

PART I CHARTER*

***Editor's note:** Printed herein is the Charter for the City of Port Aransas adopted by referendum on August 12, 1978. The Charter election was authorized by ordinance number 77-9 on September 13, 1977. Style and capitalization have been made uniform. Obvious misspelled words have been corrected. Amendments have been included and are indicated by a history note immediately following the amended section. The absence of a history note means the section remains unchanged from original adoption.

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ARTICLE I. FORM OF GOVERNMENT AND BOUNDARIES

Section 1. Form of government.

The municipal government provided in this Charter shall be known as the council-manager form of government. Under its provisions, the city council, consisting of the mayor and councilmen elected by and responsible to the people, shall appoint a city manager (who shall be responsible to the city council for the administration of the government of the city). All powers of the city shall be vested in the city council and shall be exercised in the manner prescribed by this Charter, or if the manner not be prescribed, then in such manner as may be prescribed by ordinance, the state constitution or the statutes of this state.

Section 2. Boundaries of the city.

The boundaries of the City of Port Aransas, Texas, are those heretofore established and now existing or those boundaries as may be changed by ordinances and proceedings of the city enacted in accordance with this Charter.

Section 3. Annexation.

Except insofar as it may be prohibited or limited by state or federal law, the city shall have the power to annex additional territory and/or to disannex or exchange territory, regardless of configuration, size, or location, any lawful means or methods, including, but not limited to, those means and methods, now or hereafter prescribed by state or federal law, this charter, or ordinances or resolutions of the city.
(Section 3, amended by Charter election of May 4, 1991)

Section 4. Reserved.

Editor's note: A charter election held on May 4, 1991, repealed § 4 of Art. I in its entirety. Formerly, § 4 pertained to contradiction of boundaries and derived from the original Charter, adopted by referendum on Aug. 12, 1978, as amended by a Charter election held on Jan. 21, 1984.

ARTICLE II. POWERS OF THE CITY

Section 1. Powers of the city.

The city shall have all powers and rights of self government and home rule that exist now or may be granted to municipalities by the constitution and laws of the State of Texas. These powers and rights, whether expressed or implied, shall be exercised, administered and enforced in the interest and welfare of individuals and corporations residing in or owning property within the boundaries of the city as prescribed by this Charter, or in such manner as may be provided by resolution or ordinance of the city council. The powers hereby conferred upon the city shall include, but not be restricted to, the powers expressly conferred and permitted by Texas Local Government Code, as now or hereafter amended. The city shall have the power:

- (1) To fix its boundaries, to annex adjoining territory with or without the consent of the inhabitants or owners of the territory to be annexed, to acquire and own property within or outside of its corporate boundaries.
- (2) To 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.
- (3) To cooperate with the government of the United States or any agency thereof, the government of Texas or any agency thereof, or with the government of any county, city, or political subdivision for any lawful purpose for the advancement of the interests, safety, convenience, and welfare of its inhabitants.
- (4) To contract and be contracted with, to sue and be sued, to buy, sell, lease, mortgage, hold, manage, and control such property as its interests require.
- (5) To lay out, open, close, establish, alter, widen, lower, extend, grade, supervise, maintain, and improve streets, alleyways, bridges, wharves, docks, parks and beach areas,

and regulate the use thereof, and require removal of all obstructions or encroachments of every nature and character upon said public streets, sidewalks, or other public property.
(6) To enact, establish, and enforce codes and ordinances providing for planning and zoning within the city and provide for ordinances and codes dealing with the construction of improvements within the city.
(Ord. No. 94-14, § 1, 12-15-94)

Section 2. Cost of improvements.

The cost of development of improvement of streets or water and sewer lines and other improvements as appropriate, may be paid partly or in full by assessments levied as a lien against property abutting thereon and against the owners thereof, and such assessments may be levied in any amount and under the procedure established by ordinance not prohibited by state law.

ARTICLE III. THE CITY COUNCIL

Section 1. Number, selection and term.

The legislative and governing body of the city shall consist of a mayor and six councilmen and shall be known as the "City Council of the City of Port Aransas."

(1) The mayor and councilmen shall be elected by the qualified voters of the city at large, each of whom, unless sooner removed by the provisions of this Charter, shall serve for a term of two (2) years. Each councilman shall occupy a position on the City Council, such positions being numbered 1 through 6, consecutively.

(2) All members of the city council, other than the mayor, shall be elected, under the place system. In each odd-numbered year, three (3) councilmen shall be elected to positions number 1, 3 and 5, and in each even-numbered year, the mayor and three (3) councilmen shall be elected said councilmen filling positions 2, 4, and 6. At the first meeting of the Council after passage of this Charter provision councilmen whose terms are to expire May 2003 will draw numbers to determine their positions 1, 3 or 5 and councilmen whose terms are to expire May 2004 will draw numbers to determine their positions 2, 4 or 6.

(3) For the purposes of this section, a distinction is made between the non-mayoral positions on the city council and the position of mayor.

No person shall be elected to a non-mayoral position on the city council more than three (3) consecutive terms, whether those terms are full two-year terms or partial terms of less than two (2) years duration.

No person shall be elected to the position of mayor more than three (3) consecutive terms, whether those terms are full two-year terms or partial terms of less than two (2) years duration.

No person shall be elected to the city council, in any combination of non-mayoral and mayoral positions, more than six (6) consecutive terms, whether those terms are full two-year terms or partial terms of less than two (2) years duration.

(Section 1(2) amended by Charter election of November 3, 1987; amended by Charter election of May 5, 1999; Section 1(1), (2) amended by Charter election of November 5, 2002)

Section 2. Qualification of members.

In addition to any other qualifications prescribed by law, the mayor and each councilman shall meet the conditions of article V, while in office, and shall reside within the city limits while in office.

(Section 2 amended by Charter election of January 21, 1984)

Section 3. Judge of election qualifications.

The city council shall be the final judge of all elections and of qualifications of its members and any other elected officials of the city.

Section 4. Compensation.

Members of the city council shall serve without compensation; provided, however, that they shall be entitled to all necessary expenses incurred in the performance of their official city council duties upon approval of said expenses by the city council.

Section 5. Mayor and mayor pro tem.

(a) The mayor shall be the official head of the city government. He shall be the chairman and shall preside at all meetings of the city council. The mayor when present, may vote on all propositions before the city council, but shall have no power to veto. He shall, with the concurrence of the city council, see that all ordinances, by-laws, and resolutions of the city council are faithfully obeyed and enforced. He shall, when authorized by the city council, sign all official documents, such as ordinances, resolutions, conveyances, grant agreements, official plats, contracts, and bonds. He shall perform such other duties consistent with this Charter or as may be imposed upon him by the city council.

(b) The mayor pro tem shall be a councilman elected by the city council at the first regular city council meeting following each regular city election. The mayor pro tem shall act as mayor during the disability or absence of the mayor, and in this capacity shall have the rights conferred upon the mayor.

(c) If both the mayor and mayor pro tem are absent from any meeting of the city council, those city councilmen present at such meeting shall elect one (1) of their number to act for such meeting as mayor.

(Section 5 amended by Charter election of January 21, 1984; Charter election of November 3, 1987)

Section 6. Vacancies, forfeitures, filling of vacancies.

(a) *Vacancies.* The office of a councilman or office of the mayor shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.

(b) *Forfeiture of office.* A councilman or the mayor shall forfeit his office if he:

- (1) Lacks at any time during his term of office any qualifications for the office prescribed by this Charter including Article V and Article III, Section 2, or by law;
- (2) Knowingly and intentionally violates any express prohibition of this Charter without being excused for good cause shown;
- (3) Is convicted of a felony or a crime involving moral turpitude;

- (4) Fails to attend three (3) consecutive regular city council meetings without being excused by the city council for good cause shown; or
- (5) Is absent from more than forty (40) percent of the city council meetings (including regular and special meetings) in any consecutive twelve-month period.

(c) *Forfeiture procedure.*

(1) Except as otherwise provided herein with respect to recall under Article VI of this Charter, no forfeiture shall be effective unless and until it has been found by majority vote of a quorum of the remaining members of the city council, after a hearing or reasonable opportunity to be heard of which the subject officer has been given reasonable notice of not less than ten (10) days, that one of the aforesaid acts, events, or conditions for which forfeiture of office is provided by subsection (b) above has occurred or exists.

(2) Said notice must state (a) the time, date, and place of the hearing, (b) a short and plain statement of the act, event, or condition upon which forfeiture of office is predicated, and (c) a reference to those laws and/or Charter provisions upon which forfeiture of office is predicated.

(3) Such a hearing may be called only by a councilman or the mayor.

(4) The city council may adopt by ordinance such rules and regulations which they deem reasonable to implement this subsection (c).

(d) *Filling of vacancies.*

(1) All vacancies on the council shall be filled within thirty (30) days of the occurrence by a majority vote of the remaining members of the council by selection of a person qualified for the position as described in this Charter. Such appointee shall serve in such position until the position is filled by election.

(2) If the next regular city election is less than six (6) months after creation of the vacancy, the position shall be filled at the next regular city election or the council may call a special election to be held at an earlier date to fill the vacancy. The special election, if any is called, shall be held on a date consistent with Section 41.001 or Section 201.053, Texas Election Code.

(3) If the next regular city election is six (6) months or more after the creation of the vacancy, the city council shall call a special election to fill the vacancy to be held on the next available election date specified by Section 41.001, Texas Election Code, as now existing or as hereafter amended, or, in the discretion of the city council, at an earlier date as provided by Section 201.053.

(4) Notwithstanding the requirements of Article III, Section 10, City Charter, that a quorum of the council consists of four (4) members, if at any time the council is reduced to less than four (4) members, the remaining members shall by majority action appoint additional members to raise the membership to four (4).

(5) All vacancies filled by election shall be for the remainder of the unexpired term of the office so filled.

(6) The council may not appoint any person to fill a vacancy which was created by said person's resignation, forfeiture of said person's office under Article III, or by recall of said person under Article VI. Notwithstanding anything in this subsection such person may stand for election at the next city election.

(Subsections 6.(b), (c) and (d) amended by Charter election of January 21, 1984; Ord. No. 94-14, § 1, 12-15-94; Charter election of May 6, 1995; amended by Charter election of May 5, 1999)

Section 7. Powers of the city council.

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

Section 8. Prohibitions.

(a) *Holding other office.* Except where authorized by law, no mayor or councilman shall hold any other city office or city employment during his term as mayor or councilman, and no former mayor or councilman shall hold any compensated appointive city office or city employment until one (1) year after the expiration of his term as mayor or councilman.

(b) *Appointments and removals.* Neither the city council nor any of its members shall in any manner dictate the appointment or removal of any city administrative officers or employees whom the city manager or any of his subordinates are empowered to appoint, but the city council, at a meeting called for that purpose, 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 as provided by this Charter, the city 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 city council nor its members shall give orders to any such officer or employee, either publicly or privately, except as otherwise provided in this Charter.

Section 9. Meetings of city council.

The city council shall hold at least one (1) regular meeting each month and as many additional meetings as it deems necessary to transact the business of the city and its citizens. The city council shall fix, by resolution, the date and time of the regular meetings. Special meetings of the city council shall be held on the call of the mayor or a majority of the city council members and, whenever practicable, upon no less than twelve (12) hours notice to each member. All meetings shall be and notice given in accordance with Chapter 551, Texas Local Government Code, as now existing or as hereafter amended.

(Section 9 amended by Charter election of January 21, 1984; Ord. No. 94-14, § 1, 12-15-94; amended by Charter election of November 5, 2002)

Section 10. Quorum.

Four (4) city council members shall constitute a quorum for the purpose of transaction of business, and no action of the city council, except as specifically provided in this Article III, Section 6 or elsewhere in this Charter, shall be valid or binding unless adopted by the affirmative vote of four (4) or more members of the city council.

(Ord. No. 94-14, § 1, 12-15-94)

Section 11. Rules of procedure.

The city council shall, by ordinance, determine its own rules and order of business, and the rules shall provide that citizens of the city shall have a reasonable opportunity to be heard at any meeting with regard to any matter under consideration and shall provide that each councilman shall have the right to compel the placement of any item of business on the agenda, provided said item is submitted to the city manager within a reasonable length of time before the meeting. The city council shall provide for minutes being taken and recorded for all meetings, and such minutes shall be a public record and shall be kept and maintained by the city secretary. Voting, except on procedural motions, shall be by roll call called by the city secretary and shall be recorded in the minutes.

(Amended by Charter election of May 5, 1999)

Section 12. Passage of ordinances in general.

(a) *Form.* Except where an ordinance is repealed in its entirety, the amendatory or repealing ordinance shall set out in full the ordinance sections, or subsections to be amended or repealed, and shall indicate matter to be omitted by interlining or shading it or by any other method which clearly delineates the matter and shall indicate new matters by underscoring.

(b) *Procedure.* Any member of the city council may offer any ordinance in writing that has been placed on the agenda at a regular city council meeting. Copies of proposed ordinances, in the form required for adoption, shall be furnished to members of the city council before first reading. Copies of the proposed ordinance, in the form required for adoption, shall be available at the city offices and shall be furnished to citizens, upon request to the city secretary, before first reading and, if amended, shall be available and furnished in the amended form for as long as the proposed ordinance is before the city council. A proposed ordinance, except an emergency and/or a budget/tax ordinance, shall be read at three (3) city council meetings, with at least one (1) week elapsing between each reading. A proposed ordinance may be amended at any reading, but any ordinance amended in substance shall automatically be placed again on the first reading at a subsequent meeting. Amendments involving such items as typographical, grammatical, or spelling changes or renumbering of sections shall not be considered substantive. A substantive change or amendment or change or amendment in substance is one which changes the general purpose of the ordinance. At any reading of a proposed ordinance, persons interested shall have a reasonable opportunity to be heard. Emergency ordinances shall be passed in accordance with Section 13, and budget/tax ordinances in accordance with Articles VII and VIII.

(c) *Effective date.* Every ordinance shall become effective upon adoption, or at any later times specified in the ordinance, except that every ordinance imposing any penalty, fine or forfeiture shall become effective only after having been published, in its entirety or summary form, once in a newspaper having general circulation in the city.

(d) *Reading.* The reading aloud of a title and caption of the ordinance shall suffice as a reading, provided printed copies of the ordinance, in the form required for adoption, are in front of all members of the city council and a reasonable number of additional copies are available to citizens present at the meeting. If two (2) councilmen request that the ordinance be read in its entirety, it must be so read.

(Amended by Charter election of May 5, 1999; Section 12(b) amended by Charter election of November 5, 2002)

Section 13. Emergency ordinances.

The city council may adopt emergency ordinances only to meet public emergencies affecting life, health, property, or the public peace. In particular, such ordinances shall not levy taxes, grant or renew or extend a franchise, or regulate the rate charged by any public utility for its services. Neither shall they authorize the borrowing of money, except as provided in Article VII. An emergency ordinance shall be introduced in the form and manner generally prescribed for ordinances, except that they shall be plainly designated in the title as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance can be adopted with or without amendment or rejected at the meeting at which it is introduced. The affirmative vote of at least five (5) members of the city council shall be required for adoption. After adoption, the ordinance shall be published as required for other adopted ordinances and shall become effective in the same manner. Every emergency ordinance so adopted, except one authorizing the borrowing of money as described herein, shall automatically stand repealed as of the sixty-first (61st) day following the day on which it became effective, but this shall not prevent reenactment of the ordinance.

Section 14. Authentication, recording, codification, printing, and distribution.

(a) *Authentication and recording.* The city secretary shall authenticate by signature and seal in a properly indexed book kept for that purpose, all ordinances and resolutions adopted by the city council, and it shall be kept open for public inspection. Ordinances shall be numbered consecutively in the order in which adopted.

(b) *Codification.* Within three (3) years after adoption of this Charter, and at least every five (5) years thereafter, the city council shall provide for the preparation of the codification of all general ordinances of the city. Every general ordinance enacted subsequent to such codification shall be enacted as an amendment to the code. For the purposes of this section, general ordinances shall be deemed to be those ordinances of a permanent or continuing nature which affect the residents of the city at large. The codification shall be adopted by the city council by ordinance and shall be published promptly, together with this Charter and any amendments thereto, and with appropriate references to state statutes and constitution, and such codes of technical regulations and other rules and regulations as the city council may specify.

This compilation shall be known and cited officially as the Port Aransas City Code and shall be in full force and effect without the necessity of such code or any part thereof being published in any newspaper. The caption, descriptive clause, and other formal parts of the ordinances of the city may be omitted without affecting the validity of such ordinances when they are published as a code. Copies of the code shall be furnished to city officers, placed in city offices and a public library designated by the city council for free reference and made available for purchase by the public at a reasonable price fixed by the city council.

(c) *Printing of ordinances and resolutions.* The city council shall cause each ordinance and each amendment to this Charter to be printed promptly following its adoption, and the printed ordinances and Charter amendments shall be distributed free or sold to the public at reasonable prices to be fixed by the city council. A copy of each ordinance and

resolution shall be placed in city offices and a public library designated by the city council for free reference.

Section 15. Investigations by the city council.

The city council shall have the power to inquire into the official conduct of any department, agency, office, officer, or employee of the city, and for that purpose shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and other evidence material to the inquiry. The city council shall provide, by ordinance, penalties for contempt for failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence, and shall have the power to punish any such contempt in the manner provided by such ordinance.

Section 16. Bond.

The city council shall require bonds of all municipal officers and employees who receive and/or pay out any monies of the city. The amount of such bonds shall be determined by the city council and the cost thereof shall be borne by the city.

ARTICLE IV. CITY ADMINISTRATION

Section 1. City manager.

(a) *Qualifications and appointment procedure.* The city council shall appoint a city manager who shall serve as chief administrative officer of the city, and shall be responsible to the city council for administration of all the affairs of the city, with only those exceptions that are named in this Charter. The city manager shall be appointed solely upon his executive and administrative qualifications. He need not be a resident of the city when appointed, but shall reside within the city during the tenure of his appointment. He shall be bonded, at city expense, in an amount deemed adequate by the city council.

(b) *Compensation.* The city council shall fix the compensation to be received by the city manager, and the compensation may be amended from time to time in accordance with the city manager's experience and qualifications.

(c) *Term and removal.* The city manager shall serve at the pleasure of the city council and shall have no fixed term of office. The city council shall have sole authority to remove the city manager from office.

(d) *Acting city manager.* The city manager shall, within thirty (30) days of taking office, and at appropriate subsequent times, designate by letter, filed with the city secretary, an alternate to perform the duties of the city manager in the case of his absence or disability. The city council shall ratify the city manager's designated alternate. During the absence or disability of the city manager, the city council may revoke such designation and appoint another person to serve as acting city manager until the city manager shall return or his disability shall cease. The acting city manager shall be a qualified administrative officer of the city at the time of his designation. No member of the city council shall serve as acting city manager.

(e) *Duties.* The city manager shall be required to:

(1) Appoint, and when he deems necessary for the welfare of the city, suspend or remove all city employees and appointive administrative officers provided for by this

Charter, except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter.

- (2) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by law or this Charter.
- (3) See that all state laws and city ordinances are effectively enforced.
- (4) Attend all city council meetings and have the right to take part in discussions, but he shall not vote.
- (5) Prepare and accept items for inclusion in the official agenda of all city council meetings and meetings of boards and commissions as established by this Charter.
- (6) Prepare and submit to the city council the annual budget and capital program, and administer the budget as adopted by the city council.
- (7) Prepare and submit to the city council, within sixty (60) days of the end of the city's fiscal year, an annual report on the finances and administrative activities of the city, as of the end of the fiscal year. The report of individual audit, as required by this Charter, shall be incorporated into the annual report submitted by the city manager.
- (8) Keep the city council fully advised as to the financial condition and future needs of the city, and make such recommendations concerning the affairs of the city as he or the city council deems desirable or necessary, but not less than every three (3) months.
- (9) Make reports as he or the city council may require concerning the operations of the city departments, offices, or agencies subject to his direction or supervision.
- (10) Perform such other duties as are specified in this Charter or may be required by the city council, and are not inconsistent with this Charter.

(Ord. No. 94-14, § 1, 12-15-94)

Section 2. City secretary.

- (a) *Appointment and removal.* The city manager shall appoint a city secretary. The appointment shall require ratification by the city council. The city manager, with the concurrence of a majority of the city council, shall have authority to remove the city secretary, should he find such action necessary for the welfare of the city.
- (b) *Duties.* The city secretary shall be required to:
 - (1) Give notice of all official public meetings of the city council in a manner consistent with this Charter and state laws.
 - (2) Attend all official public meetings of the city council.
 - (3) Keep the minutes of the proceedings of all official public meetings and hearings of the city council. Be responsible for the electronic taping or recording of the entire proceedings of all the official public meetings and hearings of the city council. Be responsible for the care, maintenance and filing of such tapes or recordings for a period of not less than two (2) years following each meeting or hearing so taped or recorded.
 - (4) Act as custodian of all official records of the city council.
 - (5) Hold and maintain the seal of the City of Port Aransas, and affix this seal to all appropriate documents.
 - (6) Authenticate by signature and seal, and record, index and codify all ordinances, resolutions and proclamations of the city.
 - (7) Perform such other duties as may be required by the city manager, this Charter, the laws of the State of Texas and not inconsistent with provisions of this Charter.

- (8) He shall reside within the city during the tenure of his appointment, but need not be a resident of the city when appointed.
- (9) Be bonded, at city expense, in an amount deemed adequate by the city council.

Section 3. Municipal court.

- (a) *The city council* shall establish and cause to be maintained a municipal court, for the trial of misdemeanor offenses. The court shall have all the powers and duties as are now, or may be prescribed by the laws of the State of Texas.
- (b) *Municipal court judge.* The city council shall appoint a judge of the municipal court, who shall be a competent, duly qualified, licensed attorney in the State of Texas residing in the city, and acceptable to the council, or if such an attorney is not available, then the council may appoint a lay person who is duly qualified in accordance with state law and is a resident of Port Aransas to serve in such capacity. The judge of the municipal court shall be appointed to a term of two (2) years, and may be appointed to additional and consecutive terms, upon completion of his term of office. The appointment of the judge may be terminated, for just cause, by a vote of the city council. The judge shall receive compensation as may be determined by the city council. This compensation shall be fixed, and commensurate with the duties performed by the judge. The city council shall attempt to appoint a resident of the City of Port Aransas and in the event none is available or qualified, then any attorney meeting stated qualifications may be appointed.
- (c) *Acting judge of the municipal court.* The city council shall, in the absence or disability of the appointed judge of the municipal court, appoint an acting judge to serve during such absence or disability. Preference should be given to naming the justice of the peace of the local county precinct as the acting judge. The acting judge may be compensated by the city council for his performance of required duties.
- (d) *Appointment of additional judges.* Additional judges of the municipal court may be appointed by the city council consistent with state law.
- (e) *Clerk of the court.* The city council shall appoint a clerk, and may appoint deputies of the municipal court. The clerk and deputies shall be bonded at city expense, in an amount deemed adequate by the city council, and shall receive compensation as may be determined by the city council.
- (f) *Powers of the clerk.* The clerk and deputies of the municipal court shall have the power to administer oaths and affidavits, make certificates, affix the seal of the court, and perform all acts usual and necessary by the clerks of said courts, in conducting the business thereof, including but not limited to the keeping of records and accounts of the municipal court.
- (g) *Costs, fines and penalties.* All costs, fines and penalties imposed by the municipal court shall be paid into the city treasury for the use and benefit of the city, as may be consistent with present and future state laws.

(Section 3(b) amended by Charter election of November 3, 1987)

Section 4. City attorney.

- (a) *Appointment and qualifications.* The city council, in consultation with the city manager, shall appoint a competent, duly qualified, licensed and practicing attorney in the State of Texas who shall serve as the city attorney.
- (b) *Removal.* The city attorney may be removed by a vote of the city council.

- (c) *Duties.* The city attorney shall be required to:
- (1) Serve as a legal advisor to the city council and city manager.
 - (2) Represent the city in litigation and legal proceedings as directed by the city council and city manager.
 - (3) Review and provide opinions as requested by the city council or city manager on contracts, legal instruments, and ordinances of the city.
- (d) *Limitation.* The city council shall have the right to retain special counsel at any time that it may deem necessary and appropriate.
- (e) *Compensation.* The city attorney shall receive compensation as may be determined by the city council.
- (f) *Additional attorneys.* The city attorney, with approval of the city council, may select additional attorneys to act for him and the city in its representation and litigation.
- (g) *Firm may designate individual to serve as city attorney.* The city council may contract with an attorney or with a firm of attorneys who shall designate one (1) member of said firm to serve as city attorney.

Section 5. City engineer.

- (a) *Appointment and qualifications.* The city council, in consultation with the city manager, shall appoint a competent, duly qualified, registered and practicing professional engineer in the State of Texas who shall serve as city engineer.
- (b) *Removal.* The city engineer may be removed by a vote of the city council.
- (c) *Duties.* The city engineer shall be required to serve as engineering advisor to the city council and city manager, and perform such other duties as may be required by the city council or city manager.
- (d) *Limitation.* The city council shall have the right to retain special engineering service at any time that it may deem necessary and appropriate.
- (e) *Compensation.* The city engineer shall receive compensation as may be determined by the city council.
- (f) *Additional engineers.* The city engineer, with approval of the city council, may select additional engineers to act for him and the city in serving its engineering needs.
- (g) *Term city engineer.* The term "city engineer" may refer to an individual or firm.

Section 6. Administrative departments, offices and agencies.

- (a) *City council may create offices.* The city council may, after hearing recommendations of the city manager, create or establish departments, offices, or agencies in addition to those provided for by this Charter, and may prescribe the functions and duties of such departments, offices and agencies.
- (b) *City council may abolish, redesignate, or combine departments.* The city council may, after hearing recommendations of the city manager, abolish, redesignate, or combine any of the departments, offices or agencies it has established or created, and in the event the city council abolishes, redesignates or combines any department, offices or agencies, it shall attempt to reassign any employee affected by such reorganization, if possible.
- (c) *Direction and supervision.* Except as provided elsewhere in this Charter, all departments, offices and agencies of the city shall be under the direction and supervision of the city manager, and shall be administrated by officers appointed by and subject to

supervision and direction of the city manager. The city manager may, with the consent of the city council, serve as the head of one (1) or more city departments, offices or agencies, or appoint one (1) person as the head of two (2) or more of them.

(d) *City assessor-collector.* The city manager, with approval of the city council, shall appoint a city assessor-collector, whose duties and functions shall be those usual to the office and consistent with existing or future laws of the State of Texas as they may apply to city or county assessor-collectors. The city council may approve the use of contracted assessor-collectors, and the assessor-collector contract shall be subject to the approval of the city council. Such contract shall have a term of no less than one (1) year, nor more than two (2) years, and may be renewed upon termination.

Section 7. Personnel system.

(a) Neither the city council, nor any of its members, shall request or direct the appointment of any person to, or his removal from office or employment, by the city manager or any of his subordinates; provided that personnel action shall be consistent with the personnel policies adopted by the city council. Except for the purposes of inquiry, the city council and its members shall deal with the city's administrative service solely through the city manager and, neither the city council, nor its members shall give orders to any subordinates of the city manager, either publicly or privately, except as may be provided in this Charter. As provided in Article IV, Section 1 (a) and (b), the city manager shall remain responsible to the city council for the administration of all the affairs of the city.

(b) Personnel rules shall be prepared by the city manager and presented to the city council, which may adopt them by ordinance, with or without amendment. The adopted rules shall establish the city as an equal opportunity employer and shall govern the equitable administration of the personnel system of the city.

(c) The adopted rules shall provide for the following requirements, among others:

(1) A pay and benefit plan for all city employment positions.

(2) A plan for working hours, attendance policy and regulation, and provision for sick and vacation leave.

(3) Procedures for the hearing and adjudication of grievances.

(4) Additional practices and procedures necessary to the beneficial and equitable administration of the city's personnel system.

(5) A plan for oral and written evaluation on an annual basis for all city employees by their immediate supervisor, including evaluation of the city manager by the city council.

(d) The city council may, by ordinance, establish such residency requirements for city employees as are reasonable or necessary.

(Subsection 7.(d) amended by Charter election of January 21, 1984; Charter election of November 3, 1987; amended by Charter election of May 5, 1999)

CODE

City of

PORT ARANSAS, TEXAS

Codified through

Ord. No. 2005-03, adopted March 17, 2005.
(Supplement No. 12)

Preliminaries

**PORT ARANSAS
CITY CODE**

Adopted December 17, 1987

Effective December 17, 1987

Published by Order of the City Council

Published by Municipal Code Corporation
Tallahassee, Florida 1987

OFFICIALS
of the
CITY OF
PORT ARANSAS, TEXAS
AT THE TIME OF THIS CODIFICATION

Dale Bietendorf

Mayor

Glenn Martin

Mayor Pro Tem

Audrey Manning

James Sumner
Alan Wymore
James Barr
Ken Williams
City Council

Gordon N. Beck

City Manager

Michael Morris

City Attorney

Esther Arzola

City Secretary

PREFACE

This Code constitutes a complete recodification of the ordinances of the City of Port Aransas, Texas of a general and permanent nature.

Source materials used in the preparation of the Code were the 1980 Code, as supplemented through April 18, 1985, and ordinances subsequently adopted by the city council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this volume, the reader can locate any section of the 1980 Code, as supplemented, and any subsequent ordinances included herein. The chapters of the Code have been conveniently arranged in alphabetical order and the various sections within each chapter have been catch lined to facilitate usage. Footnotes which tie related sections of the Code together and which refer to relevant state laws have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this volume.

Numbering System

The numbering system used in this Code is the same system used in many state and municipal codes. Each section number consists of two component parts separated by a dash, the figure before the dash referring to the chapter number and the figure after the dash indicating the position of the section within the chapter. Thus, the first section of Chapter 3 is numbered 3-1 and the fourth section of Chapter 5 is 5-4. Under this system, each section is identified with its chapter, and, at the same time, new sections or even whole chapters can be inserted in their proper places, simply by using the decimal system for amendments. By way of illustration: If new material consisting of three sections that would logically come between sections 6-2 and 6-3 is desired to be added, such new sections would be numbered 6-2.1, 6-2.2 and 6-2.3, respectively. New chapters may be included in the same manner. If the new material is to be included between Chapters 7 and 8, it will be designated as Chapter 7.5. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject, the next successive number being assigned to the article or division.

Indices

The indices have been prepared with the greatest of care. Each particular item has been placed under several headings, some of the headings being couched in lay phraseology, others in legal terminology, and still others in language generally used by municipal officials and employees. There are numerous cross references within each index which stand as guideposts to direct the user to the particular item in which he is interested.

Looseleaf Supplements

A special feature of this Code to which the attention of the user is especially directed is the looseleaf system of binding and supplemental servicing for the Code. With this system, the Code will be kept up-to-date periodically. Upon the final passage of

amendatory ordinances, they will be properly edited and the appropriate page or pages affected will be reprinted. These new pages will be distributed to holders of copies of the Code, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Successfully maintaining of this Code up-to-date at all times will depend largely upon the holder of the volume. As revised sheets are received it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publishers that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

The publication of this Code was under the direct supervision of Alyce A. Whitson, Supervising Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publishers are most grateful to Gordon Beck, City Manager, Michael Morris, City Attorney, and Esther Arzola, City Secretary, for their cooperation and assistance during the progress of the work on this Code. It is hoped that their efforts and those of the publishers have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

MUNICIPAL CODE CORPORATION

Tallahassee, Florida

ADOPTING ORDINANCE
ORDINANCE NO. 87-23

An Ordinance Adopting and Enacting a New Code for the City of Port Aransas, Texas; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing a Penalty for the Violation Thereof; Providing for the Manner of Amending Such Code; and Providing When Such Code and This Ordinance Shall Become Effective.

Be It Ordained by the City Council of the City of Port Aransas, County of Nueces, State of Texas:

Section 1. The Code entitled the "Port Aransas City Code," published by Municipal Code Corporation consisting of Chapters 1 through 25, each inclusive, is hereby adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before April 16, 1987, and not included in the Code or recognized and continued in force by reference therein, are hereby repealed.

Section 3. The repeal provided for in section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof, shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) in all cases arising under the ordinances of the city that govern fire safety, zoning and public health and sanitation, other than vegetation and litter violations, and not to exceed two hundred dollars (\$200.00) in all other cases. No penalty shall be

greater or less than the penalty provided for the same or a similar offense under the laws of the state. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided shall apply to the amendment of any Code section whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. Additions or amendments to the Code when passed in the form as to indicate the intention of the City to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after April 16, 1987, that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to the like provisions of the Code.

Section 7. This ordinance shall become effective December 17, 1987.

Passed and adopted by the Port Aransas City Council this 17th day of December, 1987.

Dale Bietendorf

Mayor

Esther Arzola

City Secretary

ARTICLE VI. INITIATIVE, REFERENDUM AND RECALL

Section 1. General authority.

(a) The qualified voters of the City of Port Aransas shall have the power to propose ordinances to the city council, to require reconsideration by the city council of any adopted ordinances, and to revoke the office of any elected city official. Initiative power may be used to enact a new ordinance, or to repeal or to amend sections of an existing ordinance, except ordinances appropriating money or levying of taxes, or ordinances repealing ordinances, appropriating money or levying the taxes, not in conflict with this Charter, the state constitution or the state laws.

(b) Referendum power shall not extend to the budget or capital program or any emergency ordinance or ordinances pertaining to appropriation of money or levying of taxes, or to bonds issued pursuant to the authority of an election or elections previously held.

(c) Grounds for removal of an officer, whether elected to office by the qualified voters or appointed by the city council to fill a vacancy, shall be incompetency, noncompliance with this Charter, misconduct or malfeasance in office, or any of the acts, conditions, or events for which forfeiture of office is provided by Article III, Section 6.B of this Charter.

(d) If the city council fails to adopt an ordinance so proposed, or to repeal an ordinance so reconsidered, the qualified voters shall have power to approve or reject it at a city election.

(Section 1 amended by Charter election of January 21, 1984)

Section 2. Petitioners' committee.

(a) Any ten (10) qualified voters may commence proceedings contemplated by this article by filing with the city secretary an affidavit stating that they will constitute the petitioners' committee; they will be responsible for preparing, printing and circulating the petition; they will file it in proper form; they will specify the address to which all notices to the committee are to be sent. The affidavit shall set out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered, or in the case of recall, will provide a statement of the grounds for removal.

(b) In the case of recall, the city secretary shall immediately notify in writing, the officer(s) sought to be removed, that the affidavit has been filed and shall inform the officer(s) of its statement of grounds.

Section 3. Petition circulation.

All petition blanks used for circulation by the members of the petitioners' committee or their designees shall be numbered, dated, and bear the signature of the city secretary. The city secretary shall enter in a record to be kept in his office the name of the qualified voters to whom the numbered petitions were assigned. Petition circulators must be qualified voters in the City of Port Aransas.

Section 4. Form of petition.

(a) All papers of a petition shall be uniform in size and style and shall be assembled as one (1) instrument for filing. Each signer of a petition shall personally sign his own name thereto in ink or indelible pencil, and shall print or type after his name, his place of residence within the boundaries of the City of Port Aransas, giving name of street and number, or place of residence, voter registration number, and shall also write thereon the day, month, and the year his signature was affixed.

(b) Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered, or in the case of a recall petition, a statement which distinctly and specifically states the ground(s) upon which such petition for removal is predicated. If there be more than one (1) ground, the statement shall specifically state each ground with such certainty as to give the officer(s) sought to be removed notice of such matters and things with which he is charged.

(c) 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) Locations for twenty (20) and no more than twenty (20) signatures shall be provided on each blank petition.

(Section 4 amended by Charter election of January 21, 1984)

Section 5. Presentation of petitions.

A petition to the city council for initiative, referendum, or recall, containing the signatures of qualified voters equal in number to no fewer than twenty percent (20%) of

the votes cast in the last general municipal election shall be presented to the city secretary not later than thirty (30) days following the filing of the affidavit by the petitioners' committee.

Section 6. Suspension of effect of ordinance for referendum petitions.

When a referendum petition is filed with the city secretary, the ordinance sought to be reconsidered shall be suspended from taking effect unless such suspension will create an immediate breach of public health and safety. Such suspension shall terminate when:

- (1) There is a final determination of insufficiency of the petition; or
- (2) The city council repeals the ordinance; or
- (3) Upon the certification of election results by the election officials.

Section 7. Certification of petitions and presentation to city council.

(a) Within ten (10) days after the petition is filed, the city secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, wherein it is defective and shall immediately upon completion of certification, send a copy of the certificate to the petitioners' committee by registered mail.

(b) If the petition is certified sufficient, the city secretary shall present the certificate to the city council by the next regular city council meeting which shall be a final determination of the sufficiency of the petition.

(c) If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it, the committee may, within two (2) working days after receiving the copy of such certificate, file a request that it be reviewed by the city council. The city council shall review the certificate at its next regular meeting following such a request and approve or disapprove it, and the city council's determination shall then be a final determination.

(d) If a petition is certified insufficient for lack of required number of valid signatures, it 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 having received the copy of the certificate. A supplementary petition with additional names must be filed within two (2) weeks after receiving the copy of the certificate. Such a supplementary petition shall comply with all the requirements of Sections 3 and 4 of this Article.

(e) Within five (5) days after the amended petition is filed, the city secretary shall complete a certificate of sufficiency of the petition, as amended, and shall send a copy of such sufficiency to the petitioners' committee by registered mail as in the case of an original petition. The final determination as to the sufficiency of an amended petition shall be determined in the same manner as prescribed for original petitions in this section above, except that no petition, once amended, may be amended again.

(f) A final determination as to the sufficiency of a petition shall be subject to review in a court of competent jurisdiction. 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 8. Public hearing on recall of officers.

An elected official whose removal is sought by recall 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 petition. Should

such a request be made, the city council shall order that a public hearing be held not less than five (5) days nor more than fifteen (15) days after receiving such request for a public hearing.

Section 9. Action on initiative and referendum petitions.

(a) When an initiative or referendum petition has been finally determined sufficient, the city council shall promptly consider the proposed initiative ordinance in the manner prescribed for enacting ordinances or reconsider the referred ordinance by voting its repeal. If the city 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 of Port Aransas at an election to be held on the first available election date specified by Article 2.01b(a), V.A.T.S., as now existing or as hereafter amended, or, in the discretion of the city council, on an earlier date as specified by Article 2.01b(b), V.A.T.S., as now existing or as hereafter amended, after the failure of the city council to act as specified herein.

(b) Said called election may coincide with a regular city election should such city election fall within the specified period. Special elections on initiated or referred ordinances shall not be held more frequently than once each six (6) months, and no ordinance substantially the same as an initiated ordinance which has been defeated or one substantially the same 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. Copies of the proposed or referred ordinance shall be made available at the polls and shall be published at least once in the official newspaper of the City of Port Aransas not more than fifteen (15) days immediately preceding the date of the election.

(Section 9 amended by Charter election of January 21, 1984)

Section 10. Calling of recall election.

If the officer whose removal is sought does not resign, then the city council shall order an election and set the date for holding such recall election. The date selected for the recall election shall be not less than twenty-five (25) days nor more than thirty-five (35) days after the date the petition was presented to the city council, or from the date of the public hearing, if one was held. Any election order so issued shall comply fully with the existing Texas election laws.

Section 11. Withdrawal of petitions.

(a) *Withdrawal of initiative and referendum petitions.*

(1) In order to respect the qualified voters already having affixed their signatures to petitions, no procedure for withdrawal of petitions is allowed once a petition has been finally determined sufficient. Prior to being determined sufficient, a petition may be withdrawn by filing with the city secretary a request for withdrawal, signed by at least six (6) members of the petitioners' committee and provided that the total number of signatures on the circulated petitions is less than fifty percent (50%) of the required number of signatures as provided in section 5 of this article.

(2) For the purposes of withdrawal procedures only, any registered petition not returned to the city secretary will be considered to contain the signatures of twenty (20) qualified

voters, but in no event shall the total number of signatures be determined to exceed ninety-nine percent (99%) of the number of signatures required for determination of sufficiency.

(b) *Withdrawal of recall petitions.*

(1) In order to respect qualified voters already having affixed their signatures to petitions for recall, no withdrawal from recall proceedings shall be allowed except where:

a. Such withdrawal is agreed to by an affidavit by at least six (6) members of the petitioners' committee; and

b. The total number of signatures on the circulated petition is less than fifty percent (50%) of the required number of signatures as provided in section 5 of this article.

(2) For the purposes of withdrawal procedures only, any registered petition not returned to the city secretary will be considered to contain the signatures of twenty (20) qualified voters, but in no event shall the total number of signatures thus determined exceed ninety-nine percent (99%) of the number of signatures required for determination of sufficiency.

(3) For purposes of consideration of limitations as specified in section 14 of this article, recall procedures successfully withdrawn shall be considered as never having been initiated.

Section 12. Form of ballots.

(a) Ordinances shall be submitted by ballot title, which shall be prepared in all cases by the city attorney. The ballot title may be different from the legal title of any such initiated or referred ordinance and it shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance. Immediately below the ballot title shall be printed the following two (2) statements, one (1) above the other, in the order indicated:

"For adoption of the ordinance," and

"Against adoption of the ordinance."

Immediately below or to the left of such statement shall appear a square in which the voter may cast his vote by making a mark.

(b) Ballots used at recall elections shall, with respect to each person whose removal is sought, submit the question:

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

Immediately below each such question there shall be printed the two (2) following statements, one (1) above the other, in the order indicated:

"For the removal of _____ by recall."

"Against the removal of _____ by recall."

Immediately below or to the left of such statement shall appear a square in which the voter may cast his vote by making a mark.

Section 13. Results of election.

(a) 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 city council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail.

(b) An ordinance adopted by initiative may be repealed or amended at any time after the expiration of two (2) years by a vote of not less than five (5) members of the city council, or at any time after the expiration of five (5) years by a simple majority vote of the city council members.

(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. If a majority of the qualified electors voting on a referred ordinance vote for the ordinance, the ordinance shall be considered in effect.

(d) An ordinance repealed by referendum may be reenacted at any time after the expiration of two (2) years by a vote of not less than five (5) members of the city council or at any time after the expiration of five (5) years by a simple majority vote of the city council members.

(e) If a majority of the votes cast on the question of recall at a recall election shall be against the removal of the elected official named on the ballot, he shall continue in office for the remainder of his unexpired term, subject to recall as before within the limitations of section 14 below. If a majority of the votes cast on the question of recall at a recall election shall be for the removal of the elected official named on the ballot, he shall, regardless of any technical defects in the recall petition, be deemed removed from office and the vacancy shall be filled in accordance with the provisions of this Charter for the filling of vacancies.

Section 14. Limitations and restrictions.

(a) No recall petition shall be filed against any officer of the City of Port Aransas within six (6) months after his election or appointment, nor within six (6) months of such a petition being filed and found insufficient, nor within one (1) year after an election for such officer's recall.

(b) In no instance shall an officer removed from office by recall election succeed himself, nor shall his name appear on a ballot for elective office of the City of Port Aransas within a period of five (5) years following the date of the election at which he was removed from office.

(c) Unless successfully withdrawn, no petition shall again be filed on a proposed or referred ordinance of substantially the same content within a period of six (6) months of such a petition being filed and found insufficient or within a period of two (2) years of the failure of the petition at a city election.

Section 15. Failure of city council to call an election.

In case all of the requirements of this Charter have been met and the city council shall fail or refuse to receive an initiative, referendum, or recall petition, or order such initiative, referendum, or recall election, or discharge other duties imposed upon said city council by the provisions of this Charter with reference to initiative, referendum, or recall, then the County Judge of Nueces County, Texas, shall discharge any such duties herein provided to be discharged by the city secretary or by the city council. In addition, any qualified voter in the City of Port Aransas may seek judicial relief in the District Court of Nueces County, Texas, to have any of the provisions of this Charter pertaining to initiative, referendum, or recall carried out by the proper official.

ARTICLE VII. MUNICIPAL FINANCE

Section 1. Fiscal year.

The fiscal year of the city shall begin on the first day of each October and end on the last day of September of the succeeding year. All funds collected by the city during any fiscal year, including both current and delinquent revenues, shall belong to such fiscal year, and, except for funds derived to pay interest and create a sinking fund on the bonded indebtedness of the city, may be applied to the payment of expenses incurred during such fiscal year, except as provided in this Charter. Any revenues uncollected at the end of any fiscal year, and any unencumbered funds actually on hand, shall become resources of the next succeeding fiscal year.

Section 2. Submission of budget.

On or before the fifth day of August of each year, the city manager shall submit to the city council a proposed budget for the ensuing fiscal year and the budget message. The city council shall review the proposed budget and make any appropriate changes prior to publishing the final budget.

Section 3. Budget.

(a) *Content.* The budget shall provide a complete financial plan of all city funds and activities and, except as required by law or this Charter, shall be in such form as the city manager deems desirable or the city council may require. A budget message explaining the budget both in fiscal terms and in terms of the work programs shall be submitted with the budget. It shall outline the proposed financial policies of the city for the ensuing fiscal year, describe the important features of the budget, indicate any major changes, from the current year in financial policies, expenditures, and revenues, with reasons for such changes. It shall also summarize the city's debt position and include such other material as the city manager deems desirable. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year. The proposed budget expenditures shall not exceed the total of estimated income. The budget message shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year, compared to the estimate for the budgeted year. The budget shall include in separate sections:

- (1) A clear, general summary of contents.
- (2) A consolidated statement of receipts and expenditures of all funds, listed and itemized individually.
- (3) An analysis and itemization of all estimated income of the city from surplus, miscellaneous income and taxes with miscellaneous income subclassified by source.
- (4) Tax levies, rates, and collections for the preceding three (3) years.
- (5) An itemized statement for pending and proposed new capital projects, including but not limited to the amounts to be appropriated from the budget, the amounts to be raised by the issuance of bonds, and the amount required for the operation and maintenance of the new projects.

- (6) The amount required for interest on the city's debts, for sinking funds and for maturing serial bonds.
 - (7) The total amount of the city's outstanding debts, with a schedule of maturity on bond issues in an attachment.
 - (8) An itemized estimate of the expenses of operating each department, division and office or agency.
 - (9) Anticipated net surplus or deficit for the ensuing fiscal year of each utility owned or operated by the city and the proposed method of its disposition; subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached as appendices to the budget.
 - (10) Such other information as is required by city council or deemed desirable by the city manager.
 - (11) A contingency fund must be included, not to exceed ten percent (10%) of the general fund proposed expenditures.
- (b) *Public notice and hearing.* The city council shall post in the city office and publish in the official newspaper a general summary of the proposed budget and a notice stating:
- (1) The times and places where copies of the message and budget are available for inspection by the public.
 - (2) The time and place, not less than two (2) weeks after such publication, for a public hearing on the budget.
- (c) *City council action.*
- (1) The city council shall hold a public hearing on the budget as submitted at the time and place so advertised or at another time and place with proper notification. All interested persons shall be given an opportunity to be heard, either for or against any item of the proposed budget.
 - (2) At a regular or special meeting not less than seven (7) days after the public hearing, the city 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 or for estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income plus funds available from prior years.
 - (3) The city council shall adopt the budget by ordinance on one (1) reading. Adoption of the budget will require an affirmative vote of the city council. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated. The vote on the ordinance or resolution setting the property tax rate must be separate from the vote adopting the budget.
- (d) *Failure to adopt.* If the city council fails to adopt the budget by the twenty-seventh (27th) day of September, the amounts appropriated for operation during the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it prorated accordingly, until such time as the city council adopts a budget for the ensuing fiscal year and the levy of property tax will be set such that the tax receipts for the budgeted year shall equal the tax receipts of the current fiscal year.
- (Section 3 amended by the Charter election of January 21, 1984)

Section 4. Amendments after adoption.

(a) *Supplemental appropriations.* If, during the fiscal year, the city manager certifies that there are revenues available for appropriation in excess of those estimated in the budget, the city council shall carry the excess into the next fiscal year; provided, however, that there shall be three (3) limited exceptions to this mandate, which exceptions shall be optional with the city council as follows:

- (1) The city council may make supplemental appropriations to retire indebtedness;
- (2) The city council may make supplemental appropriations to fund emergency appropriations as described in Article VII, Section 4.b of this Charter;
- (3) The city council may make supplemental appropriations to allow for the expenditure of any federal or state grant in aid funds which may be obtained during the budget year, but only to the extent of such federal or state funds and not to the extent of any local or local matching funds.

(b) *Emergency appropriations.* At any time in any fiscal year, the city council may, pursuant to this section, make emergency appropriations to meet a pressing need for public expenditure, for other than regular or recurring requirements, affecting life, health, property, or the public peace. Such appropriation shall be by ordinance adopted by the favorable vote of five (5) or more of the city council members. The total amount of all emergency appropriations made in any fiscal year shall not exceed ten percentum (10%) of the tax levy for that fiscal year. Such appropriations may require emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year in which the emergency appropriation was made.

(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 city council without delay, indicating the estimated amount of deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The city council shall then take such further action that it deems necessary to prevent or minimize any deficit.

(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 department, office or agency. The city council may require approval of these transfers within departments above a limit established by the city council. Upon written request by the city manager, the city council may, by budget amendments, transfer part or all of any unencumbered appropriation balance from one (1) department, office or agency to another.

(e) *Limitations.* 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.

(f) *Effective date.* The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section shall be made effective immediately upon adoption of the appropriate ordinance or budget amendment.

(Section 4 amended by Charter election of January 21, 1984)

Section 5. Capital program.

(a) The city manager shall submit a five (5) year capital program as an attachment to the annual budget. The capital program shall include the proposed program by the planning board and comments by the city manager. The program, as submitted, shall include:

(1) A clear, general summary of its contents;

(2) A list of all capital improvements which are proposed for the five (5) fiscal years succeeding the budget year, with appropriate supporting information as to the necessity for such improvements;

(3) Cost estimates, method of financing and recommended time schedules for each such improvement; and

(4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

(b) The above information may be revised and extended each year with regard to capital improvements still pending or in the process of construction or acquisition.

Section 6. Public records.

Copies of the budget and the capital program, as adopted, shall be public records and shall be made available to the public upon request.

Section 7. 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. Any funds not expended, disbursed, or encumbered shall be deemed excess funds.

Section 8. Borrowing.

(a) *The right to borrow.* The city shall have the right and power, except as prohibited by law or this Charter, to borrow money by whatever method it may deem to be in the public interest.

(b) *General obligation bonds.* The city shall have the power to borrow money on the credit of the city and to issue general obligation bonds for permanent public improvements or for any other public purpose not prohibited by law and this Charter, and to issue refunding bonds to refund outstanding bonds previously issued. All such bonds or certificates of obligation shall be issued in conformity with the laws of the State of Texas and shall be used only for purposes for which they were issued. Any bonds to be issued under the provisions of this section shall not be issued without an election.

Therefore, the city council shall prescribe the procedure for calling and holding such elections, shall define the voting precincts and shall provide for the return and canvass of the ballots cast at such elections. If, at such election, a majority of the vote shall be in favor of creating such a debt or refunding outstanding valid bonds of the city, it shall be lawful for the city council to issue bonds as proposed in the ordinance submitting same but if a majority of the vote polled shall be against the creation of such debt or refunding such bonds, the city council shall be without authority to issue the bonds. In all cases when the city council shall order an election for the issuance of bonds of the city, it shall,

at the same time, submit the question whether or not a tax shall be levied upon the property of the city for the purpose of paying the interest on the bonds and to create a sinking fund for their redemption.

(c) *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 not prohibited by the constitution and laws of the State of Texas, and to issue revenue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable from the properties, or interest therein pledged, or the income there from, 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 and shall be used only for the purpose for which they were issued.

(d) *Borrowing in anticipation of ad valorem tax revenues.* In any budget year, the city council may, by resolution, authorize the borrowing of money in anticipation of the collection of the ad valorem tax for the same year, whether levied or to be levied. Notes may be issued for periods not exceeding one (1) year and must be retired by the end of the budget year in which issued.

Section 9. Purchasing.

(a) The city council may, by ordinance, confer upon the city manager general authority to contract for expenditures without further approval of the city council for all budgeted items not exceeding limits set by the city council. All contracts for expenditures involving more than the set limits must be expressly approved in advance by the city council. All contracts or purchases involving more than the limits set by the city council shall be let to the lowest bidder whose submittal is among those most responsive to the needs of the city after there has been opportunity for competitive bidding as provided by law or ordinance; provided that the city council, or city manager in such cases as he is authorized to contract for the city, shall have the right to reject any and all bids.

(b) Emergency contracts as authorized by law and this Charter, may be negotiated by the city council, or city manager, if given authority by the city council, without competitive bidding. Such emergency shall be declared by the city manager and approved by the city council or may be declared by the city council.

Section 10. Administration of budget.

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the city manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriations and that sufficient funds there from 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 will be void and any payment so made illegal. Such action shall be the cause for removal of any officer who knowingly authorized or made such payment or incurred such obligations, and he shall also be liable to the city for any amount so paid. However, this prohibition shall not 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, time warrants, certificates of indebtedness, or certificates of obligation, 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 11. Depositor.

All monies received by any person, department or agency of the city for, or in connection with, the affairs of the city shall be deposited promptly in the city depository or depositories, which shall be designated by the city council in accordance with such regulations and subject to such requirements as to security for deposits and interest thereon as may be established by ordinance and law. Procedures for the withdrawal of money or the disbursement of funds from the city depositories shall be prescribed by ordinance.

Section 12. Financial report.

The city manager shall submit to the city council at its first formal meeting each month the financial condition of the city by budget item, budget estimate versus accruals for the preceding month and for the fiscal year to date. The financial records of the city will be maintained on an accrual basis to support this type of financial management.

Section 13. Independent audit.

At the close of each fiscal year, and at such other times as it may be deemed necessary, the city council shall cause an independent audit to be made of all accounts of the city by a certified public accountant. The certified public accountant so selected shall have no personal interest, directly or indirectly, in the financial affairs of the city or any of its officers. Upon completion of the audit, the summary thereof shall be published immediately in the official newspaper of the city and copies of the audit placed on file in the city secretary's office as public record.

ARTICLE VIII. TAX ADMINISTRATION*

***Editor's note:** A Charter election held on May 4, 1919, amended Art. VIII to read as herein set out. Prior to such election, Art. VIII consisted of §§1--8, which pertained to tax administration and derived from the Charter adopted by referendum on Aug. 12, 1978, as amended by Ord. No. 87-16, § I (H), which was approved at Charter election held on Nov. 3, 1987.

Section 1. Power to tax.

The city shall have the power to levy, assess, and collect taxes of every character and type for any purpose not prohibited by the laws of the State of Texas or this Charter, including, but not limited to, taxes based on the assessed value of non-exempt real and personal property in the city.

(Ord. No. 94-14, § 1, 12-15-94)

Section 2. Rules, regulations, and contracts.

Except as otherwise prohibited by state law or this Charter, the city council shall have power, by ordinance, to grant tax exemptions, to prescribe the date when taxes, and to establish and promulgate such rules and regulations, and to make and enter into such contracts as it may deem expedient, reasonable, or necessary to assess and/or collect such taxes.

Section 3. Arrears of taxes offset against debts to city.

The city shall be entitled to offset against any debt, claim, demand, or account owed by the city to any person, firm, or corporation who or which is in arrears to the city for taxes, in the amount of taxes so in arrears, together with any penalty, interest, or other sum due to the city as a result of said taxpayer's failure to pay such taxes in a timely manner, and no assignment or transfer of such debt, claim, demand, or account after the said taxes are due, shall affect the right of the city to so offset.

Section 4. Liens and security interests.

Except as otherwise provided by state law or this Charter, the city shall have the power, by ordinance, to provide that it shall have such liens and/or security interests in or on such property as it may deem expedient, reasonable, or necessary to secure the payment of taxes due and owing to it, and it further shall have the power to provide, by ordinance, for the means and/or methods of perfection of such liens and/or security interest.

ARTICLE IX. BOARDS AND COMMISSIONS

Section 1. Authority.

(a) The city council shall create, establish, or appoint, as may be required by the laws of the State of Texas or this Charter, such boards, commissions and committees as it deems necessary to carry out the functions and obligations of the city. The city council shall, by ordinance, prescribe the purpose, composition, function, duties, accountability and tenure of each board, commission, and committee, where such are not prescribed by law or this Charter.

(b) Individuals may be appointed to serve on more than one (1) board, commission or committee. The city council may, by ordinance, consolidate the functions of the various boards, commissions or committees enumerated in this Article.

(c) There shall be appointed to each board and commission mandated or established by this Charter, one (1) or more alternate members who shall be subject to the same requirements for membership and attendance at meetings as are regular members and who shall have the same authority to sit and act as a regular member in the absence of said regular member.

(Amended by Charter election of May 5, 1999)

Section 2. Boards and commissions enumerated.

(a) *Planning board.* There is hereby established a planning board, consisting of seven (7) members whose purpose, composition, function, duties and tenure shall be as set out in article X of this Charter.

(b) *Reserved.*

(c) *Parks and recreations board.* The city council shall appoint a parks and recreation board of five (5) members who shall be qualified registered voters of the city to work in an advisory capacity to the city council in the planning and development of parks and recreation facilities and regulations governing their use. Members of the board shall be appointed for two-year terms with two (2) members' terms expiring in even numbered years and three (3) members' terms expiring in odd numbered years. Members of the board shall elect a chairman from their membership and shall meet at the call of the chairman or at the request of the city council.

(d) *Reserved.*

(e) *Reserved.*

(f) *Library board.* The city council shall appoint a library board consisting of five (5) members who shall be qualified registered voters of the city and who shall serve for a term of two (2) years with two (2) members' terms expiring in even numbered years and three (3) members' terms expiring in odd numbered years. The board shall work in an advisory capacity to the city council in the planning, development, use, regulation, operation, and maintenance of the Port Aransas Library. The board shall supervise and govern the public library and shall nominate the librarian who shall be appointed by the city council. Members of the board shall elect a chairman from their membership and shall meet at the call of the chairman or at the request of the city council.

(g) *Board of adjustment and appeals.* The city council shall appoint a board of adjustment and appeals of five (5) members and two (2) alternates who shall be qualified registered voters of and own real property within the city to hear and determine appeals from the refusal of building permits or from administrative decisions by the city building official. Members of the board shall be appointed for two (2) year terms with two (2) members and (1) alternate's terms expiring in even numbered years and three (3) members and one (1) alternate's terms expiring in odd numbered years. Members of the board shall elect a chairman from their membership and shall meet at the call of the chairman within thirty (30) days of receipt of written notice from anyone aggrieved as a result of the refusal of a building permit or administrative decision by the city building official. All cases to be heard by the board will be heard by five (5) members and/or alternate members. Rules and regulations shall be prescribed for the functioning of the board consistent with the laws of the State of Texas and the building codes of the City of Port Aransas.

(h) *Other boards and commissions.* The city council shall have the power and is hereby authorized to create, establish and appoint such other boards, commissions and committees as it deems necessary to carry out the functions and obligations of the city. The city council shall, by ordinance, prescribe the purpose, composition, functions, duties, accountability and tenure of each such board, commission and committee.

(i) *Reserved.*

(Section 2(b), (e) repealed and 2(i) added by Charter election of May 6, 1995; amended by Charter election of May 5, 1999; Section 2(c), (d), (f), (g), (i) amended by Charter election of November 5, 2002)

Section 3. General.

(a) *Open meetings.* All meetings of any board, commission, or committee created, established, or appointed by this Charter or the city council shall be a public meeting and open to the public.

(b) *Reserved.*

(c) *Compensation.* Subject to the provisions of any law of the State of Texas or this Charter to the contrary, all members of any board, commission, committee or other body will serve without compensation but may be reimbursed for any necessary expenses as a result of their work.

(d) *Minutes.* All boards, commissions, or committees of the city shall keep and maintain minutes of any proceedings held and shall submit such approved minutes of such proceedings to the city council after each meeting.

(e) *Exclusion of city officers and employees.* No officer of the city nor any person who holds a compensated appointive position with the city shall be appointed to any board, commission or committee created or established by this Charter other than in an advisory capacity.

(f) *Rules and regulations.* All boards, commissions, and committees established or created by this Charter or otherwise, shall set out their own rules and regulations for operation thereof unless specifically prescribed by the laws of the State of Texas, this Charter, or by ordinance. If any member is absent from three (3) consecutive regular meetings, his position shall be declared vacant unless excused by the city council for good cause shown and the vacancy shall be filled for the remainder of the unexpired term by the city council within thirty (30) days after the vacancy occurs. If any member is absent from more than forty (40) percent of the meetings (including regular and special meetings) in any consecutive twelve-month period, his position shall be declared vacant by the city council and the vacancy shall be filled for the remainder of the unexpired term by the city council within thirty (30) days after the vacancy occurs.

(g) *Reserved.*

(Section 3 amended by Charter election of January 31, 1984; Section 3 (b) and (g) repealed by Charter election of May 4, 1991; Charter election of May 6, 1995)

ARTICLE X. PLANNING

Section 1. Powers of the city.

The city shall have the power and duty to adopt and enforce:

(a) A master plan for the orderly growth and development of the city.

(b) Ordinances for the regulation of platting and subdivisions within the city and its extraterritorial jurisdiction.

(c) Ordinances to establish development performance standards and land use regulations in general within the city, its extraterritorial jurisdiction and any valid additions thereto, or within any part thereof, in any manner that does not conflict with the constitution or present or future laws of the State of Texas.

(d) Ordinances to promote safe and reasonable building standards, with special attention provided to hurricane resistant building practices, and emergency administrative measures to be applied in the time of natural disaster.

- (e) Ordinances to regulate the use of wetlands, waterways, public waterfront lands, sand dunes and dune areas, and to protect such wetlands, public waterfront lands, waterways, sand dunes and dune areas.
- (f) Ordinances to regulate the collection and disposal of solid and other wastes in a manner so as to protect the general health, safety and welfare of the citizens, and to protect the environmental quality in accordance with present laws of the State of Texas and the United States.
- (g) Ordinances to provide for the acquisition of lands within the city limits, and extraterritorial jurisdiction for public purposes not in conflict with the laws of the State of Texas.
- (h) Ordinances to provide for capital improvements of the city, with or without the required financial participation or approval of property owners adjacent to the improvements.
- (i) Establish such commissions, boards or panels as may be needed in carrying out its planning and regulatory duties as provided by this Charter.

Section 2. Planning and zoning board.

The city council shall establish a planning and zoning board, hereinafter call the "board," in the manner provided by this charter, whose primary duty shall be to advise the city council in carrying out its various duties and functions regarding planning and environmental quality as provided by this Charter.

(a) *Organization and qualifications.*

(1) There shall be established a planning and zoning board which shall consist of seven (7) citizens of the City of Port Aransas. The members of said board shall be appointed by the city council within sixty (60) days of the adoption of this Charter, for a term of two (2) years. The members of said board at their first meeting shall draw lots to determine those who will serve one (1) year and two (2) year terms beginning on the date of initial appointment of the board. On the expiration of the term of each of the members who have drawn lots, his place shall be filled by a member appointed for a two-year term. The board shall elect a chairman from among its membership each year at the first regular meeting in July. The board shall meet not less than once each month. Vacancies in any unexpired terms shall be filled by the city council within thirty (30) days from the date of the vacancy for the remainder of the term. For purposes of this section, the appointment year of respective board members shall be deemed to begin on July 1st.

(2) Members of the board shall be residents for the City of Port Aransas for at least twelve (12) months preceding the date of appointment; own real property in said city; be a qualified registered voter in said city; be knowledgeable in the affairs of the city and be knowledgeable in the functions and activities provided for in this article.

(b) *Duties and powers of the board.* The board shall:

(1) Make and recommend to the city council a master plan for the orderly development of the city. The board shall, not less than every five (5) years, review and recommend to the city council amendments to the master plan of the city.

(2) Have such power, authority and duties as is consistent with State law and city ordinances governing platting and subdivision of land.

(3) Have such power, authority and duties as are consistent with State law and city ordinances governing zoning.

- (4) Submit annually, to the city manager, recommendations regarding capital improvements desired and needed in the city during the next five-year period.
- (5) Request information from other departments of the city relative to its work, and, as necessary and within budget appropriations, retain professional and consultant services to aid in carrying out its duties. Requests for information regarding other departments of the city shall be directed to the city manager's office.
- (6) Such other duties consistent with its purposes as may be prescribed by ordinance.
(Section 2 amended by Charter election of May 4, 1991; amended by Charter election of May 5, 1999; Section 2(a)(2) amended by Charter election of November 5, 2002)

Section 3. Reserved

Editor's note: A Charter election of May 4, 1991, repealed § 3 of Art. X in its entirety. Prior to such election, § 3 pertained to the director of planning and derived from the Charter adopted by referendum on Aug. 12, 1978.

Section 4. Master plan.

- (a) Within one (1) year from the date of adoption of this Charter, the master plan, as recommended by the board, shall be delivered to the city council for its review and action. The city council may adopt in whole, or in part, the master plan and may amend it. The city council shall act on any recommended master plan, part, or amendment within sixty (60) days of its delivery by the board. Notwithstanding any of the provisions contained herein, the city council shall enact an ordinance adopting a master plan not more than eighteen (18) months from the date of adoption of this Charter.
- (b) No action, whether public or private, in conflict with the master plan shall be approved by the city council without first having been reviewed by the board and submitted to the city council with its recommendations.
(Section 4 amended by Charter election of May 4, 1991)

ARTICLE XI. PUBLIC UTILITIES, FRANCHISES AND LICENSES

Section 1. Powers of the city.

The city has the power to buy, own, sell, construct, lease, maintain, operate, and regulate public services and utilities and to manufacture, distribute and sell the output of such service and utility operations. The city shall have such regulatory and other power as may now or hereafter be granted under the constitution and laws of the State of Texas.

Section 2. Power to grant franchise.

The city council has the power to grant, renew and extend all franchises of a public service operating within the city and, with the consent of the franchise, to amend the same. No franchise shall be granted for a term of more than twenty (20) years from the date of the grant, renewal or extension.

Section 3. Ordinance granting franchise.

Any ordinance granting, renewing, extending, or amending a public service franchise must be read at three (3) separate regular meetings of the city council and shall not take effect until thirty (30) days after the final reading. Within fifteen (15) days following the first reading of the ordinance, a summary of the ordinance shall be published one (1) time

in a newspaper of general circulation in the city with the expense of such publication borne by the prospective franchisee. No franchise shall be exclusive.

Section 4. Transfer of franchise.

No public service franchise is transferable, except with the approval of the city council. However, the franchisee may pledge franchise assets as security for a valid debt or mortgage.

Section 5. Franchise value not to be allowed.

Franchises granted by the city are of no value in fixing rates and charges for public utility service within the city and in determining just compensation to be paid by the city for public utility property which the city may acquire by condemnation or otherwise.

Section 6. Right of regulation.

In granting, amending, renewing, and extending public service and utility franchises, the city has the following rights:

- (a) To repeal the franchise by ordinance for failure to begin construction or operation within the time prescribed or for failure to comply with terms of the franchise. This may be executed only after due notice and hearing.
- (b) To require all extensions of services within city limits to become part of the aggregate property of the service and operate subject to all obligations and reserved rights contained in this Charter. This extension is considered part of the original grant and terminable at the same time and under the same conditions as the original grant.
- (c) To require expansion and extension of facilities and services and to require maintenance of existing facilities to provide adequate service at the highest level of efficiency.
- (d) To require reasonable standards of service and quality of product and prevent unjust rate discrimination.
- (e) To impose reasonable regulations and restrictions to insure the safety and welfare of the public.
- (f) To prescribe the form of accounts kept by each utility. Accounts must be kept according to the accounting system prescribed by the appropriate state or federal regulatory agency.
- (g) To examine and audit accounts and records and to require annual reports on local operations of the utility.
- (h) To require that procedural rules and regulations dealing with public utilities conform to the requirements of the appropriate state or other regulatory agency.
- (i) To require franchisee to restore, at franchisee's expense, all public or private property to a condition as good or better than before disturbed by the franchisee for construction, repair or removal.
- (j) To require every franchisee to furnish, within a reasonable time to the city, at the franchisee's expense, a general map outlining current location, character, size, length, and terminal of all facilities, over and underground of city property and additional information on request.
- (k) To require every franchisee and public service utilities operator within the city to file certified copies of all franchises owned or claimed or under which such utility is operated

in the city. This shall be done within six (6) months after the Charter takes effect. The city shall maintain a public record of public service franchises.

(l) To require such compensation and rental as may be permitted by the laws of the State of Texas.

(m) To require city council approval of all rates, rate schedules and amendments thereto of utilities franchised in the City of Port Aransas, notwithstanding any regulations or laws of the State of Texas or the United States.

Section 7. City-owned public services.

The city council shall have the following rights:

(a) To set rates of city-owned public services.

(b) To require all city-owned public services to keep accounts to show complete financial operations. Accounts must show actual cost of each service to the city, including costs of extensions and improvements and sources of funds expended for these purposes. Costs of services furnished to other cities or government agencies must also be included.

Section 8. Consent of property owners.

The consent of abutting and adjacent property owners shall not be required for construction, extension, maintenance or operation of any public utility. The property owner retains the right to seek action by law for damage resulting therefrom.

Section 9. Regulation of rates.

(a) Except to the extent rate making is governed by Federal or State law to the exclusion of city jurisdiction with respect to a given utility, the city council has the power, by ordinance, to fix and regulate the rates and charges of all public utilities and fix the fares of all public transportation of every kind operating within the corporate limits of Port Aransas.

(b) Upon receiving a request from a public service requesting a change in rates, the city council shall call a meeting for consideration of the change.

(c) The public service must show the necessity for the change by any evidence required by the city council, including:

(1) Cost of its investment for service in the city.

(2) Amount and character of expenses and revenues connected with rendering the service.

(3) Copies of any reports or returns filed with any state or federal regulatory agency within the last three (3) years.

(4) Demonstration that the return on investment is within state and federal limitations.

(d) If not satisfied with the sufficiency of evidence, the city council shall hire rate consultants, auditors, and attorneys to investigate and if necessary, litigate requests for rate changes. The public service will reimburse the city for reasonable and necessary expenses thus incurred.

(e) If not satisfied with the outcome, the public service may make a motion for a rehearing within thirty (30) days after the order is entered. The motion is considered overruled if the city council does not act upon it within sixty (60) days.

(f) No public service may institute legal action contesting rates fixed by the city council until the public service has exhausted the remedies described in this Charter.
(Amended by Charter election of May 5, 1999)

Section 10. Existing franchises; other conditions.

All franchises heretofore granted are recognized as contracts between the city and the franchisee and the contractual rights as contained in such franchises shall not be impaired by the provisions of this Charter except for the following:

(a) The power of the city to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved, except as provided by state law.

(b) The power of the city as herein provided to regulate rates and services of a utility. Nothing in this Charter shall operate to limit, in any way, the discretion of the city council or the qualified voters of the city in imposing terms and conditions as may be reasonable in connection with any public service franchise.

Section 11. Licenses.

The city council has the power to levy and collect such license fees as are authorized or not prohibited by the constitution or general laws of the State of Texas, including but not limited to the power:

(a) To license, regulate, control or prohibit the erection of signs or billboards or other devices designed to attract the attention of members of the public.

(b) To license any lawful business, occupation or calling subject to control pursuant to the police powers of the State of Texas.

(c) To license, regulate and fix charges made for vehicles carrying passengers or freight for hire on streets within the city.

(d) To license, regulate, control and prohibit vendors and/or solicitors operating within the city.

ARTICLE XII. GENERAL AND TRANSITIONAL PROVISIONS

Section 1. Publicity.

All records of the city shall be open to inspection except for those that are closed to the public by law. The records may be examined and copied in the city office during normal office hours.

Section 2. Official newspaper.

The city council shall declare annually a primary and an alternate official newspaper of general circulation in the city. All ordinances, notices, and other matters required by law to be published in a newspaper shall be published in the primary official newspaper, unless required by law to be published elsewhere. However, if publishing in the newspaper declared by the council to be the primary official newspaper would be inconvenient, uneconomical, or otherwise not in the best interest of the city in a particular situation, in the opinion of the city manager or other city staff member in charge of determining the newspaper in which to publish, then such ordinance, notice, or other matter may be published in the alternate official newspaper.

(Section 2 amended by Charter election of May 4, 1991)

Section 3. Nepotism.

(a) Neither the city manager nor any member of the city council shall appoint, vote for, or confirm the appointment to any office, position, clerkship, employment, or duty of any person related within the second degree by affinity or within the third degree by consanguinity to the city manager or to any member of the city council, said degrees of relationship being calculated using the civil law method, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever.

(b) The exceptions to the prohibitions set forth in subsection (a) above shall be those which are stated under Section 573.062, Texas Government Code.

(Section 3 amended by Charter election of May 4, 1991; Ord. No. 94-14, § 1, 12-15-94; Charter election of May 6, 1995)

Section 4. Oath.

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

Section 5. Personal financial interest.

No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall he be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies or service, except on behalf of the city as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall be subject to removal from his office or position. Any violation of this section with the knowledge, expressed or implied, of the person or corporation contracting with the city council shall render the contract involved void.

(Ord. No. 94-14, § 1, 12-15-94)

Section 6. Prohibitions.

(a) *Activities prohibited.*

(1) Equality of rights under the law shall not be denied or abridged with respect to appointment to or removal from any city position because of race, sex, age, national origin, political or religious opinions or affiliations. The city shall keep and maintain an affirmative action statement.

(2) No person who seeks appointment or promotion with respect to any city position 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 or promotion.

(3) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, or appointment or attempt to commit any fraud preventing the impartial execution of the personal provisions, rules, and regulations of this Charter.

(4) No person who holds any compensated nonelective city position shall make, solicit or receive any contribution for any candidate for public office in the city or take any part

in the management, affairs, or political campaign of such candidate. He may exercise his rights as a citizen to express his opinion and to cast his vote.

(b) *Penalties.* Any person who willfully engaged in any of the above prohibited activities shall be ineligible for appointment or election to a position in the city for a period of five (5) years. If he is an officer or employee of the city at the time of the violation, he shall immediately forfeit his office or position.

Section 7. Assignment, execution and garnishment.

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

Section 8. Security and bond.

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

Section 9. Damage suits.

Before the city shall be liable for any claim for damages for the death or personal injuries of any person or for damages to property, the complainant or his authorized representative shall notify the city secretary, city manager or other city official designated by ordinance. The notification shall be in writing and shall state specifically how, when and where the death, injury or damage occurred; the amount of loss claimed; and the identity of any witnesses upon whom it is relied to establish the claim; and shall provide such other information as may be required by ordinance. The notification shall be filed given in the manner required by ordinance, within forty-five (45) days of the date of injury or damage or, in the case of death. The failure to so notify the city within the time and manner specified shall exonerate, excuse and exempt the city from any liability whatsoever. No action at law shall be brought against the city until at least sixty (60) days have elapsed since the date of notification.

(Section 9 amended by Charter election of November 3, 1987)

Section 10. Power to settle claims.

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

Section 11. Service of process against the city.

All legal process against the city shall be served upon the mayor, or mayor pro tem.

Section 12. Public act.

This act shall be deemed a public act, and judicial notice shall be taken thereof in all courts.

Section 13. Pleading ordinances.

It shall be sufficient in all judicial proceedings to plead any ordinance of the city by caption, without embodying the entire ordinance in the pleading, and all printed ordinances or codes of ordinances shall be admitted in evidence in any suit, and shall have the same force and effect as the original ordinance. Certified copies of ordinances may also be used in evidence.

Section 14. Construction of Charter.

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

Section 15. Judicial notice.

This Charter shall be deemed a public act, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places.

Section 16. Persons indebted to the city shall not hold office or employment.

No person shall be qualified to hold a municipal office or serve the city in any other capacity for which compensation is paid who is, or may become while in service, in arrears in the payment of taxes or other liabilities due the city, provided he has received notice of the same.

Section 17. Library.

The city council has the authority to establish and maintain a free public library and to cooperate with other governmental entities for the establishment of such library.

Section 18. Parks and recreational facilities.

The city has the authority, alone or with any governmental agency, or any nonprofit organization incorporated under the laws of the State of Texas, to acquire, establish and own all property that may be useful and necessary for the purpose of establishing and maintaining parks and recreational facilities as authorized by law.

Section 19. Airport.

The city has the power to own and operate an airport and the necessary facilities in connection with it, including the right to cooperate with governmental agencies in ownership, operation and zoning provided by law or regulations.

Section 20. Cemetery.

The city has the authority to acquire, establish and own all property within or without the city limits that may be useful or necessary for establishing, maintaining and operating one (1) or more cemeteries, including the authority to cooperate with other governmental agencies. Such facilities may be operated as authorized by law.

Section 21. Hospital.

The city has the authority to acquire, establish and own property necessary for establishing, maintaining and operating a city hospital, including the authority to cooperate with other governmental agencies.

Section 22. Housing authority; standards; urban renewal.

The city council has the authority to create a housing authority under the laws of the State of Texas; to establish, by ordinance, regulations providing minimum standards for all buildings which are used or intended for use as places of human habitation to insure such places are constructed, repaired and maintained so as to protect the safety, health and general welfare of the community, its citizens and the residents of such dwellings; to undertake and engage in programs and projects for urban renewal and development as authorized by laws of the State of Texas and the federal government.

Section 23. Emergency powers of the mayor.

Whenever it shall come to the knowledge of the mayor or his designee that any malignant, infectious or contagious disease or epidemic is prevalent in the city or probably will become so, or in case of public calamity arising by reason of flood, hurricane, tornado, fire, or other disaster, he shall have the power to take all steps and use all measures necessary to avoid, suppress and mitigate such disease and relieve distress caused by flood or resulting from tornado, hurricane, fire or other disaster.

Section 24. Severability and construction.

If a section or part of this Charter:

- (1) Is held invalid by a court of competent jurisdiction; or
- (2) Conflicts with a law of the State of Texas or of the United States, which state or federal law governs and supercedes local law, then, such holding or such conflict shall not invalidate or impair the validity, force, or effect of any other section or part of this Charter, and that construction and interpretation shall be given to said part or section of this Charter which most nearly comports with its original intent and removes such conflict or invalidity.

(Section 24 amended by Charter election of January 21, 1984)

Section 25. Effect on existing laws.

All ordinances, portions thereof, resolutions, contracts, bonds, obligations, rules and regulations now in force under the city government of Port Aransas, and not in conflict with the provisions of this Charter, shall remain in force under this Charter until altered, amended, or repealed by the city council after the Charter takes effect.

Section 26. City defined.

The use of the word "city" in this Charter shall mean the City of Port Aransas, Nueces County, Texas.

Section 27. Gender of wording.

The masculine gender of the wording throughout this Charter shall always be interpreted to mean either sex.

Section 28. Amendment of Charter.

Amendments to this Charter may be framed and submitted to the qualified voters of the city in the manner provided by Chapter 9, Texas Local Government Code.
(Ord. No. 94-14, § 1, 12-15-94)

Section 29. Submission of Charter to voters.

This Charter was voted upon and approved by the voters of Port Aransas at an election for that purpose on August 12, 1978.

(Section 29 amended by Charter election of May 4, 1991)

Section 30. Charter review commission.

The city council shall appoint, at its first regular meeting in July of every fourth year after approval of this Charter, a charter review commission of five (5) citizens of the city.

(a) *Duties.*

(1) Inquire into the operation of the city government under the Charter and determine whether any provisions require revision. To this end public hearings may be held; the commission may compel the attendance of any officer or employee of the city and require submission of any city records it deems necessary to conduct the hearings.

(2) Propose any recommendations it deems desirable to insure compliance with the Charter by the departments of the city government.

(3) Propose amendments to the Charter to improve the effective application to current conditions.

(4) Report its findings and present its amendments, if any, to the city council.

(b) *Action by city council.* The city council shall:

(1) Receive the commission report;

(2) Maintain a copy of said report in the office of the city secretary for review by the public in such office;

(3) Make copies of such report available to any citizen for reasonable cost of copying;

(4) Publish a notice in the official newspaper stating that the report has been received by the city council, that it is on file in the city secretary's office, and is available for review without charge in said office, and that copies of said report are available for reasonable copying cost;

(5) Consider any recommendations made by the commission;

(6) Order any, all, or none of the amendments recommended by the commission and/or any other amendments which the council in its discretion desires to submit to the voters of the city in the manner provided by Texas Local Government Code, Section 9.004, et seq., as now written or hereafter amended.

(c) *Term of office.* The term of office of the commission shall be six (6) months, at the end of which time a report shall be presented to the city council and all records or proceedings of the commission shall be filed with the city secretary and become a public record.

(Section 30 amended by Charter election of January 21, 1984; Charter election of November 3, 1987; Charter election of May 4, 1991.

Section 31. Rearranging and renumbering.

The city council shall have the power, by ordinance, to renumber and rearrange all articles, sections, and paragraphs of this Charter or any amendments thereto, as it shall deem appropriate, and upon the passage of any such ordinance, a copy thereof, certified by the city secretary, shall be forwarded to the secretary of state for filing. The city council shall have the power, by ordinance, to modify references in this Charter to state or federal law or to other provisions of this Charter (1) in order to make such references consistent with subsequently occurring redesignation, codifications, and recodifications of such law and such other provisions of this Charter where such redesignation, codifications and recodifications do not effect any substantive change in such law or such other Charter provision, and (2) in order to correct errors in such references, and upon passage of any such ordinance, a copy thereof, certified by the city secretary, shall be forwarded to the secretary of state for filing.

The city council shall have the power, by ordinance, to correct typographical, grammatical and spelling errors in the Charter where such corrections do not change the substance of the Charter, and upon passage of any such ordinance, a copy thereof, certified by the city secretary, shall be forwarded to the secretary of state for filing.

The city council shall have the power, by ordinance, to delete obsolete, transitional provisions in the Charter and to make those corrections in the Charter which are necessitated by said deletion, where such deletion and correction do not change the substance of the Charter, and on passage of any such ordinance, a copy thereof, certified by the city secretary, shall be forwarded to the secretary of state for filing.

(Section 31 amended by Charter election of May 4, 1991; Charter election of May 6, 1995)

Section 32. Schedule of transition.

(a) This Charter shall take effect immediately following adoption by the voters, and shall be fully operable within one (1) year after adoption.

(b) Upon the adoption of this Charter, the present members of the city council filling elective offices will continue to fill those offices for the terms to which they were elected. If this Charter is adopted, the city council shall, by majority vote, at its first regular meeting after the adoption of this Charter, appoint one (1) additional councilman to serve for a term to coincide with the term of the councilmen who are elected in even numbered years, or until his successor is elected and qualified. Thereafter, the city council shall be elected as provided in this Charter. Persons, who, on the date this Charter is adopted, are filling appointive positions with the City of Port Aransas which are retained under this Charter, may continue to fill these positions for the term for which they were appointed, unless removed by the city council or by other means provided for in this Charter.

Section 33. 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 office or position until adoption of some specific provision under this Charter directing that he vacate the office or position.

(Approved by voters of Port Aransas on August 12, 1978)

Section 34. Gender and number references.

Wherever in this Charter there is reference to the male gender, said reference shall include the female gender and vice versa. Wherever in this Charter there is reference to plural numbers said reference shall include singular and vice versa, unless the subject provision compels otherwise.

(Section 34 added by Charter election of May 6, 1995)

CHARTER COMPARATIVE TABLE

The original charter, articles I through XII, is set out as adopted on August 12, 1978. The following table shows the disposition of amendments adopted at subsequent elections and ordinances adopted by the city council.

TABLE INSET:

Amendment Adoption Date	Section this Charter
8-12-78	Arts. I--XII
1-21-84	Art. I, § 4
	Art. III, §§ 2, 6(b), (c), (d), 9
	Art. IV, § 7
	Art. V, § 2
	Art. VI, § 1
	Art. VI, § 4
	Art. VI, § 9
	Art. VII, §§ 3, 4
	Art. XII, §§ 24, 30, 33
1-31-84	Art. IX, § 3

11- 3-87	Art. III, §§ 1(2), 5
	Art. IV, §§ 3(b), 7(d)
	Art. VIII, §§ 1--8
	Art. XII, §§ 9, 30(b)
5- 4-91	Art. I, §§ 3, 4
	Art. V, § 1 (a)
	Art. VIII, §§ 1--4
	Art. IX, § 3 (b), (g)
	Art. X, §§ 2--4
	Art. XII, §§ 2, 3, 29, 30(b)(6), 31
5- 6-95	Art. III, § 6(b)
Rpld	Art. IX, § 2(b), (e)
Added	Art. IX, § 2(i)
	Art. IX, § 3(f)
	Art. XII, §§ 3(a), 31
Added	Art. XII, § 34
5- 5-99	Art. III, §§ 1,
	6(d), 11, 12(a)
	Art. IV, § 7(a)
	Art. IX, §§ 1(c),
	2(c), (f)
	Art. X, § 2(b)(2), (3)
	Art. XI, § 9(a)
11- 5-02	Art. III, § 1(1), (2)
	Art. III, § 9
	Art. III, § 12(b)
	Art. IX, § 2(i)
	Art. IX, § 2(d)

	Art. X, § 2(a)(2)
	Art. IX, § 2(e)
	Art. IX, § 2(f)
	Art. IX, § 2(g)

TABLE INSET:

Ordinance Number	Adoption Date	Section	Section this Charter
94-14	12-15-94	1	Art. II, § 1
			Art. III, §§ 6(d), 9, 10
			Art. IV, § 1(e)
			Art. VIII, § 1
			Art. XII, §§ 3(b), 5, 28