

CITY CHARTER*

***Editor's note**--The city charter was approved by the electorate on Nov. 8, 1977 and adopted by the council by ordinance of 11-16-77. Subsequent amendments of the charter will be indicated by an appropriate history note following the amended section. If a section does not have a history note, this means that it is derived from the original Ord. of 11-16-77 which adopted the charter.

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ARTICLE I. NAME OF CITY; BOUNDARIES; POWERS OF CITY

Sec. 1.01. Name.

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

Sec. 1.02. Boundaries.

The boundaries and limits of the city are hereby established and described as those which exist under authority of the current city ordinances as displayed on a map maintained by the City Secretary and those boundaries established and changed hereafter as provided.

Sec. 1.03. Extension of Boundaries.

The Council shall have power by ordinance, to annex territory lying adjacent to the city, with or without the consent of the owners or inhabitants thereof, and subject only to procedural laws, thereby extending and enlarging the boundary limits of the city. Such annexation shall be limited and controlled only by the laws of the State of Texas.

Sec. 1.04. De-annexation.

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

Sec. 1.05. Powers of the City.

The city shall have all of the powers granted to cities by the Constitution and laws of the State of Texas, together with all of the implied powers necessary to execute such granted powers. The city may use a corporate seal; may sue and be sued; may contract and be contracted with; may cooperate with the government of the State of Texas or any agency or political subdivision thereof; or with the Federal government or any agency thereof; to accomplish any lawful purpose for the advancement of the interest, welfare, health, morals, comfort, safety and convenience of the city and its inhabitants; may acquire property within or without its corporate limits for any municipal purpose in fee simple, or in any lesser interest or estate, by purchase, gift, devise, lease or condemnation, and, subject to the provisions of this charter, may sell, lease, mortgage, hold, manage, improve, and control such property as may now or hereafter to be owned by it; may adopt ordinances and enact such regulations as may be expedient for the maintenance of good government, order and peace of the city and the welfare, health, morals, comfort, safety and convenience of its inhabitants. In addition to the powers enumerated herein, and subject only to the limitations imposed by the State Constitution, the laws of the State of Texas, and this charter, the city shall have, without the necessity of express enumeration in this charter, each and every power which, by virtue of Article XI, Sec. 5 of the Constitution of Texas, the people of the city are empowered by election to grant or confer upon the city by expressly and specifically granting and enumerating the same herein.

ARTICLE II. THE CITY COUNCIL

Sec. 2.01. Number; Selection; Terms.

The City Council shall be composed of the Mayor and six members. The Mayor shall be elected, as provided by law, from the City at large. Each of the six council members shall be elected from each of the six precincts that the City Council shall hereafter establish. The positions of the members of the council shall be numbered one through six. Incumbent council members serving in elected positions prior to the adoption of six single-member districts shall continue to fill their terms to expiration. Beginning in the first regular or special election for city offices in 1993, and every odd-numbered year thereafter, positions one, three and five shall be elected under the single-member precincts, as amended. Beginning with the first regular or special election for city offices in 1994, and every even-numbered year thereafter, positions two, four and six shall be elected under the single-member precincts, as amended. The Mayor shall be elected each odd-numbered year. The members of the Council, including the Mayor, shall each have terms consisting of two years. (Ord. No. 92-23, App. A, Prop. 1, 12-8-92)

Editor's note--Proposition 1 concerning number, selection and terms of mayor and council members was approved by the voters at an election held Jan. 16, 1993.

Sec. 2.02. Qualifications.

The Mayor and each member of the Council must, at the time of taking office, have resided in the city for the time required by law, and be otherwise qualified according to the laws of the State of Texas.

Sec. 2.03. Precincts.

The City Council shall establish six precincts within the city, each containing the approximate same number of citizens. Such precinct boundaries may be changed by the Council.

(Ord. No. 92-23, App. A, Prop. 2, 12-8-92; Ord. No. 02-03, § 1, 1-17-02)

Editor's note--Proposition 2 establishing precincts and single-member districts was approved by the voters at an election held Jan. 16, 1993.

Sec. 2.04. Mayor.

The Mayor shall be the official head of the city government and shall preside at all meetings of the Council. The Mayor, as a member of the Council, shall be entitled to vote upon all matters considered by the Council. Subsequent to a vote on any matter by the Council, the Mayor may veto the Council's action on such matter. Such veto must be made by the Mayor and announced by the Mayor in open meeting prior to the adjournment of the Council meeting where such matter was considered. Any matter so vetoed shall be included in the agenda for reconsideration by the Council at the next regular or special meeting of the Council. The Mayor shall not have the authority to veto any action of the Council on such reconsidered matter. The Mayor shall see that all ordinances, by laws and resolutions of the Council are faithfully obeyed and enforced; shall, when authorized by the Council, sign all official documents such as ordinances, resolutions, conveyances, agreements, official plats, contracts and bonds; shall appoint special committees as the Mayor deems advisable as instructed by the Council. The Mayor shall perform such other duties consistent with this charter or as may be imposed by the Council.

Sec. 2.05. Mayor Pro Tem.

A Mayor Pro Tem shall be a member of the Council, elected by the Council at the first regular Council meeting following each regular city election. The Mayor Pro Tem shall act as Mayor during the absence or disability of the Mayor, and, in this capacity, shall have the rights conferred upon the Mayor.

Sec. 2.06. Vacancies; Forfeiture and Filling of Vacancies.

(a) Vacancies: A Council member's office, including that of Mayor, shall become vacant upon such person's death, mental or physical disability, resignation, removal from office in any manner authorized by law, or forfeiture of office. Determination of mental or physical disability shall be made by the remaining members of the Council upon the certificate of two physicians qualified to practice medicine in the State of Texas.

(b) Forfeiture: A member of the Council, including the Mayor, shall forfeit office upon:

(1) Final conviction of a felony or offense involving moral turpitude;

(2) Ceasing to be a resident of the City. Council members elected from the first four positions, ceasing to reside in the precincts from which they were elected;

(3) Failure to regularly attend council meetings without good cause. Good cause shall be illness, temporary disability, absence from the country, physical emergency or urgent business matters. There shall be a presumption of regular failure to attend when more than three consecutive regular meetings are missed.

(c) Filling Vacancies:

(1) A single vacancy upon the Council, including the Mayor, shall be filled for the unexpired

term within thirty days of the occurrence of the vacancy by a majority vote of the remaining members of the Council, or the Council may call a special election; if the Council does not fill any such vacancy within thirty days, the Council, at the next regular meeting after such thirty days, shall call a special election to fill the vacancy.

(2) When more than one vacancy shall exist at any one time, a special election shall be called by the Council within thirty days following the occurrence of the last vacancy to fill the unexpired terms of the vacancies.

Sec. 2.07. Compensation.

The Council, including the Mayor, shall serve without pay or compensation. They shall be entitled to reimbursement of actual necessary expenses incurred in the performance of their official duties when approved by the Council.

Sec. 2.08. Meetings.

(a) *Regular Meetings:* The City Council shall have as many regular meetings as it shall deem necessary, provided, it shall have at least one meeting each month.

(b) *Special Meetings:* Special meetings may be called by the Mayor. Upon written application of any three members of the Council the City Secretary shall call a special meeting for the time and date set out in the application. Notice of special meetings shall be given by the City Secretary to each member of the Council, including the Mayor, or left at such person's residence address.

(c) *Open Meetings:* Meetings shall be open to the public, except where closed meetings are authorized by law.

Sec. 2.09. Quorum.

Four Council members shall constitute a quorum and no action shall be valid unless adopted by the affirmative vote of three or more members of the Council.

Sec. 2.10. Rules of Procedure.

The Council shall determine its own rules and order of business. Provisions shall be made for the taking of minutes, which minutes shall be a public record. Voting, except on procedural matters, shall be by a roll call and the "ayes" and "nays" shall be recorded in the minutes.

Sec. 2.11. Passage of Ordinances.

Ordinances and resolutions shall be introduced to the City Council only in written or printed form. The subject or subjects of all ordinances shall be clearly expressed in the title. Except as may be otherwise prescribed in this Charter, an ordinance shall not be passed at the meeting of the Council at which it is first introduced, but it shall then be read, and the Council shall determine whether it shall be rejected or further considered at the next meeting of the Council. If rejected, no further action shall be required.

Notwithstanding the foregoing provisions, if the Council, including the Mayor, by a vote of not less than two-thirds 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 resolutions and entered upon the journal of the proceedings of the Council. The enacting clause of all ordinances shall be, "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLIN, TEXAS," and every ordinance shall be authenticated by the signature of the Mayor and the City Secretary and shall be systematically recorded and indexed in an ordinance book in a manner approved by the Council.

(1) **PENAL ORDINANCES.** Caption or title and penalties of every ordinance imposing any penalty, fine or forfeiture shall, after passage thereof, be published in the official newspaper of the City of Marlin at least one time within fifteen days after the passage of said ordinance. The Council shall designate the official newspaper of the City of Marlin.

(2) **FRANCHISE ORDINANCES.** All ordinances granting, confirming, extending, renewing or amending a franchise shall be accepted in writing by the grantees and before taking effect shall be published as otherwise provided in this Charter for penal ordinances.

(3) **EFFECTIVE DATE.** Every ordinance adopted by the City Council shall be enrolled 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 prima facie proof of publication. Enrollment of an ordinance shall be prima facie proof of its legal adoption and effect. Ordinances shall become effective upon enrollment or enrollment and publication, as the case may be.

(4) **CODIFICATION OF ORDINANCES.** The City Council shall have the power to cause the ordinances of the city to be corrected, amended, revised, codified and printed in code form as often as the Council deems advisable, and such printed code, when adopted by the Council, shall be in full force and effect without the necessity of publishing the same or any part thereof in a newspaper. 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 did the original ordinance.

ARTICLE III. ADMINISTRATIVE ORGANIZATION

Sec. 3.01. City Manager.

The Council may appoint a City Manager who shall serve at the pleasure of the Council. The City Manager shall have such authority and responsibilities as may be designated and given by the Council.

Sec. 3.02. City Secretary.

The Council shall appoint a City Secretary. The City Secretary shall keep the minutes of the proceedings of all council meetings, shall be the official custodian of the records of the city and shall perform such other duties and responsibilities as may be designated and granted by the Council. The Council may appoint such deputies as it deems necessary.

Sec. 3.03. The Administrative Department.

There shall be such Administrative Departments as may be established by the Council. The Council shall establish the duties and responsibilities of each such department and provide for

their control and direction. The Council may combine one or more departments created by it and may assign or transfer duties of any department of the city from one department to another, or create additional departments. The Council may employ a city attorney. No employee of the City may hold the office of member of the council, including mayor, and no member of the Council, including the Mayor, may become an appointed officer or employee of the City within one year after vacating such office.

ARTICLE IV. MUNICIPAL COURT

Sec. 4.01. Municipal Court.

There shall be a court known as the Municipal Court in Marlin, Texas, with such jurisdiction, powers and duties as are given and prescribed by this Charter, by ordinances, the laws of the State of Texas, and the Constitution of the State of Texas.

Sec. 4.02. Judge.

The Council may appoint a judge for the Municipal Court who shall serve at the pleasure of the Council. The judge shall receive such compensation as may be set by the Council. The Council may authorize the Mayor to act as judge.

Sec. 4.03. Clerk of the Municipal Court.

The Council may appoint a clerk of the Municipal Court with such duties and responsibilities as the Council may direct. The clerk shall have the power to administer oaths and affidavits, make certificates, affix the seal of the Court thereto, and otherwise perform any and all acts necessary in the issuing process of such Court, in conducting the business thereof. Nothing herein shall prevent the City Secretary or any other city official or employee from also being designated the clerk, and the Council may appoint a deputy with the same power as the clerk.

ARTICLE V. ELECTIONS

Sec. 5.01. General Election.

The general city election shall be held annually on a date during the second quarter of each year, which specific date shall conform to one of the uniform election dates set by state law, at which time officers will be elected to fill those offices of Council, including Mayor, which become vacant that year. The Council shall adopt an ordinance or resolution for the conduct of the election. Each candidate for City Council shall file for one of six council places or mayor and shall be elected by obtaining a majority of the votes that are cast for that particular place.

(Ord. No. 92-23, App. A, 12-8-92)

Editor's note--Ord. No. 92-23, App. A, adopted Dec. 8, 1992, provided for the amendment of § 5.01 to comply with preemptive state law, see Charter § 11.03.

Sec. 5.02. Filing for Office.

Any qualified person who desires to become a candidate for election to the office of City Council, including Mayor, shall file with the City Secretary, within the time prescribed by law, an application as required by law.

Sec. 5.03. Official Ballot.

The official ballot shall be drawn by the City Secretary in the manner, form and time prescribed by law.

Sec. 5.04. Canvassing.

The return of every municipal election shall be delivered forthwith by the election judge to the Mayor and one copy to the City Secretary. As soon as practicable or at a time specified by state election law, if any, after a regular or special election, either at a special meeting of the Council or at the next regular meeting, the Council shall canvass the returns and declare the results of such election. Returns of each municipal election shall be recorded in the minutes of the Council. The candidates who receive a majority of the legal votes cast for each place shall be declared elected. (Ord. No. 92-23, App. A, 12-8-92)

Editor's note--Ord. No. 92-23, App. A, adopted Dec. 8, 1992, provided for the amendment of § 5.04 to comply with preemptive state law, see Charter § 11.03.

Sec. 5.05. Runoff Election and Tie Vote.

A runoff election shall be had whenever no candidate receives a majority of the votes cast for the place for which such person is a candidate. The two candidates for such place receiving the highest number of votes shall be candidates in the runoff election. Such election shall be held not less than 30 nor more than 60 days after the date of the general election. The exact date of the runoff shall be fixed by the Council and notice of the election and conduct thereof shall be the same as for the general city election.

In the event there is an equal number of votes given to two or more of the candidates receiving the highest vote for the same office, such candidates may, by agreement in writing and filed with the City Secretary, draw lots to determine the winner; both, or all such candidates being present. If the candidates receiving the equal number of votes do not agree to draw lots within 10 days after the votes are canvassed, the Council shall order a tie breaking election between the two or more candidates who have tied.

Sec. 5.06. Special Elections.

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

ARTICLE VI. INITIATIVE, REFERENDUM AND RECALL**Sec. 6.01. Power of Initiative.**

The citizens of Marlin reserve the power of direct legislation by initiative, and in the exercise of such power, may propose any ordinance not in conflict with this charter, or law, except an ordinance appropriating money or authorizing money or authorizing the levy of taxes or an ordinance repealing an ordinance appropriating money or levying taxes. Any initiated ordinance may be submitted to the Council by a petition which must be signed by qualified voters of the City equal in number to at least thirty (30) per cent of the qualified voters, or such petition must be signed by 400 qualified voters, whichever is greater.

Sec. 6.02. Power of Referendum.

The citizens of Marlin reserve the power to approve or reject at the polls any ordinance enacted by the Council which is subject to the initiative process under this charter, except an ordinance authorizing the issuance of bonds or other evidence of indebtedness. Prior to or within thirty (30) days after the effective date of any ordinance which is subject to referendum, a petition signed by qualified voters of the City, equal in number to at least thirty (30) per cent of the number of qualified voters of the City, or signed by 400 qualified voters, whichever is greater, may be filed with the City Secretary requesting that any such ordinance be either repealed or submitted to a vote of the people. When such petition has been certified as sufficient by the City Secretary, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless it is approved by the voters, as herein provided.

Sec. 6.03. Form of Petition.

Initiative petition papers shall contain the full text of the proposed legislation in the form of an ordinance, including a description caption. The signatures to the initiative or referendum need not be all appended to one paper, but the individual signers shall sign their name in ink or indelible pencil and shall add their place of residence by street and number. One of the signers of each separate paper petition shall make an affidavit that such person, and only such person, personally circulated such petition and that each signature appended thereto was made in such person's presence and is the genuine signature of the person whose name it purports to be, and further, that no signature shall have been placed thereon more than forty-five (45) days prior to the filing of such petition.

Sec. 6.04. Filing, Examination and Certification of Petition.

Within ten (10) days after an initiative or referendum petition is filed, the Secretary shall determine whether the same is signed by the requisite number of qualified voters. The City Secretary shall declare void and petition paper which does not have an affidavit attached thereto as required by Sec. 6.03 of this article. After completing examination of the petition, the City Secretary shall certify the results thereof to the Council at its next meeting, stating the number of persons found on the petition who are qualified to vote and the number of persons found on the petition who are not qualified to vote. If the certificate of the City Secretary shall show an initiative or referendum petition to be insufficient, the City Secretary shall notify the person filing the petition, and it may be amended within ten (10) days from the date of such notice by filing a supplementary petition upon additional papers signed and filed as provided for in the original petition. Within ten (10) days after such amendment is filed, the City Secretary shall examine the amended petition and certify as to its sufficiency. If the amended initiative petition is found to be insufficient, the City Secretary shall return the petition to the person filing same, without prejudice to the filing of a new petition for the same purpose; provided, however, that upon finding the amended initiative petition to be insufficient, no new petition covering the same subject matter shall be filed until six (6) months shall have elapsed from the date of filing of the original initiative petition.

Sec. 6.05. Council Consideration and Submission to Voters.

When the Council receives an authorized initiative petition certified by the City Secretary to be sufficient, the Council shall either:

- (a) pass the initiated ordinance without amendment within thirty (30) days after the date of the certification to the Council; or
- (b) submit said initiated ordinance without amendment to a vote of the qualified voters of the City at a regular or special election to be held on a date, if permitted by law, within sixty (60) days after the date of the certification to the Council, or on the next date thereafter on which such election is permitted by law; or
- (c) at such election, submit said initiated ordinance without amendment, and an alternative ordinance on the same subject proposed by the Council.

No ordinance on the same subject as an initiated ordinance which has been defeated at any election may be initiated by the voters within two (2) years from the date of such election.

When the Council receives an authorized referendum petition certified by the City Secretary to be sufficient, the Council shall reconsider the referred ordinance, and if upon reconsideration such ordinance is not repealed, it shall be submitted to the voters at a regular or special election to be held on a date, if permitted by law, within sixty (60) days after the date of the certification to the Council or, on the next date thereafter on which such election is permitted by law.

Sec. 6.06. Ballot Form and Results of Election.

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

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

Any number of ordinances may be voted upon at the same election in accordance with the provisions of this article. An ordinance submitted and receiving an affirmative majority of the votes cast, shall thereupon be effective as an ordinance of the City. An ordinance so adopted may be repealed or amended at any time after the expiration of two years by five affirmative votes of the Council. A referred ordinance which is not approved by a majority of the votes cast shall be deemed thereupon repealed.

Sec. 6.07. Power of Recall.

The Citizens of Marlin reserve the power to recall any member of the Council, including the Mayor, and may exercise such power by filing with the City Secretary a petition, signed by qualified voters of the City equal in number to at least thirty (30) per cent of the qualified voters of the city, or by 400 qualified voters, whichever is greater, demanding the removal of a member of the Council. The petition shall be signed and verified in the manner required for an initiative petition, shall contain a general statement of the grounds for which the removal is sought, and one of the signers of each petition paper shall make an affidavit that the statements therein made are true. Provided, however, when such recall pertains to City Council Place 1, 2, 3, or 4, being those elected by precincts, the petition must be signed by 30% of the qualified voters of such precinct, and only qualified voters living in such precinct shall be eligible to vote in any such recall election.

Sec. 6.08. Recall Election.

Within fifteen (15) days after the date of the filing of the recall petition, the City Secretary shall certify the petition in the manner established for initiative petitions and present such petition to the Council.

If the duly certified petition meets the requirements set forth, it shall be the duty of the Council to order an election and fix a date for holding such recall election. The date of such election if permitted by law, shall not be less than forty-five (45) days, nor more than sixty (60) days, from the date such petition was presented to the Council, or on the next date thereafter on which such election is permitted by law.

Sec. 6.09. Recall Ballot.

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

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

"For the removal of (Name)"

"Against the removal of (Name)"

Sec. 6.10. Results of a Recall Election.

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

Sec. 6.11. Limitations on Recall.

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

ARTICLE VII. FINANCE

Sec. 7.01. Fiscal Year.

The fiscal year of the city shall begin on the first day of October of each calendar year and shall end on the 30th day of September of the following calendar year. The fiscal year will also be the accounting and budget year.

All funds collected by the city during any fiscal year, including both current and delinquent revenue, shall belong to such fiscal year and, except funds designated to pay interest and create a sinking fund on any indebtedness of the city, may be applied to the payment of the expenses incurred during such fiscal year. Any revenues uncollected at the end of any fiscal year, and any unencumbered funds actually on hand, shall become resources of the next succeeding fiscal year.

Sec. 7.02. Budget.

The Council shall cause to be prepared and submitted unto it a budget covering the next fiscal year that shall be submitted to the Council prior to the 15th day of July or as soon as possible thereafter, each year, which shall contain the following information:

- (a) The proposed financial policies for the next year with explanations of any change from previous years in expenditures and any major changes of policy and a complete statement regarding the financial condition of the City;
- (b) An estimate of all revenue from taxes and other sources, including the present tax structure rates and property evaluation for the ensuing year, together with tax levies and collections for the last five (5) years;
- (c) A carefully itemized list of proposed expenses by office department, agency, employee, project and an unallocated reserve fund for the budget year, as compared to actual expenses of the last ended fiscal year, and the estimated expenses for the current year;
- (d) A description of all outstanding bond indebtedness, showing amount, purchaser, date of issue, rate of interest, and maturity date, as well as any other indebtedness which the City has incurred and which has not been paid;
- (e) A statement proposing any capital expenditures deemed necessary during the next budget year and recommended provisions for financing;
- (f) A projected list of capital projects which should be undertaken within the five (5) next succeeding years; and
- (g) Such other information as may be requested by the Council or as required by state law.
(Ord. No. 92-23, App. A, 12-8-92)

Editor's note--Ord. No. 92-23, App. A, adopted Dec. 8, 1992, amended § 7.02 to comply with preemptive state law, which doesn't require central appraisal district to complete appraisal until July 15. See also Charter §§ 9.01, 9.08, and 11.03.

Sec. 7.03. Proposed Budget a Public Record.

The proposed budget shall be filed with the City Secretary and shall be available for public inspection.

Sec. 7.04. Public Hearing on Proposed Budget.

During the Council meeting at which the proposed budget is submitted the Council shall name the date and place of a public hearing to be held thereon and shall cause to be published in the official newspaper of the City the time and place of such hearing which will be not less than ten (10) days after the date of the notice. At this hearing, interested citizens may express their opinions concerning the proposed budget.

Sec. 7.05. Proceeding on Adoption of Proposed Budget.

After public hearing, the Council shall analyze the proposed budget, making any additions or

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

Sec. 7.06. Appropriation.

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

Sec. 7.07. Emergency Appropriations.

At any time in any fiscal year, the Council may, pursuant to this section, make emergency appropriations to meet a pressing need for public expenditure, for other than regular recurring requirements, to protect the public health, safety or welfare. Such appropriation shall be by ordinance adopted by the affirmative vote of five Council members. Should the unappropriated and unencumbered revenues, income and available funds of the City for such fiscal year be insufficient to meet the expenditures under the appropriation authorized by this section, thereby creating a deficit, the Council shall include the amount of such deficit in its budget for the following fiscal year, during which such deficit shall be paid off and discharged.

Sec. 7.08. Borrowing to Meet Emergency Appropriations.

In the absence of unappropriated available revenues or other funds to meet emergency appropriations under the provisions of the next section, the Council may, by resolution, authorize the borrowing of money to meet such deficit by the issuance of notes, each of which shall be designated "Emergency Note" and may be renewed but all such notes and any renewals thereof shall mature and be payable not later than the last day of the fiscal year in which the emergency appropriation was made, as provided in the last preceding section.

Sec. 7.09. Depository.

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

Sec. 7.10. Budget Filed with City Secretary.

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

Sec. 7.11. Defect Shall Not Invalidate the Tax Levy.

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

Sec. 7.12. Independent Audit.

At the close of each fiscal year, and at such other times as it may be deemed necessary, the Council shall direct that an independent audit be made of all accounts of the City by a Certified Public Accountant. The Certified Public Accountant shall have no personal interest in the financial affairs of the City.

Sec. 7.13. Purchase Procedure.

All purchases made and contracts executed by the City shall be reviewed by the City Council or its designated representative, who shall determine that there is to the credit of such office, department or agency a sufficient unencumbered budgeted appropriation and allotment balance to pay for the supplies, materials, equipment, or contractual services for which the contract or order is to be issued. The Council may, by ordinance, confer upon its duly designated representative general authority to contract for the expenditures without further approval of the Council for all budget items, provided such amounts do not exceed the maximum allowed by law. In cases where bids are taken, all contracts or purchases shall be let to the lowest responsible bidder as provided by law or ordinance; provided that the Council shall have the right to reject any and all bids. Contracts for professional services for which bidding is prohibited by law shall not be let on competitive bids.

(Ord. No. 92-23, App. A, Prop. 3, 12-8-92)

Editor's note--Proposition 3, adding "responsible" to the current verbiage in § 7.13, was approved by the voters at an election held Jan. 16, 1993.

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

Sec. 8.01. Powers to Issue.

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

Sec. 8.02. Sale of Bonds.

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

Sec. 8.03. Interest and Sinking Funds.

The Council shall levy an annual tax sufficient to pay the interest on and provide the necessary sinking fund required by law on all outstanding general obligation bonds and other general obligation evidence of indebtedness of the City. The interest and sinking fund shall be deposited in a separate account and shall not be diverted to or used for any other purpose than to pay the interest and principal on all such bonds and other evidence of indebtedness issued by the City, or for authorized investments.

Sec. 8.04. Revenue Bonds.

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

Sec. 8.05. Execution and Registration of Bonds.

All bonds, and other evidences of indebtedness shall be signed by the Mayor, countersigned by the City Secretary, and sealed with the seal of the City in the manner provided by law, and shall be payable not more than forty (40) years from their date. The Mayor shall, to the extent permitted or required by law, forward such issued bonds and other evidences of indebtedness to the Attorney General of the State of Texas for approval and for registration by the Comptroller of Public Accounts.

ARTICLE IX. TAXATION

Sec. 9.01. Department of Taxation.

The City Council may establish a Department of Taxation or, in accordance with state law, the Council may contract with the County's Tax Assessor-Collector so that he or she may collect taxes on behalf of the City. In the event the City contracts with the County's tax department, part of the contract shall require that the County's Tax Assessor-Collector give a surety bond in an amount to be determined by the Council. The Council may, in its discretion, require by its contract that any other persons associated with the County's tax collection be included in said surety bond, or to post their own such bond. In the event the City chooses to establish or maintain its own taxation department, a City Tax Assessor-Collector shall be appointed by the Council who shall serve at the pleasure of the Council, giving a surety bond for the faithful performance of the collector's duties in a sum which shall be fixed by the Council.

(Ord. No. 92-23, App. A, Prop. 4, 12-8-92)

Editor's note--Proposition 4, establishing a department of taxation in accordance with state law allowing the city to contract for collection of city taxes, was approved by the voters at an election

held Jan. 16, 1993.

Sec. 9.02. Powers of Taxation.

The City shall have the powers to levy, assess and collect taxes in an amount and of every character and type not prohibited by the Constitution and Laws of the State of Texas for any municipal purpose.

Secs. 9.03, 9.04. Reserved.

Editor's note--Ord. No. 92-23, App. A, adopted Dec. 8, 1992, deleted §§ 9.03 and 9.04, which pertained to rendition of property for assessment and to unrendered property, to comply with preemptive state law inasmuch as taxpayers no longer "render" property. See charter §§ 9.01, 9.08, and 11.03.

Sec. 9.05. Taxes: When Due and Payable.

All taxes due the City shall be payable at the office of the Tax Assessor-Collector. The tax rolls shall be completed and approved not later than October 1st of each year. Taxes shall become due and payable on October 1st of the year assessed and shall be paid on or before January 31st of the following year. All such taxes not paid on or before such date shall be deemed delinquent and shall be subject to such penalty and interest as the Council may provide by ordinance. The Council may provide further by ordinance that all taxes, either current or delinquent, due the City may be paid in installments. Failure to levy and assess taxes through omission in preparation of the approved tax roll shall not relieve the person, firm or corporation so omitted from obligation to pay such current or past-due taxes as shown to be payable by recheck of the rolls and receipts for the years in question.

Sec. 9.06. Tax Lien and Liability.

A special lien is hereby created on all taxable property, located in the City, in favor of the City for all taxes, ad valorem, occupational or otherwise. Said lien shall exist from January 1st in each year until the taxes are paid. Such lien shall be prior to all other claims, and no gift, sale, assignment or transfer of any kind, can ever defeat such lien, but the Tax Assessor-Collector can pursue such property and whenever found may, by judicial writ, seize and sell enough thereof to satisfy such taxes.

Sec. 9.07. Reserved.

Editor's note--Ord. No. 92-23, App. A, adopted Dec. 8, 1992, deleted § 9.02, board of equalization, to comply with preemptive state law inasmuch as power to set up such board is given to city in circumstances set forth in Charter § 9.08. See also Charter §§ 9.01 and 11.03.

Sec. 9.08. Other Rules and Regulations.

Except as otherwise provided by law or by this Charter, the Council shall have the power to provide by ordinance or contract for the collection of all taxes, and to make such rules, regulations and mode of procedure to enforce the collection by and payment to the City, through either the City's Tax Assessor and Collector, or through the County's Tax Assessor-Collector. So long as law provides for the central appraisal of property by county office and employees, then appraisal of property within the City shall be done by said central appraisal office; but in the event it should

ever become necessary for the City to appraise its own property, then it shall have the power under this Charter to do so. Such power shall include, but not be limited to, the appointment by the Council of a Board of Equalization of not less than three nor more than five members, and the Council shall have the power to establish rules and procedures for such a Board.

(Ord. No. 92-23, App. A, Prop. 5, 12-8-92)

Editor's note--Proposition 5, establishing procedures for collection and enforcement of payment of taxes and providing for a central appraisal office to appraise property in the city, was approved by the voters at an election held Jan. 16, 1993.

ARTICLE X. FRANCHISE AND PUBLIC UTILITY

Sec. 10.01. Powers of the City.

In addition to the City's power to purchase, construct, lease, maintain, operate, tax 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.

Sec. 10.02. Inalienability of Control of Public Property.

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

Sec. 10.03. Franchise; Power of the City Council.

The City Council shall have the power by ordinance to grant, amend, renew and extend, all franchises of all public utilities of every character operating within the City of Marlin. All ordinances granting, amending, renewing, or extending franchises for public utilities shall be read at two separate regular meetings of the City Council, and shall not be finally passed until thirty days after the first reading; and no such ordinance shall take effect until thirty days after its final passage; and pending such time, the full text of such ordinances shall be published once each week for four consecutive weeks in the official newspaper of the City of Marlin, and the expense of such publication shall be borne by the proponent of the franchise. No public utility franchise shall be granted for a term of more than 20 years nor be transferable except with the approval of the City Council expressed by ordinance.

Sec. 10.04. Regulation of Franchise.

Every grant, renewal, extension, or amendment of a public utility franchise, whether so provided in the ordinance or not, shall be subject to the right of the Council:

- (a) To forfeit any such franchise by ordinance at any time for failure of the holder thereof to comply with the terms of the franchise. Such power shall be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise and setting a reasonable time for the correction of such failure, and shall be

exercised only after hearing and after such reasonable time has expired.

(b) To impose reasonable regulations to insure safe, efficient and continuous service to the public.

(c) To require such expansion, extension, enlargement and improvements of plants and facilities as are necessary to provide adequate service to the public.

(d) To require every franchise holder to furnish to the City, without cost to the City, full information regarding the location, character, size, length, and terminals of all facilities of such franchise holder, in, over, and under the streets, alleys, and other public property of the City, and to regulate and control the location, relocation, and removal of such facilities.

(e) To collect from every public utility operating in the City such proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping and sprinkling the streets, alleys, bridges, culverts, viaducts, and other public places of the City as represents the increased cost of such operations resulting from the occupancy of such public places by such public utilities and such proportion of the costs of such operations as results from the damage to or disturbance of such public places caused by such public utility; or to compel such public utility to perform at its own expense such operations as above listed which are made necessary by the occupancy of such public places by such public utility or by damage to or disturbance of such public places caused by such public utility.

(f) To require every franchise holder to allow other public utilities to use its poles and other facilities, including bridges and viaducts, whenever in the judgment of the Council such use shall be in the public interest, provided that in such event a reasonable rental shall be paid such owner of facilities for such use. PROVIDED, further, that inability of such public utilities to agree upon rentals for such facilities shall not be an excuse for failure to comply with such requirements by the Council.

(g) (1) To require the keeping of accounts in such form as will accurately reflect the value of the property of each franchise holder which is used and useful in rendering its service to the public and the expenses, receipts and profits of all kinds of such franchise holder.

(2) To examine and audit at any time during business hours the accounts and other records of any franchise holder.

(3) To require reports on the operations of the utility, which shall be in such form and contain such information as the Council shall prescribe.

Sec. 10.05. Regulation of Rates.

The Council shall have full power after notice and hearing to regulate by ordinance the rates, charges and fares of every public utility franchise holder operating in the City, provided that no such ordinance shall be passed as an emergency measure. 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. If, upon such hearing, the Council is not satisfied with the sufficiency of the evidence so furnished, it shall be entitled to call upon such public utility for the furnishing of additional evidence at a subsequent date, to which

said hearing may be adjourned. If, at the conclusion of said adjourned hearing, the Council is still not satisfied with the sufficiency of the evidence furnished by said utility, the Council shall have the right to select and employ, then and later, rate consultants, accountants, auditors, engineers, and attorneys to conduct investigations, present evidence, advise the Council, and conduct litigation on such requested increase in rates, charges or fares; and said utility shall reimburse the City for its reasonable and necessary expense so incurred. Each rate consultants, accountants, auditors, engineers, and attorneys shall be qualified, competent, and of good standing in their professions. 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 of 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 days from the filing of such motion for rehearing; provided, that the Council may by resolution extend such time limit for acting on said motion for rehearing from ninety days to one hundred eighty days.

Sec. 10.06. Grant Not To Be Exclusive.

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

ARTICLE XI. GENERAL PROVISIONS

Sec. 11.01. Notice of Claims.

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

Sec. 11.02. Assignment, Execution and Garnishment.

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

Sec. 11.03. Amendment of the Charter.

Amendments to this Charter may be made in the following manner:

(a) In the event amendment is necessitated by a preemptive state or federal law, by statute, court decision or administrative action, and such preemptive law or regulation is mandatory in its governance of this City, despite any action by the voters either for or against such a proposed amendment, then, and only in such event, shall the City Council itself act to amend the Charter by ordinance. Upon the passage of such ordinance, a copy thereof, certified by the City Secretary and filed with a copy of this Charter, shall be forwarded to the Secretary of State for filing, as well as certified copies of such ordinance being filed with other appropriate offices.

(b) In all other instances, except those set forth in Section 11.05 which follows, proposed amendments shall be formulated by or presented to a committee representing a cross-section of the community, to be appointed by the Council in a number, and for a term, to be determined by the Council. Said committee shall make a report to the Council, which shall thereafter vote as to the submission of the amendment(s) at the next reasonable date among the uniform election dates, at which time the amendment(s) shall be submitted to the voters for adoption or rejection.

(Ord. No. 92-23, App. A, Prop. 6, 12-8-92)

Editor's note--Proposition 6, allowing council to amend charter in certain circumstances without an election; establishing procedures for amending charter; and making mandatory a citizens review committee, was approved by the voters at an election held Jan. 16, 1993.

Sec. 11.04. Separability Clause.

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

Sec. 11.05. Rearrangement and Renumbering.

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

Sec. 11.06. Effective Date of Charter.

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

Sec. 11.07. Effect of This Charter on Existing Law.

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

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

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

Sec. 11.08. Interim Government.

The present City Council members and the Mayor shall complete their terms of office and the Council shall provide, by ordinance, for the orderly transition of the business and affairs of the City from the present form of government to the form of government set forth in this Charter.