



City of

MIDLOTHIAN

Texas

HOME RULE CHARTER

OCTOBER 1, 1980

ARTICLE I. INCORPORATION—FORM OF GOVERNMENT—POWERS

Section 1.01. Incorporation.

The inhabitants of the City of Midlothian, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity under the name of the "City of Midlothian."

Section 1.02. Form of Government.

The municipal government provided by this Charter shall be known as the "Council-Manager" form of government. Pursuant to its provisions and subject only to the limitations imposed by the State Constitution and by this Charter all powers of the City shall be vested in an elective City Council which shall enact local legislation, adopt budgets, determine policies, and appoint the City Manager, who shall execute the laws and administer the government of the City.

State law reference—Form of government, V.T.C.A., Local Government Code, sec. 26.021.

Section 1.03. Powers of the City.

The City shall have all powers possible for a city to have under the Constitution and laws of this State, as fully and completely as though they were specifically enumerated in this Charter. All such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this Charter, and, when not prescribed herein, in such manner as may be provided by ordinance or resolution of the Council of the City of Midlothian.

The enumeration of particular powers in this Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, the City may have and shall exercise all other powers which, under the Constitution of the State of Texas, it would be competent for the Charter specifically to enumerate. The City of Midlothian shall have and exercise all the powers conferred upon cities by what is known as the Home Rule Amendment to the Constitution of the State of Texas and the enabling act and all others laws passed or which may hereafter be passed by the Legislature in relation to such matters.

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

State law references—Powers of home-rule municipality, V.T.C.S. art. 1175; general powers of home-rule municipality, V.T.C.A., Local Government Code, sec. 51.071 et seq.

Section 1.04. City Limits—Extension of Boundaries.

The City Council shall have power by ordinance to fix the boundary limits of the City of Midlothian and to provide for the alteration and the extension of said boundary limits, and the annexation of additional territory lying adjacent to the City, with or without the consent of the owners or inhabitants of the annexed territory subject to the procedures set forth in state law.

State law references—Municipal boundaries and annexation, V.T.C.A, Local Government Code, ch. 41 et seq.; municipal annexation, V.T.C.A., Local Government Code, ch. 43; authority of home-rule municipality to annex area, V.T.C.A., Local Government Code, sec. 43.021.

Section 1.05. Public Improvements.

(a) **Streets.** The City of Midlothian shall have exclusive dominion, control and jurisdiction in, upon, and over and under public streets, avenues, alleys and highways of the City and may provide for the improvement thereof by paving, repaving, raising, draining, or otherwise in accordance with the provisions of the general laws of the State of Texas. Such exclusive dominion, control and jurisdiction in, upon, over and under the public streets, avenues, alleys and highways of the City of Midlothian shall also include, but not be limited to, the right to regulate, locate, remove, or prohibit the location of, all utility pipes, lines, wires or other property.

(b) **Other Improvements.** The City of Midlothian shall have the power to provide for the improvement of drainage facilities and to extend its water and sewer systems and assess a part of the cost of such improvements against abutting property owners as in the case for street improvements according to the procedures set forth in the general laws of the State of Texas, and fix a lien to secure the cost of such assessments as therein provided and issue assignable certificates.

State law references—Street improvements and assessments in cities having more than 1,000 inhabitants, V.T.C.A., Transportation Code, ch. 313; authority of municipality over and under public highways, streets and alleys, V.T.C.A., Transportation Code, sec. 311.001; assessment for street improvements, V.T.C.A., Transportation Code, sec. 311.091.

ARTICLE II. THE CITY COUNCIL

Section 2.01. Composition of Council.

Except as otherwise provided by the Charter of the City, all powers conferred on the City shall be exercised by a City Council to be composed of a Mayor and six (6) members, nominated and elected in the manner provided in Article III of this Charter, unless otherwise prescribed by law. They shall each be elected for a term of three (3) years. The Council members so elected shall serve until their respective successors shall have been elected and shall have qualified.

State law references—Eligibility for public office, V.T.C.A., Election Code, sec. 141.001 et seq.; age and residence requirements for home-rule city office, V.T.C.A., Election Code, sec. 141.003.

Section 2.02. Mayor and Mayor Pro Tem.

The Mayor shall be the official head of City government. He shall be the chairman and preside at all meetings of the Council. The Mayor may vote on every proposition before the Council but shall have no power of veto. He shall perform duties consistent with this Charter as may be imposed upon him by the Council.

The Mayor Pro Tem may be elected by the City Council from its membership. The Mayor Pro Tem shall act as Mayor in the case of the absence or inability of the Mayor to perform the duties of office and in this capacity shall be vested with all of the powers conferred upon the Mayor.

Section 2.03. Council Qualifications.

The Mayor and each Council member shall have the following qualifications:

- (a) Must be a citizen of the United States.
- (b) Must be a qualified voter of the State of Texas.
- (c) Must have resided at least six (6) months next preceding the election within the corporate limits of the City of Midlothian.
- (d) Must be at least twenty-one (21) years of age.
- (e) Must not be in arrears in payment of taxes or other liabilities due the City of Midlothian.
- (f) Must not have been convicted of a felony.
- (g) Must not be disqualified by reason of any provision of any other section of this Charter.

State law references—Eligibility for public office, V.T.C.A., Election Code, sec. 141.001 et seq.; age and residence requirements for home-rule city office, V.T.C.A., Election Code, sec. 141.003.

Section 2.04. Forfeiture of Office.

The Mayor or any Council member shall forfeit his office if he:

- (a) Lacks at any time during his term of office any qualification for the office prescribed by this Charter or by law;
- (b) Violates any express prohibition of this Charter;
- (c) Is convicted of a felony; or
- (d) Fails to attend three (3) consecutive regular Council meetings or six (6) Council meetings in any calendar year without being excused by the Council.

Section 2.05. Council Quorum.

A quorum shall consist of four (4) members, which may include the Mayor, where the number of Council members, including the Mayor, due to vacancies, is reduced to less than five (5), in which event a quorum shall consist of all the remaining Council members; but a less number than a quorum may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

Section 2.06. Council Rules.

The Council shall determine its own rules of procedures, and may punish its members for misconduct, and may compel the attendance of absent members.

Section 2.07. Vacancies in the City Council; How Filled.

- (a) If a vacancy occurs in the office of Mayor or on the City Council on or before one hundred twenty (120) days before a regular election for City Council, the vacancy shall be filled at a special election for that purpose. At its next regular meeting after the occurrence of the vacancy, the City Council shall call a special election to be held not less than thirty (30) days nor more than sixty (60) days after the date of the call. The additional member of the Council provided in this Charter until the first regular election, shall be provided as per the provisions of Section 15.17 hereof.
- (b) If a vacancy occurs subsequent to one hundred twenty (120) days before a regular election for City Council, the vacancy may be filled by a majority vote of the remaining members of the Council until the next regular election, at which time such vacancy shall be filled by election.
- (c) A person elected either at a special election or a regular election to fill a vacancy in the office of Mayor or on the City Council shall serve only the unexpired term of the Mayor or Council member whose place has been declared vacant, as the case may be.
- (d) If a candidate duly elected either to the office of Mayor or to the City Council at the regular election fails to take the oath of office on or before ten (10) days after the official canvass of the election, then his place shall be considered a vacancy and filled as herein provided for other vacancies. In the event such a candidate, elected either to the office of Mayor or to the City Council at a special election, fails to take the oath of office on or before ten (10) days after the official canvass of the election, then his place shall be considered a vacancy and filled as herein provided for other vacancies.

Section 2.08. Prohibiting Holding or Running for Other Office.

(a) No person elected to the office of Mayor or to the City Council shall, during the term for which he was elected, be appointed to any office or position of emolument in the service of the City. If the City Manager, the City Secretary, the City Tax Assessor-Collector, the City Attorney, or the Judge of the Municipal Court shall become a candidate for nomination or election to any public office, he shall immediately forfeit his place or position with the City.

(b) The Mayor or any member of the City Council shall forfeit his place on the Council if he becomes a candidate for nomination or election to any public office other than a place on the City Council or if he becomes a candidate for election to any different place on the City Council which requires him to take office prior to the end of his elective term.

Section 2.09. City Council May Summon Witnesses, etc.

The City Council shall have power to summon and compel the attendance of witnesses and the production of books and papers before it whenever it may be necessary for the more effective discharge of its duties, and shall have the power to punish for contempt before it with the same fines and penalties as the County Judge may punish for contempt before the County Court. All process shall be signed by the Mayor and attested by the City Secretary and shall be served by the Chief of Police or any police officer of the City.

The Mayor, City Secretary or any member of the City Council shall have authority to administer oaths in any matter pertaining to municipal affairs.

Section 2.10. No Interference by Council.

Subject to the Council's authority to approve all appointments of administrative officers or directors of departments of the City under Section 5.03(a) of this Charter, neither the Council nor any of its members shall dictate the appointment by the City Manager of any person to City offices or employment. Except for the purpose of inquiry, the Council and its members shall deal with that part of the administrative service for which the City Manager is responsible solely through such Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager in said departments, either publicly or privately.

Section 2.11. Investigations.

The Council, the City Manager or any person or committee authorized by either or both of them shall have power to inquire into the conduct of any department or office of the City; to make investigations as to City affairs, and for that purpose may subpoena witnesses, administer oaths and compel the production of books, papers and other evidence material to said inquiry. The Council may provide by ordinance penalties for contempt in refusing to obey any such subpoenas or failure to produce books, papers and other evidence, and shall have the power to punish any such contempt in the manner provided by ordinance.

Section 2.12. Regular Meetings.

On the day the members of the City Council take office, they shall meet at the building designated as the official City Hall and thereafter all regular meetings of the City Council shall be held in the City

Council Chamber in such building at such times as may be prescribed by ordinance or resolution; but not less than two (2) regular meetings shall be held each month unless postponed or cancelled for valid reasons, to be recorded in the minutes.

State law reference—Open meetings, V.T.C.A., Government Code, ch. 551.

Section 2.13. Special Meetings.

Special meetings shall be called by the City Secretary upon written request of the Mayor, City Manager or three members of the Council, if posted on the agenda in compliance with Texas Open Meeting Law (6252-17 VTCS). All Council members, City Manager, City Secretary and City Attorney shall be given written or equivalent notice of such meetings and therein shall be stated the subject to be considered at the special meeting and such may provide for the taking up of any other business provided at such meeting.

Section 2.14. Open Meetings.

All official meetings of the Council and all boards, commissions and committees thereof shall be open to the public except as may be provided by State law. The City Council shall provide for reasonable opportunity for citizens to be heard at all open meetings concerning any subject considered thereat under such rules as the Council may provide.

Section 2.15. Financial Loss by Elected City Officials.

Duly elected City Officials acting in their official capacity shall be protected by the City from personal financial loss resulting from Council decisions made while in official sessions as a result of law suits filed pertaining to such decisions.

ARTICLE III. MUNICIPAL ELECTIONS*

Section 3.01. Holding of Municipal Elections.

All municipal elections shall be held under the provisions of this Charter unless the laws of the State of Texas applicable to city elections require otherwise.

Section 3.02. Qualifications of Voters.

All residents of the City of Midlothian who shall have qualified to vote in accordance with the provisions of the Texas Election Code shall have the right to vote in all City elections.

Section 3.03. Regular Election.

No primary election shall be held in the selection of nominees to the City Council unless specifically required by State Law. Regular elections for the purpose of electing members of the City Council shall be held on the first Saturday in April of each year, or as otherwise may be prescribed by State Law.

Editor's note—The regular election day adopted by Ordinance 89-04 is the first Saturday in May and the runoff election day is the third Saturday in May pursuant to V.T.C.A., Election Code sec. 41.001.

State law references—Date for election of officers, V.T.C.A., Local Government Code, sec. 26.042; election dates, V.T.C.A., Election Code, ch. 41.

Section 3.04. Election of Council Members.

All qualified voters of the City shall be entitled to vote for the candidate for Mayor and for one (1) candidate for Place Number 1, 2, 3, 4, 5 or 6, as may be listed on the official ballot of the City.

Section 3.05. Nomination.

A person desiring to become a candidate for Mayor or for any place on the City Council shall be entitled to have his name placed on the official ballot if he files with the City Secretary, not less than thirty (30) days nor more than sixty (60) days prior to the election, a sworn application verifying his qualifications as provided in Section 2.03 of this Charter and stating that he is a candidate for Mayor or the Place Number for which he is running, as the case may be.

Section 3.06. Designation of Official Ballot.

The Mayor shall be designated on the official ballot as "Mayor." The Places on the official ballot shall be designated as "Member of Council, Place No. __," designating the Place Numbers, such to be in numerical order, and the candidate's name shall appear in the Place for which he filed his application. The City Secretary shall make up the official ballot from the names so presented to him in the manner hereinabove set out. The order in which the names of the candidates for each Place shall appear on the ballot shall be determined by lot in a drawing held under the supervision of the City Secretary.

Section 3.07. Canvass of Election.

Within thirty (30) days following either a regular or special election, the City Council shall convene in a meeting in the Council chambers and canvass and certify the results of such election.

State law reference—Canvassing elections, V.T.C.A., Election Code, ch. 67.

Section 3.08. Candidates Elected.

A candidate in said election receiving a majority of the votes cast for the position of Mayor and for the position of Councilman for the Place for which he is a candidate, as the case may be, shall be declared elected. If none of the candidates for such position receives a majority vote, then none of the candidates for that office shall be elected and a run-off election shall be held among the two (2) candidates who receive the greatest number of votes for such position. In the event of a run-off, the City Council shall immediately order a run-off election, which shall be held not less than twenty (20) nor more than thirty (30) days after the canvass of the election in which a run-off is required. Notice of such run-off election shall be given and the election shall be held in the same manner as the general or special election in which the run-off occurred. At such election, only the names of the two candidates who received the greatest number of votes for such position shall be printed on the ballot and any write-in votes cast for any other person shall be void and shall not be counted for any purpose.

Section 3.09. First Election of Mayor and Councilmen.

On the first Saturday in April, 1981, an election shall be held to elect the Mayor and all Councilmen. The person elected as Mayor and the persons elected to represent Places 1 and 2 shall serve for a term of three (3) years, their terms expiring in April, 1984. Notwithstanding the provisions of Section 2.01, the persons elected to represent Places 3 and 4 shall serve for a term of two (2) years, their terms expiring in April, 1983, and the persons elected to represent Places 5 and 6 shall serve for a term of one (1) year, their terms expiring in April, 1982. Beginning in April, 1982, all Council Members shall be elected for a term of three (3) years.

ARTICLE IV. ORDINANCES AND RESOLUTIONS *

Section 4.01. Council Action.

The City Council shall evidence its official actions by written ordinances, resolutions or oral motion. The use of one method or the other shall not affect the validity of the action, except in those instances where one or the other is required by State law or this Charter.

Section 4.02. Style of Ordinances and Resolutions.

The style of all ordinances shall be: "Be It Ordained by the City Council of the City of Midlothian," and the style of all resolutions shall be: "Be It Resolved by the City Council of the City of Midlothian." In each case words of like import may be used, but such caption may be omitted when said ordinances are published in book form, or are revised and digested under the order of the Council.

Section 4.03. Passage.

All ordinances and resolutions of the City Council, unless otherwise provided by State law, this Charter, or the ordinance itself, shall be final on the passage or adoption by the required majority pursuant to one motion duly made, seconded and passed. Where the State law or this Charter provides for a different procedure before the action of the Council may become final, then in that event, the Council shall follow the procedure required.

Section 4.04. Voting.

The vote upon the passage of any ordinance, resolution or motion shall be taken by voice vote unless otherwise requested by a member of the City Council, in which case a roll call vote shall be taken. The results of all voting shall be entered upon the minutes of the proceedings of the Council. Every ordinance, resolution, or motion shall require on final passage the affirmative vote of a majority of the members present unless more is required by State law or this Charter.

Section 4.05. Effective Date.

All ordinances and resolutions passed by the City Council shall become effective immediately from and after final publication, except in the following instances:

- (a) Where the State law or other provisions of this Charter provide otherwise, in which case the effective date shall be the earliest time therein prescribed.
- (b) Where the ordinance or resolution prescribes a different effective date.
- (c) Where an ordinance or resolution is adopted under the initiative and referendum provisions of this Charter, in which case the effective date thereof shall be immediately after the canvass of the election.

Section 4.06. Enrollment.

Each ordinance, resolution and motion passed by the City Council shall be enrolled by the City Secretary within five (5) days after its passage, or as soon as thereafter as practicable. It shall then be

carefully compared with the original and all amendments, if any, by the City Attorney. If errors exist therein, they shall be corrected.

Section 4.07. Publication of Ordinances.

The descriptive caption or title of each ordinance stating in summary the purpose of the ordinance and the penalty for violation thereof shall be published at least once in the official newspaper of the City, unless otherwise provided by State law or this Charter, in which event the specific provisions shall be followed.

State law reference—Publication of ordinances, V.T.C.A., Local Government Code, sec. 52.013.

Section 4.08. Codification of Ordinances.

The City Council shall have power to cause the ordinances of the City to be printed, in code form, and shall have the same arranged and digested as often as the Council may deem advisable; however, failure to print the ordinances as herein provided shall not affect the validity of the same.

State law reference—Code of ordinances, V.T.C.A., Local Government Code, ch. 53.

Section 4.09. How Plead.

In all judicial proceedings, it shall be sufficient to plead any ordinance by caption, or by the number of sections thereof wanted, and it shall not be necessary to plead the entire ordinance or section. All ordinances of the City, when printed and published and bearing on the title page thereof “Ordained and Published by the City Council of the City of Midlothian,” or words of like import, shall be prima facie evidence of their authenticity and shall be admitted and received in all the courts and places without further proof.

Section 4.10. Approval of Mayor Not Necessary.

The approval or signature of the Mayor shall not be necessary to make an ordinance or resolution valid.

ARTICLE V. THE CITY MANAGER

Section 5.01. Appointment; Qualifications; Compensation.

The Council shall appoint a City Manager for an indefinite term and fix his compensation. The Manager shall be appointed solely on the basis of his executive and administrative qualifications.

Section 5.02. Removal.

The Council may remove the Manager from office in accordance with the following procedures:

(a) The Council shall adopt by affirmative vote of a majority of all its members a preliminary resolution which must state the reasons for removal and may suspend the Manager from duty for a period not to exceed forty-five (45) days. A copy of the resolution shall be delivered promptly to the Manager.

(b) Within five (5) days after a copy of the resolution is delivered to the Manager, he may file with the Council a written request for a public hearing. This hearing shall be held at a Council meeting not earlier than fifteen (15) days nor later than thirty (30) days after the request is filed. The Manager may file with the Council a written reply not later than five (5) days before the hearing.

(c) The Council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members at any time after five (5) days from the date when a copy of the preliminary resolution was delivered to the Manager, if he has not requested a public hearing, or at any time after the public hearing if he has requested one. The Manager shall continue to receive his salary until the effective date of a final resolution of removal. The action of the Council in suspending or removing the Manager shall be final and not subject to review by any court or agency.

Section 5.03. Powers and Duties of the City Manager.

The City Manager shall be the chief executive and administrative officer of the City. He shall be responsible to the Council for the administration of all City affairs placed in his charge by or under this Charter. He shall have the following powers and duties:

(a) He shall, with approval of the Council, appoint the administrative officers or directors of the City's departments which are provided for by or under this Charter and shall make all appointments of lesser positions in the City's service on recommendations of the administrative officer or director of the department affected. When he deems it necessary for the good of the City, he may suspend or remove any City employee provided, however, that no administrative officer as head of a department may be suspended or removed without the consent of the Council.

(b) He shall direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by statute.

(c) He shall attend all Council meetings and shall have the right to take part in discussion but may not vote.

- (d) He shall see that all laws, provisions of this Charter and acts of the Council subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.
- (e) He shall prepare and submit the annual budget and capital program to the Council.
- (f) He shall be responsible for the submission to the Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year.
- (g) He shall make such other reports as the Council may require concerning the operations of City departments, offices and agencies subject to his direction and supervision.
- (h) He shall keep the Council fully advised as to the financial condition and future needs of the City and make such recommendations to the Council concerning the affairs of the City as he deems desirable.
- (i) He shall perform such other duties as are specified in this Charter or may be required by the Council.
- (j) He shall be responsible for the proper handling, disbursement and reporting on all matters of finance, purchasing, property management and other acts required under Article IX of this Charter.

ARTICLE VI. CITY SECRETARY

Section 6.01. Appointment; Removal; Compensation.

The City Council shall appoint a City Secretary who shall serve at the discretion of the Council. He shall receive such compensation as shall be fixed by the Council.

Section 6.02. Duties of the City Secretary.

The City Secretary shall:

1. Attend all meetings of the City Council and keep accurate records of all actions taken by the Council;
2. Maintain the official records and files of the City;
3. Administer oaths;
4. Attest contracts, assessment certificates and other legal instruments when executed by the authorized officers of the City;
5. Serve as the election official for all City elections; and
6. Perform such other duties as may be required of him by this Charter, the City Council, or State law.

ARTICLE VII. ADMINISTRATIVE DEPARTMENTS

Section 7.01. General Provisions.

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

(b) Direction by Manager. All departments, offices and agencies under the direction and supervision of the City Manager shall be administered by an officer appointed by and subject to the direction and supervision of the City Manager. The appointments of the directors of all departments established by the Council or by this Charter shall be subject to the approval of the Council, but approval by the Council shall not be required for the heads of subdivisions of any department, office or agency, or of any other subordinate employee of the City. The City Manager may serve as head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.

Section 7.02. Personnel Rules.

The City Manager shall prepare personnel rules and the Council may by ordinance adopt them with or without amendment. These rules shall provide for:

- (a) The classification of all City positions, based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by changed circumstances;
- (b) A pay plan for all City positions;
- (c) Methods for determining the merit and fitness of candidates for appointment or promotion;
- (d) The policies and procedures regulating reduction in force and removal of employees;
- (e) The hours of work, attendance regulations and provisions for sick and vacation leave;
- (f) The policies and procedures governing persons holding provisional appointments;
- (g) Policies regarding in-service training programs;
- (h) Grievance procedures; and
- (i) Other practices and procedures necessary to the administration of the City personnel system.

Section 7.03. City Attorney.

The City Council shall appoint a City Attorney from recommendations of the City Manager, or by any

member of the City Council, who shall be duly licensed to practice law in the State of Texas. He shall receive for his services such compensation as may be fixed by Council. He may be removed at any time by majority vote of the City Council.

The City Attorney shall represent the City of Midlothian in all its litigation. He shall be the legal advisor of and attorney and counsel for the City of Midlothian, the Council and all boards, commissions and agencies, and all officers and departments thereof.

The City Attorney shall have authority to appoint one or more assistants, subject to approval of the City Manager, such assistant or assistants to hold office at the will of the City Attorney so long as he remains as such.

Notwithstanding the above provisions, the Council may engage special legal counsel to represent the City of Midlothian in any specific matter or for the performance of any specifically delineated duties otherwise to be performed by the City Attorney.

Section 7.04. Independent Audit.

The Council shall cause an independent audit to be made of the books of account, records and transactions of all the administrative departments of the City at least once yearly. Such audits, during such fiscal year, shall be made by one or more certified public accountants who, for the three (3) years next preceding, have held a certificate issued by the State Board of Accountancy of the State of Texas, or by a state maintaining an equal standard of professional requirements, which entitled the holder of such certificate to a Texas certificate. The auditor or auditors to make the audit shall be selected by the Council, and shall be responsible to the Council. The duties of the auditor or auditors so appointed shall include the certification of all statements required of the City Manager in his annual budget estimate. Such statements shall include a balance sheet, exhibiting the assets and liabilities of the City, supported by departmental schedules, and schedules for each utility publicly owned or operated, summaries of income and expenditures, supported by detailed schedules; and also comparisons, in proper classification, with the last previous year. The report of such auditor or auditors for the fiscal year shall be printed and a copy thereof shall be furnished to each member of the Council and the City Manager and a copy shall be kept available in the office of the City Secretary for inspection by any citizen upon request. A summary of such report of the auditor or auditors may also be published once in the official newspaper. The original report of the auditor or auditors shall be kept among the permanent records of the City.

State law reference—Audit of municipal finances, V.T.C.A., Local Government Code, ch. 103.

ARTICLE VIII. MUNICIPAL COURT*

Section 8.01. Municipal Court.

There shall be a court known as The Municipal Court of the City of Midlothian, with such jurisdiction, powers and duties as are given and prescribed by the laws of the State of Texas.

Section 8.02. Judge of the Municipal Court.

The Municipal Court shall be presided over by a magistrate who shall be known as the Judge of the Municipal Court. The Judge shall be appointed by the Council to serve at the discretion of the Council.

In the event the Judge of the Municipal Court is unable to act for any reason, the Council shall appoint a replacement. The Judge, or anyone acting in his place, shall receive such compensation as may be set by the Council.

The Council shall have the power to create and establish additional municipal courts and to appoint more than one judge of each municipal court, whether one or more, each of whom shall be a magistrate and shall have the qualifications and serve at the discretion of the Council.

State law reference—Municipal court judges generally, V.T.C.A., Government Code, sec. 29.004.

Section 8.03. Clerk of the Municipal Court.

There shall be a Clerk of the Municipal Court who shall be appointed by the City Manager. The Clerk shall have the power to administer oaths and affidavits, make certificates, affix the seal of the Court thereto, and otherwise perform any and all acts necessary in issuing process of such Court and conducting the business thereof.

State law reference—Municipal court clerk, generally, V.T.C.A., Government Code, sec. 29.010.

ARTICLE IX. FINANCIAL PROCEDURES^{*}

Section 9.01. Fiscal Year.

The Fiscal Year of the City shall begin on the first day of October and end on the last day of September of the next succeeding year. Such fiscal year shall also constitute the budget and accounting year.

State law references—General fiscal power to establish fiscal year, V.T.C.A., Local Government Code, sec. 101.022; city fiscal year, V.T.C.A., Tax Code, sec. 1.05.

Section 9.02. Submission of Budget and Budget Message.

On or before the 1st day of August each year, the Manager shall submit to the Council a budget for the ensuing fiscal year and an accompanying message.

State law reference—Municipal budget, V.T.C.A., Local Government Code, ch. 102.

Section 9.03. Budget Message.

The Manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the City for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the City's debt position and include such other material as the Manager deems desirable.

Section 9.04. Budget a Public Record.

The budget and all supporting schedules shall be filed with the City Secretary when submitted to the Council and shall be opened to public inspection by anyone interested.

Section 9.05. Public Hearing on Budget.

At the Council meeting at which time the budget is submitted, the Council shall name the date and place of a public hearing and shall cause to be published in the official newspaper of the City the time and place, which will be not less than ten (10) days nor more than thirty (30) days after date of notice. At this hearing interested citizens may express their opinions concerning items of expenditures, giving their reasons for wishing to increase or decrease any items of expense.

Section 9.06. Proceeding on Adoption of Budget.

After public hearing, the Council shall analyze the budget, making any additions or deletions which they feel appropriate, and shall, at least ten (10) days prior to the beginning of the next fiscal year, adopt the budget by a favorable majority vote of the full membership of the Council. Should the City Council take no final action on or prior to such day, the current budget shall be in force on a month to month basis until a new budget is adopted.

Section 9.07. Budget, Appropriation and Amount to be Raised by Taxation.

On final adoption, the budget shall be in effect for the budget year. Final adoption of the budget by the Council shall constitute the official appropriations as proposed expenditures for the current year and shall constitute the basis of official levy of the property tax as the amount of tax to be assessed and collected for the corresponding tax year. Estimated expenditures will in no case exceed proposed revenue plus cash on hand. Unused appropriations may be transferred to any item required for the same general purpose.

Section 9.08. Contingent Appropriation.

Provision shall be made in the annual budget and in the appropriation ordinance for a contingent appropriation in an amount not more than seven (7) percent of the total general fund expenditures, to be used in case of unforeseen items of expenditures. Such contingent appropriation shall be under the control of the City Manager and distributed by him only after prior approval by the City Council. The proceeds of the contingent appropriation shall be disbursed only by transfer to other departmental appropriation, the spending of which shall be charged to the departments or activities for which the appropriations are made.

Section 9.09. Amending the Budget.

Under extreme emergency conditions which may arise and which could not reasonably have been foreseen in the normal process of planning the budget, the Council may, by a majority vote of the full membership, amend or change the budget to provide for any additional expense in which the general welfare of the citizenry is involved. These amendments shall be by ordinance, and shall become an attachment to the original budget.

Section 9.10. Certification; Copies Made Available.

A copy of the budget, as finally adopted, shall be filed with the City Secretary, and such other places required by State law or as the City Council shall designate. The final budget shall be printed, mimeographed or otherwise reproduced and sufficient copies shall be made available for the use of all offices, agencies and for the use of interested persons and civic organizations.

Section 9.11. Defect shall not Invalidate the Tax Levy.

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

Section 9.12. Finance.

A central accounting system shall be established, and insofar as local conditions will permit, all functions of accounting, financing, inventory, and budget controls will be centralized therein. The City Manager shall perform, or delegate to one or more officers designated by him, the following duties and responsibilities:

- (a) Supervise and be responsible for the disbursement of all moneys and have control over all expenditures to ensure that budget appropriations are not exceeded;
- (b) Maintain a general accounting system for the City government and each of its offices, departments and agencies, keep books for, exercise financial budgetary control

over each office, department and agency, keep separate accounts for the items of appropriation contained in the City budget, each of which accounts shall show the amount of the appropriation, the amounts paid therefrom, the unpaid obligations against it, and the unencumbered balance; require reports of receipts and disbursements from each receiving and spending agency of the City government to be made daily or at such intervals as he may deem expedient;

- (c) Submit to the Council a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial conditions of the City of Midlothian;
- (d) Have custody of all public funds belonging to or under the control of the City of Midlothian, or any office, department or agency of the City government, and deposit all funds coming into his hands in such depository or depositories as may be designated by the City Council, subject to the requirements of law in force from time to time as to the furnishing of bond or the deposit of securities and the payment of interest on deposits;
- (e) Have custody of all investments and invested funds of the City government, or in possession of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the City of Midlothian and the receipt and delivery of City of Midlothian bonds and notes for transfer, registration or exchange;
- (f) Supervise and be responsible for the purchase, storage and distribution of all supplies, materials, equipment and other articles used by any office, department or agency of the City government and prepare the periodical inventories of supplies, materials and City-owned property; and
- (g) Approve all proposed expenditures and unless there is an unencumbered balance of appropriations and available funds, no expenditure shall be made.

Section 9.13. Accounting Supervision and Control.

The City Manager or such officer or officers designated by him shall have power and shall be required to:

- (a) Prescribe the forms of receipts, vouchers, bills or claims to be used by all the offices, departments and agencies of the City government;
- (b) Examine and approve all contracts, orders and other documents by which the City government incurs financial obligations, having previously ascertained that moneys have been appropriated and allotted and will be available when the obligations shall become due and payable;
- (c) Audit and approve before payment all bills, invoices, payrolls and other evidences of claims, demands or charges against the City government and with the advice of the City Attorney determine the regularity, legality and correctness of such claims, demands or charges; and
- (d) Inspect and audit any accounts or records of financial transactions which may be maintained in any office, department or agency of the City government apart from or

subsidiary to the accounts kept in his office.

Section 9.14. Lapse of Appropriations.

All appropriations shall lapse at the end of the fiscal year to the extent that they shall not have been expended or lawfully encumbered.

Section 9.15. Fees shall be Paid to City of Midlothian.

All fees received by any officer or employee shall belong to the City and shall be accounted for and paid to the Finance Officer at such times as required by the City Manager except as otherwise provided.

Section 9.16. Sale of City Property.

Before the City of Midlothian makes any sale or contract for the sale of any property belonging to the City of Midlothian, except utilities, in the form of personal property, having an estimated value of \$3,000 or less, opportunity shall be given for open competition under such rules and regulations as the City Council may prescribe.

In the sale of property valued at more than \$3,000, the property shall be advertised for sale and bids in the local newspaper. The contract for sale shall be awarded to the highest responsible bidder, either at auction or upon sealed bids, after such public notice and competition as may be prescribed, and upon such other terms and conditions not inconsistent with express provisions of law and of this Charter, as the City Council may order; provided the City Council shall have the power to reject any and all bids and advertise again. These same procedures shall be used whenever the City of Midlothian acts as transfer agent. Sale of land shall be in accordance with provisions of Article 5421c-12, as amended, Revised Civil Statutes of Texas.

State law reference—Sale of real property by public auction or sealed bid, V.T.C.A., Local Government Code, sec. 253.008.

Section 9.17. Purchase Procedure.

Expenditures shall be made according to procedures established by ordinance of the City Council for all budgeted items not exceeding \$3,000. All contracts or purchases involving more than \$3,000 shall be let to the lowest and best bid by a responsible bidder after there has been an opportunity for competitive bidding in accordance with the requirements of Article 2368a, Revised Civil Statutes of Texas and any present or future amendments relating thereto. Provided, however, the Council shall have the right to reject any and all bids. Provided, further, nothing herein shall apply to contracts for personal or for professional services nor to work done by the City and paid for by the day as such work progresses nor to the purchase of real estate. Emergency purchases are authorized under circumstances and in accordance with procedures set forth under Article 2368a and any present or future amendments relating thereto.

Editor's Note—Ordinance 95-02, adopted January 10, 1995, provided as follows: "That, the City of Midlothian hereby elects to have Section 252.002 and related sections of the Local Government Code supersede the City of Midlothian Charter so that the threshold amount at which competitive bids are required will be in compliance with Section 252.021 of the Local Government Code, presently being \$15,000.00 for contracts other than insurance and \$5,000.00 for insurance, with the express provisions that any future amendments to the Local Government Code relating to bid amounts will be placed into effect at the time of their effective date."

Ordinance 2001-58, adopted October 23, 2001, amends Ordinance 95-02 as follows: "That, the City of Midlothian hereby elects to have Section 252.002 and related sections of the Local Government Code supersede the City of Midlothian Charter so that the threshold amount at which competitive bids are required will be in compliance with Section 252.021 of the Local Government Code, presently being \$25,000.00 for contracts other than insurance and \$5,000.00 for insurance, with the express provision that any future amendments to the Local Government Code relating to bid amounts will be placed into effect at the time of their effective date." (Ordinance 2001-58 adopted 10/23/01)

State law reference—Purchasing and contracting authority of municipality, V.T.C.A., Local Government Code, chs. 252, 271.

Section 9.18. Disbursement of Funds.

All checks, vouchers or warrants for the withdrawal of money from the City depository shall be signed by the City Manager and countersigned by the Finance Officer, if there is one officially designated, or, if not, then by the City Secretary and/or by such other persons as designated by the City Council.

Section 9.19. Borrowing in Anticipation of Property Taxes.

For the purpose of temporary borrowing, the City Council shall have the power by ordinance to raise money on the credit of the City by the issuance of warrants, certificates of obligation and/or notes in anticipation of the collection of taxes, of special assessments, or of other anticipated revenues.

Section 9.20. Sale of Notes; Report of Sale.

All notes issued pursuant to this article may be sold at not less than par and accrued interest at private sale without previous advertisement, and such sale shall be authorized by the Council.

Section 9.21. Surety Bonds.

The directors of all administrative departments whose duties include the handling of moneys, and all employees whose duties include the handling of moneys, belonging to the City of Midlothian, shall, before entering upon the duties of their office or employment, make bond in some responsible surety company authorized to do business in the State, acceptable to the City Council. Any such surety bond shall be conditioned that the principal thereon will faithfully perform and/or discharge the duties of his office, account for and pay over to the City all moneys and property coming into his hands belonging to the City, and if there are provisions of State law bearing upon the functions of his office under which the execution of a surety bond is required, it shall be further conditioned to comply therewith. Premiums for such surety bonds will be paid by the City.

State law reference—Official bonds, V.T.C.A., Government Code, ch. 604.

ARTICLE X. INCURRING INDEBTEDNESS*

Section 10.01. Powers to Issue.

In keeping with the Constitution of the State of Texas and not contrary thereto, the City of Midlothian shall have the power to borrow money on the credit of the City for any public purpose not now or hereafter prohibited by the Constitution and laws of the State of Texas, and shall have the right to issue all tax bonds, revenue bonds, funding and refunding bonds, time warrants, certificates of obligation and other evidence of indebtedness as now authorized or as may hereafter be authorized to be issued by any City under and in accordance with the restrictions, conditions and laws of the State of Texas.

Section 10.02. Sale of Bonds.

No bonds issued by the City of Midlothian shall be valid unless they are sold for par value and accumulative interest exclusive of commission. The Council shall have the right to reject any or all bids.

Section 10.03. Interest and Sinking Funds.

It shall be the duty of the Council to levy an annual tax sufficient to pay the interest on and provide the necessary sinking fund required by law on all outstanding general obligation bonds, time warrants, and certificates of obligation of the City. The interest and sinking fund shall be deposited in a separate account and shall not be diverted to or used for any other purpose than to pay the interest and principal on all such bonds, time warrants, and certificates of obligation issued by the City of Midlothian. The sinking fund maintained for the redemption of any debt may be invested in any interest-bearing security authorized by the laws of this State. Investments of all sinking funds for interest shall mature at least fifteen (15) days prior to the date of payment due on bonds issued by the City of Midlothian. The Council may also invest any other City funds in any state or national chartered bank in interest-bearing certificates of deposit secured by pledged securities as required by state law.

Section 10.04. Revenue Bonds.

The City shall have power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or facilities for any other self-liquidating municipal function not now or hereafter prohibited by any general laws of the State, and to issue revenue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable solely from the properties or interest therein acquired and the income therefrom, and shall never be a debt of the City in accordance with State law.

Section 10.05. Execution and Registration of Bonds.

All bonds, warrants and certificates of indebtedness shall be signed by the Mayor, countersigned by the City Secretary, and sealed with the seal of the City in the manner provided by general law, and shall be payable at such times and place or places as may be fixed therein. It shall be the duty of the Mayor, when such bonds are issued, to forward the same to the Attorney General of the State of Texas for approval and for registration by the Comptroller of Public Accounts.

Section 10.06. Bond Register.

The Finance Officer or other officer of the City designated by the City Manager shall keep, or cause to be kept, for and on behalf of the City a complete bond registry and books showing all bonds, warrants and certificates of indebtedness issued, the date and amount thereof, the rate of interest, maturity and other information pertinent thereto, of all bonds or other indebtedness surrendered and all other transactions of the Council having reference to the refunding of the indebtedness of said City. When bonds or their coupons are paid, their payment or cancellation shall be noted in said registry. The books shall be safely kept among the records of the City.

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ARTICLE XI. TAX ADMINISTRATION*

Section 11.01. Tax Assessor-Collector; Appointment.

There shall be a Tax Assessor-Collector who shall be appointed by the City Council from recommendations by the City Manager or any member of the City Council. The Tax Assessor-Collector shall serve at the discretion of the City Council and his compensation shall be established by the City Council. The Tax Assessor-Collector shall collect all taxes and special assessments payable to the City. He shall supervise and be responsible for the assessment of all property subject to taxation within the corporate limits of the City for taxation, prepare and maintain property maps and ownership records on all property in the City, shall give all notices and do all other acts required by law for the assessment and collection of all taxes and special assessments levied by and for the City of Midlothian.

Section 11.02. Power to Tax; Franchise Taxes; Occupation Taxes.

(a) The City Council shall have the power under the provisions of State law to levy, assess and collect an annual tax upon all taxable property within the City not to exceed the maximum provided by the Constitution and general laws of the State of Texas.

(b) The City Council shall have the power annually to levy and collect a street rental charge against any public service corporation, person, or entity whether holding a franchise or not for the privilege of the use and occupancy of public streets, alleys or grounds of the City, separately from the tangible property of such corporations, companies and corporate institutions, as authorized by the State laws, and shall have the full power to enforce the collection of such rental charges.

(c) The City Council shall have the right to assess and collect such occupation taxes, licenses and franchise taxes upon trades, professions, occupations and any business transaction carried on in said City as may be authorized by the general laws of the State of Texas.

(d) All existing taxes, assessments and charges of whatever kind or nature heretofore levied by the City of Midlothian shall remain in full force and effect until and unless repealed or changed by ordinance.

State law references—Franchise to use streets in municipality, V.T.C.A., Transportation Code, sec. 311.071 et seq.; authority to grant franchise to use or occupy public grounds, V.T.C.A., Local Government Code, sec. 282.003; imposition of occupation taxes by municipalities, V.T.C.A., Tax Code, sec. 302.101.

Section 11.03. Property Subject to Tax; Method of Assessment.

All property, real, personal or mixed, lying and being within the corporate limits of the City of Midlothian on the first day of January, not expressly exempted by law, shall be subject to annual ad valorem taxation at its true market value. The mode and manner of making renditions, tax lists, assessments, tax rolls, delinquent tax rolls, collections and procedures for enforcing collection of such taxes shall be in accordance with the State laws governing the levy and collection of ad valorem taxes by cities, school districts and counties. The City Tax Assessor-Collector shall assess all property which has been omitted from assessment in prior years upon a current supplemental assessment roll. The taxes upon such supplemental assessments shall be due at once, and if not paid within sixty (60) days thereafter, shall be deemed delinquent, and shall be subject to the same penalty and interest as other delinquent taxes for such year. If the ownership of any property should be unknown to the City

Tax Assessor-Collector, he shall enter that fact in the record.

In addition to the powers granted by this Section, the City shall have the same power as county tax assessors and collectors in Texas to make back assessments, all at the same value and tax rates as such property should have been assessed and taxed for past years, and indicating the year or years for which it is assessed.

State law reference—Authority of municipality to impose property taxes, V.T.C.A., Tax Code, sec. 302.001.

Section 11.04. Board of Equalization; Appointment; Qualifications.

The City Council shall each year appoint three (3) residents, who shall be qualified voters and real property owners, as the Board of Equalization. Such Board shall choose from its membership a chairman. The City Tax Assessor-Collector shall be ex-officio secretary of the Board, provided the City Tax Assessor-Collector, with the consent of the City Council, may designate some other officer or employee of the City to act in his stead. A majority of said Board shall constitute a quorum for the transaction of business. Members of the Board while serving shall receive such compensation as may be provided for them by the City Council.

Section 11.05. Board of Equalization; Public Hearings; Notice to Owner.

At the same meeting that the Council appoints the Board of Equalization, it shall by ordinance fix the time of the first meeting of the Board. After such first meeting, the Board may reconvene and adjourn from time to time, and as long thereafter as may be necessary it shall hear and determine the complaint of any person in relation to the assessment roll. Whenever said Board shall find it their duty to raise the value of any property appearing on the tax lists or tax records of the City, it shall after having examined such lists and records and corrected all errors appearing therein, adjourn to a day not less than ten (10) nor more than fifteen (15) days from the date of adjournment, and shall cause the secretary of said Board to give written notice to the owner of such property or to the person rendering same of the time to which said Board has adjourned, and that such owner or person rendering said property may at that time appear and show cause why the value of said property should not be raised. Such notice may be served by depositing the same, properly addressed, and postage paid, in the City Post Office.

Section 11.06. Board of Equalization; Power and Duties.

It shall be the duty of such Board to examine and, if necessary, revise the assessments as returned by the City Assessor-Collector, to the end that all property within the City shall be assessed as fairly and as uniformly as possible. The Board of Equalization shall also have the power to:

- (a) Review on complaint of property owners assessments for the purpose of taxation of both real and personal property within the City made by the City Assessor-Collector;
- (b) Administer oaths;
- (c) Take testimony;
- (d) Hold hearings;

- (e) Adopt regulations regarding the procedure of assessment review; and
- (f) Compel the production of all books, documents and other papers pertinent to the investigation of the taxable values of any person, firm or corporation having or owning property within the corporate limits of the City subject to taxation.

Section 11.07. Board of Equalization; Records; Approval of Rolls.

The Board shall be required to keep an accurate record of all its proceedings, which shall be available for public inspection. Immediately upon completion of its work the Board shall certify its approval of the assessment rolls. The decision of the Board of Equalization on property values shall be final; provided, however, appeals may be taken to a district court having jurisdiction in accordance with State law pertaining thereto.

Section 11.08. Taxes; When Due and Payable.

All taxes due the City of Midlothian shall be payable at the office of the City Assessor-Collector and may be paid at any time after the tax rolls for the year have been completed and approved, which shall be not later than October 1.

Section 11.09. Tax Liens.

The tax levied by the City is hereby declared to be a lien, charge or encumbrance upon the property upon which the tax is due, which lien, charge or encumbrance the City is entitled to enforce and foreclose in any court having jurisdiction over the same, and the lien, charge or encumbrance on the property in favor of the City, for the amount of the taxes, penalties, interest and other costs due on such property is such as to give the State courts jurisdiction to enforce and foreclose said lien on the property on which the tax is due, not only as against any resident of this State or person whose residence is unknown, but also as against nonresidents. All taxes upon real estate shall especially be a lien and a charge upon the property, real, personal or mixed, upon which the taxes are due, which lien may be foreclosed in any court having jurisdiction. The City's tax lien shall exist from January 1 in each year until the taxes are paid. Such lien shall be prior to all other claims, and no gift sale, assignment or transfer of any kind, or judicial writ of any kind can defeat such lien.

All persons or corporations owning or holding personal property or real estate in the City of Midlothian on the first day of January of each year shall be liable for all municipal taxes levied thereon for such year.

State law reference—Tax liens and personal liability, V.T.C.A., Tax Code, ch. 32.

Section 11.10. Arrears of Taxes Offset to Debt Against City.

The City shall be entitled to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation who is in arrears to the City for taxes, in the amount of taxes so in arrears, including all penalties and interest, and no assignment or transfer of such debt, claim, demand or account after the said taxes are due shall affect the right of the City to so offset against the same.

Section 11.11. Additional Power of Council.

Except as otherwise provided by law, or this charter, the Council shall have the power to provide by ordinance for the assessment and collection of all taxes, and to make such rules, regulations and mode of procedure to enforce the collection by and pay to the Tax Assessor-Collector as it may deem expedient, and shall provide such penalties for the failure to pay such taxes as it may deem expedient. The Council shall also have the power to contract with any entity to perform any or all duties described by this charter necessary for the administration and collection of taxes.

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ARTICLE XII. FRANCHISES AND PUBLIC UTILITIES*

Section 12.01. Powers of the City.

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

Section 12.02. Franchises; Power of Council.

The Council shall have power to grant, amend, renew or extend by ordinance all franchises of all public utilities of every character, including cable television, operating within the City of Midlothian, and for such purposes is granted full power. All ordinances granting, amending, renewing or extending franchises for public utilities shall be read at two separate regular meetings of the Council and shall not be finally passed until thirty (30) days after the first reading; and no such ordinance shall take effect until sixty (60) days after its final passage; and pending such time, the full text of such ordinance shall be published once each week for four (4) consecutive weeks in the official newspaper of the City of Midlothian, and the expense of such publication shall be borne by the proponent of the franchise. No public utility franchise shall be transferable except to persons, firms or corporations taking all or substantially all of the holder's business in the City of Midlothian and except with the approval of the Council expressed by ordinance. No franchise shall be granted for an indeterminate term nor for a term of more than twenty-five (25) years. No exclusive franchise shall ever be granted.

Section 12.03. Franchise Value Not to be Allowed.

In fixing reasonable rates and charges for utility service within the City and in determining the just compensation to be paid by the City for public utility property which the City may acquire by condemnation or otherwise, nothing shall be included as the value of any franchise granted by the City under this Charter.

Section 12.04. Right of Regulation.

All grants, renewal, extensions or amendments to public utility franchises, whether it be so provided in the ordinance or not, shall be subject to the right of the City:

- (a) To repeal the same by ordinance at any time for failure to begin construction or operation within the time prescribed or for failure otherwise to comply with the terms of the franchise, such power to be exercised only after due notice and hearing.
- (b) To require an adequate and reasonable extension of plant and service, and the maintenance of the plant and fixtures at the standard necessary to render the highest reasonable quality of utility service to the public.
- (c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service and rates.
- (d) To prescribe the form of accounts kept by each such utility. If the franchise or ordinance does not prescribe the form of accounts kept by each utility, then it shall keep its

accounts in accordance with the utility system of accounts for said utility prescribed by the National Association of Railroad and Public Utility Commissioners, the State Railroad Commission of Texas, or their successors or other State or Federal utility regulating agencies.

(e) To examine and audit the accounts and other records of any such utility at any time and to require annual and other reports, including reports on local operations by each such public utility.

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

Section 12.05. Consent of Property Owners.

The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance, or operation of any public utility, but nothing in this Charter or in any franchise granted thereunder shall ever be construed to deprive any such property owners of any right of action for damage or injury to his property as now or hereafter provided by law.

Section 12.06. Extensions.

All extensions of public utilities within the City limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this Charter and in any original grant hereafter made. The right to use and maintain any extension of public utility operated under a franchise hereafter granted, such right shall be terminable at the same time under the same conditions as the original grant.

Section 12.07. Temporary Permits.

Permits for minor or temporary privileges in the streets, public ways and public places of the City may be granted and revoked from time to time, provided they are unconditionally revocable at the will of the governing body. Such permits shall not be deemed franchises as the term is used in this Charter.

Section 12.08. Other Conditions.

All franchises heretofore granted are recognized as contracts between the City of Midlothian and the grantee, and the contractual rights as contained in any such franchises shall not be impaired by the provisions of this Charter, except that the power of the City of Midlothian to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved, and except the general power of the City heretofore existing and herein provided for to regulate the rates and services of a utility, which shall include the right to require adequate and reasonable extension of plant and service and the maintenance of the plant fixtures at the standard necessary to render the highest reasonable quality of service to the public. Every public utility franchise hereafter granted shall be held subject to all the terms and conditions contained in the various sections of this Article whether or not such terms are specifically mentioned in the franchise. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the Council or the voters of the City in imposing terms and conditions as may be reasonable in connection with any franchise grant, including the right to require such compensation or rental as may be permitted by the laws of the State of Texas.

Section 12.09. Franchise Records.

Within six (6) months after this Charter takes effect, every public utility and every owner of public utility franchises shall file with the City certified copies of all franchises owned or claimed, or under which such utility is operated in the City of Midlothian. The City shall compile and maintain a public record of public utility franchises.

Section 12.10. Regulation of Rates.

The City Council shall have the power by ordinance to fix and regulate, after public hearing and reasonable notice, the price of water, gas, electric lights, electric power, steam heat and cable television, and charges of all public transportation of every kind, whether transporting passengers, freight, or baggage, and generally to fix and regulate the rates and charges of all public utilities of every kind operating within the corporate limits of the City of Midlothian.

ARTICLE XIII. BOARDS AND COMMISSIONS

Section 13.01. Boards and Commissions.

The City Council shall have authority to establish by ordinance such boards, commissions, and committees as it may deem necessary for the conduct of City business and management of municipal affairs. The authority, functions and responsibilities of such boards, commissions and committees shall be such as is spelled out in the ordinance establishing them. All existing boards and commissions heretofore established shall be continued in accordance with the ordinances or other acts under which they have been created, or until the City Council shall by ordinance abolish, modify or alter the ordinances or acts under which they exist. Notwithstanding any other provision of this Charter the elected City Council shall have paramount authority over all matters affecting the budgets, appropriation of funds, expenditures, purchases and sale of properties and procedures for accounting thereof, consistent with the express provision of this Charter and applicable provisions of the State Constitution and laws of this State.

ARTICLE XIV. INITIATIVE, REFERENDUM AND RECALL

Section 14.01. Power of Initiative.

The voters shall have power to propose any ordinance except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the same at the polls, such power being known as initiative. Any initiative ordinance may be submitted to the Council by a petition signed by currently qualified voters of the City equal in number to at least ten (10) percent of the total number of the qualified voters registered to vote at the last regular municipal election.

Section 14.02. Power of Referendum.

The voters shall have power to approve or reject at the polls any ordinance passed by the Council or submitted by the Council to a vote of the voters, such power being known as the referendum, except in cases of bond ordinances and ordinances making the annual tax levy. Ordinances submitted to the Council by initiative petition and passed by the Council without change shall be subject to the referendum in the same manner as other ordinances. Within twenty (20) days after the enactment by the Council of any ordinance which is subject to referendum, a petition signed by currently qualified voters of the City equal in number to at least ten (10) percent of the total number of the qualified voters registered to vote at the last preceding regular municipal election may be filed with the City Secretary requesting that any such ordinance be submitted to a vote of the voters.

Section 14.03. Frequency of Election.

Special elections on initiated or referred ordinances shall not be held more frequently than once each six (6) months, and no ordinance on the same subject as an initiated ordinance which has been defeated or on the same subject as a referred ordinance which has been approved at any election may be initiated by the voters within one (1) year from the date of such election.

Section 14.04. Form of Petition.

Initiative petition papers shall contain the full text of the proposed ordinance. The signatures to initiative or referendum petitions need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section. Each signer of any petition paper shall sign his name in ink or indelible pencil, and shall indicate after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition the names and addresses of five (5) voters, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition. Attached to each separate petition paper there shall be an affidavit of the circulator thereof that he only personally circulated the foregoing paper, that it bears a stated number of signatures appended thereto which were made in his presence, and that he believes them to be the genuine signatures of the persons whose names they purport to be.

Section 14.05. Filing Examination and Certifications.

All petition papers comprising an initiative or referendum petition shall be assembled and filed with the City Secretary as one instrument. Within ten (10) days after the petition is filed, the City Secretary shall determine whether each paper of the petition has a proper statement of the circulator, and whether the petition is signed by a sufficient number of qualified voters. The City Secretary shall

declare any petition paper entirely invalid which does not have attached thereto an affidavit signed by the circulator thereof. After completing the examination of the petition, if the City Secretary certifies that the petition is insufficient, he shall set forth in the certificate the particulars in which it is defective, and shall at once notify the petitioners of these findings. The City Secretary shall then notify the Council of the results of the examination at its next regular meeting.

An initiative or referendum petition may be amended at any time within ten (10) days after the notification of the insufficiency has been sent by the City Secretary, by filing of a supplementary petition upon additional papers signed and filed as provided in case of an original petition. The City Secretary shall, within five (5) days after such an amendment is filed, make examination of the amended petition, and, if the petition be still insufficient, a certificate shall be filed to that effect in the City Secretary's office, and the committee of petitioners notified of these findings, and no further action shall be had on such insufficient petition. The finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

When a referendum petition, or amended petition as defined above, has been certified as sufficient by the City Secretary, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless approved by the voters, as hereinafter provided.

Section 14.06. Council Consideration and Submission to Voters.

Whenever the Council received a certified initiative or referendum petition from the City Secretary, it shall proceed at once to consider such a petition. A proposed initiative ordinance shall be read, and provision shall be made for a public hearing upon the proposed ordinance. The Council shall take final action on the ordinance not later than sixty (60) days after the date on which such ordinance was submitted to the Council by the City Secretary. A referred ordinance shall be reconsidered by the Council, and its final vote upon such reconsideration shall be upon the question, "Shall the ordinance specified in the referendum petition be repealed?"

If the Council shall fail to pass an ordinance proposed by the initiative petition, or shall pass it in a form different from that set forth in the petition therefor, or if the Council fails to repeal a referred ordinance, the proposed or referred ordinance shall be submitted to the voters not less than thirty (30) days nor more than ninety (90) days from the date the Council takes its final vote thereon. The Council may, in its discretion, and if no regular election is to be held within such period, provide for a special election.

Ordinances submitted to vote of the voters in accordance with the initiative and referendum provisions of this Charter shall be submitted by ballot title, which shall be prepared in all cases by the City Attorney, but it shall be finally approved by the City Council. The ballot title may be different from the legal title of any such initiated or referred ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance and if a paper ballot is used, it shall have below the ballot title the following propositions, one above the other in the order indicated: "FOR THE ORDINANCE" and "AGAINST THE ORDINANCE." Any number of ordinances may be voted on at the same election, and may be submitted on the same ballot, but any paper ballot used for voting on an initiated or referred ordinance or ordinances shall be for that purpose only. If voting machines are used, the ballot title of any ordinance shall have below it the same two propositions, one above the other or one preceding the other in the order indicated, and the voter shall be given an opportunity to vote for either of the two propositions and thereby to vote for or against the ordinance.

Section 14.07. Referendum Petitions; Suspension of Effect of Ordinances.

When a referendum petition is filed with the City Secretary, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (a) There is a final determination of insufficiency of the petition, or
- (b) The petitioners' committee withdraws the petition, or
- (c) The Council repeals the ordinance, or
- (d) Thirty (30) days have elapsed after a vote for repeal of the ordinance has failed.

Section 14.08. Results of Referendum Elections.

If a majority of the voters voting on a proposed initiative ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the City. A referred ordinance which is not approved by a majority of the voters voting thereon shall thereupon be deemed repealed. If the conflicting ordinances are approved by the voters at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

Initiative and referendum ordinances adopted or approved by the voters shall be published, and may be amended or repealed by the Council, as in the case of other ordinances.

Section 14.09. Power of Recall.

The people of the City reserve the power to recall any elected officer of the City. In the case of either the Mayor or any Council Member, such power may be exercised by filing with the City Secretary a petition signed by currently qualified voters of the City equal in number to at least twenty-five (25) percent of the total number of currently qualified voters registered to vote at the last regular municipal election demanding the removal of such elected officer. If the petition is certified by the City Secretary to be sufficient, the Council shall order and hold an election forthwith to determine whether such officer shall be recalled, and if the majority of the legal votes are cast for a recall of the officer named on the ballot, the Council shall immediately declare his office vacant, and such vacancy shall be filled forthwith in accordance with the provisions of this Charter. No recall petition shall be filed against an officer within six (6) months after such elected officer takes office.

Any member of the City Council may be removed from office by recall.

Section 14.10. Public Hearing to be Held.

The officer whose removal is sought may, within five (5) days after such recall petition has been presented to the City Council, request that a public hearing be held to permit him to present pertinent facts. In this event the City Council shall order such public hearing to be held not less than five (5) days nor more than fifteen (15) days after receiving such request for a public hearing.

Section 14.11. Recall Election.

The City Secretary shall at once examine the recall petition and if he finds it sufficient and in

compliance with the provisions of this article of the Charter, he shall within five (5) days submit it to the City Council with the City Secretary's certificate to that effect, and notify the officer sought to be recalled of such action. If the officer whose removal is sought does not resign within five (5) days after such notice, the City Council shall thereupon order and fix a date for holding a recall election. Any such election shall be held not less than thirty (30) nor more than ninety (90) days after the petition has been presented to the City Council or after the public hearing provided in Section 14.10 is held; if such hearing is requested, at the same time as any municipal election held within such period; but if no such municipal election be held within such period, the City Council shall call a special election to be held within the time aforesaid.

All qualified voters of the City shall be entitled to cast ballots in a recall election of the Councilman elected at large.

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

- (a) With respect to each person whose removal is sought, the question shall be submitted "Shall (name of person) be removed from the office of Council Member by recall?"
- (b) Immediately below each question there shall be printed the two following propositions, one above the other, in the order indicated:
 - "For the recall of (name of person)"
 - "Against the recall of (name of person)"

ARTICLE XV. GENERAL PROVISIONS

Section 15.01. Personal Financial Interests.

The Mayor, Council members and other officers and employees of the City shall not be interested either directly or indirectly in the profits or emoluments of any contract, job, work or service for the City of Midlothian; nor shall any of them be interested either directly or indirectly in the sale to the City of any supplies, equipment, material or articles purchased nor shall any of them be the owner of stock in any public utility or public service corporation operating under franchise or license of the City of Midlothian. Any contract in which any officer or employee of the City has an interest or shall acquire an interest may be declared void by the City Council. Any violations of this Section shall result in the forfeiture of office, position or job.

State law references—Conflicts of interest of officers, V.T.C.A., Local Government Code, ch. 171; public disclosure, V.T.C.A., Government Code, ch. 553.

Section 15.02. Official Oath.

All elected officers of the City shall, before entering upon the duties of their respective offices, take and subscribe the official oath prescribed by the Constitution of the State of Texas. The oath of office shall be administered by the Mayor, Mayor Pro Tem, City Secretary or any other person authorized by law to administer oaths.

State constitution reference—Oath of office, Texas Constitution, art. 16, sec. 1.

Section 15.03. Notice of Claim.

The City shall not be held liable on account of any claim for the death of any person or injuries to any person or damage to any property unless the person making such complaint or claiming such damages shall, with sixty (60) days after the time at which it is claimed such damages were inflicted upon such person or property, file with the City a written statement under oath, stating the nature and character of such damages or injuries, the extent of the same, the place where same happened, the circumstances under which same happened and the conditions causing same, with a detailed statement of each item of damages and the amount thereof, and if it be for personal injuries, giving a list of any witnesses known by affiant to have seen the accident.

State law references—Texas Tort Claims Act, V.T.C.A., Civil Practice and Remedies Code, ch. 101; notice procedures, V.T.C.A., Civil Practice and Remedies Code, sec. 101.101; immunity of certain governmental functions, V.T.C.A., Civil Practice and Remedies Code, sec. 101.055; limitation on amount of liability, V.T.C.A., Civil Practice and Remedies Code, sec. 101.023.

Section 15.04. Assignment, Execution and Garnishment.

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

State law reference—Authority to provide that municipal funds not subject to garnishment, V.T.C.A., Local Government

Code, sec. 101.023.

Section 15.05. Security or Bond Not Required.

It shall not be necessary in any action, suit or proceedings in which the City shall be a party for any bond, undertaking or security to be executed in behalf of the City, but all actions, suits, and proceedings shall be conducted in the same manner as if such bond, undertaking, or security had been given. The City shall have all remedies of appeal provided by law to all courts without bond or security of any kind. For the purposes of all such actions, suits, proceedings and appeals, the City shall be liable in the same manner and to the same extent as if the bond, undertaking or security had been executed and given.

State law reference—Cities exempt from security for court costs, V.T.C.A., Civil Practice and Remedies Code, sec. 6.002.

Section 15.06. Nepotism.

No person related within the second degree by affinity, or the third degree by consanguinity to the Mayor or any member of the City Council shall be appointed to any paid office or position of the City. This prohibition shall not apply to any person who shall have been employed by the City for two (2) years or more prior to and at the time of the election of the Mayor, or members of the City Council or the appointment of the City Manager so related to him or her.

State law reference—Nepotism, V.T.C.A., Government Code, ch. 573.

Section 15.07. Fire Zones.

The City Council may establish fire zones and prescribe the kind and character of materials to be used in buildings constructed within such zones.

State law reference—Designation of fire limits in home-rule municipality, V.T.C.A., Local Government Code, sec. 342.012.

Section 15.08. When Provisions Take Effect.

For the purpose of nominating and electing members of the Council, the provisions of this Charter shall be in effect for the regular municipal election to be held in April, 1981. For all other purposes this Charter shall be in effect as provided in Section 15.19.

Section 15.09. Ordinances, Rules and Regulations Validated.

All ordinances, resolutions, rules and regulations of the City of Midlothian heretofore ordained, passed or enacted, that are in force at the time this Charter becomes effective, and which are not in conflict with such Charter, shall remain in full force until altered, amended or repealed by the City Council after such Charter takes effect.

Section 15.10. Separability Clause.

If any section or part of a section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not effect [affect] the remainder of this Charter nor the context in which such section or part of a section so held invalid may appear, except to the extent that an entire

section or part of section may be inseparably connected in meaning and effect with the section or part to which such holding shall directly apply.

Section 15.11. Charter Amendment.

This Charter may be amended in accordance with the procedures set forth in Article 1170, Revised Civil Statutes of Texas, as amended or as may be hereafter amended.

State constitution reference—Adoption or amendment of charter, Texas Constitution, art. 11, sec. 5.

State law reference—Adoption or amendment of charter, V.T.C.A., Local Government Code, sec. 9.001 et seq.

Section 15.12. Officers and Employees.

(a) Rights and Privileges Preserved. Nothing in this Charter, except as otherwise specifically provided, shall affect or impair the rights or privileges of persons who are City officers or employees at the time of its adoption.

(b) Continuance of Office or Employment. Except as specifically provided by this Charter, if at the time this Charter takes full effect a City administrative officer or employee holds any office or position [sic] until the taking effect of some specific provision under this Charter directing that he vacate the office or position. Any elected officer whose office becomes appointive or is or may be abolished by this Charter shall continue in office to which he or she was elected until his or her term expires, at which time such elective office is abolished as such.

Section 15.13. Departments, Offices and Agencies.

(a) Transfer of Powers. If a City department, office or agency is abolished by this Charter, the powers and duties given it by law shall be transferred to the City department, office or agency designated in this Charter or, if the Charter makes no provision, designated by the City Council.

(b) Property and Records. All property, records and equipment of any department, office or agency existing when this Charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the Council in accordance with this Charter.

Section 15.14. Pending Matters.

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

Section 15.15. Judicial Notice.

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

Section 15.16. Gender.

Whenever the context shall so require, the words "he," "him," "his," "Council Member," and all other words herein in the male or neuter gender shall be deemed to include the female gender, all singular words shall include the plural, and all plural words shall include the singular.

Section 15.17. Interim Government.

From and after the date of adoption of this Charter and until the first regular City election thereunder and the qualifications of the Mayor and Council Members therein elected, the Mayor and Council then in office shall continue in office and shall exercise all of the powers conferred upon the City by this Charter.

The additional member of the City Council provided by this Charter shall be appointed by the Mayor, to be confirmed by a majority vote of the City Council. This appointment shall be in full force and effect until the first general city election in April, 1981.

Section 15.18. Submission of Charter to Electors.

The Charter Commission in preparing this Charter finds and declares that it is impracticable to segregate each subject so that the voter may vote "Yes" or "No" on the same, for the reason that the Charter is so constructed that in order to enable it to work and function it is necessary that it should be adopted in its entirety. For these reasons the Charter Commission directs that said Charter be voted upon as a whole, and that it shall be submitted to the qualified voters of the City of Midlothian at an election to be held for that purpose on the 9th day of August, 1980. If said Charter is approved by a majority of the qualified voters voting at said election, it shall become the Charter of the City of Midlothian upon the entering upon the records of said City by the governing body of such City an official order declaring the adoption of said Charter.

Section 15.19. Charter to Become Effective on October 1, 1980.

The Charter Commission further directs that in order to permit an orderly transition from government of the City's affairs under the provisions of the general laws to those prescribed by this Charter, this Charter shall become effective and its provisions shall not be in force until October 1, 1980.