

CITY OF BELLAIRE TEXAS

CHARTER REVIEW COMMISSION

FEBRUARY 2, 2017

Council Conference Room

Regular Session - Revised

7:00 PM

7008 SOUTH RICE AVENUE
BELLAIRE, TX 77401



Chair

Neil Verma

Vice Chair

Jill Almaguer

Member

James P. Avioli, Sr.

Member

Doug Christians

Member

Aaron Swerdlin

Council Liaison

Trisha S. Pollard

Staff Liaison

Alan P. Petrov

Facilitator

Charlie Zech

REGULAR MEETING – 7:00 P.M.

A Regular Meeting of the Charter Review Commission of the City of Bellaire, Texas ("CRC"), will be held at 7:00 p.m. on Thursday, February 2, 2017, in the Council Conference Room, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401-4411, for the following purpose(s):

A. Call to Order and Announcement of a Quorum – Neil Verma, Chair.**B. Approval of Minutes:**

Consideration of and possible action regarding the approval of the minutes of the Regular Meeting of the CRC held on Tuesday, January 17, 2017.

C. Public Comments.

Note: Public Comments are limited to three (3) minutes per person.

D. Council Liaison Comments – Trisha S. Pollard, Council Member.**E. Staff Liaison Comments – Alan P. Petrov, City Attorney.****F. Commission Business:**

Discussion and possible action on the following topic(s):

1. Review of proposed edits discussed at the last meeting of the CRC (Article I and Article II, Sections 1 through 14 15);
2. Review of Article II, Section 16, through Article V; and
3. ~~Proposed Charter Review Schedule.~~

G. New Business:

Any CRC member who wishes to bring New Business to the attention of the CRC shall do so at this time.

Note: Consideration of New Business shall be for the limited purpose of determining whether the matter is appropriate for inclusion on a future Agenda for the CRC or for referral to the staff liaison or facilitator for investigation.

H. Public Comments.

Note: Public Comments are limited to three (3) minutes per person.

I. Next Meeting:

Tuesday, February 21, 2017 – 7:00 p.m.

J. Adjourn.

CERTIFICATE

I, the undersigned authority, do hereby certify that the revised agenda set forth on the preceding page regarding a Regular Meeting of the Charter Review Commission of the City of Bellaire, Texas, to be held on Thursday, February 2, 2017, was posted on the City's official bulletin board located on an outside west wall of City Hall, 7008 South Rice Avenue, Bellaire, Texas, a place convenient and readily accessible to the general public at all times, and was posted on the following date at the stated time: Monday, January 30, 2017, at _____ a.m./p.m.

Tracy L. Dutton, TRMC
City Clerk
City of Bellaire, Texas

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City of Bellaire's ADA Coordinator, Yolanda Williams, at (713) 662-8270 or FAX (713) 662-8212.

CERTIFICATE OF REMOVAL

I, the undersigned authority, do hereby certify that the revised agenda set forth on the preceding page regarding a Regular Meeting of the Charter Review Commission of the City of Bellaire, Texas, to be held on Thursday, February 2, 2017, was removed by me from the City's official bulletin board located on an outside west wall of City Hall, 7008 South Rice Avenue, Bellaire, Texas, on the _____ day of _____, 2017, at _____ a.m./p.m. I hereby certify further that said revised agenda remained posted continuously for at least 72 hours preceding the scheduled time of said Regular Meeting.

Tracy L. Dutton, TRMC
City Clerk
City of Bellaire, Texas



Charter Review Commission

February 2, 2017

Agenda Packet



Charter Review Commission

February 2, 2017

Agenda Item B.

**Minutes of the Regular Meeting
held on Tuesday, January 17, 2017**

Minutes of the Bellaire Charter Review Commission
Tuesday, January 17, 2017 at 7:00 p.m.
Council Conference Room
7008 South Rice Avenue
Bellaire, Texas 77401

Commission Members:

Neil Verma, Chair
Jill Almaguer, Vice Chair
James P. Avioli, Sr.
Doug Christians
Aaron Swerdlin

All Members of the Bellaire Charter Review Commission (the "Commission") were present. Also present were the following: Trisha Pollard, Council Liaison, Zachary A. Petrov, Assistant City Attorney, Charlie Zech, Facilitator, Lynn McBee, Robert Riquelmy, and Richard Feanke (Mr. Riquelmy and Mr. Feanke left shortly after the first Public Comment).

- A. Call to Order and Announcement of Quorum.** Mr. Verma called the meeting to Order at 7:03 p.m. and announced that a quorum consisting of all members was present.
- B. Approval of the Minutes of Thursday, January 5, 2017.** The Commission members considered approval of the minutes of Thursday, January 5, 2017, which had been previously distributed.

A motion was made by Mr. Christians and seconded by Mr. Swerdlin to approve the minutes of Thursday, January 5, 2017. All Commission members present voted in favor of the motion.

C. Public Comment.

1. Mr. Riquelmy suggested that the meetings of the Commission be held in the Council Chamber.
2. Mr. Feanke suggested that the City creates a team to determine the critical needs of the City when deciding how to allocate City funds.
3. Ms. McBee requested a few changes to the Commission's Rules of Procedures.

D. Council Liaison Comments. Council Member Pollard stated that she had no comments.

E. Staff Liaison Comments. Mr. Petrov noted that Staff Comments had not been received yet, but they are expected soon.

F. Commission Business.

1. The Commission then discussed the proposed Rules of Procedure for the Commission. The Commission reviewed each section with members suggesting two amendments. At the conclusion of the discussion, a motion was made by Ms. Almaguer and seconded by Mr. Avioli to approve the Rules of Procedure for the Commission with the two amendments discussed. All Commission members present voted in favor of the motion.
2. The Commission then discussed Articles I and II of the Charter. The Commissions reviewed each section in Articles I and II with members and the Facilitator suggesting various revisions.
 - a. At the conclusion of the discussion of Article I Section 5, a motion was made by Mr. Swerdlin and seconded by Mr. Avioli to amend Article I Section 5 to make a reference to state law. Mr. Swerdlin, Mr. Avioli, and Ms. Almaguer voted in favor of the motion. Mr. Verma and Mr. Christians voted against.
 - b. At the conclusion of the discussion of Article I Section 6, the consensus was to amend Article I Section 6 to delete the sentence that references railroad corporations. All Commission members present voted in favor of the motion.
 - c. At the conclusion of the discussion of Article I Section 7 and Section 8, a motion was made by Ms. Almaguer and seconded by Mr. Avioli to amend Article I Section 7 and Section 8 by combine the two sections into one section to be titled “Street Powers and Improvements”. All Commission members present voted in favor of the motion.
 - d. At the conclusion of the discussion of Article I Section 11, a motion was made by Mr. Verma and seconded by Mr. Avioli to amend Article I Section 11 to add the phrase “recycling material” when mentioning garbage, trash and rubbish. All Commission members present voted in favor of the motion.
 - e. A motion was made by Mr. Verma and seconded by Mr. Christians to amend the entire Charter to be gender neutral, including changing “Councilman” to “Council Member” and his/him/he pronouns to the official position the pronoun is referencing. All Commission members present voted in favor of the motion.
 - f. At the conclusion of the discussion of Article II Section 2, a motion was made by Mr. Verma and seconded by Ms. Almaguer to amend Article II Section 2 to allow for a public hearing process if a Mayor or City Council Member no longer possesses all of the qualifications, as set forth in the Charter, to hold office. All Commission members present voted in favor of the motion.
 - g. At the conclusion of the discussion of Article II Section 3, a motion was made by Mr. Christians and seconded by Ms. Almaguer to postpone action on Article II Section 3 in order for the Commission to gain more information on the compensation for Council Members and Mayors in similar cities.

- h. At the conclusion of the discussion of Article II Section 13, the consensus was to amend Article II Section 13 by replacing the first sentence of the Section with “The Council shall appoint the City Clerk of the Council”.
 - i. At the conclusion of the discussion of the Municipal Court Judge’s term in Article II Section 14, a motion was made by Mr. Verma and seconded by Mr. Christians to amend Article II Section 14 to amend the Municipal Court Judge’s term to two (2) years with a provision allowing him or her to serve for an additional term if the City Council takes no action on the office within ninety (90) days of the expiration of the Municipal Court Judge’s term. All Commission members present voted in favor of the motion.
 - j. At the conclusion of the discussion of Article II Section 14, a motion was made by Mr. Verma and seconded by Mr. Swerdlin to amend Article II Section 14 to change the titles used in the Section to the titles actually used by the Municipal Court of the City of Bellaire.
3. No action was taken on the Charter Review schedule.
- G. New Business.** The Commission asked Mr. Petrov to speak with the Municipal Courts of the City of Bellaire to make sure the titles in Article II Section 14 are the titles actually used by the Municipal Court.
- H. Public Comments.** Ms. McBee made comments asking for the Charter to make it available for the City Clerk to have a deputy or assistant City Clerk.
- I. Next Meeting.** Thursday, February 2, 2017 at 7:00 p.m.
- J. Adjournment.** A motion was made by Mr. Verma and seconded by Ms. Almaguer to adjourn the Regular Meeting. All members present voted in favor of the motion. The meeting was adjourned at 10:15 p.m.

Neil Verma, Chair



Charter Review Commission

February 2, 2017

Agenda Item F. 2.

Review of Proposed Edits to Articles I and II of the City Charter

Attachments:

- **Proposed Amendments to Articles I and II of the City Charter (including recommendations for Article II, Section 16, and Article III, Section 2)**
- **General and Special Laws, Street Improvements and Assessments (S.B. No. 68)**

ARTICLE I. - INCORPORATION; FORM OF GOVERNMENT CORPORATE AND GENERAL POWERS

Sec. 5. - Liability of the City.

The City of Bellaire shall not be liable for personal injury or property loss or damage from any cause, including the negligence of City officials or City employees, in the performance of governmental functions, ~~including the operation of the water system, the collection and disposition of garbage, the sewer system, the fire department, or any other governmental office, department or agency created by or operating under this Charter~~ **except as set forth in the Texas Civil Practices and Remedies Code, Title 5, Governmental Liability, Chapter 101 tort claims.**

Sec. 6. - Eminent Domain.

- (a) General Provisions. The City shall have the right, power and authority to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter, or by the Constitution or laws of the State of Texas, except as provided in subsection (b) and (c). ~~In all cases where the City seeks to exercise the power of eminent domain, it may be controlled, as nearly as practicable, by the laws governing the condemnation of property by railroad corporations in this State, the City taking the position of the railroad corporation in any such case.~~ The City may also exercise the power of eminent domain in any other manner authorized or permitted by the Constitution and laws of this State, or in the manner and form that may be provided by ordinance of the governing body of the City, except as provided in subsection (b) and (c). The power of eminent domain hereby conferred shall include the right of the City to take the fee in the lands so condemned; and such power and authority shall include the right to condemn public property for such purposes.
- (b) Limitations to Eminent Domain. The City's power of eminent domain shall be limited to the taking of private property exclusively for the ownership and the use by the City, Eminent Domain shall be prohibited in those cases.
- (1) in which the taking is motivated by economic development which involves the intent to resell any interest in the property acquired; and
 - (2) which involves a joint venture or a collaborative arrangement with a private entity.
- (c) Exceptions to Limitations. The limitations in subsection (b) of this section are not intended to apply to
- (1) a non-adverse (or a willing and friendly) condemnation or a condemnation when the majority of partial interest owners consider the condemnation to be non-adverse; and
 - (2) a condemnation necessary to cure the cloud on title to real estate or any other condition where a condemnation is deemed necessary in lieu of the transfer of title from a willing seller.

Sec. 7. - Street Powers **and Improvements.**

The City of Bellaire shall have **exclusive dominion, control and jurisdiction in, upon, and over and under the public streets, avenues, alleys and highways of the City, and may provide for the improvement thereof by paving, re-paving, raising, draining, or otherwise and shall also include, but not be limited to, the right to supervise, regulate and otherwise control, locate, relocate, remove, or prohibit the location of, all utility pipes, lines, wires, or other property. In addition, the City shall have** the power to lay out, establish, open, alter, widen, lower, extend, grade, abandon, discontinue, abolish, close, care for, pave, supervise, maintain and improve streets, alleys, sidewalks, parks, squares, public places and bridges; and regulate and/or restrict the use thereof; and require the removal from the streets, sidewalks, alleys and other public property or places of all obstructions, trespasses and/or encroachments of every nature or character.

~~Sec. 8. - Street Improvements.~~

~~The City of Bellaire shall have exclusive dominion, control and jurisdiction in, upon, and over and under the public streets, avenues, alleys and highways of the City, and may provide for the improvement thereof by paving, re-paving, raising, draining, or otherwise. The provisions of Chapter 106, 40th Legislature, First Called Session, Acts of 1927, together with existing amendments and all such amendments as hereinafter may be made, are expressly adopted and made a part of this Charter. Such exclusive dominion, control and jurisdiction in, upon, over and under the public streets, avenues, alleys and highways of the City shall also include, but not be limited to, the right to supervise, regulate and otherwise control, locate, relocate, remove, or prohibit the location of, all utility pipes, lines, wires, or other property.~~

Sec. 9. - Extending **and Contracting** City Limits by Action of the City Council.

The City Council shall have power by ordinance to fix the boundary limits of the City of Bellaire, and to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said City, with or without the consent of the territory and/or inhabitants annexed. Upon the passage of such an ordinance by the city council one time, it shall be published in the official newspaper of the City of Bellaire one time. After at least thirty (30) days have elapsed from the date of such publication, said ordinance in original or amended form as said city council in its judgment may determine, shall be acted upon again, and if passed the territory so annexed shall thereupon become a part of the City of Bellaire, and any inhabitants thereof shall be entitled to all rights and privileges of other citizens of said City, and shall be bound by the acts, ordinances, resolutions and regulations of said City.

Any amendment to an ordinance annexing additional territory shall be advertised at least ten (10) days before final passage of the annexing ordinance, but any amendment eliminating from any such annexing ordinance property proposed to be annexed in the original ordinance or any amendment thereto need not be advertised.

Any area of the City may be disannexed pursuant to any procedure allowed under state law and whenever, in the opinion of the City Council, there exists within the corporate limits of the City a territory not suitable or necessary for City purposes, the City Council may discontinue said territory as part of the City by ordinance after conducting a public hearing on the matter.

Sec. 11. - Garbage Disposal.

The City Council shall have the right by ordinance to adopt and prescribe rules and regulations for the handling and disposition of all **recycling**, garbage, trash and rubbish within the City of Bellaire, and shall further have the right to fix charges and compensation to be charged by the City for the removal of **recycling**, garbage, trash and rubbish, and to provide rules and regulations for the collection of such charges and compensation.

ARTICLE II. - THE COUNCIL

Sec. 2. - Qualifications.

To be eligible to be a candidate for, or elected to, office as Mayor or City Councilman of the City of Bellaire, or to continue to hold any such office, a person must:

- (1) Be a United States citizen;
- (2) Be twenty-one (21) years of age or older on the first day of the term to be filled at the election;
- (3) Have not been determined mentally incompetent by a final judgment of a court;
- (4) Have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;
- (5) Have resided continuously in the State of Texas and within the corporate limits of the City of Bellaire for twelve (12) months immediately preceding the filing deadline of the regular election; and
- (6) Be a qualified, registered voter of the State of Texas, County of Harris.

In addition, all candidates or persons elected to office as Mayor or City Councilman of the City of Bellaire shall meet all other requirements for office holders as may, from time to time, be specified by the Constitution and general laws of the State of Texas. If, at any time, any person holding the office of Mayor or City Councilman of the City of Bellaire no longer possesses all of the qualifications specified in this Section or is convicted of a felony or an offense involving moral turpitude while in office, such office shall, after a public hearing and determination by City Council pursuant to Section _____, be declared ~~immediately and automatically become~~ vacant.

Sec. 5. - Mayor Pro Tempore.

The City Council shall elect a Mayor Pro Tempore, who shall act as, and have all the powers of the Mayor during the absence or disability of the Mayor, and if a vacancy should occur in the office of Mayor, shall ~~become~~ act as, and have all the powers of the, Mayor until the next regular election, at which election a Mayor shall be elected to fill the full or unexpired term, as the case may be. The Mayor Pro Tempore's shall office shall not be considered vacant during any such time he or she is acting as the Mayor.

Sec. 6. - Vacancies in Council.

Vacancies in office of Mayor Council, the effective date of which shall be determined in accordance with the provisions of the Texas Election Code, shall be filled by a candidate possessing all of the qualifications outlined in Section 2 of this Article, at an election called for that purpose pursuant to the provisions of the Texas Constitution and the Texas Election Code.

In the event of a vacancy in the office of City Councilmember, the effective date of which shall be determined in accordance with the provisions of the Texas Election Code, if there are 365 days or more remaining on the term of the vacated office, the City Council shall call a special election to fill such vacancy. If there are less than 365 days remaining in the term of the vacant office, the City Council may, by majority vote of the remaining Members of City Council, at its discretion, leave the office vacant, appoint a new Councilmember to fill such vacancy or call a special election to fill such vacancy.

Sec. 11. - Council Not to Interfere in Appointments or Removals.

~~Neither the Council nor any of its members shall direct the appointment of any person to office, and such power is confided solely to the City Manager. The City Council shall have no power to remove any person appointed by the City Manager and shall have only the power to appoint and/or remove the City Manager. The Council shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.~~

Neither the City Council nor the Mayor or any Councilmember shall in any manner dictate the appointment or removal of any city administrative officers or employees whom the City Manager or any of his subordinates are empowered to appoint, unless otherwise provided in this Charter, but the City Council may, at a properly noticed meeting, express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees. Further, Except for the purpose of inquiries and investigations, unless otherwise provided in this Charter, the City Council and Members of City Council shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the City Council nor Members of City Council shall give orders to any such officer or employee, either publicly or privately.

Sec. 13. - City Clerk.

The Council shall appoint ~~some person to serve as~~ the City Clerk of the Council. He shall give notices of its meetings, shall keep the official copy of this Charter and the journal of the Council's proceedings, shall authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions, and shall perform such other duties as the City Manager shall assign to him.

Sec. 14. - Municipal Court.

There is hereby established a Municipal Court of the City of Bellaire. The City Council shall appoint a Municipal Court Judge to serve a **term of office of two years. A Municipal Court Judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the City Council, continue to serve for another term of office beginning on the date the previous term of office expired.** ~~term as it shall prescribe and~~ **The City Council shall appoint** such other associate judge or judges as it shall determine to be necessary and appropriate, for such terms as it shall provide. Such judge(s) may be removed for incompetency, misconduct or malfeasance. The compensation for the judge(s) of the Municipal Court shall be fixed by the City Council. The City Council shall have the power to make temporary or relief appointments of Municipal Court Judges, in the event of emergencies, for shorter periods of time than provided for the term(s) of the Municipal Court Judge and associate judge(s).

All costs and fines imposed by the Municipal Court, or by any court in cases appealed from judgments of the Municipal Court, shall be paid into the city treasury for the use and benefit of the City.

The City Council shall, by ordinance, appoint a **Court** Clerk of the Municipal Court and as many ~~Deputy~~ **Assistant Court** Clerks as shall be necessary. The **Court** Clerk of said Court or any ~~Deputy City~~ **Assistant Court** Clerk shall have power to administer oaths and affidavits, make certificates, affix the seal of said Court thereto and generally do and perform any and all acts usual and necessary by clerks of courts in issuing process of said courts and conducting the business thereof. In the event of the absence or unavailability of the **Court** Clerk or ~~Deputy~~ **Assistant Court** Clerk to serve, any Judge of the Municipal Court may appoint a temporary replacement who shall have the same powers and duties as herein provided for the **Court** Clerk or any ~~Deputy~~ **Assistant Court** Clerk.

Sec. 16 - Council to be Judge of Qualifications of its Members; Hearings; Process.

A. General. The Council shall be the judge of the election and qualifications of its members, and shall have the power to investigate and to remove any member for malfeasance or nonfeasance in office, after public hearing, by a two-thirds (2/3) vote of the whole Council; for such purpose it shall have power to administer oaths, subpoena witnesses, compel the production of books, papers, and other evidence material to the inquiry. The City Council shall provide, by ordinance, penalties for contempt in failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence. The City Council shall have the power to punish any such contempt in the manner provided by such ordinance.

B. Hearings Process for Forfeitures of Office and Prohibitions.

- 1. All hearings held under this subsection shall be conducted in open session, except that the City Council may conduct a closed session to get advice from its attorney pursuant to the Texas Open Meetings Act;**
- 2. The officer holder subject to any investigation and/or hearing under this section shall be entitled to written notice of the specific allegations made against them;**
- 3. A special meeting shall be called to hold the hearing;**
- 4. The office holder who is the subject of the hearing shall not sit at the dais and shall not participate in deliberation or vote;**
- 5. City Council shall adopt by ordinance rules of procedures to be followed which rules shall not be amended or repealed for a particular public hearing after written notice has been provided to the office holder; except and unless, agreed to by the office holder;**

- 6. The City Council shall state the nature of the hearing and the allegations to be considered, shall be provided the results of any investigation and a presentation of the evidence against the office holder including, but not limited to testimony from individuals;**
- 7. The individual who is subject to the hearing shall be provided an opportunity to respond to the allegations and present any relevant evidence including, but not limited to, testimony from individuals;**
- 8. City Council may ask questions of any individual;**
- 9. No public comment shall be allowed unless agreed to by a majority vote of the members of City Council present. Rules for public comment shall be set by City Council.**

ARTICLE III. - THE CITY MANAGER

Sec. 2. - The City Manager; Powers and Duties.

The City Manager shall be the chief executive officer and the head of the administrative branch of the City government. He shall be responsible to the Council for the proper administration of all affairs of the City and to that end he shall have the power and shall be required to:

- (a) Appoint and remove all officers and employees of the City appointed by him, except as otherwise provided by this Charter, and except as he may authorize the head of a department to appoint and remove subordinates in such department;
- (b) Prepare the budget annually and submit it to the Council and be responsible for its administration after adoption;
- (c) Prepare and submit to the Council as of the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding year;
- (d) Keep the Council advised of the financial condition and future need of the City and make such recommendations as may seem to him desirable; and
- (e) Sign all documents, contracts and conveyances made or entered into by the City, and all bonds, pursuant to any relevant policy adopted by City Council, except where the City Council has authorized the Mayor to sign said document as provided for in Article II Section 4 of this Charter.**
- (ef) Perform such other duties as may be prescribed by this Charter or required of him by the Council, not inconsistent with this Charter.

AUTHORIZING CITIES TO IMPROVE STREETS AND
ALLEYS AND MAKE ASSESSMENTS FOR SAME.

S. B. No. 68.]

CHAPTER 106.

AN ACT to authorize incorporated cities, towns, and villages incorporated under either general or special law, including those operating under a special charter or amendments of charter adopted pursuant to the Home Rule provisions of the Constitution to cause to be improved streets, avenues, alleys, highways, boulevards, drives, public places, squares, or any portion or portions thereof, and to assess part of the cost thereof against abutting property and owners thereof, and against railroads, street railroads or interurbans and owners thereof occupying, using or crossing streets, avenues, alleys, highways, boulevards, drives, public places or squares improved, and to provide for the enforcement and collection of such assessments, and providing the powers, terms and provisions of this Act shall not repeal any charter provision of law, general or special, but shall exist as alternative powers, terms and provisions, and providing that any city which shall adopt or amend its own charter under the Home Rule provisions of the Constitution may provide therein for any of the powers, terms or provisions thereof, as part of, in lieu of, or as alternative to any charter provision, and providing the necessary matters and things incidental to and necessary for the carrying out of the purposes of this Act, provided this Act shall not apply in any city, town or village not having more than one thousand inhabitants, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That cities, towns and villages incorporated under either general or special law, including those operating under special charter, or amendments of charter adopted pursuant to the Home Rule provisions of the Constitution, shall have power to cause to be improved, any highway, within their limits by filling, grading, raising, paving, repaving, and repairing in a permanent manner, and by constructing, reconstructing, repairing and realigning curbs, gutters and sidewalks, and by widening, narrowing and straightening, and by constructing appurtenances and incidentals to any of such improvements, including drains and culverts, which power shall include that of causing to be made any one or more of the kinds or classes of improvements herein named or any combination thereof, or of parts thereof.

SEC. 2. That the term "city" whenever used herein shall include all incorporated cities, town and villages; that the term "governing body" whenever used herein, includes the governing or legislative bodies of all incorporated town, cities and villages, whether known as councils, commissions, boards of commissioners, common councils, boards of aldermen, city councils, or by whatever name such bodies may be known or designated under general or special laws or charters. That whenever the term "highway" is used herein it shall include any street, avenue, alley, highway, boulevard, drive, public place, square, or any portion or portions thereof, including any portion that may have or may be left wholly or partly unimproved in connection with other street improvements heretofore or hereafter

made. The term "improve" or "improvements" when used herein shall include the kinds and classes of improvements, with incidents and appurtenances thereto, and any portions or combinations thereof, or of parts thereof, hereinabove mentioned, liberally construed. That whenever the term "cost" or "costs of improvements" or similar terms are used herein, same shall include expenses of engineering and other expenses incident to construction of improvements, in addition to the other costs of the improvements.

SEC. 3. That the governing body of any city shall have power to determine the necessity for, and to order, the improvement of any highway, highways, or parts thereof within such city, and to contract for the construction of such improvements in the name of the city, and to provide for the payment of the cost of such improvements by the city, or partly by the city and partly by assessments as hereinafter provided.

SEC. 4. That the cost of such improvements may be wholly paid by the City, or partly by the city and partly by property abutting upon the highway or portion thereof ordered to be improved, and the owners of such property, but if any part of the cost is to be paid by such abutting property and the owners, then before any such improvements are actually constructed, and before any hearing herein provided for is held, the governing body shall prepare, or cause to be prepared, an estimate of the cost of such improvements, and in no event shall more than all the cost of constructing, reconstructing, repairing and realigning curbs, gutters and sidewalks, and nine-tenths of the remaining cost of such improvements as shown on such estimate be assessed against such abutting property and owners thereof.

SEC. 5. If improvements be ordered constructed in any part of the area between and under rails, tracks, double tracks, turn outs and switches, and two feet on each side thereof, of any railway, street railway, or interurban, using, occupying, or crossing any such highway, portion or portions thereof, ordered improved, then the governing body shall have power to assess the whole cost of the improvements in such area against such railway street railway, or interurban, and shall have power, by ordinance, to levy a special tax upon such railway, street railway, or interurban, and its road-bed, ties, rails, fixtures, rights and franchises, which tax shall constitute a lien thereon superior to any other lien or claim except State, County, and City ad valorem taxes, and which may be enforced either by sale of said property in the manner provided by law for the collection of ad valorem taxes by the city, or by suit in any court having jurisdiction. The ordinance levying such tax shall prescribe the time, terms and conditions of payment thereof, and the rate of interest, not to exceed 8% per annum, and same, if not paid when due, shall be collectible, together with interest, expenses of collection and reasonable attorney's fees, if incurred. The Governing Body shall have power to cause to be issued assign-

able certificates in evidence of any such assessments as herein-after provided.

SEC. 6. Subject to the terms hereof, the Governing Body of any city shall have power by ordinance to assess all the cost of constructing, reconstructing, repairing and realigning, curbs, gutters and sidewalks, and not exceeding nine-tenths of the estimated cost of such improvements, exclusive of curbs, gutters and sidewalks, against property abutting upon the highway or portion thereof ordered to be improved, and against the owners of such property, and to provide the time, terms and conditions of payment and defaults of such assessments, and to prescribe the rate of interest thereon not to exceed eight per cent (8%) per annum. Any assessments against abutting property shall be a first and prior lien thereon from the date the improvements are ordered, and shall be a personal liability and charge against the true owners of such property at said date, whether named or not. The governing body shall have power to cause to be issued in the name of the city assignable certificates in evidence of assessments levied declaring the lien upon the property and the liability of the true owner or owners thereof whether correctly named or not, and to fix the terms and conditions of such certificates.

If any such certificate shall recite substantially that the proceedings with reference to making the improvements therein referred to have been regularly had in compliance with the law and that all prerequisites to the fixing of the assessment lien against the property described in said certificate and the personal liability of the owner or owners thereof have been performed, same shall be prima facie evidence of all the matters recited in said certificate, and no further proof thereof shall be required. In any suit upon any assessment or reassessment in evidence of which a certificate may be issued under the terms of this Act it shall be sufficient to allege the substance of the recitals in such certificate and that such recitals are in fact true, and further allegations with reference to the proceedings relating to such assessment or reassessment shall not be necessary.

Such assessments shall be collectible with interest, expense of collections, and reasonable attorney's fee, if incurred, and shall be a first and prior lien on the property assessed, superior to all other liens and claims except state, county and city ad valorem taxes, and shall be a personal liability and charge against the said owners of the property assessed.

SEC. 7. The part of the cost of improvements on each portion of highway ordered improved which may be assessed against abutting property and owners thereof shall be apportioned among the parcels of abutting property and owners thereof, in accordance with the Front Foot Plan or Rule provided that if the application of this rule would, in the opinion of the Governing Body, in particular cases, result in injustice or inequality, it shall be the duty of said Body to apportion and

assess said costs in such proportion as it may deem just and equitable, having in view the special benefits in enhanced value to be received by such parcels of property and owners thereof, the equities of such owners, and the adjustment of such apportionment so as to produce a substantial equality of benefits received and burdens imposed.

SEC. 8. Nothing herein shall empower any city, or its governing body, to fix a lien against any interest in property exempt, at the time the improvements are ordered, from the lien of special assessment for street improvements, but the owner or owners of such property shall nevertheless be personally liable for any assessment in connection with such property: The fact that any improvement, though ordered, is omitted in front of property, any interest in which is so exempt, shall not invalidate the lien or liability of assessments made against other property.

The lien created against any property and the personal liability of the owner or owners thereof may be enforced by suit in any court having jurisdiction, or by sale of the property assessed in the same manner as may be provided by law or charter in force in the particular city for sale of property for ad valorem city taxes.

SEC. 9. No assessment herein provided for shall be made against any abutting property or its owners, nor against any railway, street railway or interurban, or owner, until after notice and opportunity for hearing as herein provided, and no assessment shall be made against any abutting property or owners thereof in excess of the special benefits of such property, and its owners in the enhanced value thereof by means of such improvements as determined at such hearing. Such notice shall be by advertisement inserted at least three times in some newspaper published in the city where such special assessment tax is to be imposed, if there be such a paper; if not, then the nearest to such city of general circulation in the county in which such city is located; the first publication to be made at least ten days before the date of the hearing. If any such notice shall describe in general terms the nature of the improvements for which assessments are proposed to be levied and to which such notice relates, shall state the highway, highways, portion or portions thereof to be improved, shall state the estimated amount or amounts per front foot proposed to be assessed against the owner or owners of abutting property and such property on each highway or portion, with reference to which hearing mentioned in the notice is to be held, and shall state the estimated total cost of the improvements on each such highway, portion or portions thereof, and if the improvements are to be constructed in any part of the area between and under rails and tracks, double tracks, turn-outs, and switches, and two feet on each side thereof of any railway, street railway or interurban, shall also state the amount proposed to be assessed therefor, and shall state the time and place at which such hear-

ing shall be held, then such notice shall be sufficient, valid and binding upon all owning or claiming such abutting property, or any interest therein, and upon all owning or claiming such railway, street railway, or interurban, or any interest therein. Such hearing shall be by and before the governing body of such city and all owning any such abutting property, or any interest therein, and all owning any such railway, street railway, or interurban, or any interest therein, shall have the right, at such hearing, to be heard on any matter as to which hearing is a constitutional prerequisite to the validity of any assessment authorized by this Act, and to contest the amounts of the proposed assessments, the lien and liability thereof, the special benefits to the abutting property and owners thereof by means of the improvements for which assessments are to be levied, the accuracy, sufficiency, regularity and validity of the proceedings and contract in connection with such improvements and proposed assessments, and the governing body shall have power to correct any errors, inaccuracies, irregularities, and invalidities, and to supply any deficiencies, and to determine the amounts of assessments and all other matters necessary, and by ordinance to close such hearing and levy such assessments before, during or after the construction of such improvements, but no part of any assessment shall be made to mature prior to acceptance by the city of the improvements for which assessment is levied.

Anyone owning or claiming any property assessed, or any interest therein, or any railway, street railway, or interurban assessed, or any interest therein, who shall desire to contest any such assessment on account of the amount thereof, or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference thereto, or with reference to such improvements, or on account of any matter or thing not in the discretion of the governing body, shall have the right to appeal therefrom and from such hearing by instituting suit for that purpose in any court having jurisdiction within fifteen (15) days from the time such assessment is levied; and anyone who shall fail to institute such suit within such time shall be held to have waived every matter which might have been taken advantage of at such hearing, and shall be barred and estopped from in any manner contesting or questioning such assessment, the amount, accuracy, validity, regularity and sufficiency thereof, and of the proceedings and contract with reference thereto and with reference to such improvements for or on account of any matter whatsoever. And the only defense to any such assessment in any suit to enforce the same shall be that the notice of hearing was not published or did not contain the substance of one or more of the requisites therefor herein prescribed, or that the assessments exceed the amount of the estimate, and no words or acts of any officer or employee of the city, or member of any governing body of the city, other than the action of

the governing body shown in its written proceedings and records shall in any way affect the force and effect of the provisions of this Act.

SEC. 10. The governing body of the city shall have power to provide for changes in plans, methods or contracts for improvements, or other proceedings relating thereto, but any change substantially affecting the nature or quality of any improvements shall only be made when it is determined by two-thirds vote of the governing body that it is not practical to proceed with the improvement as theretofore provided for, and if any such substantial change be made after any hearing has been ordered or held then unless the improvement be abandoned altogether a new estimate of cost shall be made and a new hearing ordered, and held, and new notices given, all with like effect and in like manner as herein provided for original notices and hearings. Changes in or abandonment of improvements must be with the consent of such person, firm or corporation as may have contracted with the city for the construction thereof, if any such contract has been entered into, and in case of abandonment of any particular improvement an ordinance shall be passed which shall have the effect of cancelling any assessments theretofore levied therefor, and all other proceedings relating thereto.

SEC. 11. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation or estate, and property owned jointly by one or more persons, firms or corporations, may be assessed jointly.

SEC. 12. Said governing body shall have power to carry out all the terms and provisions of this Act and to exercise all the powers thereof, either by resolution, motion, order or ordinance, except where ordinance is specifically prescribed, and such governing body shall have power to adopt, either by resolution or ordinance, any and all rules or regulations appropriate to the exercise of such powers, the method and manner of ordering and holding such hearings, and the giving of notices thereof.

SEC. 13. In case any assessment shall for any reason whatsoever be held or determined to be invalid or unenforceable, then the governing body of such city is empowered to supply any deficiency in proceedings with reference thereto and correct any mistake or irregularity in connection therewith, and at any time to make and levy reassessments after notice and hearing as nearly as possible in the manner herein provided for original assessments, and subject to the provisions hereof with reference to special benefits. Recitals in certificates issued in evidence of reassessments shall have the same force as provided for recitals in certificates relating to original assessments.

SEC. 14. Anyone owning or claiming any property, or interest in any property against which such reassessment is levied shall have the same right of appeal as herein provided in connection with original assessments, and in the event of failure to appeal within fifteen (15) days from the date of such reassessment.

assessment, the provisions hereinabove made with reference to waiver, bar, estoppel, and defense shall apply to such reassessment,

SEC. 15. This Act shall not repeal any law, general or special or charter provision already in existence, but powers, terms and provisions hereof shall exist as alternative powers, terms and provisions of all other laws and charter provisions in any wise relating to the same subject matter, and any city which shall hereafter adopt or amend its own charter under the terms of the Home Rule provisions of the Constitution may provide in any such charter or amendments thereto for any or all of the powers, terms or provisions herein contained either as alternative to or as part of or in lieu of any other charter provision then in force, and specifically this Act shall not repeal Article 1086 to 1096, inclusive, and Articles 1104 and 1105, of the Revised Civil Statutes of the State of Texas, of 1925, but the law as embraced in said Articles shall and does remain in full force and effect, provided the terms, powers, and provisions of this Act shall not apply in any city not having more than one thousand inhabitants.

SEC. 16. Should any section, provision, word, phrase, or clause of this Act be held to be invalid, unconstitutional or inoperative, no other part or parts thereof shall be held to be affected thereby.

SEC. 17. The fact that the present laws relating to the making and construction of street improvements and assessments therefor by such cities, and relating to charter provisions and amendments on such subjects, are inadequate and indefinite, and the fact that such improvements are urgently needed and many cities and citizens thereof are anxious to obtain the benefits of this Act, create an emergency and an imperative public necessity requiring the suspension of the constitutional rule requiring the reading of bills on three several days in each House, and said rule is hereby suspended and this Act shall take effect from and after its passage, and it is so enacted.

[NOTE: The enrolled bill shows that S. B. No. 68 passed the Senate "finally by two-thirds vote of 21 ayes, 1 nays" on June 4, 1927, and that the Senate concurred in House amendments on June 6, 1927, by viva voce vote; that said bill passed the House with amendments June 6, 1927, 103 ayes, 5 nays. Said Bill was received in the Executive Office June 7, 1927, and was received in the Department of State June 18, 1927, without the Governor's signature.]