

PART I - CHARTER^[1]

Footnotes:

--- (1) ---

Editor's note— Printed herein is the Charter of the City of Hewitt, Texas, as adopted by referendum on April 3, 1982. Amendments to the charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

ARTICLE I. - INCORPORATION, FORM OF GOVERNMENT, AND POWERS

Sec. 1.1. - Incorporation.

The inhabitants of the City of Hewitt in McLennan County, Texas, within the corporate limits as now established, or hereafter established in the manner prescribed by this charter, shall be and shall continue to be a municipal body politic and corporate in perpetuity under the name of the "City of Hewitt."

Sec. 1.2. - Form of government.

The municipal government provided by this charter shall be known as the "Council-Manager" government. All powers of the city shall be vested in this council, except as otherwise provided by law or this charter. The council shall appoint the city manager, who shall execute the laws and administer the government of the city in accordance with the policies and budget adopted by the council.

Sec. 1.3. - General powers of the city.

The city shall have all the powers granted to municipalities by the constitution and laws of the State of Texas, as now or hereafter adopted, enacted or amended, together with all of the implied powers necessary to carry into execution such granted powers. The city may use a corporate seal; may sue and be sued; may contract and be contracted with; 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 the State of Texas, or any agency or any political subdivision thereof, or with the federal government, or any agency thereof, or with any state or agency thereof, to accomplish any lawful purpose for the advancement of the interest, welfare, health, morals, comfort, safety and convenience of the city and its inhabitants; may acquire property within or without its corporate limits for any municipal purpose in fee simple, or in any lesser interest or estate, by purchase, gift, devise, lease or condemnation, and, subject to the provisions of this charter, may sell, lease, mortgage, hold, manage, improve or control such property as may now or hereafter be owned by it; provided however, the city shall not sell, convey, mortgage or otherwise alienate any public utilities without prior approval of the qualified voters of the city; may exercise the power of eminent domain where necessary or desirable to carry out any of the powers conferred upon it by this charter, or by the constitution and laws of the State of Texas; may adopt ordinances and enact such regulations as may be expedient for the maintenance of the city and the welfare, health, morals, comfort, safety and convenience of its inhabitants.

Subject only to the limitations imposed by law and this charter, the city shall have, without the necessity of express enumeration in this charter, each and every power which, by virtue of law, the people are empowered by election to grant or to confer upon the city by expressly and specifically granting and enumerating the same herein.

The powers of the city under this charter shall be construed liberally in favor of the city, and specific mention of particular powers in this charter shall not be construed as limiting in any way the general powers stated in this article.

State Law reference— Home rule, Texas Const., art. XI, § 5; home rule powers, V.T.C.A., Local Government Code § 51.071 et seq.

Sec. 1.4. - Streets and public property.

The city shall have exclusive dominion, control and jurisdiction in, upon, over and under the public streets, sidewalks, alleys, highways, public squares and public ways within the corporate limits of the city, and in, upon, over and under all public property of the city. With respect to each and every public street, sidewalk, alley, highway, public square, public park or other public way within the corporate limits of the city, the city shall have the power to establish, maintain, improve, alter, abandon or vacate the same; to regulate the use thereof; and to abate and remove in a summary manner any encroachment or nuisance thereon.

State Law reference— Authority regarding streets, V.T.C.A., Transportation Code § 311.001; closing streets, V.T.C.A., Transportation Code § 311.007.

Sec. 1.5. - Street development and improvement.

The city shall have the power to develop and improve, or cause to be developed and improved, any and all public streets, sidewalks, alleys, highways and other public ways within the corporate limits of the city by laying out, opening, narrowing, widening, straightening, extending, lighting and establishing building lines along the same, by purchasing, condemning and taking property therefor; by filling, grading, raising, lowering, paving, repaving and repairing the same; and by constructing, reconstructing, altering, repairing and realigning curbs, gutters, drains, sidewalks, culverts and other appurtenances and incidentals in connection with such development and improvement authorized hereinabove, or any combination or parts thereof.

State Law reference— Authority regarding street improvement, V.T.C.A., Transportation Code § 311.001(b)(3).

Sec. 1.6. - Boundaries.

The boundaries and limits of the city, until changed in the manner herein provided, shall be the same as have heretofore been established and exist on the date of the adoption of this charter, which boundaries are more fully set out and described by metes and bounds in a book called "Official Record Describing the Metes and Bounds of the City of Hewitt," which is now and shall hereafter be kept in the office of the city secretary.

Sec. 1.7. - Annexation.

In addition to other powers of annexation authorized by law, the council shall have the power by ordinance to fix the boundary limits of said city and to provide for the extension of said boundary limits by the annexation of additional territory lying adjacent to said city, with or without the consent of the owners and inhabitants of the territory annexed. Before the city shall institute such annexation proceedings, the council shall provide an opportunity for all interested persons to be heard at a public hearing, notice of which is to be given as required by law. Amendments not enlarging or not extending the boundary limits set forth in the published ordinance may be incorporated into the proposed ordinance without the necessity of republication of said ordinance as amended. After public hearing as required by law, said ordinance, in original or amended form as the council in its judgment may determine, may be finally adopted or rejected, and, if adopted, the territory so annexed shall be part of the City of Hewitt, and the inhabitants thereof shall be entitled to all rights and privileges of other citizens and shall be bound to the acts, ordinances, resolutions and regulations of the City of Hewitt.

State Law reference— Annexations, V.T.C.A., Local Government Code § 43.001 et seq.

Sec. 1.8. - Deannexation.

In addition to other powers of deannexation as authorized by law, the council may discontinue territory as a part of said city by ordinance duly passed, with or without the consent of the inhabitants or qualified voters of said territory. Prior to the final passage of such ordinance, the council shall provide an opportunity for all interested persons to be heard at a public hearing, notice of which is to be given as in the case of annexation by ordinance unless otherwise required by law.

State Law reference— Disannexation, V.T.C.A., Local Government Code § 43.141 et seq.

ARTICLE II. - CITY COUNCIL [\[2\]](#)

Footnotes:

--- (2) ---

State Law reference— Form of government, V.T.C.A., Local Government Code § 26.101 et seq.

Sec. 2.1. - City divided into wards.

The city shall be divided into three (3) wards. The territory included in such wards shall be established by ordinance and may be changed from time to time by ordinances as the interest of the city may demand. In the event the limits of the city are extended, annexed territory shall become a part of the ward to which it adjoins until changed by ordinance; and in the event any annexed tract adjoins two (2) or more wards, the ward line or lines intersecting the original city limits shall be considered extended so that such annexed territory shall become parts of such adjoining wards until changed by ordinance. The boundary lines for the wards shall be initially drawn, and adjusted from time to time, so that each ward shall contain approximately the same number of qualified voters. By ordinance, the council may increase the number of wards to six (6).

Sec. 2.2. - Election of council members, terms and compensation.

The governing body of the city shall consist of a council of seven (7) members elected at large by the qualified voters of the city. They shall run for office by place and be elected for a term of two (2) years, or until their successors are duly elected and qualified, except as herein provided. The council members shall draw no compensation as such for their duties, but may be reimbursed for any expenditure made in behalf of the city or expenses incurred in the performance of their duties when approved by the council.

The council, by ordinance at least forty-five (45) days prior to the first general city election following the adoption of this charter, shall divide the city into three (3) wards and shall designate two (2) of the council places for each ward and one of the places at large. The present mayor and council members shall complete their original terms of office as council members-at-large. The present mayor shall continue to serve as such until the first meeting following the first general city election when a mayor shall be elected as provided herein. In the event any vacancy should exist on the council then such vacancy shall be filled in accordance with law. At the first general city election, a council member-at-large and one council member from each ward shall be elected for two (2) year terms. At the second general city election, one council member from each ward shall be elected for a two (2) year term. Thereafter, three (3) council members shall be elected each even-numbered year and four (4) council members shall be elected each odd-numbered year.

Code cross reference— Voting wards, § 2-26 et seq.

Sec. 2.3. - Prohibiting holding or running for other office.

No person elected to the council shall, during the term for which he was elected, be appointed to any office or position in the service of the city. No salaried officer or employee of the city shall become a candidate for nomination or election to any publicly elected office of the city.

Sec. 2.4. - Qualifications.

Each council member shall be a citizen of the United States and a qualified voter of the State of Texas and shall be at least eighteen (18) years of age. Each of the council members shall be a resident of the City of Hewitt, and shall have resided in the city for a period of at least one (1) year immediately prior to his election.

In addition, each person filing for election to and each council member occupying one of the places designated for a ward shall be a resident of the ward for which the place is designated for at least thirty (30) days prior to filing for office and remain a resident of that ward during his or her term of office. In the event the council, by ordinance, increases the number of wards to six (6), the council shall at the same time designate one (1) council place for each ward, but the ward residence requirement stated in the foregoing sentence shall not apply to the council members occupying such places during the unexpired portion of the term for which they were elected.

A member of the council ceasing to possess any of the qualifications specified in this section or any other section of this charter, or convicted of a felony while in office, shall immediately forfeit his office. No member of the council shall hold any other elected public office.

Editor's note— The filing deadline for candidates in state law, V.T.C.A., Election Code § 143.007, is the 45th day before the election; therefore, in order to certify residency, the candidate must be a resident of the ward 45 days prior to filing for office, and not 30 days as stated in this section of the charter.

State Law reference— Eligibility of candidates, V.T.C.A., Election Code § 141.001 et seq.

Sec. 2.5. - Council to be the judge of the qualification of its own members.

The council shall be the judge of the qualifications of its own members, and for such purpose shall have power to subpoena witnesses and require the production of records.

Sec. 2.6. - Vacancies.

Vacancies occurring on the council may be filled as follows:

- (a) The council may fill a vacancy by appointment only once in any twelve (12) month period. Any additional vacancies occurring within said twelve (12) month period must be filled by special election unless said vacancy occurs less than one hundred twenty (120) days before a regular city election, in which event such vacancy or vacancies may be filled by appointment to serve until the next regular city election.

Sec. 2.7. - Mayor/mayor pro tem.

At its first meeting following each regular election of councilmen, the council shall by election designate one of its numbers as mayor and another of its numbers as mayor pro tem., each of whom shall serve in such capacity for a term of one (1) year. The mayor shall preside at all meetings of the council and shall be recognized as head of the city government for all ceremonial purposes, for the purpose of receiving service of civil process and for emergency purposes, and for military or police

purposes, but shall have no administrative duties. The mayor, as a member of the council, shall be entitled to vote upon all affairs considered by the council, but shall have no veto power. The mayor pro tem. shall act as mayor during the absence or disability of the mayor, and shall have power to perform every act the mayor could perform if present.

Sec. 2.8. - City attorney.

The council shall appoint a city attorney, who shall serve at the pleasure of the council and who shall be a competent attorney, licensed to practice law in the State of Texas. The city attorney shall be legal advisor of and attorney for all officers of the city and shall represent the city in all litigation and legal proceedings.

Sec. 2.9. - Meetings of the council.

The council shall hold at least one regular meeting in each month at a time to be fixed by it for such regular meetings, to be designated by resolution, which resolution shall be published at least one time following the adoption of the resolution, in the official newspaper of the city. The council may hold as many additional meetings during the month as may be necessary for the transaction of the business of the city and its citizens.

State Law reference— Open Meetings Law, V.T.C.A., Government Code § 551.001 et seq.

Sec. 2.10. - Rules of procedure.

The council shall determine its own rules of procedure and order of business and may compel the attendance of its members. Four (4) members of the council shall constitute a quorum to do business and the affirmative vote of a majority of those attending any meeting at which there is a quorum present shall be necessary to adopt any ordinance or resolution unless otherwise required by law or this charter. All meetings of the council shall be open to the public, except as provided by law, and minutes of all proceedings shall be kept, to which any citizen may have access at all reasonable times. The vote upon the passage of all ordinances and resolutions shall be taken by ayes and nays and entered upon the minutes, and every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the city secretary. At the first meeting of the council following the annual municipal election, the council shall adopt their rules of procedure.

Sec. 2.11. - Procedure to enact legislation.

The council shall legislate by ordinance, and the enacting clause of every ordinance shall be: "Be it ordained by the City Council of the City of Hewitt".

The city attorney shall approve as to the legality thereof all ordinances adopted by the council. Every ordinance enacted by the council shall be signed by the mayor or mayor pro tem., attested to by city secretary, and shall be filed with and recorded by the city secretary. Prior to adoption, all ordinances enacted by the council shall be read in open meeting of the council at one regular or special meeting. All ordinances, unless otherwise provided by law or by the terms of such ordinance, shall take effect immediately.

Sec. 2.12. - Adoption and ratification of existing city ordinances and prior city actions.

All ordinances of the city adopted prior to the adoption of this charter and not inconsistent with the provisions of this charter and city limits referred to herein shall remain in full force and effect until altered, amended or repealed.

Sec. 2.13. - Code of ordinances.

The council shall, within one (1) year, cause the ordinances of the city to be codified and properly entered and published in pamphlet form for public distribution at a reasonable price, and shall, no less than annually thereafter, revise and keep the same up to date.

Sec. 2.14. - Interim government.

From and after the date of the adoption of this charter, the then existing five (5) council members and mayor shall complete their terms in office as provided in section 2.2, and the council shall have and possess all of the powers provided by this charter and shall provide, by ordinance, for the orderly transition of the business and affairs of the city from the present form of government to the form of government set forth herein in accordance with this charter.

ARTICLE III. - ELECTIONS

Sec. 3.1. - General elections.

The general city election shall be held annually on the first Saturday in April, at which time officers will be elected to fill those offices which become vacant that year. The council shall adopt an ordinance or resolution for the conduct of the election. Each candidate for the city council shall file for one place and shall be elected to that place by obtaining a majority of the votes cast. Initially, each ward shall consist of two (2) places. The office of council member-at-large shall be so designated.

If the council increases the number of wards to six (6), the offices which become vacant at the next general election shall be moved to the newly created wards.

Editor's note— Pursuant to state law, the city election date is the first Saturday in May.

State Law reference— Dates for holding elections, V.T.C.A., Election Code § 41.001 et seq.

Sec. 3.2. - Filing for office.

Any qualified person who desires to become a candidate for election to the office of city council member shall file with the city secretary, at least thirty (30) days prior to the election date, an application and loyalty affidavit as required by law.

Such application shall be subscribed and sworn to before an officer of the city who is qualified to administer oaths. The date and hour of filing shall be noted on the application by the office of the city secretary.

Editor's note— Pursuant to state law, the candidate shall file the application at least 45 days prior to the election date.

Sec. 3.3. - Official ballot.

The official ballot shall be drawn up by the city secretary and approved by the council and will contain the names of all candidates for office, except those who may have been withdrawn, deceased or become ineligible. The ballot shall have the designation of the particular office and under the appropriate designation shall appear the applicable place numbers. Names will be placed under each place without party designation, and position will be determined by a drawing conducted by the city secretary. The official ballot shall be printed not less than twenty-one (21) days before the date of the election.

Sec. 3.4. - Canvassing the elections.

The returns of every municipal election shall be delivered forthwith by the election judges to the mayor and one copy to the city secretary. As soon as practicable after a regular or special election, either

at a called meeting of said council, called for that purpose, or at the next regular meeting, the city council shall canvass the returns and declare the results of such election. Returns of every municipal election shall be recorded in the minutes of the council. The candidates for election to the places of council members, who receive a majority of the legal votes cast for each place shall be declared elected. The results of said election shall be posted in the city hall as soon as they are declared official.

Sec. 3.5. - Runoff election and tie votes.

A runoff election shall be held whenever any candidate does not receive a majority of the legal votes cast for the place to which he is a candidate. Such election shall be held not less than thirty (30) or not more than sixty (60) days after the date of the general election. The date of the runoff shall be fixed by the council and notice of the election and conduct thereof shall be the same as for the general city election.

Notwithstanding other provisions of this charter relative to general elections, in the event there be an equal number of votes given to two (2) or more persons for the same office, such candidates may by agreement draw lots to determine the winner; otherwise, the council shall declare such election void as to such office and shall order a runoff election between the two (2) or more candidates, only, who have tied.

Sec. 3.6. - Special elections.

The council may, by ordinance or resolution, call such special elections as are authorized by law and this charter.

ARTICLE IV. - INITIATIVE, REFERENDUM AND RECALL

Sec. 4.1. - Power of initiative.

The citizens of Hewitt reserve the power of direct legislation by initiative, and in the exercise of such power, may propose any ordinance not in conflict with this charter, or law, except an ordinance appropriating money or authorizing the levy of taxes or an ordinance repealing an ordinance appropriating money or levying taxes. Any initiated ordinance may be submitted to the council by a petition which must be signed by qualified voters of the city equal in number to at least twenty (20) per cent of the number of registered voters at the last general election of the city, or such petition must be signed by four hundred (400) qualified voters, whichever is greater.

Sec. 4.2. - Power of referendum.

The people reserve the power to approve or reject at the polls any ordinance enacted by the council which is subject to the initiative process under this charter, except an ordinance authorizing the issuance of bonds or other evidence of indebtedness. Prior to or within thirty (30) days after the effective date of any ordinance which is subject to referendum, a petition signed by qualified voters of the city, equal in number to at least twenty (20) per cent of the number of votes cast at the last general election of the city, or signed by four hundred (400) qualified voters, whichever is greater, may be filed with the city secretary requesting that any such ordinance be either repealed or submitted to a vote of the people. When such a petition 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 it is approved by the voters as herein provided.

Sec. 4.3. - Form of petition.

Initiative petition papers shall contain the full text of the proposed legislation in the form of an ordinance, including a descriptive caption. The signatures to the initiative or referendum need not be all appended to one paper, but each signer shall sign his name in ink or indelible pencil and shall add his place of residence by street and number. One of the signers of each separate paper petition shall make an affidavit that he, and he only, personally circulated such petition and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to

be, and further that no signature shall have been placed thereon more than forty-five (45) days prior to the filing of such petition.

Sec. 4.4. - Filing, examination and certification of petition.

Within ten (10) days after an initiative or referendum petition is filed, the city secretary shall determine whether the same is signed by the requisite number of qualified voters. The city secretary shall declare void any petition paper which does not have an affidavit attached thereto as required by section 4.3 of this article. After completing examination of the petition, the city secretary shall certify the results thereof to the council at its next meeting, stating the number of persons found on the petition who are qualified to vote and the number of persons found on the petition who are not qualified to vote. If the certificate of the city secretary shall show an initiative or referendum petition to be insufficient, the city secretary shall notify the person filing the petition, and it may be amended within ten (10) days from the date of such notice by filing a supplementary petition upon additional papers signed and filed as provided for in the original petition. Within ten (10) days after such amendment is filed, the city secretary shall examine the amended petition and certify as to its sufficiency. If the amended petition is found to be insufficient, the city secretary shall return the petition to the person filing same, without prejudice to the filing of a new petition for the same purpose; provided however, that upon finding the amended petition to be insufficient, no new petition covering the same subject matter shall be file until six (6) months shall have elapsed from the date of filing of the original petition.

Sec. 4.5. - Council consideration and submission to voters.

When the council receives an authorized initiative petition certified by the city secretary to be sufficient, the council shall either:

- (a) Pass the initiated ordinance without amendment within thirty (30) days after the date of the certification to the council; or
- (b) Submit said initiated ordinance without amendment to a vote of the qualified voters of the city at a regular or special election to be held within sixty (60) days after the date of the certification to the council;
- (c) At such election, submit said initiated ordinance without amendment, and an alternative ordinance on the same subject proposed by the council.

When the council receives an authorized referendum petition certified by the city secretary to be sufficient, the council shall reconsider the referred ordinance, and if upon reconsideration such ordinance is not repealed, it shall be submitted to the voters at a regular or special election to be more than sixty (60) days after the date of the certification to the council. No ordinance on the same subject as an initiated ordinance which has been defeated at any election may be initiated by the voters within two (2) years from the date of such election.

Sec. 4.6. - Ballot form and results of election.

The ballot used in voting upon an initiated or referred ordinance shall state the caption of the ordinance and below the caption shall set forth on separate lines the words: "For the Ordinance" and "Against the Ordinance."

An initiated ordinance and an alternative ordinance proposed by the council which are submitted at the same election shall be appropriately identified as the initiated or referred ordinance and as the ordinance proposed by the council.

Any number of ordinances may be voted upon at the same election in accordance with the provisions of this article. An ordinance submitted and receiving an affirmative majority of the votes cast, shall thereupon be effective as an ordinance of the city. An ordinance so adopted may be repealed or amended at any time after the expiration of two (2) years by a five-sevenths ($5/7$) vote of the council. A referred ordinance which is not approved by a majority of the votes cast shall be deemed thereupon repealed.

Sec. 4.7. - Power of recall.

The people of the city reserve the power to recall any member of the council and may exercise such power by filing with the city secretary a petition, signed by qualified voters of the city equal in number to at least thirty (30) per cent of the number of registered voters at the last general election of the city, demanding the removal of a member of the council. The petition shall be signed and verified in the manner required for an initiative petition, shall contain a general statement of the grounds for which the removal is sought, and one of the signers of each petition paper shall make an affidavit that the statements therein made are true.

Sec. 4.8. - Recall election.

Within fifteen (15) days after the date of the filing of the recall petition, the city secretary shall present such petition to the council.

It shall be the duty of the council to order an election and fix a date for holding such recall election. The date of such election shall not be less than forty-five (45) days, nor more than sixty (60) days, from the date such petition was presented to the council.

Sec. 4.9. - Recall ballot.

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) be removed from the office of City Councilman?"
- (b) Immediately below each such question there shall be printed the two (2) following propositions, one above the other, in the order indicated:

"For the removal of (name)"

"Against the removal of (name)".

Sec. 4.10. - Results of a recall election.

If a majority of the votes cast at such election shall be for the removal of the individual named on the ballot, the council shall immediately declare his office vacant and such vacancy shall be filled in accordance with the provisions of this charter.

Sec. 4.11. - Limitations on recall.

No recall petition shall be filed against any officer of the city within three (3) months after his election, or within six (6) months after an election for such officer's recall.

ARTICLE V. - ADMINISTRATIVE ORGANIZATION

Sec. 5.1. - The city manager.

The council shall appoint a city manager who shall serve at the pleasure of the council. The city manager shall be the chief administrative officer of the city. He shall be chosen by the council solely on the basis of his executive and administrative training, experience, ability and character. He need not, when appointed, be a resident of the City of Hewitt, but he shall reside in the city within six (6) months of his appointment and remain a resident of said city during his employment. No member of the council shall, during the term for which elected, nor within one (1) year thereafter, be chosen as city manager. The city manager shall receive such compensation as may be fixed by the council.

Sec. 5.2. - Powers and duties of the city manager.

The city manager shall be responsible to the council for the proper administration of all the affairs of the city. The powers herein conferred upon the city manager shall include, but shall not be limited to, the following:

- (a) To appoint and remove any officer or employee of the city, except those officers or employees whose appointment or removal is otherwise provided for by law or this charter; however, nothing herein shall prevent the city manager from authorizing the head of a department to appoint and remove subordinates in such department;
- (b) To prepare and submit to the council an annual budget and be responsible for its administration after adoption;
- (c) To prepare and submit to the council, as of the end of the fiscal year, a complete report on the finances and administrative activities of the preceding year;
- (d) To keep the council advised of the financial condition and future needs of the city and make such recommendations as may seem to him desirable;
- (e) To perform such other duties as may be prescribed by this charter or required of him by the council, not inconsistent with this charter; and
- (f) To attend all meetings of the council, except when he is under discussion, with the right to take part in the discussion, but having no vote; and he shall be notified of all special meetings of the council.

Sec. 5.3. - Investigation by the city council.

The council shall have power to inquire into the conduct of any office, department, agency, officer or employee of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths and compel the production of books, papers and other evidence.

Sec. 5.4. - Council not to interfere in city manager's appointments or removals.

No individual member of the council shall direct or request the appointment of any person to or his removal from office by the city manager or by any of his subordinates. However, the council may consult and advise the city manager, make inquiry regarding the appointments or removals, and may express their opinion in regard thereto. In regard to administrative and executive duties under the city manager, the council and its members shall deal solely through the city manager, and neither the council nor any member thereof shall give orders to any subordinate of the city manager, either privately or publicly.

Sec. 5.5. - Absence of the city manager.

The city manager, by letter filed with the city secretary, may designate another officer of the city to perform his duties during his temporary absence or disability. In the event of failure of the city manager to make such designation, the council may, by resolution, appoint an officer of the city to perform the duties of the city manager until he shall return or his disability shall cease.

Sec. 5.6. - Administrative departments.

There shall be such administrative departments as are established by this charter and such other administrative departments as may be deemed necessary by the council and as are established by ordinance, all of which shall be under the control and direction of the city manager. The council may, by ordinance, abolish or combine one or more departments created by it and may assign or transfer duties of any department of the city from one department to another by ordinance.

Sec. 5.7. - Directors of departments.

At the head of each department there shall be a director. Two (2) or more departments may be headed by the same individual, and the city manager may head one or more department. The city manager may require department directors to reside within the City of Hewitt.

Sec. 5.8. - The city secretary.

The city manager shall appoint the city secretary. The city secretary shall give notice of council meetings, shall keep the minutes of the proceedings of such meetings, shall be the official custodian of the records of the city, shall authenticate by his signature and record in full in a book kept and indexed for that purpose, all ordinances and resolutions, and shall perform such other duties as the city manager shall assign to said secretary, and those elsewhere provided in this charter or by ordinance.

ARTICLE VI. - MUNICIPAL COURT³

Footnotes:

--- (3) ---

State Law reference— Municipal court, V.T.C.A., Government Code § 29.001 et seq.

Sec. 6.1. - Municipal court.

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

Sec. 6.2. - Judge of the municipal court.

The municipal court shall be presided over by the city judge. He shall be an attorney who is licensed to practice law in the State of Texas. The municipal judge shall not be an employee of the city in any other capacity. He shall receive such compensation as may be set by the council.

He shall be appointed by the council for a term of one (1) year, but may be removed upon the affirmative vote of a majority of the council.

In the event the city judge is unable to act for any reason or in the event of a vacancy, the mayor shall appoint a person having the same qualifications as the city judge to act in the place of the city judge until such vacancy shall be filled.

State Law reference— Municipal judge, V.T.C.A., Government Code § 29.004; term of office, V.T.C.A., Government Code § 29.005.

Sec. 6.3. - 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 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.

ARTICLE VII. - FINANCE⁴

Footnotes:

--- (4) ---

State Law reference— Financial matters, V.T.C.A., Local Government Code § 101.021 et seq.

Sec. 7.1. - Fiscal year.

The fiscal year of the city shall begin on October first of each calendar year and will end on September thirtieth of the following calendar year. The fiscal year will also be the accounting and budget year. All funds collected by the city during any fiscal year including both current and delinquent revenue shall belong to such fiscal year and, except funds derived to pay interest and create a sinking fund on any indebtedness of the city, may be applied to the payment of the expenses incurred during such fiscal year. Any revenues uncollected at the end of any fiscal year, and any unencumbered funds actually on hand, shall become resources of the next succeeding fiscal year.

State Law reference— Fiscal year, V.T.C.A., Local Government Code § 101.022.

Sec. 7.2. - Preparation and submission of budget.

The city manager, prior to August first of each year, shall prepare and submit a proposed budget, covering the next fiscal year, to the council, which shall contain the following information:

- (a) The proposed financial policies for the next year with explanations of any change from previous years in expenditures and any major changes of policy and a complete statement regarding the financial condition of the city;
- (b) An estimate of all revenue from taxes and other sources, including the present tax structure rates and property evaluation for the ensuing year, together with tax levies and collections for the last five (5) years;
- (c) A carefully itemized list of proposed expenses by office, department, agency, employee, project and an unallocated reserve fund for the budget year, as compared to actual expenses of the last ended fiscal year, and the present year-to-day;
- (d) A description of all outstanding bond indebtedness, showing amount, purchaser, date of issue, rate of interest, and maturity date, as well as any other indebtedness which the city has incurred and which has not been paid;
- (e) A statement proposing any capital expenditures deemed necessary during the next budget year and recommended provisions for financing;
- (f) A projected list of capital projects which should be undertaken within the five (5) next succeeding years; and
- (g) Such other information as may be requested by the council.

State Law reference— Budget preparation and adoption procedure, V.T.C.A., Local Government Code § 102.001 et seq.; circumstances under which charter controls, V.T.C.A., Local Government Code § 102.011.

Sec. 7.3. - Proposed budget a public record.

The proposed budget shall be filed with the city secretary and shall be available for public inspection.

State Law reference— Filing proposed budget for public inspection, V.T.C.A., Local Government Code § 102.005.

Sec. 7.4. - Public hearing on proposed budget.

At the council meeting at which the proposed budget is submitted the council shall name the date and place of a public hearing to be held thereon and shall cause to be published in the official newspaper

of the city the time and place of such hearing, which will be not less than fifteen (15) days after the date of the notice. At this hearing, interested citizens may express their opinions concerning the proposed budget.

State Law reference— Public hearing on budget, V.T.C.A., Local Government Code § 102.006.

Sec. 7.5. - Proceeding on adoption of proposed budget.

After public hearing, the council shall analyze the proposed budget, making any additions or deletions which it feels appropriate, and shall, at least ten (10) days prior to the beginning of the next fiscal year, adopt a budget by a majority vote. Should the council take no final action on or prior to such date, the then existing budget, together with its tax-levying ordinance and its appropriation ordinance shall be deemed to have been finally adopted by the council. No budget shall be adopted or appropriations made unless the total of estimated income and funds available shall be equal to or in excess of such budget or appropriations, except as otherwise provided in this article.

State Law reference— Adoption of proposed budget, V.T.C.A., Local Government Code § 102.007.

Sec. 7.6. - Appropriation.

From the effective date of the budget, the several amounts stated therein as proposed expenditures shall be and become appropriated to the several objects and purposes named therein. Except as provided in this article, no funds of the city shall be expended, nor shall any obligation for the expenditure of money be incurred, except pursuant to the annual appropriation ordinance provided by this article. At the close of each fiscal year any unencumbered balance of an appropriation shall revert to the fund from which appropriated and become available for reappropriation for the next fiscal year. The council may transfer any unencumbered appropriation balance or portion thereof from one office, department or agency to another, at any time. The city manager shall have authority, without council approval, to transfer appropriation balances from one expenditure account to another within a single office, department or agency of the city.

Sec. 7.7. - Emergency appropriations.

At any time in any fiscal year, the council may, pursuant to this section, make emergency appropriations to meet a pressing need for public expenditure, for other than regular or recurring requirements, to protect the public health, safety or welfare. Such appropriation shall be by ordinance adopted by the favorable votes of three-fourths ($\frac{3}{4}$) of the council members qualified and serving. The total amount of all emergency appropriations made in any fiscal year shall not exceed two and one-half ($2\frac{1}{2}$) per cent of the tax levy for that fiscal year. Should the unappropriated and unencumbered revenues, income and available funds of the city for such fiscal year be insufficient to meet the expenditures under the appropriation authorized by this section, thereby creating a deficit, the council shall include the amount of such deficit in its budget for the following fiscal year, during which such deficit shall be paid off and discharged.

State Law reference— Expenditure of funds under budget, V.T.C.A., Local Government Code § 102.009.

Sec. 7.8. - Borrowing to meet emergency appropriations.

In the absence of unappropriated available revenues or other funds to meet emergency appropriations under the provisions of the next preceding section, the council may by resolution authorize the borrowing of money to meet such deficit by the issuance of notes, each of which shall be designated

"Emergency Note" and may be renewed, but all such notes and any renewals thereof shall mature and be payable not later than the last day of the fiscal year next succeeding the fiscal year in which the emergency appropriation was made, as provided in the last preceding section.

Sec. 7.9. - Depository.

All moneys received by any person, department or agency of the city for or in connection with affairs of the city shall be deposited in the city depository or depositories, which shall be designated by the council in accordance with such regulations and subject to such requirements as to security for deposits and interest thereon as may be provided by law. All checks, vouchers or warrants for the withdrawal of money from the city depositories shall be signed by two (2) individuals as prescribed by ordinance.

Sec. 7.10. - Budget filed with city secretary.

A copy of the adopted budget shall be filed with the city secretary and shall be available for public inspection.

State Law reference— Adopted budget a public record, V.T.C.A., Local Government Code § 102.008.

Sec. 7.11. - 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.

Sec. 7.12. - Independent audit.

At the close of each fiscal year, and at such other times as it may be deemed necessary, the council shall direct that an independent audit be made of all accounts of the city by a certified public accountant. The certified public accountant shall have no personal interest in the financial affairs of the city.

State Law reference— Annual audit, V.T.C.A., Local Government Code § 103.002.

Sec. 7.13. - Purchase procedure.

All purchases made and contracts executed by the city shall be reviewed by the city manager who shall determine that there is to the credit of such office, department or agency, a sufficient unencumbered budgeted appropriation and allotment balance to pay for the supplies, materials, equipment or contractual services for which the contract or order is to be issued. The council may by ordinance confer upon the city manager general authority to contract for expenditures without further approval of the council for all budgeted items not exceeding three thousand dollars (\$3,000.00). All contracts for expenditures involving more than three thousand dollars (\$3,000.00) must be expressly approved in advance by the council. All contracts or purchases involving more than one thousand dollars (\$1,000.00) shall be let to the lowest bidder as provided by law or ordinance, provided that the council, or the city manager, in such cases as he is authorized to contract for the city, shall have the right to reject any and all bids. Contracts for personal or professional services need not be let on competitive bids.

State Law reference— State law may supersede charter provision, V.T.C.A., Local Government Code § 252.002.

Cross reference— See § 2-301.

ARTICLE VIII. - BONDS, CERTIFICATES OF OBLIGATION, WARRANTS AND OTHER EVIDENCE OF INDEBTEDNESS

Sec. 8.1. - Powers to issue.

The city shall have the power to borrow money for any public purpose not prohibited by law, and shall have the right to issue all tax bonds, revenue bonds, funding and refunding bonds, certificates of obligation, time warrants and other evidence of indebtedness as authorized by law.

Sec. 8.2. - Sale of bonds.

All bonds and other evidences of indebtedness of the city having been issued and sold in accordance with the terms of this article, and having been delivered to purchasers thereof, shall thereafter be incontestable, and all bonds issued to refund outstanding bonds previously issued shall be incontestable.

Sec. 8.3. - Interest and sinking funds.

The council shall 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 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 issued by the city.

Sec. 8.4. - Revenue bonds.

The city shall have power to borrow money for the purpose of constructing, acquiring, improving, extending or repairing all public utilities, recreational facilities or any other property or facility not prohibited by law and issue revenue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable solely from the revenues, pledges to payment thereof or the properties, or interest therein acquired and the income therefrom, and shall never be a debt of the city. Revenue bonds issued by the city may, within discretion of the city council, be submitted for approval by a majority of qualified voters, voting at an election held for such purpose. The council shall have authority to provide for the terms and force of any purchase agreement, contract, mortgage, bond or document desired or necessary for the issuance of revenue bonds, and the acquisition and operation of any property or interest.

Sec. 8.5. - Execution and registration of bonds.

All bonds, and other evidences 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 law, and shall be payable not more than forty (40) years from their date. The mayor shall forward such issued bonds to the attorney general of the State of Texas for approval and for registration by the comptroller of public accounts.

ARTICLE IX. - TAXATION⁽⁵⁾

Footnotes:

--- (5) ---

State Law reference— Taxes, V.T.C.A., Tax Code § 1.01 et seq.

Sec. 9.1. - Department of taxation.

There shall be established a department of taxation to assess and collect taxes, the director of which shall be the city assessor-collector, whose appointment shall be made by the city manager and ratified by the council. The assessor-collector shall give a surety bond for the faithful performance of his duties, in a sum which shall be fixed by the council.

Sec. 9.2. - Powers of taxation.

The city's power to levy, assess and collect taxes of every character and type for any municipal purpose shall be limited to those permitted by law.

The council shall levy taxes on all property not otherwise exempt, privileges and franchises of every kind and description within the city limits or having its situs therein on January first, of each year, and from any other local source, and provide for rendition thereof, the place, time and manner of payment thereof, with penalties, not in violation of law.

Sec. 9.3. - Assessment of property for tax purposes.

All owners of property subject to taxation shall, between January first and April first of each year, file with the assessor-collector a full and complete sworn inventory rendition of such property held, owned or controlled within the city limits on January first of each year. The council may prescribe by ordinance the mode and manner of making such inventories and penalty for failing or refusing to submit the same. The assessor-collector shall review all renditions made and determine the value of the property rendered and fix the value thereof for tax purposes. If the assessor-collector fixes a value higher than that shown on the owner's last tax statement, he shall give written notice thereof to such owner at his last known address by depositing the same, postage paid, in the U.S. mail, notifying him of such change and advising him that he may appear before the board of equalization to protest such change.

Sec. 9.4. - Unrendered property.

The assessor-collector shall assess all property which for any cause has not been rendered, placing such valuation thereon in accordance with law. If the owners of such property are unknown, such assessment may be made in the name, "Unknown."

Sec. 9.5. - When due and payable.

All taxes due the city shall be payable at the office of the assessor-collector. The tax rolls shall be completed and approved not later than October first of each year. Taxes shall become due and payable on October first of the year assessed and shall be paid on or before January thirty-first of the following year. All such taxes not paid on or before such date shall be deemed delinquent and shall be subject to such penalty and interest at [as] the council may provide by ordinance. The council may provide further by ordinance that all taxes, either current or delinquent, due the city may be paid in installments. Failure to levy and assess taxes through omission in preparation of the approved tax roll shall not relieve the person, firm or corporation so omitted from obligation to pay such current or past due taxes as shown to be payable by recheck of the rolls and receipts for the years in question.

Sec. 9.6. - Tax lien and liability.

A special lien is hereby created on all taxable property, located in the city, in favor of the city for all taxes, ad valorem, occupational or otherwise. Said lien shall exist from January first 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, can ever defeat such lien, but the assessor-collector can pursue such property, and whenever found may, by judicial writ, seize and sell enough thereof to satisfy such taxes.

Sec. 9.7. - The city council may delegate.

Where lawful, the city council may delegate any or all responsibilities, duties or powers under this article to any other agency, party or authority.

ARTICLE X. - PLANNING AND ZONING COMMISSION AND BOARD OF ADJUSTMENT⁶

Footnotes:

--- (6) ---

State Law reference— Zoning commission, V.T.C.A., Local Government Code § 211.007; board of adjustment, V.T.C.A., Local Government Code § 211.008.

Sec. 10.1. - The planning and zoning commission.

There shall be a planning and zoning commission which shall consist of seven (7) citizens of the City of Hewitt who own real property within the city, and such other ex-officio members as are provided herein. The members of the present commission shall continue in office until their term expires. Thereafter, the members of said commission, except the ex-officio members, shall be appointed by the council for a term of three (3) years. Vacancies shall be filled for the unexpired term by the council. The ex-officio members shall include the city manager, and such other ex-officio members as the council shall by ordinance or resolution provide. Ex-officio members shall participate in the work of the commission, but shall not have a vote in its official actions.

The commission shall elect a chairman from its appointed members. A majority of the appointed members shall constitute a quorum.

The commission shall keep minutes of its proceedings, which shall be a public record.

Sec. 10.2. - The planning and zoning commission—Powers and duties.

The planning and zoning commission shall be responsible to and act as an advisory body to the council and shall:

- (a) Recommend a city plan for the physical development of the city with amendments thereto;
- (b) Recommend to the council approval or disapproval of proposed changes in the zoning plan;
- (c) Exercise control over platting or subdividing land within the corporate limits of the city and outside said corporate limits to the extent authorized by law;
- (d) Submit annually to the city manager, not less than ninety (90) days prior to the beginning of the budget year, a list of recommended capital improvements which in the opinion of the commission are necessary or desirable during the forthcoming five-year period; and
- (e) Have all other powers, duties and responsibilities given it by law.

Sec. 10.3. - Board of adjustment.

The board of adjustment shall consist of five (5) members, none of which is a member of the city council or planning and zoning commission. Such members shall be appointed by the city council and serve under the terms and conditions as provided by law. From their own members and alternates they shall elect a chairman and a vice-chairman. The members shall be citizens of and own real property in the city. Vacancies shall be filled for the unexpired term by the council. The members and alternates of the present board of adjustment shall draw lots for terms of one (1) or two (2) years and shall serve in office until their term expires. From their own members they shall elect a chairman and a vice-chairman. The members and alternates shall be citizens of and own real property in the city. Vacancies shall be filled for the unexpired term by the council.

State Law reference— Board of adjustment, V.T.C.A., Local Government Code § 211.008.

Sec. 10.4. - Board of adjustment—Duties and powers.

The board of adjustment shall have all powers, duties and responsibilities given it by law.

State Law reference— Powers and duties of board of adjustment, V.T.C.A., Local Government Code § 211.008.

ARTICLE XI. - FRANCHISES; UTILITIES; USE OF STREETS⁷¹

Footnotes:

--- (7) ---

State Law reference— Franchise to use public streets, V.T.C.A., Transportation Code § 311.071 et seq.

Sec. 11.1. - Franchises and public utilities.

The right of control and use of the public streets, highways, sidewalks, alleys, parks, public squares and public places of the city is hereby declared to be inalienable by the city, except by ordinances not in conflict with law. No act or omission by the council or any officer or agent of the city shall be construed to grant, renew, extend or amend, expressly or by estoppel or implication, any right, franchise or easement affecting such public streets, highways, sidewalks, alleys, parks, public squares, public places and other real property, except as provided by law.

Sec. 11.2. - Franchise by ordinance.

The city shall have the power by ordinance to confer upon any person, firm or corporation the franchise or right to use the streets, alleys and other public property of the city for the purpose of furnishing to the public any general public service or benefit, including, but not limited to, heat, light, power, water, telephone service, community antenna or cable television service and transportation, for compensation or hire. Any franchise granted may be voided upon the failure of the grantee to exercise the same in compliance with the terms thereof.

Sec. 11.3. - Franchise ordinance procedure.

The granting of franchises by the council shall be governed by the following regulations:

- (a) No exclusive or indeterminate franchise or privilege shall ever be granted.
- (b) No franchise shall ever be granted for a longer term than twenty (20) years.
- (c) Actual operation under a franchise must commence within six (6) months after it is granted. As a part of the actual operation, the council may grant a reasonable time beyond the six-month period for research, development and construction upon terms and conditions as set forth in the franchise.
- (d) No franchise, nor the assets held by the franchise holder, may be sold, assigned, transferred or conveyed without the consent of the city given by ordinance or resolution. In the event that the purchaser is the holder of a like franchise, the franchise purchased shall be canceled and merged into the franchise held by the purchaser upon terms and conditions as may be set out by the council when permission for merger is granted.
- (e) The purchaser of any franchise must assume and promptly discharge all of the payments due and owing the city by the holder of the franchise being purchased.

- (f) All holders of franchises for public services from the city, their successors or assigns, as compensation for the right or privilege enjoyed shall pay to the city a sum not less than four (4) per cent per annum of the gross receipts of the business pursued by the franchise holder rendered in the city, or such other percentage as allowed by law. Such sum shall be exclusive of, and in addition to, all special assessments and taxes of whatever nature, including ad valorem taxes upon the value of the franchise and other property of the franchise holder. The sum due hereunder shall be due and payable on or before the fifteenth day of February of each year for the preceding calendar year.
- (g) All rights held under any such ordinance, shall at all times be subject to the power of the council to require the holder thereof to make any necessary changes in or reasonable extensions of facilities and service in or to any portion of the city. The city reserves the right to prevent the making of unnecessary or unprofitable extensions.

Sec. 11.4. - Contesting of rates.

No franchise holder shall ever make any charge or fix any rate for public service without first being authorized by ordinance, and no franchise holder shall contest any rate or charge fixed by the council, in any proceeding in any court until after such holder has filed a motion for a rehearing with the council specifically setting out the grounds of complaint against such ordinance and until the council shall have passed upon the motion, except as provided by law. If the council has not acted within sixty (60) days, the motion shall be deemed overruled.

Sec. 11.5. - Investigative powers.

In order to ascertain the true amount of gross receipts, capital invested, property value, depreciation and expenses, or any other fact connected with or relating to the business done by such franchise holder, the council shall have power:

- (a) To require the keeping of accounts in such form as will accurately reflect the value of the property of each franchise holder which is used and useful in rendering its service to the public and the expenses, receipts and profits of all kind of such franchise holder;
- (b) To examine and audit at any time during business hours the accounts and other records of any franchise holder, and to require reports on the operation of the utility, which shall be in such form and contain such information as the council shall prescribe;
- (c) To take testimony and compel the attendance of witnesses and the production of books, papers and records and to examine witnesses under oath, under such rules and regulations as the council may adopt;
- (d) To examine the physical properties and facilities of the franchise holder at all reasonable times; and
- (e) To declare the franchise or privilege enjoyed by the holder in default, annulled and terminated in the event the holder should refuse to permit the inspection of books, papers, records or properties, or if any officer, agent or employee of such franchise holder refuses to give testimony when requested by the council.

Sec. 11.6. - Service without discrimination.

Every franchise holder shall furnish equal and uniform service to all patrons. It shall be unlawful and a sufficient ground for forfeiture of any franchise for any such holder, after notice, to grant free service or furnish better service, or to furnish service for a lower price or rate, conditions or quantity of service considered, to any patron than to other patrons under like circumstances, or to otherwise discriminate in the manner of rates or service, except as may be provided by law. Any franchise holder may, from time to time, with the approval of the council, adopt alternative schedules governing rates, conditions or quantities of service and allow the patrons to choose between alternative schedules. No such schedule shall be operative, nor shall service be furnished in accordance therewith, until approved by the council.

Sec. 11.7. - Forfeiture of franchise.

Upon evidence being received by the council that the provisions of a franchise previously granted are being violated, it shall at once cause an investigation to be made of the alleged violation. If the council is of the opinion that the provisions of the franchise are being violated, it shall determine a reasonable period of time for compliance with provisions of the franchise, and shall direct the city attorney to notify the franchise holder of its determination that in its opinion the provisions of the franchise are being violated, and the period of time for compliance with the provisions of the franchise. Should the franchise holder fail to comply within the period of time determined by the council, the city attorney shall take any steps authorized by law, including forfeiture of the franchise, as directed by the council.

Sec. 11.8. - Rate hearings.

The council shall provide for a hearing to any franchise holder prior to the change in the rates, rules or regulations applicable to such franchise. Every franchise holder who shall request an increase in rates, charges or fares shall have, at the hearing of the council called to consider such request, the burden of establishing by clear, competent and convincing evidence, the value of its investment properly allocable to service in the city, and amount and character of its expenses and revenues collected with the rendering of such service. If, upon such hearing, the council is not satisfied with the sufficiency of the evidence so furnished, it shall be entitled to call upon such franchise holder for the furnishing of additional evidence at a subsequent date, to which said hearing may be adjourned. If at the conclusion of said adjourned hearing the council is still not satisfied with the sufficiency of the evidence furnished by said franchise holder, the council shall have the right to select and employ, then and later, rate consultants, auditors and attorneys to conduct investigations, present evidence, advise the council, and conduct litigation on such requested increase in rates, charges or fares, and said franchise holder shall reimburse the city for its reasonable and necessary expense so incurred. Such rate consultants, auditors and attorneys shall be qualified, competent and of good standing in their professions. In fixing or changing the charges, rates, fares or compensation, or determining the reasonableness thereof, no stocks or bonds authorized or issued by, nor any indebtedness created by, any franchise holder shall be considered unless upon proof that the stocks, bonds or indebtedness shall have been actually issued for money paid and used in the reasonable development of the property of the franchise holder, for labor done or property actually received in accordance with the law. No hearing shall be required for a reduction in rates initiated by the utility concerned unless requested in writing by an interested person, firm or organization.

Sec. 11.9. - Acquisition by eminent domain.

The city shall have the power through eminent domain proceedings to acquire any public utility operating with or without a franchise and furnishing a public service to the citizens of Hewitt. The procedure to be used in the acquisition of such property shall be that as set forth in V.T.C.A., Property Code § 21.001 et seq., V.T.C.A., Local Government Code §§ 261.001—261.003 as it now exists or may hereafter be amended. This power shall be in addition to and cumulative of any other powers of acquisition granted to or reserved by the city in a franchise ordinance.

Sec. 11.10. - Franchise value not allowed.

In fixing reasonable rates and charges for public 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 by the city under this charter.

Sec. 11.11. - No public utility purchase without voter approval.

Prior to the purchase of any public utility, the city council must submit the questions of the purchase to the qualified voters of the city and the same must be approved by a majority of those voting in the election. Such vote shall be ascertained at an election, which election shall be held, and notice thereof given, as provided in the case of issuance of municipal bonds by the city.

Sec. 11.12. - Private licenses.

The council shall have the power by ordinance to grant to any owner of property abutting upon the streets or other property of the city, the use thereof or to go over or under the same in any manner which may be necessary or proper to the enjoyment of said abutting property by the owner; provided, however, that such use be not inconsistent with, and does not unreasonably impair the public use to which said street or other public property may be dedicated or to the use being made of the same by a franchise holder. The council shall fix the terms and conditions of any such grant and the time for which it shall exist. The right is expressly reserved to the city to terminate such license when deemed inconsistent with the public use of the property of the city.

Sec. 11.13. - Revocable license.

The council shall have the power to grant minor or temporary privileges in the streets, public ways and public places of the city by ordinance or resolution. Such permit shall be unconditionally revocable at the will of the city and shall not be deemed to be a franchise as used in this charter.

Sec. 11.14. - Ordinance granting franchise.

Every ordinance granting, renewing, extending or amending a franchise shall be read at two (2) meetings of the council and shall not be finally acted upon until thirty (30) days after the first reading thereof. Within five (5) days following each of the two (2) readings of the ordinance, the full text thereof shall be published one time in the official newspaper of the city, and the expense of such publication shall be borne by the prospective franchise holder.

Sec. 11.15. - Accounts of municipally-owned utilities.

Accounts shall be kept for each public utility owned or operated by the city, in such manner as to show the true and complete financial results of such city ownership and operation, including all assets and all liabilities, appropriately subdivided by classes, depreciation reserve, other reserves and surplus; also revenues, operating expenses including depreciation, interest payments, rental and other disposition of annual income. The accounts shall show actual capital cost to the city of each public utility owned, also the cost of all extensions, additions and improvements and the source of funds expended for such capital purposes. They shall show as nearly as possible the cost of any service furnished to or rendered by any such utility to any city department. The council shall cause an annual report to be made by a certified public accountant and shall publish such report showing the financial results of such city ownership and operation, giving the information specified in this section and such other data as the council shall deem expedient.

Sec. 11.16. - Miscellaneous powers.

The council shall by ordinance have the following powers in addition to others granted by law:

- (a) To require every franchise holder to furnish to the city, without cost to the city, full information regarding the location, character, size, length and terminals of all facilities of such franchise holder in, over and under the streets, alleys and other public properties of the city, and to regulate and control the location, relocation and removal of such facilities;
- (b) To collect from every franchise holder operating in the city such proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping and sprinkling the streets, alleys, bridges, culverts, viaducts and other public places of the city as represent the increased cost of such operation resulting from the occupancy of such public places by such franchise holder, and such proportion of the cost of such operations as results from the damage to or the disturbance of such public places caused by such franchise holder, or to compel such franchise holder to perform at its own expense such operations as above listed which are made necessary by the occupancy or damage or disturbance of such public places by the franchise holder;

- (c) To require every franchise holder to allow other public utilities to use its poles and other facilities, including bridges and viaducts, whenever such use shall be in the public interest, provided that in such an event a reasonable rental shall be paid such owner of the facilities for such use. Provided further, that inability of such public utilities to agree upon a reasonable rental shall not be an excuse for failure to comply with such requirement by the council;
- (d) To require that the franchise holder give at least three (3) days' notice to any subscriber to its service prior to the permanent or temporary discontinuance or disruption of such service by the franchise holder, except in cases of emergency, and to require that no officer, agent, servant or employee of the franchise holder, nor any vehicles or equipment under their control, shall make use of, go upon or across any private property in the city without first obtaining the permission of the owner or occupant of such property except in cases of emergency, and to provide a penalty for the violation of such requirements; and
- (e) To impose such other reasonable regulations, restrictions, requirements and conditions as may be deemed necessary or desirable to promote the health, safety, welfare or accommodations of the public.

ARTICLE XII. - GENERAL PROVISIONS

Sec. 12.1. - Public records of the city.

Every ordinance or resolution, upon its becoming effective, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the mayor and attested by the city secretary, which book shall be kept at the city hall and a duplicate copy thereof shall be kept in a fireproof city depository. All public records of every office, department or agency of the city shall be open to inspection by any citizen at all reasonable times, provided that the police records and any other records closed to the public by law, shall not be considered public records for the purpose of this section.

State Law reference— Public records act, V.T.C.A., Government Code § 552.001 et seq.; records management, V.T.C.A., Local Government Code § 203.001 et seq.

Sec. 12.2. - Personal interest in city contracts.

No officer or employee of the city, nor any person related within the first degree by blood or marriage to such officer or employee, shall have a financial interest, direct or indirect, in any contract with the city, or be financially interested, directly or indirectly, in the sale to the city of any land, material, supplies or services, except on behalf of the city as an officer or employee; provided, however, that this section shall not apply in any instance where the interest of the officer or employee and/or relative as set out above does not exceed ten (10) per cent of the total stock or ownership of the corporation or entity involved, provided further, that such officer or employee shall disclose such interest of ten (10) per cent or less and shall refrain from voting upon or otherwise participating in his capacity as a city officer or employee in the making of such sale or in the making or performance of such contract. Any city officer or employee who willfully conceals such a financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge, expressed or implied, of the person or corporation contracted with or making a sale to the city shall render the contract or sale voidable by the council.

State Law reference— Conflict of interest, V.T.C.A., Local Government Code § 171.001 et seq.

Sec. 12.3. - Nepotism.

No person related within the second degree by marriage, or the third degree by blood, to any member of the council or the city manager or any department head shall be appointed to any paid office,

position, clerkship or other service of the city. This prohibition shall not apply, however, to any person who shall have been continuously employed by the city for two (2) years or more prior to the election of the councilman, or appointment of the city manager, or the department head, so related to him.

State Law reference— Nepotism, V.T.C.A., Government Code § 573.001 et seq.

Sec. 12.4. - Conduct of officers or employees.

No officer or employee of the city shall accept, directly or indirectly, any gift, favor, privilege or employment from any person, firm or corporation doing business with, or seeking to do business with, the city during the term of office of such officer or during the employment of such employee of the city and in connection with such office or employment, except as may be authorized by ordinance or on behalf of the city and for its benefit. No officer or employee of the city who is employed, directly or indirectly, by any person, firm or corporation doing business with, or seeking to do business with, the city shall in any manner participate in any discussion or decision of any agency, board, commission or instrumentality of the city having to do with the business done or sought to be done with the city by such person, firm or corporation. Any employee or officer of the city who shall willfully violate the provisions of this section shall be guilty of a misdemeanor and shall be punishable by such fine as may be prescribed by ordinance for this offense.

No person who holds a compensated appointive office, or who is employed by the city, shall make, solicit or receive any contribution to the campaign funds of any candidate for the city council, or take any part in the management, affairs or political campaign of any such candidate, provided further, nothing herein shall infringe the constitutional rights of such officer or employee to express his opinions and to cast his vote.

State Law reference— Conflicts of interest, V.T.C.A., Local Government Code § 171.001 et seq.

Sec. 12.5. - Notice of claims.

Before the city shall be liable for damages for the death or personal injuries of any person or for damage to or destruction of property of any kind, the person injured, if living, or his representatives, if dead, or the owner of the property damaged or destroyed, shall give the city secretary notice in writing of such death, injury, damage or destruction, duly verified by affidavit, within thirty (30) days after same has been sustained, stating specifically in such written notice when, where and how the death, injury, damage or destruction occurred, and the apparent extent of any such injury, the amount of damages sustained, the actual residence of the claimant by street and number at the date the claim is presented, the actual residence of such claimant for six (6) months immediately preceding the occurrence of such death, injury, damage or destruction, and the names and addresses of all witnesses upon whom it is relied to establish the claim for damages; and the failure to so notify the city secretary within the time and manner specified herein shall exonerate, excuse and exempt the city from any liability whatsoever. No act of any officer or employee of the city shall waive compliance or estop the city from requiring compliance with the provisions of this section as to notice, but such provisions may be waived by resolution of the council, made and passed before the expiration of the thirty-day period herein provided, and evidenced by minutes of the council.

State Law reference— Tort Claims Act, V.T.C.A., Civil Practice and Remedies Code § 101.101 et seq.

Sec. 12.6. - Suits by or against the city.

It shall not be necessary in any action, suit or proceeding in which the city is a party for any bond, undertaking or security, including supersedeas bond, to be demanded or executed by or on behalf of the city. The city shall have all remedies of appeal provided by law to all courts in this state without bond or security or [of] any kind, but shall be liable in the same manner and to the same extent as if such bond, undertaking or security had actually been executed or given.

Sec. 12.7. - Assignment, execution and garnishment.

The property, real and personal, belonging to the city shall not be liable to be sold or appropriated under any writ of execution or cost bill, nor shall the funds belonging to the city, in the hands of any person, be liable to garnishment on account of any debt the city may owe or funds the city may have on hand due any person, nor any of its officers or agents shall be required to answer any writ of garnishment on any account whatsoever, nor shall the city be liable to the assignee of any wages of any officer, agent or employee, whether earned or unearned, upon any claim or account whatsoever, and any such attempted assignment shall be absolutely void as to the city.

Sec. 12.8. - Bond of contractors.

The council shall require good and sufficient bonds of all contractors, with a cash deposit or with a good corporate surety thereon, acceptable to the council, on all contracts required by law and on all contracts in excess of three thousand dollars (\$3,000.00).

Sec. 12.9. - Pools, ponds and lakes.

The city shall have power to control or prohibit the construction of pools, ponds or lakes receiving water from a recognizable stream, creek, branch or natural drainage. The city may control location, construction, height of structure, depth and size of body of water to be impounded. No pool, pond or lake receiving water from recognizable stream, creek, branch or natural drainage shall be constructed without first obtaining a permit issued by the city.

Sec. 12.10. - Bonds of city officials, employees or department directors.

The council may require any city official or employee, before entering upon his duties, to execute a good and sufficient bond with a surety company doing business in the State of Texas and approved by the council; as surety thereon, said bond to be in such amount as the council may demand, payable to the city and conditioned for the faithful performance of the duties of his office, premium of such bond to be paid by the city.

Sec. 12.11. - Amendment of the charter.

Amendments to this charter may be framed and submitted to the voters of the city in the manner provided by V.T.C.A., Local Government Code § 9.001 et seq.

Sec. 12.12. - Separability clause.

If any section or part of a section of this charter is held to be invalid, such invalidity shall not invalidate or impair the validity, force or effect of any other section or part of a section of this charter.

Sec. 12.13. - Rearrangement and renumbering.

The council shall have the power, by ordinance, to renumber and rearrange all articles, sections and paragraphs of this charter, or any amendments thereto, and to correct any typographical errors or incorrect reference or term, and upon the passage of such ordinance, a copy thereof, certified by the city secretary and filed with a copy of this charter, shall be forwarded to the secretary of the State of Texas for filing, as well as certified copies of such ordinance being filed with any other appropriate offices.

Sec. 12.14. - Effective date of charter.

This charter, when adopted, shall become effective after the votes cast at the election at which it is submitted shall have been counted and the result of said election declared and an ordinance passed declaring it adopted.

Sec. 12.15. - Effect of this charter on existing laws.

All ordinances, resolutions, rules and regulations in force prior to the adoption of this charter, and not in conflict with the provisions of this charter, shall remain in force until altered, amended or repealed by the council.

All rights of the city under existing franchises and contracts are preserved in full force and effect to the city.

All official actions taken by the city, its councils, or other city officials and all previous elections, contracts, bonds, warrants and other evidences of indebtedness and any annexations, prior to the adoption of this charter, are hereby adopted, validated, confirmed and ratified.

Sec. 12.16. - Continuance of contracts and succession of rights.

All contracts entered into by the city, or for its benefit, prior to the taking effect of this charter, shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws or ordinances existing at the time this charter takes effect may be carried to completion in accordance with the provisions of such existing laws or ordinances.

All suits, taxes, penalties, forfeitures and all other rights, claims and demands, which have accrued under the laws heretofore in force governing the city, shall belong to and be vested in and shall be prosecuted by and for the use and benefit of the corporation hereby created, and shall not in anywise be diminished, affected or prejudiced by the adoption and taking effect of this charter.

Sec. 12.17. - Construction of charter.

Unless otherwise expressly provided herein, the masculine, feminine or neuter gender shall each include the other.

Sec. 12.18. - Submission of charter to voters.

The charter commission in preparing this charter concludes that it is impracticable to segregate each subject so as to permit a vote of yes or no on the same, for the reason that the charter is so constructed that in order to enable it to work and function, it is necessary that it 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 Hewitt at an election to be held for that purpose on April 3, 1982.

Not less than thirty (30) days prior to such election, the council shall cause the city secretary to mail a copy of this charter to each qualified voter of the city as appears from the latest certified list of registered voters. If a majority of the qualified voters, voting in such election shall vote in favor of the adoption of this charter, it shall become the charter of the City of Hewitt, and after the returns have been canvassed, the same shall be declared adopted and the city secretary shall file an official copy of the charter with the records of the city. The secretary shall furnish the mayor a copy of said charter, which copy of the charter so adopted, authenticated and certified by his signature and the seal of the city, shall be forwarded by the mayor to the secretary of the State of Texas and shall show the approval of such charter by majority vote of the qualified voters voting at such election.