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***Editor's note**—Printed herein is the home rule Charter approved at an election held May 9, 2009. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets. Former Charters were adopted on April 4, 1967, and April 16, 1955.

State law reference—Adoption, amendment, etc., of home rule Charter, V.T.C.A., Local Government Code ch. 9.

PORT NECHES CODE

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PREAMBLE

We, the citizens of Port Neches, Texas, in order to establish a home rule municipal government, provide for the future progress of our city and obtain more fully the benefits of local self government, do hereby adopt this Home Rule Charter in accordance with the statutes of the State of Texas, and do hereby declare the City of Port Neches in Jefferson County, Texas, to be a political subdivision of the State of Texas incorporated forever under the name and style of the "City of Port Neches, Texas," with such powers, rights and duties as are herein provided.

ARTICLE I. FORM OF GOVERNMENT AND BOUNDARIES

Sec. 1.01. Form of government.

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

Sec. 1.02. The boundaries.

The boundaries of the City of Port Neches are and shall be those in existence as of January 1, 1967. Such boundaries in existence as of January 1, 1967, shall remain in effect until such time as the City Council may make amendments thereto.

Sec. 1.03. Extension of boundaries.

The boundaries of the City of Port Neches may be enlarged and extended by the annexation of additional territory in any of the methods hereinafter designated:

- (a) *Extending limits in accordance with State of Texas applicable law:* Where such addi-

tional territory adjoins the corporate limits of the City and contains three or more inhabitants qualified to vote for members of the state legislature, such adjacent territory may be annexed to the City in the manner and in conformity with the procedure set forth in State of Texas applicable law, as now or hereafter amended.

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

- (c) *Annexation of unoccupied lands on petitions of owners:* The owner or owners of any land which is without residents, or upon which less than three voters reside, contiguous and adjacent to the City may, by petition in writing to the City Council, request the annexation of such contiguous and adjacent land describing it by metes and bounds. The City Council shall thereafter, and not less than five and not more than thirty days after the filing of such petition, hear such petition and the argu-

ments for and against the same, and grant or refuse such petition as the City Council may see fit. If the City Council grants such petition, it may by proper ordinance receive and annex such territory as a part of the City.

- (d) *Annexation by amendment to charter:* The boundary limits of the City may be fixed and additional territory added or annexed thereto by amendment to the charter of the City.
- (e) *Extending limits by action of the City Council:* The City Council may by ordinance annex territory lying adjacent to the City, with or without the consent of the inhabitants in such territory or the owners thereof, not inconsistent with the procedural rules prescribed by law applicable to cities operating under Charters adopted or amended under Article XI, Section 5, of the Constitution of the State of Texas.
- (f) Additional territory may also be annexed to the City in any manner and by any procedure that may now be provided by law or that may be hereafter provided by law. Same shall be in addition to the methods herein provided.
- (g) *Annexed territory to become part of the City:* Upon completion of any one of the procedures hereinabove provided, the territory so annexed shall become a part of the City, and said land and its residents and future residents shall be entitled to all the rights and privileges of other citizens of the City and shall be bound by the acts, ordinances, resolutions and regulations of the City.

Sec. 1.04. Contraction of boundaries.

Whenever there exists within the corporate limits of the City of Port Neches any territory not suitable or necessary for City purposes, which territory must adjoin the outer boundaries of the City, the City Council may, upon a petition signed by a majority of the qualified voters residing in such territory if the same be inhabited, or without any such petition if the same be uninhabited, by

ordinance duly passed, discontinue said territory as a part of said City; said petition and ordinance shall specify accurately the metes and bounds of the territory sought to be eliminated from the City and shall contain a plat designating such territory so that the same can be definitely ascertained; and when said ordinance has been duly passed the same shall be entered upon the minutes and records of said City, and from and after the entry of such ordinance said territory shall cease to be a part of said City, but said territory shall still be liable for its pro rata share of any debts incurred while said area was a part of said City, and the City shall continue to levy, assess and collect taxes on the property within said territory to pay the indebtedness incurred while said area was a part of the City as though the same had not been excluded from the boundaries of the City.

ARTICLE II. POWERS OF THE CITY

Sec. 2.01. General.

The City of Port Neches may use a corporate seal; may contract and be contracted with; may cooperate with the government of the State of Texas or any agency thereof, or any political subdivision of the State of Texas, or with the government of the United States, or an Agency thereof; and shall have all the powers granted to cities by the Constitution and laws of the State of Texas, together with all the implied powers necessary to carry into execution all the powers granted.

The City may acquire property within or without its boundaries for any municipal purpose in fee simple or in any lesser interest or estate, by purchase, gift, devise, lease or condemnation and may sell, lease, hold, manage and control any property now owned by it or which it may hereafter acquire; and may construct, own, lease, purchase, operate and regulate public utilities, may assess, levy and collect taxes for general and special purposes on all lawful subjects of taxation; may borrow money on the faith and credit of the City by the issuance and sale of bonds or notes of the City; may appropriate the money of the City for all lawful purposes; may regulate and control

the use, for whatever purpose, of the streets and other public places; may make and enforce all police, health, sanitary and other regulations; and may pass such ordinances as may be expedient for the protection and maintenance of good government, peace, and welfare of the City, for the performance of the functions thereof, for the order and security of its residents; and may provide suitable penalties for the violation of any ordinance enacted by the City of Port Neches; and, except as prohibited by the Constitution and laws of this State or restricted by this Chapter, the City may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever.

Sec. 2.02. General powers adopted.

The enumeration of the particular powers in this Chapter shall not be held or deemed to be exclusive but in addition to the powers enumerated herein or implied hereby or appropriate to exercise of such powers, the City shall have and may exercise all power of local self-government and all other powers which, under the Constitution and laws of the State of Texas, it would be competent for this Charter specifically to enumerate. The City of Port Neches shall have and may exercise all the powers enumerated by State of Texas applicable law, as now or hereafter amended.

ARTICLE III. THE CITY COUNCIL

Sec. 3.01. Number, selection and term.

The legislative and governing body of the City shall consist of a Mayor and five (5) Councilpersons and shall be known as the "Council of the City of Port Neches."

- (a) The Mayor and other members of the City Council shall be elected from the City at large; but each Councilperson shall be elected to a specific place on the City Council, by number.
- (b) The Mayor shall be the presiding officer of the City Council and shall be recognized as the head of the City government for all purposes and be the governor for purposes of military law, but shall have no

regular administrative duties. On all matters under consideration by the City Council, the Mayor shall be entitled to a vote only in the case of a tie.

- (c) Each year two (2) public officials shall stand for election in the City of Port Neches. Every third year, beginning in the year 1982, there shall be elected one Councilperson and a Mayor. In all other years after the adoption of this amendment, there shall be elected two (2) Councilpersons. Upon adoption of this amendment, Councilperson no. 1 and Councilperson no. 2 shall serve until the year 1983, at which time both Councilpersons shall stand election. In the year 1981, Councilpersons nos. 3, 4, and 5 shall draw lots to determine which one of them shall serve until the year 1982, at which time that place shall stand for election with the Mayor.
- (d) The Mayor and each Councilperson shall hold office for a period of three (3) years and until his or her successor is elected and qualified. All elections shall be held in the manner provided in Article IV of this Charter.

Sec. 3.02. Qualifications.

No person shall be eligible to serve as the Mayor or as a Councilperson unless he or she is a citizen of the United States of America and a qualified elector of the State of Texas and has resided in the City continuously for the twelve (12) months immediately preceding the election. If the Mayor or any Councilperson moves from the City during the term of office for which he or she is elected, his or her office shall be deemed vacant.

If the Mayor or any Councilperson fails to maintain the foregoing qualifications, the City shall declare a vacancy to exist and shall fill said vacancy as set forth in Section 3.05 of this Charter.

Sec. 3.03. Compensation.

The Mayor and Councilpersons shall receive one dollar (\$1.00) per year as compensation and may be reimbursed for their expenses incurred in their official duties.

Sec. 3.04. Mayor pro tem.

The City Council, at its first meeting after election of Councilpersons, shall elect one of its number Mayor Pro Tem, and he/she shall perform all the duties of the Mayor in the absence or disability of the Mayor.

Sec. 3.05. Vacancies.

When a vacancy occurs in the City Council, the remaining members of the Council shall, within ten (10) days, appoint a qualified person to fill the unexpired term. However, the City Council shall not appoint more than one Councilperson between general City elections, and, in case a vacancy has been filled by the Council between general City elections and a subsequent vacancy occurs, or if more than one vacancy occurs at the same time or before a prior vacancy has been filled, the City Council shall call a special election within ten (10) days from the date the last vacancy occurred, to be held within ninety (90) days thereafter, for the purpose of electing the successor or successors to the office or offices vacated unless such vacancies occur within ninety (90) days prior to a general City election, then no special election shall be held.

Sec. 3.06. Powers of the City Council.

All powers of the City and the determination of all matters of policy shall be vested in the City Council. Without limitation of the foregoing and among the other powers that may be exercised by the City Council, the following are hereby enumerated for greater certainty:

- (a) Approve appointments of the Department Heads and may remove from any office or position of employment in the City Government any officer or employee or member of any board or commission.
- (b) Establish, consolidate, or abolish administrative departments and distribute the work of divisions.
- (c) Adopt the budget of the City.
- (d) Authorize the issuance of bonds by a bond ordinance.

- (e) Inquire into the conduct of any office, department or agency of the City and make investigations as to municipal affairs.
- (f) Provide for such additional boards and commissions, not otherwise provided for in this Chapter, as may be deemed necessary, and appoint the members of all such boards and commissions. Such boards and commissions shall have all powers and duties now or hereafter conferred and created by this Charter, by City ordinance or by law.
- (g) Adopt and modify the zoning plan and building code of the City, and to modify or adopt any other codification of laws as it may deem necessary.
- (h) Adopt and modify the official map of the City.
- (i) Adopt, modify and carry out plans proposed by the Planning Commission for the clearance of slum districts and rehabilitation of blighted areas.
- (j) Adopt, modify and carry out plans proposed by the Planning Commission for the replanning, improvement and redevelopment of any area or district which may have been destroyed in whole or in part by disaster.
- (k) Regulate, license and fix the charges or fares made by any person, firm, or corporation owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire or the transportation of freight for hire on public streets and alleys of the City.
- (l) Provide for the establishment and designation of fire limits and prescribe the kind and character of buildings or structures or improvements to be erected therein, and provide for the erection of fireproof buildings within said limits, and provide for the condemnation of dangerous structures or buildings or dilapidated buildings, or buildings calculated to increase

the fire hazard and prescribe the manner of their removal or destruction within said limits.

- (m) Fix the salaries and compensation of the City Officers and employees.
- (n) Provide for a sanitary sewer and water system and require property owners to connect their premises with such sewer system, and provide for penalties for failure to make sanitary sewer connections.
- (o) Provide for sanitary garbage disposal and set fees and charges therefor, and provide penalties for failure to pay such fees and charges.
- (p) Exercise exclusive dominion, control and jurisdiction in, upon, over and under the public streets, avenues, sidewalks, alleys, highways, boulevards and public grounds of the City and provide for the improvement of same as provided in State of Texas applicable law, as now or hereafter amended.
- (q) Compromise and settle any and all claims and lawsuits of every kind and character in favor of or against the City of Port Neches.

Sec. 3.07. City Council not to interfere in appointments.

Neither the City Council nor any of its members shall direct the appointment of any person to office by the City Manager or by any of his/her subordinates. Except for the purpose of inquiry, the City Council and its members shall deal with the administrative services solely through the City Manager and neither the City Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.

Sec. 3.08. Meetings of the City Council.

The City Council shall hold stated meetings at such times and places as they shall by resolution direct. The Mayor, of his/her own motion, or on the application of three Councilpersons, must call special meeting by notice to each member of said

Council, the Secretary, City Manager, and City Attorney, served personally, or left at their usual place of abode.

Sec. 3.09. Rules of procedure.

(a) *Quorum*: The Mayor and three Councilpersons shall constitute a quorum for the transaction of all business of the Council. In the absence of the Mayor, the Mayor Pro Tem and three Councilpersons shall constitute a quorum. In the absence of the Mayor and Mayor Pro Tem the acting Mayor Pro Tem and three Councilpersons shall constitute a quorum. Except where a larger number of votes is required by State statute to pass a specific ordinance, no ordinance, resolution or other action of the City Council shall be effective unless it receives at least three affirmative votes.

(b) *Legislative procedure*: All meetings of the City Council shall be public, except when otherwise directed by the Council, and minutes of all proceedings shall be kept, to which any citizen may have access at all reasonable times and which shall constitute one of the archives of the City. The vote upon the passage of all ordinances and resolutions shall be taken by the "ayes" and "nays" and entered upon the minutes, and every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the person performing the duties of City Secretary. Every ordinance hereafter adopted shall be systematically numbered and it shall only be necessary to record the number and caption or title of ordinances in the minutes of the Council meeting.

Sec. 3.10. Procedure for passage of ordinances.

(a) *Ordinances, publication, thereof*: Every ordinance imposing any penalty, fine or forfeiture shall, after passage thereof, be published in one issue of a newspaper that has been continuously circulated in the City for at least one year prior to such publication, or, in the alternative, the City Council may publish a descriptive caption or title stating in summary the purpose of the ordinance and penalty for violation thereof, as is provided in

State of Texas applicable law, as now or hereafter amended, and proof of such publication shall be made by the printer or publisher of such paper, making affidavit before some officer authorized by the law to administer oaths, and filed with the person performing the duties of City Secretary, and shall be prima facie evidence of such publication, and promulgation of such ordinance so published shall take effect and be in force from and after five days after the publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect and be in force from and after the passage thereof, unless otherwise provided. It shall not be necessary to the validity of any ordinance that it shall be read more than one time or considered at more than one session of the City Council, except in an ordinance granting a franchise.

(b) *Ordinances, pleading of and admissibility in evidence:* It shall be sufficient in all judicial proceedings to plead any ordinances of the City by caption without embodying the entire ordinance in the pleadings, and all pleaded ordinances or code of ordinances shall be admitted in evidence in any suit and shall have the same force and effect as the original ordinance. Certified copies of the ordinances may also be used in evidence in lieu of original ordinances.

Sec. 3.11. Official bonds for City employees.

The City Manager and the Finance Officer and such other City officers and employees as the City Council may require, shall, before entering upon the duties of their offices, enter into a good and sufficient fidelity bond in a sum to be determined by the City Council payable to the City of Port Neches and conditioned upon the faithful discharge of the duties of such persons and upon the faithful accounting of all monies, credits and things of value coming into the hands of such persons, and such bonds shall be signed as surety by some company authorized to do business under the laws of the State of Texas, and the premium on such bonds shall be paid by the City of Port Neches, and such bonds must be acceptable to the City Council.

Sec. 3.12. Investigation by the City Council.

The City Council shall have power to inquire into the conduct of any office, department, agency,

officer or employee of the City and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths and compel the production of books, papers, and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence, as ordered under the provisions of this section shall constitute a Class C misdemeanor.

Sec. 3.13. Audit and examination of City books and accounts.

The City Council shall cause an annual audit to be made of the books of accounts of each and every department of the City. Such audit shall be made by certified public accountants who shall be selected by the City Council, under a contract entered into from year to year; however, no firm shall be retained for more than four (4) consecutive years. Such contract shall provide that the books of the City shall be audited at least annually, and such auditors' report to the City Council shall be accessible to the public or for publication.

ARTICLE IV. NOMINATIONS AND ELECTIONS

Sec. 4.01. Elections.

The regular City election shall be held annually in compliance with the Statutes of the State of Texas, at which time officers will be elected to fill those offices which become vacant that year. The City Council shall fix the place for holding such election. The City Council may, by resolution, order a special election, fix the place for holding same and provide all means for holding such special election.

Sec. 4.02. Regulation of elections.

The City Council shall make all regulations which it considers needful or desirable, not inconsistent with this Charter or the laws of the State of Texas for the conduct of municipal election, for the prevention of fraud in such elections and for the recount of ballots in case of doubt or fraud. Municipal elections shall be conducted by the appointed election authorities who shall also have

power to make regulations not inconsistent with this Charter or with any regulations made by the Council or the laws of the State of Texas.

Sec. 4.03. Filing for office.

Any persons having the qualifications as set forth for Councilperson under Section 3.02 of this Charter and paying such filing fee as may be prescribed by ordinance, or in lieu of a filing fee, a petition signed by a minimum number of twenty-five (25) qualified voters from the City, shall have the right to file an application to have his/her name placed on the official ballot as a candidate for any elective office by filing with the City Secretary an application in accordance with the Statutes of the State of Texas.

Sec. 4.04. The official ballot.

The names of the candidates for office, except such as may have withdrawn, died, or become ineligible, shall be printed on the official ballots without party designations in the order determined in a drawing of lots conducted by the City Secretary. The election shall be held in conformity with the election laws applicable to municipalities in the State of Texas and as provided by Statute.

Sec. 4.05. Laws governing municipal elections.

All City elections shall be governed by the laws of the State of Texas governing general and municipal elections.

Sec. 4.06. Conducting and canvassing elections.

The election judges and other necessary election officials for conducting all such elections shall be appointed by the City Council. The election judges shall conduct the elections, determine record and report the results as provided by the general election laws of Texas. The City Council shall meet, open the returns, canvass and officially declare the result of the election as to candidates and questions in accordance with the Statutes of the State of Texas.

The qualified person receiving the majority of votes cast for any office shall thereupon be de-

clared by said Council elected. Should any candidate fail to receive a majority of votes at the regular election for the office for which he or she is a candidate, the City Council shall immediately order a special election, in accordance with the Statutes of the State of Texas, after the result of the regular election has been declared, at which special election the names only of the two (2) candidates receiving the highest number of votes at the regular election for the office for they were candidates shall be printed on the ballots or machines and submitted to the qualified voters for election and the candidate receiving the majority of votes at such special election for which he or she was a candidate, shall be duly elected.

Sec. 4.07. Oath of office.

All officers of the City, whether elective or appointive, shall qualify by taking the oath prescribed by the constitution of this State and by executing such bond as may be required under the provisions of this Chapter and the ordinances and resolutions of the City.

ARTICLE V. RECALL OF OFFICERS

Sec. 5.01. Scope of recall.

Any elected City Official, whether elected to office by the qualified voters of the City or elected by the City Council to fill a vacancy, shall be subject to recall and removal from office by the qualified voters of the City on grounds of incompetency, misconduct or malfeasance in office.

Sec. 5.02. Petitions for recall.

Before the question of recall of such officer shall be submitted to the qualified electors of the City, a petition demanding such question to be so submitted shall first be filed with the person performing the duties of City Secretary; which said petition shall be signed by qualified voters of the City equal in number to at least twenty (20) percent of the number of votes cast at the last regular municipal election of the City, but in no event less than three hundred (300) such petitioners. Each signer of such recall petition shall personally sign his/her name, thereto in ink or indelible pencil and shall write after his/her name

his/her place of residence, giving name of street and number of place of residence, and shall also write thereon the day of the month and year his/her signature was affixed.

Sec. 5.03. Form of recall petition.

The recall petition mentioned above must be addressed to the City Council of the City of Port Neches, and must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated, and if there be more than one ground, such as for incompetency, misconduct or malfeasance in office, shall specifically state each ground with such certainty as to give the officer sought to be removed, notice of the matters and things with which he/she is charged. The signatures shall be verified by oath in the following for:

STATE OF TEXAS §
COUNTY OF JEFFERSON §

I, _____, being first duly sworn, on oath depose and say that I am one of the signers of the above petition; 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 whose name it purports to be.

Sworn and subscribed to before me this day of _____, A.D. 20____.

Notary Public in and for Jefferson County, Texas

Sec. 5.04. Papers constituting petition.

The petition may consist of one 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 papers attached thereto. Verification provided for in the next preceding section of this Article may be made by one or more petitioners, and the several parts or copies of the petition may be filed separately and by different persons; but

no signatures to such petition shall remain effective or be counted which were placed thereon more than thirty days prior to the filing of such petition or petitions with the person performing the duties of City Secretary. All papers and documents comprising a single petition, that is, all papers comprising a recall petition, shall be filed with the person performing the duties of City Secretary on the same day, and said Secretary shall immediately notify in writing, the officer so sought to be removed.

Sec. 5.05. Presentation of petition to City Council.

At the next regular meeting of the Council after the date of the filing of the papers constituting the recall petition, the person performing the duties of City Secretary shall present such petition to the City Council of the City of Port Neches.

Sec. 5.06. Election call.

If the officer, whose removal is sought, does not resign within five days after such recall petition shall have been duly presented to the City Council of the City of Port Neches as provided in the next preceding section of this Article, then it shall become the duty of said Council to order an election and fix a date for holding such recall election. Any such election shall be held at the next uniform election date, as prescribed by the Texas Election Code, which date is at least sixty (60) days after the date of the City Secretary's certification to the City Council.

Sec. 5.07. Ballots in recall election.

The form of ballot to be used at such recall election shall be as follows:

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

Immediately following the above question, there should be provided on the ballot, in separate lines, in the order here set out, the words:

"FOR the recall of (name of person)."

"AGAINST the recall of (name of person)."

Should a majority of the votes cast at such recall election be for the recall of such officer

named on the ballot, he/she shall be deemed removed from office. Should a majority of the votes cast at such recall election, however, be against the recall of the officer named on the ballot, such officer shall continue in office for the remainder of his/her term.

Sec. 5.08. Recall restrictions.

No recall petition shall be filed against any officer of the City of Port Neches within three (3) months after his/her election, nor within three (3) months after an election for such officer's recall.

Sec. 5.09. Failure of City Council to call an election.

In case all of the requirements of this Charter shall have been met and the City Council shall fail or refuse to receive the recall petition, or order such recall election, or discharge any other duties imposed upon said City Council by the provisions of this Charter with reference to such recall, then the County Judge of Jefferson County, Texas, shall discharge any of such duties herein provided to be discharged by the City Council.

Sec. 5.10. Results of recall election.

If the majority of the votes cast at a recall election shall be against the recall of the person named on the ballot, he/she shall continue in office for the remainder of his/her unexpired term, subject to recall as before. If a majority of the votes cast at such election be for the recall of the person named on the ballot, he/she shall, regardless of any technical defects in the recall petition, be deemed removed from office and the vacancy shall be filled as vacancies on the City Council are filled, as provided in Section 3.05 of this Charter.

ARTICLE VI. INITIATIVE AND REFERENDUM

Sec. 6.01. General power.

The qualified voters of the City of Port Neches, in addition to the method of legislation hereinbefore provided, shall have the power of direct legislation by the initiative and referendum: and in the exercise of the power of initiative may propose

any ordinance, except ordinances appropriating money or levying taxes, or ordinances repealing ordinances appropriating money or levying taxes, not in conflict with the State Constitution, the State laws, or this Charter; and in the exercise of the power of referendum may approve or reject at the polls any legislation enacted by the Council which is subject to the initiative process under this Charter except that ordinances authorizing the issuance of bonds (either tax bonds or revenue bonds), whether original or refunding bonds, shall not be subject to such referendum.

Sec. 6.02. Initiative.

Qualified voters of the City of Port Neches may initiate legislation by submitting a petition addressed to the City Council which requests the submission of a proposed ordinance or resolution to vote of the qualified voters of the City. Said petition must be signed by qualified voters of the City equal in number to 20% of the number of votes cast at the last regular municipal election of the City, or 300, whichever is greater, and each copy of the petition shall have attached to it a copy of the proposed legislation. The petition shall be signed in the same manner as recall petitions are signed, as provided in Section 5.02 of this Charter, and shall be verified by oath in the manner and form provided for recall petitions in Section 5.03 of this Charter. The petition may consist of one or more copies as permitted for recall petitions in Section 5.04 of the Charter. Such petition shall be filed with the person performing the duties of City Secretary. Within five days after the filing of such petition, or at the next regular meeting of the City Council, the person performing the duties of City Secretary shall present said petition and proposed ordinance or resolution to the City Council. Upon presentation of the petition and draft of the proposed ordinance or resolution, it shall become the duty of the City Council within ten days after the receipt thereof to pass and adopt such ordinance or resolution without alteration as to meaning or effect in the opinion of the persons filing the petition, or to call an election at the next uniform election date, as prescribed by the Texas Election Code, which date is at least sixty (60) days after the date of the City Secretary's certification to the City Council.

Sec. 6.03. Referendum.

Qualified voters of the City of Port Neches may require that any ordinance or resolution passed by the City Council be submitted to the voters of the City for approval or disapproval, by submitting a petition for this purpose within thirty days after final passage of said ordinance or resolution, or within thirty days after its publication. Said petition shall be addressed, prepared, signed and verified as required for petitions initiating legislation as provided in Section 6.02 of this Charter and shall be submitted to the person performing the duties of City Secretary. Immediately upon the filing of such petition, the person performing the duties of City Secretary shall present said petition to the City Council. Thereupon the City Council shall immediately reconsider such ordinance or resolution and, if it does not entirely repeal the same, shall submit it to popular vote as provided in Section 6.02 of this Charter. Pending the holding of such election, such ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof.

Sec. 6.04. Voluntary submission of legislation by the City Council.

The City Council, upon its own motion and by a majority vote of its members, 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, resolution or measure, in the same manner and with the same force and effect as provided in this Article for submission on petition, and may in its discretion call a special election for this purpose.

Sec. 6.05. 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," and

"FOR the RESOLUTION," and

"AGAINST the RESOLUTION,"

Sec. 6.06. Publication of proposed and referred ordinances.

The person performing the duties of City Secretary shall publish at least once in the official newspaper of the City the proposed or referred ordinance or resolution within fifteen 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 in general municipal elections or by the ordinance or resolution calling said election.

Sec. 6.07. Adoption of ordinances.

If a majority of the qualified voters voting on any proposed ordinance or resolution or measure shall vote in favor thereof, it shall thereupon, or at any time fixed therein, become effective as a law or as a mandatory order to the City Council.

Sec. 6.08. Ordinances passed by popular vote, repeal or amendment.

No ordinance or resolution which may have been passed by the City Council upon a petition or adopted by popular vote under the provisions of this Article shall be repealed or amended except by the City Council in response to a referendum petition or by submission as provided in Section 6.04 of this Charter.

Sec. 6.09. Further regulations by City Council.

The City Council may pass ordinances or resolutions providing other and further regulations for carrying out the provisions of this Article not inconsistent herewith.

Sec. 6.10. Franchise ordinances.

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

ARTICLE VII. ADMINISTRATIVE SERVICES

Sec. 7.01. City Manager.

(a) *Appointment and qualifications:* The City Council shall appoint a City Manager who shall be the chief administrative and executive officer of the City and shall be responsible to the City Council for the administration of all the affairs of the City. He/she shall be chosen by the City Council solely on the basis of his/her executive and administrative training, experience and ability, and need not, when appointed, be a resident of the City of Port Neches. No member of the City Council shall, during the time for which he/she is elected and for one year thereafter, be appointed as City Manager; provided that when there is a vacancy in the office of City Manager the Mayor or any Councilperson, upon unanimous vote of the other members of the City Council, may be appointed to perform the duties of the City Manager on an acting basis only until the vacancy is filled and further provided that the vacancy must be filled within ninety (90) days after it occurs. The Mayor or Councilperson so performing the duties of City Manager on an acting basis shall be paid his/her expenses as the Council may see fit, and the title of such person so acting shall be "Acting City Manager."

(b) *Term and Salary:* The City Manager shall not be appointed for a definite term but may be removed at the will and pleasure of the City Council by a vote of the majority of the entire Council. The action of the City Council in suspending or removing the City Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension or removal in the City Council. In case of the absence or disability of the City Manager, the City Council may designate some qualified person to perform the duties of the office during such absence or disability. The City Manager shall receive such compensation as may be fixed by the City Council.

(c) *Powers and Duties of the City Manager:*

- (1) Appoint, and when necessary for the welfare of the City, remove any employee of the City, except as otherwise provided by this Charter.

- (2) Prepare the budget annually and submit it to the City Council, and be responsible for its administration after adoption.
- (3) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable.
- (4) Perform such duties as may be prescribed by this Charter or may be required of him/her by the City Council, not inconsistent with this Charter.

Sec. 7.02. Department of Police.

There shall be established and maintained a Department of Police to preserve order within the City and to secure the residents of said City from violence and the property therein from injury or loss.

- (a) The Chief of Police shall be the Chief Administrative Officer of the Department of Police, shall appoint and remove the employees of said department and shall perform such duties as may required of him/her by the City Manager.
- (b) The Chief of Police shall be appointed to his/her office by the City Manager and shall be accountable to and serve under and at the will of the City Manager.

Sec. 7.03. City Secretary.

The City Manager shall appoint the City Secretary and such Assistant City Secretaries as the City Council shall deem advisable. The City Secretary, or an Assistant City Secretary, shall give notice of Council meetings, shall keep the minutes of the proceedings of such meetings, shall authenticate by his/her signature of record in full in a book kept and indexed for the purpose, all ordinances and resolutions, and shall perform such duties as the City Manager shall assign to him/her, and those elsewhere provided for in this Charter.

Sec. 7.04. Municipal Court.

(a) There shall be established and maintained a court designated as a "Municipal Court" for the trial of misdemeanor offenses, with all such powers and duties as are now or hereafter may be prescribed by the laws of the State of Texas.

(b) The judge of said court shall be qualified voter of the City of Port Neches, and shall be appointed by the City Council for a term of two (2) years, and shall receive such salary as may be fixed by the City Council. He/She may be removed by the City Council at any time for incompetency, misconduct, or malfeasance.

(c) The City Manager shall appoint the Clerk of said Municipal Court and such Deputy Clerks, which Deputy Clerks shall have authority to act for and on behalf of the Clerk of the Municipal Court.

(d) The Clerk of said court and his/her deputies shall have the power to administer oaths and affidavits, make certificates, affix the seal of said court thereto, and generally do and perform any and all acts usual and necessary by the Clerk of courts in issuing process of said courts and conducting the business thereof.

(e) In case of disability or absence of the judge of the Municipal Court, the City Council shall appoint someone with like qualifications to act as judge of said court.

Sec. 7.05. City Attorney.

The City Council shall appoint a competent and duly licensed attorney practicing law in Jefferson County, Texas, who shall be the City Attorney. He/She shall receive for his/her services such compensation as may be fixed by the City Council and shall hold his/her office at the pleasure of the City Council. The City Attorney, or such other attorneys selected by him/her with the approval of the City Council, shall represent the City in all litigation. He/She shall be the legal advisor of, and attorney and counsel for, the City and all officers and departments thereof.

Sec. 7.06. Fire Department.

(a) The Fire Chief shall be the chief administrative officer of the Fire Department, shall appoint and remove the employees of said department and shall perform such duties as may be required of him/her by the City Manager.

(b) The Fire Chief shall be appointed to his/her office by the City Manager and shall be accountable to and serve under and at the will of the City Manager.

(c) The Fire Chief shall serve as Fire Marshal of the City of Port Neches. Assistant Fire Marshal shall be appointed as required under provisions in Section 7.06, paragraph (a).

Sec. 7.07. Other Departments.

The City Council may abolish or consolidate such offices and departments as it may deem to be the best interest of the City, and may divide the administration of any such departments as it may deem advisable; may create new departments, and may discontinue any offices or departments at its discretion, except those specifically established by this Chapter.

ARTICLE VIII. FINANCE

Sec. 8.01. Fiscal year.

The fiscal year of the city government shall begin on the first day of October of each year and shall end on the last day of September of the following year. Such fiscal year shall also constitute the budget and accounting year. As used in this Chapter the term "budget year" shall mean the fiscal year for which a given budget is adopted and in which it is administered.

Sec. 8.02. Preparation and submission of budget.

The City Manager shall, on or before the 30th day of September of each year, or as soon thereafter as practicable, prepare a budget to cover all proposed expenditures of the City for the succeeding year. Such budget shall be prepared in conformity with the State of Texas applicable law, as now or hereafter amended. No public money shall ever be spent or appropriated, except in case of an emergency or public calamity, unless funds are currently in the possession of the City to cover said expenditures or appropriation.

Sec. 8.03. Contingent appropriation.

Provision shall be made in the General Fund portion of the Annual Budget for a contingent appropriation in an amount approved by the City Council. The contingent account shall be used for unforeseen expenditures and projects and must have the prior approval of the City Manager.

Sec. 8.04. Depository.

The City Council is authorized to select a depository for City funds in accordance with State of Texas applicable law, as now or hereafter amended.

Sec. 8.05. Bonds, warrants, etc.

(a) The City Council shall have the power and authority by ordinance duly passed, and it is hereby expressly authorized to issue bonds for the purpose of refunding bonds of the City previously issued.

(b) In keeping with the Constitution of Texas, and not contrary thereto, the City shall have the power to issue all tax bonds, revenue bonds, funding and refunding bonds, warrants, time warrants, notes and other evidence of indebtedness as now authorized or as may be hereafter authorized to be issued by cities and towns under the provisions of State of Texas applicable law, as now or hereafter amended.

(c) In all elections to determine the expenditures of money or the assumption of debt of any nature, qualified voters shall be deemed to be those who are qualified under the general laws of the State of Texas.

(d) Ordinances authorizing any bonds, warrants, revenue warrants, notes or other evidences of indebtedness to be issued shall provide for all creation of a sinking fund sufficient to pay the principal and interest of such bonds when and as the same become due and payable. Such sinking fund, in excess of the amount necessary to pay the principal and interest of the bonds when and as the same become due and payable, may each year be invested, as provided in State of Texas applicable law, as now or hereafter amended.

(e) Any officer or agent of the City who shall unlawfully or knowingly divert or use said funds or cause or permit same to be diverted or used for any other purpose except that for which the fund is created or herein expressly authorized to be invested shall be deemed guilty of a felony and subject to prosecution as provided under the general laws of the State of Texas.

(f) What is known as "Bond and Warrant Law", which are applicable to cities and towns, are hereby adopted by the City as defined by State of Texas applicable law, as now or hereafter amended.

Sec. 8.06. City funds not subject to garnishment.

No funds of the City shall be subject to garnishment and the City shall never be required to answer in any garnishment proceedings.

Sec. 8.07. May accept governmental aid, etc.

The City may accept monetary aid or other character of aid or benefit from the Federal Government, the State Government, the County Government, and from any agency thereof, and/or any individual, and/or a private agency; and shall have the full right, power and authority to do the things and perform the acts necessary to permit the City to receive such aid.

ARTICLE IX. TAXES AND TAXATION**Sec. 9.01. Taxable properties.**

All real, personal and mixed property held, owned or situated in the City, which is not exempt by the Constitution or general laws of the State of Texas, shall be liable for all taxes due by the owner thereof, including taxes on real estate, franchise, gross receipts or public utilities, personal and mixed property.

Sec. 9.02. Tax levies.

(a) The City Council shall have the power and it is hereby authorized and made its duty to levy annually for general purposes and for the purpose of paying interest and providing the sinking fund on the bonded indebtedness of the City now in existence or which may hereafter be created an ad

valorem tax on all real, personal or mixed property within the territorial limits of said City and upon all franchises granted by the City to any individuals or corporations of not exceeding a total of two dollars and fifty cents (\$2.50) on the one hundred dollars (\$100.00) assessed valuation of said property. If for any cause the City Council shall fail, neglect or refuse to pass a tax ordinance for any one year, levying taxes for that year, then, and in that event, the tax levying ordinance last passed shall and will be considered in force and effect as the tax levying ordinance for the year for which the City Council failed, neglected or refused to pass such ordinance, and the failure so to pass such ordinance for any year shall in no way invalidate the tax collections for that year.

(b) The City Council may determine and provide when taxes shall be due and payable by corporations and all persons owning property. It shall have the right to fix the time and terms of payments of taxes, prescribe penalties for the nonpayment thereof upon the expiration of the time fixed by the said City Council, and may provide discounts for advance payments of taxes.

(c) The City Council or any other officer or the City shall never extend the time for the payment of taxes, or remit, discount or compromise any tax legally due the City, nor waive the penalty that may be due thereon to any person, but the City Council may provide for the discount, compromise or waiver of penalty to persons legally owning taxes where such discount, compromise or waiver of penalty is for any particular and specified year or years and is deemed necessary to correct obvious errors in assessment or to join other taxing bodies in adjusting taxes to the value of the property; provided, however that this provision shall not prevent the compromise of any tax suit.

Sec. 9.03. Liens.

(a) The tax levied by the City is hereby declared to be a lien, charge or encumbrance upon the property upon which the tax is due, which lien, charge or encumbrance the City is entitled to enforce and foreclose in any court having jurisdiction over same, and the lien, charge and encumbrance on the property in favor of the City for the amount of the taxes due on such property is such

as to give the State Courts jurisdiction to enforce and foreclose said lien on the property on which the tax is due, not only as against any resident of this State or person whose residence is unknown, but also as against the unknown heirs of any person who owns the property upon which the tax is due and also as against nonresidents. All taxes upon real estate shall especially be a lien and a charge upon the property upon which the taxes are due, which lien may be foreclosed in any court having jurisdiction.

(b) The tax lien shall take effect on property as of the beginning of the tax year, and such lien shall be prior to all other claims or liens and no gift, sale, assignment, or transfer of any kind, or judicial writ shall defeat such lien. The assessor collector of taxes shall by virtue of his/her tax rolls have power and authority to seize and levy upon all personal property and sell the same to satisfy all taxes, together with all penalty, interest, and costs, due by a delinquent taxpayer to the City on personal property.

Sec. 9.04. Rendition.

(a) It shall be the duty of every person or corporation owning or holding property within the City to render under oath to the assessor of taxes of such other person as may be provided for by ordinance at his/her office in said City annually within the time prescribed by ordinance of said City a full and complete inventory of all property so owned or held by him/her, whether real, personal or mixed, and to take and subscribe to an oath to the correctness of such inventory, which oath may be administered by the assessor or such other officer as aforesaid, acting in person or by deputy.

(b) The definitions of property and terms as defined by the general laws of the State under the head of taxation shall apply to the taxation of property in this City.

Sec. 9.05. Unrendered property.

The City Council shall provide by ordinance for the listing and valuation of all property, real, personal and mixed, situated, owned or held within the City limits, and which has not been rendered by the owner thereof each year, upon a date to be

specified by the City Council, by ordinance, the assessor or other officer designated for that purpose, which list of property so unrendered and assessed shall be placed upon the tax roll of the City and submitted along with the rendered roll to the Board of Equalization and be subject to the same tax levy as the rendered property within the City.

Sec. 9.06. Collection of taxes.

(a) The City Council shall have full power, by ordinance, to provide for the prompt collection of all taxes levied, assessed and due or becoming due to said City, and prescribe where property shall be assessed or rendered for taxes, and when the taxes thereon shall become due and payable, and to that end may and shall pass all ordinances and make all such provisions as may be necessary for levying, imposing, assessing, and collecting said taxes, regulating the methods of making out tax lists and inventories, and fixing the duties and defining the powers of the assessor and collector of taxes for such other officer as may be designated therefore by the City Council.

(b) All taxes shall be payable at the office of the assessor and collector or such other offices as the City Council may prescribe, and no demand for payment thereof, nor for the collection of any taxes due, before the adoption of the Charter.

(c) All property which the owner thereof may have failed or refused to inventory, assess or render for taxation for years prior to the adoption of this Charter, shall be by the officer designated by the City Council inventoried, and assessed and rendered for taxes for the year or years for which the same was not so rendered, inventoried and assessed by the owner thereof, and such officer designated by the City Council shall have the right and it shall be his/her duty at any time to revise, correct and reassess and properly describe any property incorrectly rendered or assessed or improperly described, without the necessity of giving notice to the owner thereof; provided, however, that the valuation as fixed by the Board of Equalization shall not be changed, and such inventory and assessment when revised and worked over shall be as valid and effective as if on such assessment sheets and tax rolls and as if regu-

larly and duly rendered and assessed by the owner for the year for which rendered, assessed and inventoried, as above provided for, by the officer of the City designated by the City Council, and said tax rolls and assessment sheets shall be prima facie evidence that said property was regularly and duly rendered, inventoried, assessed and properly described in all respects as if done duly and regularly by the owner in the first instance.

Sec. 9.07. Payment of taxes.

All ad valorem taxes due or to become due upon real, personal or mixed property or upon franchises granted by the City to individuals or corporations, and all license taxes, occupation taxes, permit fees, fines, forfeitures, penalties and other amounts of taxes accruing to the City shall be collectible and payable only in current money of the United States.

Sec. 9.08. Delinquent taxes.

All ad valorem taxes due or to become due to the City that are not paid within the time specified by the City Council in the ordinance providing the date of payment of said taxes shall be declared delinquent and shall be subject to the penalties prescribed by ordinance from time to time any may be collected by suits from delinquents, and foreclosure of the lien thereon may be had in any court having jurisdiction of the same or personal property may be levied upon and sold for taxes by the assessor and collector as provided in Section 9.03 of this Article. Any person who shall purchase or shall have purchased property encumbered by a lien for taxes or upon which taxes are due shall be deemed as to such taxes a delinquent taxpayer, and such purchaser shall take the property charged with lien, and he/she cannot interpose any defense which the person or corporation owning the property at the time of the assessment of said taxes so delinquent might not have interposed had he/she or it continued to be the owner, except that no personal judgment shall be rendered for same against such purchaser.

Sec. 9.09. Occupation tax.

The City Council shall have the power to levy and collect taxes upon trades, professions or other

businesses carried on to the full extent permitted by the Constitution and the general laws of the State of Texas, and to prescribe penalties for nonpayment thereof.

Sec. 9.10. Contract for collection of delinquent.

The City Council shall have the power to contract with any competent attorney at law for the collection of delinquent taxes owing to the City. Where the City has a part-time City Attorney, he/she may be employed to collect delinquent taxes owing to the City.

Sec. 9.11. Provisions of Title 122, Chapter 10, Revised Civil Statutes of Texas, applicable.

Any matter pertaining to delinquent taxes not specifically covered by this Charter shall be governed by State of Texas applicable law, as now or hereafter amended.

Sec. 9.12. Taxes and assessments in existence shall remain in effect.

All assessments of taxes made by the City prior to the adoption of this Charter shall remain in full force and effect and all taxes owing to the City shall remain a valid debt due to the City.

ARTICLE X. FRANCHISE

Sec. 10.01. Powers of the City.

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

Sec. 10.02. Franchise and special privileges.

(a) The right to control easement use and ownership and title to the streets, highways, public thoroughfares and property of the City, its avenues, parks, bridges and all other public places and property, are hereby declared to be inalienable except by ordinance duly passed by four

affirmative votes of the City Council, and no grant of the franchise or lease, or right to use the same, either on, through, along, across, under or over the same shall be granted by the City Council for a longer period than thirty (30) years unless submitted to the vote of the legally qualified voters of the City in the manner provided for in State of Texas applicable law, as now or hereafter amended; the expense of such election to be borne by the applicant.

(b) The City Council may, of its own motion, submit all of such applications to an election at which the people shall vote upon the proposition therein submitted the expense of such election in all cases to be borne by the applicant.

(c) No franchise shall ever be granted until it has been approved by a majority of the members elected to the City Council, after the caption having been read in full at two (2) regular meetings of the City Council, nor shall any such franchise, grant or privilege ever be made unless it provides for adequate compensation or consideration therefore to be paid to the City. The caption of such ordinance shall be published once in the official newspaper of the City, and the expense of such publication shall be borne by the prospective franchise holder or assignee.

(d) Every such franchise or grant shall make adequate provision, by way of forfeiture of the grant or otherwise, to secure efficiency of public service at reasonable rates and to maintain the property devoted to the public service in good repair throughout the term of grant of said franchise.

(e) No franchise grant shall ever be exclusive.

(f) The City Council may prescribe the forms and methods of the keeping of accounts of any grantees under franchise, providing that the form and methods of keeping such accounts have not already been prescribed by a State or Federal Law or Agency.

ARTICLE XI. PUBLIC UTILITIES

Sec. 11.01. City ownership and operation.

(a) *In general:* The City shall have power to build, construct, purchase, own, lease, maintain and operate, within or without the City limits,

light and power systems, water systems, sewer systems or sanitary disposal equipment and appliances, natural gas systems, parks and swimming pools, fertilizer plants, and any other public service or utility; power to mortgage and encumber such system or systems in the manner provided in State of Texas applicable law as now or hereafter amended; and all the powers which the City might exercise in connection with such public utilities and public services under State of Texas applicable law, as now or hereafter amended, including the power to demand and receive compensation for service furnished for private purposes, or otherwise, and with full and complete power and right of eminent domain, proper and necessary efficiently to carry out said objectives.

(b) *City water system:* The City shall have the exclusive right to own, erect, improve, enlarge, maintain and operate a waterworks system for the use of said City, its inhabitants and the public; shall regulate the same and have power to prescribe rates for water furnished, with power to levy higher rates for water sold for use outside the City limits, and to acquire by purchase, donation, condemnation or otherwise, suitable grounds within the limits of the City, on which to erect any such works and the necessary right-of-way, and to acquire by purchase, donation, condemnation or otherwise, suitable grounds within or without the limits of the City on which to erect any such works and the necessary right-of-way in any outstanding franchise which may now or hereafter be owned by any individual, corporation, or other municipality, and to do and perform whatsoever may be necessary to operate and maintain such waterworks or waterworks system, and to compel the owners of all property and the agents of such owners or persons in control thereof to pay all charges for water furnished upon such property. The City shall have all the powers and privileges pertaining to water and water systems as is granted to home rule cities under the provisions of State of Texas applicable law, as now or hereafter amended. The City shall have the right to use so much of the water and water facilities of said City as may be deemed necessary in connection with the operation of Fire Department, City buildings, Public Works, streets, swimming pools, and other public functions of the City.

(c) *City sewer system:* The City shall have the exclusive rights to own, erect, maintain and operate sewer systems or sewerage systems for the use of said City and its inhabitants; to regulate the same and to have power to prescribe rates for the services so furnished and to acquire by purchase, donation, condemnation or otherwise suitable grounds, within or without the limits of the City, on which to erect any such sewer system or systems, sewage disposal plant or plants and filtering beds and emptying grounds for sewage systems, and to compel owners of property and the agents of such owners or persons in control thereof to pay all charges for sewer service furnished upon such property, and shall have power to compel owners of property and the agents or persons in control thereof to connect with such sewer systems, and to pass all ordinances necessary for the enforcement of this power, and shall have the power by ordinance to prohibit the use of sewers for oil waste, chemicals or salt water disposal. The City shall have all the rights, power and privileges pertaining to sewers as is given to home rule cities under State of Texas applicable law, as now or hereafter amended; the City may permit other municipalities to place connecting sewer lines through the City and to maintain them.

(d) *Power to contract for public utilities:* The City is authorized to enter into contracts or leases with individuals, corporations, partnerships or other municipal corporations, for furnishing in whole or in part any public utility or portions of public utility systems that might be needed by the City or the citizens of the City. The consideration for such contracts or leases may in the discretion of the City Council be paid by the City or prorated to the individual users of the utility covered by such contractor lease, or to permit individuals, corporations, partnerships or other municipal corporations to furnish in whole or in part any public utility or portion of any public utility direct to the citizens of the City on such terms as the City may direct.

(e) *Right to purchase commodities or services essential to the City or its citizens:* The City shall have the power to purchase electricity, gas, oil, or any other article, commodity or service essential to a proper conduct of all the affairs of the City

and of its inhabitants on such terms as the City Council may deem proper, for sale and distribution to the inhabitants of the City or adjacent territory.

Sec. 11.02. Regulation of public utilities.

(a) The City Council shall have the power by ordinance, after notice to the utility and hearing before the Council, to fix and regulate the charges, fares or rates of compensation to be charged by any person, firm or corporation enjoying a franchise in the City, or engaged in furnishing a public utility service in the City, and shall in determining, fixing and regulating such charges, fares or rates of compensation, base the same upon the fair value of the property of such person, firm or corporation devoted to furnishing service to such City or the inhabitants thereof. The City Council may prescribe the character, quality and efficiency of service to be rendered, and shall have the power to regulate and require the extension of adequate liens or service of such public utility within such City by such person, firm or corporation, taking into consideration the cost of the utility, and from time to time may alter or change such rules, regulations, and compensation, provided that, in adopting such regulations and in fixing or charging such compensation or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying such franchise shall be considered unless on proof that the same have been actually issued by the corporation for money paid and used for the development of the corporation property, labor done or property actually received, in accordance with the laws and Constitution of the State applicable thereto. In order to ascertain all facts necessary for a proper understanding of what is or should be reasonable rate or regulation, the City Council shall have full power to inspect the books of any such utility serving the inhabitants of the City and compel production or records and the attendance of witnesses for such purpose.

(b) Any company, corporation or persons engaged in furnishing to the inhabitants of the City any light, power, gas, telephone, transit, or other public utility services, may be required at any time by ordinance or resolution of the City Council to file with the City Council sworn written

reports pertaining to their operations and business within the City, and such report shall contain such data, facts and information as may be required by such ordinance or resolution, which shall also fix the time within which the report shall be filed.

(c) In addition to the foregoing powers the City shall have all the powers and privileges provided for by State of Texas applicable law, as now or hereafter amended in regulating public utilities.

ARTICLE XII. PLANNING AND ZONING

Sec. 12.01. In general.

The City Council shall have full power and authority to zone the City and to pass all necessary ordinances, rules, and regulations governing the same under and by virtue of the authority given to cities and legislative bodies thereof under State of Texas applicable law, as now or hereafter amended including, but not limited to General and Special Laws of the State of Texas passed by the 40th Legislature at the regular session thereof, being State of Texas applicable law, as now or hereafter amended.

Sec. 12.02. Zoning ordinance.

The Zoning Ordinance of the City of Port Neches, Texas, which is in effect at the time of the adoption of this Charter, shall remain in effect. The City Council will have the authority to repeal, amend, modify, or rewrite the Zoning Ordinance in compliance with State of Texas applicable law, as now or hereafter amended.

Sec. 12.03. Planning and Zoning Commission.

The City Council shall pass appropriate ordinances establishing a Planning and Zoning Commission, which Commission shall have the powers and authorities as set forth in State of Texas applicable law, as now or hereafter amended, and such additional powers and privileges as given by this Charter and as may be given to it by the City Council. Such ordinances shall provide for rules and regulations governing the Planning and Zoning Commission.

The Mayor from time to time shall appoint twelve persons to serve on the Planning and Zoning Commission, which appointments shall be subject to the approval of the City Council. The persons so appointed shall serve for two years or until their successors are appointed and qualified. Said persons serving on the Commission shall serve without pay.

Sec. 12.04. Board of Adjustment.

The City Council may establish, by ordinance, a Board of Adjustment which shall have all the powers and privileges set forth in State of Texas applicable law, as now or hereafter amended, and such additional powers and privileges as may be assigned to it by ordinance duly passed by the City Council. The members of the Board of Adjustment shall be appointed by the Mayor, subject to the approval of the City Council.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

Sec. 13.01. Contracts.

All contracts that the City has at the time of the adoption of this Charter shall remain in full force and effect. This provisions shall include, but not be limited to, all bonded indebtedness, contracts for professional services, contracts for improvements, lease contracts, or any other agreement binding upon the City of Port Neches, Texas, immediately prior to the adoption of this Charter.

Sec. 13.02. Goods, materials, services or supplies.

The City or any agent of the City acting for it shall not make any contract for goods, materials, services or supplies for the current use of any department of the municipality for more than one year, except as in this Charter provided, unless said contract and the cost thereof has been included in the annual budget of the City and unless an appropriation has been made therefor, and no contracts or purchase shall exceed the amount appropriated. All contracts in excess of the amount prescribed by State Statute, or as otherwise prescribed by the City Council, except for items exempted from bidding requirements as

defined by State Statute, shall be made upon specifications, and no contract shall be binding until it has been signed by a designated representative of the City.

Sec. 13.03. Competitive bidding.

Advertisement shall be published in the official newspaper of the City at least once in each week for two (2) consecutive weeks, inviting competitive bids for labor and material embraced in the proposed contract. All bids received shall be sealed and delivered to the City Secretary. At the time and place announced in said notice, the bids shall be opened and no award shall be made except to the best bidder, or bidders. The City Council shall determine the most advantageous bid for the City, and shall award the contract to such bidder, but the City Council shall always have the right to reject any and all bids, and, in the event all bids are rejected, may call for new bids which shall be advertised in like manner as the original bids. Pending advertisement of such proposed contracts, the specifications shall be on file in the office of the City Secretary subject to the inspection of all persons desiring to bid. No contract shall ever be authorized except by approval of the City Council; provided, however that contracts in an amount prescribed by the City Council may be awarded without advertisement. Identical bids shall be awarded to one bidder only.

Sec. 13.04. Ownership of real or personal property.

(a) *Acquisition of property:* The City shall have the power and authority to acquire by purchase, gift, devise, deed, condemnation, or otherwise, any character of property, within or without its municipal boundaries, including any charitable or trust funds.

(b) *Real estate, etc., owned by the City:* All real estate owned in fee simple title, or held by lease, sufferance, easement or otherwise; all public buildings, fire stations, parks, streets and alleys, and all property, whether real or personal, of whatever kind, character or description, now owned or controlled by the City, shall vest in, inure to, remain, and be the property of said City under this Charter; and all causes of action, chooses in

action, rights or privileges of every kind and character, and all property of whatsoever character or description which may have been held, and is now held, controlled or used by said City for public uses, or in trust for the public shall vest in and remain and inure to the City under this Charter, and all contracts, suits and pending actions to which the City heretofore was or now is a party, plaintiff or defendant, shall in no wise be affected or terminated by the adoption of this Chapter, but shall continue unabated.

(c) *Parks, playgrounds, etc.*: The City shall have exclusive control of all City parks and playgrounds, whether within or without the City limits, and to control, regulate and remove all obstructions and prevent all encroachments thereupon; to provide for raising, grading, filling, terracing, landscape, gardening, erecting buildings, swimming pools and wading pools and other structures, providing amusement therein, for establishing parks, playgrounds, and other public grounds, speedways or boulevards owned by it, and lying both outside and inside the municipal boundaries.

Sec. 13.05. Streets and alleys.

(a) *Street powers*: The City shall have exclusive control of all alleys, streets, gutters and sidewalks situated within the City, and the power to lay out, establish, open, alter, extend, widen, straighten, abandon and close, lower, grade, narrow, care for, extend, widen, straighten, care for, supervise, maintain and improve any public street, alley, avenue, or boulevard, and for any such purposes to acquire the necessary lands and to appropriate the same under the power of eminent domain. The City shall also have the power to name or rename, vacate and abandon and sell and convey in fee that portion of any street, alley, avenue, boulevard or other public thoroughfare or public grounds, and to convey in fee the same in exchange for other lands, over which any street, alley, avenue or boulevard may be laid out, established and opened; and the City's right to sell and dispose of in fee any part of a street, alley, avenue or boulevard so vacated and abandoned, or the City's right to convey same in exchange for other lands to be used in laying out, opening, widening and straightening any street, shall never be questioned in any of the Courts of this State. The

procedure for closing streets and alley shall be in conformity with due process of law and shall be particularly prescribed and provided for by ordinance passed in the usual manner by the City Council.

(b) *Street improvements*:

- (1) The City shall adopt State of Texas applicable law, as now or hereafter amended, and the City shall have the power to improve any street or highway within its limits by filling, grading, raising, paving or repaving the same in a permanent manner, or by the construction or reconstruction of sidewalks, curbs and gutters of necessary appurtenances there to, including sewers and drains. In the event there shall be any conflict between the method of improving streets and other public places as provided for by State of Texas applicable law, as now or hereafter amended, and in the provisions of this Charter, the City Council may elect to follow either the provisions of this Charter or the provisions of said statutes.
- (2) All contracts, assessments and other proceedings heretofore taken under previously existing powers of the City shall continue in full force and effect, and the rights of all parties in connection with the collection of street improvement, assessments of liens on property previously made are to be in no wise affected or changed.
- (3) The City Council shall have all the authority given by the provisions of State of Texas applicable law, as now or hereafter amended, and the power by ordinance to control the operations of all character of vehicles using public streets, including motorcycles, motor scooter(s), bicycles, automobiles, taxicabs, trucks, trailers, tractors, buses, house moving dollies or like vehicles; and to prescribe the speed of the same, the qualifications of the operators of the same, the routing of the same, and the lighting of same by night; and to provide for the giving of bond or other security for the operation of same.

- (4) The City Council shall have the authority to limit the speed of vehicles in school zones, near churches, hospitals, and dangerous corners, and such other places as it may deem advisable, and to limit or prohibit the parking of vehicles near schools, churches, business or other congested areas, or where the limiting or restricting of the parking of vehicles is required in providing the safe movement of traffic for the protection of life or property.

Sec. 13.06. Public property exempt from execution.

No public property, or any other character of property owned or held by said City, shall be subject to any execution of any kind or nature.

Sec. 13.07. Liability for damages.

Before the City shall be liable for damages for the death or personal injury of any person or for damages or destruction of property of any kind, the Mayor or City Council shall be given notice in writing of such death, injuries, damages or destruction within 90 days after the same has been sustained, stating when, where, and how the death, injury, damage or destruction occurred and the apparent extent thereof, and an estimate of the damages sustained, Such notice shall be filed with the City Secretary, and such filing will constitute notice to the City. The City Council is hereby authorized and directed to make and fix by ordinance such additional rules and regulations governing the City's liability for damages as the City Council may deem advisable.

Sec. 13.08. Right of eminent domain.

The City shall have the right of eminent domain and the power to condemn and appropriate private property for public purposes, whether said property be within or without the City limits, in such cases as is now or as may hereafter be provided by State of Texas applicable law, as now or hereafter amended, and all other general laws of Texas governing cities and towns. This shall apply also to fee simple titles. The City may exercise the power of eminent domain by any one of the following methods of procedures:

- (a) As nearly as practicable, by the laws governing the condemnation of property

by Railroad Corporation in this State, the City taking the position of the Railroad Corporation in any such case;

- (b) In any other manner authorized or permitted by the Constitution and/or laws of this State, including, but not limited to, State of Texas applicable law, as now or hereafter amended.

Sec. 13.09. City not required to give bond.

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

Sec. 13.10. Retirement or pensions for employees.

The City shall have the right to grant to its employees benefits of the Texas Municipal Retirement System, or any other pension or retirement system available to cities.

Sec. 13.11. Nepotism.

No person related within the second degree by affinity, or within the third degree by consanguinity to any elected officer of the City, or to the City Manager, shall hold any office, position or clerkship or other service of the City.

Sec. 13.12. Enumerated powers not exclusive.

The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated therein or implied thereby, or appropriate to the exercise of such powers, it is intended that the City shall have, and may exercise, all powers of local self-government, and all powers enumerated in State of Texas applicable law, as now or hereafter amended, or any other powers which, under the Constitution and laws of the State of Texas, it would be competent for this Charter specifically to enumerate. All powers of the City, whether

expressed or implied, shall be exercised in the manner prescribed herein, or when not prescribed herein, then in the manner provided by the general laws of Texas relating to cities and towns.

Sec. 13.13. Other enumerated powers.

The City may assess, levy and collect any and all character of taxes for general and special purposes on all subjects or objects, including occupation taxes, license taxes and excise taxes, which the City may lawfully assess, levy, and collect under the Constitution and laws of the State of Texas; may borrow money on the faith and credit of the City by the issuance of bonds or notes of the City, and may issue warrants in payment of lawful obligations of the City; may create, provide for, construct, regulate and maintain all things of the nature of public works and improvements whether for pleasure or otherwise; may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comforts, safety, convenience and welfare of the inhabitants of the City, and all nuisances and cause thereof; may regulate and restrict the construction, height and material used in all buildings and maintenance and occupancy thereof; may license any lawful business, occupation or calling that is susceptible to the control of the police power; may license, regulate, control or prohibit the erection of signs or billboards within the corporate limits of said City; may provide for a public library and maintenance thereof; may provide that the gas companies, streetcar or bus companies, telephone companies, telegraph companies, electric light companies, or any other companies or individuals furnishing public utility service, make and furnish extension of their service to such territory within the corporate limits as may be prescribed from time to time by ordinance; may provide for the issuance of permits for erecting all buildings, for the inspection of the construction of building, in respect to proper wiring for electric lights and other electric appliances, piping for gas flues, chimneys, fire escapes, plumbing and sewer connections, and to enforce proper regulations in regard thereto; may provide for the enforcement of all ordinances enacted by the City, by assessing fines in an amount authorized by Statutes of the State of Texas; provided

that no ordinance shall prescribe a greater or less penalty than is prescribed for a like offense by the laws of this State.

Sec. 13.14. Fire prevention.

The City Council shall have power by ordinance or otherwise to provide means for protection against conflagrations and for guarding against fires. It may prescribe fire limits, stipulate and provide for minimum requirements for construction of buildings within such fire limits, regulate or prohibit the erection, building, replacing or repairing of buildings within such limits; may prescribe that the buildings within such fire limits be made or constructed of fire-resistant materials; and may further prescribe limits within which only fire-resistant roofing may be used; it may also by ordinance regulate, prescribe, govern or forbid the storage of lumber, building material of any kind or inflammable or explosive goods, wares and merchandise of any and every kind within certain limits and prescribe limits within which such materials may be stored, housed or carried.

Sec. 13.15. Health regulations.

The City Council shall have the power to provide for a Health Department, and to establish all necessary rules and regulations protecting the health of the City and for the establishment of quarantine stations, pest houses, emergency hospitals and hospitals, and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious or infectious diseases. Such general powers shall include, but not to the exclusion of other powers, the following powers:

- (a) The City Council shall have the power by ordinance or otherwise to regulate, license and inspect persons, firms, corporations, common carrier(s), or associations operating, managing, or conducting any hotel or any other public sleeping or eating place or any place or vehicle where food or drink, or containers therefor, of any kind is manufactured, within the City limits of the City, or any manufacturer or vendor of candies or manufactured sweets; and shall have the power to prescribe

health regulations with reference to any and all workers or employees hired or used in any of said places or vehicles, or about said places or vehicles, or who deliver products to and from said places and vehicles; and shall have the power to inspect, license, and regulate the sanitary conditions of said places and vehicles, and to condemn all articles not wholesome or fit for human consumption.

- (b) The City shall the power to prescribe health regulations with respect to porters, hotel maids, domestic servants, cooks and waiters.
- (c) To regulate the disposal and prohibit the burning of garbage and trash; to prohibit the pollution of any stream, draw, drain, or tributaries thereof, water deposit and reservoir, whether about or below the ground, which may constitute the source or storage of water supply, and to provide for policing the same, as well as to provide for the protection of any watersheds and the policing of same; to inspect, license, and regulate dairies, cattle sales barns, slaughter pens and slaughterhouses, inside and outside the limits of the City, from which meat or milk is furnished to the inhabitants of the City; to require property owners to make connection to the sewer system with their premises, and to provide for fixing a lien against the property of property owners who fail or refuse to make sanitary sewer connections and to install such connections and charge the cost against said owner and make it a personal liability; by resolution, to adopt regulations for the care and sanitation of all toilets open for use to the public; to require the owners or occupants or lessees of vacant property to clean the same and, remove all trash and underbrush from the same, and, in the event that such owners, occupants or lessees fail to do so, to have the same cleaned and the trash and underbrush removed at the expense of the owners, and such charges shall constitute a lien against such property.

Sec. 13.16 Building regulations.

(a) *General:* The City may regulate the erection, building, placing, moving or repairing of buildings or other structures, within such limits of the City as it may designate and prescribe, in order to guard against the calamities of fire, flood, or windstorm, and may within said limits prohibit the moving or putting up of any building or other structure from one place to another within said limits, and may also prohibit the removal of any building or other structure from one place to another within said limits, and direct that all buildings or other structures within the limits so designated as aforesaid shall be made or constructed of fire-resistant materials, and may declare any dilapidated building or structure to be a nuisance and direct the same be repaired, removed or abated in such manner as they shall direct; to declare all buildings and other structures in the fire limits which they deem dangerous to contiguous buildings, or in causing or promoting fires, to be nuisances, and require and cause the same to be removed in such manner as they shall prescribe.

(b) *Building lines:* The City shall have the power, for the purpose of promoting the public health, safety, order, convenience, prosperity and general welfare, acting through its governing body, under the public power, to provide by suitable ordinance building lines on any streets or any block of any street or streets, and to require their observance by suitable penalties.

Sec. 13.17. Saving clause.

All powers granted heretofore to cities are hereby preserved. In case of any irreconcilable conflict between the provisions of this Charter and any superior law, the powers of the City and its officers shall be as defined in such superior laws. In case of any insufficiency or omission by this Charter, which insufficiency or omission may be supplied by reference to the general laws, such provisions of the general laws are hereby adopted, and the City shall have and exercise all of the powers that it could have acquired by expressly adopting and incorporating into this Charter all of the provisions of such superior and general laws, it being the intent of this Charter that no

lawful power of the City shall fail because of any omission, insufficiency or invalidity of any portion or portions of this Charter. The insufficiency or invalidity of any portion or portions of this Charter shall not in any wise affect the remainder of the Charter, but the same shall be construed as if adopted without such portion and/or portions so found invalid or impotent.

Sec. 13.18. Submission of Charter to voters.

(a) This Charter shall be submitted to the qualified voters of the City for adoption or rejection on April 4, 1967, at which election, if a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter, it shall then immediately become the Charter and governing laws of the City until amended or repealed.

(b) It being impracticable to submit this Charter by sections, it is hereby prescribed that the form of ballot to be used in such election shall be as follows, to wit:

FOR THE ADOPTION OF THE CHARTER

AGAINST THE ADOPTION OF THE CHARTER

(c) The present City Council of the City shall call an election in accordance with the provisions of the general laws of the State governing such elections, and the same shall be conducted and the returns made and results declared as provided by the laws of the State of Texas governing municipal elections, and in case a majority of the votes cast at such election shall be in favor of the adoption of such Charter, then an official order shall be entered upon the records of said City by the City Council, declaring the same adopted, and the City Secretary shall record at length upon the records of the City, in a separate book to be kept in his/her office for such purpose, such Charter as adopted and such secretary shall furnish to the Mayor a copy of the Charter, which copy of the Charter shall be forwarded by the Mayor as soon as practical to the Secretary of State under the seal of the City, together with a certificate showing the approval of the qualified votes of such Charter.

We do hereby certify that this publication constitutes a true copy of the proposed Charter of the City of Port Neches, Texas.

- Morris McCall, Chairman
- James A. Bowlin
- Alfred Weeks
- James Braud
- Stanley Humphrey
- Richard Cardwell
- Gordon Abry
- Gabe Farris
- Edwin Broussard
- Douglas Williams
- Mrs. T. O. Vernon
- Mrs. L. R. Fleming
- Bobby Roberts
- J. D. Collier
- Mrs. J. L. McGraw
- J. D. Evans
- Rev. Martin Lyons
- Bill Hubbard