



WINDCREST TEXAS

ORDINANCE NO. 2015-739(O)

AN ORDINANCE CANVASSING THE RETURNS AND DECLARING THE RESULTS OF A SPECIAL ELECTION HELD IN THE CITY OF WINDCREST, TEXAS ON NOVEMBER 3, 2015 AND DECLARING AN IMMEDIATE EFFECTIVE DATE FOR THE SEVEN (7) CHARTER AMENDMENT PROPOSITIONS APPROVED BY THE VOTERS; AUTHORIZING THE MAYOR OF THE CITY TO CAUSE AN ORDER TO BE ENTERED INTO THE RECORDS OF THE CITY OF WINDCREST DECLARING THE AMENDMENTS ADOPTED AND DIRECTING THE MAYOR TO CERTIFY THE RESULTS OF THE ELECTION TO THE TEXAS SECRETARY OF STATE.

WHEREAS, the City Charter of the City of Windcrest ("City") was adopted in 2007 and amended in November 2010, and has served the City and its citizens well; and

WHEREAS, in accordance with Section 11.03 of the Windcrest City Charter, the City Council appointed a seven (7) member Charter Review Commission to determine whether any Charter provisions require revision and such Section of the Charter requires this action not later than the fifth year after the Charter's last review; and

WHEREAS, the Charter Review Commission met from May through July 2015 to review the City Charter and at their meeting of July 23, 2015, the Commission finalized its report of its findings in writing, and presented its proposed amendments to the City Council; and

WHEREAS, the City Council has reviewed and investigated all matters pertaining to this election, including the ordering, notices, election officers, holding, and returns thereof; and

WHEREAS, the City Council hereby canvasses the returns of this election, at which there were submitted to all resident, qualified electors of the City for their action thereupon, the following propositions; now

CHARTER AMENDMENT PROPOSITIONS

PROPOSITION ONE

Shall Sections 3.05, 3.06, 3.07, 3.08 3.08 ((B), 3.08 (C), 3.14, 4.01, 5.02.3, 5.06, 5.07, 6.16, 7.4.2, 10.4.2 and Article XII, Sections 12.01 and 12.02 of the City Charter be amended to require submission to the qualified voters of the City to eliminate provisions which have become inoperative because they have been superseded by state law; replace obsolete references; update terminology to current legal usage, and to eliminate obsolete transitional provisions?

CHARTER AMENDMENT PROPOSITION ONE

	<u>For</u>	<u>Against</u>
Early Votes	958	149
Election Day Votes	362	50
TOTAL	1,320	199

PROPOSITION TWO

Shall Section 3.10 of the City Charter be amended to require all meetings of the City Council, whether Regular, Special or workshop meetings, to include a "Citizens to be Heard" and such citizens must be allowed to speak prior to any public business taken place?

CHARTER AMENDMENT PROPOSITION TWO

	<u>For</u>	<u>Against</u>
Early Votes	993	135
Election Day Votes	386	33
TOTAL	1,379	168

PROPOSITION THREE

Shall newly developed Section 5.04 be added to establish by City Charter the Police Department and outlining that the head of such department shall be the Police Chief and that the Police Chief shall be appointed and may be removed by the City Council but shall report to the City Manager?

CHARTER AMENDMENT PROPOSITION THREE

	<u>For</u>	<u>Against</u>
Early Votes	849	259

Election Day Votes	338	79
TOTAL	1,187	338

PROPOSITION FOUR

Shall newly developed Section 5.05 be added to establish by City Charter the Fire Department and outlining that the head of such department shall be the Fire Chief and that the Fire Chief shall be appointed and may be removed by the City Council but shall report to the City Manager?

CHARTER AMENDMENT PROPOSITION FOUR

	<u>For</u>	<u>Against</u>
Early Votes	845	267
Election Day Votes	330	83
TOTAL	1,175	350

PROPOSITION FIVE

Shall newly developed Section 5.08 be added to establish by City Charter the Public Works Department and outlining that the head of such department shall be the Public Works Director and that the Director shall be appointed and may be removed by the City Council but shall report to the City Manager?

CHARTER AMENDMENT PROPOSITION FIVE

	<u>For</u>	<u>Against</u>
Early Votes	854	253
Election Day Votes	330	84
TOTAL	1,184	337

PROPOSITION SIX

Shall sections 6.13 (c) of the City Charter be amended to increase the number of years that the City Council may not select the same auditor from three (3) years to no more than five (5) consecutive years?

CHARTER AMENDMENT PROPOSITION SIX

	<u>For</u>	<u>Against</u>
Early Votes	702	419
Election Day Votes	234	180

TOTAL

936

599

PROPOSITION SEVEN

Shall section 10.3.5 of the City Charter be amended clarifying when Council members and city employees may be appointed to city council appointed boards, commissions, committees and study groups?

CHARTER AMENDMENT PROPOSITION SEVEN

	<u>For</u>	<u>Against</u>
Early Votes	841	267
Election Day Votes	350	68
TOTAL	1,191	335

WHEREAS, from these returns, the City Council hereby finds that the following votes were cast in the election by voters who were resident, qualified electors of the City now:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDCREST, TEXAS, THAT;

SECTION 1. The City Council of the City of Windcrest officially finds, determines, and declares that the election was duly and properly ordered, that proper legal notice of such election was duly given in the English language and the Spanish language, that proper election officers were duly appointed prior to the election, that the election was duly and legally held, that all required pre clearance submissions were made and that no objections were interposed; that all resident, qualified electors of the City were permitted to vote at the election, that due returns of the results of the election have been made and delivered, and that the City Council of the City has duly canvassed such returns, all in accordance with the laws of the State of Texas and of the United States of America and the order calling the election.

SECTION 2. A majority of the residents, qualified electors of the City of Windcrest, Texas, voting in the election, have voted FOR the adoption of Charter Amendment Propositions One, Two, Three, Four, Five, Six, and Seven, and the Council hereby determines that the propositions were all approved, that the election was duly called, proper notice given, and that the election was held in all aspects in conformity with the law.

SECTION 3. The Charter propositions approved by the voters will be effective as of the date of this Resolution.

SECTION 4. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

SECTION 5. All Resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 6. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 7. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 8. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 9. The charter amendments approved in the election shall be in force and effect from and after the passage of this Resolution.


SECTION 10. The Mayor of the City is authorized to perform any and all acts necessary to implement the provisions of this Resolution in the manner prescribed by law. The Mayor shall cause such orders to be entered into the records of the municipality declaring the charter amendments adopted as prescribed by Tex. Loc. Gov't Code Ann. Sec. 9.005(b), and shall cause an authenticated copy of the charter amendments bearing the City's seal and certification showing the approval by the voters of the City of Windcrest to be delivered to the Secretary of State of the State of Texas in the manner required by Tex. Loc. Gov't Code Ann. Sec. 9.007(a).

RESOLVED AND APPROVED this 16th day of November, 2015.



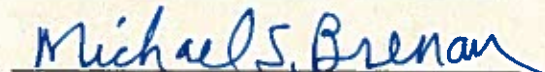
Alan E. Baxter, Mayor

ATTEST:



Kelly Rodriguez, City Secretary

APPROVED AS TO LEGAL FORM:



Michael S. Brennan, City Attorney



Windcrest Home Rule Charter

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Editors note: Amendments are noted in paranthesis by date. Where the entire section has been amended, the date is shown at the end of that section. Where parts are amended, the date appears after the amended part

WINDCREST HOME RULE CHARTER

PREAMBLE

We the citizens of the City of Windcrest, in order to obtain more fully the benefits of self-government, provide for the future progress of our City, and secure an effective, responsive, and responsible local government, do hereby adopt this Home Rule Charter as the basic foundation of our City government, under the authority granted by the Constitution and laws of the State of Texas.

The gender of the wording as contained in this Charter shall always be interpreted to mean either sex.

ARTICLE I - FORM OF GOVERNMENT, INCORPORATION AND BOUNDARIES

Section 1.01 Incorporation

All inhabitants of the City of Windcrest, Bexar County, Texas, as the boundaries and limits of said City have heretofore been established and now exist, or may hereafter be established, shall constitute a municipal body politic incorporated under and known by the name "City of Windcrest" with such powers, rights, duties, privileges, and immunities as are herein provided.

Section 1.02 Form of Government

The municipal government provided by this Charter shall be known as the "Council-Manager government." Pursuant to its provisions and subject only to the limitations imposed by the State Constitution, the statutes of this State, and this Charter, all powers of the City shall be vested in an elective City Council, hereinafter referred to as the "City Council," which shall enact local legislation, adopt budgets, determine policies and appoint the City Manager who in turn shall be held responsible to the City Council for the execution of the laws and the administration of the government of the City. All powers of the City shall be exercised in the manner prescribed by this Charter, subject to the State Constitution and statutes of the State.

Section 1.03 Boundaries

The boundaries and limits of the City of Windcrest shall be those established and described in ordinances duly passed by the City Council of the City of Windcrest in accordance with state law. The City shall prepare a map that shows the boundaries of the municipality. A copy of the map shall be kept in the office of the City Secretary. If the City annexes territory then the map shall be immediately corrected to reflect the new territory.

Section 1.04 Extension of Boundaries (Annexation)

1. The boundaries and limits of the City may be enlarged and extended by the acquisition of additional territory, irrespective of size and configuration, by the methods hereinafter set forth.
2. The City Council shall have the power by ordinance to fix the boundary limits of the City and to provide for the alteration and extension of said boundary limits and the acquisition of additional territory, lying adjacent to the City, in any manner provided by law.

a. Before the City may acquire an area or extend its extraterritorial jurisdiction, the City Manager must present a written report on the financial impact of the proposed acquisition or extension and the adoption of any proposed service plan to the City Council.

b. Action to acquire an area or extend the City's extraterritorial jurisdiction shall be initiated by ordinance calling for a public vote on the proposed acquisition or extension, which ordinance may be adopted after two public hearings are held at least ten (10) but not more than twenty (20) days after the notice of such public hearings are published in the designated official newspaper of the City. (amended 11/2/2010)

c. The public vote on the proposed acquisition or extension may be scheduled in conjunction with either a special or general election, and a simple majority of voters shall determine whether the acquisition or extension is approved. In the event of a tie, the City Council will vote to settle the tie. Based upon the outcome of the public vote and the City Council vote, if necessary, the City Council will enact an ordinance to fix the boundary limits as approved by the voters. (amended 11/2/2010)

3. When any additional territory has been so acquired, the same shall be part of the City of Windcrest and the property situated therein shall bear its pro rata part of the taxes levied by the City. The inhabitants thereof shall be entitled to 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.

4. The extraterritorial jurisdiction of the boundaries may be extended by the City Council as provided by state law.

Section 1.05 Contraction of Boundaries (Disannexation)

When the City Council determines there exists within the corporate limits of the City a territory not suitable or necessary for City purposes, the City Council may disannex the territory as part of the City by ordinance after notice, a public hearing, and vote of the citizens of Windcrest is held. (amended 11/2/2010)

ARTICLE II – POWERS OF THE CITY

Section 2.01 General

The City shall have all powers granted to cities by the Constitution and Laws of the State of Texas together with all the implied powers necessary to carry into execution such granted powers, as fully and completely as though they were specifically enumerated in this Charter, and those expressed and implied powers necessary for the government, interest, health, welfare and good order of the City and its inhabitants. 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 ordinance of the City Council.

Section 2.02 Eminent Domain

The City shall have the full power and right to exercise the power of eminent domain when necessary to carry out any of the powers conferred upon it by this Charter or by the Constitution and laws of the State of Texas. (amended 11/2/2010)

ARTICLE III – CITY COUNCIL

Section 3.01 City Council

The City Council shall be comprised of a Mayor and five (5) City Council members.

Section 3.02 Mayor

The person elected Mayor shall be the governmental and ceremonial head of the City government and Chief Administrative Officer. The Mayor shall preside over all meetings of the City Council. The Mayor will be able to vote only to break a tie vote of the City Council. Under the direction of the City Council, the Mayor shall serve as the direct supervisor of the City Manager. (amended 11/2/2010)

Section 3.03 Powers of the City Council

All powers of the City and the determination of all matters of policy shall be vested in the City Council. Except where in conflict with and otherwise expressly provided by this Charter, the City Council shall have all powers authorized to be exercised by the City Council in accordance with the laws of the State of Texas. Among the exclusive powers that may be exercised by the City Council, the following are hereby enumerated for greater certainty:

- (1) Appoint and remove the City Manager, all City Officers, and Department Heads;
- (2) Establish other administrative departments;
- (3) Establish the city's organizational chart and the number and position of employees;
- (4) Adopt the City budget;
- (5) Authorize the issuance of bonds by a bond ordinance;
- (6) Hear employee complaints of nonfeasance, malfeasance, and misfeasance, and inquire into the conduct of any office, department, or agency of the City and make investigations as to municipal affairs;
- (7) Appoint all commissions, boards, committees, task forces, and/or appointed groups to assist the City Council in the performance of its duties and responsibilities;
- (8) Set and fix the salaries and compensation for the non-elective City officers and employees;
- (9) Adopt and modify the zoning plan and the building code of the City;
- (10) Compromise and settle any and all claims and lawsuits of every kind and character in favor or against the City;
- (11) Adopt plats;
- (12) Adopt and amend the Comprehensive Plan;
- (13) Adopt Robert's Rules of Order governing City Council parliamentary procedures and amend such rules as necessary; and
- (14) Adopt and modify the official map of the City.
(amended 11/2/2010)

Section 3.04 Qualifications

Each candidate for election to the City Council or office of Mayor shall be a qualified voter of the City, shall be not less than twenty-one (21) years of age, shall have resided in the City not less than twelve (12) months immediately preceding Election Day, and shall meet the requirements of the Texas Election Code. Each Council Member and the Mayor shall continually reside within the City during the term of office, and any removal of residence from the City during the term of office shall constitute vacating the office, and such vacancy shall be filled as provided in Section 3.09.

Section 3.05 Terms of Office

The Mayor's term of office shall be for a period of two (2) years. The five (5) City Council members shall have a term of two (2) years each. The Mayor and two (2) City Council members shall be elected odd-numbered years, and three (3) City Council members elected the even-numbered years. (amended 11/03/15)

Section 3.06 Compensation

Members of the City Council may receive compensation as set by City ordinance, except that City Council members shall be entitled to reimbursement of all necessary and reasonable expenses incurred in the performance of their official City Council duties, upon approval of such expenses by the City Council.

Section 3.07 City Council to Judge Qualifications of Members

The City Council shall be the judge of the qualifications of its members under Section 3.04, and the grounds for forfeiture of their office under Section 3.08. In order to exercise these powers, the City Council shall have power to subpoena witnesses, administer oaths, and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published one (1) time in the designated official newspaper of the City at least one (1) week in advance of the hearing. (amended 11/03/15)

Section 3.08 Removal of Elective Officers; Grounds for Removal

A. Causes. The Mayor or any City Council member shall be subject to removal from office for any one (1) or more of the following causes:

- (1) Incompetence, misfeasance or malfeasance in office;
- (2) Conviction of a crime involving moral turpitude;
- (3) Failure at any time to possess any of the qualifications of office as provided by this Charter or by State Law;
- (4) Willful violation of any express prohibition of this Charter;
- (5) Abandonment of office or neglect to perform the duties thereof;
- (6) Failure for any other cause to perform the duties of office as required by this Charter or by law; or

(7) Any of the grounds listed under Texas Local Government Code Section 21.022 and Section 21.025.

B. Initiation. Removal proceedings shall be initiated when a sworn written complaint charging a member of the council with an act or omission that is a cause for removal is presented to the Mayor or, if the complaint is against the Mayor, to the Mayor ~~pro-tem~~ Pro Tempore. The Mayor or the Mayor Pro Tempore receiving the complaint shall file it with the City Secretary within three (3) working days. The City Secretary shall provide a copy to the member complained against and all other council members within three (3) working days of receipt. The Mayor or the Mayor Pro Tempore shall set a time and date for a hearing in accordance with Section 3.07 to be conducted on the complaint within 60 days of the day the Mayor or Mayor Pro Tempore received the sworn complaint. (amended 11/03/15)

C. Hearing and decision. The remaining members of the City Council must conduct a hearing to hear and review evidence regarding the sworn complaint. The member complained against shall have a right to representation at the hearing and to question and cross-examine all witnesses, but must not vote on the question of removal. Based on the evidence presented at the hearing, the City Council must make a decision in public whether the member should be removed from office and shall issue an order setting out its decision. If all members of the City Council present at the hearing – other than the member complained against – affirmatively vote to indicate that removal is warranted the Council shall declare a vacancy to be filled no sooner than the next regular meeting and in accordance with section 3.09. The decision of the city council shall be final and binding so long as it is made in good faith. (amended 11/3/2015)

Section 3.09 Vacancies on the City Council

A. The office of a City Council member or office of the Mayor shall become vacant upon death, resignation, recall, or removal from office in any manner authorized by law or this Charter, or forfeiture of office.

B. A City Council member or the Mayor shall forfeit office if they lack at any time during the term of office any qualifications for the office prescribed by this Charter or law, or failure to attend three (3) consecutive regular City Council meetings without being excused by the City Council. The City Council shall be the final judge in matters involving forfeiture of office by a City Council member.

C. If for any reason a vacancy exists on the City Council, the remaining members of the City Council shall select a person qualified for the position, as described in the Charter, within thirty (30) days of the occurrence of the vacancy. An official who has been recalled may not be reappointed to any immediate vacancy. Once appointed, the person shall serve until the position can be filled at the next regular election date.

D. In the event that a legal quorum of the elected City Council cannot be convened due to a disaster resulting in multiple injuries, deaths, or forfeiture of offices, the surviving City Council members and the Board chairs, and if necessary, the Board Vice Chairs of the

Economic Development Corporation, Planning and Zoning Commission and Board of Adjustment in numbers sufficient to constitute an interim City Council shall within fifteen (15) days of such disaster, or as provided in the Texas Election Code, call for an election to fill all vacant City Council positions. Such constituted interim City Council shall serve until the requested election occurs.
(amended 11/2/2010)

Section 3.10 Meetings/Quorum

Regular meetings of the City Council shall be held at such times as may be prescribed from time to time by resolution of the City Council. Special meetings must be called by the City Secretary upon the written request of the Mayor, the City Manager, or two (2) members of the City Council. Notice of any regular or special meetings of the City Council must state the subject(s) to be considered at the meeting and must be posted to the public in accordance with the laws of the State of Texas. A quorum shall consist of three (3) City Council members. The City Council may sanction its members for misconduct, and may compel the attendance of absent members. Items may be placed on the agenda by the request of the Mayor, the City Manager, or a City Council Member. Posted agendas must provide for "Citizens to be Heard" allowing citizens the opportunity to address the City Council on topics not on the agenda for no more than three minutes. Citizens must also have an opportunity to address the council during consideration of the posted agenda items for no more than six minutes. These opportunities for citizens to speak must be included in the agendas of all Council Meetings, Special Council Meetings and Workshops before the Council conducts its public business. This rule applies to all boards and city commissions. (amended 11/3/2015)

Section 3.11 Mayor Pro Tempore

The City Council shall elect one of its members as Mayor Pro Tempore, who shall perform the duties of the Mayor in the case of the absence or inability of the Mayor to perform the duties of office, and who shall, during that time, be vested with all the powers belonging to the Mayor.

Section 3.12 Investigations by City Council

The City Council shall have the power to inquire into the affairs of the City and the conduct of any City department, office, agency, officer, or employee of the City and to make investigations as to municipal affairs, and for these purposes may subpoena witnesses, administer oaths, take testimony, and compel the production of reports, papers, and other documentary evidence. Failure or refusal to produce evidence, to comply with a subpoena, or to obey a lawful order issued in the exercise of these powers by the City Council shall be a misdemeanor punishable by a fine of not more than the maximum allowable by law for each failure or refusal.

Section 3.13 Procedures for Passage of Ordinances and Resolutions

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

be required. Upon second reading, the ordinance may be adopted and enacted. The affirmative vote of three (3) or more members of the City Council is required to enact any ordinance.

B. Penalty and Franchise Ordinances. Caption or title and penalties of every ordinance imposing any penalty, fine, or forfeiture shall, as soon as practical after passage thereof, be published one (1) time in the designated official newspaper of the City of Windcrest. All ordinances granting, confirming, extending, renewing, or amending a franchise shall be accepted in writing by the grantees and shall be published as otherwise provided in this Charter.

C. Resolutions and Ordinances. The City Council shall evidence its official actions by written ordinances, resolutions, or oral motions. The style of all ordinances shall be: “Be it Ordained by the City Council of the City of Windcrest, Texas;” and the style of all resolutions shall be: “Be it Resolved by the City Council of the City of Windcrest.” Every Ordinance shall be authenticated by the signature of the Mayor, or in the Mayor’s absence the Mayor Pro Tempore. The City Secretary shall attest all signatures. All ordinances and resolutions passed by the City Council shall become effective immediately from and after passage except where publication of a caption is required or where the ordinance, State law, or other provisions of this Charter provide otherwise, in which case the effective date shall be as prescribed in the ordinance.
(amended 11/2/2010)

Section 3.14 Code of Ordinances

The City Council shall have the power to cause the ordinances of the City to be printed and posted on the internet, in code form, and shall have the same arranged and digested, as often as the City Council may deem advisable, provided that failure to print the ordinance shall not affect its validity. (amended 11/03/15)

ARTICLE IV – CITY ADMINISTRATION AND ELECTIONS

Section 4.01 City Elections

The general City election shall be held annually on the, first Tuesday after the first Monday in November or the date nearest thereto as may be required by State Law. Each qualified voter shall be entitled to vote. Candidates for each seat, including the Mayor, shall be elected at large.
(amended 11/03/15)

Section 4.02 Regulation of Elections

All City elections shall be conducted in accordance with the applicable provisions of the Texas Election Code and Federal Law. The City Council shall appoint the clerks, judges and other election officials and shall provide for their compensation and other expenses incurred in holding said election.

Section 4.03 Special Elections

The City Council, by ordinance or resolution, may call such special elections as are authorized by State law or this Charter, fix the time and place of holding the same, and provide all means for holding such special elections. Every special election shall be called and held according to the state provisions governing elections.

Section 4.04 Candidates; Filing for Office

Any qualified person as prescribed by Section 3.04 of this Charter may apply to be placed on the official ballot for the position of Council Member or Mayor. The application shall be made in accordance with all applicable laws and shall state that the candidate agrees to serve if qualified and elected. Each candidate shall execute such oath and other official form or affidavit as required by the Texas Election Code. The City Secretary shall review the application and notify the candidate whether or not the application satisfies the requirements of this Charter and the Texas Election Code. If an application is insufficient, the City Secretary shall return it within three (3) business days of submission with a written statement of such insufficiency to the candidate. The candidate may file a new application within the regular time for filing applications. The City Secretary shall keep on file all applications in accordance with State law. (amended 11/2/2010)

Section 4.05 Official Ballot

The City Secretary shall determine the order of the names of the candidates on the ballot in accordance with the procedures set out in the Texas Election Code. The name of each candidate seeking an elective office, except those that have withdrawn, died, or become ineligible prior to the time permitted for withdrawal, shall be printed on the official ballot in the name designated by the candidate in accordance with the Texas Election Code. Early voting shall be conducted pursuant to the Texas Election Code.

Section 4.06 Canvassing and Election Results

The election judges shall deliver forthwith the returns of every municipal election to the City Secretary, with a copy of the returns being sent to the Mayor. The City Council shall canvass the returns and declare the official results of the election as provided by the Texas Election Code.

Section 4.07 Elections by Majority/Plurality

A plurality vote for an elected office is that number which is greater than the number cast for any other candidate for the respective position. The candidate who receives a plurality vote shall be declared elected. In the event of a tie, a run off election shall be held in accordance with the Texas Election Code.

Section 4.08 Oath of Office

All City of Windcrest elected and appointed officers shall take and sign the Oath of Office prescribed for state elective and appointed offices, respectively, by the Constitution of the State of Texas. Every officer of the City shall, before entering upon the duties of the office, take and subscribe to the following oath or affirmation to be signed, filed and kept in the office of the City Secretary.

“I, _____, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of _____ of the City of Windcrest, State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and the State of Texas, so help me God.”

ARTICLE V – DEPARTMENTS, OFFICES AND AGENCIES

Section 5.01 Creation of Departments

The City Council shall approve personnel policies and guidelines, and shall, by ordinance, have the power to establish City offices or departments not provided for in this Charter, and to discontinue, redesignate, or combine any of the departments and City offices established by ordinance. The City Council may require bonding and/or insurance in addition to the legal requirements. (amended 11/2/2010)

Section 5.02 City Manager

5.02.1 Qualifications, Appointment

The City Council shall appoint and may remove the City Manager upon the affirmative vote of a majority of the City Council, and shall supervise the City Manager by majority vote. The City Manager shall be chosen and compensated solely on the basis of experience, education, training, ability, and performance. The City Council shall require the City Manager to reside within a reasonable distance as determined by the City Council. The City Council shall establish compensation for the City Manager and review performance on an annual basis. No member of the City Council shall, during the term of office for which they are elected or for one (1) year after leaving office, be appointed City Manager.

5.02.2 Direction and Supervision of Employees, Department Heads

The City Manager shall be responsible to the City Council for the proper administration of all the affairs and business of the City. Except for the purpose of inquiry, the City Council and its members shall deal with the City staff through the City Manager, and neither the City Council nor any member not having administrative or executive functions under this Charter shall give orders to any of the subordinates of the City Manager either publicly or privately. (amended 11/2/2010)

5.02.3 Specific Powers and Duties

The City Manager shall be required to:

- (a) Ensure the enforcement of all state laws and City ordinances.
- (b) Hire, suspend, or remove any employee of the City, except those employees appointed by the City Council and as otherwise specifically provided in this Charter.
- (c) Provide employees with an annual performance review.
- (d) Attend all City Council meetings except when excused. May participate in all discussions but may not vote.
- (e) Prepare and submit the proposed annual budget and be responsible for the administration of the adopted budget.

- (f) Keep the City Council advised of the financial condition and needs of the City and make such recommendations as appropriate.
- (g) Prepare and submit to the City Council at the end of each fiscal year a complete report on the finances and administrative activities of the City for such preceding fiscal year.
- (h) Make such other reports as the City Council may require concerning the operations of the City.
- (i) Meet with, discuss with, confer with, and advise the Mayor and/or any member of the City Council regarding the business of the City.
- (j) Serve as the City's investment manager, Court Administrator, and treasurer.
- (k) May delegate to City employees nondiscretionary ministerial and administrative tasks to carry out his duties.
- (l) Perform such other duties as may be prescribed in this Charter or required by the City Council.
- (m) Approve contracts and budget line items not to exceed \$25,000.
(amended 11/3/2015)

5.02.4 Acting City Manager

The City Manager may designate an officer of the City to serve as acting City Manager when the City Manager is temporarily absent or on leave, subject to the approval of the City Council. If the City Manager is unable to appoint an officer to serve as acting City Manager, the City Council may designate a qualified person to perform the duties of the office of City Manager when the office is vacant or during the City Manager's extended absence or disability, and may set the compensation paid to such person during such time. The City Council may revoke such designation at any time and appoint another individual, including an employee of the City, to serve until the City Manager shall return or his disability shall cease.

Section 5.03 City Attorney

5.03.1 Appointment

There shall be a department and office of City Attorney. The City Council shall appoint a competent and licensed attorney who shall have not less than five (5) years experience practicing municipal law in Texas. The City Council may retain special counsel or appoint Assistant City Attorneys at any time it deems appropriate and necessary.

5.03.2 Compensation

The City Attorney(s) shall receive for their services such compensation as may be fixed by the City Council.

5.03.3 Duties

The City Attorney shall report to the City Council as a whole. The City Attorney shall be the legal advisor of, and attorney for, all of the offices and departments of the City, and shall represent the City in all litigation and legal proceedings as a whole. The City Attorney shall review and approve as to form all documents, contracts, resolutions, ordinances, and legal

instruments in which the City may have an interest. The City Attorney shall perform other duties prescribed by the Charter, by ordinance, or by resolution of the City Council.

Section 5.04 Police Department

The Police Department shall be established and maintained and the head of such department shall be the Police Chief. The Police Chief shall be appointed by the City Council and shall report to the City Manager. The Chief of Police may be removed from office by the City Council by a majority vote. The Police Chief shall meet the standards of the State Laws of Texas and be responsible for the administration of the police department and shall evaluate and supervise the department and all its employees. All such evaluations and actions shall be subject to review and modification by the City Manager. (added 11/03/15)

Section 5.05 Fire Department

The Fire Department shall be established and maintained and the head of such department shall be the Fire Chief. The Fire Chief shall be appointed by the City Council and shall report to the City Manager. The Fire Chief may be removed from office by the City Council by a majority vote. The Fire Chief shall meet the standards of the State of Texas and be responsible for the administration of the fire department and shall evaluate and supervise the department and all its employees. All such evaluations and actions shall be subject to review and modification by the City Manager.

The Fire Chief will participate with the City Manager in the annual evaluation of the relationship and any contract between the volunteer Fire Department and the City. The working relationship between the volunteer Fire Department and the City shall be coordinated by the City's Fire Chief and/or the City Manager with approval of the city council. (added 11/03/15)

Section 5.06 City Secretary

5.06.1 Appointment and Compensation

The City Council shall appoint the City Secretary and such Assistant City Secretaries as the City Council shall deem advisable. The City Secretary shall receive compensation as may be fixed by the City Council. If the City Secretary is temporarily unable to perform appointed duties, the City Manager or City Council may designate an alternate. (amended 11/2/2010)

5.06.2 Duties

The City Secretary shall:

- (a) Give notice of City Council meetings.
- (b) Attend all City Council meetings and keep accurate records of all actions taken by the City Council.
- (c) Maintain the official records and files of the City.
- (d) Administer oaths required by law.
- (e) Attest contracts, assessment certificates, ordinance resolutions, and other legal instruments when executed by the authorized officers of the City.

- (f) Serve as the election official for all City elections.
- (g) Hold and maintain the City seal and affix it to all appropriate documents as required.
- (h) Supervise the administrative staff.
- (i) Serve as Assistant Court Administrator.
- (j) Perform such other duties as may be required by the City Manager, this Charter, or the laws of the State of Texas.

Section 5.07 Municipal Court of Record

5.07.1 Creation of Court

The Municipal Court of Record shall be known as the Municipal Court of Record of the City of Windcrest, Texas, and City Council may appoint one or more Municipal Judges to serve in such Court. The Court shall have all the powers and duties as are now or as may hereafter be prescribed by the laws of the State of Texas and the City's current ordinances in connection with the trial of misdemeanor offenses within its jurisdiction.

5.07.2 Municipal Court of Record Judge

The Judge of the Municipal Court of Record, and all alternates, shall be competent, duly qualified and a licensed attorney in the State of Texas. The City Council shall appoint the Judge of the Municipal Court of Record for a term of two (2) years and may be appointed to additional and consecutive terms at the will and pleasure of the City Council. The term of this position must run concurrent with the term of the office of Mayor. Following each mayoral election the City Council has a ninety (90) day window of review. If no action is taken during this ninety-day period the appointment is automatically renewed. The Judge shall receive such compensation as may be determined by the City Council. The compensation shall be fixed and commensurate with the duties performed by the Judge. The Municipal Court of Record judge or any alternate may be removed from office for lack of confidence if after the judge is given notice and an opportunity to be heard, the City Council votes to remove the judge from office by the affirmative vote of a majority of the full City Council.

5.07.3 Clerk of the Court

The City Manager shall appoint a Clerk of the Municipal Court of Record. The Clerk of the Court and any Deputies appointed by the City Manager shall have the power to administer oaths and affidavits, make certificates, affix the seal of said court as necessary and required by law, and do and perform any and all acts usual and necessary to be performed by clerks and deputy clerks of municipal courts of the State of Texas.

5.07.4 Jurisdiction, Power, and Fines

The Municipal Court of Record shall have all jurisdiction and powers provided by State law.

5.07.5 Costs, Fines, and Penalties

All costs, fees, special expenses, and fines imposed by the Municipal Court of Record shall be deposited to the City Treasury for the use and benefit of the City, except as otherwise required by State law.

Section 5.08 Public Works

The Public Works Department shall be established and maintained and the head of such department shall be the Public Works Director. The Public Works Director shall be appointed by the City Council and shall report to the City Manager. The Public Works Director may be removed from office by the City Council by a majority vote. The Public Works Director shall administer, supervise and coordinate the construction and maintenance of the streets and thoroughfares, the drainage system, and all public property and equipment not the responsibility of another department. The department shall have and be responsible for other duties, projects and works as provided by ordinance or assigned by the City Manager. (added 11/03/15)

ARTICLE VI - FINANCE

Section 6.01 Finance Department

The Department of Finance shall be established and maintained and the head of such department shall be the Municipal Finance Officer. The Municipal Finance Officer shall be appointed by the City Council and report directly to the City Council. The Municipal Finance Officer shall have knowledge of municipal accounting and experience in budgeting and financial control. Such Officer shall provide a bond with such surety and in such amount as the City Council may require. The City shall pay the premium on such bond. (amended 11/2/2010)

Section 6.02 Powers and Duties

The Municipal Finance Officer shall administer all financial affairs of the City, other than the assessment and collection of taxes. The Officer shall have authority and be required to:

- (a) Maintain a general accounting system for the City and exercise financial control over all offices, departments and agencies thereof;
- (b) Certify the availability of funds for all proposed expenditures. Unless the Municipal Finance Officer shall certify that an unencumbered balance exists in the appropriations and funds available, no appropriation shall be encumbered and no expenditure shall be made;
- (c) Submit to the City Council through the City Manager a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City, and shall provide additional detail as directed by the City Council;
- (d) Cause to be prepared, as of the end of the fiscal year, a Comprehensive Annual Financial Report (CAFR) to be available upon request to the citizens as hard copy and posted prominently on the City website. (amended 11/2/2010)

Section 6.03 Fiscal Year

The fiscal year of the City shall begin on the first day of each October and end on the last day of September of the succeeding year. All funds collected by the City during any fiscal year including both current and delinquent revenues, shall be accounted for in such fiscal year; and except for funds derived to pay interest and create a sinking fund on the bonded indebtedness of the City, may be applied to the payment of expenses incurred during such fiscal year.

Section 6.04 Annual Budget

The City Manager shall provide a complete work and financial plan for the City, including all City funds and activities. The City Manager shall submit a budget message explaining the budget, both in fiscal terms and in terms of the work programs, with the budget. It shall outline the proposed financial policies of the City for the ensuing fiscal year; describe the important features of the budget; indicate any major changes from the current year in financial policies, expenditures, and revenues, with reasons for such changes; summarize the City's debt position and include such other material as the City Manager deems desirable or the City Council requires. The budget shall begin with a clear general summary of its contents; and shall show in detail all estimated revenues, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year. The proposed budget expenditures shall not exceed the total of estimated funds available from all sources. The budget shall be so arranged as to show comparative figures for actual and estimated revenues and expenditures of the current fiscal year and actual revenue and expenditures of the preceding two (2) fiscal years, compared to the estimate for the budgeted year. It shall include in separate sections:

- (a) An itemized estimate of the expense of conducting each department, division and office.
- (b) Reasons for proposed increase or decrease of such items of expenditure compared with the current fiscal year.
- (c) A narrative statement for each department indicating projects to be accomplished by the department. The narrative shall state specifically all capital expenditures proposed during the year, all major projects on which work will be performed and any extraordinary items included in the budget.
- (d) A statement of the total probable revenues of the City from taxes by category for the fiscal year.
- (e) Tax levies, rates, and collections for the preceding five years.
- (f) An itemization of all anticipated revenue from all sources other than taxes.
- (g) The amount required for interest on the City's debts, for sinking fund and for maturing bonds or other obligations.
- (h) The total amount of outstanding City debts and other obligations, with a schedule of payments and maturities.
- (i) The total amount established for addition to reserve funds.
- (j) A capital program, which may be revised and extended each year to indicate capital expenditures pending or in process of construction or acquisition.
- (k) Such other information as may be required by the City Council.

Section 6.05 Budget Process and Adoption

The City Manager shall present a recommended budget to the Mayor and City Council no later than the date set by state law. The recommended budget shall become a public document and record when presented to the Mayor and City Council. After receipt of the budget, the City Council shall:

- (a) At the first City Council meeting for which timely notice may be given, cause to be posted in City Hall and published in the designated official newspaper of the City a general summary of the recommended budget and a notice stating the time and places where copies of the budget are available for public inspection; the time and place, not less than fifteen (15) days after such publication, of a public hearing on the budget; and such other public hearings as are necessary.
- (b) After the first public hearing the council may adopt the budget with or without amendment following the second reading of the ordinance for the proposed budget. The City Council may amend the recommended budget to add, increase, decrease or delete any programs or amounts, except expenditures required by law or for debt service; provided that no amendment shall increase the authorized expenditures to an amount greater than the total of estimated funds available from all sources. (amended 11/2/2010)
- (c) The budget shall be finally adopted by ordinance not later than the 30th of September. However if the City Council takes no final action on or prior to such date, the budget from the previous year shall be in effect on a month to month basis until approved by a majority of the City Council.
- (d) No budget shall be adopted or appropriations made unless the total of estimated revenues, income, and funds available shall be equal to or in excess of such budget or appropriations.

Section 6.06 Administration of Budget

No payment shall be made or obligation incurred except in accordance with this Charter, and until the Municipal Finance Officer first certifies that a sufficient unencumbered balance and sufficient funds are or will be available to cover the claim or meet the obligation when it becomes due and payable. If funds are not currently available to make an appropriate payment, but will become available within the fiscal year, the finance officer may request the City Council give authority to borrow money to make such payment provided that such money will be repaid by the end of the fiscal year. Any authorization of payment or incurring of an obligation in violation of the provisions of this Charter shall be void and any payment so made illegal. This procedure shall not prevent the City Council by ordinance from making or authorizing of payments or the making of contracts, for capital expenditures to be financed wholly or partly by the issuance of bonds, time warrants, certificates of indebtedness, certificates of obligation, lease-purchase, or other similar evidence of long term indebtedness or obligation authorized by State law, or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year. (amended 11/2/2010)

Section 6.07 Amendment and Supplemental Budgets

To protect the public health, safety, welfare and resources of the City, the City Council upon the affirmative vote of a majority of the full City Council shall authorize budget amendments to fund and meet conditions not anticipated in the original budget. Supplements and amendments shall be approved by ordinance and shall be filed with the original budget.

Section 6.08 Borrowing to Meet Funding Requirements

In the absence of available funds to meet emergency conditions and requirements, the City Council may authorize the borrowing of funds as may be authorized by State law. In any fiscal year in anticipation of the collection of the ad valorem property tax, whether levied or to be levied, the City Council may authorize the borrowing of money by the issuance of tax anticipation notes. Such notes shall mature and be payable not later than the end of the fiscal year in which issued, or as otherwise provided by State law.

Section 6.09 Depository

The City Council shall select a depository or depositories for City funds on the basis of bids received from such institutions for a term not to exceed five years; provided that the City Council may by resolution invest reserve funds in any state or federally chartered bank or savings institution. All monies received by any person, department, or agency of the City for or in connection with affairs of the City shall be promptly deposited in the City depository or depositories. All checks, vouchers, or warrants for the withdrawal of money from the City depositories shall be signed by the Mayor and City Manager or City Secretary. (amended 11/2/2010)

Section 6.10 Purchase Procedure

All purchases made and contracts executed by the City shall be pursuant to a requisition from the head of the office, department or agency whose appropriation will be charged. No contract or order shall be binding upon the City unless the Municipal Finance Officer certifies there is to the credit of such office, department or agency, a sufficient unencumbered appropriation to pay for the supplies, materials, equipment, or contractual services for which the contract or order is to be issued. All such contracts and purchases shall be made in accordance with all applicable competitive bidding requirements established by State law. The City Manager may execute contracts compliant with this section and as authorized by the City Council. (amended 11/2/2010)

Section 6.11 Bonds and Financial Obligations

The City Council may authorize the issuance of any bonds, refunding bonds, certificates of obligation, warrants, notes, certificates of participation, or other evidence of indebtedness or obligation, for any permanent public improvement or any other public purpose not prohibited by law, subject only to the following limitations:

- (a) no general obligation bonds, other than refunding bonds, shall be issued except as approved by a majority vote at an election held for such purpose;

- (b) no indebtedness or obligation shall be issued except in compliance with the requirements of state law;
- (c) no form of indebtedness other than general obligation bonds approved by public vote may be issued without public notice and a public hearing being held in compliance with state law; the public notice shall state the relevant statutory provisions providing for a petition and election, if any;
- (d) the total amount of outstanding general obligation indebtedness shall not exceed ten percent (10%) of the total appraised value of property within the City; and
- (e) the authorization for bonds authorized but not issued shall expire ten years after the date of authorization.

Section 6.12 Reserve Fund

A reserve fund shall be established for use during emergencies and periods of economic downturn. A majority vote of the full City Council shall be required to authorize the expenditure of reserve funds if such expenditure will decrease the reserve funds to an amount that is less than three (3) months funding of the City's annual operating budget.

Section 6.13 Independent Audit

At the close of each fiscal year the City Council shall cause an independent audit to be made of all accounts of the City by a certified public accountant experienced in auditing cities. The audit shall include an audit of all non-profit organizations receiving fifty percent (50%) or more of their income from the City. The audit shall be subject to the following:

- (a) The City shall pay a percentage of the audit costs for all non-profit organizations audited, equal to the percentage of their respective total funding provided by the City.
- (b) The independent auditor shall not otherwise maintain or keep any of the accounts of the City; act as financial advisor to the City; or have any financial interest whatsoever, direct or indirect, in any other financial affairs of the City, any member of the City Council, the City Manager or any department head. The auditor may be a resident or the owner of less than one percent (1%) of the total outstanding stock in a company contracting with the City.
- (c) The City Council shall not select the same auditor for more than five (5) consecutive years and the auditor selected shall not be, or have been within the immediate preceding three (3) years, a business associate of the certified public accountant or firm that performed the audit prior to such selection. (amended 11/03/15)
- (d) The auditor shall complete and present an audit report to City Council during the first calendar quarter each year. Upon presentation to and acceptance of the audit report by the City Council, copies of the audit shall be placed on file in the City Secretary's office and on the City's website as a public record.

Section 6.14 Taxation

The City Council may levy, assess and collect taxes in accordance with state law.

Section 6.15 Procedures

The procedures, limitations and requirements for the levy, assessment and collection of any tax or lien shall be as established by State law; but that, if not established by State law, such procedures, limitations and requirements shall be established by ordinance.

Section 6.16 RESERVED

(amended 11/3/2015)

Section 6.17 Property Taxes

All ad valorem property taxes shall be due and payable on or before the last day of January each year at the office of the Municipal Finance Officer or such other place as authorized by the City Council. Such taxes may be paid at any time after the tax rolls for the tax year have been approved and shall become delinquent and be subject to penalties and interest if not paid on or before the last day of January following the levy. The failure to levy or assess taxes does not relieve any owner or property from the tax liability on any taxable property. The tax ceiling for the City of Windcrest shall never exceed fifty (50) % of the ceiling set by the State Constitution.

Section 6.18 Tax Liens and Claims

All property within the City on the first day of January each year shall stand charged with a special lien in favor of the City, and the owner of such property on that date shall be personally liable there for, until the tax and all related penalties and interest on that property are paid. All such taxes, penalties and interest may, if not voluntarily paid, be collected by the City by:

- (a) Suit to recover personal judgment therefore without foreclosure, or by suit to foreclose its lien or liens, or to recover both by personal judgment and foreclosure; and if the property description on the assessment rolls is insufficient, the city may plead a good description of the property to prove the same, and have judgment foreclosing the tax lien or personal judgment or both, against the owners and property; or
- (b) Withholding the payment of any debt or obligation owed to such owner or person by the City; by reducing the amount of any debt owed to such owner or person by the City by an amount equal to the unpaid taxes, penalties and interest; or otherwise by counter-claim and offset in any proceeding; and
- (c) No assignment or transfer of any such debt, claim, demand, account or property, after taxes are due, shall affect the right of the City to offset the said taxes, penalties and interest against the same.

ARTICLE VII - RECALL, INITIATIVE AND REFERENDUM AND NON-BINDING ELECTIONS

Section 7.01 Powers

The people of the City of Windcrest reserve the power to direct legislation by initiative, to reject any legislation enacted by the City Council by referendum, and to recall any elected official,

including but not limited to the Mayor and any or all members of the City Council. The Council is also authorized to conduct non-binding elections.

Section 7.02 Commencement of Petition, Petitioners Committee, Affidavit

Any three (3) qualified voters may commence initiative, referendum, or recall proceedings by filing with the City Secretary an affidavit stating that they will constitute the petitioners committee and be responsible for circulating the petition and filing it in proper form as provided in this Charter and under Texas Law, stating their names and addresses and specifying the address to which all notices to the petitioners committee are to be sent and setting out in full the proposed initiative ordinance, or citing the ordinances sought to be reconsidered, or the name of the Mayor or City Council member to be recalled.

Section 7.03 Petition Form, Content and Process

All papers and pages of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature on the petition shall comply with the provisions of Section 277.002, Validity of Petition Signatures, Texas Election Code. (amended 11/2/2010)

Section 7.04 Recall Petition

The residents of the City reserve the power to recall any elected official, including but not limited to the Mayor and any or all members of the City Council. Any petition for recall will be filed with the City Secretary. Said petition must be signed by registered voters in the City in a number not less than twenty-five percent (25%) of the number of voters who cast a vote in the last Mayoral election in the City of Windcrest. Recall petitions shall contain the name of the City Official who is the subject of recall, and the statement of charges or grounds for recall (at least 250 but no more than 400 words). The petition bearers or carriers shall give each potential signer of the recall petition time to read the statement of charges before signing the petition. Within five (5) working days of receipt of a recall petition, or as soon as practicable, the City Secretary shall serve the City official who is subject of the recall a copy of the recall petition charges or allegations. Within five (5) working days after the City official is served a copy of the recall petition charges or allegations, the City official may file a written response with the City Secretary. (amended 11/2/2010)

Section 7.04.1 Basis for Recall

Specific acts of malfeasance, incompetence, moral turpitude, or ethical failures, as defined by Texas law, conviction of violations of criminal law excluding Class C misdemeanors and traffic violations, or failure to comply with the provisions of this Charter constitute basis for a recall. The basis for recall shall be specifically stated in the petition, and be in sufficient detail so as to allow the official who is the subject of the recall petition to be informed as to the allegations against him or her. A separate petition is required for the recall of each elected official.

Section 7.04.2 Recall Limitation

Elected officials shall not be subject to recall during the first six (6) months of that official's first term of office. The final six (6) months of an elected official's term of office shall be exempt from recall. (amended 11/3/2015)

Section 7.04.3 Review of Petition

The recall petition, with the required number of signatures of registered voters of the City, and all papers and documents supporting the allegations in the petition, shall be filed with the City Secretary. The City Secretary and the City Attorney shall review the petition for recall to determine that it meets the requirements of this Charter and State law. The City Secretary shall certify, or return a petition found not in compliance with this Charter to the petitioners committee with the written findings of noncompliance clearly stated within ten (10) calendar days of submission. The petitioners committee may correct errors or omissions in the petition and may resubmit the corrected petition to the City Secretary within ten (10) calendar days. The City Secretary shall provide one copy of the certified petition to the petitioners committee and one to the City Council. (amended 11/2/2010)

Section 7.04.4 Procedure After Certification

Upon certification of the petition, the elected official made the subject of the petition may resign. If the official chooses not to resign, the official may, within five (5) working days of the petition's certification, request in writing to the City Secretary a public hearing. At the hearing the elected official and petitioner may present facts and arguments. The public hearing will be held not sooner than five (5) working days after its request, nor later than fifteen (15) working days after its request. The evidence at the hearing shall consist of the petition, the petitioner's evidence, and the elected official's response, which may be written, documentary, verbal, or a combination of all three. This hearing is not a trial. A separate hearing must be allowed, if requested, for each elected official who is the subject of a recall petition. If, at the conclusion of the hearing, the official who is the subject of the recall petition chooses not to resign, the City Council shall order a recall election for the next regular election date. (amended 11/2/2010)

Section 7.04.5 Recall Ballot

Ballots prepared and used in the recall election shall read as follows: "Shall _____ Be Removed From the Office of _____ By Recall?" The ballot shall also provide two options, both printed on the ballot; one for removal, the other against removal. The City Secretary and the Election Judge shall count the ballots.

Section 7.04.6 Results of a Recall Election

A simple majority vote shall decide the issue of recall. If less than a majority of the votes favor recall, the elected official shall continue to serve. If a majority of votes are cast in favor of recall, the City Council shall declare the position vacant, and insure the filling of the vacancy in accordance with the provisions of this Charter. An official who has been recalled may not be reappointed to any immediate vacancy.

Section 7.04.7 Recall Resulting In Less Than a Quorum

Should multiple recall petitions reduce the number of serving City Council members to less than a quorum, the remaining City Council members shall have the authority to continue to conduct City business, including filling vacancies and scheduling elections.

Section 7.05 Procedures for Initiatives and Referendum

Initiative or referendum may be initiated under this Charter by submitting a petition to the City Secretary stating that the purpose of the petition is to initiate an ordinance, or, to request repeal of an ordinance or other action by the City Council. The petition must contain the verified

signatures in a number of at least 20% of the number of voters who cast a vote in the last Mayoral election in the City of Windcrest. The filing of a petition for referendum with the City Secretary, which is found in compliance with this Charter, shall postpone the enforcement of the ordinance in question until the issue has been submitted to the voters. (amended 11/2/2010)

Section 7.05.1 Form and Review of the Petition

The petition shall be readable, understandable, and clearly state the action being requested. Within ten (10) calendar days of the filing of the petition, the City Secretary and the City Attorney shall determine if the petition meets the requirements set forth in this Charter. If so, the City Secretary shall submit it to the City Council at the next regularly scheduled meeting. If the petition fails to meet the requirements of this Charter, the City Secretary shall within ten (10) calendar days return it to the petitioners committee stating reasons for its return. Insufficiencies may be corrected within ten (10) working days of notice. (amended 11/2/2010)

Section 7.05.2 Submission to the Voters

Within thirty (30) days of receipt of the petition for initiative, the City Council may approve the ordinance submitted, or submit the issue to a vote at the next uniform Election Day pursuant to State law. Certified petitions for referendum shall be acted upon by City Council adoption, or by submission to the voters at the next uniform Election Day pursuant to State law. No petition for initiative or referendum shall be considered within four years of any election in which the same subject was considered and defeated.

Section 7.05.3 Ballot Form and Results

Ordinances submitted to the electorate in accordance with the initiative and referendum provisions of this Charter shall be submitted on a ballot which contains the substance of the ordinance. More than one ordinance may be placed on a single ballot and be voted upon at the same election. The vote shall consist of a simple "for" or "against" each proposed ordinance. Any ordinance receiving a majority of the votes in favor shall become an ordinance of the City. An ordinance which is not approved by a majority of the votes shall be deemed defeated. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

Section 7.06 Non-Binding Elections

The City Council, upon its own motion and by the affirmative vote of a majority of the full membership of the City Council, may submit to popular vote at an election for adoption or rejection any proposed ordinance, resolution, or measure, or may submit for repeal any existing ordinance, resolution, or measure. The results of said election shall not have a binding effect on the City Council.

ARTICLE VIII – PUBLIC UTILITIES, FRANCHISES AND CONTRACTS

Section 8.01 Public Services and Utilities

The City shall have the full power and authority to:

- (a) Buy, own, construct, lease, acquire, maintain, and operate within and without the limits of the City a system of gas, electricity, telephone, sewage, sanitation, water, parks,

airports, swimming pools, race tracks, transportation, communications, golf course, cemeteries, cable television, or any other public service or utility.

(b) Manufacture, produce or provide its own electricity, gas, water or any other product, good, or commodity that may be required by the public for municipal purposes.

(c) Purchase gas, electricity, or any other commodity or article required by the public for municipal purposes and to contract with any person, entity or public utility for such purchase.

(d) Distribute and /or sell any utility, commodity or service.

(e) Mortgage and encumber such public utility or service systems.

(f) Regulate and control the distribution of utilities and services within the City and establish standards of service and quality of products.

(g) Establish and enforce the rates to be paid by consumers of any utility or users of any service provided within the City, and, if provided by the City, outside of the City.

These powers shall be vested in the Council, and the Council may exercise the power of eminent domain to acquire all or part of the property of any utility or service provider within the city whenever found by the Council to be in the public interest for carrying out the objectives of providing utilities or services within the City. Any such eminent domain or condemnation proceeding shall be according to the procedures and the methods of establishing the value of the property and facilities as provided by state law, and if such procedures or methods are not so provided by state law, as reasonably provided by ordinance.

Section 8.02 Utility Accounts

The utility shall keep its accounts in accordance with the uniform system of accounts for said utility prescribed by state and federal law.

Section 8.03 Option to Purchase

Any utility franchise may be terminated by city ordinance after ten (10) years after the beginning of operation, whenever the City Council shall determine to acquire by condemnation or otherwise, the property of such utility necessarily used in or conveniently useful for the operation of the city within the city limits.

Section 8.04 Other Conditions

All franchises heretofore granted are recognized as contracts between the City and the franchisee, and the contractual rights as contained therein shall not be impaired by the provisions of this Charter except:

(a) The power of the City to exercise the right of eminent domain to acquire the property and assets of the utility is reserved.

(b) The general power of the City to regulate services of a utility, including the right to require adequate and reasonable extension of plant and service and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency, shall be enforced.

Section 8.05 Power to Grant Franchises

The Council shall have the power, subject to the provisions hereof, by ordinance to confer upon any person, firm, corporation, or other legal entity, the franchise or right to use the public property of the City for the purpose of furnishing to the public any general public service or benefit, including, but not limited to, heat, light, power, telephone service, transportation, or other telecommunication providers for compensation or hire. The City shall have the power by ordinance to grant, renew, and extend all franchises of all public utilities of every character operating within the City. A grant cannot be exclusive of other franchises, nor granted for an indeterminate term.

Section 8.06 Transfer of Franchise

No public utility or other franchise shall be transferable except with the approval of the City Council.

Section 8.07 Ownership, Use and Control of Streets

No franchise or easement involving the right to use the streets, alleys, highways, parks and public rights of ways shall be valid unless granted in compliance with the terms of this Charter. No granting of a franchise by ordinance pursuant to this Charter shall convey any ownership or interest in any property of the City other than the right to use the public property for purposes of such franchisee's operations as expressed in the ordinance granting such franchise.

Section 8.08 Right of Regulation

In granting, amending, renewing and extending public service and utility franchises, the City shall retain the right to:

- (a) Repeal such franchise by ordinance for failure to comply with the terms thereof, such power to be exercised only after due notice and hearing;
- (b) Impose regulations to ensure safe, efficient and continuous service to the public. The franchise holder in opening and refilling all earth openings shall re-lay the pavement and do all other work necessary to complete restoration of streets, sidewalks or grounds to a condition equally as good as or better than when disturbed; and in a time specified by contract;
- (c) Upon notice to franchisee and a reasonable opportunity to be heard, to regulate, locate, or prohibit the erection of any and all poles, wires, or other utility equipment, conveyance, or structure, on the streets, alleys and public places of said City and to cause the same to be changed, removed, altered, relocated, increased, diminished, placed underground, or be supported by poles of such material, kind, quality and class as may be determined by the Council whether the same be, telephone, electric, cable television, or otherwise, and to enforce the provisions hereof by appropriate action in any court of competent jurisdiction.

Section 8.09 Compensation for Franchise

All persons, corporations, or association of persons, to whom a franchise or privilege may hereafter be granted shall pay to the City for such privilege such compensation as may be fixed by the Council in the grant of such franchise or privilege. Such compensation as fixed by

contract or provided by State law (s) shall become due and payable at such time as the Council shall fix in the granting of such franchise or privilege. The failure of any franchisee to pay said compensation when due may result in forfeiture of the franchise privilege. The rates, charges and fares so fixed shall at all times be reasonable to permit the franchisee a reasonable opportunity to earn a fair return on the franchisee's invested capital. The Council may require any utility or franchise holder to furnish such financial reports and information as the Council may request including reports of actual operating costs and the financial conditions of its operations within the City. The Council may employ, at the expense of such franchisee, necessary outside experts to examine and audit the accounts and records of the franchisee to determine the reasonableness of such charges, fares, and rates.

ARTICLE IX – MUNICIPAL PLANNING AND ZONING BOARDS AND COMMISSIONS

Section 9.01 Planning and Zoning Commission

The City Council shall create a Planning and Zoning Commission of the City of Windcrest and shall appoint seven (7) members, each of whom shall be a citizen of Windcrest. Members shall be appointed staggered terms as set by City ordinance. Such appointees may serve with compensation, as determined by the City Council, and may not hold any elective office of the State of Texas or any other political subdivision thereof during their terms. The City Council shall fill a vacancy in an un-expired term for the remainder of the term. The majority of the total number of appointed members shall constitute a quorum, and decisions may be made only with the affirmative vote of a majority of those members present and voting. The Commission shall select a Chairperson and Vice Chairperson from among its members. The Planning and Zoning Commission shall have the following powers and duties:

- (1) Review all current and proposed ordinances and amendments pertaining to planning and zoning and make recommendations to the City Council for action;
- (2) Develop and recommend to the council the adoption and implementation of a comprehensive plan for the development of land within the city.
- (3) Review and make recommendations to the council on all amendments to the comprehensive plan or elements or portions thereof.
- (4) Review and make recommendations to the council on platting and subdividing of land within the corporate limits and the extraterritorial jurisdiction of the city to ensure the consistency of any such plats or subdivision with the adopted comprehensive plan or element or portion thereof.
- (5) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend annually to the council any changes in or amendments to the comprehensive plan as may be desired or required.
- (6) The Commission shall recommend to the City Council for adoption a zoning plan, and recommend or disapprove proposed changes in such plan subject to the provisions of any existing ordinance covering zoning.

(7) The Planning and Zoning Commission shall perform such other duties as the City Council shall prescribe that relate to land development and community planning.
(amended 11/2/2010)

Section 9.02 Board of Adjustment

The City Council shall appoint a Board of Adjustment of the City of Windcrest comprised of five (5) regular members and two (2) alternate members, all of whom shall be citizens of the City of Windcrest, for two (2) year staggered terms. Such appointees may serve with compensation, as determined by the City Council. The City Council shall fill a vacancy on the board for an unexpired term. The Board shall select a Chairperson and Vice Chairperson from among its members.

Section 9.03 Other Boards and Commissions

The City Council shall have the power and is hereby authorized to create, establish, appoint, and abolish such other boards, commissions, and committees, as it deems necessary to carry out the functions of the City, and to prescribe the purpose, composition, functions, and tenure of each board, commission, or committee. The members of such boards, commissions, and committees may serve with compensation, as determined by the City Council.

ARTICLE X - GENERAL

Section 10.01 General Legal Considerations

10.01.1 Property Not Subject To Garnishment Or Execution

No property owned or held by the City shall be subject to garnishment or execution of any kind or nature except as provided by State law.

10.01.2 Municipal Acquisition Of Property

The City shall have the power to acquire property within or without its boundaries, subject to limitations within this Charter or State Law, for any public purpose, by purchase, gift, devise or lease.

10.01.3 Indemnification Of Officers, Employees And Official

The City Council shall, by appropriate ordinance, provide for the indemnification and legal defense of the officers and employees of the City, including the City Council, Boards, Commissions, Committees, and volunteers approved by the Mayor (or City Manager) against any cost, loss, or expense, including court costs and attorneys fees, to the extent allowed by State law, arising out of any action based upon alleged negligent act or acts of such person during the discharge of that persons duties, committed within the scope of such person's services. Indemnification under this Article shall not be provided for knowing, willful, or intentional violations of any statute or ordinance.

10.01.4 Bond Or Security Not Required

It shall not be necessary in any action, suit or proceeding in which the City is a party, for any bond or other security to be executed on behalf of the City. Any action will proceed as if such

bond or security had been given. The absence of such bond or security shall not negate the liability of the City established in such proceedings, and in any finding against the City, it shall be liable as if such security had been given.

10.01.5 Public Meetings And Records

All meetings of the City Council, Boards, Commissions, and Committees appointed by competent authority shall be governed by the provisions of Chapter 551, Texas Government Code, and any amendments thereto with regard to the posting of the agenda and the holding of Government meetings. All public records of the City shall be open to inspection by any citizen of Windcrest during reasonable business hours. Authorized exemptions under Chapter 551, Texas Government Code, may be utilized.

10.01.6 Severability

If any chapter, article, section, paragraph, sentence, clause or phrase of this Charter shall be held unconstitutional or invalid for any reason by a court of competent jurisdiction, such holding shall not affect the remainder of the Charter nor the context in which such provision so held invalid may appear.

Section 10.02 Claims Against The City

10.02.1 Notice Of Claim

No action may be filed in any court of competent jurisdiction seeking damages for personal injury or property loss or damage based upon the alleged liability of the City of Windcrest unless and until notice of such alleged loss or damage claimed is first provided to the City Secretary. Such claim must be filed within 180 calendar days of the alleged occurrence of loss or damage. Such notice shall be in writing and shall, as a minimum, provide a statement of alleged facts, the basis for the alleged liability of the City, and shall demand compensation in a specific dollar amount.

10.02.2 Thirty (30) Day Waiting Period

No action may be filed in a court of competent jurisdiction prior to the expiration of thirty (30) calendar days from the date notice of the claim was provided. During this thirty (30) calendar day period, the City may deny the claim, ask for additional information, or make an offer of settlement on the claim. Offers of settlement may not be made without the concurring opinion of the City Attorney that the facts establish the liability of the City, and that the amount of the offer is supported by the evidence available. Negotiations and discussions toward settlement of the claim may continue beyond the thirty (30) calendar day period.

10.02.3 Non Waiver Of Rights

Nothing contained in this Article shall be construed to mean that the City of Windcrest waives any rights, privileges, defenses, or immunities in tort actions which are provided in Common Law, the Constitution, and/or the general laws of the State of Texas.

Section 10.3 Ethics, Standards Of Conduct, and Conflicts Of Interest

The City Council shall develop and adopt a City Code of Ethics within one (1) year of approval of this Charter.

10.03.1 Conduct Of Administrators And Elected Officials

The conduct of City administration will comply with all State Laws and restrictions in this Charter. The conduct of elected and appointed officials must be of the highest moral and ethical standards.

10.03.2 Financial Interests To Comply With Texas Law

The Mayor, the City Council, and all City officials, elected or appointed, shall comply with the rules and regulations regarding personal financial interests as set out in State law.

10.03.3 Anti-Discrimination Laws Apply

There shall be no discrimination in the administration of the City's business based on race, religion, national origin, sex, age, or political affiliation.

10.03.4 Nepotism

No person related within the second degree of affinity, or within the third degree of consanguinity to any elected officer of the City, or to the City Manager, may be appointed to any office or position, or other service to the City, including contractual arrangements for which they receive compensation. (amended 11/2/2010)

10.03.5 Board, Commission and Committee Appointments

No member of the City Council or employee of the city may be appointed to serve on boards or commissions. A member of council may be appointed to committees, study groups, or other entities created by the City to provide advisory services to the City. A city employee may serve as a resource to any board, commission, committee, study group or other entity created by the City but may not be a voting member (amended 11/3/2015)

10.03.6 Penalties For Violations Of This Article

Any violation of the prohibitions set forth in this Article, by an individual or individuals acting in concert with such elected or appointed official may result in the forfeiture of the office or position by the individual(s) involved. Such forfeiture may occur only after due inquiry and a hearing by the City Council, concerning the alleged misconduct. An eighty percent (80%) majority vote of all of the City Council members is required to compel forfeiture of the office or position. The individual being considered for forfeiture shall not participate in the vote. (amended 11/2/10)

10.03.7 Annual Review of Code of Ethics

The City Council will annually review and amend the Code of Ethics as needed. (amended 11/2/2010)

Section 10.04 Transitional Provisions

10.04.1 Validation of Ordinances

All ordinances, resolutions, rules, contracts, and regulations of the City heretofore ordained, passed, adopted, or enacted, that are in force at the time this Charter becomes effective, and which are not in conflict with such Charter, shall remain in full force until altered, amended, or repealed by the City Council after such Charter takes effect.

10.04.2 City Elections

The Mayor and Council Members shall be elected for a term of two years according to the election cycle currently established (i.e. November of even numbered years the Council Members for Places 1, 2, and 3 shall be elected. In November of odd numbered years the Office of Mayor and Council Members for Places 4 and 5 shall be elected). (amended 11/03/15)

10.04.3 Existing Officials And Employees Retain Positions

Nothing in this Charter except as specifically provided herein, shall affect or impair the rights and privileges of persons who are City officers or employees at the time of its adoption. All persons holding elected offices that are retained under this Charter will continue to fill those offices for the terms to which they were elected.

10.04.4 Existing City Business Continue

All rights, claims, actions, orders, contracts, franchises, and legal or administrative proceedings in existence at the time of the adoption of this Charter shall continue until completion. All renewals or new rights arising after the adoption of the Charter shall be conducted pursuant to the Charter.

ARTICLE XI - CHARTER AMENDMENTS

Section 11.01 Amendment of This Charter

Amendments to this Charter shall be framed, proposed, and adopted in the manner provided by Texas Local Government Code as now or hereafter amended.

Section 11.02 Rearrangement and Renumbering Of Charter Provisions

In order to preserve coherence, the City Council shall have the power, by ordinance, to renumber and rearrange all articles, sections, and paragraphs of the Charter, or any amendments thereto, or to correct minor grammatical or spelling errors, and upon the passage of any such ordinance, a copy thereof, certified by the City Manager, shall be forwarded to the Secretary of State for filing. (amended 11/2/2010)

Section 11.03 Periodic Charter Review

The City Council shall appoint, not later than every fifth year subsequent to the official adoption of its initial Home Rule Charter, a Charter Review Commission of seven (7) citizens of the City of Windcrest.

(a) Duties of the Commission:

(1) Inquire into the operation of the city government under the Charter provisions and determine whether any such provisions require revision. The commission shall have access to all City records in the course of its review; will hold periodic public meetings; may hold public hearings; and shall have the power to compel the attendance of any officer or employee of the City at such hearings.

(2) If it deems appropriate, develop amendments to this Charter to improve the effective application of the Charter to current conditions.

(3) Report its findings in writing, and present its proposed amendments, if any, to the City Council.

(b) Term of Commission: The term of this Charter Review Commission shall be six (6) months, or sooner if a report is presented to the City Council prior to expiration of said term. If at the end of the six (6) months term, no report is presented to the City Council, all records of the proceedings of such Commission shall be filed with the City Secretary as a part of the public record, and the periodic review required under this section shall be deemed fulfilled.

(c) Action by the City Council: The City Council shall receive and have published in the designated official public newspaper of the City a summary of the report presented by the Charter Review Commission; shall consider any recommendations made, and if Charter amendments are proposed, may order such amendment or amendments be submitted to the voters of the City as provided by the laws of the State of Texas.

This Home Rule Charter for the City of Windcrest, Texas, is respectfully submitted to the City Council of the City of Windcrest for the purpose of calling an election on the question of adoption or rejection of the Home Rule Charter this 6th day of November 2007. This proposed Charter represents the recommendations of the members of the Home Rule Charter Commission, whose membership **and signatures** are evidenced below.

Mary Behrend

Ira Morgan

Cheryl Bristow

Lu Nix

Ed Chevalier

Edwin Ramos, M. D.

IN MEMORIAM
1921-2007

Colonel (Ret.) Harry L. Gans (USA)

Charles Rankin

Inge Geiger

Joe Regan

Robert D. Hamel

Harold Woods

Mary Hatch

**Don Myles
Vice Chair**

**Donna F. Ridenour
Chair**
