

**PART I**  
**CHARTER\***

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\* **Editors Note:** Printed herein is the City Charter, as adopted by the voters of the city on Mar. 6, 2008. 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.

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## HOME RULE CHARTER

FOR

THE CITY OF LULING

### PREAMBLE

We, the citizens of Luling, Caldwell County, Texas, in order to establish a Home Rule Municipal Government, provide for the future progress of our City and obtain more fully the benefits of local self-government, do hereby adopt this Home Rule Charter in accordance with the statutes of the State of Texas; and do hereby declare the residents of the City of Luling in Caldwell County, Texas, living within the legally established boundaries of the said City, to be a political subdivision of the State of Texas incorporated forever under the name and style of the "City of Luling" with such powers, rights and duties as are herein provided.

### ARTICLE I.

#### **FORM OF GOVERNMENT AND BOUNDARIES;oh5;Section 1.01. Form of government.**

The municipal government provided by this Charter shall be known as the Council-Manager Form of

Government. Pursuant to the provisions and subject only to the limitations imposed by the State Constitution, the laws of the State of Texas, and by this Charter, all powers of the City shall be vested in an elective Council, hereinafter referred to as the "City Council" which shall enact local legislation, adopt budgets, determine policies and appoint the City Manager. The Manager, in turn, shall be responsible to the City Council for the execution of the laws and the administration of the government of the City. All powers of the City shall be exercised in the manner prescribed by this Charter, or if the manner be not prescribed, then in such a manner as may be prescribed by ordinance, the State Constitution and the laws of the State of Texas.

### **Section 1.02. The boundaries.**

The boundaries of the City of Luling, Texas shall be the same as the boundaries more fully set out and described on the official map filed in the office of the city secretary.

### **Section 1.03. Extension or contraction of boundaries.**

The City Council shall have the power by ordinance to fix the boundary limits of the City and to provide by ordinance for the annexation of additional territory lying adjacent to the City and upon the final passage of any such ordinance, the corporate limits of the City shall thereafter include the territory so annexed; and the inhabitants thereof shall be entitled to all the rights and privileges of all citizens, and shall be bound by the acts and ordinances, resolutions, and regulations of the City. The City Council shall have the power to detach by ordinance any territory with or without the consent of the inhabitants or owners of such area to be detached. Such annexation or detachment of any such territory shall be in accordance with the provisions of the Texas Local Government Code, as it now exists or may be hereafter amended.

## **ARTICLE II.**

### **POWERS OF CITY**

#### **Section 2.01. Specific powers.**

The City of Luling may use a corporate seal; may sue and be sued; may contract and be contracted with; may implead or be impleaded in all courts in all matters whatsoever; may cooperate with the government of the State of Texas and any agency thereof, the Federal Government or any agency thereof, or any political subdivision of the State of Texas; and shall have all powers granted to cities by the Constitution and laws of the State of Texas, together with the implied powers necessary to carry into execution all the powers granted.

- (a) The City may own or acquire property within or without its boundaries for any municipal purpose in fee simple or in any lesser interest or estate, by purchase, gift, devise, lease or condemnation, and may sell, lease, hold, manage, control and police any property now owned by it or which it may hereafter acquire, and shall have the right to lease or let its property whether inside or outside of the City limits.
- (b) The City may construct, own, lease, operate and regulate public utilities.
- (c) The City may assess, levy and collect taxes for general and special purposes on all lawful subjects of taxation.

(d) The City may borrow money on the faith and credit of the City by the issuance and sale of bonds, warrants or notes of the City; and may borrow money on the revenue of municipally owned utilities or other municipal enterprises by the issuance of bonds and notes secured by such revenues.

(e) The City may appropriate the funds of the City for all lawful purposes; and may regulate and control the use, for whatever purpose, of the streets and other public places.

(f) The City may make and enforce all police, health, sanitary and other regulations; may pass such ordinances as may be expedient for the protection and maintenance of good government, peace and welfare, of the City for the performance of the functions thereof, and for the order and security of its residents; may provide suitable penalties for the violations of any ordinance enacted by the City of Luling; and, except as prohibited by the Constitution and laws of this state or restricted by this Charter, the City may exercise all municipality powers, functions, rights, privileges and immunities of every name and nature whatsoever.

### **Section 2.02. General powers.**

The enumeration of the particular powers in this Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein or implied hereby or appropriate to the exercise of such powers, the City shall have and may exercise all power of local self-government and all other powers which, under the Constitution and laws of the State of Texas, it would be authorized to enumerate.

## **ARTICLE III.**

### **THE CITY COUNCIL**

#### **Section 3.01. Number, selection and term.**

The Legislative and governing body of the City shall consist of a Mayor and five Councilmembers and shall be known as the "Council of the City of Luling".

(a) The Mayor shall be elected from the City at large.

(b) Each Councilmember shall be elected from one of five wards. The boundaries of the five wards shall be shown on the official City Map filed with the Office of the City Secretary . The Councilmembers shall be elected from wards that shall be drawn by ordinance and shall be as nearly equal in population as practicable. The boundaries of the wards shall be reexamined and redetermined by ordinance, where appropriate following each succeeding Federal decennial census, or at other time where substantial variances in the population of each ward has occurred, taking into consideration annexations, disannexations, shifts in populations, compactness and any other criteria established by Federal law.

(c) The Mayor shall be the presiding officer of the City Council and shall be recognized as head of the City Government for all ceremonial purposes. Mayor shall perform such other duties and exercise such authority as may be prescribed and conferred by law or the City Council. The Mayor shall be entitled to vote on all matters under consideration by the City Council.

(d) In each even-numbered year two Councilmembers (Wards 4 and 5) and a Mayor (at large) shall

be elected, and in each odd-numbered year three Councilmembers (Wards 1, 2, and 3) shall be elected.

(e) The Mayor and each Councilmember shall hold office for a period of two (2) years and serve until a successor is elected and qualified. All elections shall be held in the manner provided in Article VI of this Charter. The Mayor or Councilmembers shall take office at the next regular meeting of the Council after they are elected or appointed.

### **Section 3.02. Qualifications.**

Each member of the City Council shall be a resident citizen of the City of Luling, be at least twenty-one (21) years of age, shall be a qualified voter of the State of Texas, shall have been a resident citizen of the City of Luling for a period of not less than twelve (12) months immediately preceding his/her election, and shall reside within his/her district for a period of twelve (12) months immediately preceding his/her election; provided, however, that any person with the above qualifications, except as to residence, who shall have been a resident, for a period of not less than twelve (12) months immediately preceding his/her election, of any of the territory not formerly within the corporate limits of said City, but which is annexed under the provisions of Section 1.03 of this Charter, shall be eligible for said office. If the Mayor or any Councilmember fails to maintain the foregoing qualifications, or shall be absent from three consecutive regularly scheduled meetings without valid excuse, the City Council must at its next regular meeting declare a vacancy to exist and shall fill said vacancy as set forth in Section 3.06 of this Charter.

### **Section 3.03. Council to be judge of election qualifications.**

The City Council shall be the judge of the election and qualification of its own members.

### **Section 3.04. Compensation.**

The City Council may fix a monthly compensation to be received by its members. On or before January 1 preceding a regular municipal election, the City Council shall set the salary of office of the Mayor to be elected at that election, if the office of Mayor is to be filled at the election and the compensation of each other elected officer to be elected at that election. An officer's compensation set under this provision may not be changed during the term for which the officer is elected. In addition any actual and necessary expense incurred by a member while in the discharge of the duties of the office of such member shall be paid when an itemized statement of such expense is submitted for reimbursement.

### **Section 3.05. Mayor pro tem.**

The City Council, at its first meeting after election of Councilmembers, shall elect one of its members Mayor Pro Tem, who shall perform all the duties of the Mayor in the absence or disability of the Mayor.

### **Section 3.06. Vacancies.**

When a vacancy occurs in the City Council, the remaining members of the Council shall, within ten (10) days, appoint a qualified person to fill the unexpired term. However, the City Council shall not appoint more than one (1) Councilmember in any twelve-month period, and in case a vacancy has been filled by the City Council within twelve (12) months prior to the subsequent vacancy, or if more than one vacancy occurs at the

same time or before a prior vacancy has been filled, the City Council shall call a special election within ten (10) days from the date of the last vacancy occurring, to be held at the next uniform election day allowed under the Texas Election Code thereafter, for the purpose of electing the successors to the office or offices vacated.

### **Section 3.07. Powers of the city council.**

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

- (a) Establish, consolidate or abolish administrative departments.
- (b) Adopt the budget of the City.
- (c) Authorize the issuance of bonds by a bond ordinance.
- (d) Inquire into the conduct of any office, department or agency of the City and make investigations as to municipal affairs.
- (e) Provide such additional boards and commissions, not otherwise provided for in this Charter, as may be deemed necessary and appoint the members of such boards and commissions. Such boards and commissions shall have all powers and duties now or hereafter conferred and created by this Charter, by City ordinance or by law.
- (f) Remove from any non-elective office or position of employment in the City Government any non-elected officer or employee or any member of any board or commission for due cause.
- (g) Adopt and modify the official map of the City.
- (h) Provide for enactment and enforcement of codes governing installation of electrical wiring, natural or other gas, plumbing and any communications system. The Council shall also be responsible for enactment and enforcement of construction codes and any other codes the Council may deem necessary for the safety and general welfare of the City.
- (i) Adopt, modify and carry out plans proposed by the Planning Commission for area improvements, or for the replanning and redeveloping of any area which may be destroyed in whole or part by disaster.
- (j) Regulate, license and fix the charges or fares made by any person, firm or corporation owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets and alleys of the City.
- (k) Provide for the establishment and designation of fire limits and prescribe the kind and character of buildings or structures or improvements to be erected therein, and provide for the erection of fireproof buildings within said limits and provide for the condemnation of dangerous structures or buildings or dilapidated buildings, or buildings calculated to increase the fire hazard, and prescribe the manner of their

removal or destruction within said limits.

(l) Fix the term of office or employment, salaries and compensation of the City employees, except as otherwise proclaimed by this Charter.

(m) Provide for a sewer and water system and require property owners to connect their premises to water and sewer systems, where available, and provide for penalties for failure to make water and sewer connections.

(n) Provide for sanitary garbage disposal and other municipal service and set charges therefor and provide penalties for failure to pay such fees and charges.

(o) Provide for an electrical system and set fees and charges therefor, and provide penalties for misuse of same.

(p) Have the power to open, extend, straighten, widen, and improve any public street, alley, avenue or boulevard of the City; to control, regulate and remove all obstructions, encroachments or other encumbrances on any such public streets, alleys, avenues, boulevards or public grounds; to narrow, alter, vacate, abandon and close any such public streets, alleys, avenues, boulevards or public grounds; to exercise any and all other powers concerning such public streets, avenues, alleys, boulevards, roads, or public grounds now or hereafter conferred on municipal corporations by the Constitution and laws of the State of Texas; and to exercise those rights and powers heretofore set out in the ordinances of the City.

(q) Compromise and settle any and all claims and lawsuits of every kind and character in favor of or against the City of Luling.

### **Section 3.08. City council not to interfere in appointments.**

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

### **Section 3.09. Meetings of the city council.**

The City Council shall hold at least one (1) regular meeting in each month at a time to be fixed by the Council for such regular meeting, and may hold as many additional meetings during the month as may be necessary for the transaction of the business of the City. All meetings of the City Council shall be public except where otherwise authorized by law, and shall be held at the City Hall, except that the City Council may designate another place for such meetings after publishing due notice thereof in one (1) issue of the official newspaper of the City of Luling. The Mayor or any other two (2) members of the City Council may call special meetings of the Council at any time.

### **Section 3.10. Rules of procedure.**



The City Council shall determine its own rules of procedure and shall require the attendance of its members. Two-thirds (2/3) of the qualified members of the Council shall constitute a quorum to do business and the affirmative vote of a majority of those present shall be necessary to adopt any ordinance or resolution. A record of the minutes of all meetings of the council shall be kept, and any citizen may have access to such minutes at reasonable times.,. The vote upon the passage of all ordinances and resolutions shall be taken by the "ayes" and "nays" and entered upon the minutes, and every ordinance or resolution, upon its final passage shall be recorded in a book kept for that purpose under its full caption, and shall be authenticated by the signature of the presiding officer and the City Secretary.

### **Section 3.11. Procedure for passage of ordinances.**

Every ordinance shall be introduced in written or printed form and, upon passage, shall take effect at the time indicated therein; provided that any ordinance imposing a penalty, fine or forfeiture for a violation of its provisions shall become effective not less than ten days from the date of its passage; subject to the provisions of Article VIII of this Charter. The City Secretary shall give notice of the passage of every ordinance imposing a penalty, fine or forfeiture for a violation of the provisions thereof, by causing the caption or title, including the penalty, of any such ordinance to be published in the official newspaper of the City of Luling at least twice within ten days after the passage of said ordinance. The City Secretary shall note on every ordinance, the caption of which is hereby required to be published, and on the record thereof, the fact that same has been published as required by this Charter, and the date of such publication, which shall be prima facie evidence of the legal publication and promulgation of such ordinance; provided, that the provisions of this section shall not apply to the correction, amendment; revision and codification of the ordinances of the City for publication in book or pamphlet form. Except as otherwise provided by Article VIII of this Charter, it shall not be necessary to the validity of any ordinance that it shall be read more than one time or considered at more than one session of the City Council. Every ordinance shall be authenticated by the signature of the Mayor and City Secretary and shall be systematically recorded and indexed in an ordinance book in a manner approved by the City Council. It shall only be necessary to record the caption or title of ordinances in the minutes or journal of council meetings. The City Council shall have power to cause the ordinances of the City to be corrected, amended, revised, codified and printed in code form as often as the City Council deems advisable, and such printed code, when adopted by the City Council, shall be in full force and effect without the necessity of publishing the same or any part thereof in a newspaper. Such printed code shall be admitted in evidence in all courts and places without further proof.

### **Section 3.12. Official bonds for city employees.**

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

### **Section 3.13. Investigation by city council.**

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

or employee of the City and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths and compel the production of books, papers and other evidence. Failure to obey such subpoena or to produce books, papers or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by fine not to exceed Two Hundred Dollars (\$200.00).

### **Section 3.14. Audit and examination of city books and accounts.**

The City Council shall cause an annual audit to be taken of the books and accounts of each and every department of the City. At the close of each fiscal year a complete audit shall be made by a Certified Public Accountant, who shall be selected by the City Council, and all audit reports shall be filed with the City Council, shall be available for public inspection and shall be made a part of archives of the City. Such accountant, so selected, shall not maintain or keep any of the City's accounts or records but shall recommend and provide a central accounting system of all City business, and provide a budget-expenditure accounting procedure for each and every department of the City.

## **ARTICLE IV.**

### **ADMINISTRATIVE SERVICES**

#### **Section 4.01. City manager.**

(a) Appointment and qualifications. The City Council shall appoint a City Manager who shall be the chief administrative and executive officer of the City and shall be responsible to the City Council for the administration of all the affairs of the City. The City Manager shall be chosen by the City Council solely on the basis of his/her executive and administrative training, experience and ability and need not, when appointed, be a resident of the City of Luling. No member of the City Council shall, during the time for which he/she is elected and for one (1) year thereafter, be appointed City Manager or be eligible for employment with the City.

(b) Term and salary. The City Manager shall be appointed for an indefinite term but may be removed at the will and pleasure of the City Council by a vote of the majority of the entire council. The action of the City Council in the suspending or removing of the City Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibilities of such suspension or removal in the City Council. In case of the absence or disability of the City Manager, the City Council may designate some qualified person to perform the duties of the office during such absence or disability. The City Manager shall receive compensation as may be fixed by the Council.

(c) Duties of the City Manager.

- (1) Appoint, and when necessary for the welfare of the City, remove any employee of the City, except as otherwise provided by this Charter.
- (2) Prepare the budget annually and submit to the City Council, and be responsible for its administration after adoption.
- (3) Prepare and submit to the City Council as of the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding year.

- (4) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable.
- (5) Perform such duties as may be prescribed by this Charter or may be required of him/her by the City Council, not inconsistent with this Charter.

#### **Section 4.02. Police department.**

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

(a) Chief of Police. The Chief of Police shall be the chief administrative officer of the Police Department. He/she shall, with the approval of the City Manager, appoint and remove the employees of said department and shall perform such duties as may be required of him/her by the City Council. The Chief of Police shall be appointed by the City Manager with the approval of the City Council for an indefinite term. The Chief of Police shall be responsible to the City Manager for the administration of his/her department and the carrying out of the directive of the City Council. He/she may be removed from office by the City Manager with the approval of the City Council.

(b) Special Police. No persons except as otherwise provided by general law or this Charter or the ordinances passed pursuant thereto shall act as Special Police or Special Detective.

#### **Section 4.03. Fire department.**

There shall be maintained a Fire Department to provide for protection against fires and other disaster services and the City Council shall provide for the maintenance, support and regulation of a Fire Department and for the guarding against fires.

(a) Fire Chief. The Fire Chief shall be the chief administrative officer of the Fire Department. The Fire Chief shall be elected annually by the Volunteer Fire Department subject to the approval of the City Manager. The Fire Chief shall appoint and remove the employees of said department and shall perform such duties as may be required of him/her by the City Council. The Fire Chief shall be responsible to the City Manager for the administration of his/her department and the carrying out of the directives of the City Council. He/she may be removed from office by the City Manager with the approval of the City Council.

(b) Fire Marshal. The Fire Marshal shall be responsible for the enforcement of ordinances pertaining to general protection from fire of the residents of the City. The Fire Marshal shall be appointed by and be responsible to the City Manager.

(c) Volunteer Fire Department. Authority is hereby granted to maintain a Volunteer Fire Department.

#### **Section 4.04. City secretary.**

The City Manager shall appoint the City Secretary and such assistant City Secretaries as the City

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

#### **Section 4.05. Health and sanitation department.**

(a) Appointment and qualification. The City Council shall appoint a City Health Officer who shall be a licensed physician qualified to practice medicine in the State of Texas and need not be a resident of the City of Luling. The City Health Officer shall be a Director of the Health and Sanitation Department.

(b) Administration. The City Manager shall be responsible with the City Health Officer for the general administration of the Health and Sanitation Department and the supervision of the employees thereof.

(c) Duties of the City Health Officer. The City Health Officer shall advise with the City Council on a program of Public Health; shall cooperate in the preparation of a sanitation code; shall cooperate with the Hospital Governing Board; shall cooperate with nearby Cities on problems of health and sanitation; shall cooperate with the Commissioner's Court of Caldwell County and its agencies, and with the State Health Department and other departments of the state government in matters pertaining to health and sanitation.

#### **Section 4.06. Utility departments.**

There shall be established and maintained a Department of Utilities under the supervision of the City Manager. The function of this department shall be to operate and maintain the utility systems owned by the City, and to perform such other duties as the City Council shall assign.

#### **Section 4.07. Reserved.**

**Editors Note:** Section 4.07, pertaining to the City Hospital, was repealed in an election held on May 4, 1996. (Ord. No. 96-0-8, 5-9-96)

#### **Section 4.08. City library.**

(a) There shall be established and maintained a Public Library for purposes of serving the citizens of Luling and the surrounding area.

(b) A duly qualified Librarian shall be the Administrator of the City Library responsible to the City Manager.

(c) The City Council may appoint a Library Advisory Board.

#### **Section 4.09. Other departments.**

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

## **ARTICLE V.**

### **LEGAL AND JUDICIAL SERVICES**

#### **Section 5.01. Municipal court.**

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

(b) The Judge of said Court shall be a qualified voter of the City; City Council shall appoint the Judge to a two-year term, and he/she shall receive such salary as may be fixed by ordinance of the City Council.

(c) The City Secretary or an Assistant City Secretary shall be ex officio Clerk of said Court.

(d) The Clerk of said Court shall have the power to administer oaths and affidavits; make certificates; affix the seal of said Court thereto; and generally do and perform any and all acts usual and necessary by the Clerk of Courts in issuing process of said Courts and conducting the business thereof.

(e) In cases of the disability or absence of the Judge of the Municipal Court, the Mayor shall act as Judge of said Court.

#### **Section 5.02. City attorney.**

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

## **ARTICLE VI.**

### **NOMINATIONS AND ELECTIONS**

#### **Section 6.01. Elections.**

The regular City election shall be held annually on a uniform election day in May as authorized by State law, at which time officers will be elected to fill those offices which become vacant that year. The City Council shall fix the hour; and place for holding such election. The City Council may, by ordinance or resolution, order a special election; fix the date and place for holding same; and provide all means for holding such special election. Notice of the election shall be published in the official newspaper of the City of Luling, such publication to be not less than thirty (30) days before the election.

#### **Section 6.02. Regulation of elections.**

All elections shall be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and in accordance with the ordinances adopted by the City Council for the conduct of elections. The City Council shall appoint the election judges and other election officials.

**Section 6.03. Filing for office.**

Any person having the qualifications set forth for Councilmembers under Section 3.02 of this Charter shall have the right to file an application to have his/her name placed on the official ballot as a candidate for any elective office, and such application in writing signed by such candidate, according to the general election laws of the State of Texas, shall entitle such applicant to a place on the official ballot. Each person filing an application to have their name placed on the official ballot shall specify the office for which he/she desires to become a candidate. Applicants for elected office may only apply for one office.

**Section 6.04. The official ballot.**

- a) The name of each candidate seeking elective office, except those who have withdrawn, died or become ineligible, shall be printed on the official ballot in the form designated by the candidate in accordance with the Texas Election Code. If two (2) or more candidates have the same surname, their residence addresses shall be printed with their names on the ballot.
- b) The order of the names of the candidates on the ballot shall be determined by lot in a public drawing to be held under the supervision of the person performing the duties of the City Secretary in accordance with the Texas Election Code.
- c) Procedures for voting by absentee ballot shall be consistent with the Texas Election Code.
- d) An ordinance, bond issue, or Charter amendment to be voted on by the voters of the City shall be presented for voting by ballot title. The ballot title of a measure may be different from its legal title and shall be a clear, concise statement, approved by the City Council, describing the substance of the measure without argument or prejudice.
- e) Procedures for write-in votes shall be consistent with the Texas Election Code.

**Section 6.05. Election by plurality.**

At any regular or special municipal election the candidates in each place on the ballot, including the candidate for Mayor, receiving the greatest number of votes for any office cast in such election shall be declared elected. In the event of a tie vote between the candidates receiving the highest number of votes cast for any regular or special election, the City Council shall cause to be held a runoff election consistent with the Texas Election Code.

**Section 6.06. Laws governing city election.**

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

**Section 6.07. Conducting and canvassing elections.**

The election judges and other necessary election officials for conducting all such elections shall be appointed by the City Council. The election judges shall conduct the elections, determine, record and report the results consistent with the Texas Election Code.. The City Council, as provided by the Texas Election Code shall meet, open the returns, canvass and officially declare the results of the election as to candidates and questions, and issue certificates of election to candidates elected as hereinbefore provided.

**Section 6.08. Statement and oath of office.**

STATEMENT

(a) All appointed or elected officers shall subscribe to the following statement before taking the oath of office.

I, \_\_\_\_\_, do solemnly swear (or affirm), that I have not directly or indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or thing of value, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected or as a reward to secure my appointment or the confirmation whichever the case may be, so help me God.

SIGNED: \_\_\_\_\_

(b) All appointed or elected officers shall take the Oath of Office before entering upon the duties of their office.

OATH

I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the City of Luling, of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State. So help me God.

**ARTICLE VII.**

**RECALL OF OFFICERS**

**Section 7.01. Scope of recall.**

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

**Section 7.02. Petitions for recall.**

Before the question of recall of a Councilmember shall be submitted to the qualified voters of the City, a petition demanding such question to be submitted shall first be filed with the City Secretary, which said petition shall be signed by qualified voters of the Councilmember's ward equal in number to at least thirty (30%) percent

of the number of registered voters of the Councilmembers's ward as of the last regular municipal election of the City, but in no event not less than seventy-five (75) petitioners. In the recall of the Mayor the petition shall be signed by qualified voters of the City equal in number to at least thirty (30%) of the number of registered voters as of the last regular municipal election of the City, but in no event not less than seventy-five (75) petitioners. Each signer of such recall petition shall personally sign his/her name thereto in ink or indelible pencil, shall write after his/her name, his/her place of residence, giving name of street and number or place of residence, and shall also write thereon the day, the month and year his/her signature was affixed and voter registration number.

In each case where the recall of a Councilmember is sought, the Sections of this Article insofar as applicable shall apply to the Ward from which the Councilmember was elected rather than the City as a whole. That is, the petition must be signed by, thirty percent (30%) of registered voters and in the percentage stated, but in no event less than seventy-five (75) such petitioners, from the ward from which the Councilmember was elected, and any such recall election shall be held only in the ward from which the Councilmember whose recall is sought was elected.

**Section 7.03. Form of recall petition.**

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

THE STATE OF TEXAS

COUNTY OF CALDWELL

I, \_\_\_\_\_, being first duly sworn, on oath depose and say that I am one of the signers of the above petition and that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is the genuine signature of the person whose name it purports to be.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Notary Public in and for

State of Texas

**Section 7.04. Various papers constituting petition.**

The petition may consist of one or more copies,, circulated separately, with the signatures. Verifications provided for in the preceding section of this article may be made by one or more petitioners, and the several copies of the petition may be filed separately and by different persons; but no signatures to such petition shall remain effective or be counted which were placed thereon more than forty-five (45) days prior to the filing of such petition or petitions with Office of the City Secretary. All papers comprising a recall petition shall be filed with the Office of the City Secretary on the same day, and the said Secretary, shall immediately notify, in



writing, the office holder so sought to be removed, by mailing such notice to his/her Luling address.

**Section 7.05. Presentation of petition to city council.**

Within five working days after the date of the filing of the recall petition, the City Secretary shall present such petition to the City Council.

**Section 7.06. Public hearing to be held.**

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

**Section 7.07. Election to be called.**

If the office holder whose removal is sought does not resign, then it shall become the duty of the City Council to order an election and fix a date for holding such recall election, the date of which election shall be at the next uniform election day allowed under the Texas Election Code.

**Section 7.08. Ballots in recall election.**

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

(a) With respect to each person whose removal is sought, the question shall be submitted. "Shall (name of person) be removed from the office of (name of office) by recall?"

(b) Immediately below each such question there shall be printed the following words, one above the other, in the order indicated:

"YES"

"NO"

**Section 7.09. Result of recall election.**

If a majority of the votes cast at a recall election shall be "NO" that is, against the recall of the person named on the ballot, he/she shall continue in office for the remainder of his/her unexpired term, subject to recall as before. If a majority of the votes cast at such an election be "YES", that is, for the recall of the person named on the ballot, he/she shall, regardless of any technical defects in the recall petition, be deemed removed from office and the vacancy be filled as vacancies in the City Council are filled as provided in Section 3.06 of this Charter.

**Section 7.10. Recall; restrictions thereon.**

No recall petition shall be filed against any officer holder of the City of Luling within three (3) months after his/her election, or within three (3) months after an election for such officer's recall.

**Section 7.11. Failure of city council to call an election.**

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

**Section 7.12. Reserved.**

**ARTICLE VIII.**

**LEGISLATION BY THE PEOPLE: INITIATIVE AND REFERENDUM**

**Section 8.01. General power.**

The qualified voters of the City of Luling, in addition to the method of legislation hereinabove provided, shall have the power to direct legislation by initiative and referendum.

**Section 8.02. Initiative.**

Qualified voters of the City of Luling may initiate legislation except an ordinance appropriating money or authorizing the levy of taxes, or one repealing such an ordinance, by submitting a petition addressed to the City Council which requests the submission of a proposed ordinance or resolution to the vote of the voters of the City. Said petition must be signed by qualified voters of the City equal in number to thirty percent (30%) of the number of registered voters, as of the last regular municipal election of the City, or one hundred seventy-five (175), whichever is greater, and each copy of the petition shall be signed in the same manner as recall petitions are signed, as provided in Section 7.03 of this Charter, and shall be verified by oath in the manner and form provided for recall petitions in Section 7.03 of this Charter. The petition may consist of one or more copies as permitted for recall petitions in Section 7.04 of this Charter. Such petition shall be filed with the Office of the City Secretary. Within five (5) days after the filing of such petition, the City Secretary shall present said petition and proposed ordinance or resolution to the City Council. Upon presentation to the City Council of the petition and draft of the proposed ordinance or resolution it shall become the duty of the City Council, within ten (10) days after the receipt thereof, to pass and adopt such ordinance or resolution without substantive alteration as to meaning. If City Council does not adopt such ordinance or resolution, the Council will call a special election to be held at the next uniform election day allowed under the Texas Election Code, at which time the qualified voters of the City of Luling shall vote on the question of adopting or rejecting the proposed legislation. However, if any other municipal election is to be held within sixty (60) days after the filing of the petition, the question may be voted on at such election if sufficient time to call the election in accordance with the Texas Election Code.

**Section 8.03. Referendum.**

Qualified voters of the City of Luling may require that any ordinance or resolution, with the exception of ordinances, or resolutions levying taxes, appropriating money or authorizing the issuance of either tax or revenue bonds, whether original or refunding, passed by the City Council, be submitted to the qualified voters of the City for approval or disapproval, by submitting a petition for this purpose within thirty (30) days after its publication. Said petition shall be addressed, prepared, signed and verified as required for petitions initiating legislation as provided in Section 8.02 of this Charter and shall be submitted to the Office of the City Secretary. Immediately upon the filing of such petition, the City Secretary shall present said petition to the City Council. Thereupon the City Council shall immediately reconsider such ordinances or resolutions, and if it does not entirely repeal the same, shall submit it to popular vote as provided in Section 8.04 of this Charter. Pending the holding of such election, such ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters cast ballots in favor of retaining such ordinances or resolutions.

**Section 8.04. Voluntary submission of legislation by the city council.**

The City Council, upon its own motion and by a majority vote of its members, may submit to popular vote at any election for the adoption or rejection of any proposed ordinance or resolution or measure or may submit for repeal any existing ordinance, resolution or measure, in the same manner and with the same force and effect as provided in Section 8.02, and may at its discretion call a special election in accordance with the Texas Election Code for this purpose.

**Section 8.05. Form of ballots.**

The ballots used when voting upon such proposed and referred ordinances, resolutions, or measures, shall set forth their nature sufficiently to identify them and shall set forth upon separate lines the words:

"FOR THE ORDINANCE," and

"AGAINST THE ORDINANCE," or

"FOR THE RESOLUTION," and

"AGAINST THE RESOLUTION."

**Section 8.06. Publication of proposed and referred ordinances.**

The City Secretary shall publish at least once in the official newspaper of the City the proposed or referred ordinance or resolution within fifteen (15) days of the election, and shall give such other notices and do such other things relative to such elections as are required in general municipal elections or by the ordinance or resolutions calling said election.

**Section 8.07. Adoption of ordinances.**

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

**Section 8.08. Inconsistent ordinances.**

If in the opinion of the City Attorney the provisions of two or more proposed ordinances or resolutions approved at the same election are inconsistent, the ordinance or resolution receiving the greatest number of votes shall prevail.

**Section 8.09. Ordinances passed by popular vote, repeal or amendment.**

No ordinance or resolution which may have been passed by the City Council upon a petition or adopted by popular vote under the provisions of this article shall be repealed or amended except by the City Council in response to a referendum petition or by submission to popular vote as provided in Section 8.04 of this Charter.

**Section 8.10. Further regulations by city council.**

The City Council may pass ordinances or resolutions providing other and further regulations for carrying out the provisions of this article consistent herewith.

**Section 8.11. Franchise ordinances.**

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

**ARTICLE IX.**

**PLANNING AND DEVELOPMENT**

**Section 9.01. Planning and zoning commission.**

There shall be a City Planning and Zoning Commission which shall consist of five (5) citizens of the City of Luling. The members of said Commission shall be appointed by the City Council for a term of two (2) years, three (3) members on even years and two (2) members on odd years. The Planning and Zoning Commission shall have the duties and authority empowered by State Law and City ordinances.

**Section 9.02. Platting of property.**

Hereafter, every owner of any tract of land situated within the corporate limits of the City of Luling and its extraterritorial jurisdiction as defined, who may divide the same in two or more parts for the purpose of laying out any commercial and/or residential subdivision or any addition to the City, shall comply with State Law and City ordinances.

**Section 9.03. Development of property.**

The City Council shall cooperate in every manner possible with persons interested in the development of property within or beyond the City limits. No expenditure of public funds, however, shall be authorized for the

development of privately owned subdivisions within or beyond the corporate limits of the City, except for the extension of utilities or services to such areas.

**Section 9.04. Comprehensive city plan.**

The Comprehensive City Plan for the physical development of the City of Luling shall contain the Planning and Zoning Commission's recommendations for growth, development and beautification of the City. A copy of the Comprehensive City Plan, or any part thereof, shall be forwarded to the City Manager, who shall thereupon submit such plan, or part thereof, to the City Council with his/her recommendation thereon. The City Council may adopt this plan as a whole or in parts and may adopt any amendment thereto, after at least one public hearing on the proposed action. The City Council shall act on such plan, or part thereof within sixty (60) days following its submission by the City Manager. If such plan, or part thereof should be rejected by the City Council, the Planning and Zoning Commission, may modify such plan, or part thereof, and again forward it to the City Manager for submission to the City Council. All amendments to the Comprehensive City Plan recommended by the Planning and Zoning Commission shall be submitted in the same manner as that outlined above to the City Council for approval, and all recommendations to the City Council from any City Department affecting the Comprehensive City Plan must be accompanied by a recommendation from the Planning and Zoning Commission.

**ARTICLE X.**

**MUNICIPAL FINANCE**

**Section 10.01. Fiscal year.**

The fiscal year of the City of Luling shall be set by ordinance or resolution of the City Council. Such fiscal year shall also constitute the budget and accounting year.

**Section 10.02. Preparation and submission of budget.**

The City Manager shall submit a proposed budget containing a complete financial plan for the fiscal year. Such a budget shall be submitted to the City Council not more than one hundred twenty (120) days but not less than sixty (60) days prior to the beginning of each fiscal year. The budget shall contain the following:

- (a) A budget message shall outline the proposed financial policies of the City for the fiscal year; shall set forth the reason for any changes in expenditures and revenue items from the previous fiscal year; and shall explain any major change in financial policies.
- (b) Consolidated statements of anticipated receipts and proposed expenditures for all funds.
- (c) An analysis of property valuations.
- (d) An analysis of tax rates.
- (e) Tax levies and tax collections by year for the last five (5) years.

- (f) General fund resources in detail.
- (g) Special fund resources in detail.
- (h) Summary of proposed expenditures by fund, function, department and activity.
- (i) Detailed estimates of expenditures shown separately, for each activity to support summary as described in subsection (h) above.
- (j) A revenue and expense statement for all types of bonds.
- (k) A description of all bond issues outstanding, showing rates of interest, date of issue, maturity date, amount authorized, amount issued, and the amount outstanding on each.
- (l) A schedule of requirements for the principal and interest of each issue of bonds.
- (m) The appropriation ordinance.
- (n) The tax levying ordinance.

**Section 10.03. Anticipated revenues and expenditures compared with other years.**

In preparing the budget, the City Manager shall place in parallel columns opposite the several items of revenues and expenditures, the actual amount of each item for the last complete fiscal year, the estimated amount for the current fiscal year, and the proposed amount for the ensuing fiscal year.

**Section 10.04. Budget; a public record.**

The proposed budget and all supporting schedules shall be a public record. It shall be filed with the Office of the City Secretary, and it shall be submitted to the City Council. The Council shall provide copies for distribution to all interested persons, shall fix the time and place for a public hearing on the proposed budget, and shall cause to be published in the official newspaper of the City of Luling, at least ten (10) days before the date of such hearing, a notice of the hearing, setting forth the time and place therefore.

**Section 10.05. Public hearing on budget.**

At any time and place set forth in the notice required by Section 10.04, or at any time and place to which such public hearing shall from time to time be convened, the City Council shall hold a public hearing on the proposed budget submitted and all interested persons shall be given an opportunity to be heard for or against any item or the amount of any item therein contained.

**Section 10.06. Proceedings on budget after public hearing.**

After the conclusion of such public hearing, the City Council may insert new items or may increase or decrease the items of the budget, except items in proposed expenditures fixed by law. If the City Council increases the total proposed expenditures fixed by law, it shall also provide for an increase in the total

anticipated revenue to at least equal such proposed expenditures.

**Section 10.07. Adoption of budget.**

The budget shall be adopted by the favorable vote of a majority of City Council.

**Section 10.08. Date of final adoption.**

The budget shall be finally adopted not later than fifteen (15) days prior to the beginning of the fiscal year, and should the City Council fail to so adopt a budget, the then existing budget together with its tax-levying ordinance and its appropriation ordinance, shall be deemed adopted for the ensuing fiscal year.

**Section 10.09. Effective date of budget; certification, copies made available.**

Upon final adoption, the budget shall be in effect for the fiscal year. A copy of the budget as finally adopted shall be filed with the Office of the City Secretary. The final budget shall be printed, reproduced, and copies shall be made available for the use of all offices, departments and agencies and for the use of interested persons and civic organizations.

**Section 10.10. Budget establishes appropriations.**

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 therein expressed.

**Section 10.11. Budget establishes amount to be raised by taxation.**

From the effective date of the budget, the amount stated therein as the amount to be raised by taxation shall constitute a determination of the amount of levy for the purposes of the City in the corresponding tax year; provided, however, that in no event shall such levy exceed the legal limit provided by the Constitution and laws of the State of Texas.

**Section 10.12. Contingent appropriations.**

Provisions shall be made in the annual budget and in the appropriation ordinance for a contingent appropriation in any amount not more than three per cent (3%) of the total budget, to be used in case of unforeseen items of expenditure. Such contingent appropriation shall be under the control of the City Manager, after the approval of the City Council. Expenditures from this appropriation shall be made only in case of established emergencies and a detailed account of such expenditures shall be recorded and reported.

**Section 10.13. Estimated expenditures shall not exceed estimated resources.**

The total estimated expenditures of the general fund, available utility fund, and debt service fund shall not exceed the total estimated resources (prospective income plus cash on hand). The classification used should be promulgated by the American Institute of Certified Public Accountants or some other nationally accepted classification.

#### **Section 10.14. Other necessary appropriations.**

The City budget may be amended and appropriations altered in accordance therewith in cases of public necessity, the actual fact of which shall have been declared by the City Council.

#### **Section 10.15. Purchases.**

All purchases made and contracts executed by the City shall be made in accordance with the requirements of the Constitution and laws of the State of Texas.

#### **Section 10.16. Power to tax**

The City Council shall have the power under the provisions of State Law to levy, assess and collect an annual tax upon real and personal property within the City to the maximum provided by the Constitution and laws of the State of Texas. The City Council shall have the power to levy such additional taxes as now or hereafter may be authorized by the State of Texas.

#### **Section 10.17. Taxes; when due and payable.**

All taxes due to the City of Luling shall be paid at the office of Caldwell County Tax Appraisal District and may be paid at any time after the tax rolls for the year have been completed and approved. The City Council may allow discounts for early payment of taxes as may be provided by ordinance. Taxes shall be paid on or before the following February 1, and all such taxes not paid on or prior to such date shall be deemed delinquent and shall be subject to such penalty and interest as the City Council may provide by ordinance. The City Council may provide further by ordinance that all taxes, either current or delinquent, due to the City of Luling, 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 tax rolls and receipt for the years in question. The City Council shall be prohibited from waiving penalties and interest.

#### **Section 10.18. Tax liens.**

(a) The tax levied by the City is hereby declared to be a lien, charge or encumbrance upon the property as of January 1st of the year for which the tax is due, which lien, charge or encumbrance the City is entitled to enforce and foreclose in any court having jurisdiction over the same, and the lien, charge or encumbrance on the property is such as to give the Texas Courts jurisdiction to enforce and foreclose said lien on the property on which the tax is due, not only as against any resident of this State or person whose residence is unknown, but also as against nonresidents. All taxes upon real estate shall especially be a lien and a charge upon the property upon which the taxes are due, and such lien may be foreclosed in any court having jurisdiction. Such lien shall be prior to all other claims, and no gift, sale, assignment or transfer of any kind can ever defeat such lien.

(b) In addition to the liens herein provided, on the first day of January of any year, the owner of real and personal property subject to the taxation by the City shall be personally liable for the taxes due thereon for such year. The City shall have power to sue and recover personal judgment for taxes without foreclosure, or to foreclose its lien or liens or to recover both personal judgment and foreclosure. In any such suit where it appears



that the description of any property in the City Assessment Rolls is insufficient to identify such property, the City shall have the right to plead a good description of the property intended to be assessed, to prove the same, and to have its judgment foreclosing the tax lien or for personal judgment against the owner of such taxes.

**Section 10.19. General obligation bonds.**

The City shall have the power to borrow money on the credit of the City and to issue general obligation bonds for permanent public improvements or for any other public purpose not prohibited by the Constitution and laws of the State of Texas, and to issue refunding bonds to refund outstanding bonds of the City previously issued. All bonds shall be issued in conformity with the laws of the State of Texas.

**Section 10.20. Revenue bonds.**

The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the Constitution and laws of the State of Texas and to issue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable solely from the properties, or interest therein pledged, or the income therefrom or both. The holders of the revenue bonds shall never have the right to demand payment thereof out of monies raised or to be raised by taxation. All such bonds shall be issued in conformity with the laws of the State of Texas.

**Section 10.21. Sales of bonds and bonds incontestable.**

No bond (other than refunding bonds issued to refund and in exchange for previously issued outstanding bonds) issued by the City shall be sold for less than par value and accrued interest. All bonds of the City, having been issued and sold and having been delivered to the purchaser thereof, shall thereafter be incontestable, and all bonds issued to refund in exchange for outstanding bonds previously issued shall, after said exchange, be incontestable.

**Section 10.22. Competitive bidding.**

The City of Luling shall take competitive bidding in accordance with Texas Local Government Code as now or hereinafter amended.

**ARTICLE XI.**

**FRANCHISE AND PUBLIC UTILITIES**

**Section 11.01. Powers of the city.**

The City of Luling shall have the full power, to the extent the same is conferred by the Constitution and laws of this State, to own, operate, prohibit, regulate and control any telegraph, telephone, electric light, street railways, interurban railways, stream railways, gas company, cable television system, waterworks, waterworks system or any other character of public utility within or without the limits of said City, and to provide for the compensation and rental to be paid to the City by any public utility for the use of its public streets, alleys, highways, public grounds, and said Council shall have the power by ordinance to grant, extend, and renew all

franchises of all public utilities of every character operated within the City, and, with the consent of the franchise holder, to amend the same. The City may prohibit the use of any public street, alley, highway or public grounds within its limits to any such public utility, irrespective of whether such use may be under, over or on such public street, alley, highway or public grounds of the City except where the consent of the governing authorities expressed by ordinance has been obtained. In addition to the City's power to buy, construct, lease, maintain, operate and regulate public utilities and to manufacture, distribute, and sell the output of such utility operations, the City shall have further powers as may now or hereafter be granted under the Constitution and laws of the State of Texas.

### **Section 11.02. Franchise power of council.**

(a) The City Council shall have power by ordinance to deny, grant, amend, renew; or extend all franchises of all public utilities of every character operating within the City of Luling. All ordinances denying, granting, amending, renewing; or extending franchises for public utilities shall be read at one (1) regular meeting of the City Council, and shall not be finally passed until thirty (30) days after the reading, and pending such time, the full text of such ordinance shall be published once each week for two (2) consecutive weeks in the official newspaper in the City of Luling, and the expense of such publications shall be borne by the proponent of the franchise.

(b) Where the powers of annexation included in Article I are exercised by the City, and there exists public utility property adequately serving the inhabitants thereof, the owner of such utility property shall be granted a franchise to continue its operations in such annexed territory for a period of not more than twenty (20) years from the date of the annexation of such territory. The City retains the right to negotiate with the utility for the utility's property prior to this time if the City Council deems it to be in the best interest of the City.

(c) No public utility franchise shall be granted for a term of more than twenty (20) years nor be transferred except with the approval of the City Council expressed by ordinance.

### **Section 11.03. Franchise value not to be allowed.**

No value shall be assigned to any franchise granted by the City of Luling under this Charter in fixing reasonable rates and charges for utility service within the City and in determining the just compensation to be paid by the City for public utility property which the City may acquire by condemnation or otherwise.

### **Section 11.04. Right of regulation.**

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

(a) To repeal the same ordinance at any time upon the failure of the grantee to comply with any provisions of the ordinance, the franchise, the Charter of the City of Luling, any applicable laws of the State of Texas or the rule of any applicable governmental body.

(b) To require proper and adequate extension of plant and service, and the maintenance of the plant and fixtures of the highest reasonable standard of efficiency.

(c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.

(d) At any time to examine and audit the accounts and other records of any such utility and to require annual and other reports, including reports on operations within the City of Luling, and shall have the power to prescribe the accounts and accounting system to be used by a public utility.

(e) To impose such reasonable regulations and restrictions as may be deemed desirable or conducive to the safety, welfare, and accommodation of the public as authorized by the laws of the State of Texas or this Charter.

(f) To require such compensation and rental as may be permitted by the laws of the State of Texas.

(g) To require a utility to repair at its expense public property, streets, and ways which are destroyed or damaged in the process of laying or maintaining their lines.

#### **Section 11.05. Grant not to be exclusive.**

No grant or franchise to construct, maintain, or operate a public utility and/or renewal or extension of such grant shall be exclusive.

#### **Section 11.06. Consent of property owners.**

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

#### **Section 11.07. Extensions.**

All extensions of public utilities within the City Limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this Charter and in any original grant heretofore made. The right to use and maintain any extension shall terminate with the original grant and shall be terminable as provided in Section 11.04 of this Charter. In case of an extension of a public utility operated under a franchise hereafter granted, such right shall be terminable at the same time and under the same conditions as the original grant.

#### **Section 11.08. Other conditions.**

All franchises heretofore granted are recognized as contracts between the City of Luling and the grantee, and the contractual rights as contained in any such franchise shall not be impaired by the provisions of this Charter, except that the power of the City of Luling to exercise the right of Eminent Domain in the acquisition of utility property is in all things reserved; and except the general power of the City, heretofore existing and herein provided for to regulate the rates and services of a grantee, shall include the right to require proper and adequate extension of plant and service and in the maintenance of the plant and fixtures at the highest reasonable standard of efficiency. Every public utility franchise hereafter granted shall be held subject to all the

terms and conditions contained in the various sections of this article whether or not such terms are specifically mentioned in the franchise. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the City Council or the voters of the City in imposing terms and conditions, as may be reasonable in connection with any franchise grant.

#### **Section 11.09. 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 costs of all extensions, additions, and improvements, and the source of funds expended for such capital purposes. The accounts shall show as nearly as possible the cost of any service furnished to or rendered by any such utility to any City government department. The City Council shall cause an annual audit report to be made by a Certified Public Accountant.

#### **Section 11.10. Sales of electricity, water and sewer services.**

(a) The City Council shall have the power and authority to sell and distribute electricity and water and to sell and provide for sewer services and any other utilities to any person, firm or corporation outside the limits of the City of Luling, and to permit them to connect with said system under contract with the City, under such terms and conditions as may appear to be for the best interests of the City; provided the charges fixed for such services outside the City Limits shall be reasonable when considered in the light of all circumstances, to be determined by the City Council.

(b) The City Council shall have the power and authority to prescribe the kind of materials used within or beyond the limits of the City of Luling where it furnishes the service, and to inspect the same and require them to be kept in good order and condition at all times and to make such rules and regulations as shall be necessary and proper, and prescribe penalties for noncompliance with same.

#### **Section 11.11. Regulation of rates and services.**

The Council shall have full power after notice and hearing to regulate by ordinance the rate, charges and fares of every public utility franchise holder operating in the City. 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 investments properly allocable to service in the City and the amount and character of its expenses and revenues connected with the rendering of such service. No public utility franchise holder shall institute any legal action to contest any rate, charge or fare fixed by the Council until such franchise holder has filed a motion for rehearing with the Council specifically setting out each ground of its complaint against the rate, charge or fare fixed by the Council, and until the Council shall have acted upon such motion. Such motion shall be deemed overruled unless acted upon by the Council within a reasonable time, not to exceed ninety (90) days from filing of such motion for rehearing, provided, that the Council may by resolution extend such time limit for action on said motion for rehearing from ninety (90) days to one hundred eighty (180) days.

## ARTICLE XII.

### GENERAL PROVISIONS

#### Section 12.01. Public availability of records.

All records and accounts of every office, department or agency of the City shall be open to inspection at the City Hall by any citizen or by any representative of the press at all reasonable times and under such reasonable regulations as may be established by the City Council, provided that police records, vital statistics records and other records closed to the public by the Texas Public Information Act or any other law, shall not be considered records for the purpose of this section.

#### Section 12.02. Personal financial interests.

No member of the City Council shall hold any other employment or office under the city government while he is a member of said Council unless herein otherwise provided. No member of the City Council or City Manager, or any other appointed officer of the City shall be directly or indirectly interested in any work, business, or contract, the expense, price or consideration of which is paid by the City. The term "directly or indirectly" interested found in this section, shall be defined by the term "substantial interest" as defined in Chapter 171 of the Local Government Code.

#### Section 12.03. Prohibitions.

(a) Activities Prohibited:

- (1) In appointments to and removal from any City office of employment, persons shall not be favored or discriminated against because of race, sex, political or religious opinions or religious affiliations.
- (2) 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 thing to any person for or in connection with his/her test, appointment, proposed appointment, promotion or proposed promotion.
- (3) No City Office holder or employee, elected or appointed, shall orally, by letter, or otherwise solicit or assist in soliciting any assessment, subscription or contribution for any political purpose whatever from any subordinate City official or employee holding any compensated City position.
- (4) No person who holds any non elected compensated City position shall solicit or receive any contribution to the campaign funds of any candidate for municipal office or take any part in the management, affairs, or political campaign of any municipal candidate.

(b) Penalties. Any person who by himself/herself or with others violates any of the provisions of Paragraphs one (1) through three (3) of the preceding subsection (a) shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than one hundred dollars (\$100.00). Any person who by himself/herself or with others violates any of the provisions of Paragraph four (4) of the preceding

subsection (a) shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than one hundred dollars (\$100.00). Any person convicted under this section shall be ineligible for a period of five (5) years thereafter to hold any City office or position, and if an officer or employee of the City, shall immediately forfeit his/her office or position.

#### **Section 12.04. Nepotism.**

No person may be hired who is related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood) to any member of the City Council, or City Manager. Spouses of relatives within the first or second degree of consanguinity (i.e., son-in-law, mother-in-law, brother-in-law, sister-in-law, etc.) are also included in the prohibition. No person may continue in City employment who is related in one of the prohibited degrees to the City Council or City Manager unless the employee has been employed continuously by the City for a period of at least 30 days if the officer or member is appointed, at least six months if the officer or member is elected at a City election. In addition, in the interest of effective management, no personnel action will be taken that would result in any employee supervising another employee who is related with the second degree of affinity or the third degree of consanguinity to the supervisory employee.

#### **Section 12.05. Provisions relating to 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. The funds belonging to the City, in the hands of any person, firm or corporation, shall not be liable to garnishment, attachment, or sequestration; nor shall the City be liable to garnishment because of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City nor any of its officers or agents shall be required to answer any such writ or garnishment of a city account whatever. The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents or contractors unless required by State Law.

#### **Section 12.06. City not required to give security or execute bond.**

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

#### **Section 12.07. Special provisions covering damage suits.\***

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\* **Charter References: Courts have found Notice of Claim requirements of less than 6 months to be unconstitutional. See Fitts v. City of Beaumont, 688 S.W. 2d 182 (1985); Shawtetect v. City of San Antonio, 702 S.W. 2d 680 (San Antonio, 1986).**

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Before the City shall be liable to damage claim or suit for personal injury, or damage to property, the person who is injured or whose property is damaged, or someone in their behalf, shall give the City Manager or the City Secretary notice in writing duly verified within six (6) months<sup>1</sup> after the occurrence of the alleged injury or damage, stating specifically in such notice when, where, and how the injury or damage was sustained and setting forth the extent of the injury or damage as accurately as possible. No action at law for damages shall

be brought against the City for personal injury or damage to property prior to the expiration of thirty (30) days after the notice hereinbefore described has been filed with the City Manager or the Office of the City Secretary and no later than two (2) years after the occurrence of the injury or damage to property. In case of injuries resulting in death, before the City shall be liable in damages therefor, the person or persons claiming such damages shall after the death of the injured person give notice as above required in case of personal injury, provided, however, that nothing herein contained shall be construed to mean that the City waives any rights, privileges, defense or immunities in tort actions which are provided under the common law, the Constitution and laws of the State of Texas.

**Section 12.08. Welfare and/or pension plan for city employees.**

The City Council shall have the power to make available a group insurance and/or a welfare and/or a pension plan for any or all City employees whose employment requires at least 30 hours of work per week, and as prescribed by the Texas Municipal Retirement System.

**Section 12.09. Separability clause.**

If any section or part of section of this Charter shall be held invalid by a Court of competent jurisdiction, such holding shall not affect the remainder of this Charter nor the context in which such section or part of section so held invalid may appear, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

**Section 12.10. Effect of charter on existing law.**

All ordinances, resolutions, rules, regulations, and contracts now in force under the City Government of Luling and not in conflict with the provisions of this Charter shall remain in force under this Charter until altered, amended, or repealed by the City Council after this Charter takes effect. All rights of the City under existing franchises and contracts and all existing authority for the issuance of bonds, not in conflict with the provisions of this Charter, shall be preserved in full force and effect.

**Section 12.11. Reserved.**

**Section 12.12. Applicability of general laws.**

The Constitution of the State of Texas, Texas statutes of said State applicable to home ruled municipal corporations, as now or hereafter enacted or amended, this Charter and ordinances enacted pursuant thereto shall, in the order mentioned, be applicable to the City. The City shall also have the power to exercise any and all powers conferred by laws of the State of Texas upon any other municipality, not contrary to the provisions of said home rule statutes, charter, and ordinances. The exercise of any such powers by the City shall be optional, and the City shall not be required to conform to the law governing any other municipality unless and until by ordinance it adopts same.

**Section 12.13. Amending the charter.**

Amendments to this Charter may be framed and submitted to the voters of the City in the manner

provided by the Texas Local Government Code, Chapter 9 as now or hereafter amended.

**Section 12.14. Construction of charter.**

This Charter shall not be construed as a mere grant of enumerated powers, but shall be construed as a general grant of power and as a limitation of power on the government of the City in the same manner as the Constitution of Texas is construed as a limitation on the powers of the Legislature. Except where expressly prohibited by the Charter, each and every power under Article XI, Section 5 of the Constitution of Texas, which it would be competent for the people of the City to expressly grant to the City, shall be construed to be granted to the City by this Charter.

**Section 12.15. Judicial notice.**

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