

HOME RULE CHARTER

FOR THE CITY OF DIBOLL



AS AMENDED
5-6-2023

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ARTICLE I

INCORPORATION, FORMS OF GOVERNMENT, AND BOUNDARIES

Section 1.01. Incorporation

The inhabitants of the City of Diboll, Angelina County, Texas, residing within its corporate limits as they currently exist and may be established in the future, constitute and shall continue to be a municipal body politic and corporate in perpetuity under the name of the "City of Diboll," with the powers, privileges, rights, duties, and immunities set forth in this Charter. The City of Diboll is referred to in this Charter as "the City".

Section 1.02. Form of Government

The municipal government provided by this Charter shall be the City Council-manager form of government, consisting of a Mayor and six (6) Council Members, elected by the people and responsible to the people, and a City Manager, appointed by and responsible to the Council for proper administration of the City. Subject only to the limitations imposed by the State constitution, applicable State statutes, and this Charter, all powers of the City shall be vested in the elected Mayor and Council Members, who shall enact local legislation, adopt budgets, and determine policies. All powers of the City shall be exercised in the manner prescribed by this Charter or, if not prescribed, as set out by ordinance, adopted in accordance with this Charter.

Section 1.03. Boundaries

The bounds and limits of the City shall be those established in the original incorporation proceedings of the City, filed of record, in the office of the County Clerk of Angelina County, Texas, and those boundaries established and changed after that date by annexation ordinances and proceedings of the City.

Section 1.04. Extension of Boundaries or Extraterritorial Jurisdiction

The boundaries of the City may be enlarged and extended by the annexation of additional territory, regardless of size or configuration, in any of the following ways:

1. By annexing territory adjacent to the City and located within its extraterritorial jurisdiction, with or without the consent of the residents or owners of the territory annexed, according to the procedures prescribed by Texas Local Government Code §43.052 and § 43.053 or any other applicable State statutes.
2. By acting on the petition of area landowners in sparsely occupied areas according to the procedures prescribed by Texas Local Government Code § 43.028.
3. By any other manner and procedure now provided by law or as may be provided by law in the future or in any manner provided by ordinance of the City.

Before the City may annex an area or extend its extraterritorial jurisdiction, the City Manager must present a written report regarding the financial impact of the proposed annexation or extension. The City Manager shall also propose a service plan to the Planning and Zoning Commission and City Council regarding any property proposed to be annexed. On the effective

date of any ordinance to annex an area, the area shall become a part of the City and the inhabitants of the area shall become entitled to the rights and privileges of other citizens of the City and be bound by the acts and ordinances adopted by the City.

Section 1.05. Detachment or Contraction of Boundaries

The City Council by ordinance may detach any territory not suitable or necessary for City purposes, with or without the consent of the inhabitants or owners of the area to be detached. In detaching any area, the City Council shall provide notice and hearings as prescribed by Texas Local Government Code § 43.052. The ordinance detaching an area shall specify accurately, by metes and bounds, the affected area.

ARTICLE II

POWERS OF THE CITY

Section 2.01. General Powers Enumerated

The City shall have all powers possible for a City to have under the constitution and laws of the State of Texas as fully and completely as though they were specifically enumerated in this Charter. Said powers include but are not limited to the following:

1. The said City of Diboll shall have power to ordain and establish such acts, laws, rules and regulations, resolutions, and ordinances, not inconsistent with the Constitution and laws of Texas and of this Charter, as shall be needful for the government, interests, health, welfare, and good order of said City and its inhabitants. Under the name of the City of Diboll, it shall be known in law and have succession and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and tribunals, and in all amounts whatsoever, subject to the laws of the State of Texas, and which shall hereafter be passed.

The City of Diboll shall have the power to take, hold, lease, grant, purchase, and convey such real property or mixed property or estate, situated within or without the limits thereof, as the purpose of said City may require.

2. Rights reserved unto the City of Diboll- All suits, taxes, penalties, fines, forfeiture, and all other rights, claims and demands, of every kind and character, which have accrued under the laws in favor of said City, heretofore in force governing the same, shall belong to and vest in said City and shall not abate by reason of the adoption of this Charter, and shall be prosecuted and collected for the use and benefit of said City of Diboll and shall not be in any manner affected by the taking effect of this Charter; but as to all of such rights, the laws under which they shall have accrued shall be deemed to be in full force and effect.
3. Local Self-Government - The City of Diboll shall possess and may exercise the full power of local self-government. It may hold, by gift, deed, device, or otherwise, any character of property, including any charitable or trust fund, and subject to and within the limits of superior law may act in perpetual succession as a body politic.

4. For greater certainty, the following are hereby especially enumerated and referred to as being among the other powers which are hereby conferred upon and which may be exercised by the City of Diboll, to-wit:
 - A All of the powers conferred upon cities and towns by Title 22 of the Revised Civil Statutes of Texas, 1911, except as may hereafter be denied, limited or extended, are hereby conferred upon the City of Diboll as fully and completely as if such powers were herein separately enumerated.
 - B All powers, privileges and immunities conferred upon cities of more than five thousand (5,000) inhabitants, by Section 4 of Charter 147 Acts of the 33rd Legislature, General Laws Regular Session, at page 310 to 316, entitled, "An Act Authorizing Cities Having More Than Five Thousand Inhabitants, by a Majority Vote of the Qualified Voters of said City, at an Election Held for the Purpose to Adopt and Amend their Charters," etc.; and such powers are hereby conferred upon the City of Diboll as fully and completely as if each of said mentioned powers were herein separately enumerated; but enumeration of special powers herein, or in the Statutes referred to, shall not be held or construed to preclude the City from exercising all powers of local government not inhibited by the Constitution and Laws of the State of Texas, or by special limitations in this Charter contained, the purpose of this Charter being to enlarge upon the power extended by the general laws of cities incorporated thereunder, and to secure to the City of Diboll all the powers conferred by the Constitution and Laws of this State upon cities having more than five thousand (5,000) inhabitants.
5. Construction - The powers of the City shall be construed liberally in favor of the City, and the specific mention of particular powers in this Charter shall not be construed as limiting in any way the general power granted in this article.
6. Intergovernmental Relations - The City may exercise any of its powers or perform any of its functions and may participate in the financing there of, jointly or in cooperation, by contract or otherwise, with any one or more states or any state civil division or agency or the United States or any of its agencies.
7. Construction of Public Facilities - In addition to its regulatory powers, the Council has the authority to erect, construct and maintain a wide variety of facilities for public use, including water and sewage systems, airports, hospitals, parks, libraries, market houses, transit systems, electric and gas systems, streets, bridges, culverts, sidewalks, streetlights, and any other kind of facility.

Section 2.02. Eminent Domain

The City shall have the full power and right to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred by this Charter or by the constitution and laws of the State of Texas. The City may exercise the power of eminent domain in any manner authorized or permitted by the constitution and laws of the State of Texas, including the power to condemn private property for any municipal or public purpose, the right to condemn public property for that purpose, and the right to take the fee or any lesser interest

in land condemned. The City shall make adequate compensation for condemned property in accordance with laws and constitution of the State.

Section 2.03. Zoning

The City Council shall have the power and authority to zone the City and to pass all necessary ordinances, rules, and regulations to accomplish its purposes in zoning.

Section 2.04. Tort Liability

In order to preserve a claim under the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code, notice of personal injury, death, or property damages must be mailed by certified mail, return receipt requested, to the City Manager within 180 days of the date that the incident giving rise to the claim occurred. The notice must:

1. describe the damage or injury claimed;
2. state the time, date, and place of the incident;
3. describe the incident in reasonable detail;
4. state the City's alleged fault producing or contributing to the injury or damage; and
5. identify all parties involved in the claim.

This 180-day notice is not required if the City has actual notice of all elements of the claim, including knowledge of fault and knowledge of the injury or damage. In addition, the City may, by majority vote of its City Council, waive the 180-day notice requirement for good cause. Any claim against the City is subject to the limitations of the Texas Tort Claims Act and any other applicable Texas Statute.

ARTICLE III

THE CITY COUNCIL

Section 3.01. Number, Selection, and Term

The "City Council" shall be composed of a "Mayor" and six (6) "Council Members" elected as follows:

1. Four (4) Council Members shall be elected under the Place System, with there being Places 1, 2, 3, and 4, and two (2) Council Members who shall hold Places 5 and 6 and, together with the Mayor, shall be elected at large. The places of the four (4) Council Members in this place system shall hereafter be known as District 1, District 2, District 3 and District 4.
2. The Mayor (unless sooner removed under the provisions of this Charter) shall serve a term of two (2) years or until a successor has been elected or selected and duly qualified.
3. The six (6) Council Members shall serve a term of two (2) years each unless a successor has been duly elected or selected and duly qualified.

4. Those current Council Members whose term expire in even numbered years shall be places 2 and 4. Place 6 is added by this Charter and shall have its term commence and expire in even numbered years as well. The position of Mayor shall also commence and expire in even numbered years. Those Council Members whose terms commence and expire in odd numbered years shall be places 1, 3, and 5. Upon passage of this Charter the City Council shall name four (4) of the existing Council Members as representing the four (4) districts and one (1) Council Member to be at large. As stated above, the new Council Member for Place 6 shall be elected by the City at large.
5. The City of Diboll, Texas shall initially be divided into four Single Member Districts. These districts are reflected at this time by the map (as marked) which is attached hereto as Exhibit "A" which is made a part of for any and all purposes as if repeated verbatim herein. The Council shall from time to time create and describe by ordinance election districts known as Districts 1, 2, 3, and 4 so that each will contain, as nearly as possible, a population equivalent to the others according to the latest census data.
6. All of the City Council Members holding office at the time of passage and adoption of this Charter shall hold their respective office until their respective term of office for which they were elected expires. All Council Members representing a District shall be elected by the votes in their respective Districts. Council Members representing Places 5 & 6, as well as the Mayor, shall be elected by the City at large by a plurality of the vote. All Council Members and Mayoral candidates shall run for office nonpartisan with no listing of party affiliation. Unless the context clearly requires otherwise, the terms "City Council" or "Council" or "Council Member" when used in this Charter shall mean the Mayor and all Council persons.

Section 3.02. Term Limits

The Council Members and the Mayor shall not be limited as to number of terms in office.

Section 3.03. Qualifications

In addition to any qualifications for holding office prescribed by law, the members of the Council shall reside within the City and shall meet the conditions of this Charter while in office. Candidates for Places 1, 2, 3, and 4, shall live within the respective District they seek to represent for a period of one (1) year prior to filing for office. In case of a dispute as to residency, the Council shall hold a hearing to determine if the residency requirement set out herein has been met. The Council Member representing the District where residency of a challenger is being determined by the Council shall not vote on said issue but shall abstain. Any person filing for a position as a Council or serving as a Council Member or filing for the position of Mayor or serving as Mayor shall not be delinquent on any property taxes or court ordered child support. No person may file for a position on the Diboll City Council or serve on the Council if he or she has been convicted of a felony or misdemeanor involving moral turpitude or has received deferred adjudication for a felony or misdemeanor involving moral turpitude.

Section 3.04. Compensation

Members of the City Council shall serve without compensation but shall be entitled to payment of or reimbursement for all necessary expenses incurred in the performance of official duties, upon approval by the City Manager.

Section 3.05. General Powers and Duties

All powers of the City shall be vested in the City Council, except as otherwise provided by law or this Charter. The City Council shall provide for the performance of all duties and obligations imposed on the City by law through the establishment of general policies and ordinances, which will be implemented by the City Manager. Any City Council Member may place an item on the agenda for a subsequent regular Council meeting with the consent of a second Council Member.

Section 3.06. Mayor and Mayor Pro-tem

The Mayor shall have the following rights and responsibilities:

1. Preside at all meetings of the City Council and possess the right to vote at anything or any issue.
2. Sign any ordinance, order, resolution, plat, bond, conveyance, proclamation, contract, or other document that is authorized or enacted by the City Council.
3. Serve as head of the City government for all ceremonial purposes.
4. Serve as the official representative of the City.
5. Perform other duties, consistent with this Charter, as may be imposed by the City Council.

The Mayor shall not have the power to veto or modify any ordinance adopted by the City Council and shall not, in any way, neutralize or negate any action of the City Council. The Mayor may not bind or obligate the City in any way without prior authorization from the City Council. Any reference to the "Council" or "City Council" or "Council Members" in this Charter shall include the Mayor unless it specifically says otherwise.

The Mayor pro-tem shall be a Council Member elected by the Council at the first meeting following the canvassing of each regular election. The Mayor pro-tem shall act as Mayor during the disability or absence of the Mayor. When acting in the capacity of Mayor, the Mayor pro-tem shall have the rights and responsibilities conferred on the Mayor by this Section. In the event a vacancy in the office of Mayor occurs, the Council shall within 30 days determine how to fill, and then proceed to fill, the vacancy for the office of Mayor in accordance with State law.

Section 3.07. Vacancies

A vacancy is created when any member of the Council dies, resigns, or is removed from office under this Charter. Within 30 days following the creation of a vacancy, the Council shall take action to fill the vacancy in accordance with State law.

Section 3.08. Removal from Office

- (a) Reasons:** Any member of the Council may be removed from office for any of following reasons:
1. Failure to maintain the qualifications for office required by this Charter.
 2. Violation of any express prohibition of this Charter.
 3. Conviction of a felony or a misdemeanor involving moral turpitude or receipt of deferred adjudication regarding any crime involving moral turpitude whether felony or misdemeanor.
 4. Failure to attend at least seventy-five percent (75%) of all regular and specially called City Council meetings (without being excused by the Council) within any twelve (12) month period.
- (b) Initiation:** Removal proceedings shall be initiated when a sworn written complaint charging a member of the Council with an act or omission that is a reason for removal is received by the Mayor or Mayor pro-tem. The complaint will be presented to the Mayor or, if the complaint is against the Mayor, to the Mayor pro-tem. The person receiving the complaint shall file it with the City Secretary, who shall provide a copy to the member complained against and all other Council Members. The Mayor or the Mayor pro-tem shall set a time and date for a hearing on the complaint. Section 3.08 (a) (4) shall be exempt from this process. The City Secretary shall calculate on the first of each month the attendance record for the proceeding twelve (12) month period and report for each Council Member and the Mayor the percentage of participation of each member. The Council by unanimous vote may excuse the offending Councilperson or Mayor for good cause shown who has attended less than seventy-five percent (75%) of the regularly set and specially called meetings of the City. The City Secretary shall initiate a complaint for any Council Member attending less than seventy-five percent (75%) of the meetings set out above. Unless excused for failure to attend at least seventy-five percent (75%) of the meetings the offending Council Member shall be considered removed from office and his place on the Council declared vacant.
- (c) Hearing and decision:** The remaining members of the City Council shall conduct a hearing to take evidence on the complaint. The member complained against shall have a right to representation at the hearing and to question and cross-examine all witnesses but may not vote on the question of removal. Based on the evidence presented at the hearing, the City Council shall make a decision whether the member should be removed from office and shall issue an order setting out its decision. If the Council determines by at least four (4) affirmative votes that removal is warranted, the Council shall declare a vacancy to be filled no sooner than the next regular meeting and in accordance with this Charter. The decision of the City Council shall be final and binding so long as it is made in good faith.

Section 3.09. Prohibitions

- (a) Holding other office:** No member of the Council, including the Mayor, shall hold other City office or employment nor receive any direct or indirect compensation from the City during his term of office, and no former member of the Council or the Mayor shall hold any compensated appointive City office or employment until at least one (1) year after the expiration of his term of office. No City employee who resigns from his City employment shall be allowed to run for

an elected City position until the expiration of one (1) year from and after his employment is ended. Retirement and/or disability shall not be considered as a resignation from City employment for purposes of this paragraph.

- (b)** Appointments and removals: Neither the City Council nor any of its individual members, including the Mayor, shall require the appointment or removal of any City officer or employee that the City Manager or his subordinate is authorized to appoint. This provision shall not limit the right of the City Council to express and to freely and fully discuss with the City Manager its views pertaining to the appointment or removal of City officers or employees.
- (c)** Interference with administration: Unless making inquiries or conducting an investigation under Section 3.19, the City Council and its individual members shall work through the City Manager in dealing with City officers and employees who are under the direction and supervision of the City Manager. No member of the Council shall exert any direct control over City officers or employees or give orders to or direct the actions of the City Manager or any City employee, publicly or privately, except as may be permitted by this Charter.

Section 3.10. City Council Meetings

The City Council shall meet at least once each month and may hold as many additional meetings as it deems necessary to transact the business of the City. Days and times of regular meetings shall be set by resolution. All meetings shall be posted and conducted in accordance with the requirements of the Texas Open Meetings Act, Chapter 551, Government Code.

Section 3.11. Quorum

Four (4) City Council Members, including or excluding the Mayor, shall constitute a quorum for the purpose of transacting business. Except as otherwise provided by this Charter or State law, the affirmative vote of a majority of those members present and voting shall constitute valid action by the City Council.

Section 3.12. Rules of Procedure

The City Council shall determine its own rules and order of business by resolution. Rules of procedure shall ensure that citizens of the City have a reasonable opportunity at any meeting to address the Council regarding matters under consideration. The Council shall provide for minutes to be kept of all meetings and, except for records of discussion held in executive session, the minutes shall be public records.

Section 3.13. Voting

Voting on all motions regarding official actions of the Council shall be by roll call or show of hands, and each member's vote shall be recorded in the minutes. Except as prohibited by conflict-of-interest laws or this Charter, all members of the City Council shall vote "yes" or "no" on every action, resolution, or ordinance requiring a vote. The nature of the specific conflict of interest requiring recusal on the issue and abstention from voting shall be concisely stated in the minutes.

Section 3.14. Action Requiring an Ordinance

In addition to other acts required by law or by specific provision of this Charter to be done by ordinance, the City Council shall adopt ordinances in order to:

1. Adopt or amend an administrative code or establish, alter, or abolish any City department, office, or agency.
2. Provide for a fine or other penalty or establish a rule or regulation subject to a fine or other penalty for its violation.
3. Levy taxes.
4. Grant, renew, or extend a franchise.
5. Regulate the rates charged by a public utility for its services.
6. Authorize the borrowing of money.
7. Convey or lease or authorize the conveyance or lease of any City land.
8. Regulate land use or development.
9. Amend or repeal any ordinance previously adopted.
10. Annex property.

Acts other than those specifically enumerated above may be done either by ordinance or resolution.

Section 3.15. Ordinances, In General

(a) Form: The Council shall legislate only by ordinance that contains an enacting clause stating, "Be it ordained by the City Council of the City of Diboll, Texas." Each proposed ordinance shall be introduced in the written or printed form required for adoption. No ordinance shall contain more than one subject, unless they are expressly related; however, general appropriations ordinances may contain various subjects and accounts for which monies are to be appropriated.

Once adopted, no ordinance may be amended or repealed except by adoption of another ordinance amending or repealing the original ordinance. Except when an ordinance is repealed in its entirety, the amending or repealing ordinance shall set out in full the ordinance, sections, or subsections to be amended or repealed and shall clearly indicate the proposed amendments, additions, or deletions.

(b) Procedure: The City Manager, the Mayor, or any member of the Council may offer an ordinance in writing after it has been approved as to form by the City Attorney and placed on the agenda of a regular Council meeting. At least one (1) week before it is considered, copies of the proposed ordinance in the form required for adoption shall be furnished to members of the Council and the caption of the proposed ordinance shall be posted at the City hall. On request of any citizen, the City Secretary shall furnish a copy of any proposed ordinance, the caption of which is posted for public review. Amendments to any proposed ordinance shall be subject to the same notice, posting, and copy requirements so long as the proposed ordinance is before the Council.

The City Attorney shall review all proposed ordinances before passage and provide any suggestions or objections to the Council.

- (c)** Reading: Reading aloud the caption of an ordinance shall satisfy the requirement for reading, provided that printed copies of the ordinance in the form required for adoption are in front of all Council Members present and a reasonable number of copies are available to citizens present at the meeting. If three Council Members (including or excluding the Mayor) request, a proposed ordinance shall be read aloud in its entirety.
- (d)** Effective date: Every ordinance shall be effective upon adoption, or at any later time specified in the ordinance; however, no ordinance imposing a penalty, fine, or forfeiture shall become effective until the caption of the ordinance, which shall summarize the purpose of the ordinance and the penalty for violating the ordinance has been published one time in the City's official newspaper. An ordinance passed by at least three (3) affirmative votes may become effective after passage provided the motion so specifies.

Section 3.16. Emergency Ordinances

- (a)** Purpose and limitations: To meet a public emergency affecting life, health, property, or the public peace, the Council may adopt emergency ordinances; however, ordinances that levy taxes; grant, renew, or extend a franchise; regulate the rates charged by a public utility for its services; or, except as permitted by this Charter, authorize the borrowing of money shall not be adopted as emergency ordinances.
- (b)** Form and procedure: An emergency ordinance shall be introduced in the form required for ordinances and shall be clearly designated in its caption as an emergency ordinance. Immediately after the enacting clause, it shall contain a declaration stating that an emergency exists and describing it in clear and specific terms. The affirmative vote of a majority of the quorum of the Council shall be required to approve an emergency clause. An emergency ordinance may be adopted, amended, or rejected at the same meeting at which it is introduced, and the affirmative vote of at least a quorum of the Council Members is required for adoption. After adoption, it shall be numbered as any other ordinance with the designation of " E" following the number and shall be published and become effective in the manner required for any other ordinance.
- (c)** Expiration: Any emergency ordinance, except one authorizing borrowing as provided by this Charter, shall be automatically repealed sixty-one (61) days after becoming effective, but this provision shall not prevent re-adoption of the ordinance using the procedure required for any other ordinance.

Section 3.17. Code of Technical Regulations

The City Council may adopt any standard code of technical regulations by adopting an ordinance that incorporates the code by reference. The procedure for adopting such an ordinance shall be as prescribed in this Charter, except that the requirement for distribution and posting of copies of the ordinance shall be construed to include copies of the technical regulations proposed for adoption by reference, as well as the adopting ordinance. Copies of

an adopted code of technical regulations shall be available from the City Secretary for distribution or for purchase at a reasonable price.

Section 3.18. Bonded Employees

The City Council shall require all municipal officers and employees who receive and pay out City funds, including the City Manager, to be bonded in an amount determined by the City Council. The City shall bear the cost of the bonds.

Section 3.19. Inquiries and Investigations

The City Council may, upon majority vote of the quorum present, make investigations into the affairs of the City and the conduct of any City department, division, or office, and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. By ordinance, the Council may provide that any person who fails or refuses to obey a lawful order issued in the exercise of these powers shall, upon conviction, be guilty of a misdemeanor and subject to a fine set by that ordinance.

ARTICLE IV

ADMINISTRATIVE SERVICES

Section 4.01. City Manager

- (a) Appointment and qualifications: The City Council shall appoint a City Manager by majority vote of the Council. The Council shall determine a method of selection that ensures orderly, nonpartisan action in securing a competent and qualified person to fill the position. The City Manager shall be chosen based on executive and administrative training, experience, and ability. The Council may enter into an employment contract with the City Manager covering reasonable employment related issues, including, but not limited to, salary and benefits. Said contract shall never exceed three (3) years in duration.
- (b) Term and compensation: The City Manager shall be employed for a term and compensation and upon conditions determined by the City Council. If the City Manager is dismissed from employment by the City Council, the City Manager may request that the Council present him with the reasons for his dismissal in writing at a public meeting. If, upon dismissal, the City Manager so requests, then the City Council shall comply by furnishing the written reasons for dismissal at a public hearing.
- (c) Powers and duties: The City Manager shall be the chief administrative officer of the City and shall be responsible to the City Council for the proper administration of all City matters. In fulfilling that administrative responsibility, the City Manager shall:
 - 1. Prepare agendas for all City Council meetings and be prepared to provide all information necessary to present the agenda to the Council for discussion and ultimate action.

2. Implement the general policies established by the City Council.
 3. See that all State laws and City ordinances are effectively enforced.
 4. Appoint, suspend, or remove department heads in accordance with the City's established policies and procedures, except as otherwise provided in this Charter.
 5. Attend all City Council meetings unless excused by the Council.
 6. Prepare the annual budget and submit it to the City Council in accordance with this Charter and be responsible for administration of the budget after its adoption.
 7. Prepare and submit to the City Council at the end of each fiscal year a complete report on the finances and administrative activity of the City for the preceding year.
 8. Submit to the City Council a monthly budget report; keep the Council informed regarding the City's financial condition and future needs; and make financial recommendations.
 9. Provide reports concerning the operation of City departments, offices, commissions, boards and agencies, as required by the City Council.
 10. Serve as officer for public records in accordance with the Texas Open Records Act, Chapter 552, Government Code, and the custodian of records under the Local Government Records Act, Subtitle C, Title 6, Local Government Code.
 11. If authorized by the City Council, sign any contract, conveyance or other document.
 12. Assist each board or commission that must make recommendations to the City Council regarding the expenditure of funds or capital improvements.
 13. Perform the duties prescribed by this Charter and other duties as may be required by the City Council, consistent with this Charter.
- (d) Acting City Manager: Within sixty (60) days after the City Manager takes office, the City Council, on recommendation of the City Manager, shall appoint a qualified administrative officer of the City to serve as acting City Manager in the manager's absence or disability. No member of the City Council may serve as acting City Manager.
- (e) All City Managers hired after the passage of this Charter shall be required to live within the Diboll City limits. This requirement must be satisfied by any future City Manager within 180 days of his or her employment. The City Council may grant an extension of the 180-day move-in requirement for an additional period of up to 180 days if approved by majority vote. All department heads hired after the passage of this Charter shall live within 30 miles of the Diboll City limits. The City Council can release or extend this 30-mile rule as to any particular department head upon majority vote of the Council based on good cause sworn.

Section 4.02. Municipal Court

- (a) Establishment: A municipal court for the City of Diboll is established and shall be maintained for the trial of misdemeanor offenses. The municipal court shall have all the powers and duties of municipal courts prescribed by State law.
- (b) Municipal judge and associate judges: The City Council shall appoint a municipal judge, who may or may not be an attorney licensed to practice law in Texas and shall fix the compensation for that office. The City Council, in its discretion, may appoint additional associate municipal judges, who shall not be required to be attorneys. All municipal judges shall serve at the will of the Council and shall receive compensation fixed by the City Council.
- (c) Municipal court clerk: The City Manager shall appoint a clerk of the municipal court and deputies, as needed, who shall have power to administer oaths and affidavits, make certificates, affix the seal of the court, and perform any of the usual and necessary acts performed by clerks of courts in issuing process and conducting the business of the court.
- (d) Finances: All costs, fees, special expenses, and fines imposed by the municipal court shall be deposited to the City treasury for the use and benefit of the City, except as otherwise required by State law.
- (e) Court Technology and Security: A court technology fund and a court security fund are hereby authorized as well as any other statutory enactments which may aid the operation of the municipal court or any other City department.

Section 4.03. City Attorney

The City Council shall appoint a City Attorney, who shall be licensed to practice law in Texas. The City Attorney shall serve at the will of the Council and shall receive compensation as fixed by the Council. The City Attorney shall be the legal advisor and attorney for the City and all its departments and officers in the conduct of City business and shall represent the City in all litigation; however, the City Council may retain special counsel at any time it deems necessary or advisable to represent the City, the City Council, the individuals making up the Council or the City Manager.

Section 4.04. City Secretary

The City Manager shall appoint the City Secretary and may appoint assistant City secretaries, as needed. The City Secretary shall serve at the will of the City Manager and shall perform the following duties:

1. Post or cause to be posted notice of City Council and City board or commission meetings, as required by the Texas Open Meetings Act, Chapter 551, Government Code.
2. Keep or cause to be kept minutes of City Council meetings and ensure that minutes of City board or commission meetings are kept.

3. Authenticate by personal signature and record or cause to be recorded in full, in a book indexed for this purpose, all ordinances and resolutions.
4. Serve as an agent of the officer of public records in accordance with the requirements of the Texas Open Records Act, Chapter 552, Government Code, and the records management officer under the Local Government Records Act, Subtitle C, Title 6, Local Government Code.
5. Perform all duties prescribed by this Charter.
6. Perform other duties as required by the City Council or as assigned by the City Manager.

Section 4.05. Personnel Policies

- (a) The City Manager, subject to the approval of the City Council, shall develop policies and procedures to govern the hearing and redress of employee grievances regarding wages, hours of work, and conditions of work and to provide for the annual evaluation of all City employees.
- (b) All full-time employees shall be required to complete an initial probationary period.
- (c) Any regular full-time employee who has been promoted or appointed from within the City ranks to a position as department head, assistant department head, or assistant City Manager may be demoted to his previous rank/classification by the City Manager with or without cause and without right to appeal to the City Council, provided the demotion occurs within 180 days of the promotion. However, if a department head, assistant department head, or assistant City Manager had not been employed by the City immediately prior to the time of appointment, demotion does not apply.
- (d) The Council is authorized to implement personnel policies to further the purposes and goals of the City.

Section 4.06. Administrative Departments

Administrative departments, other than those established by this Charter, may only be established by an ordinance adopted by the City Council; however, the Council shall not affect the administrative organization of the City until it has heard the recommendations of the City Manager regarding the changes.

Except as otherwise provided in this Charter, administrative departments shall be under the direction of the City Manager, who shall appoint the head of each administrative department. All department heads shall serve at the will of the City Manager. The head of each department shall have supervision and control over the department. Two or more departments may be headed by the same person, and the City Manager may head one or more departments.

ARTICLE V

NOMINATIONS AND ELECTIONS

Section 5.01. City Elections

- (a) Schedule: Regular City elections shall be held annually on the uniform election day designated by the State of Texas closest to the second Saturday in May.
- (b) Special elections: The City Council by resolution may order a special election to fill vacancies on the City Council and for bond issues, ordinances, charter amendments, recall, referendum, or other purposes deemed appropriate by the Council.
- (c) Registered voter list: A certified list of registered voters within the City, as prepared by the county tax assessor-collector, shall be maintained current by the City Secretary. The City Secretary shall permit any organization, group, or person who requests a list of qualified voters in the City to copy the current list.
- (d) Conduct and regulation of elections: All City elections shall be governed by the State Constitution, the Election Code, this Charter, and City ordinances and resolutions. The City Council by resolution shall fix the time and polling places for all elections, provide the means for conducting them, and appoint election officials.

Section 5.02. Filing for Office

- (a) Eligibility: A candidate for elective City office shall be at least twenty-one (21) years of age at the time of the commencement of the term to be filled in the election. The candidate must also be a registered voter of the City, who for at least twelve months prior to the election has resided within the corporate limits of the City, including territory annexed prior to the filing deadline.
- (b) Limitations: No candidate may file for more than one office or Council place at the same election.

Section 5.03. Official Ballots

Ballots in all City elections shall comply with the provisions of Chapter 52, Election Code.

Section 5.04. Canvassing

The returns of any municipal election shall be delivered from the election judges to the City Secretary and the City Manager at City Hall not later than twelve hours after the polls are closed, and the City Council shall canvass the returns and declare the results in accordance with state election law. The returns of every municipal election shall be recorded in the minutes of the meeting at which the vote is canvassed by totals for each candidate or "for" and "against" each issue submitted.

Section 5.05. Election

To be elected as a Council Member, a plurality is required. In the event of a tie between two or more candidates running for the same at large position, the Council shall call a runoff election in accordance with the Texas Election Code.

Section 5.06. Taking Office

The term of a candidate who is elected shall begin when he takes the oath of office, as required by the Texas Constitution. Unless unforeseen circumstances prevent it, the oath of office shall be taken within fourteen (14) days following the date of canvassing and declaring results or following the meeting at which the appointment was made. Before taking the oath of office, a candidate who is elected shall verify via signature that he or she has read this Charter or been made aware of its provisions and promises to abide by them. The oath shall be administered by the Mayor, Mayor pro-tem, City Secretary, or other person authorized by law to administer oaths. If a City board or commission member is elected or appointed to City office, the member is deemed to have resigned from the board or commission immediately upon being elected or appointed to City office.

ARTICLE VI

RECALL OF OFFICERS

Section 6.01. Scope of Recall

Any City official, whether elected to office 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.

Section 6.02. Recall Petition Required

Before submitting the question of recalling an official to the voters, a petition, signed by at least twenty (20%) percent of the qualified voters of the City registered to vote at the last regular City election and demanding the question be submitted, shall be filed with the City Secretary. Each person signing the petition shall personally sign his own name in ink or indelible pencil and the petition shall include each signer's voter's registration number, printed name as it appears on his or her voter registration, residence address, and the date of signing. The petition shall contain a general statement of the grounds for which removal is sought.

Section 6.03. Initiating Recall Petition

- (a) Affidavit: Any registered voter of the City may make and file with the City Secretary an affidavit containing the name of the officer whose removal is sought and a statement of the grounds for removal. The City Secretary shall immediately inform the officer and all other Council Members in writing that the affidavit has been filed and of the stated grounds for removal.

- (b) Petition forms: Within two (2) working days after the affidavit is filed, the City Secretary shall make available to registered voters, copies of petition blanks demanding that the question of removal of the officer be submitted to the voters. The City Secretary shall keep a sufficient supply of printed petition blanks on hand for distribution. The printed blanks shall bear the City Secretary's signature and shall be in the form prescribed in Section 6.04. When issued, blanks shall be numbered, dated, and indicate the name of the person to whom issued.
- (c) Records: The City Secretary shall maintain a record kept in the secretary's office of the name of registered voters to whom petition blanks were issued and the number issued to each voter.

Section 6.04. Recall Petition Form

A recall petition shall be addressed to the City Council of the City of Diboll and shall distinctly and specifically state each ground for removal in sufficient detail to give the officer who is the subject of the petition reasonable notice of the matters and things with which he is charged. A recall petition shall be in substantially the form that follows and may consist of one or more copies or lists circulated separately. Verifications as required below may be made by more than one petitioner and parts or copies of the petition may be filed separately by different persons.

"We, the undersigned voters of the City of Diboll, demand the question of removing (name of person) from the office of (name of office) be submitted to a vote of the registered voters of the City. The charges and specifications upon which this demand for removal is predicated are as follows:

NAME	SIGNATURE	VOTER'S REGISTRATION#	ADDRESS	DATE
_____	_____	_____	_____	_____

"The signature shall be verified by oath in the following form: STATE OF TEXAS
COUNTY OF ANGELINA

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 thereto was made in my presence on the 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.

(Signature) (Printed Name)

Sworn and subscribed to before me this day of _____, 20_____.

Notary Public State of Texas"

Section 6.05. Certification of Petition

To be valid, a signature must be placed on a petition no more than one hundred eighty-two (182) days after the original affidavit is filed with the City Secretary as described under Section 6.03. Certification procedures described in Section 7.04 shall be followed for recall petitions.

Section 6.06. Presentation to City Council

The City Secretary shall present a certified petition to the City Council at the next regular Council meeting following certification.

Section 6.07. Public Hearing on Recall Petition

Within five (5) days after a certified recall petition is presented to the City Council, the officer sought to be removed may request that a public hearing be held to allow him to present facts pertinent to the charges specified in the recall petition. The City Council shall order a public hearing to be held not fewer than five (5) days nor more than fifteen (15) days after receipt of a request for a public hearing.

Section 6.08. Calling Recall Election

If the officer whose removal is sought does not resign, the City Council shall order an election on the question to be held at the earliest possible date as allowed by State election law.

Section 6.09. Recall Election Results

If the majority of votes are against the recall of the person(s) named on the ballot, he shall continue in office for the remainder of the term, subject to recall as before. If the Council Member being recalled is from District 1, 2, 3 or 4, then only the voters in the affected District may vote on the recall of that official. If the Council Member being recalled is Place 5 or 6 (at large members) or the Mayor, then all registered voters in the City shall be entitled to vote on the recall issue. If a majority of the votes from the affected District are for the recall of that Council person (Places 1, 2, 3, or 4), then, regardless of any technical defects in the recall position, that Council Member shall be deemed removed from office and the vacancy shall be filled as required by Section 3.07.

If a majority of the votes from the City as a whole vote in favor of the recall of the Mayor or Council Members from Place 5 or Place 6, then, regardless of any technical defects in the recall petition, that Council Member or Mayor (as named on the ballot) shall be deemed removed from office and the vacancy shall be filled as required by Section 3.07. If any Council Member or the Mayor is removed from office by recall election, then that person shall not be eligible to succeed himself, nor shall he be a candidate for any City elective office during the two-year period following the date of the election at which he was removed from office.

Section 6.10. Restrictions on Recall

No recall petition may be filed against a City officer during the six (6) months following his election or appointment or during the one-year period following an election for that officer's recall.

Section 6.11. Failure to Call Election

If a certified petition for recall is presented to the City Council and it fails, or the Council refuses to accept the petition, or call the required election, or discharge any other duty pertaining to this article, the Senior District Judge of Angelina County, Texas, shall discharge those duties.

ARTICLE VII

REFERENDUM

Section 7.01. General Authority

- (a) Referendum: The qualified voters of the City shall have the power to require Council reconsideration of any adopted ordinance, but this power does not extend to an ordinance relating to appropriation of money, levy of taxes, or zoning; nor does referendum authority extend to the budget, the capital program, an emergency ordinance, or bonds issued pursuant to an election. If the Council fails to repeal an ordinance so reconsidered, the voters may approve or reject it at a City election.
- (b) Nonbinding referendum: The qualified voters of the City may petition the Council to hold a nonbinding referendum election on any issue that affects the City, but this power does not extend to an ordinance relating to appropriation of money, levy of taxes, zoning, the budget, the capital program, an emergency ordinance, or bonds issued pursuant to another election. The City Council is not required to call an election if a petition for a nonbinding referendum is submitted. The City Council may call a nonbinding referendum election on any issue on its own motion.

Section 7.02. Petitioners' Committee and Affidavit

Any five (5) qualified voters may begin referendum or nonbinding referendum proceedings by filing an affidavit with the City Secretary stating that they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form. The affidavit shall state their names and addresses, their voter's registration numbers, and the address or addresses to which all notices to the committee shall be sent. The affidavit shall cite the ordinance sought to be reconsidered, or the question proposed to be submitted to the voters at a nonbinding referendum election. When the affidavit is filed, the City Secretary immediately shall issue the appropriate petition blanks to the committee.

Section 7.03. Petitions

- (a) Number of signatures: Referendum and nonbinding referendum petitions must be signed by least twenty (20%) percent of the number of qualified voters registered to vote at the last regular City election.
- (b) Form and content: All papers of a petition shall be of uniform size and style and shall be assembled as one instrument for filing. Each person signing the petition shall personally sign his own name in ink or indelible pencil and the petition shall also include each signer's name, voter's registration number, residence address and the date of signing. Petitions shall contain or have attached to them throughout their circulation the full text of the ordinance proposed or sought to be reconsidered, or the question proposed to be submitted at a nonbinding referendum election.
- (c) Circulator's affidavit: When filed, each page of the petition shall have attached to it an affidavit executed by the circulator attesting (1) that he personally circulated the page, (2) the number of signatures on the page, (3) that all the signatures were made in his presence, (4) that he believes them to be the genuine signatures of the persons whose names they purport to be, and (5) that each signer had an opportunity before signing to read the full text of the ordinance or proposition at issue.
- (d) Time for filing referendum petitions: Petitions must be filed within one hundred and eighty (180) days after issuance of the appropriate blanks to the petitioners' committee. Additional time as specified in Section 7.04 shall be allowed for amending petitions.

Section 7.04. Determining Sufficiency of Petition

- (a) Certificate of City Secretary: Within twenty (20) days after a petition is filed, the City Secretary shall complete a certificate as to its sufficiency. If the petition is found to be insufficient, the certificate shall specify the particulars of its defects. When the certification is complete, the City Secretary shall immediately send a copy of the certificate to each member of the petitioners' committee by certified mail.
- (b) Sufficient petition, final determination: If the petition is certified sufficient, the City Secretary shall present the certificate to the City Council at the next regular Council meeting. The certificate shall be a final determination of the sufficiency of the petition.
- (c) Insufficient petition, final determination: If the petition is certified insufficient and the petitioners' committee does not pursue its options under subsections (d) and (e), the City Secretary shall present the certificate to the City Council at the next regular Council meeting. The certificate shall be a final determination of the insufficiency of the petition.
- (d) Insufficient petition, appeal: If the petition is certified insufficient and the petitioners' committee does not file notice of intention to amend as provided in subsection (e) within two (2) working days after receipt of the certificate, the committee may file a request that the City Council review the certificate. The Council shall review the certificate at its next regular meeting after the request is filed and shall approve or disapprove the certificate. The Council's determination shall be a final determination of the sufficiency of the petition.

- (e) Insufficient petition, amendment: If the petition is certified insufficient because it lacks the required number of valid signatures, it may be amended one time only. The petitioners' committee shall file notice that it intends to amend the petition with the City Secretary within two (2) working days after receipt of the certificate. A supplementary petition with additional signatures and in a form that complies with Sections 7.03 (b) and (c) must be filed within two (2) weeks after receipt of the certificate.

Within five (5) days after an amended petition is filed, the City secretary shall complete a certificate as to its sufficiency. Within twenty-four (24) hours of completion, the City secretary shall send a copy of the certificate to each member of the petitioners' committee by certified mail. The final determination of the sufficiency of an amended petition shall be as prescribed by subsections (b), (c), and (d) of this section. An amended petition shall not be amended again.

- (l) Court review, new petition: A final determination of the sufficiency of a petition is subject to judicial review. A final determination that the petition is insufficient, even if sustained by a court, shall prevent the filing of a new petition for the same purpose for a period of one (1) year from the date insufficiency is found.

Section 7.05. Effect of Ordinance Suspended

If a referendum petition is determined to be sufficient, the ordinance that is the subject of the petition shall be suspended until the Council repeals or amends the ordinance as requested by the petition or until the ordinance is upheld by election. It is understood that variances granted by the Council shall not be subject to the referendum process.

Section 7.06. Action on Petitions

- (a) Council Action: Within thirty (30) days after the date a referendum petition is certified as sufficient, the City Council shall either.
 - (1) Repeal a referred ordinance, or
 - (2) Call an election on the referred ordinance according to subsection (b).
- (b) Election or referred ordinance: An election shall be held at the next uniform election date in accordance with State law but not earlier than thirty (30) days after the Council calls the election. If a regular City election falls within the specified period, the ordinance election shall be included on the ballot. Copies of the referred ordinance shall be available at the polls. Special elections for referred ordinances shall not be held more often than once per year. Further, if a referred ordinance is sustained in an election, neither that ordinance nor one that is substantially the same may be the subject of a referendum petition within two years from the date of that election.
- (c) Publication of referred ordinance: The City Secretary shall publish the referred ordinance in the City's official newspaper at least once within the fifteen (15) days preceding the election. The referred ordinance shall also be posted at City hall for at least fifteen (15) days preceding the election, and copies shall be available at City hall upon request.

- (d) Petition withdrawn: The petitioners' committee may withdraw a referendum petition at any time before a final determination that it is sufficient by filing a request to withdraw with the City Secretary. The request shall be signed by at least four (4) members of the petitioners' committee. When a request is filed, the petition shall have no further force or effect and all related proceedings shall be terminated.

Section 7.07. Election Results

- (a) Referendum: If a majority of votes cast are against the referred ordinance, it shall be considered repealed, and the repeal shall be effective from the date election results are certified. If a majority of votes cast are in favor of the referred ordinance, it shall remain in effect and the referendum petition shall become void.

- (b) Readoption of referred ordinance: An ordinance repealed by referendum shall not be reenacted for two (2) years from the date of its repeal.

ARTICLE VIII

BOARDS AND COMMISSIONS

Section 8.01. Boards and Commissions in General

In addition to the boards and commissions established by this Charter, the City Council by ordinance may establish any boards and commissions it deems necessary for the conduct of City business and the management of municipal affairs. The functions, authority, and responsibilities of such boards and commissions shall be set out in the ordinances establishing them. All boards and commissions in existence at the time this Charter is adopted shall continue according to the ordinances or other acts under which they were created, except as otherwise provided in this Charter. The ordinances (creating the boards and commissions currently in existence) shall remain in effect until the City Council abolishes, modifies, or alters the ordinances or acts under which they exist. Notwithstanding any other provision of this Charter, the City Council retains full authority over the budget, appropriation of funds, expenditures, purchase and sale of property, and accounting procedures for all boards and commissions, consistent with this Charter and the State Constitution and laws.

Section 8.02. Membership Qualifications

Except as otherwise provided in this Charter, each candidate for appointment as a member of a board or commission shall be a registered voter of the City, who is at least twenty-one (21) years of age at the commencement of the appointment, who has resided within the corporate City limits, or within territory annexed prior to the appointment, for at least twelve (12) months preceding the appointment. Board or commission members shall serve without compensation and shall not be employed by or hold any other position in City government. In addition to any

other requirements prescribed by the Council, members shall maintain the qualifications established by this section while in office.

Section 8.03. Membership Disqualification

No member of a board or commission shall remain in his position after being elected or appointed to City office.

Section 8.04. Term Limits

Members of a board or commission shall not be limited to any number of terms in office.

Section 8.05. Vacancies

All candidates of Boards or Commissions shall meet eligibility standards as stated in Section 5.02. Filing for Office (a). In addition to attendance requirements, members of Boards or Commissions shall be held to standards in Section 3.08. Removal from Office (a) 2 and 3.

Section 8.06. Officers

Each board or commission must annually elect a chairman and a vice-chairman and may elect a secretary.

Section 8.07. Open Meetings

All City boards and commissions and any of their subcommittees containing one or more board or commission members shall give notice of and conduct their meetings in accordance with the Texas Open Meetings Act, Chapter 551, Government Code.

Section 8.08. Planning Commission

- (a) Composition and term: The City Council shall appoint a planning and zoning commission of at least five (5) members who shall be appointed to two-year terms and shall serve until their successors are appointed and qualified.
- (b) Rules of procedure: The commission shall establish its own rules of procedure, which shall require that a quorum consisting of at least three (3) members of the commission and that an affirmative vote of a majority of those present shall be necessary to act on pending questions. The chairman shall be permitted to vote on any question.
- (c) Powers and duties: The commission shall exercise the following powers:

1. Make, amend, extend, and add to the comprehensive plan for the physical development of the City, and from time to time (upon request) recommend a comprehensive plan to the City Council for approval.
2. Approve or disapprove plats of proposed subdivisions submitted to the City.

In considering plats, the commission shall require the proposed subdivision to meet, so far as is practicable, all the standards of layout and street and sidewalk construction required by existing City regulations. Further, it shall require restriction on the use of the property consistent with the restrictions set out in existing City regulations and zoning requirements within the City's corporate limits.
3. Draft rules and regulations governing platting and subdividing of land that are consistent with the State constitution and laws and recommend them to the City Council for adoption.
4. Recommend an annexation plan to the City Council as deemed necessary or upon request by the City Manager or City Council.
5. Meet at least three (3) times per year.
6. Perform other duties and be vested with other powers as the City Council shall from time to time prescribe.

(d) Liaison with City Council: The City Manager or his representative may attend planning commission meetings and shall serve as liaison between the commission and the City Council.

Section 8.09. Board of Adjustment

The City Council of Diboll shall serve as the Board of Adjustment.

- (a) Composition and term: If at any time the City Council votes to cease serving in such capacity and to establish a board of adjustment, then the City Council shall appoint a board of adjustment consisting of five (5) regular members to serve two-year terms. Alternate members may be appointed by the Council and may participate in meetings and vote on matters in the absence of regular members when requested to do so by the City Manager or City Manager's designee. The City Council may remove a member for cause set out in a written charge and as determined by the Council after a public hearing on the charges. The City Council shall set the qualifications for these members.
- (b) Rules of procedure: The presiding officer shall call meetings when requested and may administer oaths to witnesses and compel attendance of witnesses. Cases shall be heard in open meeting by at least four (4) members and not more than five (5) members. The minutes of meetings shall be public records of the board's examinations, official actions, and other proceedings and shall reflect each member's vote, absence, or failure to vote on each question.
- (c) Powers: The board of adjustment shall exercise the following authority:

1. Hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in enforcing zoning laws or ordinances.
 2. Hear and decide special exceptions to terms of zoning ordinances when the ordinance so requires, provided that exceptions granted shall be consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance.
 3. In specific cases, authorize a variance from the terms of a zoning ordinance, provided that the variance is not contrary to the public interest and that, due to special conditions, literal enforcement of the ordinance would result in unnecessary hardship. In authorizing variances, the board shall ensure that the spirit of the ordinance is observed and substantial justice is done.
 4. Hear and decide other matters authorized by City zoning ordinances.
- (d) Appeals procedure: Appeals to the board of adjustment shall be conducted in accordance with the requirements of § 211.010, Local Government Code.
- (e) Board determination: The board may reverse or affirm, wholly or in part, or may modify the order or decision that is the subject of an appeal under subsection (c)(1). The concurring vote of at least four (4) members is necessary to: reverse an order, requirement, decision, or determination of an administrative official; decide in favor of an applicant on a matter which the board is required to pass under the zoning ordinance; or authorize a variation from the term of the zoning ordinance.
- (f) Judicial review: Any person dissatisfied with the board of adjustment's decision on an appeal may appeal to the City Council and thereafter (if unsatisfied) may petition a court of record for further action in accordance with the requirements of § 211.011 Local Government Code.

ARTICLE IX

BUDGET AND FINANCIAL ADMINISTRATION

Section 9.01. Fiscal Year

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

Section 9.02. Public Record

The budget shall be a public record and copies shall be made available to the public upon request.

Section 9.03. Annual Budget

- (a) **Content:** The budget shall provide a complete financial plan of all City funds and activities and, except as required by law or this Charter, shall be in a form that the City Manager deems desirable or that the Council may require. A budget message explaining the budget both in fiscal terms and in terms of City programs shall be submitted with the budget. The budget message shall (1) outline the proposed financial policies of the City for the coming fiscal year, (2) describe the important features of the budget, (3) indicate any major changes from the current year in financial policies, expenditures, and revenues, with reasons for such changes, (4) summarize the City's debt position, and (5) include other material as the City Manager deems necessary or desirable.

The budget shall begin with a clear general summary of its contents and shall show in detail all estimated income, based on the proposed property tax levy and all proposed expenditures, including debt service, for the coming fiscal year. The proposed budget expenditures shall not exceed the total of estimated income and any fund balances available from prior years. For every budget adopted after the 2008-2009 fiscal year budget, the adopted budget must include an unencumbered general fund balance that is at least sufficient to cover one month of the City's budgeted general fund operation and maintenance expenses. This fund balance may be used for emergency appropriations in accordance with Section 9.04(b). The budget shall be arranged to show comparative figures for the current fiscal year's actual and estimated income and expenditures, the preceding fiscal year's actual income and expenditures, and the estimate of income and expenditures for the budgeted year.

The budget shall include any and all information required by the City Council.

- (b) **Submission:** On or before the fifteenth day of August of each year, the manager shall submit to the Council a proposed budget. The Council shall review the proposed budget and revise it as the Council deems appropriate prior to general circulation for public hearing.
- (c) **Public notice and hearing:** The Council shall post in the City hall and publish in the official newspaper a general summary of the proposed budget and a notice stating the times and places where copies of the message and budget are available for inspection by the public and the time and place for a public hearing on the budget. The public hearing must be held not fewer than five (5) or more than thirty (30) days after publication of the notice.
- (d) **Amendment before adoption:** After the public hearing, the Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for estimated cash deficit; however, no budget amendment shall increase the authorized expenditures to an amount greater than the total of estimated income, plus funds available from prior years.
- (e) **Adoption:** The Council shall adopt its annual budget by ordinance, by the fifteenth (15) day of September, or as soon thereafter as practical. Adoption of the budget shall require an affirmative vote of at least a majority of all members of the Council. Adoption of the budget shall constitute appropriations of the amounts specified as expenditures from the funds indicated.

Section 9.04. Amendments After Adoption

- (a) Supplemental appropriations: If, during the fiscal year, the City Manager certifies that there are revenues available for appropriation in excess of those estimated in the budget, the Council by ordinance may make supplemental appropriations for the year up to the amount of the excess.
- (b) Emergency appropriations: To meet a public emergency created by a natural disaster or man-made calamity affecting life, health, property, or the public peace, the Council may make emergency appropriations by emergency ordinance in accordance with the provisions of this Charter. If there are no available unappropriated revenues or general fund balances to meet such appropriations, the Council may by emergency ordinance authorize the issuance of renewable emergency notes sufficient to fund the appropriation.
- (c) Reduction of appropriations: If at any time during the fiscal year it appears probable to the City Manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him, and his recommendations for any other steps to be taken. The Council shall take further action as it deems necessary to prevent or minimize any deficit and, for that purpose, it may by ordinance reduce one or more appropriations.
- (d) Transfer of appropriations: At any time during the fiscal year, the City Manager may transfer part or all of any unencumbered appropriation balance among programs within a department, division, or office. Upon written request by the City Manager, the Council by ordinance may transfer part or all of any unencumbered appropriation balance from one department, office, or agency to another.
- (e) Limitations: No appropriation for debt service may be reduced or transferred. No appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance.
- (f) Effective date: Supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption of the enacting ordinance.

Section 9.05. Borrowing

- (a) Borrowing: The City shall have the power, except as prohibited by law, to borrow money by whatever method the Council deems to be in the public interest. The methods, restrictions, and notices for such borrowing, if not permitted in this Charter, shall be empowered or restricted by State law.
- (b) 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.

- (c) Revenue bonds: The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending, or repairing 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 revenue bonds to evidence the obligation. Revenue bonds shall be a charge upon and payable from the properties, or interest pledged in the bonds, or the income from the bonds, or both. Holders of the revenue bonds shall never have the right to demand payment out of monies raised or to be raised by taxation. All revenue bonds shall be issued in conformity with the laws of the State of Texas.
- (d) Bonds incontestable: All bonds of the City, after they have been issued, sold, and delivered to the purchaser, shall be incontestable. All bonds issued to refund in exchange for outstanding bonds previously issued shall, after the exchange, be incontestable.
- (e) Election to authorize bonds: Bonds payable from ad valorem taxes, other than refunding bonds, shall not be issued unless the bonds have been authorized by majority vote at an election held for that purpose.
- (f) Ordinance authorizing borrowing: A copy of the proposed ordinance shall be furnished to each member of the City Council, to the City Attorney, and to any citizen, upon request to the City Secretary, at least seven (7) days before the date of the meeting at which the ordinance is to be considered. Any ordinance pertaining to borrowing may be adopted and finally passed at the meeting at which it is introduced.
- (g) Public hearing before ordinance authorizing borrowing is adopted: The City Council must hold a public hearing before adopting an ordinance authorizing borrowing money. The City must publish notice of the public hearing at least one week before the public hearing unless a public emergency exists that requires immediate action by the City Council.

Section 9.06. Lapse of Appropriations

Every unexpended or unencumbered appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any appropriation shall be deemed abandoned if three (3) years pass without any disbursement from or encumbrance of the appropriation.

Section 9.07. Administration of Budget

- (a) Payments and obligations prohibited: No payment shall be made or obligation incurred against any allotment or appropriation unless the manager or his designee certifies there is a sufficient unencumbered balance in the allotment or appropriation, and that sufficient funds are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any payment authorized or obligation incurred in violation of this provision shall be void; any payment made in violation of this provision shall be illegal. Making unauthorized payments or obligations shall be cause for removal of any officer who knowingly authorized or made such a payment or incurred such an obligation. Furthermore, the person making the payment shall also

be liable to the City for any amount illegally paid. However, this prohibition shall not be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds, time warrants, certificates of indebtedness, or certificates of obligation, or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that the action is made or approved by ordinance.

- (b) Independent audit: At the close of each fiscal year, and at any other times deemed necessary, the Council shall call for an independent audit of all City accounts to be conducted by a certified public accountant. The certified public accountant selected shall have no personal interest, direct or indirect, in the City's financial affairs, or in any of its officers and, in any event, the same certified public accountant shall not perform the City's audit for more than five (5) consecutive years. The audit shall contain all information required by any covenants contained in any bond ordinance of the City. Upon completion of the audit, and presentation of the auditor's report to the City Council, the summary of the audit results shall be made available in the City Secretary's office as a public record, and a copy of the audit shall also be forwarded to each of the two primary bond rating agencies, as determined by the City's financial advisor, at their principal offices.

Section 9.08. Taxation

The City Council shall annually establish the annual rate of taxation of the City, and City taxes shall be levied and collected on all property taxable by the City which is not exempt from taxation under the State constitution or State law. The Council shall adopt a tax levy ordinance, by the 15th day of September of each year, or as soon after the certification of the appraisal rolls of the City as practical. Failure of the Council to enact a tax levy ordinance for a particular year shall not invalidate the collection of taxes for that year and, in such event, the tax levy ordinance last enacted shall remain in effect until the next tax levy ordinance is adopted by the Council.

Section 9.09. Sales and Purchasing

All sales of City property, 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 9.10. Disbursements to Other Agencies or Organizations

- (a) Appropriations: As part of the budget process, the City may appropriate funds to other agencies or organizations which provide services to the citizens of the City.
- (b) Audits of Other Agencies or Organizations: The City may annually audit the affairs of any other agency receiving an appropriation from the City. Audits shall include all collections made on behalf of the City. An audit report shall be made on every audit. Special audits of the affairs of any such organization or agency may be made whenever the Mayor (based on a majority vote of the City Council) shall call upon the City staff to make them. Copies of all audit reports made shall be promptly submitted to the Mayor and the Council.

- (c) Recommendations: The City shall from time to time make recommendations to the several organizations and agencies receiving appropriations from the City for the improved efficiency and economy of their operations involving the expenditure of City funds.

ARTICLE X

FRANCHISES AND PUBLIC UTILITIES

Section 10.01. Limits on Transfer of Use of Public Property

The right of control or use of City public property can be transferred only by ordinance. No act or omission by the City Council or by any officer or agent of the City shall be construed to grant, renew, extend, or amend any right, franchise, or easement affecting City public property, except in accordance with this Charter.

Section 10.02. Granting Franchises

The City Council may grant, renew, or extend franchises of public utilities operating in the City. Franchises may be amended by the Council, with the agreement of the franchise holder. All franchises shall be for a definite term of not more than twenty (20) years.

Section 10.03. Enacting Franchise Ordinances

An ordinance granting, renewing, extending, or amending a public utility franchise shall be considered at a regularly called City Council meeting.

Section 10.04. Limit on Transferring Franchise

Any transfer or assignment of a public or private utility franchise shall not be effective until approved by ordinance of the City Council.

Section 10.05. Regulating Franchises

The City Council has the right to regulate the grant, renewal, extension, or amendment of public utility franchises in the following manner, regardless of whether the ordinance granting the franchise provides for it:

1. Forfeiting the franchise by ordinance for failure of the franchise holder to comply with the terms of the franchise. Before exercising this right, the Council shall provide written notice to the franchise holder stating how the holder has failed to comply and shall set a reasonable time for correcting the failure. Forfeiture will occur only after a hearing and expiration of a reasonable time for correction.
2. Imposing reasonable regulation to ensure safe, efficient, and continuous service to the public.

3. Requiring expansion, enlargement, and improvement of plant and facilities necessary to provide adequate service to the public.
4. Requiring franchise holders to furnish, at no cost to the City, full information regarding the location and precise description of all the holder's facilities in, over, or under the City and regulating and controlling the location, relocation, and removal of the facilities.
5. Collecting from public utilities in the City a proportionate part of increased City cost of operations and services attributable to the utility's occupancy or use of public property and required as a result of damage to or disturbance of public property caused by the utility and, compelling the utility to make and bear the cost of repairs or other operations made necessary by the utility's occupancy or use of, or damage to or disturbance of, public or private property.
6. Requiring one franchise holder to allow other holders to use its facilities, if the City Council considers that joint use is in the public interest. The owner may impose reasonable terms of joint use and be paid a reasonable rental by the other holders; however, the inability of franchise holders to agree on terms and rentals shall be an excuse for failure to comply with a joint use requirement.
7. Requiring franchise holders to keep records that accurately reflect the value of their own or other property used in rendering its service to the public and that reflect the franchise holder's expenses, receipts, and profits of all kinds.
8. Examining and auditing the franchise holder's accounts and other records.
9. Requiring reports on the utility's operations in the form and containing the information directed by the City Council.

Section 10.06. Nonexclusive Grants

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

Section 10.07. Utility Regulation

The City Council may regulate the operation, services, rates, charges, and fares of public utilities operating in the City by ordinance and in accordance with State and federal law. Rates may only be adopted after reasonable notice and hearing.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01. Public Records

All records of every office, department, or agency of the City shall be open to inspection by the public, except as may be withheld from public disclosure under the Texas Open Records Act, Chapter 552, Government Code. During regular office hours, any person shall have the right to examine and make copies of any public records of the City in accordance with reasonable rules and regulations prescribed by the City Council.

Section 11.02. Official Newspaper

The City Council by resolution shall designate a public newspaper of general circulation in Angelina County as the City's official newspaper, and it shall continue to serve as the City's official newspaper until another is designated. All ordinances, notices, and other matters required to be published by this Charter, City ordinances, or the State constitution or laws shall be published in the City's official newspaper.

Section 11.03. Nepotism

Except as permitted by Chapter 573, Government Code, no officer of the City, nor any member of any City board or commission, shall participate in the deliberation of or voting upon the appointment or confirmation of any person related to them within the second degree by affinity, or within the third degree by consanguinity to any office, position, clerkship, employment, or duty of the City.

Section 11.04. Nondiscrimination

The City shall not discriminate in the provision of and access to City facilities, programs, and services because of a person's race, color, religion, sex, national origin, age, or disability.

Section 11.05. Conflict of Interest

All elected or appointed members of the City Council or of any City board or commission shall be subject to the provisions of Chapter 171, Local Government Code, regarding conflict of interest and, by affidavit filed with the City Secretary, shall disclose the nature and extent of any substantial interest in any business entity or in any real property, as defined and required by that chapter, which would be affected by any official action taken by the body of which such person is a member, and shall abstain in from any discussion or vote on any such matter.

Section 11.06. Assignment, Execution, and Garnishment

Neither the real nor the personal property of the City shall be liable to be sold or appropriated under any writ of execution or cost bill. No City funds, in the hands of any person, firm, or corporation, shall be liable to garnishment, attachment, or sequestration; nor shall the City be liable to garnishment on account of any debt it may owe or funds or property it may have on hand

or owe to any person. Neither the City nor any of its officers or agents shall be required to answer any writ of garnishment. The City shall, however, recognize any assignment of wages or funds by its employees, agents, or contractors.

Section 11.07. Power to Settle Claims

The City Council shall have the authority to compromise and settle any and all claims and suits in favor of or against the City, except suits by the City to recover delinquent taxes.

Section 11.08. Charter Construction

- (a) General rule: This Charter 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 as expressly prohibited by this Charter, each and every power under the Constitution of Texas which would be competent for the people of Diboll to expressly grant to the City shall be construed to be granted to the City by this Charter.

Section 11.09. Charter Amendment

This Charter may be amended in accordance with the laws of the State of Texas.

Section 11.10. Charter Review

- (a) The City Council may appoint a Charter Review Committee of seven (7) citizens of the City once in any five-year period. City Council Members from Places 1, 2, 3, and 4 shall appoint a citizen from their district, and the Mayor and the City Council Members for Places 5 and 6, shall each appoint a citizen of the City at large.
- (b) The Charter Review Committee shall:
 - 1. Inquire into the operation of the City government under the Charter and determine whether any provisions require revision. To this end, public hearings may be held. The Committee may compel the attendance of any officer or employee of the City and require the submission of any City records;
 - 2. Propose any recommendations it deems desirable to ensure compliance with the Charter of the City government;
 - 3. Report its findings and present its recommendations to the City Council.
- (c) The City Council shall receive a comprehensive summary of the report presented by the Committee, shall consider any recommendations made and may order any amendments suggested to be submitted to the voters of the City in the manner provided by State law as now written or hereafter amended.

- (d) The term of office of the Committee shall be for no more than six (6) months, at the end of which time a report shall be presented to the City Council and all records of proceedings of the Committee shall be filed with the City Secretary and become a public record.
- (e) Notwithstanding anything herein to the contrary, the Council may appoint a Charter Committee at any time they deem necessary to address needed revisions to this Charter.

Section 11.11 Pending Matters and Preservation of Rights

All codes, ordinances, resolutions, rules, and regulations in force on the effective dates of this Charter, and not in conflict with this Charter, shall remain in force until altered, amended, or repealed by the Council. All taxes, assessments, liens, encumbrances, and demands, of or against the City, that are fixed or established before the effective date of this Charter, or for which the proceedings to fix or establish have begun at that date, shall be valid when properly fixed or established, either under the law in force at the time of the beginning of such proceedings or under the law after the adoption of this Charter.

All rights, claims, actions, orders, ordinances, resolutions, contracts, franchises, and legal or administrative proceedings existing before the adoption of this Charter shall continue except as modified by the charter, and shall be maintained, carried on, or dealt with by the City department, office, or agency appropriate under this Charter. All renewals or new rights, claims, actions, orders, contracts, franchises, and legal or administrative proceedings arising after the adoption of this Charter shall be conducted pursuant to this Charter.

Section 11.12 Transfer of Powers, Duties, Property, and Records

- (a) Departments and agencies: If a City department, office, or agency is abolished by this Charter, the powers and duties of that department or agency shall be transferred to the departments, offices, or agencies assuming the respective powers and duties, if the powers or duties are discontinued or are divided among more than one department, office, or agency, or if a conflict arises concerning the transfer, the property, records, and equipment shall be transferred to departments, offices, or agencies designated by the Council.
- (b) Property and records: Property, records, and equipment of all City departments, offices, or agencies existing before this Charter is adopted shall be transferred to the departments, offices, or agencies assuming the respective powers and duties. If the powers or duties are discontinued or are divided among more than one department, office, or agency, or of a conflict arises concerning the transfer, the property, records, and equipment shall be transferred to departments, offices, or agencies designated by the Council.

Section 11.13 Severability

If any section or part of a section of this Charter is held to be invalid or unconstitutional by a court of competent jurisdiction, that holding shall not violate or impair the validity, force, or effect of any other section or part of a section of this Charter.

Section 11.14 Continuance of Contracts

All City contracts currently in existence will not be affected by the approval of this Charter by the voters.

Section 11.15 Disaster Clause

In case of a disaster when legal quorum of elected Council Members cannot otherwise be assembled due to multiple deaths or injuries, the surviving member or members of the elected Council, or highest surviving City official, if no elected official remains, must, within twenty-four (24) hours of such disaster, request the highest surviving officers of the Board of Trustees of the Diboll Independent School District and the County Judge of Angelina County to appoint a commission to act during the emergency and call a City election within fifteen (15) days of such disaster for election of a required quorum, if for good reason it is known a quorum of the present Council will never again meet.

Section 11.16 Liability Insurance Coverage for City Council and City Officials

The City of Diboll shall secure and pay in full for a liability policy to provide general liability coverage against suit for the Mayor and all members of the City Council, as well as the City Manager and City Secretary. This coverage is extended to provide protection for the above-named office/position holders while in the execution of the official duties.

Certified as the current Diboll City Charter currently in effect as of this the ____ day of _____, 20____.

City Secretary, City of Diboll, Texas