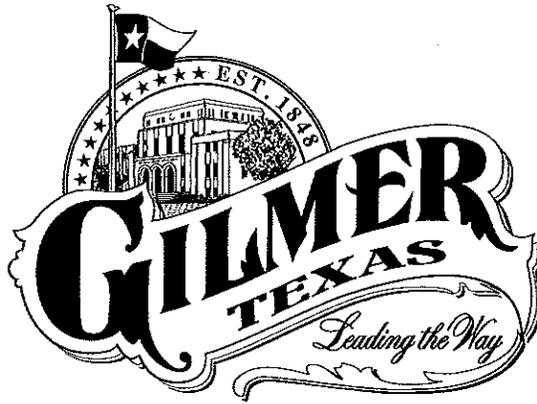


**HOME RULE  
CHARTER  
CITY OF GILMER**



**ADOPTED 1996  
AMENDED 2000, 2007, 2013 & 2017**

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**HOME RULE CHARTER  
CITY OF GILMER, TEXAS**

**ARTICLE 1**

**Incorporation, Form of Government, and Boundaries**

**Section 1.01 Incorporation**

The citizens of the City of Gilmer in Upshur County, Texas, within the corporate limits as now established, or hereafter established in the manner prescribed by this Charter, shall be, and shall continue to be, a municipal body politic and corporate in perpetuity under the name of the "City of Gilmer".

**Section 1.02 Form of Government**

The municipal government provided by this Charter shall be known as "Council Manager" government. Pursuant to its provisions and, subject only to the limitations imposed by the State constitution, by statutory laws of Texas, and this by Charter, all powers of the City shall be vested in an elective Council, hereinafter referred to as the "Council", which shall enact local legislation, adopt budgets, determine policies, appoint the City Manager, who in turn shall execute the laws and administer the government of the City.

**Section 1.03 Boundaries**

The boundaries and limit of the City of Gilmer, until changed in the manner herein provided, shall be the same as have heretofore been established and exist on the date of the adoption of this Charter, which boundaries are more fully set out and described by metes and bounds in a book called Official Record Describing the Metes and Bounds of the City of Gilmer, which is now and shall hereafter be in the office of the City Secretary of the City of Gilmer.

**Section 1.04 Extension of Boundaries**

The boundaries of the City of Gilmer may be enlarged and extended by the annexation of additional territory, irrespective of size and configuration, in any of the methods hereinafter designated:

a) Extension of City Limits by Petition: Whenever a majority of the legally qualified property owners who are citizens of the State of Texas and inhabitants of any territory adjoining the City of Gilmer, or in case there are no qualified voters in said territory, then, when persons owning a majority of the land in the area to be annexed, may present a written petition requesting annexation to the Council and shall attach to said petition an affidavit of one or more of their number to the effect that said petition is

signed by a majority of such qualified voters or, in the case there no qualified voters, said affidavit shall be to the effect that there are no qualified voters in said territory and that the persons signing the petition own a majority of the landing said territory; and, thereupon the Council, at regular session or in special session held not sooner than thirty (30) days after the presentation of said petition, may, by ordinance, annex such territory to the City of Gilmer and thenceforth the said territory shall be a part of the City of Gilmer and the inhabitants thereof shall be entitled to all the rights and privileges of other citizens and shall be bound by the acts, ordinances, resolutions and regulations of said City.

b) Annexation of Unoccupied Lands on Petition of Owners: The owner or owners of any such land which is without residents adjacent to the City may, by petition in writing to the City Council, request annexation of such contiguous and adjacent land describing it by metes and bounds. The City Council shall thereafter, and not less than five (5) days and not more than ninety (90) days after the filing of such petition, hear such petition and the arguments for and against the same, and grant or refuse such petition as the City Council may see fit. If the City Council grants such petition, it may by proper ordinances receive and annex such territory as a part of the City.

c) Annexation by Amendment to Charter: The boundary limits of the City may be fixed and additional territory added or annexed thereto by amendment to the Charter of the City.

d) Extending Limits by Action of the City Council: The City Council shall have power by ordinance to fix the boundary limits of the City of Gilmer 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 inhabitants in such territory or the owners thereof, not inconsistent with the procedural rules prescribed by law applicable to the cities operating under charters adopted or amended under Article 11, Section 5, of the Constitution of the State of Texas.

e) Annexation by Any Other Method Provided by Law: Additional territory may be annexed to the City in any manner and by any procedure that may now be provided by law or that may be hereafter provided, or in such manner as shall be provided, by ordinances or resolutions of the City Council. Same shall be in addition to the methods hereinabove provided.

f) Annexed Territory to Become Part of the City: Upon completion of any one of the procedures described in paragraphs (a) through (e) above, the territory so annexed shall become a part of the City and said land and its residents and future residents shall be provided, within a timely manner with all the rights and privileges of other citizens of the City and shall be bound by the acts, ordinances resolutions and regulations of the City.

### **Section 1.05 Rule for Contraction of Boundaries**

Whenever there exists within the corporate limits of the City of Gilmer any territory not suitable or necessary for orderly planning and development of the City, the City Council may, upon a petition signed by the majority of the qualified voters residing in such territory, if the same be inhabited, or without any such petition, if the same be

uninhabited, by ordinance duly passed, discontinue said territory as a part of said City. Said petition and ordinance shall specify accurately the metes and bounds of the territory sought to be eliminated from the City and shall contain a plat designating such territory so that the same can be definitely ascertained. When said ordinance has been duly passed, the same shall be entered upon the minutes and records of the City and, after the entry of such ordinances, said territory shall cease to be a part of said City, but said territory shall still be liable for its pro rata share of any debts incurred while said area was a part of said City. Further, the City shall continue to levy, assess, and collect taxes on the property within said territory to pay the indebtedness incurred while said area was a part of the City as though the same had not been excluded from the boundaries of the City, provided however, that in the event such disannexation shall be initiated unilaterally by the City without application of the residents residing within such areas to be disannexed or the owners thereof, then, in such event, the City shall not continue to levy, assess, and collect taxes on such disannexed area as herein provided or in accordance with laws and codes of the State of Texas.

**Section 1.06 Industrial Districts**

The City of Gilmer may form industrial districts in accordance with laws and codes of the State of Texas.

**ARTICLE 2  
Powers of the City**

**Section 2.01 Specific Powers**

The City of Gilmer shall have all powers now or hereafter granted to municipalities by the Constitution and laws of the State of Texas, together with all of the implied powers necessary to carry into execution such granted powers.

The City may:

- (a) Use a corporate seal;
- (b) Sue and be sued;
- (c) Contract and be contracted with;
- (d) Cooperate with the government of the State of Texas or an agency or any political subdivision thereof, or with the Federal government or any agency thereof, to accomplish a lawful purpose for the advancement of the interest, welfare, health, morals, comfort, safety, and convenience of the City and its citizens;
- (e) Acquire property within or without its corporate limits for any municipal purpose in fee simple, or in any lesser interest or estate, by purchase, gift, devise, lease or condemnation, and subject to the provisions of this Charter;
- (f) Sell, lease, mortgage, hold, manage, improve, control, and police any such property as may now or hereafter be owned by it, shall have the right to lease or let its property whether inside or outside of the city limits; provided however, the City shall not

sell, convey, mortgage, or otherwise alienate any public utility without prior approval of the voters of the City;

(g) Exercise the power of eminent domain where necessary or desirable to carry out any of the powers conferred upon it by this Charter or by the Constitution and laws of the State of Texas;

(h) Assess, levy, and collect taxes for general and special purposes on all lawful subjects of taxation;

(i) Borrow money in the faith and credit of the City by the issuance and sale of bonds, warrants, or notes of the City;

(j) Borrow money on the revenue of municipally owned utilities or other municipal enterprises by the issuance of bonds and notes secured by such revenues;

(k) Appropriate the funds of the City for all lawful purposes;

(l) Regulate and control the use, for whatever purpose, of the street and other public places;

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

The powers hereby conferred upon the City shall include, but are not restricted to, the powers conferred expressly and permissively by the Home Rule Amendment of the Constitution of Texas, known as the Enabling Act and including other laws and codes of the State of Texas as now or hereafter amended, all of which are hereby adopted. In addition to the powers enumerated herein, and subject only to the limitations imposed by the State Constitution, the State laws, and this Charter, the City shall have, without the necessity of express enumeration in this Charter, each and every power which, by virtue of the Constitution of Texas, the people of the City are empowered by election to grant to or confer upon the city by expressly and specifically granting and enumerating the same herein. All such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this Charter; or when not prescribed herein, in such manner as shall be provided by the ordinance of the council.

## **Section 2.02 General Powers**

The enumeration of the particular powers set forth herein shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein or implied hereby or appropriate to the exercise of such powers, the City shall have and may exercise all power of local self-government and all other powers which, under the Constitution and laws of the State of Texas, it would be competent for this Charter specifically to enumerate. Said authority shall include the right to condemn property for such purposes.

The City shall have and possess the power of condemnation for any municipal or public purposes even though not specifically enumerated in this Charter.

### **Section 2.03 Streets and Public Property**

The City shall have exclusive dominion, control, and jurisdiction in, upon, over, and under the public streets, sidewalks, alleys, highways, public squares, and public ways within the corporate limits of the City, and in, upon, over, and under all public property of the City. With respect to each and every public street, sidewalk, alley, highway, public square, public park, or other public way within the corporate limits of the City, the City shall have the power to establish, maintain, improve, alter, abandon, or vacate the same; to regulate the use thereof; and to abate and remove in a summary manner any encroachment thereon.

### **Section 2.04 Street Development and Improvement**

The City shall have the power to develop and improve, or cause to be developed and improved, any and all public streets, sidewalks, alleys, highways, and other public ways within the corporate limits of the City by laying out, opening, narrowing, widening, straightening, extending, lighting, and establishing building lines along the same; by purchasing, condemning, and taking property therefore by filling, grading, raising, lowering, paving, repaving, and repairing, in a permanent manner, the same; and by constructing, reconstructing, altering, repairing, and realigning curbs, gutters, drains, sidewalks, culverts, and other appurtenances and incidentals in connection with such development and improvement authorized hereinabove, or any combination or parts thereof. The cost of such development and improvement may be paid partly by assessments levied as a lien against the property abutting thereon and against the owners thereof, and such assessments may be levied in any amounts and under any procedure not prohibited by State Law.

As an alternate and cumulative method of developing, improving, and paving any and all public streets, sidewalks, alleys, highways, and other public ways within its corporate limits, the City shall have the power and authority to proceed in accordance with applicable laws of the State of Texas.

## **ARTICLE 3 The City Council**

### **Section 3.01 Number, Selection, and Term of Office**

The legislative and governing body of the City of Gilmer shall consist of a Mayor and six (6) Councilmembers, and said body shall be the only elective officers of the City. The Mayor and two (2) Councilmembers will be elected at large with the remaining four Councilmembers being elected by district. The Mayor and Councilmembers shall be known as the "City Council of the City of Gilmer". In the manner provided in Article 7, the Mayor and Councilmembers shall be elected for a term of two (2) years or until their successors have been elected and shall take office as provided in Article 7. Upon

adoption of this Charter, all duly elected or appointed Councilmembers or Mayor shall remain in office until term of office expires.

*Amended 2000; 2007; 2013*

### **Section 3.02 Prohibiting Holding or Running for Other Office**

No person elected to the City Council shall, during the term for which they were elected, hold any other elected office or employment in the service of the City. City Council appointments are subject to dual office holding laws of the State of Texas. For any violation of said dual office holding laws, an individual shall immediately forfeit their place, position or employment with the City, except such individual may be a Notary Public or member of the National Guard or naval or military reserve or a retired member of the Armed Forces.

*Amended 2017*

### **Section 3.03 Qualifications**

Each of the six (6) Councilmembers and Mayor shall: *Amended 2013*

- (a) Be a citizen of the United States of America;
- (b) Be a registered qualified voter of the State of Texas and at least 21 years of age;
- (c) Not be convicted of a felony or crime involving moral turpitude;
- (d) Have resided at least one (1) year immediately preceding the election date at which they are candidates within the corporate limits of the City of Gilmer; if seeking election for a single member district, they must reside in that district for at least one (1) year immediately preceding the election date;
- (e) Not be employed by the City at the time they declare to be a candidate as a Councilmember or Mayor;
- (f) If elected, shall hold no other public office except that of Notary Public or a member of the National Guard or naval or military reserve; and
- (g) Not be disqualified by reason of any provision of any other sections of this Charter.

A Councilmember or Mayor shall forfeit his/her office if he or she:

- (a) Lacks at any time during his/her term of office, any qualifications for the office prescribed by this Charter or by law;
- (b) Willfully violates any express prohibition of this Charter;
- (c) Is convicted of a felony offense or a crime involving moral turpitude;
- (d) Is placed under the terms and conditions of the Adult Probation Department and/or Community Supervision Department of the State of Texas pursuant to a final Court order for any felony offense or crime involving moral turpitude; or

(e) Fails to attend three (3) consecutive regular meetings of the Council without being excused by the Council.

(f) Moves out of their represented district whether elected or appointed.

***Amended 2017***

If the Mayor or any member of Council refuses to voluntarily comply with the above regulations, the City Council shall, at its next regular meeting, declare a vacancy to exist and shall fill said vacancy in accordance with this Charter.

**Section 3.04 Council to be the Judge of the Qualification of Own Members**

The City Council shall be the judge of the election and qualifications of its own members and for such purpose shall have power to subpoena witnesses and require the production of records. The Council shall, within five (5) calendar days after a regular or special election, either at a called meeting of said council, called for that purpose, or at the next regular meeting, canvass the returns and declare the results of such election:

**Section 3.05 Vacancies**

If a member of the Council is appointed or elected to any public office other than the specific office then held, he/she shall forfeit his/her office of place on the Council as of the date of such appointment or election. A single vacancy in the Council shall be filled within thirty (30) days of the occurrence of the vacancy by a majority vote of the remaining members of the council by selection of a person qualified for the position as described in this Charter. This appointee shall serve until the position can be filled at the next regular City election.

When more than one vacancy shall develop at any one time, a special election shall be called by the Council for the next date available under the Texas Election Code to fill the vacancies in the same manner described herein for regular elections. However, if such vacancies occur within ninety (90) days prior to a regular election, then no special election shall be called and remaining Councilmembers shall appoint qualified persons to fill the vacancies until the regular election. ***Amended 05/2007***

Notwithstanding any other provision of this Charter to the contrary if, at any time, the membership of the Council is reduced to less than three (3), the remaining members may, by majority action, appoint additional members to raise the membership to three (3). These appointees shall serve until the positions can be filled at the next regular or special City election.

**Section 3.06 Compensation**

Salary of elective officers: The salaries of the Mayor and City Council shall be set by the City Council.

Compensation of appointive officers: Appointive officers shall receive such compensation as may be provided for them by the City Council.

### **Section 3.07 Mayor**

The Mayor shall preside over the meetings of the Council, and perform such other duties consistent with the office as may be imposed upon him/her by this Charter, and by ordinances and resolutions passed in pursuance thereof. The Mayor may participate in the discussion of all matters coming before the Council, and may vote on all matters. The Mayor shall sign (after authorization by the Council) all contracts, conveyances made or entered into by the City, all bonds, warrants and any other obligations issued under the provisions of this Charter and in the manner prescribed in the ordinance authorizing the signing of any such obligation. The Mayor shall be recognized as the official head of the City by the courts for the purpose of serving civil process, by the Governor for the purpose of enforcing military law, and for all ceremonial purposes. *Amended 05/2013*

### **Section 3.08 Mayor Pro-Tem**

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

### **Section 3.09 Powers of the Council**

All powers of the City, the determination of all matters of policy and authority to pass all laws and ordinances relating to its municipal affairs, shall be vested in the City Council; provided, however, that the City Council shall have no power to exercise the powers which are expressly conferred upon other City officers by this Charter. Without limitation of the foregoing, and among the other powers that may be exercised by the City Council, the following are hereby enumerated for greater certainty:

(a) Appoint and remove the City Manager as herein after provided. An evaluation of the City Manager will be performed at a regular City Council meeting in January of each year. Furthermore, the City Manager's evaluation will be a required agenda item for a meeting in January. The Council shall evaluate the performance of the City Manager and suggest items for improvement and priorities for the coming year. In addition, the Council may conduct as many evaluations as they deem necessary during the year. This may be handled in executive session as a personnel matter. *Amended 2007, 2017*

(b) Establish, create, consolidate, or abolish administrative departments and distribute the work of divisions, upon recommendation of the City Manager;

(c) Adopt the City budget;

(d) Authorize the issuance and sale of bonds by a bond ordinance;

(e) Inquire into the conduct of any office, department, or agency of the City and make investigations as to municipal affairs;

(f) Provide for such additional boards and commissions, not otherwise provided for in this Charter, as may be deemed necessary, and appoint the members of all such boards and commissions. Such boards and commissions shall have all powers and duties now or hereafter conferred and created by this Charter, by City ordinance, or by State law;

(g) Adopt and modify the zoning plan, and a building code, including electrical and plumbing codes, of and for the City and to require building permits;

(h) Adopt and modify the official map of the City. (The official map is and shall be maintained by the City Secretary in the City Hall in the City of Gilmer);

(i) Adopt, modify, and carry out plans proposed by the City Planning and Zoning Commission for the clearance of slum districts and rehabilitation of blighted areas;

(j) Adopt, modify, and carry out plans proposed by the City Planning and Zoning Commission for the preplanning, improvement, and redevelopment of any area or district which may have been destroyed in whole or in part by disaster;

(k) Regulate, license, and fix the charges or fares made by any person, firm, or corporation owning, operating, or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets and alleys of the City;

(l) Provide for the establishment and designation of fire limits, and prescribe the kind and character of buildings or structures or improvements to be erected therein; and provide for the erection of fireproof buildings within said limits; and provide for the condemnation of dangerous structures or buildings or dilapidated buildings, or buildings calculated to increase the fire hazard, and prescribe the manner of their removal or destruction, within said limits;

(m) Fix the salaries and compensation of the City officers and employees;

(n) Approve changes to the personnel policy and procedures of the City as recommended by the City Manager;

(o) Provide for a sanitary sewer and water system, and require property owners to connect their premises with the water and sewer systems, and provide the penalties for failure to make sanitary sewer connections;

(p) Provide for sanitary garbage disposal, and set fees and charges therefore, and provide penalties for failure to pay such fees and charges;

(q) To define nuisances and prohibit same, and provide penalties for violations;

(r) Provide for all necessary public utilities and set fees and charges therefore and provide penalties for misuses of same;

(s) Exercise exclusive dominion, control, and jurisdiction (including the right to close and abandon streets and alleys) in, upon, over, and under the public streets, avenues, sidewalks, alleys, highways, boulevards and public grounds of the City; and provide for the improvement of same as provided by applicable laws of the State of Texas;

(t) Regulation of railroads and railroad right-of-way. The City Council shall have the power by ordinance to direct and control, within the city limits, the speed of engines, locomotives, and motor cars operating on railroad tracks, the length of trains, the construction of railroad tracks, turnouts and switches, maintenance and repair of

crossings, the regulation of the grade thereof and the use of the streets for switching or stopping cars. If improvements be ordered constructed in any part of any area used or occupied by the tracks or facilities of any railroad, then the City Council shall have power to assess the whole cost of improvements in such area and the added cost of improvements in the area adjacent thereto made necessary by such use or occupancy, against such railway or utility affected by such improvements and shall have power, by ordinance, to provide for the enforcement of such assessment;

(u) Compromise and settle any and all claims, demands and lawsuits of every kind and character in favor of, or against, the City of Gilmer;

(v) To require bonds, both special and general, of all contractors and others constructing or building for the City, and set up standards, rules and regulations therefore;

(w) To pass ordinances defining and prohibiting misdemeanors and vagrancy, and provide penalties for violations;

(x) To provide and/or arrange for any and all "civil defense measures" and "public shelter measures" for the City of Gilmer, Texas, and for the citizens thereof, deemed necessary for the public welfare; and

(y) To name and designate an "Official Newspaper" for the City of Gilmer, Texas, and to cause only the caption of duly enacted ordinances and resolutions to be published, except as provided otherwise by law.

### **Section 3.10 Meetings of the Council**

The Council shall hold at least one (1) regular meeting a month and may hold as many other meetings as may be necessary for the transaction of the business of the City. All regular meetings shall be held at the City Hall or at such other places within city limits as will permit the attendance of the general public. All meetings will be held in accordance with open meeting laws of the State of Texas.

### **Section 3.11 Special Meetings**

The Mayor or any three (3) members of the Council may call special meetings by giving notice to the City Secretary who shall notify each member of the Council of the time of such meeting and purpose thereof. Only Matters mentioned in the call shall be considered.

### **Section 3.12 Nepotism**

No person related within the second degree by affinity (marriage) or third degree by consanguinity (blood) to the Mayor or to any member of the Council or the City Manager or Department Heads shall be appointed to any permanent paid office, position, clerkship, or other service of the City.

### **Section 3.13 Prohibitions of Appointment to City Manager**

No Councilmember or Mayor shall be appointed City Manager during the term for which he/she has been elected Councilmember or Mayor, nor within two (2) years after the expiration of his/her term. *Amended 2000*

### **Section 3.14 Council Not to Interfere in City Manager Appointment and Removals**

#### **Section 3.14.1 Administration**

Neither the City Council nor any of its members shall direct or request the appointment of any person to, or his/her removal from, office by the City Manager or by any of his/her subordinates, or in any manner take part in the appointment or removal of officers in the administrative service of the City. However, the Council may consult and advise with the City Manager, make inquiry regarding the appointments or removals and may express their opinion in regard thereto. *Amended 2000*

#### **Section 3.14.2 Executive**

In regard to administrative and executive duties under the City Manager, the Council and its members shall deal solely through the City Manager, either publicly or privately. Willful violation of the foregoing provisions of this Charter by any member of the Council shall constitute misconduct and shall authorize the Council by a vote of the majority of its membership to expel such offending member of the council if found guilty after public hearing and thereby create a vacancy in the place held by such member. *Amended 2000*

### **Section 3.15 Rules of Procedure**

The Council shall, by ordinance, determine its own rules and order of business and the rules shall provide that citizens of the City shall have a reasonable opportunity to be heard at any meeting. The Council shall provide for the minutes being taken and records of all meetings, and such minutes shall be a public record. Four (4) Councilmembers shall constitute a quorum for the purpose of the transaction of business and no action of the Council shall be valid or binding unless adopted by the affirmative vote of a majority of the members present. All meetings of the City Council shall be open to the public as provided by state law, and minutes of all proceedings shall be kept, to which any citizen may have access at all reasonable times and which shall constitute one of the archives of the city. The vote upon the passage of all ordinances and resolutions shall be taken by "Ayes" and Nays" made in open meeting by a canvas of the Council, and the vote of each Councilmember shall be entered upon the minutes and every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the City Secretary. *Amended 2013*

### **Section 3.16 Procedure to Enact Legislation**

The City Council shall legislate by ordinance, and the enacting clause of every ordinance shall be: "Be it ordained by the City Council of the City of Gilmer". Every ordinance enacted by the Council shall be signed by the Mayor or Mayor Pro-Tem and shall be filed with and recorded by the City Secretary. The descriptive caption of all ordinances

enacted by the Council shall be read in open meeting of the Council at one (1) regular or special Council meeting. All ordinances, unless otherwise provided by law or by the terms of such ordinance, shall take effect in accordance with Article 3, Section 3.17.

### **Section 3.17 Publication of Ordinances**

Except as otherwise provided by law or by this Charter, the City Secretary shall give notice of the proposed enactment of every ordinance imposing any penalty, fine or forfeiture for any violation of any of its provisions and of every other ordinance required by law, or this Charter, to the public, by causing a descriptive caption of the ordinance stating in summary the purpose of the ordinance to be published at least one (1) time within ten (10) days after its adoption by Council in the official newspaper of the City. The affidavit of such publication by the publisher of such newspaper, taken before any officer authorized to administer oaths and filed with the City Secretary, shall be conclusive proof of the legal publication and promulgation of such ordinance in all courts. Such enacted ordinance shall take effect upon publication as required by law.

*Amended 2013, 2017*

### **Section 3.18 Adoption and Ratification of Existing City Ordinances and Prior City Actions**

All ordinances of the City of Gilmer adopted prior to the adoption of this Charter and not inconsistent with the provisions of this Charter shall remain in full force and effect until altered, amended or repealed by the City Council. All official actions taken by the City of Gilmer, its City Councils or other City officials, and all previous elections, contracts, bonds, warrants, and other evidences of indebtedness and any annexations, prior to the adoption of this Home Rule Charter, are hereby adopted, validated, confirmed and ratified.

### **Section 3.19 Code of Ordinances**

The City Council shall have power to cause the ordinances of the City of Gilmer to be printed in code form and shall have the same arranged and digested as often as the Council may deem advisable; however, failure to print the ordinances as herein provided shall not affect the validity of same.

### **Section 3.20 Bonds for Employees**

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

### **Section 3.21 Investigative Powers of the Council**

The Council shall have the power to inquire into or investigate the official conduct of any department, agency, officer, or employee of the City and, for that purpose, shall have the power to administer oaths, subpoena witnesses, compel the production of books, papers, records, or other evidence, and, as provided by ordinance, to punish and fix penalties for contempt for failure or refusal to obey any such subpoena or to produce any such books, papers, records, or other evidence.

## **ARTICLE 4 Administrative Services**

### **Section 4.01 City Manager – Appointment and Qualifications**

The City Council shall appoint a City Manager for an indefinite term, who shall be the chief administrative and executive officer of the City. The City Manager shall be chosen by the City Council solely on the basis of executive and administrative training, experience, ability and character, and without regard to political consideration. The City Manager need not be a resident at the time of appointment; however, the City Manager **MUST** reside within the city during the tenure served. The City Council shall require the City Manager, before entering upon the duties of this office, to execute a good and sufficient surety bond in such amount as the City Council may demand payable to the City of Gilmer and, conditioned upon the faithful performance of the duties of this office, the premium of such bond to be paid by the city. *Amended 2000*

#### **Section 4.01.1 City Manager – Powers and Duties**

The City Manager shall be the chief executive officer and head of the administrative branch of City government. The City Manager shall be responsible to the City Council for the proper administration of all the affairs of the City. The powers herein conferred upon the City Manager shall include, but shall not be limited to, the following:

(a) Appoint and employ all heads of departments and other employees not otherwise provided for in this Charter or by ordinance. Appointments made by the City Manager shall be on the basis of executive and administrative experience, ability, training, fitness, and efficiency of such appointees in the work which they are to administer. All heads of departments shall be immediately responsible to the City Manager, and may be removed any time the City Manager may deem it necessary in the best interest of the City. The City Manager shall have the right to discharge any of the subordinate employees of departments under said direction in accordance with the provisions of this Charter and ordinances enacted pursuant thereto;

(b) Exercise control and direction over all departments established by this Charter, or that may hereafter be created by the City Council by Ordinance, except as otherwise herein provided;

(c) See that all State laws and Ordinances of the City of Gilmer are effectively enforced as well as recommended, in writing to the City Council for adoption, such other ordinances and measures as may be deemed necessary or expedient;

(d) Annually prepare a budget and be responsible for its administration after adoption by the City Council; *Amended 2013*

(e) 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;

(f) Keep the Council advised of the financial condition and future needs of the City and make such recommendations as may seem to be desirable;

(g) Prepare personnel policy recommendations to the City Council and furnish it with necessary information in arriving at proper decisions;

(h) Attend all meetings of the City Council, with the right to take part in the discussion, but having no vote; and

(i) Perform such other duties as may be prescribed by this Charter or required by the Council not inconsistent with this Charter.

#### **Section 4.01.2 City Manager – Term and Removal**

The City Council shall appoint the City Manager for an indefinite term and may remove him/her by a majority vote of the entire Council. At least thirty (30) days before such removal shall become effective, the City Council, shall by a majority vote of the entire Council, adopt a preliminary resolution stating the reasons for removal. The Manager may reply in writing and may request a public hearing which shall be held not earlier than twenty (20) days nor later than thirty (30) days after the filing of such request. After such public hearing, if one be requested and after full consideration, the City Council, by the entire council, may adopt a final resolution of removal. By the preliminary resolution, the City Council may suspend the Manager from duty. The City Council may remove the Manager with no public hearing, upon the affirmative vote of the majority of the entire Council, if the Manager has only served the city for six (6) months or less. The action of the Council in suspending or removing the City Manager shall be final, it being the intention of the Charter to vest all authority and fix all responsibility for such suspension or removal in the City Council.

*Amended 2017*

#### **Section 4.01.3 City Manager – Investigative Powers**

The City Manager, or any persons or committee authorized by the City Manager, shall have power to inquire into the conduct of any department or office of the City and to make investigations as to City affairs and, for that purpose, may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence material to said inquiry. The City Council shall provide by ordinance penalties for contempt in refusing to obey any such subpoenas or failures to produce books, papers and other evidence, and shall have the power to punish any such contempt in the manner provided by ordinance.

#### **Section 4.01.4 City Manager – Compensation**

The City Manager shall receive compensation as may be fixed by the City Council according to the person's experience, education, and training. The compensation should

be agreed upon before appointment with the understanding that the City Council may change it at its discretion.

#### **Section 4.01.5 Absence of City Manager**

The City Manager, by letter filed with the City Secretary, may designate a qualified department head of the City to perform the manager's duties during temporary absence or disability. In the event of failure of the City Manager to make such designation, the Council may, by resolution, appoint a qualified person to perform the duties of the City Manager until he/she shall return or until such disability shall cease. *Amended 2013*

#### **Section 4.02 City Secretary**

The City Manager shall appoint and remove the City Secretary and any Assistant City Secretary as the City Council shall deem advisable. The City Secretary shall be entitled to a seat at the Council table at all regular and special Council meetings. The Assistant City Secretary shall serve such obligations in the absence of the City Secretary. *Amended 2000*

##### **Section 4.02.1 City Secretary - Duties and Responsibilities**

The duties of the City Secretary, or an Assistant City Secretary, shall be as required by law and as established by the Job Description as adopted with the City's Pay Classification Plan and shall include the following:

- (a) Record the minutes of all official meetings of the Council provided, however, only the captions of duly enacted ordinances and resolutions shall be recorded in the minutes; and
- (b) Be the custodian of all municipal records and provide for the safety and security thereof and maintain the City seal and affix it to all instruments requiring the seal.

##### **Section 4.02.2 City Secretary - Compensation**

The City Secretary shall be compensated as other City employees based on the City's Pay Classification Plan.

#### **Section 4.03 Department of Finance**

There shall be established and maintained a Department of Finance to ensure that effective and efficient administration of all financial affairs of the City is achieved:

##### **Section 4.03.1 Director of Finance – Appointment and Qualifications**

There may be a Director of Finance appointed by the City Manager. The Director of Finance shall serve in no other position within the City Government, except when so designated by the City Council. The City Manager shall have the authority to remove the Director of Finance without the prior approval of a majority vote of the entire Council. If following a detailed internal or external investigation identifying that the Director of Finance has committed a criminal act or acts against the City of Gilmer in performance of their duties and/or responsibilities. With the departure of the Director of Finance, whether voluntary or involuntary, the City Manager at the direction of the City Council shall cause an independent audit to be undertaken of the City's financial books and accounts. The Director of Finance shall have knowledge of municipal accounting and

taxation and have had experience in budgeting and financial control. The Director shall be fully responsible to the City Manager for the administration of their department, and for the carrying out and enforcement of the financial resolutions and ordinances of the City Council. The Director shall, with the approval of the City Manager, appoint and remove the employees of said department and shall perform such duties as identified within this Charter or as may be developed by the City Manager not in conflict with City Council or required by the City Council. *Amended 2000;2007; 2017*

#### **Section 4.03.2 Director of Finance – Powers and Duties**

The Director of Finance shall have charge of the administration of the financial affairs of the City and to that end shall have the authority and shall be required to:

- (a) Compile the current expense estimates;
- (b) Compile the capital estimates for the budget;
- (c) Supervise and be responsible for the disbursement of all monies and have control over all expenditures to insure that budget appropriations are not exceeded;
- (d) Maintain a general accounting system for the City government and each of the offices, departments, and agencies; keep books for and exercise financial budgetary control over each office, department, and agency; keep separate accounts for items of appropriation contained in the City budget, each of which accounts shall show the amount of the appropriation, the amount paid therefrom, the unpaid obligations against it and the unencumbered balance; require report of receipts and disbursements from each receiving and spending agency of the City to be made daily or at such intervals as he/she may deem expedient;
- (e) Submit to the City Council a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City; *Amended 2000*
- (f) Prepare, as of the end of each fiscal year, a complete financial statement and report;
- (g) Collect all taxes, fees, and service charges, including special assessments, license fees, and all other revenues of the City, except those collectable by the County, and receive all money receivable by the City from other levels of government, or from any court, or from any office, department, or agency of the City;
- (h) Have custody of all public funds belonging to or under control of the City, or any office, department, or agency of the City government and deposit all funds coming into hands in such depositories as may be designated by resolution of the Council, or, if no such resolution be adopted by the City Manager, subject to the requirements of law as to surety and payment of interest on deposits, but all such interest shall be the property of the City and shall be accounted for and credited to the proper account;
- (i) Supervise and be responsible for the purchase, storage, and distribution of all supplies, materials, equipment, and any other articles used by any office, department, or agency of the City government;

(j) Approve all proposed expenditures; unless he/she shall certify that there is an unencumbered balance of appropriation and available funds, no appropriation shall be encumbered and no expenditure made;

(k) Prescribe the forms of receipts, requisitions, vouchers, bills, or claims to be used by all the offices, departments, and agencies of the City government;

(l) Examine and approve all contracts, orders, and other documents by which the City government incurs financial obligations having previously ascertained that monies have been appropriated and allotted and will be available when the obligations shall become due and payable;

(m) Audit and approve before payment all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the City government and with the advice of the City Attorney determine the regularity, legality, and correctness of such claims, demands, or charges; and

(n) Inspect and audit any accounts or records of financial transactions which may be maintained in any office, department, or agency of the City government apart from or subsidiary to the accounts kept in his office.

#### **Section 4.03.3 Director of Finance – Compensation**

The Director of Finance shall be compensated as other City employees based on the City's Pay Classification Plan.

#### **Section 4.04 Department of Police**

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

##### **Section 4.04.1 Chief of Police**

The Chief of Police shall be the chief administrative officer of the Department of Police. The Chief shall, with the approval of the City Manager, appoint and remove the employees of said department and shall perform such duties as may be required by the City Manager. The Chief of Police shall be appointed by the City Manager. The Chief of Police shall be fully responsible to the City Manager for the administration of the Police Department, and for the carrying out and enforcement of the resolutions and ordinances of the City Council. The Chief may be removed from office by said City Manager.

*Amended 2017*

##### **Section 4.04.2 Special Police**

No person, except as authorized by general law, by this Charter, or by the ordinances not in conflict herewith, shall act as special police or special detective.

##### **Section 4.04.3 Chief of Police - Compensation**

The Chief of Police shall be compensated as other City employees based on the City's Pay Classification Plan.

#### **Section 4.05 Fire Department**

There shall be established and maintained a Fire Department for the City of Gilmer, to be maintained by the Gilmer Volunteer Fire Department for the protection of the City.

##### **Section 4.05.1 Fire Chief and Assistant Fire Chiefs**

The Fire Chief and Assistant Chiefs shall be elected by a majority vote of the active members of the Gilmer Volunteer Fire Department present at the annual meeting of each year and then approved by the City Council. The Fire Chief shall have all certificates required by the State of Texas to administer paid fire personnel. The Fire Chief shall be the Chief Administrative Officer of the Municipal Fire Department, fully responsible to the City Manager for the administration of the fire department, and for the carrying-out and enforcement of the resolutions and ordinances of the City Council. The Chief shall, with the approval of the City Manager, appoint and remove the employees of said department, and shall perform such duties as may be required of him by the City Manager.

At the annual meeting of the Gilmer Volunteer Fire Department, the active members shall, by majority vote, elect two Assistant Chiefs. The Assistant Chiefs shall be approved by the City Council. *Amended 2000; 2013*

##### **Section 4.05.2 Fire Marshal**

The Fire Marshal shall be appointed by the City Council and have a term of one (1) year, beginning February 1 of each year. The Fire Marshal shall be fully responsible to the Fire Chief and City Council for the investigation of the origin of fires and the carrying out and enforcement of the resolutions and ordinances of the City Council pertaining to the general prevention of fire and the education of fire prevention of the residents of the City. The Fire Marshal may be removed from office by the City Council, and the duties of the Fire Chief and Fire Marshal may be performed by the same individual but only on a temporary basis.

#### **Section 4.06 Administrative Departments**

There shall be such administrative departments as established by this Charter and may be established by ordinance and, except as otherwise provided in this Charter, these administrative departments shall be under the direction of the City Manager. The City Council shall have the power by ordinance, to establish administrative departments or offices not herein provided by this Charter. The Council may discontinue, redesignate, or combine any of the departments and/or administrative offices. The head of each department shall be a director or superintendent who shall be appointed by the City Manager and such director or superintendent shall have supervision and control over his/her department. Excluding the fire department and police department, two (2) or more departments may be headed by the same individual and the City Manager may head one (1) or more departments.

## **ARTICLE 5**

### **Legal and Judicial Services**

#### **Section 5.01 City Attorney**

The Mayor, with the concurrence of the City Council, shall appoint a competent, duly qualified, and licensed attorney practicing law in the State of Texas to be an attorney for the City of Gilmer, hereinafter referred to as the "City Attorney." He shall serve at the discretion of the City Council and shall receive for his services such compensation as may be fixed by the Council. The City Attorney shall perform and discharge all duties and exercise all powers which shall be conferred upon him/her by any ordinance or resolution of the City Council and, in addition, he shall exercise the following powers;

(a) Be the legal advisor of and attorney and counsel for the City and for all of the offices and departments and all of the administrative officers thereof, in respect to their official duties, of the City of Gilmer;

(b) Represent the City of Gilmer in all litigation and legal proceedings; provided that the City Council may retain special counsel at any time they deem same appropriate and necessary;

(c) Review, concur or dissent, or prepare, as requested or required, all documents, contracts, bonds, legal instruments, and other writings in which the City is concerned or may have an interest;

(d) Be Prosecuting Attorney of the Municipal Court and prosecute all cases brought before such court on behalf of the City;

(e) The City Council and all administrative officers of the City may require the opinion of the City Attorney upon any question of law involving their respective powers and duties, and he shall furnish the same in writing;

(f) Apply in the name of the City to a court of competent jurisdiction for an order of injunction restraining the misapplication of funds of the City or the abuse of its corporate powers, or the execution or performance of any contract, made on behalf of the City in contravention of law, or which was procured by fraud or corruption;

(g) When an obligation or contract made on behalf of the City granting a right or easement, or creating a public duty, is evaded or violated, the City Attorney shall require the specific performance of the duty by any administrative officer by application for a writ of mandamus to a court of competent jurisdiction; and

(h) Perform other duties prescribed by this Charter, by ordinance or as directed by the City Council.

#### **Section 5.02 Municipal Court**

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

### **Section 5.02.1 Judge of the Municipal Court**

The Municipal Court shall be presided over by a Magistrate who shall be known as the City Judge. The Judge shall be appointed by the Mayor with the concurrence of the Council, and shall serve at the discretion of the City Council. The Judge shall receive such compensation as may be set by the Council. The City Council, at its discretion, may appoint one or more Associate Judges. *Amended 2007*

### **Section 5.02.2 Clerk of the Municipal Court**

There shall be a Clerk of the Municipal Court who shall be appointed by, and who shall serve at the pleasure of the City Manager. The Clerk and any deputies shall have the power to administer oaths and affidavits, make certificates, affix the seal of the court thereto, and otherwise perform any and all acts necessary in issuing process of such Court, and conducting the business thereof. The Council shall require the Municipal Court Clerk, before entering upon the duties of the office, to execute a good and sufficient surety company bond, in such amount as the Council may demand payable to the City and conditioned for the faithful performance of the duties of the office, the premium of such bond to be paid by the City. The City Secretary shall be ex-officio clerk of said Court and in the absence of the Municipal Court Clerk, the City Secretary or an appointed deputy shall serve as the Municipal Court Clerk until a new clerk is appointed by the City Manager.

### **Section 5.02.3 Procedure in the Municipal Court**

All complaints, prosecutions, the service process, commitment of those convicted of offenses, the collection and payment of fines, the attendance and service of witness and juries, punishment for contempt, bail and the taking of bonds shall be governed by the laws and codes of the State of Texas applicable to Municipal Courts.

## **ARTICLE 6 Municipal Finance**

### **Section 6.01 Fiscal Year**

The fiscal year of the City of Gilmer shall begin on October 1<sup>st</sup> of each calendar year and will end at midnight on September 30<sup>th</sup> of the following calendar year. Such fiscal year shall also constitute the budget and accounting year. *Amended 2007*

### **Section 6.02 Preparation and Submission of Budget**

The City Manager shall, between sixty (60) and ninety (90) days prior to the beginning of each fiscal year, submit to the Council a proposed budget, which budget shall provide a complete financial plan for the fiscal year and shall contain, but not be limited to, the following: *Amended 2000; 2007*

(a) A budget message, explanatory of the budget, which message shall contain an outline of the proposed financial policies of the City of the fiscal year, shall set forth

the reasons for changes from the previous year in expenditures and revenue items, and shall explain any major changes in financial policy;

- (b) A consolidated statement of anticipated receipts and proposed expenditures of all funds;
- (c) An analysis of property valuations;
- (d) An analysis of the tax rate;
- (e) Tax levies and tax collections by year for at least five (5) years;
- (f) General fund resources in detail;
- (g) Special fund resources in detail;
- (h) Summary of proposed expenditures by function, department, and activity;
- (i) Detailed estimates of expenditures shown separately for each activity to support summary in (h) above;
- (j) A revenue and expense statement for all types of bonds;
- (k) A description of all bond issues outstanding, showing rate of interest, date of issue, maturity date, amount authorized, amount issued and amount outstanding;
- (l) A schedule of requirements for the principal and interest of each issue of bonds;
- (m) The appropriation ordinance; and
- (n) The tax levying ordinance.

**Section 6.03 Anticipated Revenues and Expenditures Compared with Other Years**

In preparing the budget, the City Manager shall list in a parallel column, opposite the various items of revenues and expenditures, the actual amount of each item for the last completed fiscal year, the estimated amount for the current fiscal year and the proposed amount for the ensuing fiscal year. *Amended 2000; 2007*

**Section 6.04 Budget a Public Record**

The budget and all supporting schedules shall be filed with the person performing the duties as City Secretary when submitted to the City Council and shall be a public record. The City Secretary shall make available a copy to any resident of the City upon request. *Amended 2000*

**Section 6.05 Notice of Public Hearing on Budget**

At the meeting of the City Council at which the budget is submitted, the City Council shall fix the time and place of public hearing on the budget and shall cause to be published in the official newspaper of the City of Gilmer, a notice of the hearing setting forth the time, place, and date, as required by law.

**Section 6.06 Public Hearing on Budget**

At the time and place set forth in the notice required by Section 6.05, or at any time and place to which such public hearing shall from time to time be adjourned, the City Council shall hold a public hearing on the budget submitted and all interested persons shall be given an opportunity to be heard for or against any item or the amount of any item therein contained.

**Section 6.07 Proceeding on Adoption of Budget**

After public hearing the Council shall analyze the budget, making any additions or deletions which it feels appropriate, and then shall adopt the budget by a favorable vote of four (4) of the members of the City Council. *Amended 2013*

**Section 6.08 Failure to Adoption of Budget**

The City Council shall adopt the budget on or before the 30<sup>th</sup> day of September of the fiscal year currently ending. If it fails to adopt the budget by this date, the budget proposed by the City Manager shall go into effect. *HRC amended 05/2013*

**Section 6.09 Effective Date of Budget; Certification of Copies; Copies Made Available**

Upon final adoption, the budget shall be in effect for the fiscal year. A copy of the budget, as finally adopted, shall be filed with the person performing the duties of the City Secretary and the County Clerk of Upshur County. If the City maintains an internet website State law requires that a copy of the budget must be posted on it. The final budget shall be reproduced and copies shall be made available for the use of all City offices, departments, and agencies and for the use of interested persons. *Amended 2013*

**Section 6.10 Budget Establishes Appropriations**

From the effective date of the budget, the several amounts stated therein as proposed expenditures shall be and become appropriated to the several objects and purposes therein named.

**Section 6.11 Budget Establishes Amount to be Raised by Property Tax**

From the effective date of the budget, the amount stated therein as the amount to be raised by property tax shall constitute a determination of the amount of the levy necessary for the purposes of the City in the corresponding tax year; provided, however, that in no event, shall such levy exceed the legal limit provided by the laws and Constitution of the State of Texas. *Amended 2013*

**Section 6.12 Reserve & Contingencies**

a. Provision shall be made in the annual budget and in the appropriation ordinance for contingencies in an amount not less than one (1%) percent but not more than eight (8%) percent of the total budget, to be used in case of unforeseen items of expenditure. Such contingencies shall be under the control of the City Manager and distributed by him/her. Expenditure of said contingencies to be made in an amount greater than \$5,000.00 shall

require approval of the City Council. "Separate, sequential, or component purchases" as defined by Chapter 252 of the Texas Local Government Code are prohibited.

b. Funds not appropriated in the current fiscal year and held in reserve shall require council approval for transfer and expenditure.

c. Where expenditures are necessary and immediate because of a public calamity and/or to preserve, or protect the public health or safety of city residents, approval of the City Council is not required. However, approval is required after the fact as a means of informing the City Council and for public record.

*Amended 2000; 2017*

### **Section 6.13 Amendments After Adoption of Budget**

(a) Supplemental Appropriations: If, during the fiscal year, the City Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council, by resolution, may make supplemental appropriations for the year up to the amount of such excess. *Amended 2000;2007*

(b) Emergency Appropriation: To meet a public emergency affecting life, health, property, or the public peace, the Council may make emergency appropriations. Such appropriations may be made by emergency resolution. To the extent that there are no available inappropriated revenues to meet such appropriations, the Council may by such emergency resolution authorize the issuance of emergency notes.

(c) Reduction of Appropriation: 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 budgeted, the City Manager shall report to the Council without delay, indicating the estimated amount of the shortfall, any remedial action taken and make recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may by resolution reduce one or more appropriations. *Amended 2000;2007*

(d) Transfer of Appropriation: 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, office, or agency. Upon written request by the City Manager, the Council may, by budget amendment, transfer part or all of any unencumbered appropriation balance from one department, office, or agency to another. *Amended 2000;2007*

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

**Section 6.14 Capital Program Budget**

The City Manager shall prepare and submit to the City Council a five (5) year Capital Program Budget between sixty (60) and ninety (90) days prior to the beginning of each fiscal year. Such Capital Program Budget shall include: *Amended 2000; 2007*

- (a) Clear general summary of its contents;
- (b) List of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity of such improvements; and
- (c) Cost estimates, method of financing, and recommended time schedules for each such improvement.

**Section 6.15 Council Action on Capital Program Budget**

The Council shall give notice of a public hearing on the proposed Capital Program Budget and shall hold said hearing in the same manner as provided in this Article for annual budget. The hearing for the proposed Capital Program Budget and the notice of same may be in conjunction with the annual budget. The Council shall, by resolution, adopt the Capital Program Budget with or without amendment after the public hearing and on or before the 27<sup>th</sup> day of the last month of the current fiscal year.

**Section 6.16 Defect Shall Not Invalidate the Tax Levy**

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

**Section 6.17 Audit and Examination of City Books and Accounts**

The City Council shall cause an independent annual audit to be made of the books and accounts of each and every department of the City and may provide for more frequent audits as it deems necessary. Such audit shall be made by a Certified Public Accountant or firm of accountants, who shall be selected by the City Council and who shall have no interest direct, or indirect in the financial affairs of the City government or in any of its officers. The Council may designate such accountant or firm annually or for a period not exceeding three (3) years, provided that the designation for any particular year shall be made no later than thirty (30) days after the beginning of such fiscal year. Nothing herein shall prevent the City Council from redesignating the same accountant or firm which has previously been designated to prepare an audit. If the State of Texas makes such an audit, the Council may accept it as satisfying the requirement of this section. Such accountant, so selected, shall not maintain or keep any of the City's accounts or records. Such audit shall include a recapitulation of all internal audits made during the course of each fiscal year, and all audit reports shall be filed with the City Council and shall be available for public inspection and shall be made a part of the archives of the City.

**Section 6.18 Purchases**

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

**Section 6.19 Power to Tax**

The City Council shall have the power under the provisions of the State law to levy, assess, and collect an annual tax upon real and personal property within the City to the maximum provided by the Constitution and general laws of the State of Texas.

**Section 6.20 Property Subject to Tax**

All real and personal property within the City of Gilmer on the first day of January, not expressly exempted by law, shall be subject to annual taxation.

**Section 6.21 Board of Directors of Appraisal District**

Participation in the selection of members to serve on the Board of Directors of the Appraisal District of Upshur County shall be in accordance with the Texas Property Tax Code and other applicable laws, unless altered by the Constitution and Statutes of the State of Texas.

**Section 6.22 Appraisal of Property**

All taxable property located or situated within the corporate limits of the City shall be appraised in accordance with the Texas Property Tax Code or as may be revised by the Constitution or Statues of the State of Texas.

**Section 6.23 Certification and Adoption**

The Board of Directors of the Appraisal District of Upshur County shall be required to keep an accurate record of all its proceedings which shall be available for public inspection. Immediately upon completion of its work, the Board shall certify its approval of the assessment rolls which shall be returned to the City Council, which shall in turn approve said rolls as returned to it and shall thereupon certify and adopt the same as the assessment rolls to be used for the collection of taxes for the current year. The City shall thereafter cause tax statements to be mailed to each person, firm, or corporation named upon the tax rolls. Compliance with this section shall be in accordance with the Texas Property Tax Code or as may be revised by the Constitution or Statutes of the State of Texas.

**Section 6.24 Taxes, When due, and Payable**

All taxes due the City shall be payable at the office of the City or through an agent of the City of Gilmer so designated by ordinance of City Council and may be paid at any time after the tax rolls for the year have been completed and approved, which shall not be later than October 1<sup>st</sup>. Taxes shall be paid before February 1<sup>st</sup> of each year succeeding the year for which the taxes are levied, and all such taxes not paid prior to such date shall be deemed delinquent and shall be subject to such penalty and interest as the City Council may provide by ordinance. Failure to levy and assess taxes through omission in preparation of the approved tax roll shall not relieve the person, firm, or corporation so omitted from the obligation to pay such current or past due taxes shown to be payable by recheck of the rolls and receipts for the years in questions, unless otherwise provided by law.

### **Section 6.25 Tax Liens**

A lien is hereby created on all property, personal and real, in favor of the City of Gilmer, for all taxes, ad valorem, or otherwise. Said lien shall exist from January 1<sup>st</sup> in each year until the taxes are paid. Such lien shall be prior to all other claims. No gift, sale, assignment, or transfer of any kind, or judicial writ of any kind, can ever defeat such lien, but the City can pursue such property and, whenever discovered, may seize and sell enough thereof to satisfy such taxes. All persons or corporations owning or holding personal property or real estate in the City of Gilmer on the first (1<sup>st</sup>) day of January of each year shall be liable for all municipal taxes levied thereon for such year.

### **Section 6.26 Issuance of Bonds**

In keeping with the Constitution of the State of Texas and not contrary thereto, the City of Gilmer shall have the right, authority and power to borrow money on the credit of the City for any public purpose not now or hereafter prohibited by the Constitution and laws of the State of Texas, and shall have the right to issue all tax bonds, revenue bonds, funding and refunding bonds, time warrants, and other evidence of indebtedness as now authorized, or as may hereafter be authorized, to be issued by cities and towns, by the laws of the State of Texas.

## **ARTICLE 7 Elections**

### **Section 7.01 General Elections**

The regular City Election shall be held annually on a uniform election date set by the State of Texas, at which time officers will be elected to fill those offices that become vacant that year. The City Council shall fix the hours and place for holding such elections. Notice of the election shall be published in the official newspaper of the City of Gilmer. Notice of the election shall be published in the time and manner required by Section 4.003(a)(1) of the Texas Election Code. The Mayor and at-large Councilperson(s) shall be elected by obtaining a majority of the votes cast. Candidates for single member districts shall file for one district and shall be elected by a majority of votes cast within that district. During the odd numbered years, the Mayor and one candidate will be elected at-large along with Districts 2 and 3. During the even numbered years, one candidate will be elected at-large along with Districts 1 and 4. *Amended 2007; 2013*

### **Section 7.02 Regulation of Elections**

All general and special elections shall be held in accordance with the laws of the State of Texas regulating the holding of municipal elections and in accordance with this Charter and ordinances or resolutions adopted by the Council for the conduct of elections. The Council shall appoint the election judges and other election officials in the City elections and for all other expenses in holding said elections. *Amended 2007*

### **Section 7.03 Special Elections**

The City Council, by ordinance or resolution, may call such special elections as are authorized by the State of Texas law or this Charter, fix the time and place of holding

same and provide all means for holding such special elections, provided that every special election shall be called and held, as nearly as practical, according to the provisions governing regular elections.

**Section 7.04 Filing for Office**

Any qualified person who desires to become a candidate for election to the office of Mayor or City Councilmember shall file an application as prepared by the Office of the Texas Secretary of State with the City Secretary at the time set forth in the yearly election calendar prepared by the Office of the Texas Secretary of State. *Amended 2013*

**Section 7.05 Official Ballot**

The names of all candidates for office, except such as may withdraw, die, or become ineligible, shall be printed on the official ballots without party designations, in the order determined in a drawing of lots, conducted by the City Secretary. Absentee voting shall be governed by the General Election Laws of the State of Texas.

**Section 7.06 Election by Majority**

At any regular or municipal election, the candidate in each place or office who shall have received the majority of votes cast for that place in such election shall be declared elected. Should any candidate fail to receive the majority of votes for the office or place for which he is a candidate, the Council shall immediately order a runoff election to be held on a date in accordance with the laws of the State of Texas and as set by ordinance of the City. At this special election, the names only of the two (2) candidates receiving the highest number of votes at the regular election, for the office or place for which they are candidates, shall be printed on the ballot and submitted to qualified voters for election, and the candidate receiving the majority votes in such special election for the place or office for which he was a candidate, shall be declared duly elected.

**Section 7.07 Conducting and Canvassing Elections**

The returns of every municipal election shall be delivered forthwith by the election judges to the proper authority in compliance with the laws of the State of Texas. The City Council shall canvass the returns, investigate the qualifications of the candidates and declare the official results of the election in accordance with the laws of the State of Texas. Returns of every municipal election shall be recorded in the minutes of the Council. The qualified person receiving the majority of votes cast for any office shall thereupon be declared elected by said Council. The decision of the Council, as to qualifications of candidates, shall be conclusive and final for all purposes.

**Section 7.08 Oath of Office**

Every elected official of the City shall, before entering upon the duties of office, take and subscribe to the Oath of Office as stated below: "I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_, of the City of Gilmer, Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God." *Amended 2013*

**Section 7.09 Statement of Elected/Appointed Officer**

“I, \_\_\_\_\_, do solemnly swear (or affirm), that I have not directly or indirectly paid, offered, or promised to pay, contributed, not promised any employment as a reward for the giving or withholding a vote at the election at which I was elected, or if the office is one of appointment, to secure my appointment, so help me God.” *Amended 2013*

## **ARTICLE 8**

### **Legislation By the People; Initiative**

#### **Section 8.01 General Powers**

The qualified voters of the City of Gilmer, in addition to the method of legislation hereinbefore provided, shall have the power to direct legislation by initiative. In exercising such power, legislation may not be proposed for:

- (1) Ordinances appropriating money or levying taxes;
- (2) Ordinances repealing ordinances appropriating money or levying taxes;
- (3) Ordinances granting franchises;
- (4) Ordinances fixing salaries; and
- (5) Ordinances inconsistent with this Charter or law.

#### **Section 8.02 Commencement of Proceeding: Petitioners' Committee: Affidavit**

Any five (5) registered voters may commence initiative proceedings by filing with the City Secretary an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance.

Promptly after the affidavit of the petitioners' committee is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.

#### **Section 8.03 Petitions**

(a) **Number of Signatures.** Initiative petitions must be signed by registered voters of the City equal in number to at least ten percent (10%) of the total number of registered voters registered to vote at the last regular election.

(b) **Form and Content.** All papers of a petition shall be uniform in size and style and be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the printed name, address and voter registration certificate number of the person signing, and shall include the day, month, and year his or her signature was affixed to the petition. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed.

(c) **Affidavit of Circulator.** Each paper of a petition shall have attached to it when filed an affidavit executed by the person circulating it stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine

signatures of the persons whose names they purport to be and that each sign had an opportunity before signing to read the full text of the ordinance proposed.

STATE OF TEXAS            )  
COUNTY OF UPSHUR        )

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

\_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public, Upshur County, Texas

**Section 8.04 Procedure after Filing**

(a) **Certificate of Clerk; Amendment.** Within twenty (20) days after the petition is filed, the City Secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two (2) days after receiving the copy of his or her certificate and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (b) and (c) of Section 8.03 and, within five (5) days after it is filed, the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section within the time required, the clerk shall promptly present his or her certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

(b) **Council Review.** If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if the amended petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, file a request that it be reviewed by the Council.

The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition.

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

#### **Section 8.05 Council Either to Pass Ordinance or Call Election**

If the petition accompanying the proposed ordinance be signed by electors equal in number to ten percent (10%) of the registered voters of the City who were qualified to vote on the date of the last regular municipal election as determined from the list of registered voters maintained by the appropriate office of Upshur County, and contains a request that the ordinance be submitted forthwith to a vote of the people at the next general election, the governing body of the City shall either:

- (1) Pass said ordinance without alteration within forty-five (45) days after the attachment of the City Secretary's certificate of sufficiency to the accompanying petition; or
- (2) Submit the ordinance, without alteration, to a vote of the people in the next general election.

#### **Section 8.06 Form of Ballot**

The ballots used when voting upon said ordinance shall contain the words "For the Ordinance" and "Against the Ordinance" (stating the nature of the proposed ordinance). If a majority of the registered electors voting on said proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the City.

#### **Section 8.07 Voluntary Submission or Legislation by the Council**

The City Council may, upon its own motion, and by a majority vote of its Members, submit to popular vote at any election, for adoption or rejection, any proposed ordinance in the same manner and with the same force and effect as provided in this Article for "submission on petition".

#### **Section 8.08 Publication of Proposed Ordinances**

The City Secretary shall publish at least once in the official newspaper of the City the proposed ordinance seven (7) days before the date of the notices and do such other things relative to such election as required in general municipal elections or by the ordinance calling the election.

#### **Section 8.09 Adoption of Ordinances**

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

**Section 8.10 Inconsistent Ordinances**

If the provisions of two (2) or more proposed ordinances approved at the same election are inconsistent, the ordinance or resolution receiving the highest number votes shall prevail.

**Section 8.11 Ordinances Passed by Petition, Popular Vote: Repeal or Amendment**

Any ordinances which may have been passed by the City Council upon petition or adopted by popular vote under the provisions of this Article shall be repealed or amended only by the City Council, in response to a referendum petition, or by submission, as provided in Section 8.14 of this Charter.

**Section 8.12 Further Regulations by City Council**

The City Council may pass ordinances providing other and further regulations for carrying out the provisions of this Article, which are consistent with this Charter.

**Section 8.13 Franchise Ordinances**

Nothing contained in the Article shall be construed to be in conflict with any of the provisions of Article 12 of this Charter, pertaining to ordinances granting franchises, when valuable right shall be actually accrued thereunder.

**Section 8.14 Election Required for Municipal Utility or Public Improvement Districts**

Should any person, persons or corporation request that the City Council approve the implementation of a Municipal Utility District or a Public Utility District, the following shall be done before the Municipal Utility District or Public Improvements District may be authorized to operate within the corporate limits of the City of Gilmer.

(a) The request shall be made to the City Council at a regular meeting. The City Council, following discussion and debate of the issue, may approve the implementation of Municipal Utility District or a Public Improvement District by vote of the members.

(b) Following vote of the Council to approve such Municipal Utility or Public Improvement District, the Council shall, at the next general election, allow the qualified voters of the City to consider the question of allowing the District to be placed in the City of Gilmer.

(c) The election shall be held on the next available election date, allowed by the laws of the State of Texas, which provides sufficient time to prepare for such election in compliance with the laws of the State of Texas; and

(d) The ballot used when voting upon said question shall contain the words "For the \_\_\_\_\_ District", and "Against the \_\_\_\_\_ District" (stating the nature of the district). If a majority of the qualified electors voting on said proposed district shall vote in favor thereof, such district shall thereupon become permitted within the City of Gilmer.

## **ARTICLE 9**

### **Legislation By the People; Referendum**

#### **Section 9.01 General Powers**

The qualified voters of the City of Gilmer, in addition to the method of legislation hereinbefore provided, shall have the power to direct legislation by referendum. In exercising such power, legislation may not be repealed for:

Ordinances appropriating money or levying taxes;

- (1) Ordinances appropriating money or levying taxes;
- (2) Ordinances repealing ordinances appropriating money or levying taxes;
- (3) Ordinances granting franchises;
- (4) Ordinances fixing salaries; and
- (5) Ordinances inconsistent with this Charter or law.

#### **Section 9.02 Commencement of Proceeding; Petitioners' Committee: Affidavit**

Any five (5) registered voters may commence referendum proceedings by filing with the City Secretary an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and citing the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the City Secretary shall issue the appropriate petition blanks to the petitioners' committee.

#### **Section 9.03 Petitions**

(a) **Number of Signatures.** Referendum petitions must be signed by registered voters of the city equal in number to at least ten percent (10%) of the total number of registered voters registered to vote at the last regular election.

(b) **Form and Content.** All papers of a petition shall be uniform in size and style and be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the printed name, the address, and the voter registration certificate number of the person signing and the day, month and year his or her signature was affixed to the petition. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance sought to be reconsidered.

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

STATE OF TEXAS            )  
COUNTY OF UPSHUR        )

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

\_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public, Upshur County, Texas

**Section 9.04 Procedure after Filing**

(a) **Certificate of Clerk; Amendment.** Within twenty (20) days after the petition is filed, the City Secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two (2) days after receiving the copy of his or her certificate and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (b) and (c) of Section 9.03, and within five (5) days after it is filed, the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section within the time required, the clerk shall promptly present his or her certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

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

(c) **Court review; New Petition.** A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even

if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

**Section 9.05 Council Either to Rescind Ordinance or Call Election**

If the petition accompanying the ordinance proposed for repeal be signed by electors equal in number to ten percent (10%) of the registered voters of the City who were qualified to vote on the date of the last regular municipal election as determined from the list of registered voters maintained by the appropriate office of Upshur County, and contains a request that the proposed repeal of the ordinance be submitted forthwith to a vote of the people at the next general election, the governing body of the City shall either:

- (1) Repeal said ordinance within forty-five (45) days after the attachment of the City Secretary's certificate of sufficiency to the accompanying petition; or
- (2) The proposed repeal of the ordinance shall be submitted to a vote of the people in the next general election.

**Section 9.06 Form of Ballot; Provision for Repeal**

The ballots used when voting upon the repeal of said ordinance shall contain the words "For the Repeal of Said Ordinance" and "Against the Repeal of Said Ordinance" (stating the nature of the referred ordinance). If a majority of this registered electors voting on said referred ordinance shall vote in favor of repeal, such ordinance shall thereupon cease to be a valid and binding ordinance of the City.

**Section 9.07 Voluntary Submission or Legislation by the Council**

The City Council may, upon its own motion, and by a majority vote of its members, submit for repeal any existing ordinance in the same manner and with the same force and effect as provided in this Article for "submission on petition".

**Section 9.08 Publication of Referred Ordinances**

The City Secretary shall publish at least once in the official newspaper of the City the referred ordinance within seven (7) days before the date of the notices and do such other things relative to such election as required in general municipal elections or by the ordinance calling the election.

**Section 9.09 Adoption of Ordinances**

If a majority of the registered voters voting on repeal of said ordinance shall vote to rescind, it shall thereupon, or at any time fixed therein, cease to be effective as a law or as a mandatory order of the City Council.

**Section 9.10 Inconsistent Ordinances**

If the provisions of two (2) or more proposed ordinances approved at the same election are inconsistent, the ordinance or resolution receiving the highest number votes shall prevail.

**Section 9.11 Ordinances Passed by Petition, Popular Vote; Repeal or Amendment**

Any ordinances or resolutions which may have been passed by the City Council upon petition or adopted by popular vote under the provisions of this Article shall be repealed or amended only by the City Council, in response to a referendum petition, or by submission, as provided in this Charter. *Amended 2000*

**Section 9.12 Further Regulations by City Council**

The City Council may pass ordinances providing other and further regulations for carrying out the provisions of this Article, consistent with this Charter.

**Section 9.13 Petition for Referendum Not Allowed**

No petition for referendum shall be submitted for:

- (a) Ordinances required by the general laws of the State of Texas or by the provisions of this Charter;
- (b) Ordinances passed for the immediate preservation of the public peace, health, or safety under emergency conditions as specified in this Charter;
- (c) Ordinances prohibited from initiative process by Section 9.01 of this Charter.

**ARTICLE 10  
Recall**

**Section 10.01 Scope of Recall**

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

**Section 10.02 Commencement of Proceeding: Petitioners' Committee: Affidavit**

Any five (5) registered voters may commence recall proceedings by filing with the City Secretary an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the recall petition and filing it in proper form, stating their names and addresses specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed recall.

Promptly after the affidavit of the petitioners' committee is filed, the City Secretary shall issue the appropriate petition blanks to the petitioners' committee.

**Section 10.03 Petitions**

- (a) *Number of Signatures.* Recall petitions must be signed by registered voters of the city equal in number to at least 10 percent (10%) of the total number of registered voters registered to vote at the last regular election.

(b) **Form and Content.** All papers of the recall petition shall be uniform in size and style and be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the printed name, the address, and the voter registration certificate number of the person signing, and the day, month, and year his or her signature was affixed to the petition. The recall petition mentioned above must be addressed to the Council of the City of Gilmer, must distinctly and specifically point out the ground or grounds upon which such petition for removal is predicated, and, if there be more than one (1) ground, such as for incompetency, misconduct or malfeasance in office, shall specifically state each ground with such certainty as to give the officer shall to be removed notice of the matters and things with which he/she is charged. Petitions shall contain or have attached thereto throughout their circulation the full text of the recall petition.

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

STATE OF TEXAS            )  
COUNTY OF UPSHUR        )

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

\_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
Notary Public, Upshur County, Texas

**Section 10.04 Procedure after Filing**

(a) **Certificate of City Secretary; Amendment.** Within twenty (20) days after the recall petition is filed, the City Secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate of the petitioners' committed by registered mail. A recall petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it

with the clerk within two (2) days after receiving the copy of his/her certificate and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary recall petition shall comply with the requirements of subsections (b) and (c) of Section 10.03, and within five (5) days after it is filed, the clerk shall complete a certificate as to the sufficiency of the recall petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original recall petition. If a recall petition or amended recall petition is certified sufficient, or if a recall petition or amended recall petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section with the time required, the clerk shall promptly present his/her certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the recall petition.

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

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

#### **Section 10.05 Petition Found Sufficient**

If the petition be found sufficient, the City Secretary shall immediately notify, in writing, the officer so sought to be removed by mailing such notice to his mailing address and submitting the same to the Council without delay. In the event the Councilmember fails to resign, the Council shall order and fix a date for holding the said election. If an election is to be held within the City for any other purpose with sixty (60) days from the date of said notification, then the said recall election shall be held on the same day. If the Councilmember in question resigns, no election shall be necessary and the vacancy shall be filled by the Council as in other cases of vacancies.

#### **Section 10.06 Public Notice**

The Council shall make or cause to be made publication or notice and provide for holding such election and the same shall be conducted and the result thereof declared in all respects as other City elections.

#### **Section 10.07 Ballots in Recall Election**

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

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

(2) Immediately below each such question, there shall be printed the two (2) following propositions, one above the other, in the order indicated:

“For the recall of (name person)”

“Against the recall of (name person)”.

#### **Section 10.08 Recall Petition Prohibited**

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

#### **Section 10.09 Refusal of Recall Petition**

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

### **ARTICLE 11**

### **Municipal Planning, Zoning, and Development**

#### **Section 11.01 Platting of Property**

(a) Hereafter, every owner of any tract of land situated within the corporate limits of the City of Gilmer, who may divide the same in two (2) or more parts for the purpose of laying out any subdivision or any addition to the City, shall comply with the provisions of the Subdivision Regulations or ordinances of the City, and such other Statutes of the State of Texas, as now or hereafter amended.

(b) The provisions of Section 11.01(a) above shall apply similarly to the owner of any tract of land situated within the extraterritorial jurisdiction of the City of Gilmer, if not in an incorporated city or town.

#### **Section 11.02 Development of Property**

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

#### **Section 11.03 The Planning and Zoning Commission**

There shall be established a Planning and Zoning Commission which shall consist of seven (7) citizens from the City of Gilmer. The members of said Commission shall be appointed by the Mayor with confirmation by City Council for a term of three (3) years. The initial confirmed appointments of the Planning and Zoning Commission members by the Council shall designate which two (2) members shall serve one (1) year which two

(2) members shall serve two (2) years, and which three (3) members shall serve three (3) years. On each succeeding year thereafter, the Mayor shall select replacements for the Planning and Zoning Commission members whose terms have expired. Vacancies and unexpired terms shall be appointed by the Mayor for the remainder of the term. The Commission shall elect a Chairman and Vice Chairman from among its members. The Commission shall meet not less than once each quarter. A majority of the members shall constitute a quorum, and the affirmative vote of four (4) members shall be necessary for the passage of any recommendation to the City Council. Any member may be removed by the appointing authority upon filing of written charges and after public hearing, which may be provided upon request of the members against whom the charges are brought. However, should a member of the Commission fail to attend fifty percent (50%) of the scheduled meetings of the Commission within a twelve (12) month period, such member shall be subject to removal from the Commission without a public hearing by the Mayor without notice or approval of the City Council.

The Commission shall keep minutes of its proceedings which shall be of public record. The City Manager and City Engineer, or their designates, shall serve as ex-officio members of the Commission with no voting rights, but may participate in the discussions of the Commission. The City Secretary, or his/her designate, shall serve as the Commission's secretariat, with no voting rights. The Commission shall serve without compensation. Commission members and officers holding such office on the effective date of the Charter shall continue in office until the expiration of their term of membership or office and shall thereafter be appointed as provided in this Section.

#### **Section 11.04 Powers and Duties of Planning and Zoning Commission**

(a) The Planning and Zoning Commission shall have the following powers and duties:

- (1) Review and make recommendations to the City Council regarding the adoption and implementation of a comprehensive plan, any element or portion thereof, and any amendments thereto;
- (2) Review and make recommendations to the City council on all proposals to adopt or amend land development regulations for the purpose of establishing consistency with the comprehensive plan;
- (3) Monitor and oversee the effectiveness of the comprehensive plan and zoning ordinance, review and make recommendations to the Council on any amendments to the plan and zoning ordinance, and forward to the Council comprehensive updates to the plan and zoning ordinance at least once every five (5) years;
- (4) Review and make recommendations to the City Council regarding zoning or requests for zoning changes in a manner to insure the consistency of any such zoning or changes in zoning with the adopted comprehensive plan;
- (5) Exercise control over platting and subdividing land within the corporate limits and the extraterritorial jurisdiction of the city in a manner to insure the consistency of any such plats with the adopted comprehensive plan; and

(6) Review and make recommendation to the City Council on the city's annual capital budget and any capital improvement bond program.

(b) The departments of the city government shall cooperate with the planning and zoning commission in furnishing it such information as is necessary in relation to it work.

(c) The commission shall be responsible to and act as an advisory body to the City Council and shall perform such additional duties and exercise such additional powers as may be prescribed by ordinance of the Council.

### **Section 11.05 Comprehensive Plan**

(a) Purpose and Intent: It is the purpose and intent of this Section that the City Council establish comprehensive planning as a continuous and ongoing governmental function in order to promote and strengthen the existing role, processes, and powers of the City of Gilmer to prepare, adopt, and implement a comprehensive plan to guide, regulate, and manage the future development within the corporate limits and the extraterritorial jurisdiction of the City to assure the most appropriate and beneficial use of land, water, and other natural resources, consistent with the public interest.

(b) The Comprehensive Plan: The comprehensive plan for the physical development of the City of Gilmer shall be adopted by the City Council and it shall contain recommendations for orderly growth, development, and beautifications of the City. The City Council shall have the authority to amend the comprehensive plan in whole or in part after one (1) public hearing on the proposed action.

(c) Legal Effect of the Comprehensive Plan: Upon the adoption of a comprehensive plan by the City Council, no subdivision, street, park, or any public way, ground or space, public building or structure, or public utility, whether publicly or privately owned, which is in conflict with the comprehensive plan shall be constructed or authorized by the City until and unless the location and extent thereof shall have been submitted to and approved by the City Council. The widening, narrowing, relocating, vacating, or change in the use of any street, alley, or public way, or ground or the sale of any public building or real property shall be submitted for approval by the City Council.

### **Section 11.06 Boards and Commissions**

The City Council shall have authority to establish by ordinance such boards and commissions as it may deem necessary for the conduct of City business and management of municipal affairs including appointments of all officers to such boards and commissions except as otherwise provided in the Charter. The authority, functions and responsibilities of such boards and commissions shall be such as is spelled out in the ordinance establishing them. All existing boards and commissions heretofore established shall be continued in accordance with the ordinance or other acts under which they have been created, or until the City Council shall, by ordinance, abolish, modify or alter the ordinances or acts under which they exist. Notwithstanding any other provisions of this Charter, the elected City Council shall have paramount authority over all matters affecting the budgets, appropriation of funds, expenditures, purchases and sale of

properties and procedures for accounting therefore, consistent with the express provisions of this Charter and applicable provisions of the State constitution and laws of this State.

**Section 11.07 Building Permits**

The City of Gilmer shall have the power to prohibit the removal of, the movement into or through, the erection of, or the construction of any building or structure of any kind within the City of Gilmer without a permit first having been issued by the City for the construction or erection of such building or structure, and may authorize a fee to be charged for such permit, and in pursuance of said authority may authorize the inspection by the City of all buildings or structures during the progress of their construction and may require that all buildings shall be constructed in conformity with the building code which exists in said City or shall hereafter be passed.

**Section 11.08 Condemnation of Dangerous Structures**

Whenever, in the opinion of the governing body of the City of Gilmer or appropriate city official, any building, fence, shed, awning, cave, excavation, structure, object, or thing of any kind or part thereof may fall or collapse and injure persons or property, the City may order the owner or agent of the same or occupant of the premises to take such corrective measures as the governing body may direct, and may punish by fine all persons failing to do so. Upon notice and compliance with requirements of due process of law, the governing body shall have the additional power to remove the same on account of the owner of the property and assess the expenses thereof, including condemnation proceedings, as a special tax against the land or improvements, and the same may be collected as other special taxes provided for in this Charter, or by suit in any court of competent jurisdiction.

**Section 11.09 Pools, Ponds, and Lakes**

The City of Gilmer shall have the power to control or prohibit construction of pools, ponds, or lakes, receiving water from recognizable stream, creek, branch or natural drainage. The City may control location, construction, height of structure, depth and size of body of water to be impounded. No pool, pond, or lake, receiving water from a recognizable stream, creek, branch or natural drainage, shall be constructed without first obtaining a permit issued by the City.

**ARTICLE 12**  
**Franchises and Public Utilities**

**Section 12.01 Powers of the City**

In addition to the City's power, right and authority, to buy, construct, lease, maintain, operate, and regulate public utilities, and to manufacture, distribute, and sell the output of such utilities' operations, the City shall have all further rights, authorities, and powers as may now, or hereafter, be granted under the Constitution and laws of the State of Texas.

### **Section 12.02 Inalienability of Control of Public Property**

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

### **Section 12.03 Power to Grant Franchise**

The Council shall have the power by ordinance to grant, renew, and extend all franchises of all public utilities of every character operating within the City and, with the consent of the franchise holder, to amend the same. Provided, however, that no franchise shall be granted for an indeterminate term, and that no franchise shall be granted for a term of more than twenty (20) years.

### **Section 12.04 Ordinance Granting Franchise**

Every ordinance granting, renewing, extending, or amending a public utility franchise shall be presented in writing at two (2) regular meetings of the Council and shall not be finally acted upon until thirty (30) days after the first presentation thereof. Within five (5) days following each of the two (2) presentations for the ordinance, a descriptive caption of the ordinance stating in summary the purpose of the ordinance shall be published one (1) time in the official newspaper of the City, and the expense of such publication shall be borne by the prospective franchise holder.

### **Section 12.05 Transfer of Franchise**

No public utility franchise shall be transferred by the holder thereof except with the approval of the Council expressed by the ordinance.

### **Section 12.06 Franchise Value Not Allowed**

In fixing reasonable rates and charges for public utility service within the City and in determining the just compensation to be paid by the City of public utility property which the City may acquire by condemnation or otherwise, nothing shall be included as the value of any franchise by the City under this Charter.

### **Section 12.07 Regulation of Franchise**

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

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

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

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

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

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

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

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

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

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

(h) To require that the public utility give notice to any subscriber to its service prior to the permanent or temporary discontinuance or disruption of such service by the public utility, except in cases of emergency, and to require that no officer, agent, servant, or employee of the public utility nor any vehicles or equipment under their control shall make use of, go upon or across any private property in the City without first obtaining the permission of the owner or occupant of such property, except in cases of emergency, and to provide a penalty for the violation of such requirements; or

(i) To impose such other reasonable regulations, restrictions, requirements and conditions as may be deemed necessary or desirable to promote the health, safety, welfare, or accommodations of the public.

### **Section 12.08 Franchise Records**

Within six (6) months after the effective date of this Charter, every public utility operating in the City and every owner of public utility franchise within the City, shall file with the City Secretary certified copies of all franchises owned or claimed or under which such utility is operating in the City of Gilmer. The City shall compile and maintain a public record of public utility franchises.

### **Section 12.09 Regulation of Rates**

The Council shall have full power after notice and hearing to regulate by ordinance the rates, charges, and fares of every public utility franchise holder operating in the City, provided that no such ordinance shall be passed as an emergency measure. Every franchise holder who shall request an increase in rates, charges, or fares shall have, at the hearing of the Council called to consider such request, the burden of establishing by clear, competent, and convincing evidence the value of its investments properly allowable to service in the City, and the amount and the character of its expenses and revenues connected with the rendering of such service. If, upon such hearing, the Council is not satisfied with the sufficiency of the evidence so furnished, it shall be entitled to call upon such public utility for the furnishing of additional evidence at a subsequent date to which said hearing may be adjourned. No public utility franchise holder shall institute any legal action to contest any rate, charge, or fare fixed by the Council until such franchise holder has filed a motion for rehearing with the Council for a specific date setting out each ground of its complaint the rate, charge, or fare fixed by the Council, and until the Council shall have acted upon such motion. Such motion shall be deemed overruled unless acted upon by the Council within a reasonable time, not to exceed ninety (90) days from the filing of such motion for rehearing; provided, that the Council may, by resolution, extend such time limit for acting on said motion for rehearing from ninety (90) days to one hundred eighty (180) days.

### **Section 12.10 Accounts of Municipally Owned Utilities**

Accounts shall be kept for each public utility owned or operated by the City, in such manner as to show the true and complete results of such ownership and operation, including all assets and all liabilities, appropriately subdivided by classes, depreciation reserve, other reserves and surplus; also revenues, operating expenses including depreciation interest payments, rental and other disposition of annual income. The accounts shall show actual capital cost to the City of each public utility owned, also the cost of all extensions, additions, and improvements and the source of funds expended for such capital purposes. They shall show, as nearly as possible, the cost of any service to or rendered by any such utility to any City department. The City Council shall cause an annual report to be made by a Certified Public Accountant and shall publish such report, showing the financial results of such City ownership and operation, giving the information specified in this section and such other data as the City Council shall deem expedient.

### **Section 12.11 Temporary Permits**

Permits unconditionally revocable at the will of the governing body for minor or temporary privileges in the streets, public ways, and public places of the City may be

granted and revoked from time to time, and such permits shall not be deemed franchises as the term is used in this Charter.

**Section 12.12 Grant Not to be Exclusive**

Any grant, contract, or franchise, to construct, maintain, or operate a public utility, for or in Gilmer, Texas, and any renewal or extension of such grant, contract, or franchise shall not be exclusive.

**Section 12.13 Consent of Property Owners**

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

**Section 12.14 Extensions**

All extensions of public utilities within the city limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this Charter and in any franchise grant made to such public utility. The right to use and maintain any extensions shall terminate with the termination of the original franchise grant, and shall be terminable as provided in Section 12.04 of this Charter. In case of an extension of a public utility operated under a franchise hereafter granted, such right shall be terminable at the same time and under the same condition as the original grant.

**Section 12.15 Other Conditions**

All franchises heretofore granted are recognized as contracts between the City of Gilmer and the grantee, and the contractual rights, as contained in any such franchise, shall not be impaired by the provisions of this Charter, except that the power of the City of Gilmer to exercise the right of eminent domain in the acquisition of utility property is in all things reserved, and except the general power of the City, to regulate the rates and services of a grantee, which shall include the right to require proper and adequate extension of plant and service and the maintenance of the franchise hereafter granted, shall be held subject to all the terms and conditions contained in the various sections of this article, whether or not such terms are specifically mentioned in the franchise. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the City Council, or voters of the City, in imposing terms and conditions as may be reasonable in connection with any franchise granted.

**ARTICLE 13  
General Provisions**

**Section 13.01 Publicity of Records**

All records and accounts of every office, department or agency of the City shall be open to inspection by any citizen or by any representative of the press at all reasonable times

under such reasonable regulations as may be established by the City Council or the Mayor, except those records and documents closed pursuant to law.

### **Section 13.02 Conflict of Interests**

(a) General Provisions. The use of public office for private gain is prohibited. A Councilmember, officer or employee of the City of Gilmer shall be prohibited from the following acts including, but not limited to:

- (1) acting in an official capacity on matters in which the official has a private financial interest that is clearly separate from that of the general public;
- (2) the acceptance of gifts and other things of value;
- (3) acting in a private capacity on matters dealt with as a public official;
- (4) the use of confidential information; and
- (5) appearance by city officials before other city agencies on behalf of private interests.

(b) Councilmembers. No member of the City Council shall hold any other office with the City of Gilmer, nor be employed by the City of Gilmer, unless herein otherwise provided.

A Councilmember having any type of personal interest, directly, indirectly or otherwise, including, but not limited to, any work, business or contract, wherein the consideration paid or contracted for will be paid, in whole or in part by: [1] the City Treasury; [2] an assessment levied by an ordinance; or [3] resolution of the City Council and shall not be prohibited from taking any action as a member of the City Council and shall not participate in any discussion that is had by and between the remaining Councilmembers. Further, any such Councilmember having any type of financial interest in any matter shall abstain from voting on such matters or being present while such other members of the City Council consider or vote on the same.

A Councilmember is further prohibited from serving or acting as surety of any person, company or other legal entity who is obligated by contract or otherwise, to perform any type of work or transact any type of business with the City of Gilmer.

(c) Officers and employees. No officer or employee of the City of Gilmer shall have a financial interest, directly or indirectly, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, material, supplies or services, except on behalf of the City as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall forfeit his office or position.

(d) Financial Interest by Stock Ownership. A Councilmember, officer or employee of the City of Gilmer shall be deemed to have a financial interest in a corporation if they, their spouse or child, own one percent (1%) or more of the stock in a corporation.

(e) Prohibition Against Receiving Things of Value. A Councilmember, officer or employee of the City of Gilmer shall be prohibited from accepting, whether directly, indirectly or otherwise, any gift, favor or privilege, from any public utility corporation, or other corporation, person or persons, enjoying a grant, contract, franchise, privilege or easement from or with said City, during any term of office, or during such employment, except as may be authorized by law. Any such Councilmember, officer or employee of the City of Gilmer who shall violate the provisions of this section shall be guilty of a misdemeanor, and may be punished pursuant to the prescribed ordinance or statute for such offense, and shall forthwith, be removed from office.

### **Section 13.03 Prohibitions**

(a) Activities prohibited:

(1) In appointment to and removal from any City office employment, persons shall not be favored or discriminated against because of race, gender, age, religious preference or political affiliation;

(2) No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for, or in connection with, the test appointment, proposed appointment, promotion or proposed promotion.

(3) No City officer or employee, elected or appointed, shall orally, by letter, or otherwise, solicit or assist in soliciting an assessment, subscription, or contribution for any political purpose whatever from any subordinate City official or employee holding any compensated City position.

(4) No person who holds a compensated City position shall solicit or receive any contribution to the campaign funds of any candidate for municipal office or take any part in the management, affairs, or political campaign of any municipal candidate.

(b) Penalties. Any person who alone, or with others, violates any of the provisions of paragraphs one (1) through four (4) of the preceding subsection, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable as determined by ordinance adopted by the City Council. Any person convicted under this section shall be ineligible for a period of five (5) years thereafter to hold any City office or position and, if an officer or employee of the City, shall immediately forfeit the office or position.

### **Section 13.04 Provisions Relating to Assignment, Execution, and Garnishments**

The property, real and personal, belonging to the City shall not be liable to be sold or appropriated under any writ of execution or cost bill. The funds belonging to the City, in the hands of any person, firm or corporation shall not be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City nor any of its officers or agents shall be required to answer any such writ of garnishment on any account whatever. The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents, or contractors, except as required by law.

**Section 13.05 Bond of Contractors**

The governing body of the City of Gilmer shall require sufficient payment and/or performance bonds in an amount equal to the contract price of all contractors, with a good corporate surety thereon.

**Section 13.06 City Not Required to Give Security or Execute Bond**

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

**Section 13.07 Special Provisions Covering Damage Suits, Etc.**

(a) The City of Gilmer, Texas, shall never be liable for any personal injury, whether or not resulting in death, unless the person injured, or someone on his behalf, or in the event the injury results in death, the person or persons who may have a cause of action under the law by reason of such death or injury, shall file a notice in writing with the City Manager or City Secretary within thirty (30) days after the occurrence of such injury, stating specifically in such notice, when, where, and how the exact injury occurred and the full extent thereof, together with the amount of damage claimed or asserted. The City of Gilmer shall never be liable for any claim for damage or injury to personal property unless the person whose personal property has been injured or damaged, or someone in his/her behalf, shall file a claim in writing with the City Manager or the City Secretary within thirty (30) days after said damage or injury has occurred, stating specifically when, where, and how the injury or damage occurred and the full extent thereof, and the amount of damage sustained.

(b) The City of Gilmer, shall never be liable for any claim for damage or injury to real property caused by the negligent act or omission of its officers, servants, agents or employees, unless the person whose real property has been injured or damaged, or someone in his behalf, shall file a claim in writing with the City Manager or City Secretary within thirty (30) days after said damage or injury has occurred, stating specifically when, where, and how the injury or damage occurred, and the amount of damage claim. The City of Gilmer shall never be liable on account of any damage or injury to person or to personal property arising from, or occasioned by, any defect in any public street, highway, alley, grounds, or public work of the City of Gilmer, unless the specific defect causing the damage or injury shall have been actually known to the City Manager at least twenty-four (24) hours prior to the occurrence of the injury or damage, or unless the attention of the City Manager or City Secretary shall have been called thereto by a notice thereof in writing at least twenty-four (24) hours prior to the occurrence of the injury or damage, and proper diligence has not been exercised to rectify the defect. The notice herein required to be given to the City Manager or the City Secretary of the specific defect arose from any omission of the City itself, through its agents, servants, or employees, or acts or third parties.

(c) No provision of this Section shall ever be so construed as to expand the ordinary liability of the City. Nothing herein contained shall be construed to mean that

the City of Gilmer waives any rights, privileges, or defenses under the common law, the Constitution, or the general laws of the State of Texas.

**Section 13.08 Judicial Notice**

This Charter shall be deemed a public act, and shall have the force and effect of a general law, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places without further proof.

**Section 13.09 Construction of Charter**

This Charter shall not be construed as a mere grant of enumerated powers, but shall be construed as a general grant of power and as a limitation of power on the government of the City of Gilmer in the same manner as the Constitution of Texas is construed as limitations of the powers of the Legislature. Except where expressly prohibited by this Charter, each and every power under the Constitution of Texas, which it would be competent for the people of the City of Gilmer to grant expressly to the City, shall be construed to be granted to the City by this Charter. In the wording of the Charter, the use of the singular number shall include the plural, and the plural shall include the singular. Words used in the masculine gender shall include the feminine also, unless by reasonable construction, it appears that such was not the intention of this Charter.

**Section 13.10 Powers to Remit Penalties**

The governing body shall have the right to remit, in whole or in part, any fine or penalty belonging to the City, which may be imposed under any ordinance or resolution passed pursuant to this Charter.

**Section 13.11 Property Not Exempt from Special Assessments**

No property of any kind including churches, schools, or otherwise by whomsoever owned or held or by whatsoever institution, agency, political subdivision or organization, owned or held, whether in trust or by nonprofit organization, or by "foundation" or otherwise, (except property of the City of Gilmer), shall be exempt in any way from any of the special taxes, charges, levies, and assessments, authorized or permitted by this Charter for local improvement, unless the exemption is required by State Law for the public welfare.

**Section 13.12 No Lien on Public Property; Contractors, Etc.**

No lien of any kind or character can be created, and non shall ever exist or be established on or against the public buildings, property, public halls, parks, or public works of the City of Gilmer; and, all subcontractors, material men, mechanics, artisans and laborers upon any public works or projects of the City of Gilmer are hereby required to notify the City in writing of all claims against it that they may have, on account of such work, and, when such notice has been timely, duly, and properly given, the City shall retain an amount from any funds due the Contractor, sufficient to satisfy all claims; provided that such notice may be given at any time after such indebtedness becomes due, and before final settlement; and provided, further, that no contractor or subcontractor shall issue any "time check" on, or on account of, any public works of said City.

**Section 13.13 Severability Clause**

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

**Section 13.14 Damages**

No member of the City Council shall be individually liable or accountable in damage as a result of any section taken by the member in performance of official duties.

**Section 13.15 Effect of this Charter on Existing Law**

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

**Section 13.16 Interim Municipal Government**

From and after the date of the adoption of this Charter, the persons then filling elective offices which are retained under this Charter, shall, continue to fill those offices for the terms to which they were elected. The City Council shall be elected as provided in this Charter. Persons, who on the date this Charter is adopted are filling appointive position with the City of Gilmer which are retained under this Charter, may continue to fill these positions for the term for which they were appointed, (subject to Section 13.02 above).

**Section 13.17 Retirement System and Social Security; Group Insurance**

The City Council shall have the power to provide for coverage of its appointed officers and employees under the Worker's compensation, Retirement and Social Security systems provided or permitted by laws of the State of Texas, for such officers and employees of the City and for "group insurance coverage" of such officers and employees; the City Council having the power to provide for the payment of all or any part of the cost thereof.

**Section 13.18 Special Powers Under Applicable State Codes and Regulations**

The City of Gilmer and the City Council shall have all rights, powers and authority which is given and granted, pursuant to applicable laws of the State of Texas, unless altered by Federal law or the Constitution.

**Section 13.19 City Depository**

The provisions of the general laws of the State of Texas governing the selection designation of a City depository are hereby adopted as the law governing the selection and designation of a depository of and for the City of Gilmer.

### **Section 13.20 Disaster Clause**

In case of disaster when a legal quorum of elected Councilmembers 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 local Chamber of Commerce, the Board of Trustees of the local school district, and the County Judge of Upshur County to appoint a commission to act during the emergency and call a City election within thirty (30) days of such disaster for election of a required quorum, if for good reasons it is known a quorum of the present Council will never again meet.

### **Section 13.21 Charter Review Commission; Amendments**

At a regular meeting, every fifth year or as deemed necessary by the City Council, the City Council shall appoint a Charter Review Commission of nine (9) citizens of the City to review the Charter for possible revision in accordance with state law. The Charter Review Commission can only convene after two (2) years have passed from the most recent revision/adoption of the Charter. It shall be the duty of the Commission to:  
*Amended 2013; 2017*

(a) Inquire into operation of the City Government under the Charter provisions and determine whether any such provisions require revision. To this end, public hearings may be held and the Commission shall have the power to compel the attendance of any officer or employee of the City to require the submission of any of the City records which it may consider necessary to the conduct of such hearing;

(b) Make any recommendations it considers desirable to insure compliance with the provisions of this Charter;

(c) Propose amendments to this Charter; and

(d) Report its findings in writing to the Council.

The Council shall receive any report submitted by the Charter Review Commission and shall consider any recommendations made and, if any amendment or amendments to be presented as a part of such report, may order such to be submitted to the electors of the City. The term of office of the Charter Review Commission shall be six (6) months. All records of the Commission shall be filed with the City Secretary and shall be a public record. *Amended 2013*

## 1996 Home Rule Charter Commission Members

This Charter is dedicated to the citizens of the “City of Gilmer, Texas”, and to ensure such powers, rights, and duties as herein provided and to encourage the citizens’ participation in the democratic government for proper and efficient progress of our city.

To this end, we ordain this home rule charter as prescribed by law and with the guidance of God.

Richard A Fromm  
Chairman

Robbie Bruns  
Vice-Chairman

Kevin M. Rushing  
Secretary-Treasurer

David A. Bishop  
Commission Member

Gordon L. Bowers  
Commission Member

Frank Breazeale  
Commission Member

Kenneth Conaway  
Commission Member

Sara Dumas  
Commission Member

Thelma T. Duncan  
Commission Member

Edwin P. Herrman  
Commission Member

Frankie Lindley  
Commission Member

Buford Petty  
Commission Member

Steve Stewart  
Commission Member

Bill Taylor  
Commission Member

Ruth Whiteside  
Commission Member

## 2000 Home Rule Charter Commission Members

This Charter is dedicated to the citizens of the “City of Gilmer, Texas”, and to ensure such powers, rights, and duties as herein provided and to encourage the citizens’ participation in the democratic government for proper and efficient progress of our city.

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Gordon L. Bowers  
Chairman

Peggy S Garmon  
Vice-Chairman

Kevin M. Rushing  
Secretary-Treasurer

Diedra L. Camp  
Commission Member

Kenneth Conaway  
Commission Member

Thomas E. Daniels  
Commission Member

Sara Dumas  
Commission Member

Edwin P Herrmann  
Commission Member

Dr. David L. Jenkins  
Commission Member

Frankie Lindley  
Commission Member

Cynthia B. Murry  
Commission Member

Butch Ragland  
Commission Member

Karen Skinner  
Commission Member

David Sowell  
Commission Member

Melvin L. Webb  
Commission Member

## 2007 Home Rule Charter Commission Members

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Gary Patterson  
Chairman

William Hornsby  
Vice-Chairman

Kevin M. Rushing  
Secretary-Treasurer

Buford Andrews  
Commission Member

Frank Breazeale  
Commission Member

Mike Chevalier  
Commission Member

Thomas E. Daniels  
Commission Member

Peggy Garmon  
Commission Member

Richard Holloway  
Commission Member

Dr. David L Jenkins  
Commission Member

Pete Scarborough  
Commission Member

David Sowell  
Commission Member

Steve Stewart  
Commission Member

Bill Taylor  
Commission Member

Melvin L. Webb  
Commission Member

## 2013 Home Rule Charter Commission Members

This Charter is dedicated to the citizens of the “City of Gilmer, Texas”, and to ensure such powers, rights, and duties as herein provided and to encourage the citizens’ participation in the democratic government for proper and efficient progress of our city.

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Steve Stewart  
Chairman

Richard Holloway  
Vice-Chairman

Ruth Whiteside  
Commission Member

William Hornsby  
Commission Member

Suzanne Elwell-Cappel  
Commission Member

Brenda Jeffery  
Commission Member

Thomas E. Daniels  
Commission Member

Peggy Garmon  
Commission Member

Teathel Hollis  
Commission Member

Dr. David L. Jenkins  
Commission Member

Tim Marshall  
Commission Member

Julia Davis  
Commission Member

Jim Ragland  
Commission Member

William Taylor  
Commission Member

Melvin L. Webb  
Commission Member

## 2017 Home Rule Charter Commission Members

This Charter is dedicated to the citizens of the “City of Gilmer, Texas”, and to ensure such powers, rights, and duties as herein provided and to encourage the citizens’ participation in the democratic government for proper and efficient progress of our city.

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Steve Stewart  
Chairman

Tim Marshall  
Commission Member

Brad Ellison  
Commission Member

William Hornsby  
Commission Member

Julia Davis  
Commission Member

Brenda Jeffery  
Commission Member

William (Bill) Taylor  
Commission Member

Peggy Garmon  
Commission Member

Phil Fowler  
Commission Member