

FOREWORD

The City of San Benito was first incorporated on July 30, 1920. The City's governmental affairs were conducted under a comparatively simple form of government consisting of a Mayor and two Commissioners.

By November of 1948, the City had grown to warrant a change to a Home Rule Charter. The City Charter was amended to include a Mayor, four Commissioners, and a City Manager to be appointed by the City Commission.

In December 1969, minor amendments were thereafter made to the Home Rule Charter.

In 1992 San Benito was experiencing growing pains. The Mayor and City Commission agreed that the City's Charter warranted a thorough examination and evaluation. Accordingly, a Charter Advisory Committee was created to conduct a study and survey extending over a period of several months. A copy of the existing City Charter was widely distributed to San Benito citizens with requests for recommendations; and meetings were held with various civic groups to receive ideas and recommendations. The Charter Advisory Committee completed its work by providing a report recommending numerous changes which were then approved by the City Commission.

A Charter Amendment Election was held on May 6, 1995, at which sixty proposed amendments were voted upon all amendments were adopted.

In 2007 minor amendments were thereafter made to the Home Rule Charter. The Mayor and City Commission agreed that the City's Charter warranted a change as to the terms members of the commission were serving and that a review of the recall petition needed reform.

A Charter Amendment Election was held on May 12, 2007 at which time two proposed amendments were voted upon both amendments were adopted.

The Charter is a part of the foundation on which our City government operates, and as such, its importance to our community can not be overemphasized. The printing of this revised charter, and in turn, making it available to all interested parties, is truly in accord with our progressive City government and democratic way of life.

Joe H. Hernandez

Mayor

CHARTER
of the
CITY OF SAN BENITO
as amended May 12, 2007

CHARTER ADVISORY COMMITTEE

PETE CLAUDIO Chairman
JANICE BUITRON Member
HECTOR MANCILLAS..... Member
JOSE MORALES Member
RON ROGERS Member
JESUS RAMIREZ City Attorney

CITY GOVERNMENT

JOE H. HERNANDEZ Mayor
VALENTE RESENDEZ Mayor Pro Tem
MARK MOODY Commissioner
VICTOR GARZA Commissioner
CELESTE Z. SANCHEZ..... Commissioner
VICTOR G. TREVINO City Manager
LUPITA PASSEMENT City Secretary

Article I Corporation

Section 1.01 Corporate Name.

All of the inhabitants of the City of San Benito and Cameron County, Texas within its boundaries as now established, or many which hereafter will be established shall be and continue to be a body corporate with perpetual succession and full power of local self government, under the name and style of the City of San Benito.

Section 1.02. Boundaries.

The boundaries of the City of San Benito shall be the same as have been heretofore established and now exist, which boundaries are more fully set out in the record of the "Incorporation of the City of San Benito" as the same appears in Volume "K" at pages 193 to 195 of the Minutes of the County Commissioners' Court of Cameron County, Texas, and in the deed records of said County, and also as delineated upon and shown by the maps of San Benito and additions thereto as maintained by the City Secretary and duly recorded in the map records of Cameron County, Texas.

Section 1.03. Extension of Boundaries and Regulation of Subdivisions.

The City Commission shall have the power by Ordinance to fix the boundary limits of said City, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said City, to provide for the disannexation of territory within such City and to provide for the exchange of territory with other cities or towns according to such rules as may be provided in this Charter and in accordance with the rules and provisions prescribed by *V.T.C.A., Local Government Code §43.00 et seq.*

The City Commission shall have the power to regulate the subdivision of all property into lots and blocks within the City limits and shall have the power to enact Ordinances, rules and regulations governing subdivisions within five (5) miles of the corporate limits of the City, provided that Ordinances, rules and regulations are not inconsistent with *V.T.C.A., Local Government Code §212.001 et seq.* as amended or the general law or Constitution of the State of Texas. For the purpose of promoting health, safety and morals, and for the protection and preservation of places and areas of historical and cultural importance and significance, or the general welfare of the community, the City Commission of the City of San Benito is hereby empowered to regulate and restrict the height, number of stories, size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces and the location and use of buildings, structures, and land for trade, industry, residence, or other purpose; and in the case of designated places and areas of historic and cultural importance, to regulate and restrict the construction, alteration, reconstruction, or razing of buildings and other structures, and shall have all the powers not inconsistent with *V.T.C.A., Local Government Code §211.001 et seq.* as amended and the general law and Constitution of the State of Texas.

Article II POWERS OF THE CITY

Section 2.01. Powers of the City

A. Authority. The said City of San Benito shall have power to ordain and establish such acts, laws, rules, regulations, resolutions, and ordinances, not inconsistent with the Constitution and laws of Texas and of this Charter, as shall be needful for government, interests, health, welfare and good order of said City and its inhabitants.

Under the name of the City of San Benito it shall be known in law and have succession and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and tribunals, and in all amounts whatsoever, subject to the laws of the State of Texas, or which shall hereafter be passed.

B. Rights Reserved. All suits, taxes, penalties, fines, forfeiture, and all other rights, claims and demands, of every kind and character, which have accrued under the laws in favor of said City, heretofore in force governing the same, shall belong to and vest in said City and shall not abate by reason of the adoption of this Charter; and shall be prosecuted and collected for the use and benefit of said City of San Benito and shall not be in any manner affected by the amendments to this Charter: but as to all of such rights, the laws under which they shall have accrued shall be deemed to be in full force and effect.

C. Local Self-Government. The City of San Benito shall possess and may exercise the full power of local self-government. It may hold, by gift, deed, devise, or otherwise, any character of property, including any charitable or trust fund, and subject to and within the limits of superior law may act in perpetual succession as a body politic.

D. Clarification. The City of San Benito shall possess all of the rights granted to it by the Home Rule Amendment contained in Article 11 §5 of the Texas Constitution as amended and all powers, privileges and immunities conferred upon cities and contained in V. T. C. A., Local Government Code §51.072 et seq. as amended as well as any and all powers not inconsistent with the Texas Constitution and general law.

Section 2.02. Construction.

The powers of the City under this Charter shall be constructed liberally in favor of the City, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power granted in this article.

Section 2.03. Intergovernmental Relations.

The City 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 any one or more states or any state civil division or agency, or the United States or any of its agencies.

**Article III
CITY COMMISSION**

Section 3.01. General Powers and Duties.

All powers of the City shall be vested in the City Commission, except as otherwise provided by law or this Charter, and the City Commission shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the City by law.

Section 3.02. Composition, Eligibility, Election and Terms.

(a) Composition. There shall be a City Commission composed of the Mayor and four (4) members; the Mayor and City Commissioners shall be elected by the voters of the City at large.

(b) Eligibility. Only registered voters of the City shall be eligible to hold the office of City Commissioner or Mayor in accordance with the Texas Election Code as amended. He or she shall have paid all taxes due the City of San Benito and be free from debt to said City and shall have resided in the State of Texas twelve (12) months and in the City of San Benito six (6) months prior to filing deadline. He or she shall not be a stockholder or director in any public service corporation having a standing contract with the City government and he or she shall not be pecuniarily interested, directly or indirectly, in any public work or improvement let, supervised or controlled by said City or which shall be paid for wholly or in part by said City.

(c) Election and Terms. Place Designation and Terms of Office. The four members of the City Commission shall be designated as City Commissioner Place 1, City Commissioner Place 2, City Commissioner Place 3, and City Commissioner Place 4. Effective on the first general election held after 2007, the term of office for the office of Mayor and of City Commissioner shall, thereafter, be three (3) years.

(d) Whenever it happens in any general or special election that there is a tie vote between two or more candidates for the same office, provisions of V.T.C.A., Election Code §2.002 shall apply.

Section 3.03. Mayor

The Mayor shall be a member of the City Commission and shall preside at meetings of the City Commission, represent the City in intergovernmental relationships, appoint with the advice and consent of the City Commission the members of the citizen advisory boards and commissions, present an annual state of the City message, and perform other duties specified by the City Commission. He shall sign all bonds, ordinances, resolutions, proclamations, contracts, deeds and conveyances, and he shall exercise all powers and perform all duties as chief executive officer imposed upon him by this Charter and by the ordinances of the City. The Mayor shall be recognized as head of the City government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. The City Commission shall elect from among its members a Mayor Pro Tem who shall act as Mayor during the absences or disability of the mayor and, if a vacancy occurs, shall become Mayor for the remainder of the unexpired term.

Section 3.04. Compensation; Expenses.

The City Commission shall, on or before the first day of August next preceding the election of officers, fix and determine the salaries of all who are to be elected at the next election and the salaries so fixed and determined by the City Commission shall not be increased or decreased during the term for which such officers have been elected regardless of the resultant differences in pay scale on the City Commission. The Mayor and City Commissioners shall receive their actual necessary expenses incurred in the performance of their duties of office.

Section 3.05. Prohibitions.

(a) Holding other office. Except where authorized by law, no City Commissioner shall hold any other elected public office during the term for which the member was elected to the City Commission. No City Commissioner shall hold any other City office or employment during the terms for which the member was elected to the City Commission. No former City Commissioner shall hold any other compensated appointive office or employment with the City until one year after the expiration of the term for which the member was elected to the City Commission. Nothing in this section shall be construed to prohibit the City Commission from selecting any current or former City Commission member to represent the City on the governing board of any regional or other intergovernmental agency.

(b) Appointments and Removals. Neither the City Commission nor any of its members shall in any manner control or demand the appointment or removal of any City administrative officer or employee whom the City Manager or any subordinate of the City Manager is empowered to appoint, but the City Commission may express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.

(c) **Interference with Administration.** Except for the purpose of inquiries and investigations under §3.08, the City Commission or its members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the City Commission nor its members shall give orders to any such officer or employee, either publicly or privately.

Section 3.06. Vacancies; Forfeiture of Office; Filing of Vacancies.

(a) **Vacancies.** The office of a member of the City Commission shall become vacant upon the member's death, resignation, removal from office or forfeiture of office in any manner authorized by law or this Charter.

(b) **Forfeiture of Office.** A City Commission Member shall forfeit that office if the City Commission Member:

(1) lacks at any time during the term of office for which elected any qualification for the office prescribed by this Charter or by law.

(2) violates any express prohibition of the Charter;

(3) is convicted by a trial court of a crime involving moral turpitude; however, such person shall take a leave of absence pending appeal, or

(4) fails to attend three consecutive regular meetings of the City Commission without being excused by the City Commission.

(c) **Filling of Vacancies.** The City Commission by a majority vote shall nominate a qualified individual to serve out any unexpired term. If the City Commission fails to do so within thirty (30) days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than ninety (90) days and not later than one hundred twenty (120) days following the occurrence of the vacancy, and to be otherwise governed by law. If at any time the membership of the City Commission is reduced to fewer than four (4) members, remaining members shall call a special election to fill the vacancies to be held not sooner than ninety (90) days and not later than one hundred twenty (120) days following the occurrence of the later vacancy and to be otherwise governed by law.

Section 3.07. Judge of Qualifications.

The City Commission shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office. The City Commission shall have the power to set additional standards of conduct for its members beyond those specified in the Charter and may provide for such penalties as it deems appropriate, including forfeiture of office. In order to exercise these powers, the City Commission shall have power to subpoena witnesses, administer oaths and require the production of evidence.

Section 3.07. Judge of Qualifications. (continued)

A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing. Decisions made by the City Commission under this section shall be subject to judicial review.

Section 3.08. Investigations.

The City Commission shall have the power and duty at any time to investigate and examine the affairs of the City, financial and otherwise, and official acts and conduct of the officials and acts and conduct of employees of said City and such investigation shall be made by the City Commission itself or by a committee or some suitable person or persons appointed for that purpose. Such examination may be made as to the financial condition and resources of the City and the acts and conduct of officials or employees so as to ascertain whether the requirements of the Constitution and laws of Texas, as well as the terms of this Charter and the laws of the City, shall have been complied with. Such examination shall be made into the methods and accuracy of the City accounts and of all other such matters as the City Commission may prescribe by Ordinance. The City Commission shall have the power to issue subpoenas and to punish for contempt.

Section 3.09. Independent Audit.

The City Commission shall provide for an independent annual audit of all City accounts and may provide for more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. The City Commission may designate such accountant or firm annually or for a period not exceeding three years, but the designation for any particular fiscal year shall be made no later than thirty (30) days after the beginning of such fiscal year. If the State makes such an audit, the City Commission may accept it as satisfying the requirements of this section.

Section 3.10. Procedure.

(a) **Regular Meetings.** The City Commission shall have as many regular meetings as it shall deem necessary provided that it shall have at least one meeting per month.

(b) **Special Meetings.** The City Commission may meet in special session upon call of the Mayor or two (2) Commissioners at such time and place as the Commission may deem necessary to properly conduct City business.

(c) **Rules and Minutes.** The City Commission shall determine its own rules and order of business. Provisions shall be made for the taking of minutes, which minutes shall be public record. Voting, except on procedural matters, shall be by roll call and the "ayes" and "nays" shall be recorded in the minutes.

Section 3.10. Procedure (continued)

(d) Voting. A majority of City Commissioners shall constitute a quorum and no action shall be valid unless adopted by the affirmative vote of a majority of the City Commission present.

Section 3.11. Action Requiring an Ordinance.

In addition to other acts required by law or by specific provision of this Charter to be done by Ordinance, those acts of the City Commission shall be by Ordinance which:

- (1) Adopt or amend an administrative code or establish, alter, or abolish any City department, office or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation the violation of which a fine or other penalty is imposed;
- (3) Levy taxes;
- (4) Grant, renew or extend a franchise;
- (5) Regulate the rate charged for its services by a public utility;
- (6) Authorize the borrowing of money;
- (7) Convey or lease or authorize the conveyance or lease of any lands of the City;
- (8) Regulate land use and development;
- (9) Amend or repeal any Ordinance previously adopted; and
- (10) Adopt with or without amendment Ordinances proposed under the initiative power.

Acts other than those referred to in the preceding sentence may be done either by Ordinance or by Resolution.

Section 3.12. Ordinances in General.

(a) Form. Ordinances shall be introduced to the City Commission only in written or printed form. The subject or subjects of all Ordinances shall be clearly expressed in the title.

(b) Procedure. Except as may be otherwise prescribed in this Charter, an Ordinance shall not be passed at the meeting of the City Commission at which it is first introduced, but it shall then be read, and considered at the next meeting of the City Commission. At the meeting subsequent to the introduction of the Ordinance, said Ordinance shall be re-read and a vote taken. At the meeting adopting the Ordinance, only the title of the Ordinance shall be read prior to the vote.

Notwithstanding the foregoing provisions, if the City Commission, including the Mayor, by a unanimous vote of the members present at the meeting at which an Ordinance is first introduced, determines that an emergency exists requiring immediate action, such Ordinance may then be voted upon and rejected or passed at that meeting. The "ayes" and "nays" shall be taken upon the passage of all Ordinances and entered upon the journal of the proceedings of the City Commission. The enacting clause of all Ordinances shall be "*BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SAN BENITO, TEXAS,*" and every Ordinance shall be authenticated by the signature of the Mayor and the City Secretary and shall be recorded systematically and indexed in an Ordinance book in a manner approved by the City Commission.

(c) **Effective Date.** Every Ordinance adopted by the City Commission shall be recorded by the City Secretary as soon as practicable after its passage. If the Ordinance is published, the City Secretary shall note the time and place of publication which shall be prima facie proof of publication thereof. The affidavit by printer or publisher shall also be proof of publication. Every adopted Ordinance shall become effective upon adoption or publication as set forth herein.

(d) **Publication.** The caption or title and penalties of every Ordinance after passage thereof shall be published in a newspaper of general circulation in the City of San Benito at least one time within seven (7) days after the passage of said Ordinance.

Section 3.13. Authentication and Recording; Codification; Printing.

(a) **Authentication and Recording.** The City Secretary shall authenticate by signing and shall record in full in a properly indexed book kept for that purpose all Ordinances adopted by the City Commission.

(b) **Codification.** The City Commission shall have the power to cause the Ordinances of the City to be codified and printed in code form as often as the City Commission deems advisable and such printed code when adopted by the City Commission shall be in full force and effect and shall become effective without publication unless publication is required by law. All printed Ordinances or Codes of Ordinances shall be admitted as evidence in all courts without further proof and shall have the same force and effect as the original Ordinance.

Section 3.14. Ordinances in force at the time of the accepting this Charter.

All Ordinances, rules, regulations and resolutions now in force in said City of San Benito at the time of the taking effect of this Charter and not in conflict herewith or with the Constitution and Laws of Texas, or upon which any contract is based, shall remain in full force and effect until altered, amended or repealed by the City Commission after the adoption and taking effect of this Charter.

Section 3.15. Resolutions.

The City Commission shall have the authority to adopt resolutions as it may deem necessary for the proper conduct of City business.

**Article IV
CITY MANAGER**

Section 4.01. Appointment; Qualifications; Compensation.

The City Commission by a majority vote of its total membership shall appoint a City Manager for an indefinite term and fix the Manager's compensation. The City Manager shall be appointed solely on the basis of administrative qualifications. The Manager need not be a resident of the City or State at the time of appointment but will be expected to become a resident of the City as soon as practical following appointment as agreed by the City Commission.

Section 4.02. Removal.

The City Manager may be suspended by a resolution approved by the majority of the total membership of the City Commission which shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the City Manager. The City Manager shall have fifteen (15) days in which to reply thereto in writing, and upon request, shall be afforded a public hearing, which shall occur not earlier than ten days nor later than fifteen days after such hearing is requested. After the public hearing, if one be requested, and after full considerations, the City Commission by a majority vote of its total membership may adopt a final resolution of removal.

Section 4.03. Acting City Manager.

By letter filed with the City Secretary, the City Manager shall designate a City officer or employee to exercise the powers and perform the duties of City Manager during the Manager's temporary absence or disability. The City Commission may revoke such designation at any time and appoint another officer of the City to serve until the City Manager returns.

Section 4.04. Powers and Duties of the City Manager.

The City Manager shall be the chief administrative officer of the City, responsible to the City Commission for the administration of all City affairs placed in the Manager's charge by or under this Charter. The City Manager shall:

- (1) Hire and, when necessary for the good of the City, suspend or remove all City employees and Department Heads provided for by or under this Charter, except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this Charter. The City Manager may authorize any administrative officer subject to the Manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (2) Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.
- (3) Attend all City Commission meetings. The City Manager shall have the right to take part in discussion but shall not vote;
- (4) See that all laws, provisions of this Charter and acts of the City Commission, subject to enforcement by the City Manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual budget and capital program to the City Commission;
- (6) Submit to the City Commission and make available to the public a complete report of the finances and administrative activities of the City as of the end of each fiscal year;
- (7) Make such other reports as the City Commission may require concerning the operations of the City

- departments, offices and agencies subject to the City Manager's direction and supervision.
- (8) Keep the City Commission fully advised as to the financial condition and further needs for the City;
 - (9) Make recommendations to the City Commission concerning the affairs of the City;
 - (10) Provide staff support services for the Mayor and City Commissioners; and
 - (11) Perform such other duties as are specified in this Charter or may be required by the City Commission.

**Article V
DEPARTMENTS, OFFICES AND
AGENCIES**

Section 5.01. General Provisions.

(a) **Creations of Departments.** The City Commission may 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 City 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 Manager. With the consent of City Commission, the City Manager may serve as the 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 5.02. Personnel System.

(a) **Merit Principle.** All appointments and promotions of City offices and employees shall be made solely on the basis of merit and fitness demonstrated by a valid and reliable examination or other evidence of competence.

(b) **Merit System.** Consistent with all applicable federal and state laws the City Commission shall provide by Ordinance for the establishment, regulation and maintenance of a merit system governing personnel policies necessary for effective administration of the employees of the City's departments, offices and agencies, including but not limited to classification and pay plans, examinations, force reduction, removals, working conditions, provisional and exempt appointments, in-service training, grievances and relationships with employee organizations.

Section 5.03. Legal Officer.

There shall be a City Attorney appointed by the City Commission. The City Attorney shall serve as chief legal adviser to the City Commission, the City Manager and all City departments, officers and agencies, shall represent the City in all legal proceedings and shall perform any other duties prescribed by state law, by this Charter or by Ordinance.

Section 5.04. City Secretary.

The City Manager shall appoint an officer of the City who shall have the title of City Secretary. The City Secretary shall give notice of City Commission meeting to members and the public, shall keep minutes of all City Commission proceedings as required by law, shall record and authenticate all Ordinances and Resolutions and shall perform other duties as designated by the City Manager. The City Secretary may also act in the capacity of City Assessor and Collector of taxes.

Section 5.05. Municipal Court and Judge.

There shall exist in the City a Municipal Court presided over by a Municipal Judge who shall have all the powers and duties granted by the Constitution of the United States and the State of Texas, State, Local Law and all Ordinances enacted by the City Commission within the powers of this Charter.

The Municipal Judge shall be appointed by the City Manager and shall serve for a term of two (2) years beginning on the effective date of this Charter. Unless replaced or reappointed on or before the 91st day following the expiration of the two year term, the term of office shall continue for another two (2) year period from the expiration date of the preceding term.

Section 5.06. Planning:

Consistent with all applicable federal and state laws with respect to land use, development and environmental protection, the City Commission:

- (1) may designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by:
- (2) shall adopt a comprehensive plan and determine to what extent zoning and other land use control Ordinances must be consistent with the plan; and,
- (3) shall adopt development regulations, to be specified by Ordinance, to implement the plan.

Section 5.07. Boards.

The City Commission may establish *Boards* or Commissions as it shall deem necessary to properly effectuate City business.

Section 5.08. Bonds.

All elected or appointed officers who collect or disburse funds and/or have authority to sign on City accounts shall be required to enter into a bond with good and sufficient surety to be approved by the Commission in such form and amount and shall be prescribed by the Commission; provided, however, that employees may be required to give bond when deemed necessary by the Commission.

**Article VI
FINANCIAL PROCEDURES**

Section 6.01. Fiscal Year.

The fiscal year of the City shall begin on the first day of October and end on the last day of September.

Section 6.02. Submission of Budget and Budget Message.

On or before the 15th day of July of each year, the City Manager shall submit to the City Commission a budget for the ensuing fiscal year and an accompanying message.

Section 6.03. Budget Message.

The City 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 City Manager deems desirable.

Section 6.04. Budget.

The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the City Manager deems desirable or the City Commission may require. The budget shall begin with a clear general summary of its contents, shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year, and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

- (1) The proposed goals and objectives and expenditures for current operations during the ensuing fiscal year, detailed for each fund by organization unit and program, purpose or activity, and the method of financing such expenditures;
- (2) Proposed capital expenditures during the ensuing fiscal year, detailed for each fund by organization unit when practical, and the proposed method of financing each such capital expenditure; and
- (3) The anticipated income and expense and profit and loss for the ensuing year for each utility or other enterprise fund operated by the City.

For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance, exclusive of reserves.

Section 6.05. City Commission Action on Budget.

(a) **Notice and Hearing.** The City Commission shall publish in one or more newspapers of general circulation in the city a brief summary of the budget and a notice stating:

- (1) The times and places where copies of the message and budget are available for inspection by the public, and
- (2) The time and place, not less than two weeks after such publication, for a public hearing on the budget.

(b) **Amendment before Adoption.** After the public hearing, the City Commission may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income.

(c) **Adoption.** The City Commission shall adopt the budget on or before the 30th day of September of each year. If it fails to adopt the budget by this date, the then existing budget, together with any tax-levying Ordinance and appropriation Ordinance, shall be deemed adopted for the ensuing fiscal year on a month to month basis with all items in it prorated accordingly until such time as the City Commission adopts a budget for the balance of that fiscal year.

Section 6.06. Appropriation and Revenue Ordinances.

To implement the adopted budget, the City Commission shall adopt, prior to the beginning of the ensuing fiscal year:

- (a) An appropriation Ordinance making appropriations by department or major organizational unit and authorizing a single appropriation for each program or activity;
- (b) A tax levy Ordinance authorizing the property tax levy or levies and setting the tax rate or rates; and
- (c) Any other Ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

Section 6.07. Amendments after Adoption.

(a) **Supplemental Appropriations.** If during the fiscal year the City Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the City Commission may make supplemental appropriations for the year up to the amount of such excess.

(b) **Emergency Appropriations.** To meet a public emergency affecting life, health, property or the public peace, the City Commission may make emergency appropriations. Such appropriations may be made by emergency Ordinance in accordance with the provisions of §2.13. To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the City Commission may by such emergency Ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

(c) **Reduction of Appropriations.** If at any time during the fiscal year it appears probable to the City Manager that the revenues or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the Manager shall report to the City Commission without delay, indicating the estimated amount of the deficit, any remedial action taken by the Manager and recommendations as to any other steps to be taken. The City Commission shall then take such further action as it deems necessary to prevent or reduce any deficit and for that purpose it may by Ordinance reduce one or more appropriations.

(d) **Transfer of Appropriations.** At any time during the fiscal year the City Commission may by Resolution or Ordinance transfer part or all of the unencumbered appropriation balance from one department or major organizational unit to other departments or major organizational units. To meet a public emergency affecting life, health, property or the public peace only, the City Manager may transfer part or all of any unencumbered appropriation balances among programs within a department or organizational unit and shall report such transfers to the City Commission in writing in a timely manner.

(e) **Limitation; Effective Date.** No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

Section 6.08. Lapse of Appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until expended, revised or repealed: the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

Section 6.09. Administration of the Budget.

The City Commission shall provide by Ordinance the procedures for administering the budget.

Section 6.10. Overspending of Appropriations Prohibited.

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriation duly made and unless the City Manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds there from are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provision of this Charter shall be void and any payment so made illegal. A violation of this provision shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation. Such officer may also be liable to the City for any amount so paid. Except where prohibited by law, however, nothing in this Charter shall be constructed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, but only if such action is made or approved by Ordinance.

Section 6.11. Capital Program.

(a) **Submission to City Commission.** The City Manager shall prepare and submit to the City Commission a five year capital program no later than the final date for submission of the budget.

(b) **Contents.** The capital program shall include:

- (1) A clear general summary of its contents;
- (2) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five fiscal years next ensuing with appropriate supporting information as to the necessity of each;
- (3) Cost estimates and recommended time schedules for each improvement or other capital expenditure;
- (4) Method of financing, upon which each expenditure is to be reliant; and
- (5) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

Section 6.12. City Commission Action on Capital Program.

(a) **Notice and Hearing.** The City Commission shall publish in one or more newspapers of general circulation, in the City the general summary of the capital program and a notice stating:

- (1) The times and places where copies of the capital program are available for inspection by the public, and
- (2) The time and place, not less than two weeks after such publication, for a public hearing on the capital program.

(b) **Adoption.** The City Commission by resolution shall adopt the capital program with or without amendment after the public hearing on or before the 30th day of September of the current fiscal year.

Section 6.13. Public Records.

Copies of the budget, capital program and appropriation and revenue Ordinances shall be public records and shall be made available to the public at suitable places in the City.

**Article VII
ELECTIONS**

Section 7.01. City Elections.

(a) **Regular Elections.** The regular City election shall be held on the dates and at the times established by State law.

(b) **Registered Voter Defined.** All citizens legally registered under the Constitution and laws of the State of Texas to vote in the City shall be registered voters of the City within the meaning of this Charter.

(c) **Conduct of Elections.** The provisions of the general election laws of the State of Texas shall apply to elections held under this Charter. All elections provided for by the Charter shall be conducted by the election authorities established by law. Candidates shall run for office without party designation. For the conduct of City elections, for the prevention of fraud in such elections and for the recount of ballots in cases of doubt or fraud, the City Commission shall adopt Ordinances consistent with law and this Charter, and the election authorities may adopt further regulations consistent with the law and this Charter and the Ordinances of the City Commission. Such Ordinances and regulations pertaining to elections shall be publicized in the manner of City Ordinances generally.

Section 7.02. General Authority.

(a) **Initiative.** The registered voters of the City shall have power to propose Ordinances to the City Commission. If the City Commission fails to adopt an Ordinance so proposed without any change in substance, the registered voters shall have the power to adopt or reject it at a City election, but such power shall not extend to the budget or capital program or any Ordinance relating to appropriation of money, levy of taxes or salaries of City officers or employees.

(b) **Referendum.** The registered voters of the City shall have power to require reconsideration by the City Commission of any adopted Ordinance. If the City Commission fails to repeal an Ordinance so reconsidered, the registered voters shall have the power to approve or reject it at a City election, but such power shall not extend to the budget or capital program or any emergency Ordinance or Ordinance relating to the appropriation of money or levy of taxes.

Section 7.03. Commencement of Proceeding; Petitioners' Committee; Affidavit.

Any five registered voters may commence initiative or referendum proceedings by filing with the City Secretary an affidavit stating they will constitute the Petitioners' committee and be responsible for circulating the Petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative Ordinance or citing the Ordinance sought to be reconsidered.

Promptly after the affidavit of the Petitioners' committee is filed the City Secretary shall issue the appropriate Petition blanks to the Petitioner's committee.

Section 7.04. Petitions.

(a) **Number of Signatures.** Initiative and Referendum Petitions must be signed by twenty-five percent (25%) of those eligible to vote at the last regular election of which fifty percent (50%) must have actually voted at the last election.

(b) **Form and Content.** All papers of a Petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the Ordinance proposed or sought to be reconsidered.

(c) **Affidavit of Circulator.** Each Petition shall have attached to it when filed an affidavit executed by the person circulating it stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the Ordinance proposed or sought to be reconsidered.

(d) **Time for Filing Referendum Petitions.** Referendum Petitions must be filed within thirty (30) days after adoption by the City Commission of the Ordinance sought to be reconsidered.

Section 7.05. Procedure after Filing.

(a) **Certificate of City Secretary; Amendment.** Within twenty (20) days after the Petition is filed, the City Secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the Petitioners' committee by registered mail. A Petition certified insufficient for lack of the required number of valid signatures may be amended once if the Petitioners' committee files a notice of intention to amend it with the City Secretary within two (2) days after receiving the copy of his or her certificate and files a supplementary Petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary Petition shall comply with the requirements of subsections (b) and (c) of §7.04, and within five (5) consecutive days after it is filed the City Secretary shall complete a certificate as to the sufficiency of the Petition as amended and promptly send a copy of such certificate to the Petitioners' committee by registered mail as in the case of an original Petition. If a Petition or amended Petition is certified sufficient, or if a Petition or amended Petition is certified insufficient and the Petitioners' committee does not elect to amend or request City Commission review under subsection (b) of this section within the time required, the City Secretary shall promptly present his or her certificate to the City Commission and the certificate shall then be a final determination as to the sufficiency of the Petition.

(b) **City Commission Review.** If a Petition has been certified insufficient and the Petitioners' committee does not file notice of intention to amend it or if an amended Petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by the City Commission. The City Commission shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the City Commission's determination shall then be a final determination as to the sufficiency of the Petition.

(c) **Court Review; New Petition.** A final determination as to the sufficiency of a Petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new Petition for the same purpose.

Section 7.06. Referendum Petitions; Suspension of Effect of Ordinance.

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:

- (1) There is a final determination of insufficiency of the Petition, or
- (2) The Petitioners' committee withdraws the Petition, or
- (3) The City Commission repeals the Ordinance, or
- (4) Thirty (30) days have elapsed after the referendum election.

Section 7.07. Action on Petitions.

(a) **Action by City Commission.** When an initiative or referendum Petition has been finally determined sufficient, the City Commission shall promptly consider the proposed initiative Ordinance in the manner provided in Article III or reconsider the referred Ordinance by voting its repeal. If the City Commission fails to adopt a proposed initiative Ordinance without any change in substance within sixty (60) days or fails to repeal the referred Ordinance within thirty (30) days after the date the Petition was finally determined sufficient, it shall submit the proposed or referred Ordinance to the voters of the City.

(b) **Submission to Voters.** The vote of the City on a proposed or referred Ordinance shall be held not less than thirty (30) days and not later than one year from the date of the final City Commission vote thereon. If no regular City election is to be held within the period prescribed in this subsection, the City Commission shall provide for a special election: otherwise, the vote shall be held at the same time as such regular election, except that the City Commission may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred Ordinance shall be made available at the polls.

(c) **Withdrawal of Petitions.** An initiative or referendum Petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the City by filing with the City Secretary a request for withdrawal signed by at least four (4) members of the Petitioners' committee. Upon the filing of such request the Petition shall have no further force or effect and all proceedings thereon shall be terminated.

Section 7.08. Results of Election.

(a) **Initiative.** If a majority of the registered voters voting on a proposed initiative Ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as Ordinances of the same kind adopted by the City Commission. If conflicting Ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(b) **Referendum.** If a majority of the registered voters voting on a referred Ordinance vote against it, it shall be considered repealed upon certification of the election results.

Section 7.09. Recall.

Any elective officers of the City shall be subject to recall and removal from office by the qualified voters of the City, and the procedure to effect such removal shall be as follows:

A Petition, demanding that the question of removing an elective officer or officers be submitted to the electors, shall be filed with the City Secretary. Such Petition for the recall of any such elective officer or officers shall be signed by twenty-five percent (25%) of those eligible to vote at the last regular election of which sixty percent (60%) must have actually voted in the last regular city general election.

Petition for signatures for such recall shall be procured only from the City Secretary, who shall keep a sufficient number of such blank Petitions on file for distribution, and prior to the issuance of such Petitions for signatures there shall be filed with the City Secretary an affidavit by one or more qualified electors, stating the name or names of the officer or officers, sought to be removed. The City Secretary in issuing such Petitions for removal of an officer shall enter a record to be kept for the purpose, the name of the elector to whom issued, the date of such issuance and the number of Petitions issued, and shall certify on such Petitions for signatures, the name of the elector to whom issued and the date of its issuance. No Petition for signatures shall be accepted and taken into consideration in determining the necessary percentage of voters for removal unless it bears such certificate and is filed as herein provided.

Each signer of a recall shall sign his name thereto in ink or indelible pencil, and shall write thereon, after his name, his place of residence by street and number. To each of said Petitions there shall be attached an affidavit, of the circular thereof, stating the number of signers to such part of the Petition and that such signature to the same is genuine, and was made in his presence and is that of the person whose name it purports to be.

All papers comprising a recall Petition shall be returned and filed with the City Secretary within thirty (30) days after the filing of the affidavit herein before provided for. The City Secretary, upon the return of such Petition shall at once submit the same to the City Commission, and shall notify the officer or officers sought to be recalled of such actions.

If the official whose removal is sought does not resign within five (5) days after such notice is given, the City Commission shall thereupon order and fix a day for holding a recall election, the date of which election shall not be less than forty-five (45) nor more than sixty (60) days from the time such Petition was presented to the City Commission.

The ballot at such recall election shall conform to the following requirements, with respect to each person whose removal is sought; the question shall be submitted: "Shall (name of person) be removed from the office of (naming office) by recall?" Immediately following each of such questions there shall be printed on the ballots, in separate lines, in the order here set out the words: "For the recall of (naming of the person)" "Against the recall of (naming the person). Should a majority of the votes cast at such recall election be for the recall of the officer named on the ballot, he shall, regardless of any technical defects in the recall Petition, [cast at such recall election be against the recall of the officer named on the ballot, such officer shall continue in office for the remainder of his term, subject to recall as before.]

No recall Petition shall be filed against any officer of the City within six (6) months after his election, nor within six (6) months after an election for such officer's recall.

In case the City Commission shall fail to refuse to receive the recall Petition, order such recall election, or discharge any other duties with reference to such recall, then the County Judge of Cameron County or the County Judge of the in which the City of San Benito is located, shall discharge any of such duties herein provided to be discharged by the City Commission.

If in a recall election there results in a vacancy or vacancies, the position or positions shall be filled in accordance with Article III §3.06 (c) herein.

Article VIII GENERAL PROVISIONS

Section 8.01. Conflicts of Interest.

(a) Conflicts of Interest. The use of public office for private gain is prohibited. The City Commission shall implement this prohibition by Ordinance. Regulations to this end shall include but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official, the use of confidential information; and appearances by City officials before other City agencies on behalf of private interests. This Ordinance shall provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations.

Section 8.02. Prohibitions.

In addition to Prohibitions set forth in state law, the following activities will be prohibited:

- (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to, any City position or appointive City administrative office because of race, gender, age, handicap, religion, country of origin or political affiliation;
- (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this Charter or the rules and regulations made thereunder or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations;
- (3) No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion;
- (4) No City employee during working hours shall knowingly or willingly make, solicit or receive any contribution to the campaign funds of any political candidate or committee or in support of, or opposition to, any ballot issue; and
- (5) No city employee during working hours shall knowingly or willfully participate in any aspect of any political campaign on behalf or in opposition to any candidate for political office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinion or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government outside of working hours.

Section 8.03. Claims against City.

The provisions of V.T.C.A., Civil Practice and Remedies Code §101.101 et seq. as amended shall govern claims arising against the City.

Section 8.04. Tax Arrearages.

No money shall be paid by the City for any claims, debt, demand or account, whatsoever due, to any person, firm or corporation who is in arrears to the City of San Benito for taxes; and the City shall be entitled to a counterclaim and offset against any such debt, claim, demand or account in the amount of taxes so in arrears 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 the said taxes against the same.

Section 8.05. Bonds in Suits.

It shall not be necessary in any action, suit or proceeding in which the city shall be a party, for any bond, undertaking or security to be executed on behalf of the city.

Section 8.06. Nepotism.

No one shall be eligible for appointment to any salaried position in the city, or employed by the city who is related to any member of the Commission, to the City Manager or the department head of the department to which he or she is appointed, by consanguinity or affinity nearer than the fourth degree.

Section 8.07. Property Exemption.

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

Section 8.08. Garnishments.

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

**Article IX
CHARTER AMENDMENT**

Section 9.01. Proposal of Amendment.

Amendments to this Charter may be framed and proposed:

- (a) In the matter provided by law, or
- (b) By Ordinance of the City Commission containing the full text of the proposed amendment and effective upon adoption, or
- (c) By report of a Charter City Commission created by Ordinance, or
- (d) By a Petition signed by a number or qualified voters of the municipality equal to at least five percent (5%) of the number of qualified voters of the municipality or twenty thousand (20,000) whichever number is smaller.

Section 9.02. Election.

The City Commission shall adopt an Ordinance submitting the proposed Charter amendments to the qualified voters of the municipality at an election to be held on the first authorized uniform election date prescribed by the Election Code as amended that allows sufficient time to comply with other requirements of law and that occurs on or after the 30th day after the date the Ordinance is adopted. Notice of the election shall be published in a newspaper of general circulation published in the municipality and shall include:

- (1) A substantial copy of the proposed amendment; and
- (2) Being published on the same day in each of two successive weeks with the first publication occurring before the 14th day before the date of the election.

An amendment may not contain more than one subject. The ballot shall be prepared so that a voter may approve or disapprove any one or more amendments without having to approve or disapprove all of the amendments.

Section 9.03. Adoption of Amendment.

The proposed amended Charter is adopted when it is approved by a majority of the qualified voters who vote at the election on which the amendments appear on the ballot.

Section 9.04. Effective Date.

Charter amendments do not take effect until the City Commission enters an order in the City records that the amendments have been adopted.

Section 9.05. Certification.

As soon as practical after the City Commission adopts the Charter amendments, the Mayor shall certify to the City Secretary of the State of Texas an authenticated copy of the Charter amendments under the City's seal showing the approval by the voters of the City of San Benito.

**Article X
TRANSITION/SEPARABILITY
PROVISION**

Section 10.01. 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 which is or can be abolished by or under this Charter, he or she shall continue in such office or position until some specific provision under this Charter directs that he or she vacate the office or position.

(c) **Personnel System.** An employee holding a City position at the time this Charter takes full effect, who was serving in that same or a comparable position, at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position but in all other respects shall be subject to the personnel system provided for in §4.02.

Section 10.02. Pending Matters.

All rights, claims, actions, orders, contracts and legal 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 10.03. State and Municipal Laws.

All City Ordinances, resolutions, orders and regulations which are in force when this Charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this Charter or of Ordinances or resolutions adopted pursuant thereto. To the extent that the Constitution and laws of the State of Texas permit, all laws relating to or affecting this City or its agencies, officers or employees which are in force when this Charter becomes fully effective, are superseded to the extent that they are inconsistent or interfere with the effective operation of this Charter or of Ordinances and resolutions adopted pursuant thereto. Where State law requires, State law will have control over any Charter provision in conflict with State law.