

HOME RULE CHARTER

City of Boerne, Texas

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PREAMBLE

We, the citizens of Boerne, Texas, in order to establish a home rule municipal government, provide for the future progress of our City and obtain more fully the benefits of local self-government, do hereby adopt this Home Rule Charter in accordance with the Constitution and statutes of the State of Texas; and do hereby declare the residents of the City of Boerne, in Kendall County, Texas, living within the legally established boundaries of the said City, to be a political subdivision of the State of Texas incorporated forever under the name and style of the "City of Boerne" with such powers, rights and duties as are herein provided.

I. FORM OF GOVERNMENT AND POWERS

Section 1.01 Establishment

The municipal government provided by this Charter shall be known as the "Council-Manager form of Government." Pursuant to its provisions and subject only to the limitations imposed by the State Constitution, the statutes of this State, and this Charter, all powers of the City shall be vested in an elective Council, hereinafter referred to as the "City Council," which shall enact local legislation, adopt budgets, determine policies and appoint the City Manager, who in turn shall be held responsible to the City Council for the execution of the laws and the administration of the government of the City. All powers of the City shall be exercised in the manner prescribed by this Charter, subject to the State Constitution and statutes of the State, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

Section 1.02 General Powers

The City shall have all the powers granted to cities by the Constitution and Laws of the State of Texas together with all of the implied powers necessary to carry into execution such granted powers, as fully and completely as though they were specifically enumerated in this Charter; and those express and implied powers necessary for the government, interests, health, welfare and good order of the City and its inhabitants. All such powers, whether express or implied, shall be exercised and enforced in the manner prescribed in this Charter; or when not prescribed herein, in such manner as shall be provided by ordinance of the Council.

Section 1.03 Construction of the Charter

The powers of the City under this Charter shall be construed liberally in favor of the City , and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power granted in this article.

Section 1.04 Intergovernmental Relations

The City of Boerne may exercise any of its powers or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise with the Government of Texas or any agency thereof, or with the Federal Government or any agency thereof, or with the government of any county, city or political subdivision to accomplish any lawful municipal purpose.

Section 1.05 Eminent Domain

The City shall have the full power and right to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter or by the Constitution and laws of the State of Texas. The City may exercise the power of eminent domain in any manner authorized or permitted by the Constitution and Laws of this State. The power of eminent domain hereby conferred shall include the right of the City to take the fee in land so condemned and such power and authority shall include the right to condemn public property for such purposes. The City shall have and possess the power of condemnation for any municipal or public purposes even though not specifically enumerated in this Charter.

II. BOUNDARIES

Section 2.01 Boundaries

The boundaries of the City of Boerne shall be the same as have heretofore been established and as they existed on the day of ratification of this Charter, which boundaries are more fully set out and described by the official city map of the City of Boerne.

Section 2.02 Extension of Boundaries

Additional territory may be annexed to the City in any manner and by any procedure that may now be provided by law or that may be hereafter provided by law. Same shall be in addition to the following methods:

A. **Annexation by Ordinance.** The Council shall have the power by Ordinance, to annex territory lying adjacent to the City, with or without the consent of the owners or inhabitants thereof, thereby extending and enlarging the bounds and limits of the City.

Such annexation shall be limited and controlled by the Municipal Annexation Act of the State of Texas as the same is now or may hereafter be amended, the same now being Chapters 42 and 43 and Section 212.003 of the Local Government Code (which provide procedures for municipal annexation, for establishment of extraterritorial jurisdiction, notice and hearing for annexation proceedings, limitations on annexation and the extension of the City's subdivision regulations into its extraterritorial jurisdiction).

B. **Annexation by Petition.** The owner or owners of any land contiguous or adjacent to the City may, by petition in writing to the City Council, request the annexation of said land, describing it by metes and bounds. The City Council shall thereafter hear such petition and the arguments for and against the same and grant or refuse such petition as the City Council may see fit. If the City Council grants such petition, it may by proper ordinance, under such procedural rules as may be prescribed by law, receive and annex such territory as a part of the City.

C. **Annexation by Election.** The City Council shall have the power to order an election or elections for the purpose of annexing territory lying adjacent to the City of Boerne. Such order shall include the survey notes of the area sought to be annexed. The City Council shall give notice of the date and place of balloting at such election by publication of the order in the official newspaper of the City at least thirty days prior to the date on which such election is ordered. The residents of the territory sought to be annexed, who are qualified to vote for members of the State Legislature, shall be qualified to vote at such election. The City Council shall, at its next meeting, canvass the return of such election and if a majority of the votes cast at such election by the residents of said territory being considered for annexation, favor such annexation, the Council may declare the said territory annexed to the City of Boerne and the boundary limits of the City of Boerne shall thereafter be extended and fixed so as to include

such territory.

Section 2.03 Disannexation

Any area hereafter annexed under this Charter and the law of this State may be disannexed only under the authority of and by the procedure set out in Section 43.141 et seq. of the Local Government Code.

III. THE CITY COUNCIL AND MAYOR

Section 3.01 General Powers and Duties

All powers of the City shall be vested in the City Council, except as otherwise provided by law or this Charter, and the 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 (*as amended by voters, May 12, 2012*)

The City Council shall be composed of the Mayor and five(5) Council Members each serving two (2) year terms. Each Council Member shall qualify and be elected by District, such Districts being numbered one (1) through five (5). Each Council Member shall be elected only by the voters residing in the area represented by the District to which the candidate seeks to be elected. Every registered voter in the City shall be entitled to vote for one candidate for Council Member for the area represented by the District in which the registered voter resides. Every registered voter in the City shall also be entitled to vote for one candidate for Mayor without regard to the District in which the voter resides.

Section 3.03 Qualifications(*as amended by voters, May 12, 2012*)

The Mayor and each Council Member must, at the time of taking office, have attained the age of 21 years and be a qualified voter. The Mayor must have been a resident of the City for at least twelve (12) consecutive months, and each Council member must have been a resident of the area represented by the District number sought for

at least six (6) consecutive months.

Section 3.04 Judge of Qualifications

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

Members of the City Council shall serve with such compensation as may be determined by the Council. An increase in compensation shall not be effective until the date of commencement of terms of office of the Council members or Mayor elected at the next scheduled regular election. The policy regulating payment of expenses incurred in performance of official duty shall be determined by the Council.

Section 3.06 Mayor

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 and by the governor for purposes of military law. The Mayor may debate and discuss any matters before the Council but may vote only in the event of a tie. He shall, when authorized as necessary by the Council, sign all official documents. The Mayor shall appoint, with the advice and consent of the Council, the members of citizen advisory boards and commissions, whose conditions of membership shall have been set previously by ordinance.

The Mayor shall sign all ordinances and resolutions; except that he may veto any such ordinance or resolution by failing to sign it and by filing written objection to it with the City Secretary not later than the third (3rd) day after the date of passage of the same, excluding Saturday, Sunday and legal holidays provided by national, state or local law. The ordinance or resolution so vetoed must be reconsidered at the next regular meeting of the Council, at which time a four-fifths affirmative vote of the entire Council membership, excluding the Mayor, shall constitute enactment.

Section 3.07 Mayor Pro-Tem

The Mayor Pro-Tem shall be a Council member elected by the Council at the first regular Council meeting following each regular City election. The Mayor Pro-Tem shall act as Mayor during the absence or disability of the Mayor and when acting in this capacity he shall retain the right to vote.

Section 3.08 Vacancies; Forfeiture of Office; Filling of Vacancies

A. **Vacancies.** The office of a Council member or Mayor shall become vacant upon the member's death, resignation, removal from office or forfeiture of office in any manner authorized by law.

B. **Forfeiture of Office.** A Council member or the Mayor shall forfeit that office if that person

1. lacks at any time during the term of office for which elected any qualification for the office prescribed by this Charter or by law,
2. violates any express prohibition of this Charter,
3. is convicted of a crime involving moral turpitude,
4. ceases to be a resident of the city, or
5. fails to attend three consecutive regular meetings of the Council without being excused by the Council.

C. **Filling of Vacancies.** When a vacancy occurs in the City Council, the remaining members of the Council shall, within thirty (30) days, appoint a qualified person to fill the unexpired term. At no given time shall two (2) appointed Council members serve on the Council. In the case where a vacancy has been filled by the Council prior to a subsequent vacancy or vacancies, the Council shall call a special election within thirty (30) days from the date the last vacancy occurred, to be held within forty-five (45) days thereafter, unless otherwise provided by law, for the purpose of electing the successor or successors to the office or offices vacated.

Section 3.09 Prohibitions

A. **Holding Other Office.** Except where authorized by law, no Council member shall hold any other elected public office during the term for which the member was elected to the Council. No Council member shall hold any other City office or employment during the term for which the member was elected to the Council.

No former Council member shall hold any compensated appointive office or employment with the City until one year after the expiration of the term for which the member was elected to the Council. Nothing in this section shall be construed to prohibit the Council from selecting any current or former Council member to represent the City on the governing board of any regional or other intergovernmental agency.

B. **Appointments and Removals.** Neither the City Council nor any of its members shall in any manner control or demand the appointment or removal of any City administrative officer or employee whom the City Manager or any subordinate of the City Manager is empowered to appoint, but the council may express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.

C. **Interference with Administration.** Except for the purpose of inquiries and investigations under Section 3.12, the Council or its 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 Council nor its members shall give orders to any such officer or employee, either publicly or privately.

Section 3.10 Meetings and Procedures

A. **Regular and Special Meetings.** The Council shall meet at least once each month at a time and place which the Council may prescribe by rule. Special meetings may be called by the Mayor on his own motion. On application of three (3) Council members, the Mayor shall call a special meeting. Notice of the date, place, time and subject of each meeting shall be in accordance with State Law.

B. The Council shall by resolution determine its own rules and order of business. Provision shall be made for the taking of minutes, which shall be a public record. Three Council members shall constitute a quorum.

Section 3.11 Ordinances

A. **Passage.** Ordinances shall be introduced to the City

Council only in written or printed form. The subject or subjects of all ordinances shall be clearly expressed in the title. Except as may otherwise be prescribed in this Charter, an ordinance shall not be finally passed at the meeting of the Council at which it is first introduced, but it shall then be read, and the Council will determine whether it shall be rejected or further considered at a subsequent meeting of the Council. If rejected, no further action shall be required. Upon second reading, the ordinance may be adopted and enacted. The affirmative vote of three or more members of the Council is required to enact any ordinance.

During the first reading of an ordinance, the Council may determine that the first reading is sufficient for adequate consideration. A motion for first and only reading of an ordinance may be made and passed upon the affirmative vote of four-fifths (4/5) of the entire Council membership, excluding the Mayor. The Council may then proceed to vote, pass, and adopt the ordinance on the first reading.

B. **Enacting Clause.** The enacting clause of all ordinances shall be "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS;" and every ordinance shall be authenticated by the signature of the Mayor or Mayor Pro-Tem and the City Secretary.

C. **Penal and Franchise Ordinances.** 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 Boerne. All ordinances granting, confirming, extending, renewing, or amending a franchise shall be accepted in writing by the grantees and shall be published as otherwise provided in this Charter.

D. **Codification of Ordinances.** 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 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. 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

The Council shall have the power to inquire into the official

conduct of any department, agency, appointed boards, office, officer, employee or appointed board members of the City. For this purpose, the Council shall have the power to administer oaths, subpoena witnesses, compel the production of books, papers, and other evidence material to the inquiry. The Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence. The Council shall have the power to punish any such contempt in the manner provided by such ordinance.

IV. ELECTIONS

Section 4.01 Elections

The regular City election shall be held annually on the first Saturday 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. The City Council shall fix the place for holding such election. 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. Notice of the election shall be published in a newspaper of general circulation of the City of Boerne, such publication to follow the requirements of the Election Code and any applicable law.

Section 4.02 Regulation of Elections

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. The City Council shall appoint the election judges and other election officials.

Section 4.03 Filing for Office

Any person having the qualifications set forth for Council members under Section 3.03 of this Charter shall have the right to file an application to have his name placed on the official ballot as a candidate for any elective office, and such application in writing signed by such candidate, filed with the City Secretary not less than forty-five (45) days prior to the date of election, shall entitle such applicant to a place on the official ballot.

Section 4.04 Official Ballot

The names of all candidates for office, except such as may have withdrawn, died or become ineligible, shall be printed on official ballots without party designations in the order determined in a drawing of lots (for each position) conducted by the City Secretary. All official ballots shall be prepared and printed in accordance with the Election Code and any other applicable law. Early voting shall be governed by the general election laws of the State of Texas.

Section 4.05 Candidates Elected (as amended by voters, May 12, 2012)

A. The candidate in the regular City election who receives the greatest number of votes cast for the office of Mayor shall be declared elected. In the event of a tie vote between the candidates receiving the highest number of votes cast for the office of Mayor, the City Council shall within five (5) days order a special election between the tied candidates to be held not earlier than the 20th day or later than the 30th day after the date the canvass of the main election is completed.

B. The candidate for an area represented by District number in the regular City election who received the greatest number of votes cast for the Council place shall be declared elected. In the event there is a tie vote between candidates for the Council district, the City Council shall within five (5) days order a special election between the tied candidates to be held not earlier than the 20th day or later than the 30th day after the date the canvass of the main election is completed.

V. ADMINISTRATIVE ORGANIZATION

Section 5.01 City Manager

A. **Appointment and Qualifications.** The City Council shall appoint a City Manager who shall be the chief administrative and executive officer of the City and shall be responsible to the City Council for the administration of all the affairs of the City. He shall be chosen by the City Council solely on the basis of his executive and administrative training, experience and ability. No member of the City Council shall, during the term to which he is

elected and for one year thereafter, be appointed City Manager.

B. **Term and Compensation.** The City Manager shall not be appointed for a definite term but may be removed at the will and pleasure of the City Council by a four-fifths (4/5) vote of the entire Council, excluding the Mayor. The action of the City Council in suspending or removing the City Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibility of such suspension or removal in the City Council. The City Manager shall receive compensation as may be fixed by the Council.

C. **Powers and Duties.** The City Manager shall have the following powers and duties:

1. He shall appoint and, when he deems it necessary for the good of the City, suspend or remove all City employees and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
2. He shall direct and supervise the administration of all departments, officers, and agencies of the City, except as otherwise provided by this Charter or by law.
3. He shall attend all Council meetings, except when excused by the Mayor or Mayor Pro-Tem, and shall have the right to take part in discussion but may not vote.
4. He shall see that all laws, provisions of this Charter and acts of the Council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.
5. He shall prepare and submit the annual budget and capital program to the Council.
6. He shall ensure that the City Master Plan is maintained and all changes approved by the City Council.
7. He shall submit to the Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year.

8. He shall make such other reports as the Council may require concerning the operations of the City departments, offices and agencies subject to his direction and supervision.
9. He shall keep the Council fully advised as to the financial condition and future needs of the City and make such recommendations to the Council concerning the affairs of the City as he deems desirable.
10. He shall keep a written inventory of all real property and all permanent equipment belonging to the City, said inventory to be subject to annual audit. A system shall be established to control the use and replacement of expendable items.
11. He shall perform such other duties as are specified in this Charter or may be required by the Council.

D. **Acting City Manager.** By letter filed with the City Secretary the City Manager shall designate, subject to approval of the Council, a qualified City Administrative Officer to exercise the powers and perform the duties of City Manager during his temporary absence or disability. The Council may revoke such designation at any time and appoint another officer of the City to serve until the City Manager shall return or his disability shall cease.

Section 5.02 Other Departments, Offices, and Agencies

A. General Provisions.

- (a) **Creation of Departments.** The Council may continue or establish City departments, offices or agencies in addition to those created by this Charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this Charter to a particular department, office or agency may be discontinued or, unless this Charter specifically so provides, assigned to another department.
- (b) **Direction by City Manager.** All departments, offices and agencies under the direction and supervision of the City Manager shall be administered by an officer appointed by and subject to the direction and supervision of the City Manager. With the consent of Council, the City Manager may serve as the head of one or more such departments,

offices or agencies or may appoint one person to serve as the head of two or more of them.

B. **City Attorney.** The City Council shall appoint a City Attorney for an indefinite term and fix his compensation. The City Attorney must be a member of the State Bar of Texas. He shall serve as chief legal advisor to the City Council, the City Manager, supervisors of City departments and other City officers and agencies. He shall represent the City in all legal proceedings and shall perform any other duties prescribed by this Charter, ordinance or State Laws. The City Manager with the consent of Council may retain an attorney when the City Attorney is absent or as other circumstances require.

C. **Municipal Court; Judge(s).** The Council shall establish a municipal court and shall appoint a presiding judge(s) of the municipal court of the City of Boerne and any such other associate judge(s) as are deemed necessary and fix the compensation. The person(s) so appointed as the presiding judge shall be a member of the State Bar of Texas. Sessions of the municipal court shall be held at such times as the City Council may determine after considering recommendations as to the times for such sessions submitted by the judge(s) of the municipal court. The dates of such court sessions and each change thereto shall be filed with the City Secretary. The judge(s) of the municipal court shall serve at the will and pleasure of the City Council, unless otherwise provided by law.

D. **City Secretary.** The City Manager shall appoint the City Secretary and such Assistant City Secretaries as needed. The City Secretary, or an Assistant City Secretary, shall give notice of Council meetings, shall keep the minutes of the proceedings of such meetings, shall authenticate by signature and record in full in a book kept and indexed for the purpose, all ordinances and resolutions, and shall perform such other duties as the City Manager shall assign and those elsewhere provided for in this Charter. The City Secretary shall be responsible for responding to any requests for information concerning the Charter and or any State laws or regulations cited herein.

Section 5.03 Personnel Rules

The City Manager shall be responsible for the preparation of personnel rules, which rules shall be submitted by him to the Council. The Council may accept and adopt such rules as proposed or may adopt them with such amendments as the Council deems

necessary or may reject them in their entirety and direct the City Manager to further consider the rules and present new proposals at a subsequent meeting.

Section 5.04 Freedom From Interference

It shall be unlawful for the City Council or any of its members to dictate to the City Manager the appointment of any person to office or employment. The City Council or its members will not interfere in any manner with the City Manager in the performance of the duties of that office or prevent him from exercising his own judgement 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, the City Council and its members shall deal with the City Staff solely through the City Manager, and neither the Council nor any member 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.

VI. FINANCIAL PROCEDURES

Section 6.01 Fiscal Year

The fiscal year of the City shall begin on the first day of October and end on the last day of September.

Section 6.02 Preparation and Submission of Budget

The City Manager shall submit a proposed budget containing a complete financial plan for each fiscal year. Such a budget shall be submitted to the City Council not more than one hundred twenty (120) days but not less than sixty (60) days prior to the beginning of each fiscal year. The budget shall contain the following:

- (a) A brief budget message which shall outline the proposed financial policies of the City for the fiscal year, shall set forth the reasons for any major changes in expenditure and revenue items from the previous fiscal year, and shall explain any major change in financial policies.
- (b) Revenue Summary

- (c) Departmental Expenditure Summary
- (d) Departmental Budget
- (e) Schedule of Outstanding Bonded Debt
- (f) Schedule of Capital Outlays by Department
- (g) Review of Property Valuations
- (h) An Analysis of Tax Rates
- (i) Tax Levies and Tax Collection by Year for the Last Three (3) Years
- (j) A Provision for Financing the Current Capital Improvement Program

In preparing the budget, the City manager shall place in parallel columns opposite the several items of revenues and expenditures, the actual amount of each item for the last complete fiscal year, the estimated amount for the current fiscal year, and the proposed amount for the ensuing fiscal year.

Section 6.03 Council Action on Budget

A. **Notice of Hearings.** The Council shall have published in the official newspaper(s) of the City a notice stating:

- (1) The time and place where copies of the budget are available for inspection by the public, and
- (2) The time and place, not less than two (2) weeks after such publication, for a public hearing on the budget.

B. **Amendment Before Adoption.** After the public hearing, the Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service, provided that no amendment to the budget shall increase expenditures to an amount greater than the estimated income.

C. **Adoption.** The Council shall adopt the budget on or before the 20th day of the last month of the fiscal year currently ending. If it fails to adopt the budget by this date, the amounts appropriated for current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it pro-rated accordingly, until such

time as the Council adopts a budget for the ensuing fiscal year. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed.

Section 6.04 Budget Amendments after Adoption

A. **Supplemental Appropriations.** If, during the fiscal year, the City Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council may make supplemental appropriations for the year up to the amount of such excess.

B. **Emergency Appropriations.** To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency appropriations. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may by such ordinance authorize the issuance of emergency notes, which may be renewed as necessary.

C. **Reduction of Appropriations.** If at any time during the fiscal year it appears probable to the City Manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may reduce one or more appropriations.

D. **Transfer of Appropriations.** At any time during the fiscal year the City Manager may transfer part or all of any unencumbered appropriation balance among programs within a fund department, office or agency and, upon written request by the City Manager, the Council may transfer part or all of any unencumbered appropriation balance from one fund department, office or agency to another.

E. **Limitations; Effective date.** No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer

of appropriations authorized by this section may be made effective immediately upon adoption.

Section 6.05 Balanced Budget

The total of proposed expenditures shall not exceed the total of estimated income.

Section 6.06 Lapse of Appropriations

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three (3) years pass without any disbursement from or encumbrance of the appropriation.

Section 6.07 Payments and Obligations Prohibited

No payment shall be made or obligation incurred against any allotment or appropriation unless the City Manager or his designee first certifies that there is a sufficient unencumbered balance in such allotments or appropriations and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal. Such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and he shall also be liable to the City for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.

Section 6.08 Purchase Procedure

The Council may by ordinance confer upon the City Manager general authority to contract for expenditures without further approval of the Council for all budgeted items not exceeding fifteen thousand dollars (\$15,000.00). All contracts for

expenditures involving more than fifteen thousand dollars (\$15,000.00) must be expressly approved in advance by the Council.

Section 6.09 General Obligation Debt

The City shall have the power to borrow money on the credit of the City for any public purpose not prohibited and as provided by the Constitution and Laws of the State of Texas.

Section 6.10 Revenue Bonds

The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function as provided and not prohibited by the Constitution and Laws of the State of Texas and to issue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable solely from the properties, or interest therein pledged, or the income therefrom or both. The holders of the revenue bonds shall never have the right to demand payment thereof out of monies raised or to be raised by taxation. All such bonds shall be issued in conformity with the Laws of the State of Texas.

Section 6.11 Audit of City Books and Accounts

The City Council shall appoint a Certified Public Accountant to make a complete audit of the books and accounts of every City Department at the close of every fiscal year and present his report to the City Council. Such audit report shall be filed with the City Secretary and shall be available for public inspection.

VII. PLANNING AND ZONING

Section 7.01 Planning and Zoning Commission

Consistent with all applicable Federal and State laws with respect to land use, development and environmental protection, the City Council shall:

1. Establish a Planning and Zoning Commission to carry out the planning function and such decision-making responsibilities as may be specified by ordinance;

2. Adopt a comprehensive plan and determine to what extent zoning and other land use control ordinances must be consistent with the plan; and
3. Adopt development regulations, to be specified by ordinance, to implement the plan.

VIII. PUBLIC UTILITIES AND FRANCHISES

Section 8.01 Powers of the City

The City of Boerne shall have the full power, to the extent the same is conferred by the Constitution and Laws of the State of Texas, to own, lease, operate, prohibit, regulate and control any public utility within or without the limits of the City and to provide for the compensation and rental to be paid to the City by any public utility for the use of its streets, highways and public areas.

In addition to the City's power to buy, construct, lease, maintain, operate, and regulate public utilities and to manufacture, distribute, and sell the output of such utility operations, the City shall have such regulatory and other powers as may now or hereafter be granted under the Constitution and Laws of the State of Texas.

Section 8.02 Board of Directors

The City Council shall be and act as the Board of Directors of all utilities owned and operated by the City.

Section 8.03 Franchises

The City Council shall have power by ordinance to grant, renew and extend all franchises of public utilities of every character operating within the City and for such purposes is granted full power. The term "public utility" as used herein is construed to mean any person, firm or corporation furnishing to the public any general public service, including, but not limited to heat, light,

power, telephone service, communication services, community antenna or cable television service, sewer service and the treatment thereof, water, wrecker service, the carrying of passengers for hire, or any other public service whereby a right to, in part, appropriate or use the streets, highways, or other property of the City, as necessary or proper is granted. Any ordinance granting, renewing or extending franchises shall not take effect until at least thirty (30) days after its passage; and during such thirty (30) day period the descriptive caption of the ordinance shall be published at least twice in the official newspaper(s) of the City, the expense of the publication being borne by the proponents of the franchise.

Section 8.04 Franchise Value Not to be Allowed

Franchises granted by the City under this Charter shall be considered to be of no value in fixing reasonable rates and charges for utility service within the City, and in determining the just compensation to be paid by the City for public utility property which the City may acquire by condemnation or otherwise.

Section 8.05 Right of Regulation

All grants, renewals, extensions, or amendments of public utility franchises, whether so provided in the ordinance or not, shall be subject to the right of the City Council:

- (a) To repeal the same by ordinance at any time upon the failure of the grantee to comply with the terms of the franchise, the ordinance, this Charter, any applicable statute of the State of Texas, or the rule of any applicable governmental body, such power to be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise, and if said default is not cured within a reasonable time such power shall be exercised only after the grantee has been given the opportunity for hearing.
- (b) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.
- (c) To require such expansion, extension, and improvements of plants and facilities as are necessary to provide adequate service to the public; and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency.

- (d) To prescribe the accounts and accounting system to be used by a franchise holder so that they will accurately reflect the value of the property used in rendering its service to the public; and the expenses, receipts, and profits of all kinds of such franchises. (It shall be deemed sufficient compliance with this paragraph if the franchisee keeps its accounts in accordance with the uniform system established by an applicable Federal or State agency for such service.) To examine and audit, at any reasonable time during regular business hours, the accounts and other records of any franchise holder; and to require annual and other reports including reports on operations within the City of Boerne.
- (e) To impose such reasonable regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare, and accommodation of the public.
- (f) To require such compensation and rental as may be permitted by the Laws of the State of Texas.
- (g) To require that the franchise holder restore to the applicable City standards at that time, at his expense, all public and private property damaged or destroyed by construction, maintenance, or removal by such franchise holder.

Section 8.06 Extensions

All extensions of public utility service shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved

rights contained in this Charter. The extension of any public utility shall be considered as a part of the original grant and shall be terminable at the same time and under the same conditions as the original grant.

Section 8.07 Other Franchise Conditions

All franchises heretofore granted are recognized as contracts between the City of Boerne and the grantee, and the contractual rights as contained in any such franchise shall not be impaired by the provisions of this Charter, except that the power of the City to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved; and except that the

general power of the City, heretofore existing and herein provided for to regulate the rates and services of a grantee, shall include the right to require proper and adequate extension of plant and service and the maintenance of the plant and equipment at the highest reasonable standard of efficiency. All franchises hereafter granted shall be held subject to all terms and conditions contained in the various sections of this article whether or not such terms are specifically mentioned in the franchise.

Section 8.08 Regulation of Rates and Service

The City Council **subject to State and Federal laws** shall have full power, after due notice and hearing, to regulate by ordinance the rates, charges, and fares of every public utility franchise holder operating in the City. Every franchise holder who shall request an increase in rates, charges or fares shall have, at a hearing of the Council called to consider such request, the burden of establishing by clear, competent, and convincing evidence the value of its investment property allocable to service in the City, the amount and character of its expenses and revenues connected with the rendering of such service, and any additional evidence required by the Council. If no agreement between the Council and the franchise holder can be reached on such request for an increase in rates, charges, or fares, the Council may select and employ rate consultants, auditors and attorneys to investigate and, if necessary, litigate such request. The franchise holder shall reimburse the City for its reasonable and necessary expenses so incurred and may be allowed to recover such expenses through its rates during the period of recovery if authorized to do so by the City Council.

Section 8.09 Accounts of City-Owned Utilities

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

Section 8.10 Sale of City-Owned Utilities

Prior to the consideration of a sale of the City's city-owned electric utility, the City Council shall hold a public hearing during which the City's financial advisor shall present a report to the City Council concerning the revenue that has been earned by the City's city-owned electric utility throughout the City's ownership thereof, and an analysis of the revenue to be lost by the City through the proposed sale of the electric utility.

There shall be two (2) Council votes twelve (12) months apart to call a referendum election concerning the sale of the electric utility. The City shall then hold a referendum election which must be favorably passed by a majority of the voters voting at the election.

IX. INITIATIVE, REFERENDUM, AND RECALL

Section 9.01 General Authority

A. **Initiative.** The registered voters of the City shall have power to propose ordinances to the Council. If the Council fails to adopt an ordinance so proposed without any change in substance, the qualified voters shall have the power to adopt or reject it at a City election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of City officers or employees or any ordinance relating to the issuance and sale of bonds.

B. **Referendum.** The registered 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 registered 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 registered voters of the City shall have the power to petition for recall of the Mayor or any member of the City Council.

Section 9.02 Commencement of Proceedings; Petitioners' Committee; Affidavit

Any ten (10) registered 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 Council member or Mayor to be recalled. Within five (5) working days after the affidavit of the petitioners' committee is filed with the City Secretary, he shall issue the appropriate petition blanks to the petitioners' committee.

Section 9.03 Petitions

A. **Number of Signatures.** Initiative, referendum, or recall petitions shall be signed by registered 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 fifty (250) such petitioners. However, no signatures to any petitions shall remain effective or be counted which do not comply with the provisions of the Election Code.

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 followed by the signer's printed name, the address and voter registration number of the person signing and date of signature. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered. The contents of the recall petition shall be as specified in Section 9.05.B.

C. **Filing Referendum Petitions.** Referendum petitions must be filed within sixty (60) days after adoption by the Council of the ordinance sought to be reconsidered.

Section 9.04 Procedure After Filing

A. **Certificate of City Secretary; Amendment.** Within twenty (20) working 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) working 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 (2) working days after receiving the copy of his certificate and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of Subsection B of Section 9.03, and within five (5) working 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 Subsection 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 petitioner's committee does not file notice of intention to amend it, or if an amended petition has been certified insufficient, the committee may, within two (2) working days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request 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 9.05 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 III or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) days or fails to repeal the referred ordinance within thirty (30) days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance 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 Boerne 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 incompetency, misconduct or malfeasance in office, the petition shall specifically state each ground with such certainty as to give the officer sought to be removed, notice of the matters with which he is charged. The officer whose removal is sought may, within five (5) working 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.

C. **Recall Restrictions.** No recall petition shall be filed against any officer of the City of Boerne within three (3) months after his election nor 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 not less than thirty (30) days and not later than ninety (90) days from the date that the petition is found to be sufficient. A recall election shall be held not less than thirty (30) days and not later than sixty (60) days after the last day on which the officer named in the recall petition may properly request a public hearing to present facts pertinent to the charges specified in the recall petition. If no regular City election is to be held within the period prescribed in this subsection, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls to registered voters.

E. **Withdrawal of Petitions.** An initiative, referendum, or recall petition may be withdrawn at any time prior to the fifteenth (15) day preceding the day scheduled for a vote of the City by filing with the City Secretary a request for withdrawal signed by at least five (5) members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Section 9.06 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, 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 3.08, Subsection C of this Charter.

X. GENERAL PROVISIONS

Section 10.01 Personal Financial Interest

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

Section 10.02 Prohibitions

A. Activities Prohibited:

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

2. No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the personnel

provisions of this Charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provision, rules and regulations.

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

4. No person related within the second degree by affinity, or within the third degree by consanguinity to any elected officer of the City, or to the City Manager, shall be appointed to any office, position, or clerkship or other service of the City, but this prohibition shall not apply to officers or employees who have been continuously employed by the City for not less than two (2) years prior to the election or appointment of the officer related in the prohibited degree.

B. **Penalties.** Any person who by himself or with others willfully violates any of the provisions of paragraphs one (1) through four (4) shall be guilty of misconduct and shall be subject to immediate forfeiture of his office or position after hearing by the City Council. An affirmative vote of four (4) Council Members shall be required to compel forfeiture of the office or position.

Section 10.03 Notice of Claim

The City of Boerne shall have the authority to establish an ordinance which may specify procedures and time limitations during which notice of personal injury or property damage claims against the City must be presented.

Section 10.04 Assignment, Execution, and Garnishment

The property, real and personal, belonging to the City shall not be liable to be sold or appropriated under any writ of execution or cost bill. The funds belonging to the City, in the hands of any person, firm or corporation, shall not be liable to garnishment, attachment, or sequestration; nor shall the City be

liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City nor any of its officers or agents shall be required to answer any such writ or garnishment on account whatever.

Section 10.05 City Not Required to Give Security or Execute Bond

It shall not be necessary in any action, suit or proceeding in which the City of Boerne is a party, for any bond, undertaking, or security to be demanded or executed by or on behalf of said City in any of the State Courts, but in all such actions, suits, appeals or proceedings same shall be conducted in the same manner as if such bond, undertaking or security has been given as required by law.

Section 10.06 Separability Clause

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

Section 10.07 Amendment

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

XI. TRANSITIONAL PROVISIONS

Section 11.01 Existing Ordinances and Resolutions

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

Section 11.02 Officers and Employees

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

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

Section 11.03 Number and Gender Defined.

As used in this Charter, whenever the context so indicates, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the other.

Section 11.04 Pending Matters.

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

Section 11.05 Manner of Submission to Electors.

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

TRANSMITTAL

Unanimously passed and approved by the Boerne Home Rule Commission and delivered on this the 12th day of September, 1995, to the City Council of Boerne, Texas in open session.

Respectfully submitted,

Gordon L. Hollon, Chairman

Pat Martin

Barry Jackson, Vice Chairman

Bonnie Molberg

Phillip M. Bell

Anna Marie Schoch

Chris Bradbury

Darren Smith

Dr. Rob Bradley

Martha Doenges

Karen Carlos

Dr. Clifford Wendler

Jimmy Locke

Nancy White

Dick Magers

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