

The City of Bryan

CHARTER REVIEW ADVISORY COMMITTEE



Report to the Bryan City Council

Tim Bryan, Chairman

June 28, 2017

1. SUMMARY

On behalf of the Charter Review Advisory Committee, I respectfully offer this report as the official and final record of our proceedings. Over the course of four meetings, we were able to review the City of Bryan's home-rule charter, evaluate possible revisions, and formulate guidance for moving forward. On the advice of our Special Counsel, the Committee took a limited, conservative approach to this task. At this time, the Committee recommends that some sections of the charter identified initially by city staff be modified, as specified in *Appendix "A"*. In addition, this report includes one proposition the Committee initiated without a staff request (see proposed amendment to Section 5 (j) (1) (a) 3). However, the Committee's members did not voice support for the propositions currently being circulated in a petition, for reasons stated in *Appendix "B"*. Our guidance will now be conveyed to Bryan's Planning & Zoning Commission (P&Z), Bryan's Business Council (BBC), and ultimately the City Council.

2. BACKGROUND

On May 16, 2017, the Bryan City Council appointed a seven-member citizen advisory group, known as the Charter Review Advisory Committee (CRAC), for the purpose of reviewing the City Charter and recommending proposed changes for final review and action by the City Council. The members of the Committee appointed by the Council were:

- Tim Bryan (Chairperson)
- Richard Cortez
- Gabriel Garcia
- Kenny Lawson
- Sonny Lyles
- George Nelson
- Jenita Rayford

3. COMMITTEE'S CHARGE

During the Committee's first meeting, Mayor Andrew Nelson delivered his charge and scope of work to the Committee, which is enclosed as *Appendix "C"*. In his charge, Mayor Nelson explained the importance of gathering professional advice and input through the Committee's process. He underscored the valuable role the committee was to play in working with city staff to review possible amendments to the charter, in addition to evaluating the proposed amendments currently being circulated on a petition by a specific purpose political committee. The Mayor asked the Committee to recommend modifications to the City Council that are deemed by the Committee's membership to be wise and beneficial to the City of Bryan. Lastly, Mayor Nelson expressed his preference that the Committee perform its function independently and without any interference (direct or indirect) from individual members of the City Council. He clearly preferred that our work be done without political pressure or council involvement of any kind. As chairman, I can report that the City Council members did not attend our meetings, and to my knowledge, honored the Mayor's request not to interfere in our deliberations.

4. STAFF RESOURCES

In order to ensure that the Committee had the proper support and institutional background, Mayor Andrew Nelson requested that City Secretary Mary Lynne Stratta and City Attorney Janis Hampton attend the meetings. City Attorney Hampton engaged Alan Bojorquez, Attorney at Law, to serve as Special Counsel to the Committee. As an expert in Municipal Law, Mr. Bojorquez was selected to serve as a neutral, objective resource to the Committee. His resume is provided as *Appendix "D"*. Furthermore, when the Committee began to assess the possible effects of certain potential amendments, we received input from staff members conveying feedback from the City's Economic Development Department, Planning Department, and office of the Chief Financial Officer.

5. LEGAL COUNSEL

Prior to evaluating specific provisions of the charter and suggested amendments, Mr. Bojorquez presented the Committee with an overview of the history of home-rule cities in Texas, and offered his perspective on how home-rule charters are best amended. A summary of that information is provided as *Appendix "G."* In essence, charters function much like constitutions in that they provide the basic framework for the municipal organization, identifying key offices, establishing essential duties, enumerating broad powers, and erecting certain limitations. Mr. Bojorquez cautioned the Committee against cluttering the charter with too many details that might unduly encumber current or future city councils, or prevent the City from being timely in responding to changes in the law, technology, or community priorities. Finally, Bojorquez urged the Committee to prioritize clarity, brevity and flexibility. Based in part on staff input and Bojorquez' legal guidance, as well as the Committee's own discernment, the Committee drafted the proposed amendments accordingly.

6. COMMITTEE MEETINGS

The Committee first convened on June 8, 2017, at which point the Committee developed a timeline that enabled the group to complete its tasks expeditiously, providing for three additional meetings to be held within the month: June 20th, June 26th; and June 28th. All meetings were held at the Bryan Municipal Building, commencing at 1:30 p.m.

Although the Committee is purely advisory and not empowered to take any final action that may be binding upon the City, all Committee meetings were conducted in accordance with the Texas Open Meetings Act. Agendas were posted in advance, minutes of the proceedings were prepared, and members of the public were allowed to attend the meetings. Members of the public were in attendance at some meetings. Copies of the agendas and minutes are provided as *Appendices "E" and "F"*, respectively.

7. COMMITTEE REPORT

In response to the Mayor's charge, the Committee produced this report, which includes a recommended draft of City Charter amendments, which is attached as *Appendix "A"*. The Committee held its final meeting on June 28, 2017, at which time its membership reviewed and approved this report. In approving its report, the Committee also recommended against supporting the proposed propositions currently being circulated by petition that are intended for the ballot in November.

8. CONCLUSION

The Committee recommends to the City Council that 13 sections of the charter be submitted to the voters for amendment consistent with the edits contained in *Appendix "A"*. In preparing these proposed amendments, Committee members expressed a mutual desire to offer charter amendments consistent with the norms common among most Texas cities. Committee members were also concerned with the practical and legal effects of any amendments, and the common sense application amendments on the citizenry. It is the will of the Committee that a charter amendment election be conducted on November 7, 2017, to ask the voters to approve these amendments.

We neither recommend nor do we support submitting to the voters any of the propositions currently being circulated by petition. We find them to be unnecessary and inappropriate for the reasons stated in *Appendix "B"*.

As a group, our work is concluded. We appreciate the opportunity granted by the City Council for us to serve as representatives of the public-at-large and as representatives of all five City of Bryan Single Member Districts. It was an honor to serve on the Committee, voicing our opinions at first individually, and finally as a collective. Not only were we able to build the consensus requested by

Mayor Nelson in the charge to the Committee, we also achieved unanimity in all respects. With all of the City's single-member districts represented, the Committee was able to reach complete agreement with all aspects of this report.

ACCEPTED & APPROVED by a vote of 7 (*ayes*) to 0 (*nays*) to 0 (*abstentions*).

Respectfully Submitted:

Tim Bryan, Chairperson
Charter Review Advisory Committee

APPENDICES:

- A. Committee's Proposed Amendments to Charter
- B. Committee's Critique of the Charter Amendment Petition
- C. Mayor's Charge to Committee
- D. Bojorquez Resume
- E. Agendas of Committee's Meeting
- F. Minutes of Committee's Meeting
- G. Explanation of Home-Rule in Texas
- H. City Charter (Side by Side) Showing Committee Recommendations

Appendix A

Appendix "A"

CHARTER REVIEW ADVISORY COMMITTEE

Committee's Proposed Amendments to Charter *Annotated*

June 28, 2017

Committee Note: City staff brought the following charter provisions to the Committee's attention (other than the suggested amendment to Section 5 (j) (1) (a) 3, which was initiated by the Committee). Having reviewed these sections and received briefings on these issues, the Committee recommends the following amendments.

Sec. 1. - Establishment and corporate powers.

(a) Powers. The inhabitants of the City of Bryan, Texas shall be a body politic and corporate by the name of the City of Bryan, shall have perpetual succession and may: ...

(12) Regulate the construction, height, maintenance, occupancy, and the material used in all buildings and structures;

Committee Note: This change was recommended by city staff to provide consistency with the City's current regulations, as found in the Bryan Code of Ordinances. The change also expands coverage to newer forms of technology, such as wireless communications towers.

Sec. 5. - City Council. ...

(g) Meetings. The City Council shall meet regularly ~~twice~~ once a month and more often on the call of the mayor or on the request of a majority of the councilmembers. ...

Committee Note: The charter should establish a minimum, but be flexible and leave the actual frequency of meetings to the discretion of the City Council.

(j) Duties. It shall be the duty of the City Council:

(1) To make its own rules of procedure and to enact all ordinances and resolutions and adopt all regulations for the conduct of the affairs of the city, provided that the affirmative vote of at least a majority of those attending any meeting at which there is a quorum present shall be necessary to adopt any ordinance or resolution, unless state law requires a vote of more than a majority.

(a) Council agenda.

1. The City Council shall identify items to place on the City Council meeting agenda and shall establish the order of the agenda.

2. ~~If Any~~ two City Council members desiring a particular item to be placed on the City Council agenda ~~shall~~ notify the City Secretary in writing. ~~The~~ item shall be placed on the agenda ~~as requested~~ subject to the order of the agenda set forth in (a)(1) above.

3. ~~This section of the charter supersedes any city Code of Ordinances with which it conflicts.~~ The City Council shall by ordinance, following annual City Council general elections, establish rules and procedures for conducting City Council meetings, including timing, location, and format. Those rules and procedures shall govern until replaced or

repealed. Absent an ordinance establishing rules and procedures, the provisions in this charter regarding conducting meetings shall apply by default.

Committee Note: The charter should provide for flexibility on how City Council meetings are conducted, and thus leave the format of City Council meeting agendas to the discretion of the City Council (as each new City Council is elected). The Committee supports the City Council's practice of establishing meeting procedures by ordinance, and finds that the current rules are adequate to ensure the public's business is conducted efficiently.

(l) Duties of the mayor. The mayor of the city shall:

- (1) Be the presiding officer of the City Council;
- (2) Perform the duties of a councilmember and have the right to vote on any matter before the council unless otherwise disqualified;
- (3) Sign all municipal bonds, deeds of conveyance, and all instruments where the executive head of the city shall be required to act;
- ~~(4) Have like power with a justice of the peace to administer oaths of office and other oaths pertaining to the affairs of the city;~~
- ~~(5) Have authority in case of riot or disaster, with a purpose to preserve peace and good order in the city, to order and enforce the closing of any place of public gathering or establishment that sells alcoholic beverages;~~
- ~~(6) Have the power to punish for contempt of the City Council, any City Councilmember or other person present at a City Council meeting by fine not to exceed \$100.00, and may enforce the fine in the same manner provided by law for the enforcing of fines by the county courts of this state; and~~
- ~~(7) Perform all other duties as may be imposed by this Charter and the ordinances of the city. ...~~

Committee Note: The exercise of these powers by a mayor in a home-rule city (administering the oath, and holding persons in contempt) are not supported by state law. Furthermore, the Committee finds these sections unnecessary for the efficient and effective operation of government.

(r) Councilmember independence.

- (1) Appointment or employment of relatives of Bryan City Councilmembers. No person related within the ~~first or second or third~~ degree of affinity (by marriage), or within the ~~first or second or third~~ degree of consanguinity (by blood), to members of the City Council shall be appointed or employed by the City Council to any paid office, position including appointed positions or service including contracted service, ~~paid or nonpaid~~ within the City. This prohibition excludes election workers.

Committee Note: This change makes the charter language consistent with the Texas Government Code, as applied to municipalities. The current language unduly restricts the ability of the City to conduct elections cooperatively with other local governments. Finally, the Committee finds the current language to be unduly restrictive of the City's ability to engage community volunteers.

- (2) Use of the prestige title of a city official's position. A city councilmember shall not, in any election, except his or her own, use the prestige title of the city official's position with the city on behalf of a candidate, political party, or political committee, except that a city official is not prohibited from lending his or her name so long as the office held with the city is not mentioned in any connection with the endorsement.

Committee Note: The current language is vague. It is presumed the intent is to avoid the undue influence of an official's public title.

(3) Campaign donations. An elected city official and candidates shall comply with the Fair Campaign Practices Act and the Texas Election Code. ~~not directly or indirectly discuss or vote or influence the vote on any matter that comes before the City Council that involves a campaign donor that has made any type of contribution direct or indirect to the city elected official's campaign funding greater than \$250.00 within 3 years before or after that elected official's current election date.~~

Committee Note: The current language is broad, vague, and unenforceable in light of 1st Amendment jurisprudence. Special Counsel has questioned the legality of this provision. Through the substitution of this language, the Committee seeks to encourage ethical behavior, but avoid infringing on Free Speech and remaining consistent with the Texas Election Code.

Sec. 9. - Ordinances.

(a) Form and introduction. Each proposed ordinance or resolution shall be introduced in written or printed form and shall not contain more than one subject, which shall be clearly stated in the title; except, that general appropriation ordinances may contain various subjects and accounts for which moneys are to be appropriated. ~~No ordinance, unless it is declared an emergency measure, shall be finally passed on the day of which it is first introduced.~~

(b) Style. The style of all ordinances of the City of Bryan shall be "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN".

~~(c) *Emergency measures.* An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety, or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble. No measure making a grant, renewal, or extension of a franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, shall be passed as an emergency measure.~~

Committee Note: State law does not require ordinances to be read more than once. State law requires more than one reading for certain types of actions (e.g., regarding property tax increases), but it is unnecessary to have such a requirement in the charter. The current language unduly restricts the City and hinders the ability of the City Council to be flexible and responsive to urgent matters that arise. It can also result in a need for an excessive number of special meetings.

Sec. 12. - Finance, annual budget, taxation and fees.

(a) Chief ~~Finance~~ Financial Officer. The city shall have a department of finance. There is created the office of Chief ~~Finance~~ Financial Officer who shall be head of the department of finance. The Chief ~~Finance~~ Financial Officer shall:

- (1) Be appointed and removed by the city manager;
- (2) Be qualified by training and experience in accounting, budgeting and financial control, auditing, and financial administration;
- (3) Perform functions as may be assigned by the city manager that are not inconsistent with this Charter.

Committee Note: This substitution simply provides for the correct title (which is currently in use).

Sec. 16. - Utilities; streets, avenues, alleys and highways; public works.

(a) Power to own. The city, at this time owning and operating its water, electric, and sewer systems, shall have the power to own, maintain, extend, construct, and reconstruct its water, ~~light~~ electric, and sewer systems, within or outside the city limits.

Committee Note: The antiquated term “light” should be replaced with the more modern term “electric.”

Committee Note: Finally, the Committee recommends to the City Council that the City submit to the voters a general *Clean-Up* provision that corrects punctuation, grammar, capitalizations, and replaces gender-specific language (to the extent doing so will not overly-complicate the ballot-drafting process).

Appendix B

Appendix “B”

CHARTER REVIEW ADVISORY COMMITTEE

Committee’s Critique of the Charter Petition

June 28, 2017

Committee Note: The Committee reviewed the ten propositions appearing in the petition that is currently being circulated among the community for signatures. We evaluated each of the proposals openly and objectively. However, no support arose among the Committee members for any of the propositions. While there may have been support for some of the objectives the petition sought to achieve, most of the opposition that was voiced questioned whether the charter was the proper means of pursuing those goals (see *Appendix “G”* on home-rule charters). Additionally, there were many legal and practical impediments with implementing some of the propositions.

According to Special Counsel to the Committee, a home-rule municipality “is empowered to adopt or amend its charter in any manner in which it may desire, consistent and in accordance with the state constitution and the general laws of this State.” *Burch v. City of San Antonio*, 518 S.W.2d 540,543 (Tex. 1975). Generally speaking, if a valid petition calling for a charter election is presented to the City, the proposed charter amendments typically must go before the voters. Under the process provided in Texas, the legality of the individual charter amendments is determined later (i.e., upon passage after the election). *In re Robinson* 175 S.W.3d 824 (Tex. App-Houston [1st Dist.] 2005) *citing In re Roof*, 130 S.W.3d 414 (Tex. App-Houston [14th Dist.] 2004). If a charter provision conflicts with a state law, the state law controls. Any action taken pursuant to the illegal proposition is *void ab initio* (municipal laws inconsistent with state law are *void ab initio*). *City of Wink v. Griffith Amusement Co.*, 100 S.W.2d 695, 698 (Tex. 1936.)

The Committee simply cannot in good faith recommend to the City Council that the City of Bryan put items before the voters when we have good reason to conclude in advance that certain items are impractical, inappropriate, or unlawful (and thus not legally enforceable). Therefore, the Committee rejects each proposition, and recommends against the petition.

Reprinted below (in substantially the same form) is a copy of the petition, with each of its propositions listed, followed by the Committee’s assessment.

Petition
For a Charter Amendment Election, to Amend the Charter of the City of Bryan

We, the undersigned, being more than five (5) percent of the qualified voters of the City of Bryan, pray that a Charter Amendment election be called and held within the boundaries of the City of Bryan at the next possible election date after this Petition is filed with the City Secretary and pray that the following amendment to the City of Bryan Charter be submitted at such election:

Propositions

Shall the following Sections of the Bryan City Charter be amended by adding:

1. Section 24: The City Council shall establish zoning ordinances to preclude housing of more than 2 unrelated adults in a dwelling located in a single-family residential zoned or planned development zoned area.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. Zoning is a legislative act reserved by state law for the City Council, exclusively. To enact this proposition would result in the unlawful delegation of legislative authority, and thus render the proposition unenforceable (according to legal advice provided by Special Counsel to the Committee). There is a sufficient means of addressing such issues through the current process established for the Planning & Zoning Commission (P&Z) and City Council. Furthermore, restrictions on the number of “unrelated” persons that may occupy a home must comply with federal rules stemming from the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act. Presently, the Texas Legislature is scheduled to consider (in special session) rules preempting municipal regulation of short-term rentals (in an effort to protect the ability of private property owners to generate income from their single-family houses). In this legal environment, it would be unwise to enact rigid rules in a charter that state law allows to be amended no more frequently than every two years.

2. Section 24: The City Council shall conduct a survey of property owners within 500 feet of any property to be rezoned or applying for a conditional use permit. Fifty-five percent or more of the property owners within 500 feet of the property must agree for the property to be rezoned or conditional use permit to be issued, otherwise, the rezoning or conditional use permit shall not be allowed.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. Zoning is a legislative act reserved by state law for the City Council, exclusively. To enact this proposition would result in the unlawful delegation of legislative authority, and thus render the proposition unenforceable (according to legal advice provided by Special Counsel to the Committee). There is a sufficient means of addressing such issues through the current process established for the P&Z and City Council.

3. Section 5, para (g): The City Council shall provide for and conduct a Hear Citizens period on the regular and special council meeting agenda at 6:00 pm. Each person must have signed up by 6:00 pm to speak. The speakers shall be allowed a minimum of three minutes for their presentations unless they do not follow the city rules of presentation conduct.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. This type of detailed mandate for meetings is uncommon in home-rule charters (according to survey information provided by city staff). The timing and format for City Council meetings should be left up to the City Council to determine. Committee members confirmed with Special Counsel and city staff that this level of detail about conducting City Council meetings is unnecessary and uncommon for inclusion in a charter. The subject of this proposition is more appropriate for an ordinance or resolution.

4. Section 5, para (g): The City Council shall conduct all regular meetings on the Second and Fourth Tuesdays of each month. If a holiday falls on one of those days the meetings will be held on the next available workday.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. This type of detailed mandate for meetings is uncommon in home-rule charters (according to survey information provided by city staff). The timing and format for City Council meetings should be left up to the City Council to determine. Furthermore, the term “holiday” is vague and undefined (e.g., Local? State? Federal?). Committee members confirmed with Special Counsel and city staff that this level of detail about conducting City Council meetings is unnecessary and uncommon for inclusion in a charter. The subject of this proposition is more appropriate for an ordinance or resolution.

5. Section 5, para (g): The City Council shall conduct all open sessions of the Regular and Special council meetings no earlier than 6:00 pm on the day of the meeting.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. This type of detailed mandate for meetings is uncommon in home-rule charters (according to survey information provided by city staff). The timing and format for City Council meetings should be left up to the City Council to determine. The charter should provide flexibility in order to allow meetings to be called at a time that is most appropriate under the circumstances. Committee members confirmed with Special Counsel and city staff that this level of detail about conducting City Council meetings is unnecessary and uncommon for inclusion in a charter. The subject of this proposition is more appropriate for an ordinance or resolution.

6. Section 16, para (w): The Travis Bryan Municipal Golf Course use, as a golf course, shall not be changed without a majority vote of the citizens held on a uniform election date.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. The future of a municipal asset such as a recreational space should be left up to the City Council with guidance from professional experts and ample input from the citizenry.

7. Section 33: The City Council shall establish rules and procedures to assign an equal number of members from each district to all City Boards, Commissions and Committees unless dictated by state law.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. While general proportionality is a worthy goal, implementing such a rule would be impractical and impose operational impediments. Furthermore, there is not a meaningful disparity of representation among the council districts (based on data provided by city staff).

8. Section 33: No person shall be appointed to more than two of the following: City Boards, Committees or Commissions or special committees. This rule excludes currently elected council members and the mayor.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. While broad participation among the citizenry is a worthy goal, implementing such a rule would be impractical and impose operational impediments. City Council should be entrusted to make the proper appointments in light of the pool of qualified, available volunteers.

9. Section 16, para (y): The City Council shall conduct an annual needs analysis of low to moderate income housing and develop an action plan from the analysis to address 15% of the needs each year with funding available.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. The mandate is vague in its requirement that an “action plan” be formulated, but would not require that any action occur. Creation of a plan would be expensive and must be outsourced to a consultant (according to city staff, which confirmed that such a level of in-house expertise does not currently exist). The Committee was informed by city staff of the concerns shared by the City’s financial advisor that implementing such a rigid funding rule would adversely affect the City’s bond rating, and thus result in higher interest rates for future bond packages. The policy decision of whether to commit city resources toward funding low to moderate income housing is a legislative decision that cannot be delegated (according to legal advice provided by Special Counsel to the Committee). Finally, the Committee concluded that the approval of this proposition would put the City of Bryan at a competitive disadvantage in the region.

10. Section 12, para (s): The City Council shall establish an additional fee to permits issued from 5% to 10% on the value of all new construction. There shall be a maximum limit of 10% for new commercial construction and 5% on new single family home construction. The permit fee shall be distributed as two thirds of the total collected for infrastructure repair and upgrades of drainage and sewer systems and one third for low to moderate income housing construction or repair.

Committee Note: This proposition is inappropriate for inclusion in a home-rule charter. The establishment of fees is a legislative decision reserved by law for the City Council, not the electorate. Administrative fees are intended to recoup some or all of the costs of administering a regulatory program. Administrative fees imposed for the purpose of generating revenue run the legal risk of being characterized as an *unlawful tax*, and thus are vulnerable to legal challenge.

The City's Chief Financial Officer conveyed information to the Committee that implementing this new fee would impose approximately \$9 million annually on builders, and have the effect of increasing the average cost of a new single-family home by \$5,000 (including homes that may be intended for the low-to-moderate income market). Another legal issue raised by Special Counsel is the intricate legal analysis required to determine if any particular allocation of public funds towards private property constitutes an unlawful grant of public funds in violation of the Texas Constitution, art. III, §52. Furthermore, the policy decision of whether to commit city resources toward funding low to moderate income housing is a legislative decision that cannot be delegated (according to legal advice provided by Special Counsel to the Committee). Additionally, this proposition has been preempted by state law. "Linkage fees" such as those created by this proposition, have been expressly prohibited by recent legislation (H.B. 1449, creating Tex. Loc. Gov't Code § 250.008).

Finally, the Committee concluded that the approval of this proposition would put the City of Bryan at a competitive disadvantage in the region.

Committee Note: The issues raised in the propositions listed in the petition are worthy of public discussion. However, for the many legal and practical reasons stated above, none of the propositions belong in our city's charter. Thus, the Committee opposes placing these propositions on a ballot for election.

Appendix C

**CHARGE AND SCOPE OF WORK OF
CHARTER REVIEW ADVISORY COMMITTEE
AS DELIVERED BY MAYOR ANDREW NELSON**

Esteemed Citizen Charter Review Advisory Committee Members:

First, I want to welcome you to City Hall and thank each one of you for volunteering to serve on this Citizen Charter Review Advisory Committee. Each of you is here not only because you generously volunteered to serve our community, but also because you were elected to serve in this capacity by a super-majority of the Bryan City Council, a reflection of the broad confidence our council has in each of you to do the work of this committee with integrity and competence. I would like to pay a special thank you to Tim Bryan who was unanimously selected to serve on this committee by the city council bearing his family name, and who has graciously agreed to chair the committee. I'd like to thank Bryan Senior City Staff and their teams for the assistance and expertise they will provide to the committee through this process, including City Secretary Mary Lynne Stratta and her staff, City Manager Kean Register and his staff, and City Attorney Janis Hampton and her staff.

I asked our council to start up a charter committee at a recent council meeting because every two years, the City of Bryan has the opportunity to adopt changes to the city "charter" which defines the fundamental structure of our local municipal government. Our city charter serves us locally much like constitutions serve our State and federal governments, or like by-laws serve corporations.

Such fundamental changes in a charter typically transcend personalities and existing councils and hit at the basic way we work across the spectrum of time to guide many iterations of city leadership. As such, changes should be made very thoughtfully, deliberately, and carefully after seeking both wise professional advice and wise citizen input. This is why I asked our council to create this committee, and this is where you will play such a valuable role for our community in working with our city staff to review the City Charter to recommend any appropriate Charter amendments to possibly include on the November 7, 2017, ballot and also review Charter amendments included on a petition being circulated by a specific purpose political action committee.

To assist you and city staff, our city attorney, Janis Hampton, has hired a highly experienced and respected outside independent legal expert, Alan Bojorquez, who will make himself available every step of the way to advise you through this process and assist you as necessary in the preparation and presentation of your recommendations. Likewise, our City Secretary, Mary Lynne Stratta, has invited experts with the Texas Municipal League to provide similar advice and support on good practice in municipal government. Ultimately, Mary Lynne, Janis and the outside experts will merely advise you, and then you, not them, will make the recommendations on modifications you consider to be wise and beneficial to the City of Bryan.

Once you have your preliminary recommendations complete, I ask that you present them to two existing Bryan citizen committees. I ask that you present those related to planning and zoning to our Planning and Zoning committee for their input, and present those potentially impacting business to our Bryan Business Council for their input. You should then present your final recommendations to the city council no later than July 25, 2017.

Ideally, your recommendations should be a broad consensus of your committee even if not unanimous. Where you have a majority without broad consensus, please note such exceptions and then present your final recommendations to the Bryan City Council July 25, 2017.

One final word. Ultimately, our city council will review and take action as appropriate on your recommendations, but until you present your final recommendations to the council, I and all other members of council will leave you in peace to do your job independently and without any direct or indirect interference in your work. No councilmembers should attend your meetings or make any attempt to communicate with you directly or through surrogates. The City Council will have our time to decide soon enough, but until that final meeting, your work should be done without political pressure or council involvement of any kind.

Again, on behalf of the City of Bryan and its city council, I thank you for your service in completing this important work for our community and look forward to hearing your recommendations soon.

Andrew Nelson
Mayor, City of Bryan
June 8, 2017

Appendix D

Resume for

Alan Bojorquez

Attorney at Law



Education:

Texas Tech University (Doctor of Jurisprudence '96, Master of Public Administration '96, Bachelor of Arts English / Political Science '90)

Abilities:

- Serve as City Attorney and Special Counsel
- Manage state-wide law firm of 16 attorneys
- Conduct Training at national and local seminars
- Provide Expert Witness testimony

Experience:

- Manager, Bojorquez Law Firm, PC ('02-present)
- Associate, Bickerstaff, Heath, *et al.* ('99-'02)
- Assistant General Counsel, Texas Municipal League ('97-'99)
- Staff Attorney, Texas General Land Office - Environmental Law Section ('96-'97)
- Law Clerk, City of Garland ('95)
- Law Clerk / Intern, City of Lubbock ('93-'95)

Professional Memberships:

- International Municipal Lawyers Association (State Chair- Texas)
- Scenic Texas (Board Member)
- Texas Center for Municipal Ethics (President)
- Texas City Attorneys Association (Board Member)

Publications:

- *Texas Municipal Law & Procedure Manual*, Texas Municipal Clerks Association (6th Ed)
- *The Stars at Night: Local Regulation of Outdoor Lighting*, Texas Tech Admin. Law Journal ('15)
- *Religious Displays in City Hall*, Texas Town & City magazine (September '14)
- *Open Government & the Net: Bringing Social Media into the Light*, Texas Tech Admin. Law Journal ('09)
- *U.S. Supreme Court Validates Moratoriums*, Texas City Attorney Association Newsletter ('02)
- *Sand Dollars: The Need for Coastal Erosion Prevention & Response in Texas*, State Bar of Texas Environmental Law Journal (Winter '99)

Presentations:

- *Fostering Integrity at City Hall*, TML Region 12 Seminar ('17)
- *Open Government: A Municipal Guide to Open Meetings & Open Records*, CapCOG ('16)
- *Integrity at City Hall: Ethics & Codes of Conduct*, New Mexico Municipal Attorney Association ('16)
- *Open Carry of Firearms: A Tale of Two Cities*, Advanced Government Law Conference, SBOT ('16)
- *Negotiation of Development Agreements*, UT Land Use Conference ('16)
- *Municipal Regulation of Outdoor Lighting*, International Municipal Lawyers Association ('15)
- *Legal Impacts of Social Media on Public Sector Organizations*, Certified Public Manager Program - Texas State University ('15)
- *City Officials Workshop*, Rio Grande COG ('15)
- *Board of Adjustment DOs & DON'Ts*, American Planning Association, Texas Conference ('14)

Honors:

- *Distinguished Public Administrator Award*, by the CenTex Chapter of the American Society for Public Administration ('17)
- *William P. Hobby Distinguished Lecture*, Texas Certified Public Manager Conference ('17)
- *Local Government Attorney in Private Practice Award* (Marvin J. Glink Award), by the International Municipal Lawyers Association ('16)
- *Merit Certification in Municipal Law*, by the Texas City Attorney Association ('09)
- *College of the State Bar of Texas* ('11-'17)
- *Outstanding Alumnus*, by Master of Public Administration Program, Texas Tech University ('05)
- Adjunct Professor of Political Science, Texas State University-San Marcos ('99-'03)



Appendix E

**CITY OF BRYAN
CHARTER REVIEW ADVISORY COMMITTEE
MEETING AGENDA
THURSDAY, JUNE 8, 2017 – 1:30 P.M.
BRYAN MUNICIPAL BUILDING
BASEMENT TRAINING ROOM
300 SOUTH TEXAS AVENUE
BRYAN, TX 77803**

- 1. Welcome – Mayor Andrew Nelson**
- 2. Introduction of CRAC Members**
- 3. Delivery of Scope of Work and Charge to CRAC – Mayor Nelson**
- 4. Presentation Regarding Foundation for and Purpose of a City Charter – Alan Bojorquez, Outside Legal Counsel, and City Attorney Janis Hampton**
- 5. Review of Proposed Timeline of Work – City Secretary Mary Lynne Stratta**
- 6. Discussion and Review of City Charter, Staff Suggestions for Recommended Charter Amendments, and Petition Initiated Charter Amendments**
- 7. Discussion Regarding Items for Next Agenda – Date of Next Meeting**
- 8. Adjourn**

**CITY OF BRYAN
CHARTER REVIEW ADVISORY COMMITTEE
MEETING AGENDA
TUESDAY, JUNE 20, 2017 – 1:30 P.M.
BRYAN MUNICIPAL BUILDING
BASEMENT TRAINING ROOM
300 SOUTH TEXAS AVENUE
BRYAN, TEXAS 77803**

- 1. Call to Order**
- 2. Presentation by Legal Counsel Alan Bojorquez Regarding City Charter as Requested by the Charter Review Advisory Committee**
- 3. Discussion and Recommendations Relative to Possible City Charter Amendments, Staff Suggestions for Recommended Sections of Charter for Review by Committee, and Petition Initiated Charter Amendments**
- 4. Discussion Regarding Items for Next Agenda – Date of Next Meeting**
- 5. Adjourn**

**CITY OF BRYAN
CHARTER REVIEW ADVISORY COMMITTEE
MEETING AGENDA
MONDAY, JUNE 26, 2017 – 1:30 P.M.
BRYAN MUNICIPAL BUILDING
BASEMENT TRAINING ROOM
300 SOUTH TEXAS AVENUE
BRYAN, TEXAS 77803**

- 1. Call to Order**
- 2. Approval of Minutes – June 8, 2017, Meeting**
- 3. Presentation by Legal Counsel Alan Bojorquez Regarding City Charter as Requested by the Charter Review Advisory Committee**
- 4. Discussion and Recommendations Relative to Possible City Charter Amendments, Staff Suggestions for Recommended Sections of Charter for Review by Committee, and Petition Initiated Charter Amendments**
- 5. Discussion Regarding Items for Next Agenda – Date of Next Meeting**
- 6. Adjourn**

**CITY OF BRYAN
CHARTER REVIEW ADVISORY COMMITTEE
MEETING AGENDA
WEDNESDAY, JUNE 28, 2017 – 1:30 P.M.
BRYAN MUNICIPAL BUILDING
BASEMENT TRAINING ROOM
300 SOUTH TEXAS AVENUE
BRYAN, TEXAS 77803**

- 1. Call to Order**

- 2. Approval of Minutes – June 20, 2017, and June 26, 2017, Meetings**

- 3. Presentation by Legal Counsel Alan Bojorquez Regarding City Charter and Possible Amendments as Requested by the Charter Review Advisory Committee**

- 4. Discussion and Recommendations Relative to Possible City Charter Amendments, Staff Suggestions for Recommended Sections of Charter for Review by Committee, and Petition Initiated Charter Amendments**

- 5. Discussion of Final Recommendations to City Council and Approval of Charter Review Advisory Committee Report to City Council**

- 6. Discussion Regarding Presentations to Planning and Zoning Commission, Bryan Business Council and the City Council Regarding Committee Recommendations**

- 7. Adjourn**

Appendix F

**CITY OF BRYAN
CHARTER REVIEW ADVISORY COMMITTEE
MINUTES OF MEETING
THURSDAY, JUNE 8, 2017 – 1:30 P.M.**

The citizen Charter Review Advisory Committee met on Thursday, June 8, 2017, in the basement training room of the Bryan Municipal Building. A notice of the meeting was posted at least 72 hours in advance in accordance with Section 551, Texas Government Code. Chair Tim Bryan and members Kenny Lawson, Gabriel Garcia, George Nelson, Jenita Rayford, Sonny Lyles and Richard Cortez were present. Also present were Special Counsel to the Committee Alan Bojorquez, City Attorney Janis Hampton and City Secretary Mary Lynne Stratta.

1. Welcome – Mayor Andrew Nelson

Chair Bryan opened the meeting at 1:30 p.m., welcomed the members and thanked them for agreeing to serve on the committee. Mayor Nelson also welcomed the members of the committee and thanked them for their service.

2. Introduction of CRAC Members

The members of the committee introduced themselves.

3. Delivery of Scope of Work and Charge to CRAC – Mayor Nelson

Mayor Nelson delivered the scope of work and charge to the committee, as follows: “Fundamental changes in a charter typically transcend personalities and existing councils and hit at the basic way we work across the spectrum of time to guide many iterations of city leadership. As such, changes should be made very thoughtfully, deliberately, and carefully after seeking both wise professional advice and wise citizen input. This is why I asked our council to create this committee, and this is where you will play such a valuable role for our community in working with our city staff to review the City Charter to recommend any appropriate Charter amendments to possibly include on the November 7, 2017, ballot, and also review Charter amendments included on a petition being circulated by a specific purpose political action committee.” Mayor Nelson also asked the committee to present their initial recommendations to the members of the Planning and Zoning Commission and the Bryan Business Council and obtain their feedback, since many of the propositions included on the petition will impact zoning and business development. Mayor Nelson stressed the importance of the Charter Review Advisory Committee working independently from political pressure or influence from sitting elected officials. Mayor Nelson then departed the meeting.

4. Presentation Regarding Foundation for and Purpose of a City Charter – Alan Bojorquez, Outside Legal Counsel, and City Attorney Janis Hampton

Mr. Alan Bojorquez introduced himself. He informed the committee his law firm only represents cities and does not currently represent any entity in Brazos County. He explained he was hired as independent counsel for the committee, that he does not know any of the Councilmembers, and that his job did not extend beyond working with the committee.

Mr. Bojorquez then explained that Texas is one of strongest states relative to municipal governance. He advised the Texas home rule statute was adopted in 1913 and described how voters choose to become a home rule city. He added when voters make the choice to be home rule, they decide to empower the city to

govern, and then look to the city charter on how the city will rule. Mr. Bojorquez also explained that home rule cities can do what they want, so long as state law does not expressly prohibit an act or function. Mr. Bojorquez explained that a city charter is the city's constitution and is how the city governs itself. A charter is a governing document and provides the framework for the city's operations. He explained the Texas Constitution was not a good example of a properly framed constitution, but the U.S. Constitution was, the reason being that the Texas Constitution is amended too frequently, whereas the U.S. Constitution is infrequently amended. He advised keeping the Bryan City Charter simple. He explained Bryan's Charter set forth a council-manager form of government for the City of Bryan. He said the Charter should provide a simple framework and then the election process should be allowed to work: Councilmembers are elected and those people are elected to govern. Mr. Bojorquez advised that details are best handled by ordinance because ordinances are easily changed. Charters are hard to change as they can only be changed by a vote of the people once every two years. He added that a great deal could happen in two years, and that whatever you put before the voters and they approve, you must live with those provisions for at least two years.

Mr. Bojorquez summarized that the best practice from a municipal law perspective was to have a charter that grants broad authority and imposes some restrictions. Then, he said, you should turn to your elected officials to make legislative decisions. He said it was unadvisable to put zoning decisions before the voters, because State law specifically gives that authority to the City Council, and the courts have ruled that you cannot take legislative authority away from the elected body and give it to the voters. He summarized that you cannot delegate legislative authority. Mr. Bojorquez also advised that you should not give voters the choice on issues that pose legal problems, citing possible large public expense to defend these legal problems. He cautioned strongly not to place these types of issues on the ballot or in the Charter, calling it a "recipe for disaster". He summarized it was "bad business" to saddle the City with litigation costs for the next ten to fifteen years.

Committee members posed several questions about city charters, home rule cities, the norm for charter provisions, etc. Following answers from Mr. Bojorquez, the committee discussed several aspects of home rule city governance and the types of provisions that should appear in a city charter. The committee also discussed the proper use of ordinances, resolutions, policies and procedures in city governance.

5. Review of Proposed Timeline of Work – City Secretary Mary Lynne Stratta

The City Secretary presented the November 7 election deadlines, stating it was important the Committee deliver its final report to the Bryan City Council no later than July 25, 2017. She advised this would allow just enough time for a certified interpreter to provide Spanish translations of the lengthy public notices that would be required to be published prior to the election, and also allow timely preparation of the ballot to begin mailing military and overseas ballots by the deadline imposed by state law. Questions posed by committee members were answered.

6. Discussion and Review of City Charter, Staff Suggestions for Recommended Charter Amendments, and Petition Initiated Charter Amendments

Mr. Bojorquez and Mrs. Hampton explained to the committee that if the Charter amendment petition being circulated was deemed sufficient, the City Council must place those propositions on the ballot, whether they are illegal or problematic. If any illegal or problematic propositions pass, the City will then have to address the legal implications involved.

The committee members then began a review of the sections of the Charter the City staff requested they review. Mr. Bojorquez stated that city council meetings belong to city councils, and that the Texas Open Meetings Act allows each council to establish its own agenda. He said only a small number of cities would have provisions relative to council meeting agendas and conduct in their charters, as most would establish

this by ordinance. It was pointed out the City of Bryan Council's current meeting conduct and agenda preparation guidelines are contained in an ordinance. Questions posed by committee members were answered.

The committee then began a review of the sections of the Charter the City staff had suggested be reviewed.

Regarding Section 1 (a) (12), staff explained adding the word "structures" would include cell towers, etc. The committee discussed this and indicated the requested revision seemed logical. Therefore, the committee recommended adding "and structures" to this section of the Charter.

The committee then discussed Section 5 (g) of the City Charter. Staff reported this item was included for the committee to review to determine if they wished to recommend the Charter be amended to allow the Council more flexibility regarding regular monthly meeting requirements to change the requirement for at least two regular meetings per month to one regular meeting per month, with special meetings called as needed. The committee was informed the Council had traditionally for several years held both regular monthly meetings on the same day in certain months of the year to accommodate spring break absences and holidays. The committee members discussed this requirement and it was opined that requiring only one regular meeting per month with special called meetings as needed would provide more flexibility for working individuals to be a member of the Council. Accordingly, after a lengthy discussion, the committee unanimously agreed to recommend this Charter section be changed to "The City Council shall meet regularly once a month and more often on the call of the mayor or on the request of a majority of the councilmembers."

Regarding Section 5 (j) (1) (a) 1, 2 and 3, staff explained that having two councilmembers be able to place items on a council agenda was not an issue. However, the issue was with the wording "The item shall be placed on the agenda as requested." The City Attorney explained that on occasion, two councilmembers had submitted agenda items where the wording of the agenda item did not comply with the requirements of the Texas Open Meetings Act. Also, at times two councilmembers submitting agenda items had requested the item(s) be placed on the open meeting agenda, when the item(s) needed to be discussed in executive session. The City Attorney explained that two councilmembers acting alone could not waive attorney client privilege for the entire Council by placing an item on the regular open agenda when it was actually an item for executive session legal advice. It was discussed again that the provision allowing two Councilmembers to place an item on the agenda was not the issue involved with this provision. The committee members posed several questions about these Charter provisions and debated the best way to clear up unintended consequences of this provision. After their discussion, the committee members recommended the wording be changed to the following in Section 5 (j) (1) (a) 2: "If any two city councilmembers desiring a particular item to be placed on the City Council agenda shall notify the City Secretary in writing, then the item shall be placed on the agenda subject to the order of the agenda as set forth in (a) 1 above."

The committee then discussed Section 9 (a) of the Charter. Staff explained requiring ordinances to be read twice and on two separate days slows down development and implementation of new regulations. It was explained that ordinances with a penalty provision would still require publication in the newspaper before the effective date even if the ordinances were adopted with only one reading. An example was given of the Texas Department of Transportation asking the City to temporarily lower a speed limit in a certain area. This would currently require two readings of the ordinance, on separate days, plus extra time for publication. It was also explained that should the Council need more time or there were changes to the ordinance, it would be brought back to the Council for a new "first and only" reading. The committee was informed that State law currently trumps the Charter as it relates to bond ordinances, in that those only require one reading by state law in order to timely sell the bonds and file paperwork with the Attorney General. The committee members debated whether there could be any consequences of changing to ordinance adoption after one reading only. Committee members opined that requiring only one reading for ordinance adoption would greatly facilitate the accomplishment of business, including citizen requested actions. After discussion, the

committee unanimously agreed to recommend to the Council moving to ordinance adoption following one reading of the ordinance. Therefore, this section should be changed by deleting “No ordinance, unless it is declared an emergency measure, shall be finally passed on the day of which it is first introduced.” Accordingly, it was noted Section 9 (c) should be deleted from the Charter.

Following discussion, the committee agreed unanimously to recommend changing “Chief Finance Officer” to “Chief Financial Officer” in all instances (in Section 12 and other references) to conform to industry standard.

To modernize language in the Charter, the committee unanimously agreed to recommend changing the word “light” to “electric” in Section 16 (a).

The committee also agreed unanimously that a “clean up” proposition to correct punctuation, grammar, capitalization, etc., was allowable if the electronic ballot format allowed sufficient space for this proposition.

7. Discussion Regarding Items for Next Agenda – Date of Next Meeting

The committee asked Mr. Bojorquez to be prepared to provide legal advice regarding certain sections of the Charter at the next meeting. Committee members all agreed they would continue the review of the sections of the Charter the staff had requested they review at the next meeting and once complete, would begin the review of the propositions contained in the petition being circulated by a specific purpose political action committee. It was announced the committee would next meet on June 20, 2017.

8. Adjourn

Without objection, the meeting adjourned at 2:45 p.m.

**CITY OF BRYAN
CHARTER REVIEW ADVISORY COMMITTEE
MINUTES OF MEETING
TUESDAY, JUNE 20, 2017 – 1:30 P.M.**

The citizen Charter Review Advisory Committee met on Tuesday, June 20, 2017, in the basement training room of the Bryan Municipal Building. A notice of the meeting was posted at least 72 hours in advance in accordance with Section 551, Texas Government Code. Chair Tim Bryan and members Kenny Lawson, Gabriel Garcia, George Nelson, Jenita Rayford, Sonny Lyles and Richard Cortez were present. Also present were Special Counsel to the Committee Alan Bojorquez, First Assistant City Attorney Thomas Leeper and City Secretary Mary Lynne Stratta.

1. Call to Order

The meeting was called to order at 1:30 p.m.

2. Presentation by Legal Counsel Alan Bojorquez Regarding City Charter as Requested by the Charter Review Advisory Committee

Mr. Bojorquez stated he would provide his comments under the discussion of agenda item 3.

3. Discussion and Recommendations Relative to Possible City Charter Amendments, Staff Suggestions for Recommended Sections of Charter for Review by Committee, and Petition Initiated Charter Amendments

The committee members continued the review of sections of the City Charter the staff requested be reviewed.

Regarding duties of the Mayor in Section 5 of the City Charter, committee members posed several questions. The committee discussed the information provided by Mr. Bojorquez regarding this Charter provision. The Committee members unanimously agreed to recommend Section 5 (l) (4), which states the Mayor has the authority to administer oaths, be stricken since this section does not comply with State law, per advice from Mr. Bojorquez. Likewise, the committee members all agreed Section 5 (l) (6), which states the Mayor has the power to punish for contempt of the City Council and assess a fine not to exceed \$100, should be stricken as Mr. Bojorquez reported there was no legal support for this provision.

Staff provided examples of situations that had arisen from the adoption of Sections 5 (r) (1), (2) and (3) in a Charter amendment election in 2014. Emails from the College Station City Secretary and the Brazos County Elections Administrator expressing concern about the loss of bilingual election workers as a result of the implementation of Section 5 (r) (1) were discussed by the committee. It was explained since all the governmental entities in Brazos County must conduct joint elections in November, the other governmental entities also lost bilingual election workers upon the implementation of this Charter provision. The State law contained in the Texas Election Code was provided, which indicates nepotism relative to election workers applies in the case of an opposed candidate on the ballot who is related to a poll worker. This Charter provision prohibits relatives of all Councilmembers, even those not appearing on the ballot, from working as an election worker. Committee members acknowledged that experienced bilingual election workers were necessary to the fair conduct of elections. After their discussion, the committee members felt the Charter provision should exempt election workers and the City should abide by State law in the appointment of

election workers. Mr. Bojorquez then advised this Charter provision was more restrictive than State law relative to nepotism in general, as the State law nepotism provision applies to relatives in the second degree by affinity, whereas this provision in the Charter applies to the third degree by affinity. Committee discussion also followed that the current wording of this provision does not state that it applies to City Council appointees only. Examples were given that this wording prohibited children from Councilmembers volunteering at the animal shelter or the spouse of a Councilmember working to beautify the graves of family members in the city owned cemetery. After a lengthy discussion among the committee members, they directed Mr. Bojorquez to provide proposition wording to amend this section of the Charter as follows: add "by City Council" to Section 5 (r) (1) thereby limiting this to Council appointees only; the provision in the Texas Election Code regarding nepotism and election workers be added, indicating election workers are exempt from this provision; the word "nonpaid" be deleted; and drop the third degree by affinity to second degree to reflect State law.

The committee then discussed Section 5 (r) (2) of the Charter and agreed unanimously with Mr. Bojorquez that the word "prestige" was difficult to define and clarify. A lengthy discussion of this item indicated that a slight wording change could provide clarity. Accordingly, the committee unanimously agreed to suggest the word "prestige" be changed to "title", making the intent of this provision clear.

The committee then discussed Section 5 (r) (3) of the Charter and reviewed State law relative to campaign contributions. It was explained the current provision was worded where the limitation of \$250 of any type of campaign contribution(s) prohibiting a Councilmember from voting was cumulative and had to be tracked over a six-year period. The committee reviewed and discussed excerpts from the Texas Election Code and the Fair Campaign Practices Act. Questions posed by the committee were answered. After their lengthy discussion and receiving legal advice from Mr. Bojorquez, the committee members all agreed to recommend this provision be stricken in its entirety and replaced with "(3) Campaign Donations. Elected officials and candidates shall comply with the Fair Campaign Practices Act and the Texas Election Code."

At the request of the committee, Mr. Bojorquez stated he would provide a report regarding Section 16, Utilities; Streets, Avenues, Alleys and Highways; Public Works, of the City Charter at the next committee meeting.

The committee then began a discussion of the propositions contained in a charter amendment petition being circulated by a specific purpose political action committee (see attached). Mr. Bojorquez opined that a city charter should not micromanage the city council or city manager. He again advised that a city charter serves as a city's constitution. He said that city councils should be able to set their own rules of procedures and those should not be included in a city charter. The committee discussed these basic premises of home rule city charters.

The committee discussed proposition number 10 on the petition, which states "Section 12, para (s): The City Council shall establish an additional fee to permits issued from 5% to 10% on the value of all new construction. There shall be a maximum limit of 10% for new commercial construction and 5% on new single family home construction. The permit fee shall be distributed as two thirds of the total collected for infrastructure repair and upgrades of drainage and sewer systems and one third for low to moderate income housing construction or repair." The committee was informed that House Bill 1449 passed the Texas Legislature and was signed into law by the Governor. Mr. Bojorquez explained HB 1449 specifically prohibits "linkage", or assessing a fee, such as increased building permit fees, to build residential housing; therefore, he said, proposition number 10 on the petition was unlawful and could not be enforced even if it was passed by the voters. Committee discussion followed and it was explained that it is also illegal to gift public funds. The committee spent considerable time discussing this petition. The committee consensus was that this proposition, assessing additional building permit fees, was not in the best competitive interest of the City of Bryan as it put the City at a disadvantage with other municipalities. Concern was expressed that new

construction would slow down significantly due to these increased fees. The committee asked that it be explained in its report that this proposition was not legal and could not be enforced even if approved by the voters.

The committee then discussed proposition number 9 on the petition, which reads “Section 16, para (y): The City Council shall conduct an annual needs analysis of low to moderate income housing and develop an action plan from the analysis to address 15% of the need each year with funding available.” Mr. Bojorquez stated that city councils routinely order studies and analyses with great frequency, but it is not typical to require these in charter language. He said he could not recommend support of petition proposition number 9 for a variety of reasons: funding, expenses, staff time, etc. He also pointed out the wording is problematic because the proposition language does not trigger any action following the annual analysis and plan development. Mr. Bojorquez explained that future city councils should not be bound to established annual funding by a charter provision and that doing so may pose legal issues in the future. He advised this proposition was not supportable legally or practically. The committee was informed about the housing programs administered through federal programs and funded through Community Development Block Grant and HOME funds, which target low to moderate income housing needs in the community. It was the committee’s opinion that outside the federally funded programs, the City should not be in the business of constructing or repairing low to moderate income housing. The committee also expressed concern about legal challenges to this provision in the future.

Discussion followed about proposition number 2 on the petition, which states “Section 24: The City Council shall conduct a survey of property owners within 500 feet of any property to be rezoned or applying for a conditional use permit. Fifty-five percent or more of the property owners within 500 feet of the property must agree for the property to be rezoned or conditional use permit to be issued, otherwise, the rezoning or conditional use permit shall not be allowed.” Mr. Bojorquez advised the committee this proposition was not legal in that it constituted an unlawful delegation of legislative authority. He explained that zoning decisions, per state law, are to be made by city councils, and that there is case law that expressly prohibits the delegation of legislative authority of elected councils to the voters. Therefore, he summarized, this petition provision is not lawful.

4. Discussion Regarding Items for Next Agenda – Date of Next Meeting

It was stated the committee would continue its review of the petition propositions and Section 16 of the City Charter at the next meeting to be held June 26, 2017.

5. Adjourn

Without objection, the meeting adjourned at 2:54 p.m.

Circulator:

Petition
For a Charter Amendment Election, to Amend the Charter of the City of Bryan

We, the undersigned, being more than five (5) percent of the qualified voters of the City of Bryan, pray that a Charter Amendment election be called and held within the boundaries of the City of Bryan at the next possible election date after this Petition is filed with the City Secretary and pray that the following amendment to the City of Bryan Charter be submitted at such election:

Propositions

Shall the following Sections of the Bryan City Charter be amended by adding:

1. Section 24: The City Council shall establish zoning ordinances to preclude housing of more than 2 unrelated adults in a dwelling located in a single-family residential zoned or planned development zoned area.
2. Section 24: The City Council shall conduct a survey of property owners within 500 feet of any property to be rezoned or applying for a conditional use permit. Fifty-five percent or more of the property owners within 500 feet of the property must agree for the property to be rezoned or conditional use permit to be issued, otherwise, the rezoning or conditional use permit shall not be allowed.
3. Section 5, para (g): The City Council shall provide for and conduct a Hear Citizens period on the regular and special council meeting agenda at 6 :00 pm. Each person must have signed up by 6:00 pm to speak. The speakers shall be allowed a minimum of three minutes for their presentations unless they do not follow the city rules of presentation conduct.
4. Section 5, para (g): The City Council shall conduct all regular meetings on the Second and Fourth Tuesdays of each month. If a holiday falls on one of those days the meetings will be held on the next available workday.
5. Section 5, para (g): The City Council shall conduct all open sessions of the Regular and Special council meetings no earlier than 6:00 pm on the day of the meeting.
6. Section 16, para (w): The Travis Bryan Municipal Golf Course use, as a golf course, shall not be changed without a majority vote of the citizens held on a uniform election date.
7. Section 33: The City Council shall establish rules and procedures to assign an equal number of members from each district to all City Boards, Commissions and Committees unless dictated by state law.
8. Section 33: No person shall be appointed to more than two of the following: City Boards, Committees or Commissions or special committees. This rule excludes currently elected council members and the mayor.
9. Section 16, para (y): The City Council shall conduct an annual needs analysis of low to moderate income housing and develop an action plan from the analysis to address 15% of the need each year with funding available.
10. Section 12, para (s): The City Council shall establish an additional fee to permits issued from 5% to 10% on the value of all new construction. There shall be a maximum limit of 10% for new commercial construction and 5% on new single family home construction. The permit fee shall be distributed as two thirds of the total collected for infrastructure repair and upgrades of drainage and sewer systems and one third for low to moderate income housing construction or repair.

This petition is signed in multiple pages, each of which is an original, which taken together, shall constitute a single petition.

Continued on reverse side

Revised: 05/17/2017

**CITY OF BRYAN
CHARTER REVIEW ADVISORY COMMITTEE
MINUTES OF MEETING
MONDAY, JUNE 26, 2017 – 1:30 P.M.**

The citizen Charter Review Advisory Committee met on Monday, June 26, 2017, in the basement training room of the Bryan Municipal Building, a notice of the meeting having been posted at least 72 hours in advance in accordance with Section 551, Texas Government Code. Chair Tim Bryan and members Kenny Lawson, Sonny Lyles, Jenita Rayford, Richard Cortez, George Nelson and Gabriel Garcia were present. Also in attendance were Special Counsel to the Committee Alan Bojorquez, First Assistant City Attorney Thomas Leeper and City Secretary Mary Lynne Stratta.

1. Call to Order

The meeting was called to order at 1:30 p.m.

2. Approval of Minutes – June 8, 2017, Meeting

It was requested the minutes be placed on the next agenda for consideration.

3. Presentation by Legal Counsel Alan Bojorquez Regarding City Charter as Requested by the Charter Review Advisory Committee

As requested by the committee, Mr. Bojorquez provided legal advice regarding Section 16 (c) and (f) of the City Charter relative to utilities. He said the lease of fiber space did not constitute the lease of the entire electric system; therefore, he recommended leaving the wording in Section 16 (c) as it currently exists. He also advised no edit was needed to Section 16 (f) as this section would apply to cable and telecommunication companies' infrastructure. Committee discussion followed regarding new State law permitting small node cell installation on publicly owned utility poles and in rights-of-way. After their discussion, the committee members unanimously agreed to recommend leaving the wording in Section 16 (c) and (f) as is.

4. Discussion and Recommendations Relative to Possible City Charter Amendments, Staff Suggestions for Recommended Sections of Charter for Review by Committee, and Petition Initiated Charter Amendments

The committee then discussed propositions contained in a Charter amendment petition being circulated by a specific purpose political action committee (see attached). At the committee's request regarding proposition number 10, City staff members from the Economic Development Department spoke about the potentially devastating impact this provision could have on development and building in the City. They reported that for the first time in many years, the City of Bryan had issued more residential building permits than College Station and opined the passage of this provision would have a drastic impact on this success. They advised the Chief Finance Officer for the City had estimated this proposition would increase building permit fees by about \$9 million per year, and had expressed concern this could have a damaging impact on future building in the City. Staff provided information that nationally indicated for every \$1,000 a home price increases, 20,000 families no longer qualify for a loan for that home. The committee expressed concern that builders will have to pass on additional fees to buyers, preventing many families from qualifying for home loans due to the increased cost of the homes. Mr. Bojorquez again advised the committee this petition proposition was not lawful, as a fee such as this cannot be assessed. (See committee meeting minutes of June 20, 2017.)

The committee discussed petition proposition number 9. The committee was advised the City's financial advisor had warned that as worded, this proposition would target the City's general fund, oil and gas funds, capital reserve funds and operating funds to this proposed low to moderate income housing program because these funds are all "funding available". He advised this would result in funding for low to moderate income housing taking precedence over all other discretionary needs. He said if the City takes the view that this program for low to moderate income housing takes precedence over other needs and cuts those other needs, there may be no impact on bond ratings or interest costs. However, he said if the City wants to maintain its current plans in the Capital Improvement Program to build needed infrastructure over the upcoming years while continuing to offer current services and programs, a tax increase would be required. He also said that if the City wants to maintain its current Capital Improvement Program plans and continue to fund other ongoing improvements as well, while adding this program to fund low to moderate income housing without raising taxes, the City's credit metrics would weaken resulting in higher borrowing costs. He advised a 50 basis point increase in interest rates would increase the City's borrowing costs by \$13.0 million over the next 20 years of borrowing. Ultimately, he indicated a tax increase would be required to maintain the City's current outstanding bond ratings if the City wanted to continue its infrastructure plans and current programs while adding this new program for low to moderate income housing. The committee then discussed this information passed along. Mr. Bojorquez cautioned that an important point was whether or not a city should get into the business of constructing and repairing low to moderate income housing, and that the decision on how much to spend on such a program should be left up to the legislative body elected by the citizens to make those decisions. He advised this proposal was "bad business" and also pointed out the wording in the petition proposition was so vague, legal battles could ensue if approved by the voters. Mr. Bojorquez stated that in the end, the wording in proposition 9 does not require the City Council to act beyond the annual analysis and plan development referenced in the proposition language. Mr. Bojorquez then advised to require the Council to commit to a certain amount of public funds per program per year through the City Charter is illegal. He advised that funds must be allocated through the budgeting process set out by State law; otherwise, funds are not available. A lengthy committee discussion followed that the wording of this petition proposition required an annual analysis and plan, but does not require implementation of the plan. Committee members expressed concern this would be a costly provision to implement as these analyses and plans would most likely require significant consultant and staff time on an annual basis, with no requirement for further action. Mr. Bojorquez again cautioned about the potential legal issues with this provision. Economic Development staff answered questions posed by committee members and again opined this proposition would be extremely detrimental to the City of Bryan. The committee discussed at length concerns about detrimental impacts to the future of the City of Bryan from this petition proposition. Mr. Bojorquez inserted into the discussion that the City Attorney is responsible for the interpretation of the City Charter.

In response to a request from the committee relative to petition proposition number 1, the City Planning Department staff provided the history regarding the definition of "family" in the zoning ordinance, the advent of the Residential-Neighborhood Conservation (RNC) District zoning designation, and citizens' current concerns about "stealth dorms". The committee was advised the Planning and Zoning Commission was currently working to address these concerns. It was mentioned college and university towns all over the country deal with these issues. The committee was also informed that RNC zoning takes many properties out of the market for starter homes and moderate income family homes. After committee discussion, Mr. Bojorquez said this was a good example of an issue that may be legitimate, but should not be in the City Charter. He advised zoning is a legislative act and ample case law exists that sets out that only city councils can make zoning decisions. Mr. Bojorquez then talked about three federal laws (the Americans With Disabilities Act, the Fair Housing Act, and the Federal Rehabilitation Act) that can void city ordinances restricting where people can live. He advised that courts are trending away from requirements about living in a set area. He also said the Texas Legislature has adopted a stance that can be called "ultra private property rights". Mr. Bojorquez then discussed recent State legislation that, if adopted, would have

prohibited a city from banning short-term rentals in single family neighborhoods. The committee was informed this issue is on the Governor's call for a special legislative session to begin July 18; hence, the State Legislature will be considering this again soon. He summarized this petition proposition was a bad idea and afforded no procedural safeguards for the City. He also said he feels this petition proposition is unlawful, and if it passes, the City is free to ignore it since it is unlawful to delegate the City Council's legislative authority to the voters. The committee discussed these issues at length, again opining this petition proposition was not in the City's best interest as well as being unlawful.

Mr. Bojorquez then advised that petition proposition number 2 also constituted an unlawful delegation of legislative authority. He advised that per state law, zoning decisions are ultimately up to the City Council. He said there is a very narrow area of zoning that falls on the shoulders of the Board of Adjustments. Mr. Bojorquez reported the Legislature had already built safeguards into the zoning enabling act and said that if this proposition passes, it is unenforceable. Committee members posed questions and discussed concerns with this petition proposition.

The committee then continued its discussion of the petition propositions listed above and unanimously agreed it could not recommend passage of propositions that were unlawful.

The committee then discussed petition propositions numbers 3, 4 and 5. Committee questions were answered. Following a lengthy discussion, it was the consensus of the committee that each City Council should be allowed to adopt its own rules for its own meetings, and these provisions should not be in the City Charter. The committee asked that Charter provision language to that effect be formulated for their consideration. Mr. Bojorquez advised it was not common for this specificity regarding meeting conduct be in a city charter. He said these rules of procedure should be set out in ordinance, resolution or policy. Accordingly, the committee members unanimously agreed they could not support petition propositions 3, 4 and 5.

A history of the Travis B. Bryan Municipal Golf Course was provided. Committee members' questions were answered. After discussion, the committee unanimously agreed that petition proposition number 6 relative to the golf course use did not belong in the City Charter. This committee consensus followed a discussion that State law already provided that a park could not be disposed of or changed to a non-recreational use without approval of the voters.

As to petition proposition number 7, City staff described the extensive recruitment efforts utilized annually by the staff to recruit minorities and a diverse group of applicants for board/committee/commission service. Committee members reviewed statistics regarding the number of applications received, the number of citizens appointed by single member district, and the number of individuals serving on more than one panel. The committee members discussed and opined the recruitment process in place was very thorough. Mr. Bojorquez advised there was no legal reason this provision could not be in the City Charter; however, he warned against tying board/committee appointments to Council seats, thereby politicizing these appointments. He cautioned against allowing ward politics to creep into the board/committee/commission appointment process. The committee was advised that the Council already had a resolution in place that stated the Council would attempt to have representatives from all single member districts on committees and boards, when at all possible. It was explained that the number of seats on committees and boards varied (some by State law), and that certain boards required people of specific backgrounds, employment, memberships, etc. For example, plumbers, electricians, engineers, architects, historical society members, veterinarians, etc., were required on certain panels. The committee felt that being able to meet these requirements was challenging and requiring these applicants live in a specific district could pose additional difficulties in filling these board/committee seats. Mr. Bojorquez advised it would be uncommon for this language to be in a charter. The committee discussed the social climate relative to work-family balance and

that finding time to volunteer can be difficult for working people. After its discussion, the committee agreed unanimously this provision should not be in the City Charter.

As to petition proposition 8, the committee discussed and unanimously agreed this provision did not fall into the type of provision that should be in a city charter.

5. Discussion Regarding Items for Next Agenda – Date of Next Meeting

Mr. Bojorquez advised he would have the committee's report to Council prepared for the committee's consideration at the next meeting. It was mentioned minutes of the committee meetings to date would also be available for the committee's review. The committee members discussed the process they would follow to complete their work. It was announced the next committee meeting would be held June 28, 2017, at 1:30 p.m. in the same location.

6. Adjourn

Without objection, the meeting adjourned at 2:55 p.m.

Circulator:

Petition
For a Charter Amendment Election, to Amend the Charter of the City of Bryan

We, the undersigned, being more than five (5) percent of the qualified voters of the City of Bryan, pray that a Charter Amendment election be called and held within the boundaries of the City of Bryan at the next possible election date after this Petition is filed with the City Secretary and pray that the following amendment to the City of Bryan Charter be submitted at such election:

Propositions

Shall the following Sections of the Bryan City Charter be amended by adding:

1. Section 24: The City Council shall establish zoning ordinances to preclude housing of more than 2 unrelated adults in a dwelling located in a single-family residential zoned or planned development zoned area.
2. Section 24: The City Council shall conduct a survey of property owners within 500 feet of any property to be rezoned or applying for a conditional use permit. Fifty-five percent or more of the property owners within 500 feet of the property must agree for the property to be rezoned or conditional use permit to be issued, otherwise, the rezoning or conditional use permit shall not be allowed.
3. Section 5, para (g): The City Council shall provide for and conduct a Hear Citizens period on the regular and special council meeting agenda at 6 :00 pm. Each person must have signed up by 6:00 pm to speak. The speakers shall be allowed a minimum of three minutes for their presentations unless they do not follow the city rules of presentation conduct.
4. Section 5, para (g): The City Council shall conduct all regular meetings on the Second and Fourth Tuesdays of each month. If a holiday falls on one of those days the meetings will be held on the next available workday.
5. Section 5, para (g): The City Council shall conduct all open sessions of the Regular and Special council meetings no earlier than 6:00 pm on the day of the meeting.
6. Section 16, para (w): The Travis Bryan Municipal Golf Course use, as a golf course, shall not be changed without a majority vote of the citizens held on a uniform election date.
7. Section 33: The City Council shall establish rules and procedures to assign an equal number of members from each district to all City Boards, Commissions and Committees unless dictated by state law.
8. Section 33: No person shall be appointed to more than two of the following: City Boards, Committees or Commissions or special committees. This rule excludes currently elected council members and the mayor.
9. Section 16, para (y): The City Council shall conduct an annual needs analysis of low to moderate income housing and develop an action plan from the analysis to address 15% of the need each year with funding available.
10. Section 12, para (s): The City Council shall establish an additional fee to permits issued from 5% to 10% on the value of all new construction. There shall be a maximum limit of 10% for new commercial construction and 5% on new single family home construction. The permit fee shall be distributed as two thirds of the total collected for infrastructure repair and upgrades of drainage and sewer systems and one third for low to moderate income housing construction or repair.

This petition is signed in multiple pages, each of which is an original, which taken together, shall constitute a single petition.

**CITY OF BRYAN
CHARTER REVIEW ADVISORY COMMITTEE
MINUTES OF MEETING
WEDNESDAY, JUNE 28, 2017 – 1:30 P.M.**

The citizen Charter Review Advisory Committee met on Wednesday, June 28, 2017, in the basement training room of the Bryan Municipal Building. A notice of the meeting was posted at least 72 hours in advance in accordance with Section 551, Texas Government Code. Board Chair Tim Bryan and members Kenny Lawson, Jenita Rayford, Richard Cortez, Sonny Lyles, George Nelson and Gabriel Garcia were present. Also in attendance were Special Counsel to the Committee Alan Bojorquez, Assistant City Attorney Jonathan Koury, First Assistant City Attorney Thomas Leeper and City Secretary Mary Lynne Stratta.

1. Call to Order

The meeting was called to order at 1:30 p.m.

2. Approval of Minutes

The committee discussed the draft minutes of the June 8, June 20, and June 26, 2017, committee meetings. After discussion, Mr. Lyles moved to approve the minutes with noted corrections. The motion was seconded by Mr. Lawson and carried unanimously.

3. Presentation by Legal Counsel Alan Bojorquez Regarding City Charter and Possible Amendments as Requested by the Charter Review Advisory Committee

Mr. Bojorquez' presentations requested by the committee were included in the discussions of agenda item 5 below.

4. Discussion and Recommendations Relative to Possible City Charter Amendments, Staff Suggestions for Recommended Sections of Charter for Review by Committee, and Petition Initiated Charter Amendments

The committee then discussed its desire to recommend the inclusion of a proposition relative to each Council's ability to establish its own rules of procedure. It was noted this was not a proposition submitted by the staff for the committee to consider, but rather originated with the committee. After a lengthy debate, the committee directed that the following proposition be included in its list of recommendations to the Council:

Section 5. City Council

(j) Duties. It shall be the duty of the City Council:

(a) Council agenda.

3. ~~This section of the charter supersedes any city Code of Ordinances with which it conflicts.~~ The City Council shall by ordinance, following annual City Council general elections, establish rules and procedures for conducting City Council meetings, including

timing, location, and format. Those rules and procedures shall govern until replaced or repealed. Absent an ordinance establishing rules and procedures, the provisions in this charter regarding conducting meetings shall apply by default.

Committee discussion of the remainder of this agenda item was entailed in the discussion of agenda item 5 below.

5. Discussion of Final Recommendations to City Council and Approval of Charter Review Advisory Committee Report to City Council

The committee then entered into a detailed review of the draft Charter Review Advisory Committee Report to the Bryan City Council (“the draft report”). Committee members expressed a mutual desire to be consistent with the norms of other home rule city charters.

The committee discussed sections 1, 2, 3, 4 and 7 of the draft report and indicated agreement with the wording in those sections as set out. Relative to section 5, the committee expressed a desire that it be included that staff input, Mr. Bojorquez’ legal advice, and, most importantly, the committee’s own discernment and deliberations were critical to the committee’s final recommendations. Relative to section 6 of the draft report, the committee wanted it noted that its meetings were posted in accordance with the Texas Open Meetings Act, open to the public, and that members of the public did attend the meetings. Relative to section 8 of the draft report, the committee asked it be noted that all City of Bryan single member districts were represented on the committee; and that in all respects, the committee was able to build consensus and achieved unanimity. As to Appendix A of the draft report, the committee reviewed each of its recommended propositions for Council consideration and agreed with the wording contained therein. The committee reviewed Appendix B of the draft report and asked for minor wording changes in various sections. Mr. Bojorquez indicated he would incorporate these changes in the final report to the City Council. The committee reviewed Appendix C, which outlines the charge to the committee delivered by the Mayor.

After this lengthy discussion and notations of the committee’s direction as to report content, Mr. Lyles moved to adopt the report subject to the edits cited during the meeting. The motion was seconded by Mr. Lawson. The Chair then conducted a roll call vote, with the voting results as follows: Mr. Lyles voted aye; Mr. Lawson voted aye; Mr. Cortez voted aye; Ms. Rayford voted aye; Mr. Garcia voted aye; Mr. Nelson voted aye; and Mr. Bryan voted aye; constituting a unanimous vote.

6. Discussion Regarding Presentations to Planning and Zoning Commission, Bryan Business Council and the City Council Regarding Committee Recommendations

Committee members all stated for the record that no members of the City Council or the Mayor had been in contact with them, nor did they indicate that they felt any type of interference or political pressure regarding their recommendations. They noted no elected officials used “emissaries” to attempt to influence committee members.

The committee members then entered into a discussion that indicated their findings were that most of the propositions included on a Charter amendment petition currently being circulated by a specific purpose political action committee are not contained in other cities’ charters.

The committee reviewed the calendar of events leading up to the delivery of the report to the City Council.

Discussion then followed that other than meeting with the Planning and Zoning Commission, the Bryan Business Council, and the City Council, the committee's work was substantially complete. Mr. Bojorquez informed the committee their work was not confidential so the committee members could feel free to discuss their findings and recommendations with the public.

The committee members then expressed concern that illegal propositions included on a petition must be placed on the ballot if the petition is deemed sufficient. It was opined this appeared to be a tremendous waste of time and resources, since unlawful propositions cannot be enforced even with voter approval. The committee opined a process should exist to prevent this from happening in the future. Mr. Bojorquez explained that as the law currently exists, unlawful propositions from a sufficient petition must appear on the ballot and, if passed by the voters, the governmental entity must expend funds later to deal with the aftermath.

Chair Bryan thanked everyone for their service as committee members. He and committee members also extended thanks to Mr. Bojorquez for his outstanding guidance and to City staff for providing support and information to the committee during its deliberations.

7. Adjourn

Without objection, the meeting adjourned at 2:44

Appendix G

Appendix “G”

Explanation of Home-Rule in Texas

There are two basic types of cities in Texas, *home-rule* and *general-law*. Most cities are small, general-law towns and villages. The City of Bryan, like most large municipalities, is home-rule. Of the nearly 1,200 cities in Texas, approximately 351 are home-rule.¹

A municipality with more than 5,000 inhabitants may seek home-rule status. Unlike a general-law municipality, a home-rule municipality has full power of local self-government that its voters grant under its charter. The only powers a home-rule municipality does and may not have are any powers that would conflict with a state statute, state constitutional provision, or federal law. Thus, a home-rule city can enjoy many inherent powers that have not been specifically granted by the state, just as long as the state has not specifically forbid them. As may be paraphrased from the Texas Supreme Court's ruling in *Forwood v. City of Taylor*:

Home-rule cities have full authority to do anything the legislature could theretofore have authorized them to do. The result is that it is necessary to look to the acts of the legislature not for grants of power to such cities but only for limitation on their powers.

Unlike counties, general-law cities, and special districts, the governmental structure of a home rule city is left largely to the discretion of local voters. Home-rule cities are created through the voters electing to approve a charter, a document that serves much like a constitution (or a nonprofit's articles of incorporation). The charter provides a framework for the basic form of government, officer positions, general powers, and certain limitations.

A home-rule city may amend its charter no more often than every two years. Thus, it is typically best to strive to keep the documents simple, and avoid overly-complicated rules and restrictions that may prove impractical or unlawful, and that saddle the municipality for two years or more.

A home-rule municipality "is empowered to adopt or amend its charter in any manner in which it may desire, consistent and in accordance with the state constitution and the general laws of this State."² Generally speaking, if a valid petition calling for a charter election is presented to the City, the proposed charter amendments typically must go before the voters. Under the process provided in Texas, the legality of the individual charter amendments is determined later (i.e., upon passage after the election).³ If a charter provision conflicts with a state law, the state law controls. Any action taken pursuant to the illegal proposition is *void ab initio* (municipal laws inconsistent with state law are *void ab initio*). *City of Wink v. Griffith Amusement Co.*, 100 S.W.2d 695, 698 (Tex. 1936.)

-Alan Bojorquez, Special Counsel, CRAC (2017)

¹ TEXAS HOME RULE CHARTERS, Terrell Blodgett (TML 2010).

² *Burch v. City of San Antonio*, 518 S.W.2d 540,543 (Tex. 1975).

³ *In re Robinson* 175 S.W.3d 824 (Tex. App-Houston [1st Dist.] 2005) citing *In re Roof*, 130 S.W.3d 414 (Tex. App Houston [14th Dist.] 2004).

Appendix H

The City of Bryan

CITY CHARTER



OFFICE OF THE CITY SECRETARY
NOVEMBER 2014

of the government of the State of Texas or any political subdivision of the State of Texas, to accomplish any lawful purpose for the advancement of the interest, welfare, health, morals, comfort, safety, and convenience of the city or its inhabitants; and

(17) pass ordinances that may be expedient for maintaining and promoting the peace, good government, welfare, and performance of the functions of the city.

(b) Powers from Other Law. The city shall have all powers granted to municipalities by the Constitution or laws of the State of Texas now or in the future; and all powers shall be exercised and enforced in the manner prescribed by this Charter, by ordinances, or by resolutions of the City Council.

Sec. 2. Boundaries.

The boundaries of the city shall be those established by ordinances of the City Council. The city secretary shall keep a correct and complete description of the city boundaries, indicating all annexations and disannexations.

Sec. 3. Annexation of Territory.

The City Council shall have power by ordinance to fix, alter, and extend the boundaries of the city and to annex additional territory lying adjacent to the city, with or without the consent of the inhabitants in the territory annexed. Public hearings shall be held and notices to the public provided in accordance with State law relative to annexation by municipalities. Upon the final passage of an annexation ordinance, the boundaries of the city shall include the territory annexed by the ordinance. When any additional territory is annexed, it shall be a part of the city, and bear its pro rata part of the taxes levied by the city, and the inhabitants shall be citizens of the city and shall be bound by the acts, ordinances, resolutions, and regulations of the city.

Sec. 4. Form of Government.

The governing and lawmaking body of the city shall consist of a mayor and six councilmembers and shall be known as the "City Council." The City of Bryan shall operate under the council-manager form of government.

Sec. 5. City Council.

(a) Powers. All legislative and executive powers of the city shall be vested in the City Council and shall be exercised in the manner provided in this Charter and state law.

(b) Elected. The mayor and one councilmember shall be elected by the qualified voters from the city at large, and five councilmembers shall be elected from single member districts by the qualified voters from each of the five City Council districts as provided in Section 7.

(c) Qualifications. The councilmembers shall:

- (1) be resident citizens of the city;
- (2) be registered to vote in the city at the time of filing for elected office;
- (3) not hold any other office of emolument;
- (4) not have a financial interest in any contract, job, work, or service of or to the city, or the sale to the city of any supplies, equipment, material, or real or personal property; and
- (5) if elected to place 1, 2, 3, 4, or 5, be a resident of the corresponding district.

(d) Terms; Limitation on Consecutive Terms.

(1) Councilmembers and the mayor shall serve terms of three years or until their successors have been elected and qualified.

(2) A person who has served as a councilmember, other than mayor, for two consecutive terms shall not again be eligible to become a candidate for, or to serve as, a councilmember until the next general election after the second consecutive term has expired.

(3) A person who has served as mayor for two consecutive terms shall not again be eligible to become a candidate for, or to serve as, mayor until the next general election after the second consecutive term has expired.

(4) A person who has served four consecutive terms as mayor and City Councilmember shall not again be eligible to become a candidate for, or to serve as, mayor or councilmember until the next regular election after the fourth consecutive term has expired.

(5) Service as a councilmember or mayor will not be counted in determining the number of consecutive terms served if the service was for only a part of a term.

(e) Vacancies. Vacancies in the City Council shall be filled by a special election for the remainder of the unexpired term. The special election to fill a vacancy shall be held on the next uniform election date set out by state law and allowing sufficient time to order said special election in accordance with state law.

(f) Salary. Each member of the council shall receive an annual salary of \$120.

(g) Meetings. The City Council shall meet regularly twice a month and more often on the call of the mayor or on the request of a majority of the councilmembers.

(h) Promotion of Welfare. The City Council shall promote the welfare of the city and its inhabitants, subject only to federal law, the constitution and laws of this state, and the provisions of this Charter.

(i) Quorum. The majority of all elected members of the council shall constitute a quorum.

(j) Duties. It shall be the duty of the City Council:

(1) to make its own rules of procedure and to enact all ordinances and resolutions and adopt all regulations for the conduct of the affairs of the city, provided that the affirmative vote of at least a majority of those attending any meeting at which there is a quorum present shall be necessary to adopt any ordinance or resolution, unless state law requires a vote of more than a majority.

(a) Council agenda.

1. The City Council shall identify items to place on the City Council meeting agenda and shall establish the order of the agenda.

2. Any two City Council members desiring a particular item to be placed on the City Council agenda shall notify the City Secretary in writing. The item shall be placed on the agenda as requested.

3. ~~This section of the charter supersedes any city CODE OF ORDINANCES with which it conflicts.~~

(2) to see that all laws and ordinances of the city are enforced;

(3) to see that all other officers of the city faithfully and efficiently discharge their duties;

(4) to create the departments of service in the governmental and ministerial affairs of the city for City Council appointees; and

(5) the City Council shall cause an independent audit of the books of accounts and of all records and transactions of the administration of the affairs of the city. The audit shall be made annually for each fiscal year by a certified public accountant. The City Council shall also cause an annual financial statement to be prepared.

(k) Removal. Any member of the City Council may be removed for the same causes and in the same manner as county officers under the laws of the state.

Section 5(g) – Charter Review Advisory Committee recommendation was that Council should meet regularly at least once per month and then in called special meetings as needed, as this would give working individuals more flexibility in serving on the Council. Charter Review Advisory Committee recommendation: Change wording to: “The City Council shall meet regularly once a month and more often on the call of the mayor or on the request of a majority of the councilmembers.”

Section 5(j)(1)(a)1, 2 and 3 - After discussion, the Charter Review Advisory Committee recommended the wording be changed to the following:

“2. If any two city councilmembers desiring a particular item to be placed on the City Council agenda shall notify the City Secretary in writing, then the item shall be placed on the agenda subject to the order of the agenda as set forth in (a) 1 above.

3. The City Council shall by ordinance, following annual City Council general elections, establish rules and procedures for conducting City Council meetings, including timing, location, and format. Those rules and procedures shall govern until replaced or repealed. Absent an ordinance establishing rules and procedures, the provisions in this charter regarding conducting meetings shall apply by default.”

(l) Duties of the Mayor. The mayor of the city shall:

(1) be the presiding officer of the City Council;

(2) perform the duties of a councilmember and have the right to vote on any matter before the council unless otherwise disqualified;

(3) sign all municipal bonds, deeds of conveyance, and all instruments where the executive head of the city shall be required to act;

~~(4) have like power with a justice of the peace to administer oaths of office and other oaths pertaining to the affairs of the city;~~

(5) have authority in case of riot or disaster, with a purpose to preserve peace and good order in the city, to order and enforce the closing of any place of public gathering or establishment that sells alcoholic beverages;

~~(6) have the power to punish for contempt of the City Council, any City Councilmember or other person present at a City Council meeting by fine not to exceed \$100, and may enforce the fine in the same manner provided by law for the enforcing of fines by the county courts of this state; and~~

(7) perform all other duties as may be imposed by this Charter and the ordinances of the city.

(m) General Police Force. Whenever the mayor determines it is necessary to enforce the laws of the state or of the city, to avert danger, or protect life or property, in case of riot or disaster, or any other danger to the city or its inhabitants, the mayor may summon into service, as a general police force, all or as many citizens of the city as necessary and proper. The summons may be by proclamation or order addressed to the citizens generally or to any subdivision of the city, by personal notice, citation, or publication in a newspaper in the city. The general police force, while in service, shall be subject to the orders of the police chief or his/her designee and will be utilized to augment the regular police force. Members of the general police force will work under the direct supervision of a member of the regular police force. Any person so summoned and failing to obey, or appearing and failing to perform any duty that may be required by this article, shall be fined by the mayor in any sum not exceeding \$500.

(n) Enforcement. All processes necessary to enforce the powers conferred by this section shall be signed by the mayor and attested by the person acting as city secretary, and may be served by any police officer of the city or any state officer authorized to serve court process.

(o) Mayor Pro Tem. The City Council may provide for a mayor pro tem who shall preside in the

Strike Section 5 (l) (4) as this section is not in compliance with State law.

Strike Section 5 (l) (6) as there is no legal support for this provision.

absence of the mayor, and shall perform all other acts that the mayor could perform if the mayor were present, except as otherwise limited by this Charter.

(p) Status of Officers and Employees. No contract shall be made which binds the city to pay for personal services to be rendered by any stated period of time, except as otherwise provided in this Charter. All officers and employees of the city, other than the councilmembers and mayor, shall be appointed and shall be subject to discharge at the will of the appointing authority, except as otherwise provided in this Charter.

(q) Employee Salaries. The City Council shall annually establish the salaries and wages and provide for the payment of all appointive officers and employees of the city through the budget adoption process.

(r) Councilmember Independence.

(1) Appointment or employment of relatives of Bryan City Councilmembers. No person related within the first or second or third degree of affinity (by marriage), or within the first or second or third degree of consanguinity (by blood), to members of the City Council shall be appointed or employed to any office, position including appointed positions or service including contracted service, paid or nonpaid within the City.

(2) Use of the prestige of a city official's position. A city councilmember shall not, in any election, except his or her own, use the prestige of the city official's position with the city on behalf of a candidate, political party, or political committee, except that a city official is not prohibited from lending his or her name so long as the office held with the city is not mentioned in any connection with the endorsement.

~~(3) Campaign Donations. An elected city official shall not directly or indirectly discuss or vote or influence the vote on any matter that comes before the City Council that involves a campaign donor that has made any type of contribution direct or indirect to the city elected official's campaign funding greater than \$250 within 3 years before or after that elected official's current election date.~~

Sec. 6. Contracts and Purchases.

Except as provided in this subsection, all contracts or purchases must be made in compliance with competitive bidding or competitive proposal requirements established by state law. The City Council may, by ordinance, set a figure above which any contracts or purchases must be approved in advance by the City Council. The manner of giving

Charter Review Advisory Committee recommendations after discussion:

“(1) *Appointment or employment of relatives of Bryan City Councilmembers.* No person related within the second degree by affinity (by marriage), or within the third degree by consanguinity (by blood), to members of the City Council shall be appointed or employed by the City Council to any paid office, position, including appointed positions, or service, including contracted service, within the City. This prohibition excludes election workers.”

Section (2) Change “prestige” to “title”.

Section (3) Campaign Donations. Will replace in its entirety with “Elected officials and candidates shall comply with the Fair Campaign Practices Act and the Texas Election Code.”

notice of contracts as provided by ordinance shall be controlling to the extent permitted by state law. All contracts and purchases shall be handled in a manner to obtain the best value for the city.

Sec. 7. Elections.

(a) **Date.** Regular municipal elections shall be held on a uniform election date set out in state law.

(b) **Order and Notice.** All elections conducted by the City shall be ordered and notice provided in accordance with state law.

(c) **Nonpartisan Ballot.** The ballots used in the election shall be without party or partisan designation. The positions on the ballot shall be drawn by the city secretary.

(d) **City Council Districts.** The city shall be divided into five City Council single member districts. Following each federal decennial census or more often if required by annexations or disannexations, the City Council shall, by ordinance, adjust the boundaries of the City Council districts using legally appropriate criteria for determining where to place boundary lines. The City Council shall hold one or more public hearings before voting on a proposed plan.

(e) **Election to Places and Districts.** The members of the City Council, which include the mayor and six councilmembers, shall be elected, hold office, and be compensated as provided in this Charter.

(1) Five councilmembers shall be elected by the qualified voters residing in a City Council district. Each district councilmember shall be elected to and occupy a place on the council that corresponds to the number of the district from which the councilmember is elected. These five places shall be numbered 1, 2, 3, 4, and 5. The districts shall be numbered clockwise around the city, beginning with District 1 in the west portion of the city.

(2) The mayor and one councilmember shall be elected by the qualified voters of the entire city at-large. The at-large councilmember shall be elected to and occupy place 6 on the council. The places of the councilmembers shall be designated on the official ballot as councilmember place(s) 1, 2, 3, 4, 5, and 6.

(f) **Residency Requirements.** To become a candidate for the City Council from a single member district (places 1, 2, 3, 4, or 5), a person must have resided continuously within that district for at least six months immediately preceding the deadline for filing for a place on the ballot. A councilmember elected from a single member district must remain a resident of that district throughout the term of office. To become a

candidate for mayor or City Councilmember place 6, a person must have resided continuously within the city for at least six months immediately preceding the deadline for filing for a place on the ballot and remain a resident of the city throughout the term of office.

(g) Staggered Three-year Terms. The mayor and councilmembers shall be elected for three-year terms or until their successors are elected and qualified.

(h) Runoff Elections.

(1) Process. Should any candidate running for mayor or councilmember fail to receive a majority vote of all votes cast at the election, a runoff election shall be ordered for each place in which no one received a majority. In a run-off election, the two candidates who received the highest number of votes for each place in which no one received a majority of the votes cast, shall be voted on again and the candidate who receives the majority of the votes cast for each place in the run-off election is elected to the place.

(2) Date of Run-off. Run-off elections shall be held on a date allowed by state law.

(3) Death or Withdrawal of Candidate. If a runoff candidate withdraws or dies, the remaining candidate is considered elected and the runoff election for that office is not held.

(i) State Law. Except as provided otherwise in this Charter, the conduct of elections in the city shall conform to the Texas Election Code.

(j) Polling Places. The City Council may, from time to time, create and designate such polling places within the city as it determines is proper.

(k) Voters. Every person who is a qualified voter in the city under the laws of the State of Texas shall be entitled to vote for:

- (1) the mayor and councilmember, place 6; and
- (2) a councilmember in place 1, 2, 3, 4, or 5, corresponding to the district in which the voter resides.

(l) Special Elections. Special elections shall be ordered in compliance with state law.

Sec. 8. Appointive Officers - Charter Officers Appointed by City Council.

(a) Appointments.

(1) The City Council shall appoint a city manager, municipal court judge, city attorney, and city

secretary who shall hold their respective offices at the pleasure of the City Council.

(2) The city manager shall appoint and remove all other employees of the city.

(b) City Manager.

(1) Appointment and Term. The City Council shall appoint a manager whose term of office shall be governed by the will and pleasure of the City Council. In addition to the duties described in this Charter, the City Council shall prescribe duties of the city manager by ordinances and resolutions that are not inconsistent with this Charter. The City Council may enter into an employment contract with the city manager that prescribes the conditions of employment as the City Council determines appropriate. The employment contract of the city manager may include a definite term that does not exceed five years, but which is renewable.

(2) Duties. The city manager shall:

- a. be the chief administrative officer of the city;
- b. receive such compensation as may be provided by the City Council;
- c. be subject to removal by the City Council in accordance with the city manager's employment agreement, if any, or this Charter and the city manager may demand written charges and a public hearing before the City Council, at any time between the issuance of the order of removal and the date on which it takes effect;
- d. be responsible to the City Council for the proper administration of all the affairs of the city;
- e. make recommendations to the City Council on all matters concerning the administration of the city;
- f. establish and supervise city departments, make contracts for supplies and routine service, and disburse funds under such regulations as the City Council may prescribe;
- g. make regular reports in writing to the City Council, and make such special reports as the City Council may from time to time request;
- h. attend all meetings of the City Council, either in person or by designee, and take part in discussion of matters pertaining to the city, but have no vote;
- i. from time to time, make recommendations to the City Council and keep it fully advised as to all matters pertaining to the city; and
- j. devote full time to the service of the city and never have any private interest, directly or indirectly, in any contract with the city or to which the city is a party.

(c) City Secretary. The city secretary shall:

(1) unless excused by the City Council for good cause, attend all meetings of the City Council and keep accurate minutes of its proceedings;

(2) preserve and keep in order all books, papers, documents, records and files of the City Council;

(3) authenticate by signing and recording all ordinances and resolutions;

(4) serve as chief election officer for the city and be responsible for the conduct of elections in accordance with this Charter and applicable state laws; and

(5) perform such other duties as the Charter or the City Council may provide.

When authorized by the City Council, the city secretary may appoint assistants, subject to approval of the council, who may assist in the performance of any of these functions.

(d) City Attorney. The city attorney shall have practiced as an attorney at law for at least two years in the State of Texas and shall be an attorney licensed by the State Bar of Texas. The city attorney shall:

(1) be chief legal advisor of, and attorney for, the city;

(2) attend all meetings of the City Council unless excused by the City Council for good cause, and when requested give advice in writing to the City Council, the city manager, the city secretary, and all other officers of the city;

(3) prosecute or defend, as the case may be, all suits or cases to which the city is a party;

(4) attend sessions of the municipal court in person or by deputy, and prosecute all persons charged with offenses in that court;

(5) approve the form of all official bonds, and of all contracts to which the city is a party; and

(6) render such other professional legal service as required by the City Council.

When authorized by the City Council, the city attorney may appoint assistants, subject to the approval of the City Council.

(e) City Internal Auditor. The City Council may appoint a City Internal Auditor, who shall serve at the pleasure of the City Council. The City Council shall establish the duties and operating procedures of the City Internal Auditor by ordinance. The City Council may enter into a contract for the duties of City Internal Auditor to be carried out by an outside firm, if it so chooses.

(f) Officer Requirements and Benefits.

Qualifications, duties, salaries, and benefits of all appointed officers of the city shall be prescribed by the City Council in accordance with the provisions of this Charter. No person related to the mayor, a councilmember, or a council appointee within the third degree by consanguinity or within the second degree by affinity shall be appointed to a position that is to be compensated from public funds.

Sec. 9. Ordinances.

(a) Form and Introduction. Each proposed ordinance or resolution shall be introduced in written or printed form and shall not contain more than one subject, which shall be clearly stated in the title; except, that general appropriation ordinances may contain various subjects and accounts for which moneys are to be appropriated. ~~No ordinance, unless it is declared an emergency measure, shall be finally passed on the day of which it is first introduced.~~

(b) Style. The style of all ordinances of the City of Bryan shall be "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN".

~~**(c) Emergency Measures.** An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety, or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble. No measure making a grant, renewal, or extension of a franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, shall be passed as an emergency measure.~~

(d) Publication. The caption, penalty, and effective date of every ordinance imposing a penalty or fine for violation of its provisions, shall, after its passage, be published in a newspaper of general circulation in the city, and shall not take effect until the publication has been completed. The city secretary, or other officer performing the duties of city secretary, shall note on ordinances that are required to be published, the fact that they have been published as required by the Charter and the date of publication, which shall be prima facie evidence of publication. The provisions of this section shall not apply to a revision or codification of the ordinances of the city as the City Council may, from time to time, adopt.

(e) Effective Date. All ordinances not required to be published under Subsection (d), shall go into effect immediately upon final passage.

(f) Authentication and Recording. Upon becoming effective, every ordinance or resolution shall

Sec. 9(a) - After discussion the Charter Review Advisory Committee recommendation is to recommend to Council moving to ordinance adoption following one reading only. Therefore, this section should be changed by deleting "No ordinance, unless it is declared an emergency measure, shall be finally passed on the day of which it is first introduced."

Sec. 9(c) - Should be deleted in keeping with Sec 9 (a) above.

be recorded and authenticated by the signature of the mayor and attested by the officer exercising the duties of the city secretary.

Sec. 10. Initiative.

(a) **Petition.** Any proposed ordinance may be submitted to the City Council by a petition signed by qualified voters of the city equal in number to 10 percent of the qualified voters of the city as appears in the county voter registration records as of the January 31st preceding the date of submission of the petition. The signatures to the petition need not all be appended to one paper, but in addition to a signature, the petition shall contain each signer's printed name, voter registration number, place of residence, giving street and number, and date of signing. One of the signers to each paper shall make an oath before an officer authorized to administer oaths that the statements in the petition are true and each signature to the paper appended is the genuine signature of the person whose name appears.

(b) **Submission to City Council.** Within 10 business days from the date of filing of the petition, the city secretary shall examine the petition and ascertain whether it is signed by the requisite number of qualified voters and shall attach to the petition the city secretary's certificate showing the result of the examination. If the certificate shows the petition is insufficient, it may be amended within 10 business days from the date of the certificate, then the city secretary shall examine the amended petition within 10 business days after the amendment is submitted. If the city secretary's certificate shows the amended petition to be insufficient, a copy shall be returned to the person filing it without prejudice to the filing of a new petition to the same effect. If the petition is found to be sufficient, the city secretary shall submit the petition to the City Council without delay.

(c) **Sufficiency.** If the petition accompanying the proposed ordinance is signed by voters equal in number to 10 percent of the qualified voters of the city as appears from the county voter registration records as of the January 31st preceding the date of submission of the petition and contains a request that the ordinance be submitted to a vote of the people at a special election, the City Council shall either:

- (1) Pass the ordinance without alteration within 20 days after the attachment of the city secretary's certificate of sufficiency to the petition; or
- (2) proceed to call a special election at which the ordinance, without alteration, shall be submitted to a vote of the people.

(d) Publication. Notice of said election, including the content of the proposed ordinance, shall be published in accordance with state law.

(e) Recall of City Councilmembers.

(1) City Council. Any member of the City Council may be removed from office by a recall election.

(2) Petition. Recall petition papers shall contain the name of the councilmember or members whose removal is sought and must concisely state one or more of the following grounds for removal: incompetency (gross ignorance of official duties, gross carelessness in the discharge of official duties, or inability or unfitness to promptly and properly discharge official duties because of a serious mental or physical defect that did not exist at the time of election); official misconduct (intentional unlawful behavior relating to official duties including an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law); habitual drunkenness; or conviction for any felony or misdemeanor involving official misconduct. There shall appear at the head of each petition paper the names and addresses of five qualified voters eligible to vote for the successor of the councilmember sought to be removed, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. In addition to a signature, a petition shall contain the signer's printed name, voter registration number, and place of residence by street and number or other description sufficient to identify the place, and the date of signing. No signature to a petition shall be counted, which was placed on the petition more than 45 days prior to the filing of the petition with the city secretary. The signatures to a recall petition need not be appended to one paper, but to each separate petition there shall be attached an affidavit of the circulator that the circulator personally circulated the paper, that it bears a stated number of signatures, that all signatures were appended in the circulator's presence, and that each signature is the genuine signature of the person whose name appears.

(3) Procedure.

a. All papers comprising a recall petition shall be assembled and filed with the city secretary as one instrument. Within ten business days after a petition is filed, the city secretary shall determine:

1. whether each paper bears the names of the five qualified voters who constitute the committee of the petitioners and the required affidavit of the circulator; and

2. whether the petition is signed, with the required information provided, by qualified voters entitled to vote for a successor to the member sought to be removed, equal in number to at least 10 percent of the registered voters in the territory which the councilmember represents.

b. If the city secretary finds the petition insufficient, the city secretary shall return a copy to the committee of the petitioners without prejudice. If the city secretary finds the petition sufficient and in compliance with the provisions of this section of the Charter, the city secretary shall submit the petition and a certificate of its sufficiency to the council at its next regular meeting and immediately notify the councilmember or members whose removal is sought of such action.

c. If the councilmember whose removal is sought does not resign within seven days after notice from the city secretary, the City Council shall order a recall election to be held on the next uniform election date as set forth by state law.

(4) Ballot. Ballots used at recall elections shall conform to the following requirements:

a. With respect to each person whose removal is sought, the questions shall be submitted: "SHALL (name of person) BE REMOVED FROM THE CITY COUNCIL BY RECALL?"

b. Immediately below each question shall be printed the two following responses, one above the other, in the order indicated;

"YES"
"NO"

(5) Removal. If a majority of the votes cast at a recall election are for the recall of the councilmember named on the ballot, the member shall be removed from office, and the vacancy shall be filled in the manner prescribed in Section 5(e) of this Charter.

(6) Limitation. No petition shall be filed against a councilmember within six months after taking office, nor against a councilmember who has been subjected to a recall election and not removed, until at least six months after the election, nor within six months of the end of the councilmember's term.

(7) District Court. Should the City Council fail to order any recall election when all the requirements for the election have been complied with by the petitioning voters in conformity with this section of the Charter, it shall be the duty of the district judge of Brazos County, upon proper application, to order the election and enforce the provisions of this section of the Charter.

Sec. 11. Administration.

Investigations. The City Council, city manager, and any officer or committee authorized by either of them, shall have power to conduct investigations of city affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books and papers. The city manager shall designate a qualified person under the Texas Rules of Civil Procedure to serve subpoenas.

Sec. 12. Finance, Annual Budget, Taxation and Fees.

(a) **Chief Finance Officer.** The city shall have a department of finance. There is created the office of Chief Finance Officer who shall be head of the department of finance. The Chief Finance Officer shall:

- (1) be appointed and removed by the city manager;
- (2) be qualified by training and experience in accounting, budgeting and financial control, auditing, and financial administration;
- (3) perform functions as may be assigned by the city manager that are not inconsistent with this Charter.

(b) **City Manager's Budget Estimate.** Not later than one month prior to the end of the fiscal year, the city manager shall prepare and submit to the City Council a budget estimate of the expenditures and revenues of all city departments, divisions, and offices for the ensuing year. The estimate shall provide all the information required by the City Council. The city manager shall provide the budget to the public and media and make printed copies available through the public library and an electronic copy available on the city's website.

(c) **Appropriation Ordinance; Fiscal Year.** Upon receipt of the budget estimate, the City Council shall receive an appropriation ordinance using the city manager's estimate as a basis. A public hearing on the proposed appropriations ordinance shall be held as required by state law. The City Council shall pass the appropriation ordinance before the beginning of the fiscal year to which it is to apply or as soon after as practicable. The fiscal year of the city shall be established by ordinance adopted by the City Council.

(d) **Transfers.** The City Council may delegate to the city manager the authority to transfer any part of an unencumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient, or may authorize a transfer to be made between items appropriated to the same

Sec. 12. Finance, Annual Budget, Taxation and Fees.

“(a) Chief ~~Finance~~ Financial Officer. The city shall have a department of finance. There is created the office of Chief ~~Finance~~ Financial Officer who shall be head of the department of finance. The Chief ~~Finance~~ Financial Officer shall:

- (1) Be appointed and removed by the city manager;
- (2) Be qualified by training and experience in accounting, budgeting and finance control, auditing, and financial administration;
- (3) Perform functions as may be assigned by the city manager that are not inconsistent with this Charter.”

Committee Note: This substitution simply provides for the correct title (which is currently in use).

office, department, or divisions, when it is not in contravention of the constitution and laws of this state or other provisions of this Charter.

(e) **Reappropriations.** Any revenue of the city, not appropriated, and any balance at any time remaining after the purposes of the appropriation have been satisfied or abandoned, may from time to time be reappropriated by the City Council to uses that will not conflict with uses for which the revenues were specifically appropriated, and when not in conflict with the constitution and laws of this State or other provisions of this Charter.

(f) **Unencumbered Balances.** No obligation for the expenditure of money may be incurred, except pursuant to appropriations made by the City Council. At the close of each fiscal year the unencumbered balance of each appropriation shall revert to the fund from which it was appropriated and shall be subject to future appropriations; but appropriations may be encumbered in furtherance of improvements or other objects or works of the city which will not be completed within the current year.

(g) **Tax Levy Ordinance.** At its first meeting in September of each year, or as soon after as possible, the City Council shall by ordinance levy such taxes as are necessary to meet the appropriations made, and to provide all sums required to pay the bonded indebtedness of the city. In fixing the tax rate, the City Council shall designate what portions of the total are levied for other specific purposes. The portion of the tax rate designated for the city's bonded and other indebtedness shall be adequate to provide revenue to meet the requirements of interest and provide the necessary sinking fund to pay the principal of the bonds and other indebtedness at maturity.

(h) **Tax Limitation.** The City Council shall have the power, and is authorized to levy, assess, and collect a tax not to exceed \$1.50 on each \$100 assessed valuation of all real and personal property within the city limits of the city not exempt from taxation by the Constitution and laws of the State of Texas.

(i) **Occupation Tax.** The city is authorized to tax all occupations taxed by the state, at an amount that is one-half of the amount prescribed by the state.

(j) **Franchise Fees or Taxes.** The city shall have the power to:

(1) annually levy and collect a franchise tax or fee from any public service corporation using and occupying the public grounds and streets of the city, separately from the tangible property of the corporation;

(2) collect annually upon the property and shares of corporations, companies, and corporate institutions, or their trustees or receivers, as they are or may be assessed by the laws of Texas; and

(3) enforce the collection of these taxes and fees.

(k) Personal Liability for Taxes. Persons, firms, and corporations owning personal or real property taxed by the city, are liable for these taxes as prescribed by state law.

(l) Tax Liens. All real, personal, or mixed property held, owned, or situated in the city, not exempt by the laws of the State of Texas, is liable for all municipal taxes due from the owner, including taxes on real estate, franchises, personal and mixed property and all other municipal taxes. These municipal taxes are declared to be a lien, charge, and encumbrance upon the property taxed, and shall be a prior lien to all other claims, sales, assignments, transfers, gifts, and judicial writs. This lien shall exist from the first day of January of each year until all taxes have been paid. It shall also exist against any real estate which for any cause has failed to be assessed for one or more years, and the lien shall be effective for every year for which no assessment was made.

(m) Tax Levy. The City Council shall levy the annual tax for the year prior to the end of September each year. Special taxes or assessments allowed by this Charter may be levied, assessed, and collected at any time. If the City Council fails to levy the annual tax for any one year, the annual tax levy for the preceding year will be considered in force and effect as the tax levy for the year for which no annual tax levy was made.

(n) Tax Collections. The city has power to provide for the prompt collection, by suit, contract, or otherwise, of taxes assessed, levied, and imposed, and the city has authority to sell, or cause to be sold for payment of taxes, all property, real and personal, and shall make rules and regulations and enact ordinances necessary for the collection of taxes.

(o) Bond Unnecessary. It shall not be necessary in any action, suit, or proceedings in which the city is a party for any bond, undertaking, or security to be executed on behalf of the city.

(p) Finances. The city shall have the power to control and manage the finances of the city and to provide its fiscal year and fiscal arrangements.

(q) City Depository. The City Council shall select a city depository or city depositories for all funds of the city in the manner provided by the general laws

of the State of Texas.

(r) National Defense. The City Council is authorized to cooperate with the United States of America and the State of Texas and a subdivision of either, in the defense of the United States, and in preparation of this defense, is authorized to appropriate necessary funds for the purpose. The City Council may also cooperate with the United States of America and the State of Texas in employment and relief work and other purposes that develop from time to time.

Sec. 13. Finance, Taxation and Fees.

(a) Debt Service Fund. Revenue collected from taxes and other sources, which has been pledged as security for bonds, warrants, or other obligations of the city shall be deposited in a "debt service fund". Money paid by utilities for the retirement of debt, however, shall be deposited in accordance with relevant contracts and the law applicable to revenue bonds.

(b) General Fund. Revenue collected from taxes and other sources not restricted by law for another use shall be maintained in a separate fund to be designated as the "general fund."

(c) City-owned Utilities.

(1) Revenues derived from public utility systems of the city shall be apportioned, as follows:

- a. for the operation and maintenance of the utilities;
- b. for the extension and improvement of the utility systems;
- c. for the liquidation of the indebtedness of the utility systems;
- d. for use of the city rights of way, an amount not to exceed seven percent of gross revenue shall be paid as a transfer to the general fund of the city. The amount of such general fund transfers and any reimbursements to the general fund for services rendered to publicly owned utility systems shall be approved by ordinance.

(2) The city shall maintain an accounting procedure for utility earnings that will record each utility or similar fee based service as a separate fund, and the sinking fund to all revenue bonds shall be kept as provided by law and the applicable bond covenants.

(d) General Obligation Debt. The City of Bryan shall have the power to borrow money on the credit of the city and to issue general obligation debt for permanent public improvements or for any other public purpose not prohibited by the Constitution and laws of the State of Texas, and to issue refunding bonds to refund outstanding debt of the city previously issued.

All such debt shall be issued in conformity with the laws of the State of Texas and the United States of America.

(e) **Revenue Debt.** The City of Bryan shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the Constitution and laws of the State of Texas and the United States of America, and to issue revenue debt to evidence the obligation created thereby; and to issue revenue refunding debt to refund outstanding revenue debt previously issued. Such debt shall be a charge upon and payable solely from the properties, or interest therein, pledged, or the income there from, or both, and shall never be a debt of the city. All such debt shall be issued in conformity with the laws of the State of Texas and the United States of America.

Sec. 14. Reserved.

Sec. 15. Municipal Court.

A municipal judge shall be appointed by the City Council in accordance with Section 8, "Appointive Officers," of this Charter. The city secretary is appointed clerk of the municipal court and is authorized to serve either in person or by deputy. The judge shall receive compensation as determined by the City Council. The municipal judge shall be the judge of the municipal court. The court shall have jurisdiction and be conducted in the manner prescribed by state law and ordinances of the city. All costs and fines imposed by the municipal court, or by any other court in cases appealed from the municipal court, shall be paid into the city treasury for the use and benefit of the city, except for the portion that must be remitted to the State of Texas in payment of state court costs. All complaints or information filed in the municipal court shall be approved by signature of the city attorney or an assistant city attorney.

Sec. 16. Utilities; Streets, Avenues, Alleys and Highways; Public Works.

(a) **Power to Own.** The city, at this time owning and operating its water, electric, and sewer systems, shall have the power to own, maintain, extend, construct, and reconstruct its water, light, and sewer systems, within or outside the city limits.

(b) **Financing of Improvements.** The city shall have power to construct, acquire, own, maintain, and operate, within and outside the city limits, electric transmission and distribution lines, waterworks and water distributing systems and sewer systems, for the

Sec. 16 (a) - Charter Review Advisory Committee recommendation: Change "light" to "electric".

furnishing of electric energy, water, sewer, and other utility services within and outside the city limits. The city has authority to mortgage and encumber the electric, water, and sewer systems and income by the issuance of bonds, notes, or warrants to secure the payment of funds to construct or acquire the systems. The obligation shall be solely a charge upon the property and income of the systems encumbered and shall not be included in determining the power of the city to issue bonds for any purpose authorized by law. The city is further authorized to purchase any additional unit of power for its utilities and for its rural electrical lines and mortgage them as a unit and, if purchased for its rural electric lines, the city for its other utilities will be authorized to pay a reasonable rental to be used to discharge the obligation and mortgage given for its purchase. The city is further authorized to charge a reasonable monthly rate to the rural electric division lines for current furnished by the city utilities and use the money for all purposes authorized by this Charter.

(c) Utility Sale Not Authorized. The city is not authorized to sell, contract for sale, or lease any of its public utility systems, except that the city may mortgage or encumber its public utility systems as provided in this Charter.

(d) City Utilities Exclusive. The operation and maintenance of public utilities owned by the city shall be exclusive to the city and it shall grant no franchise to a like public service or public utility system.

(e) Utility Rates. The city may regulate the rates and charges for materials or services of all its public utility systems, within or outside the city, and it may demand and receive these rates and charges for public utility service furnished by the city.

(f) Regulation of Other Utilities. The city may require all public service or public utility systems not owned by the city and operating within the city to:

(1) extend its services to such territory as the city may require;

(2) furnish the city correct and complete maps showing the location and extent of all its services inside and outside the city limits and furnish other information as the city may require; and

(3) comply with such rates and charges for its services or commodities as the city may require, to the extent the city's authority is not limited by state law.

(g) Intergovernmental Cooperation. The city has the authority to cooperate in the operation or maintenance of any of its public utility systems with any other governmental entity or agency.

Sec. 16(c) – Charter Review Advisory Committee recommendation: Leave as is.

Sec. 16(f)(1) & (2) – Charter Review Advisory Committee recommendation: Leave as is.

(h) Election Required for Contract Over 25 Years. The city may manufacture, produce, or buy gas, electricity, water, or any other power, service, or commodity for public uses, and sell the power, service, or commodity by wholesale or retail inside or outside the city limits; provided, that before the city shall be bound by any contract for the purchase or sale of this power, service, or commodity for a longer period than 25 years, the proposition shall be submitted to a vote of the people of the City of Bryan. The election shall be held in accordance with the Charter, and the proposition shall be presented to the voters in the form of a proposed ordinance setting forth the material terms of the contract.

(i) Ratification of Contracts and Obligations. Adoption of this Charter shall ratify all outstanding bonds, revenue warrants, and other existing obligations and encumbrances pledged against the revenues of all public service and public utility systems. All existing contracts between the city or its utility systems and any other agency or company for purchase, manufacture, sale, resale, operation of service, equipment or commodities are also ratified.

(j) Additional Powers. In owning, leasing, buying, extending, operating, maintaining, or otherwise handling its public utility systems, the city shall have additional powers that may be granted, now or in the future, under the Constitution and laws of the State of Texas.

(k) Authority Over Streets. The city shall have exclusive control and jurisdiction in, upon, over, and under the public streets, avenues, alleys, and highways of the city. The city may provide for their improvement by paving, repaving, raising, grading, draining, or otherwise and finance the improvements by any method authorized by law.

(l) Sidewalks. The city may provide for the construction of sidewalks and curbs, and to charge the entire cost of construction of sidewalks, including the curbs, against the owner of adjacent property and to provide by special assessment, a lien against the property for the cost. In addition, the city may finance the construction of sidewalks by any method authorized by law.

(m) Required Sidewalk Improvements. The city may provide for the construction, improvements, or repair of any sidewalk or curb by penal ordinance and to declare defective sidewalks or curbs public nuisances.

(n) Power to Grant Franchises. The City Council may by ordinance grant franchises for the use and occupancy of streets, avenues, alleys, and other

public grounds belonging to or under the control of the city, to a fiber company, telecommunication company, cable company, electric light or power company, railway, gas, waterworks, water systems, or other public utility.

(1) Before an ordinance proposing to grant a franchise or privilege to use or occupy a street, avenue, alley, or other public ground becomes effective, the ordinance, as finally proposed to be passed, shall be published at the expense of the applicant in a newspaper of general circulation in the city one time. The proposed ordinance shall not be changed after publication unless republished as in the first instance, nor shall the ordinance take effect or vest any rights in the applicant, until after the expiration of 20 days from the last publication.

(2) Pending the time the ordinance may become effective, it is the duty of the City Council to order an election, if requested by written petition, conforming to Chapter 277, Texas Election Code, signed by at least 20 percent of the qualified voters of the city, as shown by the county voter registration records as of the preceding January 31. At the election, the qualified voters of the city shall vote for or against the proposed grant, as set forth in detail by the published ordinance. The election shall be ordered for the next state uniform election date that is not less than 45 days from the date of filing the petition, and if at the election the majority of the votes cast are for the granting of the franchise or privilege, the ordinance and the proposed grant shall become effective. If the majority of the votes cast at the election are against the granting of the franchise or privilege, the ordinance shall not be effective and the making of the proposed grant shall be void.

(o) **Length of Franchise.** The city shall not grant a franchise for other than an indeterminate period or for a period of years not exceeding 10, except in cases when an election is held as provided in Subsection (n), to determine whether or not a franchise shall be granted. No franchise granted as the result of an election shall be for a period of time exceeding 20 years.

(p) **Right to Purchase.** All franchises granted shall contain the right of the city to purchase at a fair value, the franchise and property of the utility company at the end of the first five years and at the termination of every five years during the term of the franchise.

(q) **City Regulation.** All franchises shall be subject to:

(1) the right of the city, whether expressly stated or not, to make reasonable regulations

concerning the service, capitalization, and rates of the franchisee; and

(2) the right of the city to inspect the corporation books at all times and to require accounts to be kept to show clearly how the finances of the corporation are handled and whether the franchise requirements as to sinking fund, depreciation fund, improvements and capitalization are met.

(r) City Consent to Use Streets. No utility company, including, but not limited to, bus lines, taxicabs, automobiles, and vehicles for the transportation of passengers from the city or through the city, railroad companies, telecommunication companies, fiber companies, cable companies, or other utility corporations, shall occupy the streets of the city without first obtaining the consent of the city, evidenced by ordinance. No acquiescence or other act or omission of the city or its officers shall be held to confer rights to use of the streets. A person, firm, or corporation to which a franchise is granted shall pay for the privileges, reasonable and just compensation, which shall be regulated and changed from time to time by the City Council, as in its opinion may be reasonable and just. A franchise subject to this section shall not be granted for a longer period than 20 years. Existing franchises may be renewed, or others granted in lieu of them, under such terms as the City Council may require. All rights to use or place anything in a street or alley or grounds owned by the city, not created by ordinance, exist only at the pleasure of the City Council and may be revoked at any time by a resolution adopted by the City Council.

(s) Right of Eminent Domain. The City Council may appropriate private property for public purposes, whenever it determines that it is necessary, and to take any private property inside or outside the city limits, for any of the following purposes: Hospitals, waterworks system, sewer system, gas system, electric light system, storm sewers, sewerage disposal plants, drainage, filtering beds and emptying grounds for sewer systems, reservoirs, watersheds, water supply courses, wells, cemeteries, crematories, parks, and any other municipal purpose. The power granted for the purpose of acquiring private property shall include the power of improvement and enlargement of the waterworks, including water supply, riparian rights, standpipes, water sheds, and the construction of supply reservoirs. The power of eminent domain shall include the right of the City Council to take the fee title in the lands as condemned, and shall include the right to condemn public property for the listed purposes.

(t) Intangible Value Not Calculated. In arriving at a fair valuation at which any utility may be sold to the city, the value of any franchise or grant from

the city held by the owner or owners of the utility or any intangible value of the utility shall not be considered, but merely a fair value for the tangible property in use by the utility in its business of supplying the public with service shall be taken into account.

(u) Bond Financing for Purchase. The city may construct or acquire a public utility by purchase, condemnation, or otherwise and may finance the acquisition by issuing bonds and securing them by fixing a lien upon the property acquired. The security shall apply alone to the property pledged.

(v) Control of Streets. The city has authority to control, regulate, narrow, alter, widen, straighten, vacate, abandon, close, and remove all obstructions, encroachments, and encumbrances on any public street, avenue, or alley and to regulate and control the moving of buildings and structures upon and along the streets.

(w) Parks. The city shall have exclusive control over city parks and playgrounds and may provide for raising, grading, filling, terracing, landscape gardening, erecting buildings, providing amusements, establishing walks, paving driveways, constructing playgrounds, and providing other public grounds. The city shall not sell a public park or playground of the city unless the authority to sell is approved by the voters at an election. After approval by the voters, park property shall be disposed of in accordance with State law.

(x) Litigation with Utility. When a public utility, operating either in whole or in part in the city, attacks in litigation the validity of any provision of an ordinance of the city pertaining to the public utility, the burden of proof shall be on the public utility to establish facts necessary to show that a provision is invalid; and the attack shall not be permitted to prevail if the utility is in default in keeping or producing books, records and memoranda as required in this Charter.

Sec. 17. Reserved.

Sec. 18. Reserved.

Sec. 19. Non-liability to Execution or Garnishment.

Property, real and personal, belonging to the city is not subject to sale or appropriation under any writ of execution or cost bill. Funds belonging to the city, in the hands of any person, firm, or corporation, are not subject to garnishment; nor shall the city be liable to garnishment for any debt it may owe. Neither the city nor any of its officers or agents shall be required to answer a writ of garnishment for any reason.

Sec. 20. Notices as to Damage Claims.

(a) **Notice to City of Defect.** The city shall not be liable for damages to anyone resulting from a defect in, obstruction on, or any other matter involving a sidewalk in the city. In addition, the city shall not be liable for damages to anyone resulting from a defect in, obstruction on, or any other matter involving a street, alley, or public place other than any sidewalk, unless it is shown that some person in the employment of the city having responsibility for the work on the streets, alleys, or public places, had actual notice of the defect, obstruction, or other condition, for a sufficient length of time before the injury to have remedied the condition of the street, alley, or public place before the injury was received.

(b) **Notice to City of Claim.** Before the city shall be liable for damages for the death or personal injuries of a person or for damage to or destruction of property, the person injured, if living, or the person's representative, if dead, or the owners of the property injured or destroyed, shall give the mayor or city manager verified notice in writing of the death, injury, or destruction, within 90 days after the occurrence causing the damages, death, or injury, stating when, where, and how the death, injury, or destruction occurred, the apparent extent of the injury, the amount of damages sustained, the residence of the claimant by street number at the date the claim is presented, the residence of the claimant for six months immediately preceding the occurrence of the death, injuries, or destruction, and the names and addresses of all the witnesses upon whom it is relied to establish the claim for damages. Failure to notify the mayor or city manager within the time and in the manner specified shall exonerate, excuse, and exempt the city from any liability; provided, however, that nothing in this subsection shall be construed to affect or repeal the provision in Subsection (a) of this section relating to the liability of the city for damages on account of injuries received on the sidewalks, streets, alleys, and public places of the city.

Sec. 21. Punishment for Violation of Ordinances.

The city may enforce its ordinances by fines as provided in state law. The city may also provide by ordinance for the commutation of fines by labor on any public work or place of the city, but no ordinance shall provide a lesser penalty than is prescribed for a like offense by the laws of the state. Provision may also be made by ordinance for the collection of fines imposed and executions issued in civil cases.

Sec. 22. Continuation in Office of Existing Officers.

All persons holding administrative offices at the time this Charter takes effect shall continue in office and in

the performance of their duties until provision shall have been made, in accordance with the provisions thereof, for the performance of such duties or the discontinuance of such office. The powers conferred and the duties imposed by law upon any office, commission, board, or department of the city abolished by this Charter shall, upon the taking effect thereof be exercised and discharged by the office or department designated by the City Council unless otherwise provided herein.

Sec. 23. Reserved.

Sec. 24. Subdivisions and Additions.

The City Council has authority by ordinance to prescribe rules and regulations for the dedication of additions and subdivisions of tracts of land within the city, and no subdivisions or additions shall be dedicated except in accordance with the rules and regulations. The City Council may further prescribe rules and regulations relative to additions and subdivisions outside the limits of the city before and as a condition precedent to the bringing into the city of an addition or subdivision. The City Council shall have power to establish a comprehensive plan which guides the future growth and development inside or outside the city. Additions and subdivisions shall be in keeping with the stated goals and intent of the comprehensive plan before dedication of a subdivision shall be valid as to tracts of land within the city, or before additions and subdivisions outside the city shall be admitted into the city. The City Council shall have the authority to enforce this ordinance of rules and regulations by injunction, mandamus, or any other appropriate legal process.

Sec. 25. Garbage, Trash and Rubbish Removal.

The City Council has authority by ordinance to adopt and prescribe rules and regulations for the handling and disposition of all garbage, trash, and rubbish within the city. The City Council may also provide for a system of collecting throughout the city or in a portion of the city and prescribe that the city alone shall remove all or a portion of the garbage, trash, and rubbish, and fix fees to be charged by the city for the removal. The City Council may provide that the fee is a personal obligation of the person for whom the garbage, trash, or rubbish is hauled and disposed of, and provide penalties against all other persons hauling garbage, trash, or rubbish.

Sec. 26. Effect of Charter on Existing Franchises, and Ordinances, etc.; City Not Required to Give Bond.

(a) **Savings.** Nothing in this Charter shall be construed to affect or repeal any ordinance, order, or

law legally passed by the City Council, nor affect any franchise legally granted, nor any other act of the mayor, commission, or other officer of the city, legally done and performed under which any rights have vested, and all ordinances, orders, laws, grants, and franchises shall be continued in full force and effect, except that this clause shall not be taken as limiting the effect of this Charter in regard to the regulations of public utilities or corporations doing business in the city.

(b) Security Bonds. It shall not be necessary in any action, suit, or proceedings in which the city is a party for security to be executed in behalf of the city, and all actions, suits, appeals, or proceedings shall be conducted in the same manner as if a bond or security had been given, and the city shall be liable as if the obligation had been given and executed.

Sec. 27. State Law Governs Questions Not Provided for Herein.

All questions arising in administering the city government and not provided for in this Charter shall be governed by the laws of the State of Texas.

Sec. 28. Judicial Notice of Charter.

This Charter is a public act, and judicial notice shall be taken of it in all courts and pleadings without it having been pleaded or read in evidence.

Sec. 29. Other and Additional Powers; Definitions of Terms.

All powers authorized by the Constitution and laws of the State of Texas, when not inconsistent with this Charter, are cumulative of powers vested by this Charter in the city, and the enumeration of powers made in this Charter shall not be construed to preclude by implication or otherwise the city from exercising all the powers incident to the enjoyment of local self-government and from doing any and all things not inhibited by the Constitution and laws of the State of Texas. Where the term "city" is used in this Charter it means City of Bryan, Texas, and the term "City Council" "commission," or "board" means the City Council.

Sec. 30. Severability of Unconstitutional Provisions.

Should any provision or portion of this Charter be declared unconstitutional or otherwise invalid by the courts of this state, the remainder of the Charter shall be unimpaired by the holding, and shall be in full force and effect until amended or repealed.

Sec. 31. Vesting of Title in New City.

All real estate, personal property, and rights owned or controlled by the city at the date of the adoption of this Charter shall vest in, inure, remain, and be the property of the city.

Sec. 32. Constitution in Effect of Contracts and Obligations.

All contracts and obligations of the city in force and effect at the time of the adoption of this Charter are hereby assumed by the city as incorporated.

Sec. 33. Advisory Boards.

The City Council shall provide for advisory boards to be appointed by the City Council to serve without pay, such as city planning boards and other boards that shall be found desirable. It shall be the function of these boards to consult and advise on matters submitted to them by the administrative officers, as may be required by act of the City Council, and the City Council may, by ordinance, pay the expenses of the boards appointed.

Sec. 34. Ratification of Prior Sales of Real Estate.

All sales of real estate heretofore made by the mayor of the city under authority of the City Council of Bryan are hereby validated and ratified.

Sec. 35. Reserved.

Sec. 36. Amending Charter.

This Charter, after its adoption by the qualified voters of the city, may be amended in accordance with the provisions of an act of the Thirty-third Legislature of the State of Texas, entitled "An Act Authorizing Cities Having More Than 5000 Inhabitants by a Majority Vote of the Qualified Voters of Said City at an Election Held for that Purpose, to Adopt and Amend Their Own Charter, etc." approved April 7, 1913, and any and all acts amendatory thereof.

The Charter Review Advisory Committee agreed a "clean up" proposition to correct punctuation, grammar, capitalization, etc., was allowable, if ballot length allows.