

PRELIMINARY REPORT OF CHARTER REVIEW COMMITTEE



Town of Sunnyvale, Texas

September 24, 2018

TABLE OF CONTENTS

	Page
I. Introduction	1
■ Town Charter	
■ Council Charge	
■ Committee Membership	
II. Committee Proceedings	1
■ Meetings	
■ Scope of Review	
III. Preliminary Recommendations	2
■ Vacancies, Sections 3.06 and 3.08	
■ Duties of the Mayor, Section 3.04	
■ Election Ordinances, Exception from Two-Reading Requirement, Section 4.01	
■ Budget and Amendments, Passage by Ordinance and Public Hearing Requirements, Sections 6.04 and 6.05	
■ Transitional Elections, Elimination of Unnecessary Provision, Section 12.06	
IV. Other Recommendation	5
■ Code of Ethics, Two Town Representatives Negotiations Requirement	
V. Remaining Work of the Committee	5
■ Town Hall/Public Hearing	
■ Consideration of Public Input	
■ Final Report to Town Council	
■ Public Education Presentation	
VI. Conclusion	6
EXHIBITS	
1. July 12, 2018 Progress Report of the Town of Sunnyvale Home Rule Charter Committee	
2. Preliminary, Proposed Amendments to Charter (red-lined)	

I. INTRODUCTION

On May 11, 2013, the citizens of the Town of Sunnyvale voted to adopt the Town of Sunnyvale Home Rule Charter. Section 11.02 of the Charter requires that the Town Council appoint a Charter Review Committee every five years to review the Charter and make recommendations 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. The Committee is further charged with presenting a report¹ to the Town Council and the Town Council is charged with submitting to the voters any amendments recommended by the Committee.

The Town Council, on October 9, 2017, appointed the members of the Committee and tasked the Committee with the requirements of the Charter. The membership of the Committee is as follows²:

- | | |
|--------------------------|--------------------------------|
| David Byrd*, Chairperson | Linda Gooch*, Vice Chairperson |
| Mark Egan | Don Griffin* |
| Bob Johnson | Warren Kampmeir |
| Jack Kirkland | Peter Muhl* |
| Nathan Shackelford | |

II. COMMITTEE PROCEEDINGS

The Committee met seven times. In addition to Committee Members, meetings were attended by Leslie Black, Assistant Town Manager, or Rachel Ramsey, Town Secretary, and David Paschall, special counsel to the Committee. The meetings were noticed in accordance with the

¹ In compliance with the Charter, the Committee will submit to the Town Council a final report following a Town Hall meeting/Public Hearing and the Committee’s consideration of public input.
² Members that served on the original Home Rule Charter Committee are denoted by an asterisk.

Texas Open Meetings Act, were open to the public and minutes taken and approved. The Committee began each meeting by receiving comments from the public. The Committee also received written comments from the public.

The Charter in its entirety was reviewed by the Committee. Attention was focused on provisions relating to a vacancy occurring in the Mayor's position and issues identified by Committee Members, Town Staff and the public. A more detailed summary of the subjects studied by the Committee is included in the July 12, 2018 Progress Report of the Committee, attached as **Exhibit 1** and previously provided to the Town Council. The Committee also reviewed the Code of Ethics.

III. PRELIMINARY RECOMMENDATIONS

Consistent with the requirements of the Charter and charge of the Town Council, the Committee formulated five proposed revisions to the Charter affecting seven Charter sections. A red-lined version of the proposed revisions and deletions to the Charter sections and wording is attached as **Exhibit 2**. Following are the subjects of the preliminary recommendations and the rationale:

A. Filling Mayoral Vacancy

Proposal. The Committee recommends revising Section 3.06 of the Charter by adding a new subsection for filling a Mayoral vacancy by appointment. The recommendation includes an order for whom may be appointed, timing for the appointment and a public meeting requirement for discussions of the appointment. A small revision to Section 3.08 is also recommended for consistency.

Rationale. The Charter currently requires a vacancy in the office of the Mayor be filled by special election within 120 days. This conflicts with the Election Code. The issues

surrounding this subject are complex and involve the Texas Constitution and Election Code. The remedy is to allow the Town Council to appoint as the new Mayor a person that consents in the following order: (i) Mayor Pro-Tem; (ii) Town Council Member, and (iii) any person qualified for office under the Charter. This remedy allows a Mayoral vacancy being filled promptly and most likely by another person elected by the citizens.

B. Duties of the Mayor

Proposal. The Committee recommends revising Section 3.04(A) of the Charter by adding a restriction that the Mayor does not have the power to make agreements unless expressly authorized by the Town Council.

Rationale. Adding this provision makes clear to the Mayor, Town Council Members and the public that the powers of the Mayor expressly exclude any ability to make agreements outside of any authority expressly granted the Mayor by the Town Council. That the elected governing body of the Town, the Town Council, give informed consent prior to the Town entering into agreements is essential to a representative government. Including this addition in the Charter serves as a reminder to all involved parties of the significance of this subject to the citizens of the Town.

C. Election Ordinances, Exception from Two-Reading Requirement

Proposal. The Committee recommends revising Section 4.01(A) of the Charter by adding a provision exempting election ordinances from the Section 3.10(B) two-reading requirement.

Rationale. The Committee supports the purposes of the two-reading requirement, including more opportunity for public notice and input and more time for reflection and consideration by the Town Council. Election ordinances, however, are ministerial in nature

and must be acted upon within designated time periods. The calculation of and compliance with these deadlines is complicated by the two-reading requirement and unduly burdensome on Town Staff. Request for this proposal was generated by Town Staff and the Committee supports the request.

D. Budget and Amendments, Passage by Ordinance and Public Hearing Requirements

Proposal. The Committee recommends revising Section 6.04(C) of the Charter to require adoption of the annual budget by an ordinance. The Committee further recommends revising Section 6.05, addressing budget amendments, to require notice of and holding a public hearing prior to adopting a budget amendment.

Rationale. The Town Council’s current practice is to adopt the annual budget by ordinance. The Committee supports this practice that should be memorialized in the Charter.

The Texas Local Government Code and Charter require a public hearing on the annual budget prior to adoption to assure the public is informed and has an opportunity to provide input. The Committee supports a public hearing requirement for budget amendments for these same reasons.

E. Transitional Elections, Elimination of Unnecessary Provision

Proposal. The Committee recommends deleting Section 12.06 of the Charter that provided the means and methods for transitioning from election of Town Council Members by plurality to election by places and majority vote.

Rationale. The provision no longer serves any purpose. The Committee did consider eliminating other transitional-related provisions, but determined these other provisions may yet serve a purpose – depending upon circumstances. The more cautious approach is

allowing these other provisions to remain for now and be reconsidered for deletion by a future Committee.

IV. OTHER RECOMMENDATION

In addition the foregoing preliminary recommendations for Charter revisions, the Committee may also recommend the Town committee charged with reviewing the Code of Ethics consider adding a requirement that any negotiations conducted on behalf of the Town by the Mayor or a Council Member should include at least one additional Town representative. The rationale is two-fold: (1) accountability – having two persons present helps ensure negotiations remain within the authorized scope and that negotiation results are accurately communicated to the Town Council; and (2) safety – having two persons present provides an additional witness to negotiations in the event a dispute arises. It was the consensus of the Committee that this matter may best be addressed in the Code of Ethics rather than the Charter.

V. REMAINING WORK OF THE COMMITTEE

Following presentation of this Preliminary Report to the Town Council, the Committee will hold a Town Hall/Public Hearing meeting to present the preliminary recommendations to the public and receive input. It is anticipated this meeting will occur prior to the end-of-year holidays and likely in October.

Subsequent to the Town Hall/Public Hearing meeting, the Committee will meet again to discuss input received from the Town Council and public. At that time, the Committee will determine whether additional work is required or to finalize its recommendations and submit a Final Report to the Town Council.

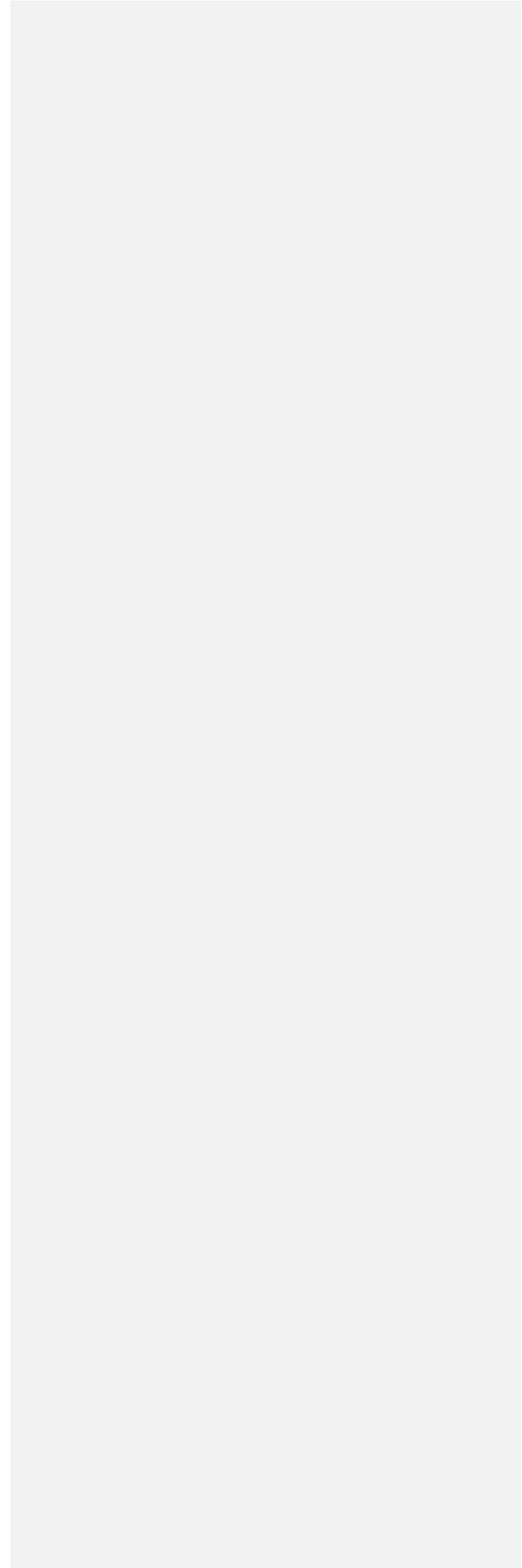
Following submittal of a Final Report to the Town Council and prior to the anticipated election in May 2019, the Committee intends to hold another Town Hall meeting to provide

information to and answer questions from the public concerning the proposed Charter Amendments and election.

VI. CONCLUSION

The Committee has diligently performed the duties prescribed by the Charter and charged by the Town Council. Numerous subjects were considered, discussed and debated. With the exception of the preliminary recommendations contained herein, the Committee is satisfied and pleased with the current provisions in and operations required by the Charter. It is the opinion of the Committee that these preliminary recommendations will further enhance the Charter and government of the Town. The Committee looks forward to finalizing its work and presenting its final report to the Town Council.

EXHIBIT 1



**PROGRESS REPORT OF THE TOWN OF SUNNYVALE
HOME RULE CHARTER REVIEW COMMITTEE**

TO: Mayor Saji George and Town Council Members
FROM: Town of Sunnyvale Home Rule Charter Review Committee
DATE: July 12, 2018
RE: Progress Report

Following is a progress report of the Town of Sunnyvale Home Rule Charter Review Committee as of July 12, 2018.

Membership

The membership of the Committee consists of the following:

David Byrd, Chairperson	Jack Kirkland
Linda Gooch, Vice Chairperson	Peter Muhl
Nathan Shackelford	Mark Egan
Bob Johnson	Don Griffin
Warren Kampmeir	

Meetings

The Committee has met on the following dates this year:

February 8	May 17
March 1	June 26
April 12	July 12

Subjects reviewed and status

The following chart depicts the subjects reviewed and discussed, the current Charter requirements and the status of the Committee’s review of these subjects (subjects are listed in order of discussion by the Committee).

<u>Charter Section and Subject</u>	<u>Current Requirements</u>	<u>Status/Recommendation</u>
Term Limits (not in charter)	None	No recommended change
3.02(C) Term of Office	Mayor – 2 years Council Member – 3 years	No recommended change
3.02(B) Staggered Terms	Mayor elected odd number yrs.	

	2 Council Members elected every yrs.	No recommended change
3.02(B) Council Member Selection	At Large	No recommended change
3.02(B) Council Member Election by Places	Council Members elected to office by Place	No recommended change
3.05 Compensation	No compensation	No recommended change
3.06(D) Filling Vacancies	Special election required for all vacancies (conflicts with State law regarding Mayor having 2 yr. term)	Recommended change: maintain special election for Council Members (required by State law) and add appointment procedure for Mayor
3.08(B) Resign to Run	Vacancy to be filled in same manner as other vacancies	Recommended change: modify language to recognize special elections for Council Member vacancy and appointment for Mayor vacancy
3.10(B) Ordinance 2-reading requirement	Except as provided elsewhere in charter, requires 2 readings of all ordinances prior to passage.	No recommended change, but recommended change to 4.01 (Elections) to exempt election ordinances from 2-reading requirement
4.01(A) Elections	Requires holding elections in accordance with State law.	Recommended change: adding provision exempting election ordinances from 2-reading requirement.
5.07 Freedom from interference	Town Council not to interfere with Town Manager's employment decisions and Town Council to give orders to Town Manager, not his/her subordinates	No recommended change

3.07 Code of Ethics ³	Requires adoption and review every 5 years	Recommend review and may recommend consideration of additional subjects in Code of Ethics
7.01 Boards and Commission, Authority, Composition and Procedures	Provides requirements for Boards and Commissions	No recommended change
9.01 Recall, Initiative and Referendum	Provides scope of measures	No recommended change
6.05 Budget Amendments	Allows amendments by majority vote	Recommend public hearing requirement and adoption by ordinance
6.04 Annual Budget	Provides procedure for adoption of annual budget	Recommend adoption by ordinance
3.04(A) Mayor duties and restrictions	Identifies general duties of Mayor, and restrictions	Recommend adding restriction that Mayor can make no agreement without express authorization from Council
12.06 Transitional Elections	Provided mechanism for transitioning to places, additional Council Member and three-year terms	Recommend eliminating from Charter as unnecessary/no longer needed

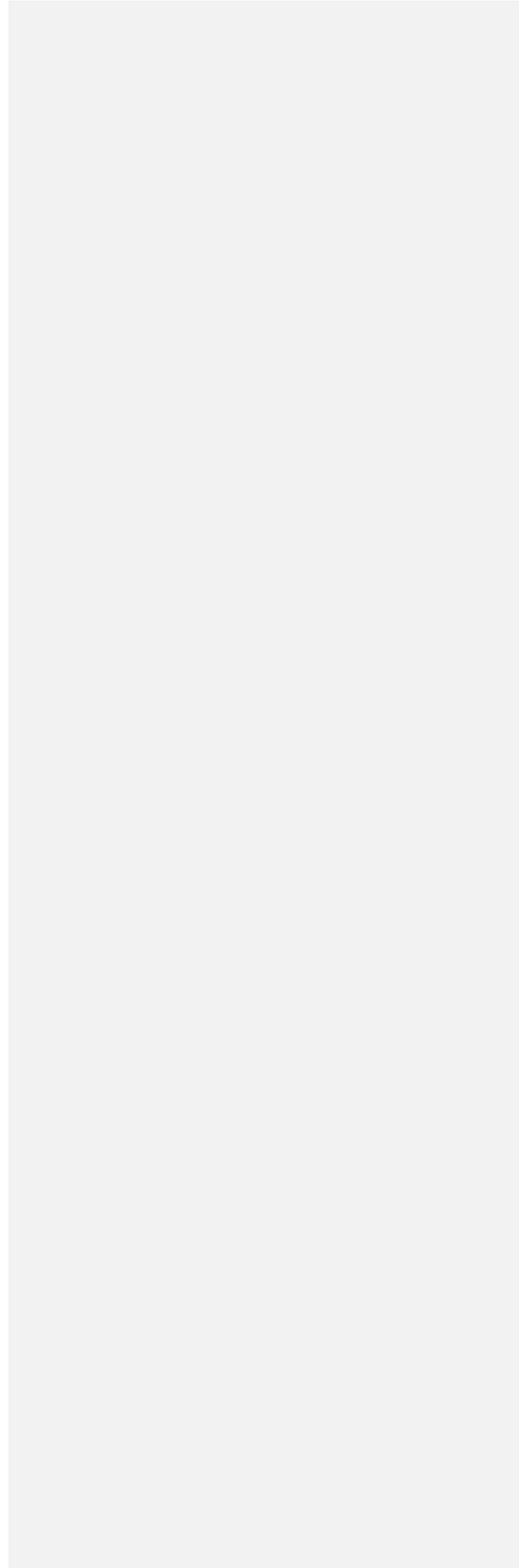
Anticipated remaining work and election on Charter amendments

The Committee has proceeded with caution and careful deliberation. The Committee will meet again on August 9, 2018 to review and finalize the Committee’s preliminary recommendations. The Committee hopes to present the preliminary recommendations to the Town Council at its meeting on September 24, 2018, followed by a Town Hall type presentation to the public in October. After these presentations, the Committee will meet again to consider and discuss input received from the Town Council and public, with a goal of delivering a final report to the Town Council in November 2018.

The Committee will also plan efforts to provide information to the public in early 2019 about the upcoming election on amendments to the Charter in May 2019.

³ The Committee also reviewed the Town’s Code of Ethics in connection with Charter § 3.07.

EXHIBIT 2



ARTICLE III
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; Council Members.** 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.

(E) **Filling of Vacancy; Mayor.** A vacancy in the office of the Mayor shall be filled by appointment by a majority of the members of the Town Council then qualified and serving. The appointment shall be for the unexpired term. The appointment procedure shall be as follows:

- (1) At the next regular Town Council meeting following the vacancy and in compliance with the Texas Open Meetings Act, the Town Council agenda shall include an item for

appointing a new Mayor. The Town Council shall make the appointment from the following persons and in the following order, provided that person consents:

(a) the Mayor Pro-Tem; or

(b) if the Mayor Pro-Tem does not consent, a Council Member.

(i) A Council Member may vote for himself or herself.

(2) If the Mayor Pro-Tem and all Council Members do not consent, then the Town Council agenda for every regular meeting thereafter shall include an item for appointing a new Mayor until a new Mayor is appointed. At any such meeting and in addition to the persons identified in Section 3.06(E)(1), the Town Council may appoint a qualified person of the public that consents.

(3) The Town Council agenda item required by this Section 3.06(E) may not be considered or discussed in a closed meeting under the Texas Open Meetings Act except when necessary for the Town Council to seek the advice of its attorney.

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 as provided herein.

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 (1) veto any matter before the Town Council or (2) make agreements unless expressly authorized by 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.

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. Ordinances for the conduct of elections are excepted from the requirements of Section 3.10(B) of this Charter and may be introduced and adopted by the Town Council at the meeting at which any such ordinance is first introduced.

(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.

ARTICLE VI Financial Procedures

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 ordinance and 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

(A) **Amendments Allowed.** At the conclusion of the public hearing required herein and ~~U~~nder 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.

(B) **Notice of Hearing.** The Town Council shall have published a notice for a public hearing on any budget amendment not earlier than the 30th day or later than the 10th day before the date of the hearing, which shall contain a general summary of the proposed amendment.

(C) **Public Hearing Required.** The Town Council shall hold a public hearing on the proposed budget amendment. Any person may attend and may participate in the hearing. The public hearing shall be held at a regular meeting of the Town Council.

ARTICLE XII
Transitional Provisions

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
2

3
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.~~