of November 2014 at 6:00 p.m. at the Leon Valley City Council Chambers located at 6400 El Verde Road, Leon Valley, Texas for the purpose of the following business:

Call to order and announcement of a quorum.

Chairman Arthur "Art" Reyna called the meeting to order at 6:09 p.m. and determined that a quorum was present.

The minutes reflect that the following Members of the Home Rule Charter Commission were present: Chairman Arthur "Art" Reyna, Vice Chairman Jack Dean, Rudy Garcia, Kathy Hill, David Jordan, Mike McCarley, Liz Maloy, Victor Rodriguez, and Al Uvietta. Not in attendance and excused were Darby Riley and Manuel Rubio.

City Attorney Charles Zech, City Manager Manuel Longoria, Jr., and Human Resources Director & Commission Staff Liaison Crystal Caldera, Economic Development Director Claudia Mora were also present.

Adopting the minutes of the October 8, 2014 Home Rule Charter Commission Meeting.

Chairman Reyna asked the Commission if they had any changes to the minutes. Commission Member Liz Maloy made a motion to adopt the minutes as written for October 8, 2014. Vice Chairman Jack Dean seconded the motion. The motion passed unanimously.

Discussion, consider and possible action on Article III Mayor and City Council.

City Attorney Zech began with his changes to Section 3.09 Prohibitions Part D which stated the following:

~~"It shall be unlawful for the~~ Neither the City Council nor any of its members ~~to~~ shall dictate to the City Manager the appointment of any person to office or employment. ~~The~~ No City Council ~~or its members will not~~ shall interfere ~~in any manner~~ with the City Manager in the performance of the duties of that office or prevent the City Manager from exercising the City Manager's own judgment in the appointment of officers and employees whose employment, appointment, and supervision are reserved by this Charter for the City Manager. Except for the purpose of inquiry and investigations, the City Council and its members shall deal with the City Staff solely through the City Manager, and neither the City Council, as a body or any individual member, nor any individual not having administrative or executive functions under this Charter shall give orders to any of the subordinates of the City Manager, either publicly or privately".

There was no discussion the Commission was in unanimous consensus over the recommended changes as presented by Attorney Zech.

The next section that was visited was section 3.11 Ordinances Section Part A Passage, which states the following:

“Except as may otherwise be prescribed in this Charter or other law, all ordinances shall be read in open meeting of the City Council on two (2) separate days provided that all readings of any ordinance may be by descriptive caption only. Any ordinance necessary to protect the public’s peace, health, safety and general welfare, may be passed as an emergency and become effective at once upon one (1) reading of the City Council, upon the approval of a majority vote of the City Council members that it is an emergency at said reading and the finding of an emergency shall be stated within the ordinance”

The Commission had little discussion in regards to this verbiage and agreed to the language as presented by City Attorney Zech.

City Attorney Zech presented Section 3.12 Council Investigation; Hearing; Process Part A. General, which stated the following:

“In addition to any other specific authority of investigation and hearing provided for in this Charter, the City Council shall have the power to inquire into the official conduct of any department, agency, appointed boards, office, officers, [employees] or appointed board members of the City. For the purpose of investigations and hearings, the City Council shall have the power to administer oaths, subpoena witnesses, compel the production of books, papers, and other evidence material to the inquiry. The City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence. The City Council shall have the power to punish any such contempt in the manner provided by such ordinance.”

Chairman Reyna reviewed the discussion that happened at the last meeting, the main concern was whether to delete the word “employees” from the passage above. Vice Chairman Dean felt the City Manager should have the sole authority to investigate employees; if the City Council did not agree with the City Manager’s actions then the City Council had the authority to reprimand and/or terminate the City Manager. There was a lengthy discussion. The following members were in favor of the language as presented by City Attorney Zech: Chairman Arthur “Art” Reyna, Rudy Garcia, Kathy Hill, David Jordan, Mike McCarley, Liz Maloy, Victor Rodriguez, and Al Uvietta. One opposed Vice Chairman Jack Dean, no abstentions, the motion passed.

Discuss, consider and possible action on Elections.

City Attorney Zech presented Article 4 Elections, stating that the language inserted in this section is standard verbiage. There was question arising from section 4.06 Taking of Office; which state the following:

“Each newly elected person to the City Council shall be inducted into office at the first regular City Council meeting following the canvass of the votes”

There was some discussion and a request to add specific language to state the following: “Newly elected officials shall be inducted into office as the first item of business on the agenda at the first regular City Council Meeting”. All were in favor of the additional language, none opposed, none abstained. The motion passed unanimously.

Discuss, Consider and Possible action on Initiative, Referendum and Recall.

City Attorney began by defining Initiative, referendum and recall. Then he asked the Commission if they wanted Initiative, referendum and recall, all the commission members were in agreement to have initiative, referendum and recall in the City Charter.

City Attorney Zech reviewed different examples from vague to specific language dealing with initiative, referendum and recall. City Attorney Zech recommended to the committee to use a percentage of registered voters to initiate referendum, initiative, and/or recall by petition. It was determined that there were 6868 registered voters.

There was a lengthy discussion and the following comments were made about petition validity:

- The original signatures
- The ordinance should be on the top of the petition
- The signature must be of a registered voter
- The person collecting the signatures should be a registered voter of the city
- The City Secretary would verify the petition
- The City Secretary will verify the petition against the registered voter list

The Commission discussed the percentage of registered voters necessary to initiate referendum by petition. The Commission unanimously agreed on 10 percent.

The Commission discussed the percentage of registered voters necessary to set forth an initiative by petition. The Commission unanimously agreed on 10 percent.

The Commission discussed the percentage of registered voters necessary to initiate a recall by petition. The Commission unanimously agreed on 20 percent.

The Commission then reviewed the process requirements specific to the petition for initiative, referendum and recall. City Attorney Zech asked the commission to consider the following:

- A minimum of 5 qualified voters may commence (petition committee) initiative, referendum and recall proceedings by filing with the City Secretary.
- The signers of the petition should include signature, address, date, registration number etc.
- A time limit after the City Secretary is notified
- A time limit for the City Secretary verify the petition

The Commission was in favor of having a petition committee with a minimum of five members, must be a resident and a registered voter of the City of Leon Valley.

The Commission agreed to have elections for an initiative, referendum and/or recall at the City's general election for that year.

There was consensus among the Commission to allow the City Secretary 45 days to validate the signatures.

Commission Member Al Uvietta asked the Commission to consider language that would allow the petition committee to gather signatures of 20% of the registered voter. This would require City Council to consider their request and if City Council denies the request, then it would automatically go on the ballot (nicknamed super petition). There was some discussion in favor of the above language, but the commission agreed to pick up here at the next meeting.

Adjournment

Chairman Arthur "Art" Reyna announced the meeting adjourned at 9:11 p.m.

APPROVED: _____
Arthur "Art" Reyna
Chairperson

ATTESTED: _____
Crystal Caldera
Staff Liaison

Item 3

III. THE CITY COUNCIL AND MAYOR

Section 3.01 General Powers and Duties

Comment [CZ1]: Approved

All powers of the City shall be vested in the City Council, except as otherwise provided by law or this Charter and the City Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the City by law.

Section 3.02 Number, Selection, and Term

A. The membership of City Council (members of City Council) shall be composed of the Mayor and six (6) Council Members. The Mayor and Council Members shall be elected from the City at large by place for three (3) year terms.

B. No [current or] future elected official shall serve more than three (3) consecutive terms of office and no more than five (5) terms during a lifetime. For purposes of this subsection an official shall have been considered to have served a term upon taking the oath of office, regardless of whether the official serves the complete term. Any official who has served three (3) consecutive terms shall be prohibited from serving another term for a period of one year and eleven months from the date of the expiration of the third consecutive term.

Section 3.03 Qualifications

Comment [CZ2]: Approved

The Mayor and each Council Member shall meet the following:

- A. Be a qualified voter in the City and State at the time of taking office;
- B. Be a resident of the City;
- C. Have resided continuously in the corporate limits of the City for 12 months immediately preceding the date of the election;
- D. Not be in violation of any provision in this Charter;
- E. Be 21 years of age or older on the first day of the term to be filled at the election;
- F. Satisfy any other eligibility requirements prescribed by law for the office for which they are a candidate.

Section 3.04 Judge of Qualifications

Comment [CZ3]: Approved

The City Council is the final judge of all elections and the qualifications of its members and of any other elected officials of the City.

Section 3.05 Compensation

Comment [CZ4]: Approved 10.08.2014

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A. City Council shall not receive any compensation unless determined by vote as provided for herein.

1. Compensation of the City Council, and any subsequent increases, shall be determined and approved by City Council upon a two-thirds vote of the City Council.

2. The increase in compensation shall take effect for the Mayor and each Council Member at the beginning of the next term of office for each respective office.

B. The City Council may be reimbursed for expenses incurred in performance of official duty. The policy regulating payment of expenses incurred in performance of official duty shall be determined by the City Council.

Section 3.06 Mayor

Comment [CZ5]: Approved 10.08.2014

A. The Mayor shall be the presiding officer of the City Council and shall be recognized as the head of the City government for all ceremonial purposes, for emergency management purposes, and by the governor for purposes of military law.

B. The Mayor may debate and discuss any matters before the City Council and shall vote on all issues with the City Council.

Section 3.07 Mayor Pro-Tem

Comment [CZ6]: Approved 09.17.2014

A. The Mayor Pro-Tem shall be a Council Member elected by the City Council at the first regular City Council meeting following each regular City election.

B. The Mayor Pro-Tem shall act as Mayor during the absence or disability of the Mayor.

Section 3.08 Vacancies; Forfeiture of Office; Filling of Vacancies

Comment [CZ7]: Revisit to determine penalties associated with violations and whether to include violations of charter prohibitions.

A. *Vacancies.* The office of a Council Member or office of the Mayor shall become vacant upon death, resignation, removal from office by recall, or forfeiture of his/her office.

B. *Forfeiture.* A Council Member or the Mayor shall forfeit his/her office if he/she:

1. Fails to maintain at any time during the term of office any qualification for the office prescribed by this Charter or by law;

2. Is convicted of a misdemeanor involving moral turpitude, a violation of any state laws regulating conflicts of interest of municipal officers, a felony, or is assessed a deferred adjudication or probation for a felony or any state laws regulating conflicts of interest of municipal officers;

3. Failure to regularly attend City Council meetings without an approved absence obtained by a majority vote by City Council either before or after the absence. There shall be a presumption of failure to regularly attend when three (3) regular meetings are missed during a term year without obtaining an approved absence from City Council.

C. If a member of City Council violates any provision of this section and does not immediately resign, the City Council may conduct an investigation and hearing pursuant to Section 3.12 of this Charter to determine if the office holder is in violation of this section. The hearing shall be held within 60 days of the City Council, as a body, learning of the alleged forfeiture.

D. All vacancies with unexpired terms of 12 months or more shall be filled by special election pursuant to State law. All vacancies with unexpired terms of 12 months or less may be filled, at the discretion of City Council, by appointment of the City Council upon a majority vote, may be left vacant for the remainder of the unexpired term or filled by a special election pursuant to state law.

Comment [CZ8]: Approved 08.15.2014

Section 3.09 Prohibitions

Comment [CZ9]: Revisit to determine penalties associated with violations and whether to include violations of charter prohibitions

A. No member of City Council shall accept or admit liability or pay any claim for damages asserted against the City. City Council shall not accept or admit liability without first obtaining a written opinion from the City Attorney regarding the City's liability therein and only then upon a majority vote of the City Council.

B. No member of City Council shall be employed in or appointed to the positions of City Manager, City Attorney, or Department Head until three (3) years after the expiration of the term for which he/she was elected to the City Council and for any other compensated City position until one (1) year after the expiration of the term for which he/she was elected to the City Council. This subsection shall not apply to a volunteer who receives a stipend that is the same as the stipend received by other similarly situated volunteers.

C. Except for the purpose of inquiries and investigations, unless otherwise provided in this Charter, the City Council as whole and its individual members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the City Council nor its individual members shall give orders to any such officer or employee, either publicly or privately.

D. Neither the City Council nor any of its members shall dictate to the City Manager the appointment of any person to office or employment. No City Council shall interfere with the City Manager in the performance of the duties of that office or prevent the City Manager from exercising the City Manager's own judgment in the appointment of officers and employees whose employment, appointment, and supervision are reserved by this Charter for the City Manager. Except for the purpose of inquiry and investigations, the City Council and its members shall deal with the City Staff solely through the City Manager, and neither the City Council, as a body or any individual member, nor any individual not having administrative or

executive functions under this Charter shall give orders to any of the subordinates of the City Manager, either publicly or privately.

E. It shall be unlawful for the Mayor or a Council Member to release any attorney-client privileged communication. The City Council as the governing body of the City solely holds and is entitled to the attorney client-privilege and it may only be waived by an affirmative vote of two-thirds of the City Council.

Comment [CZ10]: Approved 10.08.2014

Section 3.10 Meetings and Procedures

Comment [CZ11]: Approved 10.15.2014

A. **Agendas.** A member of City Council may place an item on an agenda by agreement of two additional members of City Council. The member of City Council desiring to place an item on an agenda shall submit in writing the request to place the item on an agenda to the City Secretary who shall inquire with members of City Council as to their agreement. The item shall be placed on the next City Council meeting occurring on or after the 8th calendar day after obtaining the agreement of the second member of City Council.

At a meeting of City Council a member of City Council may place an item on an agenda by making a motion to place the item on a future agenda and receiving a second. No discussion shall occur at the meeting regarding the placement of the item on a future agenda.

The City Manager may place any item on any City Council agenda.

B. **Procedures.** City Council shall, except as otherwise provided for in this Charter, create rules of procedure for all City Council workshops, regular and special meetings and public hearings by ordinance.

Section 3.11 Ordinances

Comment [CZ12]: Approved 11.05.2014

A. **Passage.** Except as may otherwise be prescribed in this Charter or other law, all ordinances shall be read in open meeting of the City Council on two (2) separate days provided that all readings of any ordinance may be by descriptive caption only. Any ordinance necessary to protect the public's peace, health, safety and general welfare, may be passed as an emergency and become effective at once upon one (1) reading of the City Council, upon the approval of a majority vote of the City Council members that it is an emergency at said reading and the finding of an emergency shall be stated within the ordinance.

B. **Enacting Clauses; Signature and Authentication.** The enacting clause of all ordinances shall be "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS;" and every ordinance shall be signed by the Mayor or the Mayor pro-tem and authenticated by seal and signature of the City Secretary.

C. **Publication.**

The caption or title and penalties of every ordinance imposing any penalty, fine, or forfeiture shall, as soon as practical after passage thereof, be published one (1)

time in the official newspaper(s) of the City of Leon Valley. An ordinance required to be published under this section shall take effect the day after publication unless otherwise provided in the ordinance

D. Codification of Ordinances.

1. The City Council shall have the power to cause the ordinances of the City to be corrected, amended, revised, codified and printed in code form as often as the City Council deems advisable, and such printed code, when adopted by the Council, shall have full force and effect without the necessity of publishing the same or any part thereof in a newspaper.

2. All printed ordinances or codes of ordinances shall be admitted as evidence in all courts without proof, and shall have the same force and effect as did the original ordinance.

Section 3.12 Council Investigations; Hearings; Process

Comment [CZ13]: Approved 11.05.2014

A. *General.* In addition to any other specific authority of investigation and hearing provided for in this Charter, the City Council shall have the power to inquire into the official conduct of any department, agency, appointed boards, office, officers, employees or appointed board members of the City. For the purpose of investigations and hearings, the City Council shall have the power to administer oaths, subpoena witnesses, compel the production of books, papers, and other evidence material to the inquiry. The City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence. The City Council shall have the power to punish any such contempt in the manner provided by such ordinance.

B. Hearings Process for Forfeitures of Office and Prohibitions.

1. All hearings held under this subsection shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act;
2. The office holder subject to any investigation and/or hearing under this section shall be entitled to written notice of the allegations of forfeiture and/or the alleged violation of this Charter as applicable;
3. A special meeting shall be called to hold the hearing;
4. A member of City Council who initiated or is the subject of the investigation or hearing shall not sit at the dais and shall not participate in deliberation or vote;
5. City Council shall adopt by ordinance rules of procedures to be followed;

6. The City Council shall state the nature of the hearing and the allegations to be considered, shall be provided the results of any investigation and a presentation of the evidence against the office holder including, but not limited to testimony from individuals;
7. The individual who is subject to the hearing shall be provided an opportunity to respond to the allegations and present any relevant evidence including, but not limited to, testimony from individuals;
8. City Council may ask questions of any individual;
9. No public comment shall be allowed unless agreed to by a majority vote of the members of City Council present. Rules for public comment shall be set by City Council;
10. In the case of a violation of Section 3.08 of this Charter City Council shall vote on the forfeiture and on the affirmative vote of two-thirds of City Council declare the office of said office holder to be forfeited and vacant;
11. In the case of a violation of Section 3.09 of this Charter City Council may on the affirmative vote of a majority of the City Council take any action it determines to be appropriate including, but not limited to, directing further investigation, requesting further information, vote to enforce a penalty pursuant to section _____ of this Charter, vote to bring an action in municipal court, take a vote of censure; or, upon the affirmative vote of two-thirds of City Council, declare the office of said office holder to be forfeited and vacant.

Item 4

IV. ELECTIONS

Section 4.01 Elections

- A. The regular City election shall be held annually on the uniform election date in May, or at such other times as may be specified by State Law, at which time officers will be elected to fill those offices which become vacant that year.
- B. The City Council shall fix the place for holding such election.
- C. The City Council may, by ordinance or resolution, order a special election, fix the date and place for holding same, and provide all means for holding such special election.
- D. Notice of elections shall be published in a newspaper of general circulation of the City of Leon Valley, such publication to follow the requirements of the Election Code and any applicable law.
- E. Early voting shall be governed by the general election laws of the State of Texas.

Section 4.02 Regulation of Elections

- A. All elections shall be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and in accordance with the ordinances adopted by the City Council for the conduct of elections.
- B. The City Council shall appoint the election judges and other election officials.

Section 4.03 Filing for Office

- A. Any person having the qualifications set forth under Section 3.03 of this Charter shall have the right to file an application to have their name placed on the official ballot as a candidate for any elective office.
 - 1. Any such application shall be in writing, signed by such candidate, and filed with the City Secretary in accordance with the Texas Election Code and this Charter.
 - 2. An application filed in accordance herewith shall entitle such applicant to a place on the official ballot.
- B. A candidate of City Council shall specify the place number or position the candidate is seeking.

Section 4.04 Official Ballot

A. The names of all candidates for office, except such as may have withdrawn, died or become ineligible, shall be placed on official ballots without party designations specifying the council place for which each is seeking election.

Section 4.05 Run-Off Election

In the event no candidate for an elective office receives a majority of the votes cast for that place in the general or special election or there is a tie, a run-off election shall be held between the two (2) candidates who received the greater number of votes.

Section 4.06 Taking of Office

Each newly elected person to the City Council shall be inducted into office as the first item of business at the first regular City Council meeting following the canvass of the votes.

Item 5

VI. INITIATIVE, REFERENDUM AND RECALL

Section 6.01 General Authority

A. **Initiative.** The qualified voters of the City shall have power to propose ordinances to the Council. Such power shall not extend to the granting of franchises, budget or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes or salaries of City officers or employees, or any other ordinance not subject to initiative as provided by state statute or common law.

B. **Referendum.** The qualified voters of the City shall have power to require reconsideration by the Council of any adopted ordinance. Such power shall not extend to the granting of franchises, budget or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes or salaries of City officers or employees, or any other ordinance not subject to referendum as provided by state statute or common law.

C. **Recall.** The qualified voters of the City shall have the power to petition for recall of the Mayor or any Council Member.

Section 6.02 Commencement of Initiative, Referendum and Recall Petitions; Petitioners' Committee; Affidavit

A. Any five (5) qualified voters may commence initiative, referendum, or recall proceedings by filing with the City Secretary an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent and setting out in full the proposed initiative ordinance or citing the ordinances sought to be reconsidered, or the name of the individual to be recalled.

B. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall comply with Chapter 277 of the Texas Election Code as it may be amended from time to time.

C. Petitions shall be returned to the Office of the City Secretary for filing within **sixty (60) days** after filing of the affidavit of petitioners committee and no signature on said petition shall have been affixed prior to the filing of the affidavit of petitioners committee.

D. Each signer of such recall petition shall personally sign their name thereto in ink or indelible pencil and shall write after their name their place of residence, giving the name of the street and the number, and shall also write thereon the day, the month and the year their signature was affixed. The signatures on petitions shall be verified by oath in the following form:

STATE OF TEXAS

COUNTY OF [petition circulator’s county of residence]

I, _____, being first duly sworn, on oath depose and say that I am one of the signers of the above petition, and that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is the genuine signature of the person it purports to be.

Signature _____

Sworn and subscribed before me this ____ day of _____ 20__.

NOTARY PUBLIC, STATE OF TEXAS

My commission expires: _____

Section 6.03 Initiative, Referendum and Recall Petition Process; Certificate of City Secretary; Supplementation; Presentation to Council; Council Review

A. Certificate of City Secretary. Within thirty (30) working days after the petition (the “Original Petition”) is filed, the City Secretary shall complete a certificate as to its sufficiency or insufficiency as mandated herein, specifying, if it is insufficient, the particulars wherein it is defective and shall within that thirty (30) working day period send a copy of the certificate to the petitioners' committee by certified mail return receipt requested or by hand delivery to a committee member.

B. A petition certified insufficient for lack of the required number of valid signatures may be supplemented once if the petitioners' committee files a notice of intention to supplement with the City Secretary within 3 working days after receiving the copy of the Certificate of the City Secretary. The supplementary petition shall be filed within the time specified in Subsection 6.03 C. Such supplementary petition shall comply with the requirements of Subsections 6.02 B and D, and within ten (10) working days after the supplementary petition is filed, the secretary shall complete a certificate as to the sufficiency of the petition as supplemented and send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition.

C. Upon the submission of the Original Petition to the City Secretary the [redacted] day time line for submission as provided for in Section 6.02 C shall be tolled. The petitioners committee shall submit the supplementary petition to the City Secretary within the remaining tolled [redacted] day deadline, said remaining time to be calculated from receipt of the certificate of

insufficiency by the petitioner's committee or committee member as applicable. No signature on said supplementary petition shall have been affixed prior to the receipt by the petitioners committee of the certificate of insufficiency.

D. Presentation to Council. The City Secretary shall, at the next regular Council meeting in compliance with the Texas Open Meetings Act after completion of certification of the petition or supplementary petition, present such certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

Section 6.04 Requirements specific to Petitions for Recall

Before the question of a recall shall be submitted to the qualified voters of the City a petition, containing at least twenty percent (20%) of the number of voters registered to vote at the last general City election, demanding such question to be so submitted shall first be filed with the Office of the City Secretary pursuant to this Article. The petition shall be addressed to the City Council of the City and shall state distinctly and specifically the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the individual that warrant the reason for the recall as to give the individual sought to be removed notice of the matter(s) and thing(s) with which the individual's recall is predicated. If there be more than one (1) reason, said petition shall distinctly and specifically state each reason upon which such petition for removal is predicated and shall distinctly and specifically state the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the individual that warrant the recall as to give the individual sought to be removed notice of the matter(s) and thing(s) on which the recall is predicated.

Section 6.05 Public Hearing to be Held on Recall Petition

The individual whose removal is sought may, **within five (5) working days** after such recall petition has been presented to the City Council, request that a special meeting be held to permit him/her to present a response to the reasons for recall specified in the recall petition. In this event, the City Council shall order such special meeting to be held, no more than **thirty (30) and no less than fifteen (15) days** before early voting.

At any special meeting held under this Section the individual whose removal is sought shall have a **thirty (30) minute period** to state their response to the recall petition. There shall be no public participation in the special meeting and no other items of business shall be a part of the special meeting.

Section 6.06 Calling of Recall Election

If the individual whose removal is sought does not resign, then the City Council shall for the next available uniform election date, order an election for holding such recall election. If, after the recall election date is established, the officer vacates his/her position, the election shall be cancelled, in accordance with State Law.

Section 6.07 Ballots in Recall Election

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

A. With respect to each individual whose removal is sought, the question shall be submitted: "Shall _____ be removed from the office of _____ by recall?"

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

"Yes"

"No"

Section 6.08 Result of Recall Election

If a majority of the votes cast at a recall election shall be "No", that is against the recall of the individual named on the ballot, the individual shall continue in office for the remainder of his/her unexpired term, subject to recall as provided herein. If a majority of the votes cast at such election be "Yes", that is for the recall of the individual named on the ballot, the individual shall, regardless of any technical defects in the recall petition, be deemed removed from office upon passing of the resolution canvassing the election, and the vacancy shall be filled by the City Council as provided for in State law.

[Section 6.09 Recall Restrictions

No petition shall be filed for the recall of an individual within three-hundred and sixty-five (365) days of the date of the individual's election to City Council or within one-hundred and eighty (180) days before the end of the individual's term on City Council.]

[VERSION 1] Section 6.10 Initiative; Requirements specific to Petition for Initiative; Procedure

A. A petition for initiative must contain the number of valid signatures totaling at least ten percent (10%) of the total number of registered voters registered to vote at the last general City election and shall otherwise comply with the requirements for petitions in this Article. Each copy of the petition shall have attached to it a copy of the full text of the proposed ordinance.

Item 5 Article 06 Initiative Referendum and Recall_11052014 v 1

B. Upon presentation to the City Council, it shall become the duty of the City Council, within _____ days after the date the petition was finally determined sufficient, to pass and adopt such ordinance without alteration as to meaning or effect, or to call for an election, to be held on the soonest date allowed under the Texas Election Code, at which the qualified voters of the City shall vote on the question of adopting or rejecting the proposed ordinance.

C. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon the canvassing of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

D. The Council is not obliged to consider the same ordinance initiated by petition, or one that is substantially the same, more often than once in: two years.

[VERSION 2] Section 6.10 Initiative; Requirements specific to Petition for Initiative; Procedure

A. An original petition for initiative must contain the number of valid signatures totaling at least ten percent (10%) of the total number of registered voters registered to vote at the last general City election and shall otherwise comply with the requirements for petitions in this Article. Each copy of the petition shall have attached to it a copy of the full text of the proposed ordinance.

B. Upon presentation to the City Council they shall, within _____ days after the date the petition was finally determined sufficient, hold a public hearing and vote on the adoption or rejection of said ordinance.

C. Should an ordinance proposed by petition for initiative not be enacted by the City Council, or should it be enacted in an amended form, a second petition for initiative, signed by a number of registered voters equal to at least _____ percent of the total number of registered voters registered to vote at the last general City election and otherwise complying with the petition process, may be presented to City Council. Upon presentation of the second petition for initiative to the City Council they shall order an election to submit the proposed ordinance to the qualified voters of the City. Said election to be held on the first available uniform election date authorized by law.

D. Should the original petition for initiative contain the number of valid signatures totaling at least twenty percent (20%) of the total number of registered voters registered to vote at the last general City election and should City Council refuse to enact the proposed ordinance

without amendment then the City Council shall order an election to submit the proposed ordinance to the qualified voters of the City. Said election to be held on the first available uniform election date authorized by law.

E. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon the canvassing of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

F. The Council is not obliged to consider the same ordinance initiated by petition, or one that is substantially the same, more often than once in: two years.

Section 6.11 Referendum; Requirements specific to Petition for Referendum; Procedure; Effect Prior to Election

Comment [CZ1]: Does the Committee want to consider the same double step process for referendum?

A. A petition for referendum must contain the number of valid signatures totaling at least ten percent (10%) of the total number of registered voters registered to vote at the last general City election and shall otherwise comply with the requirements for petitions in this Article.

B. Within forty-five (45) days after final sufficiency of the petition City Council shall either repeal the referred ordinance or order an election to submit the referred ordinance to the qualified voters of the City said election to be held on the first available uniform election date authorized by law.

C. If a majority of the qualified electors voting on a referred ordinance vote against the ordinance, it shall be considered repealed upon certification of the election results.

D. A petition for referendum on the same subject matter may only be submitted once every three (3) years.

Section 6.12 Initiative and Referendum; Form of Ballots

The ballots used when voting upon initiative or referendum shall set forth their nature sufficiently to identify them and shall also set forth, upon separate lines, the words:

"For the Ordinance"

or

"Against the Ordinance"

[Section 6.13 Ordinances Passed by Popular Vote, Repeal or Amendment

No ordinance which may have been passed by the City Council upon a petition or adopted by popular vote under the provisions of this Article may be repealed or amended by the City Council for a period of three (3) years from the date said ordinance became effective and then only upon by an affirmative vote of two-thirds (2/3's) of the City Council.]

DRAFT

Example Cities

EL Paso IRR Provisions

Section 2.1 CITY ELECTIONS.

C. Recall. Any elected officer of the City may be removed from office, for stated reasons, by those voters who are qualified to vote for a successor to such office.

The Council shall enact, within sixty days of the adoption of this Charter, an ordinance providing for:

1. The general conduct of recall elections;
2. Receipt, by the City Clerk, prior to the conduct of any recall election of a petition bearing authentic signatures of a number of registered voters equal to at least twenty percent of the total number of votes cast in the election of the officer whose recall is sought;
3. Completion of a recall petition within sixty days of filing notice with the City Clerk of intent to circulate a petition for recall; and
4. Recall petitions to specify the reasons for which recall is sought.

No recall petition shall be filed against any elected officer within six months after taking office, nor within twelve months of the end of the elected officer's term of office, nor in case of an officer who was the subject of an unsuccessful recall election, until six months after that election. Should the elected officer, whose recall is sought, resign, no recall election shall be held.

Section 3.11 INITIATIVE.

Whenever a number of registered voters equal to at least five percent of the voters who voted in the last general City election sign a petition setting forth the precise content of an ordinance desired by the signers, the Council must place that ordinance on the agenda of a Council meeting to be held within thirty working days of the receipt, by the City Clerk, of the petition bearing the authenticated names and addresses of the petitioners. Such an item shall be treated by the Council exactly as any other proposed ordinance.

Should an ordinance proposed by such petition not be enacted by the Council, or should it be enacted in an amended form, a second petition, signed by a number of registered voters equal to at least five percent of the voters who voted in the last general City election, may be submitted to the City Clerk and that official shall have twenty working days in which to authenticate the signatures and thereafter must place the repropoed ordinance on the ballot at the next general election specified in State law, if the proposal received the favorable vote of a majority of those voting in that election it shall thereupon become a City ordinance.

The Council is not obliged to consider the same ordinance initiated by petition, or one that is substantially the same, more often than once in: two years.

Section 3.11A REFERENDUM.

A referendum election may be called by the City Council when a collective bargaining agreement between the City and an employee organization so provides.

ARTICLE X. - INITIATIVE, REFERENDUM AND RECALL

Section 10.01 - General authority.

- (a) *Initiative*: The qualified voters of the city shall have power to propose ordinances to the council. If the council fails to adopt an ordinance so proposed, or passes the ordinance with substantial changes, the qualified voters shall have the power to adopt or reject it at a city election.
- (b) *Referendum*: The qualified voters of the city shall have power to require reconsideration by the council of any adopted ordinance. If the council fails to repeal an ordinance so reconsidered, the qualified voters shall have the power to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.
- (c) *Recall*: The qualified voters of the city shall have the power to petition for recall of the mayor or any member of the city council.

(Ref. of 5-2-98)

Section 10.02 - Commencement of proceedings; petitioner's committee; affidavit.

Any five qualified voters may commence initiative, referendum, or recall proceedings by filing with the city secretary an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form stating their names and addresses and specifying the address to which all notices to the committee are to be sent and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. Within five (5) working days after the affidavit of the petitioners' committee is filed the secretary shall issue the appropriate petition blanks to the petitioners' committee.

Section 10.03 - Petitions.

- (a) *Number of signatures*: Initiative, referendum or recall petitions shall be signed by qualified voters of the city equal in number to at least ten percent (10%) of the total number of qualified voters registered to vote at the last regular city election, but in no event less than two hundred (200) such petitioners. However, no signatures to any petitions shall remain effective or be counted which were placed thereon more than forty-five days, prior to the filing of such petition or petitions with the person performing the duties of city secretary.
- (b) *Form and content*. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address and voter registration number of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- (c) *Affidavit of circulation*: Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- (d) *Filing referendum petitions*: Referendum petitions must be filed within 60 days after adoption by the council of the ordinance sought to be reconsidered.

Section 10.04 - Procedure after filing.

- (a) *Certificate of city secretary; amendment*: Within twenty (20) days after the petition is filed, the city secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall within that twenty (20) day period send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the city secretary within two days after receiving the copy of his certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of sub-sections (b) and (c) of section 10.03 (), and within five days after it is filed, the secretary shall complete a certificate as to the sufficiency of the petition as amended and send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under sub-section (b) of this section within the time required, the city secretary shall at the next regular council meeting present his certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.

- (b) *Council review:* If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be revised by the council. The council shall review the certificate at its next meeting following the filing of such requests and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition.
- (c) *Court review, new petition:* A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

Section 10.05 - Referendum petitions; suspension of effect of ordinance.

When a referendum petition complying with all the provisions of section 10.03 () and 10.04 () is filed with the city secretary the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (a) There is a final determination of insufficiency of the petition, or
- (b) The petitioners' committee withdraws the petition, or
- (c) The council repeals the ordinance, or
- (d) Voters sustain the ordinance in an election.

Section 10.06 - Action on petitions.

- (a) *Action by council on initiative or referendum:* When an initiative or referendum petition has been fully determined sufficient, the council shall at their next regular council meeting consider the proposed initiative ordinance in the manner provided in article IV or reconsider the referred ordinance by voting its repeal. If the council, within sixty (60) days from the date a proposed initiative ordinance has been fully determined sufficient, fails to adopt the ordinance or adopts it with substantive change, the proposed initiative ordinance shall be submitted to the voters of the City. If the council, within thirty (30) days from the date a referendum has been fully determined sufficient, fails to repeal the referred ordinance, the referendum shall be submitted to the voters of the City.
- (b) *Action by council on petition for recall:* The recall petition must be addressed to the city council of the City of Live Oak and must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated. If there be more than one ground, such as for incompetence, misconduct or malfeasance in office, the petition shall specifically state each ground with such certainty as to give the office sought to be removed, notice of the matters and things with which he is charged. The officer whose removal is sought may, within five (5) days after such recall petition has been presented to the city council, request that a public hearing be held to permit him to present facts pertinent to the charges specified in the recall petition. In this event, the city council shall order such public hearing to be held, not less than five (5) days nor more than fifteen (15) days after receiving such request for a public hearing. If the officer whose removal is sought does not resign, then it shall become the duty of the city council to order an election and fix a date for holding such recall election on the earliest allowable uniform election date as provided by the Texas Election Code.
- (c) *Recall restrictions:* No recall petition shall be filed against any office of the City of Live Oak within three (3) months after an election for such officer's recall.
- (d) *Submission to voters:* The vote of the city on a proposed or referred ordinance shall be held on the earliest allowable uniform election date as provided by the Texas Election Code. Copies of the proposed or referred ordinance shall be made available at the polls to registered voters. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(Ref. of 5-2-98; Ref. of 5-13-06; Ref. of 5-9-09)

Section 10.07 - Results of election.

- (a) *Initiative:* If a majority of the qualified electors 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 of the same kind adopted by the council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
- (b) *Referendum:* If a majority of the qualified electors voting on a referred ordinance vote against it shall be considered repealed upon certification of the election results.
- (c) *Recall:* If a majority of the votes cast at a recall election shall be "NO," that is, against the recall of the person named on the ballot, he shall continue in office for the remainder of his unexpired term, subject to recall as before. If a majority of the votes cast at such election be "YES," that is, for the recall of the person named on the ballot, he shall regardless of any

technical defects in the recall petition, be deemed removed from office and the vacancy be filled as vacancies in the city council are filled, as provided in section 4.07 (), subsection (c) of this charter.

[(d)] *Repeal or amendment:* No ordinance which may have been passed by the City Council upon a petition or adopted by popular vote under the provisions of this Section may be repealed or amended by the City Council for a period of three (3) years from the date said ordinance became effective. An ordinance which may have been passed by the City Council upon a petition or adopted by popular vote under the provisions of this Article may be repealed or amended at any time in response to a referendum petition.

(Res. No. 1850, § 2, 5-28-13)

ARTICLE V. - INITIATIVE, REFERENDUM AND RECALL

Sec. 5.01. - Power of initiative.

The people of the city reserve the power of direct legislation by initiative, and in the exercise of such power may propose any ordinance, not in conflict with this Charter, the state constitution, or the state laws except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance may be submitted to the council by a petition signed by qualified voters of the city equal in number to at least ten percent (10%) of the qualified voters of the city at the time of such submission.

Sec. 5.02. - Power of referendum.

The people reserve the power to approve or reject at the polls any legislation enacted by the council which is subject to the initiative process under this Charter and under the laws of this state, except an ordinance which is enacted for the immediate preservation of the public peace, health, safety, or welfare which contains a statement of its urgency, and which is adopted by the favorable votes of four (4) or more of the councilmembers. Prior to the effective date that any ordinance, which is subject to referendum, shall take effect, a petition signed by qualified voters of the city equal in number to at least ten percent (10%) of the qualified voters of the city, at the time of filing the petition, may be filed with the city secretary requesting that any such ordinance be either repealed or submitted to a vote of the people. When such a petition has been certified as sufficient by the city secretary, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless it is approved by the voters as herein provided.

Sec. 5.03. - Form of petitions.

Initiative petition papers shall contain the full text of the proposed legislation in the form of an ordinance including a descriptive caption. The signatures to the initiative or referendum petitions need not all be appended to one paper, but each signer shall personally sign his name in ink or indelible pencil and shall add to his signature his printed name, date of birth or voter registration number and county of voter registration, place of residence by street and number, and the month and year his signature was affixed. One of the signers of each separate petition shall make an affidavit that he, and he only, personally circulated such petition and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be.

(Ord. No. 0-13-08, § 2, 2-18-2013/5-11-2013)

Sec. 5.04. - Filing, examination and certification of petitions.

Within twenty (20) days after an initiative or referendum petition is filed, the city secretary shall determine whether the same is signed by the requisite number of qualified voters. The city secretary shall declare void any petition paper which does not have an affidavit attached thereto as required in Section 5.03 () of this Article. In examining the petition the city secretary shall write the letters "D.V." (Disqualified Voter) in red ink opposite the names of signers found not qualified to vote. After completing examination of the petition the city secretary shall certify the results thereof to the council at its next regular meeting stating the number of persons found on the petition who are qualified to vote and the number of persons found on the petition who are not qualified to vote. If the certificate of the city secretary shall show an initiative or referendum petition to be insufficient, the city secretary shall notify the person filing the petition, and it may be amended within ten (10) days from the date of such notice by filing a supplementary petition upon additional papers which must be signed and filed as is provided herein for an original petition. Within ten (10) days after such amendment is filed, the city secretary shall examine the amended petition and certify as to its sufficiency. If the amended petition is found to be insufficient the city secretary shall return the petition to the person filing the same, without prejudice to the filing of a new petition for the same purpose.

Sec. 5.05. - Council consideration and submission to voters.

When the council receives an authorized initiative petition certified by the city secretary to be sufficient, the council shall either: (a) pass the initiated ordinance without amendment within sixty (60) days after the date of the certification to the council; or (b) submit said initiated ordinance without amendment to a vote of the qualified voters of the city at a regular or special election to be held within ninety (90) days after the date of the certification to the council; provided, however, that when a regular city election is to be held within 120 days, but not less than sixty (60) days, after the final council vote on the initiated ordinance, such ordinance shall be submitted to a vote of the qualified voters of the city at such regular election; or (c) at such election submit to a vote of the qualified voters of the city such initiated ordinance without amendment, and an alternative ordinance on the same subject proposed by the council.

When the council receives an authorized referendum petition certified by the city secretary to be sufficient, the council shall reconsider the referred ordinance, and if upon such reconsideration such ordinance is not repealed, it shall be submitted to the voters at a regular or special election to be held not more than ninety (90) days after the date of the certification to the council. Provided, however, that when a regular city election is to be held within one hundred twenty (120) days, but not less than sixty (60) days, after the final council vote on the referred ordinance, such ordinance shall be submitted to a vote of the qualified voters of the city at such regular election. Special elections on initiated or referred ordinances shall not be held more frequently than once each six (6) months, and no ordinance on the same subject as an initiated ordinance which has been defeated at any election may be initiated by the voters within two (2) years from the date of such election.

Sec. 5.06. - Ballot form and results of election.

The ballot used in voting upon an initiated or referred ordinance shall state the caption of the ordinance and below the caption shall set forth on separate lines the words, "For the Ordinance" and "Against the Ordinance."

Where an initiated ordinance and an alternative ordinance proposed by the Council are submitted, the ballot shall state the captions of each ordinance, clearly designating them "Ordinance No. 1" and "Ordinance No. 2," respectively, and shall set forth below the captions on separate lines the words "For Ordinance No. 1," "For Ordinance No. 2," and "Against Both Ordinances." Where an initiated ordinance and an alternative ordinance are submitted, each voter shall vote "For" only one ordinance or "Against Both Ordinances," and a vote for one ordinance shall be counted as a vote against the other ordinance.

Any number of ordinances may be voted on at the same election in accordance with the provisions of this Article. If a majority of the votes cast is in favor of a submitted ordinance, it shall thereupon be effective as an ordinance of the city. An ordinance so adopted may be repealed or amended at any time after the expiration of two years by a two-thirds vote of the council. A referred ordinance which is not approved by a majority of the votes cast shall be deemed thereupon repealed.

Sec. 5.07. - Power of recall.

The people of the city reserve the power to recall any elected official and may exercise such power by filing with the city secretary a petition, signed by qualified voters of the city equal in number to at least ten (10) percent of the voters of the city who were qualified to vote for said official at the time of the last regular election for such office at the time of such filing, demanding the removal of such elected official. The petition shall be signed and verified in the manner required for an initiative petition, shall contain a general statement of the grounds for which the removal is sought and one of the signers of each petition paper shall make an affidavit that the statements therein made are true.

(Elec. of 5-1-99, Amend. No. 4)

Sec. 5.08. - Recall election.

Within twenty (20) days after a recall petition is filed, the city secretary shall examine the same. The provisions regulating examination, certification and amendment of initiative petitions shall apply to recall petitions. If the petition is certified by the city secretary to be sufficient and the elected official whose removal is sought does not resign within five (5) days after the certification to the council, the council shall order and hold a recall election within not less than thirty (30) nor more than sixty (60) days from such certification.

Sec. 5.09. - Recall ballot.

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

1. With respect to each person whose removal is sought the question shall be submitted "Shall (name of elected official) be removed from office?"
2. Immediately below each such question there shall be printed the two following propositions, one above the other, in the order indicated:
"For the recall of (name of elected official)."
"Against the recall of (name of elected official)."

Sec. 5.10. - Results of recall election.

If a majority of the votes cast at a recall election by the voters qualified to vote for said official at the time of the last regular election for such office shall be against removal of the elected official named on the ballot, he shall continue in office. If the majority of the votes cast at such election by the voters qualified to vote for said official at the time of the last regular

election for such office shall be for the removal of the elected official named on the ballot, the council shall immediately declare his office vacant and such vacancy shall be filled in accordance with the provisions of the Charter for the filling of vacancies. An elected official thus removed shall not be a candidate to succeed himself in an election called to fill the vacancy thereby created.

(Elec. of 5-1-99, Amend. No. 4)

Sec. 5.11. - Limitation on recall.

No recall petition shall be filed against an elected official within six (6) months after he takes office, and no elected official shall be subjected to more than one recall election during a term of office.

VI. INITIATIVE, REFERENDUM AND RECALL

Section 6.01 General Authority

A. **Initiative.** The qualified voters of the City shall have power to propose ordinances to the Council. Such power shall not extend to the granting of franchises, budget or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes or salaries of City officers or employees, or any other ordinance not subject to initiative as provided by state statute or common law.

B. **Referendum.** The qualified voters of the City shall have power to require reconsideration by the Council of any adopted ordinance. Such power shall not extend to the granting of franchises, budget or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes or salaries of City officers or employees, or any other ordinance not subject to referendum as provided by state statute or common law.

C. **Recall.** The qualified voters of the City shall have the power to petition for recall of the Mayor or any Council Member.

Section 6.02 Commencement of Initiative, Referendum and Recall Petitions; Petitioners' Committee; Affidavit

A. Any five (5) qualified voters may commence initiative, referendum, or recall proceedings by filing with the City Secretary an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent and setting out in full the proposed initiative ordinance or citing the ordinances sought to be reconsidered, or the name of the individual to be recalled.

B. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall comply with Chapter 277 of the Texas Election Code as it may be amended from time to time.

C. Petitions shall be returned to the Office of the City Secretary for filing within sixty (60) days after filing of the affidavit of petitioners committee and no signature on said petition shall have been affixed prior to the filing of the affidavit of petitioners committee.

D. Each signer of such recall petition shall personally sign their name thereto in ink or indelible pencil and shall write after their name their place of residence, giving the name of the street and the number, and shall also write thereon the day, the month and the year their signature was affixed. The signatures on petitions shall be verified by oath in the following form:

STATE OF TEXAS

COUNTY OF [petition circulator’s county of residence]

I, _____, being first duly sworn, on oath depose and say that I am one of the signers of the above petition, and that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is the genuine signature of the person it purports to be.

Signature _____

Sworn and subscribed before me this ____ day of _____ 20__.

NOTARY PUBLIC, STATE OF TEXAS

My commission expires: _____

Section 6.03 Initiative, Referendum and Recall Petitions; Certificate of City Secretary; Supplementation; Presentation to Council; Council Review

A. **Certificate of City Secretary.** Within thirty (30) working days after the petition (the “Original Petition”) is filed, the City Secretary shall complete a certificate as to its sufficiency or insufficiency as mandated herein, specifying, if it is insufficient, the particulars wherein it is defective and shall within that thirty (30) working day period send a copy of the certificate to the petitioners' committee by certified mail return receipt requested or by hand delivery to a committee member.

B. A petition certified insufficient for lack of the required number of valid signatures may be supplemented once if the petitioners' committee files a notice of intention to supplement with the City Secretary within 3 working days after receiving the copy of the Certificate of the City Secretary. The supplementary petition shall be filed within the time specified in Subsection 6.03 C. Such supplementary petition shall comply with the requirements of Subsections 6.02 B and D, and within ten (10) working days after the supplementary petition is filed, the secretary shall complete a certificate as to the sufficiency of the petition as supplemented and send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition.

C. Upon the submission of the Original Petition to the City Secretary the 60 day time line for submission as provided for in Section 6.02 C shall be tolled. The petitioners committee shall submit the supplementary petition to the City Secretary within the remaining tolled 60 day deadline, said remaining time to be calculated from receipt of the certificate of insufficiency by

the petitioner's committee or committee member as applicable. No signature on said supplementary petition shall have been affixed prior to the receipt by the petitioners committee of the certificate of insufficiency.

D. Presentation to Council. The City Secretary shall, at the next regular Council meeting in compliance with the Texas Open Meetings Act after completion of certification of the petition or supplementary petition, present such certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

Section 6.04 Requirements specific to Petitions for Recall

Before the question of a recall shall be submitted to the qualified voters of the City a petition, containing at least thirty percent (30%) of the number of qualified voters registered to vote at the last general City election, demanding such question to be so submitted shall first be filed with the Office of the City Secretary pursuant to this Article. The petition shall be addressed to the City Council of the City and shall state distinctly and specifically the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the individual that warrant the reason for the recall as to give the individual sought to be removed notice of the matter(s) and thing(s) with which the individual's recall is predicated. If there be more than one (1) reason, said petition shall distinctly and specifically state each reason upon which such petition for removal is predicated and shall distinctly and specifically state the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the individual that warrant the recall as to give the individual sought to be removed notice of the matter(s) and thing(s) on which the recall is predicated.

Section 6.05 Public Hearing to be Held on Recall Petition

The individual whose removal is sought may, within five (5) working days after such recall petition has been presented to the City Council, request that a special meeting be held to permit him/her to present a response to the reasons for recall specified in the recall petition. In this event, the City Council shall order such special meeting to be held, no more than thirty (30) and no less than fifteen (15) days before early voting.

At any special meeting held under this Section the individual whose removal is sought shall have a thirty (30) minute period to state their response to the recall petition. There shall be no public participation in the special meeting and no other items of business shall be a part of the special meeting.

Section 6.06 Calling of Recall Election

If the individual whose removal is sought does not resign, then the City Council shall for the next available uniform election date, order an election for holding such recall election. If, after the recall election date is established, the officer vacates his/her position, the election shall be cancelled, in accordance with State Law.

Section 6.07 Ballots in Recall Election

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

A. With respect to each individual whose removal is sought, the question shall be submitted: "Shall _____ be removed from the office of _____ by recall?"

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

"Yes"

"No"

Section 6.08 Result of Recall Election

If a majority of the votes cast at a recall election shall be "No", that is against the recall of the individual named on the ballot, the individual shall continue in office for the remainder of his/her unexpired term, subject to recall as provided herein. If a majority of the votes cast at such election be "Yes", that is for the recall of the individual named on the ballot, the individual shall, regardless of any technical defects in the recall petition, be deemed removed from office upon passing of the resolution canvassing the election, and the vacancy shall be filled by the City Council as provided for in State law.

Section 6.09 Recall Restrictions

No petition shall be filed for the recall of an individual within three-hundred and sixty-five (365) days of the date of the individual's election to City Council or within one-hundred and eighty (180) days before the end of the individual's term on City Council.

Section 6.10 Initiative; Requirements specific to Petition for Initiative; Procedure

A. A petition for initiative must contain the number of valid signatures totaling at least twenty percent (20%) of the total number of registered voters registered to vote at the last general City election and shall otherwise comply with the requirements for petitions in this Article. Each copy of the petition shall have attached to it a copy of the full text of the proposed ordinance.

B. Upon presentation to the City Council, it shall become the duty of the City Council, within sixty (30) days after the date the petition was finally determined sufficient, to pass and adopt such ordinance without alteration as to meaning or effect, or to call for an election, to be held on the soonest date allowed under the Texas Election Code, at which the qualified voters of the City shall vote on the question of adopting or rejecting the proposed ordinance.

C. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon the canvassing of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

Section 6.11 Referendum; Requirements specific to Petition for Referendum; Procedure; Effect Prior to Election

A. A petition for referendum must contain the number of valid signatures totaling at least twenty percent (20%) of the total number of registered voters registered to vote at the last general City election and shall otherwise comply with the requirements for petitions in this Article.

B. Within forty-five (45) days after final sufficiency of the petition City Council shall either repeal the referred ordinance or order an election to submit the referred ordinance to the qualified voters of the City said election to be held on the first available uniform election date authorized by law.

C. If a majority of the qualified electors voting on a referred ordinance vote against the ordinance, it shall be considered repealed upon certification of the election results.

D. A petition for referendum on the same subject matter may only be submitted once every three (3) years.

Section 6.12 Initiative and Referendum; Form of Ballots

The ballots used when voting upon initiative or referendum shall set forth their nature sufficiently to identify them and shall also set forth, upon separate lines, the words:

"For the Ordinance"

or

"Against the Ordinance"

Section 6.13 Ordinances Passed by Popular Vote, Repeal or Amendment

No ordinance which may have been passed by the City Council upon a petition or adopted by popular vote under the provisions of this Article may be repealed or amended by the City Council for a period of three (3) years from the date said ordinance became effective and then only upon by an affirmative vote of two-thirds (2/3's) of the City Council.

ARTICLE IV. - INITIATIVE, REFERENDUM AND RECALL

Section 1. - Power of Initiative.

The people of the City of Port Arthur reserve the power of direct legislation by initiative and in the exercise of such power may propose any ordinance, except ordinances appropriating money or levying taxes, or ordinances repealing ordinances appropriating money or levying taxes, not in conflict with this Charter, the State constitution, or the State laws. Any initiated ordinance may be submitted to the Council by a petition signed by qualified voters of the City equal in number to at least twenty (20) percent of the number of ballots cast in the last general municipal election, provided, however, that if less than 7,000 votes were cast, the petition must contain at least 1,400 signatures.

Section 2. - Power of Referendum.

The people reserve the power to approve or reject at the polls any legislation enacted by the Council which is subject to the initiative process under this Charter, except that ordinances authorizing the issuance of bonds (either tax bonds or revenue bonds), whether original or refunding bonds, shall not be subject to such referendum, prior to or within sixty (60) days after the effective date of any ordinance which is subject to referendum, a petition signed by qualified voters of the City equal in number to at least twenty (20) percent of the number of ballots cast in the last general municipal election may be filed with the City Secretary requesting that any such ordinance be either repealed or submitted to the vote of the people; provided, however, that if less than 7,000 votes were cast, the petition must contain at least 1,400 signatures. When such petition has been certified as sufficient by the City Secretary, the ordinance specified in the petition shall not go into effect or further action thereunder shall be suspended if it shall have gone into effect, until and unless it is approved by the voters as herein provided.

Section 3. - Form of Petitions.

- (a). Initiative petition papers shall contain the full text of the proposed ordinance, including a descriptive caption, and before being circulated for signatures, it shall first be approved as to form by the City Attorney. In the event the proposed petition and proposed ordinance are not in proper form, it shall be the duty of the City Attorney to redraft, within a reasonable time, the instruments in proper legal language and render other service to persons desiring to propose the Ordinances as shall be necessary to make the same proper for consideration by the qualified voters of the City.
- (b). Referendum petition papers shall contain a sufficient description of the ordinance sought to be referred to identify it, or if the ordinance has been passed by the Council, the full text of the ordinance sought to be referred shall be included in such papers.
- (c). The signatures to the initiative or referendum petitions need not all be appended to one paper, but each signer shall sign his name in ink or indelible pencil, together with a notation showing his residence address and the precinct number. No signature shall be counted where there is reason to believe it is not the actual signature of the purported signer or that it is a duplication either of name or of handwriting used in any other signature on the petition, and no signature shall be counted unless the residence address of the signer is shown, or unless it is signed exactly as the name of the voter appears on the official copy of the current voter registration list or an official copy of the current list of exempt voters, or unless the precinct number is noted as above required. Before the signatures on any petition paper may be counted, one of the signers of such petition paper, a qualified voter, shall make oath before the City Secretary, or any other officer competent to administer oaths, that the statements made therein are true, that the petition papers were complete in all respects when signed, that each signature to the paper appended is the genuine signature of the person whose name purports to be signed thereto, and that such signatures were placed thereon in his presence.

Section 4. - Filing, Examination and Certification of Petitions.

Within thirty (30) days after an initiative or referendum petition is filed, the City Secretary shall determine whether the same is properly signed by the requisite number of qualified voters. The City Secretary shall declare void any petition paper which does not have an affidavit attached thereto as required I [in] Section 3 of this Article. In examining the petition the Secretary shall write the letters "N.Q." in red ink opposite the names of signers found not qualified. After completing examination of the petition the Secretary shall certify the result thereof to the Council at its next regular meeting. If the certificate of the City Secretary shall show an initiative or referendum petition to be insufficient, the Secretary shall notify the person filing the petition and it may be amended within ten (10) days from the date of such notice by filing a supplementary petition upon additional papers signed and filed as provided for in the original petition. Within thirty (30) days after such amendment is filed, the Secretary shall examine the amended petition and certify as to its sufficiency. If the amended petition is then found to be insufficient, no further proceedings shall be had with regard to it.

Section 5. - Council Consideration and Submission to Voters.

When the Council receives an authorized initiative petition certified by the City Secretary to be sufficient, the Council shall either: (a) pass the initiated ordinance without amendment within thirty (30) days after the date of the certification to the Council; or (b) submit said initiated ordinance without amendments to a vote of the qualified voters of the City at a regular or special election to be held within ninety (90) days after the date of the certification to the Council; or at such election submit to a vote of the qualified voters of the City said initiated ordinance without amendment, and an alternative ordinance on the same subject proposed by the Council.

When the Council receives an authorized referendum petition certified by the City Secretary to be sufficient, the Council shall reconsider the referred ordinance, and if upon such reconsideration such ordinance is not repealed within thirty (30) days, it shall be submitted to the qualified voters of the City at a regular or special election to be held not more than ninety (90) days after the date of the certification to the Council. Special elections on initiated or referred ordinances shall not be held more frequently than once each six (6) months, and no ordinance on the same subject as an initiated ordinance which has been defeated or on the same subject as a referred ordinance which has been approved at any election may be initiated by the voters within two (2) years from the date of such election.

Section 6. - Results of Elections.

Any number of ordinances may be voted on at the same election in accordance with the provisions of this Article. If a majority of the legal votes cast is in favor of an initiated ordinance, it shall thereupon be effective as an ordinance of the City. An ordinance so adopted may be repealed or amended at any time after the expiration of two (2) years by a vote of three-fourths of the Councilmembers qualified and serving. A referred ordinance which is rejected by a majority of the legal votes cast in a referendum election shall be deemed thereupon repealed.

Section 7. - Power of Recall.

Any member of the City Council may be recalled from office by the respective qualified voters of the District or the City from which he or she was elected, as herein provided. For purposes of the recall procedure, the term City Council shall include the office of Mayor.

Section 8. - Notice of Intention.

- (a). To initiate recall proceedings for Councilmembers serving in Districts One, Two, Three, Four, Five and Six and Positions Seven and Eight and the Mayor's position, any five respective qualified voters of the District or City from which the Councilmember or Mayor was elected, shall make and file with the City Secretary an affidavit stating the name of the member of the City Council sought to be removed and a statement of reasons for the removal. Such statement shall not exceed 300 words and shall, in so far as possible, state factual grounds for the removal. The five persons shall constitute the petitioner's committee.
- (b). Upon receipt of the affidavit and statement, the City Secretary shall deliver copies of them to the member sought to be removed. Within five (5) days after the delivery of the copies, the member may file with the Secretary an answering statement. Such statement shall not exceed 300 words, and shall, in so far as possible, give factual reasons in defense of the actions cited in the statement of the petitioners' committee.

Section 9. - Issuance of Petition Blanks.

Six (6) days after the delivery of copies of the affidavit and statement to the member of the Council whose recall is sought, the Secretary shall deliver to the petitioners' committee copies of petition blanks demanding the member's removal. Such petition blanks shall be issued by the Secretary with his signature and official seal attached; they shall be dated and addressed to the Council and shall contain the following:

- (a). The names and addresses of the member of the petitioners' committee.
- (b). The address to which all notices to the petitioners' committee are to be sent.
- (c). The name of the member whose removal is sought.
- (d). The statement of reasons for removal filed by the committee.
- (e). The answering statement of the member whose removal is sought, unless no such answering statement was filed with the Secretary within the time required by Section 8 (b), in which case the petition blanks shall state that no answering statement was received within the time required; and the petition shall not be considered insufficient because of the lack of an answering statement.

Section 10. - Petitioners' Committee.

The five members of the petitioners' committee shall be responsible for the circulation of the petition and for its filing in proper form.

Section 11. - Form and Sufficiency of Petitions.

- (a). No petition shall be valid unless signed by qualified voters of the district or the City, respectively, from which the Councilmember whose removal is sought was elected, equal in number to at least 25% [percent] of the number of ballots cast in the last general Municipal election for that position, provided, however, that if less than 7,000 votes were cast for that position, the petition must contain at least 1,400 signatures.
- (b). The signatures to a petition shall be executed in ink or indelible pencil and shall be affixed to one of the petition blanks issued by the City Secretary as provided in Section 9. Any petition paper which does not comply with the requirements of Section 9 shall be invalid.
- (c). The completed petition shall be filed with the City Secretary within sixty (60) days after the petition blanks were issued.
- (d). Each petition paper shall have attached to it at the time of filing an affidavit executed by the circulator thereof to the effect:
 - (1). that he personally circulated the paper;
 - (2). that the paper bears a stated number of signatures;
 - (3). that each signature was affixed in his presence;
 - (4). that he believes each signature to be the genuine signature of the person whose name it purports to be;
 - (5). that the full text of the statement of reasons for removal, and the answering statement, if any, of the member whose recall is sought were contained in such petition paper throughout its circulation, and that each signer had an opportunity before signing to read the full extent.

Section 12. - Procedure After Filing.

The procedure after filing of a recall petition so far as examination and certification of the recall petitions shall be the same as that for initiative and referendum petitions, as set out in Section 4, except that when the Secretary notifies the Council that a petition is sufficient he shall, at the same time, separately notify the member whose removal is sought.

Section 13. - Consideration by the Council and Submission to Voters.

- (a). If the member whose removal is sought resigns within five (5) days after he has received notice of the sufficiency of the petition, such resignation shall be irrevocable. The Council shall appoint a successor to fill the vacancy in the manner provided by Article II, Section 5.
- (b). If the member whose removal is sought does not resign within five (5) days after said notice, Council shall thereupon fix a date for a recall election to be held, said date to be not less than forty (40) nor more than sixty (60) days after the petition has been presented to the Council or, if there is no permissible date under State law for holding an election within said period, then said recall election shall be held on the next permissible date thereafter. The election shall be held at the same time as any regular municipal election to be held within the time hereby prescribed, if no said election is to be held, the Council shall call a special election. Provided, however, notwithstanding anything to the contrary in this charter, if a recall election would otherwise be held within ninety (90) days before a regular election for City Councilmembers, then said recall election shall instead be held in conjunction with said regular election for Councilmembers; provided, further if the member whose removal is sought is a candidate for re-election to the same office at said regular election then no recall election shall be held as to said member.

Section 14. - Ballot in Recall Elections.

- (a). Ballots used in recall elections shall conform to the following requirements:
 - (1). With respect to the member of the Council whose removal is sought, the question to be submitted shall be "SHALL (Name of person) BE REMOVED FROM THE COUNCIL BY RECALL?"
 - (2). Immediately below this question there shall be printed the petitioners' committee's statement of reasons for removal, under the title "STATEMENT FOR REMOVAL."
 - (3). Immediately below the statement for removal shall be printed, in the same type size and style, the answering statement, if any, of the member whose removal is sought, under the title "STATEMENT AGAINST REMOVAL."
 - (4). Immediately below such statement there shall be printed the two following propositions, one above the other in the order here indicated:

"Against the Recall of (name of person)."

"For the Recall of (name of person)."

Section 15. - Results of Recall Election.

If a majority of the votes cast on the question of recalling a member of the Council shall be against his recall he shall continue in office for the remainder of his unexpired term, subject to recall as before. If a majority of such votes be for the recall he shall, regardless of any defect in the recall petition, be deemed removed from office.

Section 16. - Recall Election for More than Three Members.

- (a). If an election is held for the recall of more than three (3) members of the Council, candidates to succeed them for their unexpired terms shall be voted upon at the same election.
- (b). Applications for candidates at such elections shall be made in the manner provided by this Charter for nominations for regular elections to the City Council.
- (c). No applications for candidates shall be accepted until after the recall petitions have been filed.

Section 17. - Limitation on Recall.

No recall petition shall be filed against a member of the Council within three (3) months after he takes office. Furthermore, no recall petition shall be filed against a member of the City Council during the current term after he has been subjected to a recall petition save and except upon different grounds of official misconduct than were alleged in the previous election.

(Ord. No. 97-77, § 1-5 (amend 13), 12-16-1997/1-17-1998)

Section 18. - Ban on Holding Appointive Office.

No member of the Council who has been recalled from office on the basis on [of] an allegation of official misconduct, or who has resigned after a sufficient recall petition alleging official misconduct has been filed against him, shall be appointed to any City office or position within four (4) years after such resignation or recall.

(Ord. No. 97-77, § 1-5 (amend 14), 12-16-1997/1-17-1998)

Section 19. - Council May Submit Issues.

The Council may submit, on its own initiative, a proposition for the enactment, repeal, or amendment of any ordinance to be voted upon at any municipal election and should such proposition receive a majority of the votes cast thereon at any election, such ordinance shall be enacted, repealed or adopted accordingly.