

TOWN CHARTER



Town of Sunnyvale, Texas

As Prepared by the
TOWN CHARTER COMMISSION

And Approved by a Vote of the People on
May 11, 2013

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**HOME RULE CHARTER
FOR
THE TOWN OF SUNNYVALE, TEXAS
PREAMBLE**

We, the citizens of Sunnyvale, Texas, in order to establish a Home Rule municipal government, provide for the future progress of our Town and obtain more fully the benefits of local self-government, and provide for the public welfare, hereby adopt this Home Rule Charter, in accordance with the statutes of the State of Texas; and do hereby declare the residents of the Town of Sunnyvale, in Dallas County, Texas living within the legally established boundaries of the said Town, to be a political subdivision of the State of Texas, incorporated forever under the name and style of the “Town of Sunnyvale” with such powers, rights, privileges, authorities, duties, and immunities, as are herein provided.

**ARTICLE I
Form of Government and Boundaries**

SECTION 1.01 Form of Government

The municipal government provided by this Charter shall be the “Council-Manager” form of government. Pursuant the provisions of this Charter and subject only to the limitations imposed by the State Constitution, State statutes, and by this Charter, all powers of the Town shall be vested in an elective council, hereinafter referred to as the “Town Council,” which shall enact local legislation, adopt budgets, determine policies, and appoint the Town Manager. The Town Manager shall be held responsible to the Town Council for the execution of the laws and the administration of the government of the Town. All powers of the Town shall be exercised in the manner prescribed by the laws of the State of Texas, this Charter and as may be prescribed by ordinance.

SECTION 1.02 The Boundaries

The citizens of the Town of Sunnyvale, Dallas County, Texas, residing within its corporate limits, as heretofore or hereafter established, are hereby constituted and shall continue to be a municipal body politic and corporate, in perpetuity, under the name of the “Town of Sunnyvale,” with such powers, privileges, rights, duties, authorities, and immunities, as are herein provided. The boundaries of the Town at the time this Charter is adopted are those that have previously been legally established. These boundaries may be changed through annexation or deannexation, as described in this Charter. The records of the Town’s boundaries shall be kept on file with the Town Secretary.

SECTION 1.03 Extension and Reduction of Boundaries

(A) The boundaries of the Town may be enlarged, extended or reduced, regardless of size and configuration, by the methods hereinafter set forth or provided by State law:

(1) The Town Council shall have the power by ordinance to fix the boundary limits of the Town, to exchange area with other municipalities, and to provide for the alteration and extension of said boundary limits, and the annexation of additional territory lying adjacent to the Town, with or without the consent of the inhabitants of the territory annexed, in any manner provided by State law.

(2) When any additional territory has been annexed, the same shall be a part of the Town and the property situated therein shall bear taxes levied by the Town, and the citizens thereof shall be entitled to all the rights and privileges of the other citizens of the Town, and shall be bound by the acts, ordinances, resolutions and regulations of the Town.

(3) Whenever there exists within the Town any territory not suitable or necessary for Town purposes, the Town Council may discontinue said territory as part of the Town in accordance with State law.

ARTICLE II

Powers of the Town

SECTION 2.01 General Powers

The Town shall have the power of local self-government to the fullest extent permitted by law. The Town shall have all the powers granted to cities by the Constitution and laws of the State of Texas, as fully and completely as though they were specifically enumerated in this Charter, together with all of the implied powers necessary to carry into execution those powers and those express and implied powers necessary for the government, interests, health, welfare and good order of the Town and its inhabitants. All powers shall be exercised and enforced in the manner prescribed by the laws of the State of Texas, in this Charter and the Town's ordinances.

SECTION 2.02 Construction of Powers

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

SECTION 2.03 Intergovernmental Relations

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

SECTION 2.04 Eminent Domain

The Town shall have the full power and right to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon the Town by this Charter or by the Constitution and laws of the State of Texas. The Town shall have and possess the power of condemnation for any municipal or public purpose even though not specifically enumerated in this Charter.

**ARTICLE III
The Town Council**

SECTION 3.01 General Powers and Duties

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

SECTION 3.02 Number, Selection, Terms of Office and Elections

(A) **Number.** The legislative and governing body of the Town shall be composed of a Mayor and six (6) "Council Members" and shall be known as the "Town Council of the Town of Sunnyvale," and referred to in this Charter as the Town Council.

(B) **Selection.** The Mayor shall be elected to office at large. The Council Members shall be elected to office at large, but by specific place which shall be designated as Place One (1), Two (2), Three (3), Four (4), Five (5) and Six (6). The Mayor shall be elected in odd number years. Except as set forth in the Transitional Provisions of this Charter, terms of Council Members are staggered so that every year there shall be an election for two (2) of the Places as follows: Places 1 and 2; Places 3 and 4; and Places 5 and 6.

(C) **Term.** The Mayor shall serve a term of two (2) years and shall serve until his/her successor is elected and qualified. Except as set forth in the Transitional Provisions of this Charter, each Council Member shall serve a term of three (3) years and shall serve until his/her successor is elected and qualified. All of the members of the Town Council holding office at the time of passage of this Charter or any amendments to this Charter shall continue to hold their respective office until the respective term for which they were elected expires.

SECTION 3.03 Qualifications for Town Council

In addition to any other qualifications prescribed by law, the Mayor and each Council Member shall meet the qualifications set forth in Article IV, Section 4.02 of this Charter while in office.

SECTION 3.04 Mayor and Mayor Pro-Tem

(A) The Mayor shall preside over the meetings of the Town Council. The Mayor shall participate in the discussion of all matters coming before the Town Council, and shall have a

vote on all matters before the Town Council. The Mayor does not have the power to veto any matter before the Town Council. The Mayor shall represent the Town in intergovernmental relationships, and perform other duties specified by the Town Council and/or imposed by this Charter and by ordinances and resolutions passed in pursuance thereof. Additionally, the Mayor may sign, after authorization by the Town Council, all contracts and conveyances made or entered into by the Town and all bonds, warrants and any other obligation issued under the provisions of this Charter, in the manner prescribed in the ordinance or resolution authorizing the signing of any such obligation. The Mayor shall be recognized as head of the Town government for all ceremonial purposes, and by the Governor for purposes of military law, but shall have no regular administrative duties.

(B) The Mayor Pro-Tem shall be a Council Member elected by the Town Council. Following each regular Town election and any applicable run-off election, and at the first regular Town Council meeting when the newly elected members of the Town Council are sworn and seated, the Town Council shall elect the Mayor Pro-Tem. The Mayor Pro-Tem shall act as Mayor during the absence or disability of the Mayor and, when doing so, shall have the rights conferred upon the Mayor.

SECTION 3.05 Compensation

Members of the Town Council shall serve without compensation but may be reimbursed only for actual expenses incurred in the performance of duties required of the members of the Town Council.

SECTION 3.06 Vacancies, Forfeiture of Office and Filling of Vacancies

(A) **Vacancies.** The office of a Council Member or Mayor shall become vacant upon that person's death, resignation, forfeiture of office or removal from office in any manner authorized by this Charter or other law.

(B) **Forfeiture of Office.** A Council Member or the Mayor shall forfeit that office if that person:

- (1) lacks, at any time during the term of office for which elected, any qualification for the office prescribed by this Charter or by law;
- (2) violates any express prohibition of this Charter or the Code of Ethics adopted under Section 3.07 of this Charter;
- (3) is convicted of a felony, crime involving moral turpitude or any State law regulating conflicts of interest of municipal officers;
- (4) ceases to be a resident of the Town; or
- (5) must vacate office by the mandate of any other law.

(C) **Office Subject to Forfeiture.** A Council Member or the Mayor who is absent from three (3) consecutive regular meetings, or twenty-five percent (25%) of regularly scheduled meetings during a twelve-month (12-month) period immediately preceding and including the absence in question, without explanation acceptable to the other members of the Town Council, shall be subject to forfeiting his or her position on the Town Council, which forfeiture shall occur upon a vote for such a forfeiture by a majority of the members of the Town Council then qualified and serving.

(D) **Filling of Vacancies.** A vacancy in the office of the Mayor or a Council Member shall be filled by special election within one hundred twenty (120) days after such vacancy occurs, in accordance with the Texas Constitution and the Texas Election Code. If the vacated office is that of Mayor Pro-Tem, the Town Council shall elect a new Mayor Pro-Tem at the next regular meeting. Vacancies filled by special election shall be for the remainder of the term that was vacated.

SECTION 3.07 Code of Ethics

(A) **Purpose and policy.** The Town Council shall adopt, maintain and enforce, by ordinance or resolution, a code of ethics for the purpose of, among other things, establishing guidelines for high ethical standards in official conduct by Town officials, employees and appointees. The code of ethics shall establish the policy that Town officials, employees and appointees shall conduct themselves in a manner consistent with sound business and ethical practices, ensuring that the public interest is always considered in conducting Town business, and shall provide guidance in order to instill and maintain a high level of public confidence in the professionalism, integrity, and commitment to the public interest of those in public service. At a minimum, the code of ethics shall include: (1) standards of conduct related to public administration and offenses against public administration, as set out in Chapter 36 of the Texas Penal Code; (2) a travel and expense policy regulating the expenditure of public funds for travel, conferences, and entertainment; (3) policies for reimbursement of actual expenses incurred by members of the Town Council and Boards and Commissions as allowed in this Charter; (4) restrictions on serving as surety for the performance of any person doing business with the Town or as surety for any Town officer or employee required to make a surety bond; and (5) provisions requiring review of the code of ethics at least every five (5) years. The initial adoption of this code of ethics shall occur within one hundred eighty days (180) days of the effective date of this Charter.

(B) **Penalties.** The Town Council shall adopt ordinances providing penalties for violation of the code of ethics, which penalties shall include, but not be limited to, removal from office or appointed position or dismissal from employment for any person found to have willfully violated the code of ethics and additionally that any such person shall be ineligible to hold a Town office, appointed position or employment for five (5) years after removal or dismissal, in addition to any other penalty that may be provided by law or the code of ethics.

SECTION 3.08 Prohibitions

(A) **Holding Other Office or Town Employment.** Except where authorized by law, no Council Member or Mayor shall hold any other elected public office during their term on the

Town Council. No Council Member or Mayor shall hold any other Town office or Town employment during their term on the Town Council. No former Council Member or Mayor shall hold any compensated appointive office or employment with the Town until one (1) year after the expiration of their term on the Town Council. Nothing in this section shall be construed to prohibit the Town Council from selecting any current or former Council Member or Mayor to represent the Town on the governing board of any Town non-profit corporation, association or agency or any regional or other intergovernmental agency, association or corporation.

(B) **Becoming Candidate for Different Office.** Should the Mayor or any Council Member announce his or her candidacy, or in fact become a candidate, in any general, special or primary election for any office of profit or trust under this Charter, the laws of this State or the United States, other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year and thirty (30) days, such announcement of such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

SECTION 3.09 Meetings and Procedures

(A) **Regular and Special Meetings.** The Town Council shall meet at least once each month at a time and place which the Town Council may prescribe by rule. Special meetings may be called by the Mayor. On written request of three (3) Council Members, the Mayor shall call a special meeting. Notice of the date, place, time and subject of each meeting shall be in accordance with State law.

(B) A majority of the members of the Town Council then qualified and serving shall constitute a quorum for the purpose of transaction of business.

(C) The Town Council shall by resolution or ordinance determine its own rules and order of business. Provision shall be made for the taking of minutes, which minutes shall be a public record.

(D) Except as prohibited by conflict of interest laws or this Charter, all members present at a meeting of the Town Council shall vote on every action requiring a vote. The nature of a conflict of interest requiring an abstention shall be concisely stated in the minutes.

SECTION 3.10 Passage of Ordinances in General

(A) The Town Council shall legislate by ordinance only. The enacting clause of every ordinance shall be, "Be it ordained by the Town Council of the Town of Sunnyvale, Texas" Each proposed ordinance shall be introduced in the written or printed form required for adoption. No ordinance shall contain more than one (1) subject which shall be clearly expressed in its title. General appropriation ordinances may contain various subjects and accounts for which monies are to be appropriated. After adoption, an ordinance shall not be amended or repealed except by the adoption of another ordinance amending or repealing the original ordinance. Copies of any proposed ordinance, in the form required for adoption, shall be furnished to the Town Council, shall be available at the Town offices and shall be furnished to citizens upon request to the Town

Secretary from and after the date on which such proposed ordinance is posted as an agenda item for a Town Council meeting and, if amended, shall be available and furnished in amended form for as long as the proposed ordinance is before the Town Council.

(B) Except as may otherwise be prescribed in this Charter, an ordinance shall not be finally passed at the meeting of the Town Council at which it is first introduced, but it shall then be read, and the Town Council will determine whether it shall be rejected or further considered at a subsequent meeting of the Town Council. If rejected, no further action shall be required. Upon second reading, the ordinance may be adopted and enacted. The affirmative vote of a majority or more of the members of the Town Council present is required to enact any ordinance, unless a greater number is required by law or this Charter.

(C) Unless otherwise required by law, every ordinance shall become effective upon adoption or at any later time(s) specified in the ordinance, except that every ordinance imposing any penalty, fine or forfeiture shall become effective only after having been published in accordance with State law.

(D) If a majority of the members of the Town Council present requests that the ordinance, title, and caption or its entirety be read, it must be read.

SECTION 3.11 Emergency Ordinances

(A) The Town 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. The borrowing of money pursuant to an emergency ordinance shall comply with the requirements of this Charter for the borrowing of money.

(B) 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 the emergency in clear and specific terms.

(C) Notwithstanding the requirements of the preceding Section 3.10 applicable to the passage of ordinances in general, an emergency ordinance may be introduced at any Town Council meeting and can be adopted with or without amendment or rejected at the meeting at which it is introduced. The affirmative vote of a majority of the members of the Town Council then qualified and serving shall be required for adoption.

(D) Emergency ordinances shall become effective upon adoption and shall be published as soon thereafter as practicable. Every emergency ordinance so adopted, except one authorizing the borrowing of money, as described herein, is automatically repealed as of the sixty-first (61st) day following the day on which it became effective. The ordinance may be re-enacted if the emergency still exists.

SECTION 3.12 Codes of Technical Regulations

The Town Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedures and requirements governing such an adopting ordinance shall be that prescribed for ordinances generally. A copy of each adopted code of technical regulations, as well as the adopting ordinance, shall be authenticated and recorded by the Town Secretary. Copies of any adopted code of technical regulations shall be available for inspection by the public at the office of the Town Secretary and shall be made available by the Town Secretary for purchase at a reasonable price.

SECTION 3.13 Authentication, Recording, Codification, Printing and Distribution

(A) All ordinances and resolutions adopted by the Town Council shall be authenticated by seal and signature of the person performing the duties of the Town Secretary and numbered consecutively as adopted. They shall be properly indexed and placed in a book kept open for public inspection.

(B) The Town Council may codify the ordinances of the Town. This codification shall be known and cited as "The Sunnyvale Town 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 Town may be omitted without affecting the validity of such ordinances when codified. Every general ordinance enacted subsequent to such codification shall be enacted as an amendment to the Code. For the purpose of this section, general ordinances shall be deemed to be those ordinances of a permanent or continuing nature which affect the residents of the Town at large. Copies of the Code shall be furnished to Town Officers, placed in Town offices, available for inspection by the public at the office of the Town Secretary and shall be made available for purchase by the public at a reasonable price to be fixed by the Town Council.

(C) The Town Council shall cause all ordinances and amendments to this Charter to be printed promptly following their adoption. A copy of each ordinance and amendment shall be placed in appropriate Town offices for public reference and shall be available for inspection by the public at the office of the Town Secretary. Printed ordinances and Charter amendments may be sold to the public at a reasonable price to be fixed by the Town Council.

SECTION 3.14 Council Investigations

The Town Council, by an affirmative vote of a majority of the members of the Town Council then qualified and serving, shall have the power to inquire into the official conduct of any department, agency, appointed boards, office, officers, employees or appointed board members of the Town. For this purpose, the Town Council shall have the power to administer oaths, subpoena witnesses, compel the production of books, papers, and other evidence material to the inquiry. The Town Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence. The Town Council shall have the power to punish any such contempt in the manner provided by such ordinance.

SECTION 3.15 Town Council Shall Require Bonds

The Town Council shall require all Town officers and employees who receive or pay out any monies of the Town, before entering upon his/her duties, to execute a good and sufficient bond with a surety company doing business in the State of Texas and approved by the Town Council. The Town Council may require any other Town officer or employee to execute a good and sufficient bond with a surety company doing business in the State of Texas and approved by the Town Council. The premium of any such bond shall be paid by the Town.

ARTICLE IV Elections

SECTION 4.01 Elections

(A) All elections shall be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and in accordance with the ordinances adopted by the Town Council for the conduct of elections. The general Town election shall be held annually on the uniform election date in May, or at such other times as may be specified by State law, at which time officers will be elected to fill those offices which become vacant that year. The Town Council shall fix the place for holding such election. The Town Council may, by ordinance or resolution, order a special election, fix the date and place for holding same, and provide all means for holding such special election. Notice of the election shall be publicized in accordance with the Texas Election Code and any applicable law. Early voting, absentee voting and procedure for write-in votes shall be governed by the general election laws of the State of Texas.

(B) The order of the names of the candidates on the ballot shall be determined by lot in a public drawing to be held under the supervision of the person performing the duties of the Town Secretary in accordance with the Texas Election Code.

(C) An ordinance, bond issue, or Charter amendment to be voted on by the voters of the Town shall be presented for voting by ballot title. The ballot title of a measure may be different from its legal title and shall be a clear, concise statement, approved by the Town Council, describing the substance of the measure without argument or prejudice.

SECTION 4.02 Filing for Office and Qualifications

(A) Candidates for elective Town offices shall file for office in accordance with the Texas Election Code.

(B) Candidates for elective Town offices shall meet the following:

(1) Be a qualified voter in the Town and State;

(2) Have resided continuously in the corporate limits of the Town, or recently annexed territory, for twelve (12) months immediately preceding the date of the election;

- (3) Not be in violation of any provision in this Charter;
- (4) Be twenty-one (21) years of age or older on the first day of the term to be filled at the election; and
- (5) Satisfy any other eligibility requirements prescribed by law for the office for which they are a candidate.

(C) Notwithstanding the foregoing, an officer removed by a recall election shall not be a candidate in any election called to fill the vacancy created by said officer's removal.

(D) No candidate may file in a single election for more than one (1) office or position provided by this Charter.

SECTION 4.03 Judge of Qualifications

The Town Council is the final judge of all elections and the qualifications of its members. For these purposes, the Town Council shall have the power to subpoena witnesses, administer oaths and require the production of evidence. Decisions by the Town Council as to election and qualifications of its members shall be considered final.

SECTION 4.04 Official Ballot

The names of all candidates for office, except such as may have withdrawn, died or become ineligible, shall be printed on official ballots without party designations specifying the Town Council office for which each is seeking election. All official ballots shall be prepared and printed in accordance with the Texas Election Code and any other applicable law.

SECTION 4.05 Official Results

(A) At any election for the Town Council, including the Mayor, the candidate receiving a majority, meaning more than fifty (50) percent of the votes cast, shall be declared the winner. In the event that no candidate receives a majority of all votes cast at such election, the Town Council shall, upon completion of the official canvass of the ballots, issue a call for a runoff election to be held within thirty (30) days following the issuance of such call, or in accordance with the Texas Election Code. At such runoff election, the two (2) candidates receiving the highest number of votes (or three (3) persons in case of a tie for second place) for any one office in the first election shall be voted again.

(B) The returns of every municipal election shall be handled in accordance with the Texas Election Code. The Town Council shall canvass and declare the results of the election, which shall be recorded in the Council minutes.

SECTION 4.06 Taking Office

- (A) Each newly elected member to the Town Council shall be inducted into office at the first regular Town Council meeting following the canvass of the votes.
- (B) At such meeting, the oath shall be administered in accordance with the Town Charter.

ARTICLE V Town Administration

SECTION 5.01 Town Manager

- (A) **Appointment and Qualifications.** The Town Council, by a vote of the majority of the members of the Town Council then qualified and serving, shall appoint a Town Manager who shall be the chief administrative officer of the Town and shall be responsible to the Town Council for the administration of all the affairs of the Town. The Town Manager shall be chosen by the Town Council solely on the basis of the Town Manager's executive and administrative training, experience and ability. The Town Manager need not be a resident of the Town when appointed, but shall within a reasonable time after such appointment, as determined by the Town Council, reside within the Town during the balance of the tenure of his or her appointment.
- (B) **Term and Compensation.** The Town Manager may be removed at the discretion of the Town Council by an affirmative vote of a majority of the members of the Town Council then qualified and serving. The action of the Town Council in suspending or removing the Town Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension or removal in the Town Council. The Town Manager shall receive compensation as may be determined by the Town Council.
- (C) **Powers and Duties.** The Town Manager shall have the following powers and duties:
 - (1) The Town Manager shall appoint, and when the Town Manager deems it necessary for the good of the Town, may suspend and/or remove any Town employee except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this Charter. The Town Manager may authorize any employee who is subject to the Town Manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
 - (2) The Town Manager shall direct and supervise the administration of all departments, offices and agencies of the Town, except as otherwise provided by law or this Charter.
 - (3) The Town Manager shall see that all laws, provisions of this Charter and acts of the Town Council, subject to enforcement by the Town Manager or by employees subject to the Town Manager's direction and supervision, are faithfully executed.

(4) The Town Manager shall attend all Town Council meetings, except when excused by the Mayor or Mayor Pro-Tem, and shall have the right to take part in discussion, but may not vote.

(5) The Town Manager shall prepare and accept, or designate an appropriate department head or Town employee to prepare and accept, items for inclusion in the official agenda of all Town Council meetings and meetings of all boards and commissions.

(6) The Town Manager shall prepare and submit the annual budget and capital program to the Town Council and administer the annual budget and capital program as adopted by the Town Council.

(7) The Town Manager shall keep the Town Council fully advised as to the financial conditions and future needs of the Town and make such recommendations to the Town Council concerning the affairs of the Town as the Town Manager or the Town Council deems desirable or necessary.

(8) The Town Manager shall make such other reports as the Town Manager or the Town Council may require concerning the operations of the Town departments, offices, or agencies subject to the Town Manager's direction or supervision.

(9) The Town Manager shall perform such other duties as are specified in this Charter or may be required by the Town Council, and are consistent with this Charter or State or Federal law.

(D) **Acting Town Manager.** By letter filed with the Town Secretary, the Town Manager shall designate, subject to approval of the Town Council, a qualified employee to exercise the powers and perform the duties of Town Manager during the Town Manager's temporary absence or temporary disability. The Town Council may revoke such designation at any time and appoint another qualified person to serve until the Town Manager shall return or his/her disability shall cease. In all other cases of absence, disability or suspension of the Town Manager, the Town Council may designate a qualified person to perform the duties of the office.

SECTION 5.02 Town Secretary

(A) **Appointment and Qualifications.** The Town Council, upon recommendation by the Town Manager and by a vote of a majority of the members of the Town Council then qualified and serving, shall appoint a competent and duly qualified person as Town Secretary.

(B) **Term and Compensation.** The Town Secretary may be removed upon recommendation of the Town Manager and at the discretion of the Town Council by an affirmative vote of a majority of the members of the Town Council then qualified and serving. The action of the Town Council in suspending or removing the Town Secretary shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension or removal in

the Town Council. The Town Secretary shall receive compensation as may be determined by the Town Council.

(C) **Powers and Duties.** The Town Secretary shall have the following powers and duties:

- (1) The Town Secretary shall give notice of all official public meetings of the Town Council in a manner consistent with this Charter and State laws.
- (2) The Town Secretary shall attend all public meetings and hearings of the Town Council, except when excused by the Town Manager.
- (3) The Town Secretary shall keep the minutes of the proceedings of all public official meetings and hearings of the Town Council in a manner prescribed by the Town Council consistent with applicable law.
- (4) The Town Secretary shall act as custodian of all official records of the Town.
- (5) The Town Secretary shall hold and maintain the seal of the Town and affix it to all appropriate documents.
- (6) The Town Secretary shall serve as the election official for all Town elections.
- (7) The Town Secretary shall authenticate by signature and seal and record all ordinances, resolutions and proclamations of the Town.
- (8) The Town Secretary shall perform such other duties elsewhere provided for in this Charter or as may be required by the Town Manager consistent with this Charter and the laws of the State of Texas.

SECTION 5.03 Town Attorney

(A) **Appointment and Qualifications.** The Town Council, upon recommendation by the Town Manager and by a vote of a majority of the members of the Town Council then qualified and serving, shall appoint a competent, duly qualified, licensed and practicing attorney in the State of Texas who shall serve as the Town Attorney. The Town Council shall additionally have the right to retain special counsel at any time that it may deem necessary and appropriate.

(B) **Term and Compensation.** The Town Attorney may be removed upon recommendation of the Town Manager and at the discretion of the Town Council by an affirmative vote of a majority of the members of the Town Council then qualified and serving. The action of the Town Council in suspending or removing the Town Attorney shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension or removal in the Town Council. The Town Attorney shall receive compensation as may be determined by the Town Council.

(C) **Powers and Duties.** The Town Attorney shall have the following powers and duties:

(1) The Town Attorney shall serve as chief legal advisor to the Town Council, the Town Manager, directors of Town departments and other Town officers and agencies.

(2) The Town Attorney shall represent the Town in all legal proceedings and shall perform any other duties prescribed by this Charter, ordinance or State laws. Notwithstanding the foregoing, the Town Attorney, with approval of the Town Council, may select additional attorneys to act for him or her and the Town in its representation and/or litigation.

(3) The Town Attorney shall review and provide opinions as requested by the Town Council or Town Manager on contracts, legal instruments, ordinances of the Town and other Town business.

SECTION 5.04 Municipal Court and Town Judge(s)

(A) **Municipal Court.** The Town Council shall establish and cause to be maintained a Municipal Court. The Court shall have all the powers and duties as are now, or as may be, prescribed by the laws of the State of Texas.

(B) **Judge(s); Appointment and Qualifications.** The Town Council, upon recommendation by the Town Manager and by a vote of a majority of the members of the Town Council then qualified and serving, shall appoint a competent, duly qualified, licensed and practicing attorney in the State of Texas who shall serve as the presiding Town Judge and may appoint such other associated judge(s) as are deemed necessary.

(C) **Term and Compensation.** The Town Judge and any associate judge(s) shall be appointed for a term of two (2) years and may be appointed to additional consecutive terms of office in accordance with the laws of the State of Texas. Except as otherwise provided by law, the Town Judge or any associate judge may be removed upon recommendation of the Town Manager and at the discretion of the Town Council by an affirmative vote of a majority of the members of the Town Council then qualified and serving. The action of the Town Council in suspending or removing the Town Judge or any associate judge shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension or removal in the Town Council except as otherwise provided by law. The Town Judge and any associate judge(s) shall receive compensation as may be determined by the Town Council.

SECTION 5.05 Other Departments, Offices and Agencies

(A) **Creation of Departments.** The Town Council may continue or establish Town departments, offices or agencies in addition to those created by this Charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this Charter to a particular department, office or agency may be discontinued or, unless this Charter specifically so provides, assigned to another department.

(B) **Direction by Town Manager.** All departments, offices and agencies under the direction and supervision of the Town Manager shall be administered by an employee appointed by the Town Manager, after consultation with the Town Council, and shall be subject to the direction and supervision of the Town Manager. With the consent of Town Council, the Town Manager may serve as the head of one or more such departments, offices or agencies or may appoint one person to serve as the head of two or more of them.

SECTION 5.06 Personnel Rules

The Town Manager shall be responsible for the preparation of personnel rules, which rules shall be submitted to the Town Council. The Town Council may accept and adopt such rules as proposed or may adopt them with such amendments as the Town Council deems necessary or may reject them in their entirety and direct the Town Manager to further consider the rules and present new proposals at a subsequent meeting.

SECTION 5.07 Freedom From Interference

Neither the Town Council nor any of its members shall dictate to the Town Manager or his/her subordinates the appointment or removal of any person to office or employment. The Town Council or its members will not interfere in any manner with the Town Manager in the performance of the duties of that office or prevent the Town Manager from exercising the Town Manager's own judgment in the appointment of officers and employees whose employment, appointment, and supervision are reserved by this Charter for the Town Manager. Except for the purpose of inquiry and investigations, the Town Council and its members shall deal with the Town Staff solely through the Town Manager, and neither the Town Council, as a body or any individual member, nor any individual not having administrative or executive functions under this Charter, shall give orders to any of the subordinates of the Town Manager, either publicly or privately.

SECTION 5.08 Prohibition

Except as otherwise prohibited by law, an employee of the Town shall forfeit his or her employment with the Town effective upon that employee's election or appointment to any elective public office of the Town. Except as otherwise prohibited by law, an employee of the Town shall forfeit his or her employment with the Town effective upon that employee's election or appointment to any elective public office of the Sunnyvale Independent School District that would conflict with the employee's position with the Town.

ARTICLE VI Financial Procedures

SECTION 6.01 Fiscal Year

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

SECTION 6.02 Preparation and Submission of Budget

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

- (1) A brief budget message which shall outline the proposed financial policies of the Town for the fiscal year, shall set forth the reasons for any major changes in expenditure and revenue items from the previous fiscal year, and shall explain any major change in financial policies;
- (2) Revenue Summary;
- (3) Departmental Expenditure Summary;
- (4) Departmental Budget;
- (5) Schedule of Outstanding Bonded Debt;
- (6) Schedule of Capital Outlays by Department;
- (7) Review of Property Valuations;
- (8) An analysis of Tax Rates;
- (9) Tax Levies and Tax Collection by year for the last three (3) years;
- (10) A provision for financing the current Capital Improvement Program; and
- (11) Other such information as may be required by the Town Council.

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

SECTION 6.03 Capital Improvement Program

(A) The Town Manager shall submit a five-year (5-year) Capital Improvement Program as an attachment to the annual budget. The Program as submitted shall include:

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

(2) A list of all capital improvements that 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 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 process of construction or acquisition. The Capital Improvement Program will be updated and presented to the Town Council annually.

SECTION 6.04 Council Action on Budget

(A) **Notice of Hearing.** The Town Council shall have published a notice for a public hearing on the budget in accordance with State law.

(B) **Amendment before Adoption.** After the public hearing, the Town Council may adopt the budget with or without amendment. In amending the budget, the Town Council 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.

(C) **Adoption.** On or before the 20th day of the last month of the fiscal year currently ending, the Town Council shall adopt the budget by an affirmative vote of a majority of the members of the Town Council then qualified and serving. If the Town Council fails to adopt the budget by this date, the amounts appropriated for current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it pro-rated accordingly, until such time as the Town Council adopts a budget for the ensuing fiscal year. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed.

SECTION 6.05 Budget Amendments After Adoption

Under conditions which may arise and which could not have been foreseen in the normal process of budget preparation, the Town Council may, by an affirmative vote of a majority of the members of the Town Council then qualified and serving, amend the budget. Such amendments shall be by ordinance and shall become an attachment to the original budget.

SECTION 6.06 Defect Shall Not Invalidate the Tax Levy

Errors or defects in the form or preparation of the budget or the failure to perform any procedural requirements shall not nullify the tax levy or the tax rate.

SECTION 6.07 Balanced Budget

The total of proposed expenditures shall not exceed the total of estimated income plus reserves on hand.

SECTION 6.08 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. Unless otherwise provided by law, any funds not expended, disbursed or encumbered shall be deemed excess funds.

SECTION 6.09 Payments and Obligations Prohibited

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

SECTION 6.10 Borrowing

(A) The Town shall have the power to borrow money on the credit of the Town and also to issue or incur bonds and other evidences of indebtedness, and such powers may be exercised to finance public improvements or for any other public purpose not prohibited by the Constitution and the laws of the State of Texas. The Town may issue refunding bonds to refund outstanding bonds and other evidences of indebtedness of the Town previously issued or incurred.

(B) All such bonds and other evidences of indebtedness shall be issued in conformity with the laws of the State of Texas and may be secured by or paid, in whole or in part, from ad valorem tax revenues, revenues derived from other taxing powers of the Town, revenues derived by the Town from any fee or service charge, including revenues derived from the operations of any public utilities, utility systems, recreational facilities or any other municipal function to the extent not prohibited by the Constitution and laws of the State of Texas. Such bonds or evidences of indebtedness may be a charge upon and payable from the properties, or interest therein pledged, or the income therefrom, or both to the extent not prohibited by the Constitution or laws of the State of Texas. The proceeds of bonds or other evidences of indebtedness issued

or incurred by the Town shall be used only for the purpose for which the bonds or other indebtedness was issued or incurred.

SECTION 6.11 Contracts and Purchase Procedure

The Town Council may by ordinance set a maximum amount for which the Town Manager shall be authorized to execute contracts and/or to expend funds for budgeted items; provided however, that all such contracts and expenditures subject to State laws requiring competitive bids shall comply with such laws. The Town Council may by ordinance establish an amount above which all contracts or purchases must be approved in advance by the Town Council. All contracts and purchases shall be handled in a manner to obtain the best value for the Town.

SECTION 6.12 Audit of Town Books and Accounts

The Town Council shall appoint a certified public accountant to make a complete audit of the books and accounts of each Town Department at the close of every fiscal year and present his or her report to the Town Council. Upon completion of the audit, that fact shall be published forthwith in the official newspaper of the Town. Such audit report shall be filed with the Town Secretary and shall be available for public inspection. No more than five (5) consecutive annual audits shall be completed by the same firm without the Town first requesting from other firms proposals for the annual audit services. The certified public accountant selected shall have no personal interest, directly or indirectly, in the financial affairs of the Town or any of its officers.

SECTION 6.13 Power to Tax

(A) The Town Council shall have the power under the provisions of State law to levy, assess and collect an annual tax upon taxable property within the Town provided, however, that the tax for any one year shall not exceed one and one-half per cent of the taxable property of the Town. The Town Council shall have the further power to establish a tax on sales within the Town, to the maximum extent provided by the Constitution and laws of the State of Texas. The Town Council shall have the further power to levy, assess and collect all other types of taxes as provided and permitted by the Constitution and laws of the State of Texas.

(B) The Town Council shall have the power to grant tax exemptions in accordance with the laws of the State of Texas.

SECTION 6.14 Implementation of Power to Tax

The Town Council shall prescribe by ordinance the methods, procedures, rules and regulations by which its power to tax may be implemented, and by which any taxes thereby imposed may be enforced and collected.

SECTION 6.15 Taxes, When Due and Payable

All taxes due to the Town shall be payable at a location designated by the Town Council. Taxes shall be due and shall become delinquent as provided in the Texas Tax Code, which Code further provides for delinquent taxes, interest, penalty and procedures for the collection of taxes.

SECTION 6.16 Tax Liens

The Town shall have all the rights granted by State law to collect taxes and to enforce collection by lien foreclosures and other procedures set forth by State law pertaining to real and personal property.

SECTION 6.17 Depository

The provisions of the laws of the State of Texas, governing the selection and designation of the Town Depository, are hereby adopted as the law governing the selection and designation of a depository of and for the Town.

SECTION 6.18 Investment Policy

The Town Manager may invest any Town monies in accordance with policies adopted by the Town Council and as provided by State law. Such policies shall be reviewed by the Town Council annually.

**ARTICLE VII
Boards and Commissions**

SECTION 7.01 Authority, Composition and Procedures

(A) The Town Council shall create, establish or appoint, as may be required by the laws of the State of Texas or this Charter, or deemed desirable by the Town Council, such boards, commissions and committees as it deems necessary to carry out the functions and obligations of the Town. The Town Council shall, by ordinance or resolution, 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 who are qualified voters in and residents of the Town may be appointed by the Town Council to serve on one (1) or more boards, commissions or committees. Such appointees shall serve at the pleasure of the Town Council, are not automatically entitled to reappointment for any term and may or may not be reappointed at the discretion of the Town Council. During the term of any appointee, the Town Council may remove the appointee for cause, as found by the Town Council, on a written charge and after a public hearing. Except as may otherwise be provided in this Charter, members of any such board, commission or committee shall serve without compensation but may be reimbursed only for actual expenses incurred in the performance of duties required of the member.

(C) An appointed member of any Town board, commission or committee shall forfeit his or her place or position effective upon election or appointment to any publicly elected office.

(D) All boards, commissions or committees of the Town shall keep and maintain minutes of any proceedings held and shall submit a written report of such proceedings to the Town Council no more than three (3) weeks following each meeting. Members of boards and commissions are considered Town officers for purposes of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and are considered local public officials for purposes of Chapter 171, Texas Local Government Code.

(E) Except as otherwise provided in this Charter, no officer or employee of the Town shall be a member of any board, commission or committee created or established by this Charter other than in an advisory and/or *ex officio* capacity.

(F) Any member of a board, commission or committee who is absent from three (3) consecutive regular meetings, or twenty-five percent (25%) of regularly scheduled meetings during a twelve-month (12-month) period immediately preceding and including the absence in question, without explanation acceptable to a majority of the other members, shall be subject to forfeiting his or her position on the board, commission, or committee.

(G) Before the Town Council may consider the removal of the roster of an entire board or commission or abolish the existence of a particular board or commission, the Town Council must hold a public hearing prior to a decision being rendered.

SECTION 7.02 Planning and Zoning Commission

(A) The Town Council shall appoint a Town Planning and Zoning Commission in accordance with the laws of the State of Texas. The Town Council shall have all of the rights, privileges, powers and authority, given, permitted and granted under the laws of the State of Texas relative to planning and zoning in, for and of municipalities and their environs.

(B) A vote of a majority of the members of the Town Council then qualified and serving is required to overrule a recommendation of the Commission that a proposed zoning amendment, supplement, or change be denied.

(C) Except as prohibited by conflict of interest laws or this Charter, all members present at a meeting of the Planning and Zoning Commission shall vote on every action requiring a vote. The nature of a conflict of interest requiring an abstention shall be concisely stated in the minutes.

SECTION 7.03 The Comprehensive Plan

(A) The Town Council shall adopt a Comprehensive Plan that shall be used as a guide by the Town Council to establish codes and ordinances determined to be essential in providing for the public health, safety, and welfare of the citizens of the Town, and by the Planning and Zoning Commission to facilitate development and master plans that the Town deems necessary and

appropriate for systemic growth and development. The Comprehensive Plan shall not be nor be considered a zoning map nor constitute zoning regulations or establish zoning boundaries and shall not be site nor parcel specific and shall be used to illustrate generalized locations. The depiction of thoroughfare alignments in the Comprehensive Plan is subject to modification by the Planning and Zoning Commission and Town Council to fit local conditions and is subject to refinement as development occurs.

(B) The Comprehensive Plan shall be reviewed by the Planning and Zoning Commission at a minimum every five (5) years and any recommended changes shall be submitted to the Town Council for approval, disapproval, amendment or modification.

(C) Any proposal that deviates from the Comprehensive Plan shall not be authorized until and unless the location and extent thereof shall have been submitted to and approved by the Planning and Zoning Commission. In case of denial of a request to deviate from the Comprehensive Plan, the Planning and Zoning Commission shall communicate its reason to the Town Council, which shall have the power to overrule such denial with a vote of a majority of the members of the Town Council then qualified and serving. Upon such overruling, the Town Council or the appropriate office, department or agency shall have authority to proceed.

SECTION 7.04 Zoning Board of Adjustment

The Town Council shall appoint a Zoning Board of Adjustment in accordance with the laws of the State of Texas. The Zoning Board of Adjustment shall have such powers as granted under the laws of Texas and any additional powers which may, at the discretion of Town Council, be granted.

ARTICLE VIII Public Utilities and Franchises

SECTION 8.01 Powers of the Town

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

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

SECTION 8.02 Franchises

(A) The Town Council, upon a vote of a majority of the members of the Town Council then qualified and serving, shall have power by ordinance to grant, renew and extend all franchises of

public utilities of every character operating within the Town and for such purposes is granted full power. The term “public utility” as used herein is construed to mean any person or entity furnishing to the public any general public service, including, but not limited to heat, light, gas, power, telephone service, communication services, community antenna or cable television service, sewer service and the treatment thereof, water, wrecker service, the carrying of passengers for hire, or any other public service whereby a right to, in part, appropriate or use the streets, highways, or other property of the Town, as necessary or proper is granted.

(B) Any ordinance granting, renewing or extending franchises shall not take effect until at least thirty (30) days after its passage; and during such thirty (30) day period the descriptive caption of the ordinance shall be published at least twice in the official newspaper(s) of the Town, the expense of the publication being borne by the proponents of the franchise.

(C) No franchise shall be granted for a term of more than twenty (20) years from the date of the grant, renewal or extension of any franchise.

(D) No franchise is transferable, except with the approval of the Town Council by a vote of a majority of the members of the Town Council then qualified and serving. The franchise holder, however, may pledge franchise assets as security for a valid debt or mortgage.

SECTION 8.03 Franchise Value Not to be Allowed

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

SECTION 8.04 Right of Regulation

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

(A) To repeal the same by ordinance at any time upon the failure of the grantee to comply with the terms of the franchise, the ordinance, this Charter, any applicable statute of the State of Texas, or the rule of any applicable governmental body, such power to be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise, and if said default is not cured within a reasonable time such power shall be exercised only after the grantee has been given the opportunity for hearing;

(B) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates;

(C) To require such expansion, extension, and improvements of plants and facilities as are necessary to provide adequate service to the public;

(D) To require that maintenance of facilities be performed at the highest reasonable standard of efficiency;

(E) To prescribe the accounts and accounting system to be used by a franchise holder so that they will accurately reflect the value of the property used in rendering its service to the public; and the expenses, receipts, and profits of all kinds of such franchises. (It shall be deemed sufficient compliance with this paragraph if the franchisee keeps its accounts in accordance with the uniform system established by an applicable Federal or State agency for such service.)

(F) To examine and audit, at any reasonable time during regular business hours, the accounts and other records of any franchise holder; and to require annual and other reports including reports on operations within the Town;

(G) To impose such reasonable regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare, and accommodation of the public;

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

(I) To require that the franchise holder restore to the applicable Town standards at that time, at the expense of the franchise holder, all public and private property damaged or destroyed by construction, maintenance, or removal by such franchise holder; and

(J) To require a franchise holder to furnish to or make available for inspection by the Town, within a reasonable time following request of the Town, at the expense of the franchise holder, a general map outlining current location, character, size, length, depth, height and terminal of all facilities over and under property within the Town and its extraterritorial jurisdiction. If the Town Council determines that a franchise holder's compliance with these requirements raises legitimate security issues, the Town Council may address those issues and these requirements in any manner determined proper by the Town Council.

SECTION 8.05 Extensions

All extensions of public utility service shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this Charter. The extension of any public utility shall be considered a part of the original grant and shall be terminable at the same time and under the same conditions as the original grant.

SECTION 8.06 Other Franchise Conditions

All franchises heretofore granted are recognized as contracts between the Town and the grantee. The contractual rights as contained in any such franchise shall not be impaired by the provisions of this Charter, except that the power of the Town to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved; and except that the general power of the Town, heretofore existing and herein provided for to regulate the rates and services of a

grantee, shall include the right to require proper and adequate extension of plant and service and the maintenance of the plant and equipment at the highest reasonable standard of efficiency. All franchises hereafter granted shall be held subject to all terms and conditions contained in the various sections of this article whether or not such terms are specifically mentioned in the franchise. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the Town Council or voters of the Town in imposing terms and conditions as may be reasonable in connection with any franchise grant.

SECTION 8.07 Regulation of Rates and Service

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

SECTION 8.08 Licenses

The Town shall have the power to license, levy and collect fees in order to license any lawful business, occupation or calling subject to control pursuant to the police powers of the State of Texas and/or for any other purpose not contrary to the Constitution and laws of the State of Texas.

ARTICLE IX Recall, Initiative and Referendum

SECTION 9.01 General Authority

(A) **Recall.** The qualified voters of the Town shall have the power to petition for recall of the Mayor or any member of the Town Council.

(B) **Initiative.** The qualified voters of the Town shall have power to propose ordinances to the Town Council. Such power shall not extend to the budget or any capital improvement program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes, annexation or salaries of Town officers or employees, or any zoning amendment or amendment of the Town's comprehensive plan, or any other ordinance not subject to initiative as provided by this Charter, State law or case law.

(C) **Referendum.** The qualified voters of the Town shall have power to require reconsideration by the Town Council of any adopted ordinance. Such power shall not extend to the budget or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes, annexation or salaries of Town officers or employees, or any zoning amendment or amendment of the Town's comprehensive plan, or other ordinance not subject to referendum as provided by this Charter, State law or case law.

SECTION 9.02 Scope of Recall

Any elected Town official shall be subject to recall and removal from office by the qualified voters of the Town on grounds set forth in Section 22.077 of the Texas Local Government Code.

SECTION 9.03 Petitions for Recall

Before the question of recall of any Town official is submitted to the qualified voters of the Town, a petition demanding such question to be so submitted shall first be filed with the person performing duties of Town Secretary. Said petition must be signed by qualified voters of the Town of at least fifteen percent (15%) of the total number of qualified voters in the Town according to the then existing voter registration rolls maintained by the Dallas County Elections Department. Each signature on a recall petition shall conform to the requirements for information as set forth in Chapter 277 of the Texas Election Code.

SECTION 9.04 Form of Recall Petition

All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. The petition shall be addressed to the Town Council and the content shall distinctly and specifically point to the ground upon which such petition for removal is predicated. Further, said petition shall state distinctly and specifically (1) each ground upon which such petition for removal is predicated, and (2) the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the official that warrant the charge(s), as to give the officer sought to be removed notice of the matter(s) and thing(s) with which the officer is charged. The signatures on the petition shall be verified by oath in the following form:

State of Texas

County of Dallas

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

Signature

Sworn and subscribed before me this _____ day of _____, 20_____.

Signed _____

Notary Public in and for
State of Texas

SECTION 9.05 Various Papers Constituting Recall Petition

The petition may consist of one (1) or more copies, or subscription lists, circulated separately, and the signatures thereto may be upon the paper or papers containing the form of petition, or upon other paper attached thereto. Verifications provided for in Section 9.04 of this Article may be made by one (1) or more petitioners. No signatures to such petition shall remain effective or be counted which were placed thereon more than one hundred eighty (180) days, or such other length of time as may be allowed by the Texas Election Code, prior to the filing of such petition. All papers comprising a recall petition shall be filed with the person performing the duties of Town Secretary and the said person performing the duties of Town Secretary shall immediately notify, in writing, the officer so sought to be removed, by mailing such notice to the officer's Town address.

SECTION 9.06 Certificate of Town Secretary; Amendment; Presentation of Petition to Town Council

(A) Within twenty (20) working days after the petition is filed, the person performing the duties of Town Secretary shall (1) verify the number of valid signatures, (2) verify that the petition conforms to the requirements of this Article, (3) complete a certificate as to the sufficiency or insufficiency of the petition, specifying, if it is insufficient, the particulars wherein it is defective, (4) present such petition and certificate to the Town Council at the next regular Town Council meeting, and (5) within two (2) working days of the date of such certification, send a copy of the certificate by certified mail or by hand delivery to the person that filed the petition.

(B) A petition certified insufficient based solely upon lack of the required number of valid signatures may be amended once if the person that filed the petition files with the person performing the duties of Town Secretary: (1) a notice of intention to amend the petition which

must be filed within two (2) working days after receiving a copy of the certificate; and (2) a supplementary petition upon additional papers within ten (10) calendar days after receiving a copy of the certificate. Such supplementary petition shall comply with the requirements of Section 9.04, and within ten (10) working days after it is filed, the person performing the duties of Town Secretary shall complete a certificate as to the sufficiency of the petition, as amended, and send a copy of such certificate by certified mail or by hand delivery to the person that filed the petition and shall present such petition and certificate to the Town Council at the next regular Town Council meeting.

(C) If a petition is certified insufficient for any reason other than lacking the required number of valid signatures, the certificate shall then be a final determination as to the sufficiency of the petition. If a petition is certified insufficient solely on the basis of lacking the required number of valid signatures and (1) the person filing the petition does not elect to amend the petition under subsection (B) of this Section, or (2) the petition, as amended as provided in this Section, is certified insufficient, the certificate shall then be a final determination as to the sufficiency of the petition.

SECTION 9.07 Public Hearing to be Held

The officer whose removal is sought may, within seven (7) days after such sufficient recall petition has been presented to the Town Council, request that a public hearing be held to permit him or her to present the facts pertinent to the charges specified in the recall petition. In this event, the Town Council shall order such public hearing to be held, not less than five (5) working days or more than fifteen (15) working days after receiving such request for a public hearing. The person performing the duties of Town Secretary shall send notice by regular mail to the registered voters of the Town, based on the then existing registered voter information on file with the Dallas County Elections Department, of the public hearing on or before two (2) working days prior to the hearing.

SECTION 9.08 Calling of Recall Election

If the officer whose removal is sought by sufficient recall petition does not resign, then the Town Council shall order an election and set the date for holding such recall election. The date selected for the recall election shall be for the next available election date and in accordance with the Texas Election Code. If, after the recall election date is established, the officer vacates his or her position, the election shall be cancelled in accordance with State law.

SECTION 9.09 Ballots in Recall Election

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

(A) With respect to each person whose removal is sought, the question shall be submitted:

“Shall _____ be removed from the office of _____ by recall?”

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

“Yes”

“No”

SECTION 9.10 Result of Recall Election

If a majority of the votes cast at a recall election shall be “No,” that is against the recall of the person named on the ballot, the officer shall continue in office for the remainder of his or her unexpired term, subject to recall as provided herein. If a majority of the votes cast at such election shall be “Yes,” that is for the recall of the person named on the ballot, the officer shall, regardless of any technical defects in the recall petition, be deemed removed from office upon passing of the resolution canvassing the election, and the vacancy shall be filled in accordance with the provisions of this Charter for filling vacancies

SECTION 9.11 Recall, Restrictions Thereon

(A) No recall petition shall be filed against any officer of the Town within six (6) months after the officer’s election to his or her first term. This restriction does not apply to an officer’s reelection to any term subsequent to his or her first term, regardless of whether any subsequent term is consecutive or nonconsecutive to the officer’s first term.

(B) No more than one (1) recall petition shall be filed against any officer of the Town during the same term of office for such officer.

(C) No recall petition shall be filed against any officer of the Town within three 3 months of the end such officer’s term.

SECTION 9.12 Initiative; Petition; Amendment; Procedure

(A) Except for ordinances described in Section 9.01(B) and following a review by the Town Attorney for enforceability and legality, qualified voters of the Town may initiate legislation by ordinance by submitting a petition addressed to the Town Council which requests the submission of a proposed ordinance to a vote of the qualified voters of the Town. Said petition must be signed by at least ten percent (10%) of the total number of qualified voters in the Town according to the then existing voter registration rolls maintained by the Dallas County Elections Department. Each copy of the petition shall have attached to it a copy of the full text of the proposed legislation. The petition shall be signed in the same manner as recall petitions are signed, as provided in this Article, and shall be verified by oath in the manner and form provided for recall petitions in this Article. The petition may consist of one (1) or more copies as permitted for recall petitions. Such petition shall be filed with the person performing the duties of Town Secretary. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing.

(B) Within twenty (20) working days after the petition is filed, the person performing the duties of Town Secretary shall: (1) verify the number of valid signatures; (2) verify that the petition conforms to the requirements of this Article; (3) complete a certificate as to the sufficiency or insufficiency of the petition, specifying, if it is insufficient, the particulars wherein it is defective; (4) present such petition and certificate to the Town Council at the next regular Town Council meeting; and (5) within two (2) working days of the date of such certification, send a copy of the certificate by certified mail or by hand delivery to the person that filed the petition.

(C) A petition certified insufficient based solely upon lack of the required number of valid signatures may be amended once if the person that filed the petition files with the person performing the duties of Town Secretary: (1) a notice of intention to amend the petition which must be filed within two (2) working days after receiving a copy of the certificate; and (2) a supplementary petition upon additional papers within ten (10) calendar days after receiving a copy of the certificate. Such supplementary petition shall comply with the requirements of Section 9.12(A), and within ten (10) working days after it is filed, the person performing the duties of Town Secretary shall complete a certificate as to the sufficiency of the petition, as amended, and, within two (2) working days of the date of such certification, send a copy of such certificate by certified mail or by hand delivery to the person that filed the petition and shall present such petition and certificate to the Town Council at the next regular Town Council meeting.

(D) If a petition is certified insufficient for any reason other than lacking the required number of valid signatures, the certificate shall then be a final determination as to the sufficiency of the petition. If a petition is certified insufficient solely on the basis of lacking the required number of valid signatures and (1) the person filing the petition does not elect to amend the petition under subsection (C) of this Section, or (2) the petition, as amended as provided in this Section, is certified insufficient, the certificate shall then be a final determination as to the sufficiency of the petition.

(E) Upon presentation of a sufficient petition to the Town Council, it shall become the duty of the Town Council, within thirty (30) calendar days after the receipt thereof, to either pass and adopt such ordinance without alteration as to meaning or effect, or to call an election to be held on a date allowed under the Texas Election Code, at which the qualified voters of the Town shall vote on the question of adopting or rejecting the proposed legislation. Any election order so issued shall comply fully with the Texas Election Code. Unless otherwise provided by law, any election for an initiative under this Charter shall be held on the first authorized uniform election date that occurs sixty-five (65) days after presentation of the petition. At the election, the Town Council may submit, in addition to the initiated ordinance without amendment, an alternative ordinance on the same subject proposed by the Town Council; the voters being given the opportunity to vote on both.

(F) At least fifteen percent (15%) of the total number of qualified voters in the Town according to the then existing voter registration rolls maintained by the Dallas County Elections Department must vote in any election on any initiated ordinance or the initiated ordinance is deemed rejected regardless of whether the majority vote is in its favor. The following applies only

if the foregoing minimum number of qualified voters cast ballots in the election: (1) In the event that only the initiated ordinance is submitted to the voters without an alternative ordinance submitted by the Town Council and if a majority of the qualified electors voting on the proposed initiated 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 Town Council; and (2) if conflicting initiated ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(G) In the event that the Town Council submits to the voters an alternative ordinance in addition to the initiated ordinance and the qualified electors voting on the initiated ordinance and Town Council alternative ordinance vote in favor of both, then the ordinance receiving the greatest number of affirmative votes is adopted, and the other ordinance is deemed rejected. If both are accepted by the qualified electors and receive the same number of affirmative votes, both are deemed rejected.

SECTION 9.13 Referendum; Petition; Amendment; Procedure; Effect Prior to Election

(A) Except ordinances described in Section 9.01(C), qualified voters of the Town may require that any other ordinance passed by the Town Council be submitted to the voters of the Town for approval or disapproval by submitting a petition for this purpose within one hundred and eighty (180) days after the date the ordinance sought to be reconsidered was adopted. Said petition must be signed by at least ten percent (10%) of the total number of qualified voters in the Town according to the then existing voter registration rolls maintained by the Dallas County Elections Department. Each copy of the petition shall have attached to it a copy of the full text of the legislation that is the subject of the petition. The petition shall be signed in the same manner as recall petitions are signed, as provided in this Article, and shall be verified by oath in the manner and form provided for recall petitions in this Article. The petition may consist of one (1) or more copies as permitted for recall petitions. Such petition shall be filed with the person performing the duties of Town Secretary. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing.

(B) Within twenty (20) working days after the petition is filed, the person performing the duties of Town Secretary shall: (1) verify the number of valid signatures; (2) verify that the petition conforms to the requirements of this Article; (3) complete a certificate as to the sufficiency or insufficiency of the petition, specifying, if it is insufficient, the particulars wherein it is defective; (4) present such petition and certificate to the Town Council at the next regular Town Council meeting; and (5) within two (2) working days of the date of such certification, send a copy of the certificate by certified mail or by hand delivery to the person that filed the petition.

(C) A petition certified insufficient based solely upon lack of the required number of valid signatures may be amended once if the person that filed the petition files with the person performing the duties of Town Secretary: (1) a notice of intention to amend the petition which must be filed within two (2) working days after receiving a copy of the certificate; and (2) a

supplementary petition upon additional papers within ten (10) calendar days after receiving a copy of the certificate. Such supplementary petition shall comply with the requirements of Section 9.13(A), and within ten (10) working days after it is filed, the person performing the duties of Town Secretary shall complete a certificate as to the sufficiency of the petition, as amended, and, within two (2) working days of the date of such certification, send a copy of such certificate by certified mail or by hand delivery to the person that filed the petition and shall present such petition and certificate to the Town Council at the next regular Town Council meeting.

(D) If a petition is certified insufficient for any reason other than lacking the required number of valid signatures, the certificate shall then be a final determination as to the sufficiency of the petition. If a petition is certified insufficient solely on the basis of lacking the required number of valid signatures and (1) the person filing the petition does not elect to amend the petition under subsection (C) of this Section, or (2) the petition, as amended as provided in this Section, is certified insufficient, the certificate shall then be a final determination as to the sufficiency of the petition.

(E) Upon presentation of a sufficient petition to the Town Council, it shall become the duty of the Town Council, within thirty (30) calendar days after the Town Council's receipt thereof, to either repeal the referred ordinance, or to call an election to be held on a date allowed under the Texas Election Code, at which the qualified voters of the Town shall vote on the question of repealing the referred ordinance. Any election order so issued shall comply fully with the Texas Election Code. Unless otherwise provided by law, any election for a referendum under this Charter shall be held on the first authorized uniform election date that occurs sixty-five (65) days after presentation of the petition to Town Council.

(F) Pending the holding of such election and upon certification of the sufficiency of the petition, each ordinance specified in the petition shall be suspended from taking effect, or further action thereunder shall be suspended if it shall have gone into effect, and shall not later take effect unless a majority of the qualified voters voting thereon, in accordance with Section 9.13(G), at such election shall vote in favor thereof.

(G) At least fifteen percent (15%) of the total number of qualified voters in the Town according to the then existing voter registration rolls maintained by the Dallas County Elections Department must vote in any election on any referred ordinance or the referred ordinance is deemed approved regardless of whether the majority vote against it. The following applies only if the foregoing minimum number of qualified voters cast ballots in the election: If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results. An ordinance repealed by referendum may be reenacted by the Town Council at any time by a unanimous vote of the members of the Town Council then qualified and serving.

SECTION 9.14 Voluntary Submission of Legislation by the Town Council

(A) **Binding Election.** The Town Council, upon its own motion and by the affirmative vote of a majority of the members of the Town Council then qualified and serving, may submit to

popular vote at any election for adoption or rejection any proposed ordinance or resolution or measure, or may submit for repeal any existing ordinance, or resolution, or measure, in the same manner and with the same force and effect as provided in this Article for submission of initiative or referendum petitions, and may at its discretion call a special election for this purpose.

(B) Non-Binding Ballot Propositions. The Town Council, upon its own motion and by the affirmative vote of a majority of the members of the Town Council then qualified and serving, is authorized to call elections on ballot propositions that are non-binding in nature when the Town Council wishes to obtain an informal indication of the position of the Town’s voters on an issue. The following shall apply to elections on non-binding ballot propositions:

- (1) The ballots must clearly label each proposition as non-binding in the heading of the proposition.
- (2) The ballot cannot contain an indication of the effect that approval or disapproval of a proposition will have on the position of the Town Council on any issue.
- (3) The ordinance calling the election and the ordinance declaring the result of the election must both contain a clear statement that the non-binding propositions are not binding on the Town Council.
- (4) The Town Council shall not place a non-binding proposition on a ballot as a substitute or alternative for a binding proposition the Town Council is obligated to place on the same ballot.
- (5) A non-binding proposition may be placed on the ballot by the Town Council only when the ballot will contain other matters. The Town Council shall not call an election at any time solely for the purpose of placing one or more non-binding propositions before the voters of the Town.

SECTION 9.15 Form of Ballots

The ballots used when voting upon such proposed and referred ordinances, resolutions or measures, shall set forth their nature sufficiently to identify them and shall also set forth upon separate lines the words:

“For the Ordinance” and
“Against the Ordinance”

or

“For the Resolution” and
“Against the Resolution”

SECTION 9.16 Restriction on Frequency of Initiative and Referendum Elections

No ordinance on the same subject as an initiated ordinance or referred ordinance which initiative or referendum has been defeated at any election may be again initiated or again referred by the voters within one (1) year from the date of such election.

SECTION 9.17 Publication of Proposed and Referred Ordinances

The person performing the duties of Town Secretary shall publish at least twice in the official newspaper of the Town the proposed or referred ordinance or resolution within fifteen (15) days before the date of the election, and shall give such other notices and do such other things relative to such election as are required by law in municipal elections and by the ordinance or resolution calling said election.

SECTION 9.18 Adoption of Ordinances

If a majority of the qualified voters voting on any proposed ordinance or resolution or measure shall vote in favor thereof and in accordance with the requirements of the Section of this Article under which the proposed ordinance, resolution or measure is submitted, it shall thereupon or at any time fixed therein, become effective as a law or as a mandatory order of the Town Council.

SECTION 9.19 Further Regulations by the Town Council

The Town Council may pass ordinances or resolutions providing other and further regulations for carrying out the provisions of this Article consistent herewith.

SECTION 9.20 Ordinances Passed by Popular Vote, Repeal or Amendment

An ordinance passed by the Town Council upon a petition or adopted by popular vote under the provisions of this Article may not be repealed or amended except by the Town Council in response to a referendum petition or by submission as provided by Section 9.14 of this Charter.

SECTION 9.21 Franchise Ordinances

Nothing contained in this Article shall be construed to be in conflict with any of the provisions of this Charter pertaining to ordinances granting franchises when valuable rights shall have accrued thereunder.

ARTICLE X
Nepotism, Prohibitions and Penalties

SECTION 10.01 Nepotism

(A) The Town Council and Town Manager shall follow the rules and regulations regarding nepotism as set out in the Texas Government Code, Chapter 573, subject to the following modifications to Chapter 573:

(1) Seasonal employees, interns, volunteers or any person serving in an unpaid capacity are exempt from these provisions. This exemption applies even if the exempted person's services are provided to or through an entity that receives funds from the Town.

(2) A member of the Town Council and the Town Manager, if related in a prohibited degree to a person exempt from these provisions under Section 10.01(A)(1), may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation or dismissal of any such person if that action applies only to such person and is not taken regarding a bona fide class or category of exempt persons.

SECTION 10.02 Personal Financial Interest

(A) Town Officers, both elected and appointed, shall follow the rules and regulations regarding personal financial interests as set out in the Texas Local Government Code, Chapter 171, subject to the following modifications to Chapter 171:

(1) A member of the Town Council or Town Official is considered to have a substantial interest under this section if a person related to the member of the Town Council or Town Official in the second degree by consanguinity or affinity, as determined under Chapter 573, Texas Government Code, has a substantial interest under Texas Local Government Code, Chapter 171.

(B) No Town Officer, whether elected or appointed, or any Town Employee, whether full or part-time, shall have a substantial interest in any contract with or sale to the Town of any land, materials, supplies or services, subject to the following:

(1) "Substantial interest" means the same as "substantial interest" as defined by Texas Local Government Code, Section 171.002; and

(2) Employment contracts between Town and Town employees are excluded from this prohibition.

(C) Any knowing violation of this section shall render any resulting contract voidable by the Town Manager.

SECTION 10.03 Wrongful Interference

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 personnel provisions, rules and regulations of this Charter.

SECTION 10.04 Wrongful Influence

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

SECTION 10.05 Equality of Rights

Equality of rights under State and Federal law shall not be denied or abridged with respect to appointment to or removal from any Town position.

SECTION 10.06 Employee's Political Activities

No person who holds any compensated non-elective Town position shall make, solicit or receive any contribution for any candidate for Town Council, or take part in the management, affairs or political campaign of such candidate. Such person may exercise his or her rights as a citizen to express his or her opinion and cast his or her vote.

SECTION 10.07 Penalties

Any person who willfully engages in and is found in violation of any of the activities prohibited in Sections 10.3, 10.4, 10.5, or 10.6 of this Article shall be ineligible for appointment or election to a position in the Town for a period of five (5) years from that time. If the person is an officer or employee of the Town at the time of the violation, he or she shall immediately forfeit his or her office or position, if found in violation.

**ARTICLE XI
Review and Amendment of Charter**

SECTION 11.01 Amending the Charter

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

SECTION 11.02 Charter Review Committee

(A) The Town Council shall appoint a Charter Review Committee at least once every five (5) years.

(B) The Charter Review Committee shall consist of nine (9) citizens of the Town. Each member of the Charter Review Committee shall be appointed by a vote of a majority of the members of the Town Council then qualified and serving. To the extent possible and practicable, citizens who served on the Charter Commission that prepared the original of this Charter and citizens serving on past Charter Review Committees should be given consideration

for serving on subsequent Charter Review Committees. No more than one (1) elected official from the Town Council may serve on the Charter Review Committee.

(C) The Charter Review Committee shall:

(1) Propose any recommendations it deems desirable to (a) insure compliance with the Charter of the Town government, (b) resolve any conflicts between the Charter and State law, (c) address any legal or administrative issues, and (d) improve the effective application of the Charter to current conditions;

(2) Report its findings and present its recommendations to the Town Council in the form of a report;

(3) File a copy of its report with the office of the person performing the duties of Town Secretary where it shall be a public record; and

(4) Discharge such other duties as instructed by the Town Council.

(D) Upon finalization of the Charter Review Committee's report, the Town Council shall receive the report and have published in the official newspaper of the Town a public notice that a copy of the report is available in the office of the Town Secretary and on the Town's website.

(E) The Town Council shall submit to the voters of the Town in the manner provided by State law any amendments to the Charter recommended by the Charter Review Committee.

(F) Nothing in this section prohibits the Town Council from forming a Charter Review Committee at any time or from submitting any amendments to the Charter to election on its own initiative as provided by State law.

ARTICLE XII Transitional Provisions

SECTION 12.01 Effective Date

This Charter or any amendments hereto shall take effect immediately following adoption by the voters and as prescribed by State law.

SECTION 12.02 Continuation of Operation

At the time of initial adoption of this Charter, all existing ordinances, bonds, resolutions, rules, regulations, and other prior actions of the Town Council, without exception, shall remain in effect without being subject to the provisions of this Charter for referendum. All rights of the Town under existing franchises and contracts are preserved in full force and effect.

SECTION 12.03 Continuation of Elective and Appointed Offices

Upon adoption of this Charter, the present persons filling elective offices on the Town Council will continue to fill those offices for the terms for which they were elected. Persons who, on the date this Charter is adopted, are filling appointive positions with the Town which positions are retained under this Charter may continue to fill these positions for the term for which they were appointed, unless removed by the Town Council or by other means provided in this Charter.

SECTION 12.04 Administrative 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 Town administrative officers or employees at the time of the adoption of this Charter.

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

SECTION 12.05 Pending Matters

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

SECTION 12.06 Transitional Elections

(A) In order to provide for a smooth transition between a six (6) member Town Council elected for two (2) year terms and a seven (7) member Town Council with the Mayor elected for two (2) year terms and the Council Members elected for three (3) year terms, the following rules shall apply.

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

(1) Place One (1) shall be the new Council Member seat created by this Charter. This position shall be first filled by election as provided in these Transitional Provision and no current, sitting Council Member shall draw lots for the Place One (1) Council Member seat. Place One (1) shall not be considered vacant prior to the election for this seat in 2014.

(2) Places Two (2), Three (3) and Four (4) – Council Members whose terms end in 2014.

(3) Places Five (5) and Six (6) – Council Members whose terms end in 2015.

(C) **Election Year 2014.** Places One (1) and Two (2) shall be elected for two (2) year terms. Places Three (3) and Four (4) shall be elected for a three (3) year terms.

(D) **Election Year 2015.** The Mayor shall be elected for a two (2) year term. Places Five (5) and Six (6) shall be elected for three (3) year terms.

(E) **Election Year 2016.** Places One (1) and Two (2) shall be elected for three (3) year terms.

(F) The following chart visually demonstrates the 2014 through 2016 elections described in this Section:

<u>ELECTION YEAR</u>	<u>PLACE</u>	<u>TERM</u>
2014	1	2
	2	2
	3	3
	4	3
2015	Mayor	2
	5	3
	6	3
2016	1	3
	2	3

(G) All subsequent regular Council Member elections shall be for three (3) year terms and all subsequent regular Mayoral elections shall be for two (2) year terms.

SECTION 12.07 Manner of Submission to Electors

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

ARTICLE XIII General Provisions

SECTION 13.01 Official Newspaper and Official Notice

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

SECTION 13.02 Oaths

All elected and appointed officers of the Town shall take and sign an oath of office based on those prescribed for State elective and appointive offices, respectively, in the Constitution of the State of Texas. All oaths of office shall be administered at a publicly scheduled meeting of the body to which the officer is elected or appointed.

SECTION 13.03 Regulation of Alcohol

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

ARTICLE XIV Legal Provisions

SECTION 14.01 Assignment, Execution and Garnishment

(A) Property, real and personal, belonging to the Town shall not be liable to be sold or appropriated under any writ of execution or cost bill. Funds belonging to the Town in the hands of any person, firm or corporation, shall not be liable to garnishment, attachment or sequestration; nor shall the Town be liable to garnishment, attachment or sequestration; nor shall the Town be liable to garnishment on account of any debt it may owe or funds or property it may have on hand owing to any person. Neither the Town nor any of its officers or agents shall be required to answer any such writ of garnishment on any account whatsoever.

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

SECTION 14.02 Security and Bond

It shall not be necessary in any action, suit or proceeding in which the Town is a party for any bond, undertaking or security to be demanded or executed by or on behalf of the Town. 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 14.03 Notice of Claim

The Town shall not be held liable on account of any claim for the death of any person or injuries to any person or damage to any property unless the person making such complaint or claiming such damages shall, within one hundred-twenty (120) days after the time at which it is claimed such damages were inflicted upon such person or property, file with the Town Secretary a written statement, under oath, stating the claimant's name, actual residence and residence for the six months preceding the occurrence, the nature and character of such damages or injuries, the extent of the same, the place where same happened, the circumstances under which same happened and the condition causing same, with a detailed statement of each item of damages and the amount thereof, giving a list of any witnesses, including their names and addresses, known by affiant to have seen the accident. Failure to notify the Town of such a claim within one hundred-twenty (120) days from the date of the claim shall exonerate, exempt and excuse the Town from any liability whatever. Nothing in this section shall be construed to mean the Town waives any rights, privileges, defenses or immunities in tort action, or otherwise, which are provided under common law and State law.

SECTION 14.04 Power to Settle Claims

The Town 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 Town, including suits by the Town to recover delinquent taxes.

SECTION 14.05 Service of Process Against the Town

All legal process against the Town shall be served upon the Town Manager or Town Secretary.

SECTION 14.06 Judicial Notice

This Charter shall be deemed a public act, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places provided that the Town Secretary certifies the most current Town Charter with any amendments.

SECTION 14.07 Property Not Exempt From Special Assessments

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

SECTION 14.08 Disaster Clause

In case of disaster when a legal quorum of the elected Town Council cannot otherwise be assembled due to multiple deaths or injuries, the surviving persons of the Town Council, or highest surviving Town official, if no elected official remains, must, within twenty-four (24) hours of such disaster, request the highest surviving officers of the Town Planning and Zoning Commission, the Town Board of Adjustment and the trustees of the Sunnyvale Independent School District to appoint a commission to act during the emergency as the Town Council and call a Town election within fifteen (15) days of such disaster, or as provided in the Texas Election Code, for election of a required quorum, if for good reasons it is known a quorum of the present Town Council will never again meet.

SECTION 14.09 Construction of Charter

The Charter shall not be construed as a mere grant of enumerated powers, but shall be construed as a general grant of power and as a limitation of power on the government of the Town 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 Town to expressly grant to the Town, shall be construed to be granted to the Town by this Charter.

SECTION 14.10 Severability Clause

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

SECTION 14.11 Wording Interpretation

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

(F) The phrase “majority of the members of the Town Council then qualified and serving” means a majority of all of the members of the Town Council, including the Mayor, that are then qualified members of the Town Council and are then serving as members of the Town Council, regardless of whether any such member is present or absent at any meeting or for any action to which this phrase applies.

(G) Unless otherwise specified and except as otherwise provided by law, references made in this Charter to time periods is to calendar days. In computing any period of time prescribed or allowed by this Charter, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday observed by the Town, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday observed by the Town. Where a time period is designated as including only working days, Saturdays, Sundays and legal holidays observed by the Town shall not be counted for any purpose in computing the specified time period.

SECTION 14.12 No Waiver of Immunity

No provision of this Charter is a waiver of sovereign immunity from suit or liability, and no provision of this Charter is a waiver of any public official, employee or volunteer immunity. The Town expressly retains all immunities provided to municipalities and their officials, employees and volunteers as those immunities now exist or may exist in accordance with state and federal law.