

ABERDEEN HOME RULE CHARTER



ADOPTED NOVEMBER 2004

ABERDEEN HOME RULE CHARTER

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PREAMBLE

We the people the of the City of Aberdeen, South Dakota, in order to establish a more representative and effective government do adopt this Charter in accordance with the Home Rule power granted in Article IX, Section 2 of the South Dakota Constitution and the procedural requirements of SDCL Chapter 6-12.

ARTICLE I: POWERS OF THE CITY

Section 1.01. Powers of the City.

The city shall have all powers possible for a city to have under the Constitutions and laws of the State of South Dakota and the United States as fully and completely as though they were specifically enumerated in this charter.

Section 1.02. Construction

The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this article.

Section 1.03. Intergovernmental Relations.

The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or any state civil division or agency, or the United States or any of its agencies. The city retains and reserves its right to Joint Exercise of Governmental Powers as set forth in SDCL Title 1. Further the city adopts and ratifies each and every contract and agreements entered into by virtue of that power under any prior city organization or form of government.

Section 1.04. Limitations.

Nothing in this charter shall be construed to permit the City to do any of the following:

- (1) Levy a personal or corporate income tax,
- (2) Issue more liquor licenses,
- (3) Permit increased gaming, or
- (4) Incur additional debt,

unless and except to the extent otherwise authorized to any City established as a SDCL Title 9 authorized form of City government or any other act prohibited by SDCL 6-12-6.

Section 1.05. New Taxes.

Any new form or type of taxation, which is approved by the City Council, must be referred to a vote of the people before it can become effective. This does not apply to new or increased fees or increases in existing taxes including by way of illustration, and not in limitation, sales, use or other ad valorem taxes on internet sales or purchases.

ARTICLE II: CITY COUNCIL

Section 2.01. General Powers and Duties.

All powers of the city shall be vested in the city council, except as otherwise provided by law or this charter and the council shall provide for the exercise thereof and for the performance of all

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duties and obligations imposed on the city by law. The Council shall act as a part-time, policy making and legislative body, avoiding management and administrative issues.

Section 2.02. Composition, Eligibility, Election and Terms

- (a) **Composition.** There shall be a city council composed of the mayor and eight members; the council members shall be elected by the voters of the city according to districts established in §6.03 and the mayor shall be elected as provided in §2.03.
- (b) **Eligibility.** Only registered voters of the city shall be eligible to hold office of council member or mayor.
- (c) **Election and Terms.** The regular election of council members shall be held on the first Tuesday of June, in the manner provided by law. At the first election under this charter council members shall be elected to terms that are staggered so as to provide continuity in future council membership as established in §6.03. Thereafter, all council members shall be elected for five-year terms. The terms of council members shall begin on the first day of July after their election, unless it is a special election, then the first day of an official's term would begin on the first day of the month following the special election or immediately if it is to fill a vacancy.
- (d) **Continuation in office.** The mayor, upon the successful adoption of this Charter by the voters of the City of Aberdeen, shall continue in office for the remainder of his or her respective term. The remaining commissioners shall remain in office until an election is held pursuant to the districting commission established in §6.03 can be completed. It is intended that the districting commission shall establish districts prior to the regularly scheduled general city election in June.
- (e) **Powers and duties.** The council by ordinance shall establish the powers and the duties of the council and of the mayor in addition to those assigned by this Charter.

Section 2.03. Mayor

- (a) **Term:** At each regular election a mayor shall be elected for a term of five years, when the mayor's term is to expire in that year.
- (b) **Duties Prior to Appointment of a City Manager:**
 - (1) The mayor shall serve as the city manager in terms of duties until the expiration of his or her term. At the expiration of his or her term, a city manager will be appointed to take over such duties. The duties are outlined in §3.04 herein.
 - (2) Upon election of the new council after adoption of this charter, the mayor would not vote except in cases of a tie.
 - (3) The mayor shall be a member of the city council and shall preside at meetings of the council, represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of citizens' advisory boards and commissions, present an annual state of the city message, and perform other duties specified by the council.
 - (4) The mayor shall be recognized as the head of the city government for all ceremonial purposes and by the governor for purposes of military law. The council shall elect from among its members a deputy mayor who shall act as mayor, for ceremonial purposes but shall not assume the duties outlined in §3.04 herein unless a vacancy occurs, during the absence or disability of the mayor, and if a vacancy occurs, shall become mayor for the

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remainder of the unexpired term but would require the appointment of the city manager as expediently as possible.

(5) The term mayor may be substituted in sections referring to city manager during the continuation term of the mayor prior to the actual appointment of a city manager.

(c) Duties of Mayor upon Appointment of City Manager:

(1) The mayor shall be a member of the city council including the power to vote and in addition shall preside at meetings of the council, represent the city in inter-governmental relationships, appoint with the advice and consent of the council the members of citizens advisory boards and commissions, present an annual state of the city message, and perform other duties specified by the council.

(2) The mayor shall be recognized as the head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties.

(3) The council shall elect from among its members a deputy mayor who shall act as mayor during the absence or disability of the mayor, and if a vacancy occurs, shall become mayor for the remainder of the unexpired term.

Section 2.04. Compensation; Expenses

The city council may determine the annual salary of the mayor and council members by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of council members elected at the next regular election. The mayor and council members shall receive their actual and necessary expenses incurred in the performance of their duties of office.

Section 2.05. Prohibitions.

(a) **Holding Other Office.** Except where authorized by law, no council member shall hold any other elected public office during the term for which the member was elected to the council. No council member shall hold any other city office or employment during the terms for which the member was elected to the council. No former council member shall hold any compensated appointive office or employment with the city until one year after the expiration of the term for which the member was elected to the council unless such position existed prior to term expiration or resignation of the member or was created by this charter. .

Nothing in this section shall be construed to prohibit the council from selecting any current or former council member to represent the city on the governing board of any regional or other intergovernmental agency.

(b) **Appointments and Removals.** Neither the city council nor any of its members shall in any manner control or demand the appointment or removal of any city administrative officer or employee whom the city manager or any subordinate of the city manager is empowered to appoint, but the council may express its views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees. This provision would not be a power available to the mayor serving the conclusion of their term prior to the appointment of a city manager.

(c) **Interference with Administration.** Except for the purpose of inquiries and investigations, under §2.09, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the mayor solely through the mayor and neither

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the council nor its members shall give orders to any such officer or employee either publicly or privately.

Section 2.06. Vacancies; Forfeiture of Office; Filling of Vacancies.

- (a) **Vacancies.** The office of a council member shall become vacant upon the member's death, resignation, removal from office or forfeiture of office in any manner authorized by law.
- (b) **Forfeiture of Office.** A council member shall forfeit that office if the council member
 - (1) lacks at any time during the term of office for which elected any qualification for the office prescribed by this charter or by law,
 - (2) violates any express prohibition of this charter,
 - (3) is convicted of a felony,
 - (4) fails to attend three consecutive regular meetings of the council without being excused by the council, or
 - (5) fails to attend at least sixty percent (60%) of the regular meetings of the council during a fiscal year without being excused by the council.
- (c) **Filling of Vacancies.** A vacancy in the office of mayor or in the city council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than 60 days upon the occurrence of the vacancy, but the Council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. Notwithstanding the requirement in §2.11, if at any time the membership of the council is reduced to less than 5, the remaining members may by majority action appoint additional members to raise the membership to 5.
- (d) **Recall.** The power of recall of the mayor or council members shall be allowed as set forth in SDCL Title 9, as amended from time to time.

Section 2.07. Judge of Qualifications and Forfeiture

The city council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office. The council shall have the power to set additional standards of conduct for its members beyond those specified in the charter and may provide for such penalties as it deems appropriate, including forfeiture of office. In order to exercise these powers, the 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 in one or more newspapers of general circulation in the city at least one week (*7 days*) in advance of the hearing. Decisions made by the council under this section shall be subject to judicial review.

Section 2.08. Finance Officer

The city council shall appoint an officer of the city who shall have the title of finance officer. The finance officer shall give notice of council meetings to its members and the public, keep the journal of its proceedings and perform such other duties as are assigned by this charter or by the council or by state law.

Section 2.09. Investigations.

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The city council may make investigations into the affairs of the city and the conduct of any city department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Failure or refusal to obey a lawful order issued in the exercise of these powers by the council shall be a misdemeanor punishable by a fine of not more than \$200.00, or by imprisonment for not more than 30 days or both.

Section 2.10. Independent Audit.

The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits, as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the city government or any of its officers. The council may, without requiring competitive bids, designate such accountant or firm annually or for a period not exceeding three years, but the designation for any particular fiscal year shall be made no later than 30 days after the beginning of such fiscal year. If the state makes such an audit, the council may accept it as satisfying the requirements of this section.

Section 2.11. Procedure.

- (a) **Meetings.** The council shall meet regularly at least once in every month at such times and places as the council may prescribe by ordinance. Special meetings may be held on the call of the mayor or of 2 or more members and, whenever practicable, upon no less than three hours notice to each member. Except as allowed by state law, all meetings shall be public; however, the council may recess for the purpose of discussing in a closed or executive session on any matter which would tend to defame or prejudice the character or reputation of any person, if the general subject matter for consideration is expressed in the motion calling for such session and final action on such motion is not taken by the council until the matter is placed on the agenda.
- (b) **Rules and Journal.** The city council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record. The journal may also be referred to as the Minutes of the Council.
- (c) **Voting.** Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. A majority of the voting members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to penalties prescribed by the rules of the council. No action of the council, except as otherwise provided in the preceding sentence and in §2.06, shall be valid or binding unless adopted by the affirmative vote of a majority of those present or more members of the council.

Section 2.12. Action Requiring Ordinance.

In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of the city council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter, or abolish any city department, office or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Levy taxes,
- (4) Grant, renew or extend a franchise;

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- (5) Regulate the rate charged for its services by a public utility;
- (6) Authorize the borrowing of money;
- (7) Convey or lease or authorize the conveyance or lease for a period of longer than one (1) year of any lands of the city;
- (8) Regulate land use and development;
- (9) Amend or repeal any ordinance previously adopted; and
- (10) Establish and regulate the conduct of elections.

Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution.

Section 2.13. Ordinances and Resolutions in General.

City ordinances and resolutions shall be introduced, published, enacted, recorded, and codified as provided in state law; however, the City Council may by ordinance amend such requirements.

Section 2.14. Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in §5.07(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least sixty percent of the members present shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to §5.07(b) shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Section 2.15. Codes of Technical Regulations.

The city council may adopt any standard code of technical regulations by reference hereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

- (1) The requirements of §2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the finance officer pursuant to §2.16(a).

Copies of any adopted code of technical regulations shall be made available by the finance officer for distribution or for purchase at a reasonable price.

Section 2.16. Authentication and Recording; Codification; Printing.

(a) **Authentication and Recording.** The finance officer shall authenticate by signing and shall

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record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the city council.

- (b) **Codification.** Within three years after adoption of this charter and at least every ten years thereafter, the city council shall provide for the preparation of a general codification of all city ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published promptly in bound or loose-leaf form, together with this charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of South Dakota, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the Aberdeen city code. Copies of the code shall be furnished to city officers, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the council.
- (c) **Printing of Ordinances and Resolutions.** The city council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the council. Following publication of the first Aberdeen City Code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the state of South Dakota, or the codes of technical regulations and other rules and regulations included in the code.

ARTICLE III: CITY MANAGER

Section 3.01. Appointment; Qualifications; Compensation.

The city council by a majority vote of its total membership shall appoint a city manager for an indefinite term and fix the manager's compensation. The city manager shall be appointed solely on the basis of executive and administrative qualifications. The city manager need not be a resident of the city or state at the time of appointment but may reside outside the city while in office only with the approval of the council. This appointment shall be made effective at the conclusion of the current mayor's term. (Cross-reference: See § 2.02(d))

Section 3.02. Removal.

The city manager may be suspended by a resolution approved by the majority of the total membership of the city council which shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the city manager. The city manager shall have fifteen days in which to reply thereto in writing, and upon request, shall be afforded a public hearing, which shall occur not earlier than ten days or later than fifteen days after such hearing is requested. After the public hearing, if one is requested, and after full consideration, the city council by a majority vote of its total membership may adopt a final resolution of removal. The city manager shall continue to receive full salary until the effective date of a final resolution of removal.

Section 3.03. Acting City Manager.

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By letter filed with the finance officer, the city manager shall designate a city officer or employee to exercise the powers and perform the duties of city manager during the manager's temporary absence or disability, the city council may revoke such designation at any time and appoint another officer of the city to serve until the city manager returns.

Section 3.04. Powers and Duties of the City Manager.

The city manager shall be the chief administrative officer of the city, responsible to the Council for the administration of all city affairs placed in the manager's charge by or under this charter.

The city manager shall:

- (1) Appoint and, when necessary for the good of the service, suspend or remove all city employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (2) Direct and supervise the administration of all departments, office and agencies of the city, except as otherwise provided by this charter of by law;
- (3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;
- (4) See that all laws, provisions of this charter and acts of the city council subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual budget and capital program to the city council;
- (6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;
- (7) Make such other reports as the city council may require concerning the operations of city departments, offices and agencies subject to the city manager's direction and supervision;
- (8) Keep the city council fully advised as to the financial condition and future needs of the city;
- (9) Make recommendations to the city council concerning the affairs of the city;
- (10) Provide staff support services for the mayor and council members;
- (11) Submit updates annually on the date specified by the city council a five-year capital program in such form as the City manager deems desirable or the Council may require;
- (12) Submit updates annually on the date specified by the City Council a five-year financial plan in such form as the City manager deems desirable or the council may require;
- (13) Sign all warrants for the payment of money, and the same shall be countersigned by the Clerk, but no warrant shall be issued until the claim therefore has been approved by the City Council, except as may be otherwise provided by ordinance or resolution; and
- (14) Perform such other duties as are specified in this charter or may be required by the city council.

ARTICLE IV: DEPARTMENTS, OFFICES AND AGENCIES

Section 4.01. General Provisions.

(a) **Creation of Departments.** The city council may establish city departments, offices or

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agencies in addition to those created by this charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this charter to a particular department, office or agency may be discontinued or, unless this charter specifically so provides, assigned to any other.

- (b) **Direction by City Manager.** All departments, offices and agencies under the direction and supervision of the city manager shall be administered by an officer appointed by and subject to the direction and supervision of the city manager. With the consent of the council, the city manager may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them. The appointment by the city manager of any officer or employee having final authority over more than five (5) percent of the city's employees or budget shall only be effective with the advice and consent of the council.

Section 4.02. Personnel System.

- (a) **Merit Principle.** All appointments and promotions of city officers and employees shall be made solely on the basis of merit and fitness demonstrated by a valid and reliable examination or other evidence of competence.
- (b) **Merit System.** Consistent with all applicable federal and state laws with city council shall provide by ordinance for the establishment, regulation and maintenance of a merit system governing personnel policies necessary to effective administration of the employees of the city's departments, offices and agencies, including but not limited to classification and pay plans, examinations, force reduction, removals, working conditions, provisional and exempt appointments, in-service training, grievances and relationships with employee organizations.

Section 4.03. Legal Officer.

There shall be a legal officer of the city appointed by the city council. The legal officer shall serve as chief legal adviser to the city council, the city manager and all city departments, offices and agencies shall represent the city in all legal proceedings and shall perform any other duties prescribed by state law, by this charter or by ordinance.

Section 4.04. Planning.

Consistent with all applicable federal and state laws with respect to land use, development and environmental protection, the city council shall:

- (1) Designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by ordinance;
- (2) Adopt a comprehensive plan and determine to what extent zoning and other land use control ordinances must be consistent with the plan; and
- (3) Adopt development regulations, to be specified by ordinance, to implement the plan.

ARTICLE V: FINANCIAL PROCEDURES

Section 5.01. Fiscal Year.

The fiscal year of the city shall begin on the first day of January and end on the last day of December.

Section 5.02. Submission of Budget and Budget Message.

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On or before the first day of August each year, the city manager shall submit to the city council a budget for the ensuing fiscal year and an accompanying message.

Section 5.03. Budget Message.

The city manager's message shall explain the budget both in fiscal terms and in terms of the work programs. 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 together with the reasons for such changes, summarize the city's debt position and include such other material as the city manager deems desirable.

Section 5.04. Budget.

The budget shall provide a complete financial plan of all city funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the city manager deems desirable to the city council may require. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

- (1) The proposed goals and objectives and expenditures for current operations during the ensuing fiscal year, detailed for each fund by organization unit, and program, purpose or activity, and the method of financing such expenditures;
- (2) Proposed capital expenditures during the ensuing fiscal year, detailed for each fund by organization unit when practicable, and the proposed method of financing each such capital expenditure; and
- (3) The anticipated income and expense and profit and loss for the ensuing year for each utility or other enterprise fund operated by the city.

For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance, exclusive of reserves.

Section 5.05. City Council Action on Budget.

- (a) **Notice and hearing.** The city council shall publish in one or more newspapers of general circulation in the city the general summary of the budget and a notice stating:
 - (1) The times and places where copies of the message and budget are available for inspection by the public, and
 - (2) The time and place, not less than two weeks after such publication, for a public hearing on the budget.
- (b) **Amendment before Adoption.** After the public hearing, the city council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income.

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- (c) **Adoption.** The city council shall adopt the budget on or before the 30th 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.

Section 5.06. Appropriation and Revenue Ordinance.

To implement the adopted budget, the city council shall adopt, prior to the beginning of the ensuing fiscal year:

- (a) **Appropriation Ordinance:** An appropriation ordinance making appropriations by department or major organizational unit and authorizing a single appropriation for each program or activity; shall, no later than its first regular meeting in September of year or within 10 days thereafter, introduce the annual appropriation ordinance for the ensuing fiscal year, in which it shall appropriate the sums of money necessary to meet all lawful expenses and liabilities of the municipality. The ordinance shall specify the function and subfunction as prescribed by the department of legislative audit for which the appropriations are made and the amount appropriated from the proper fund. It is not necessary to appropriate revenue to be expended from an enterprise or trust and agency fund if the fund is not supported or subsidized by revenue derived from the annual appropriated tax levy. However, an annual budget for these funds shall be developed and published no later than the last day of December of each year; and
- (b) **Tax Levies and Rates:** A tax levy ordinance authorizing the property tax levy or levies and setting the tax rate or rates; and
- (c) **Other Ordinances:** Any other ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

Section 5.07. Amendments after Adoption.

- (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 city council by ordinance may make supplemental appropriations for the year up to the amount of such excess.
- (b) **Emergency Appropriations.** To meet a public emergency affecting life, health, property or the public peace, the city council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of §2.14. To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the council may be made by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.
- (c) **Reduction of Appropriations.** If at any time during the fiscal year it appears probable to the city manager/mayor that the revenues or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the manager/mayor shall report to the city council without delay, indicating the estimated amount of the deficit, any remedial action taken by the city manager and recommendations as to any other steps to be taken. The council shall then take such further action as it deems necessary to prevent or reduce any deficit and for that purpose it may be ordinance reduce one or more appropriations.
- (d) **Transfer of Appropriations.** At any time during the fiscal year the city council may by

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resolution transfer part or all of the unencumbered appropriation balance from one department or major organizational units. The city manager may transfer part or all of any unencumbered appropriation balances among programs within a department or organizational unit and shall report such transfers to the council in writing in a timely manner.

- (e) **Limitation; 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 5.08. Lapse of Appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until expended, revised or repealed; the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

Section 5.09. Administration of Budget.

The city council shall provide by ordinance the procedures for administering the budget.

Section 5.10. Overspending of Appropriations Prohibited.

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the city manager or his or her designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this charter shall be void and any payment so made illegal. A violation of this provision shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation. Such officer may also be liable to the city for any amount so paid. Except where prohibited by law, however, nothing in this charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, but only if such action is made or approved by ordinance.

Section 5.11. Capital Program.

- (a) **Submission to City Council.** The city manager shall prepare and submit to the city council a five year capital program no later than the final date for submission of the budget.
- (b) **Contents.** The capital program shall include:
- (1) A clear general summary of its contents;
 - (2) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for each;
 - (3) Cost estimates and recommended time schedules for each improvement or other capital expenditure;

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- (4) Method of financing, upon which each capital expenditure is to be reliant; and
- (5) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

Section 5.12. City Council Action on Capital Program.

- (a) **Notice and hearing.** The city council shall publish one or more newspapers of general circulation in the city the general summary of the capital program and a notice stating:
 - (1) The times and places where copies of the capital program are available for inspection by the public, and
 - (2) The time and place, not less than two weeks after such publication, for a public hearing on the capital program.
- (b) **Adoption.** The city council by resolution shall adopt the capital program with or without amendment after the public hearing and on or before the first day of December for the following fiscal year.

Section 5.13. Public Records.

Copies of the budget, capital program and appropriation and revenue ordinances shall be public records and shall be made available to the public at suitable places in the city.

ARTICLE VI: ELECTIONS

Section 6.01. City Elections.

- (a) **Regular Elections.** The regular city election shall be held at the time established by state law. The date of the election shall be established by an ordinance of the city council.
- (b) **Registered Voter defined.** All citizens legally registered under the constitution and laws of the state of South Dakota to vote in the city shall be registered voters of the city within the meaning of this charter.
- (c) **Conduct of Elections.** The provisions of the general election laws of the state of South Dakota shall apply to elections held under this charter. All elections provided for by the charter shall be conducted by the election authorities established by law. Candidates shall run for office without party designation. For the conduct of city elections, for the prevention of fraud in such elections and for the recount of ballots in cases of doubt or fraud, the city council shall adopt ordinances consistent with law and this charter, and the election authorities may adopt further regulations consistent with law and this charter and the ordinances of the council. Such ordinances and regulations pertaining to elections shall be publicized in the manner of city ordinances generally.

Section 6.02. Initiative and Referendum.

The powers of initiative and referendum are hereby reserved to the electors of the city unless otherwise allowed by state law. The provisions of the election law of the state of South Dakota, as they currently exist or may hereafter be amended or superseded, shall govern the exercise of the powers of initiative and referendum under this charter.

Section 6.03. Council Districts: Adjustment of Districts.

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(a) **Number of Districts:** There shall be four (4) city council districts.

(b) **Districing Commission; Composition; Appointment; Terms; Vacancies; Compensation.**

- (1) There shall be a districing commission consisting of five (5) members. No more than three (3) commission members may belong to the same political party. The city council shall appoint four (4) members. These four (4) members shall, with the affirmative vote of at least three (3), choose the fifth member who shall be the chairperson.
- (2) No member of the commission shall be employed by the city or hold any other elected or appointed position in the city.
- (3) **Appointment of Initial Districing Commission:** The city council shall appoint the commission no later than one (1) month after the general election approving this charter to determine and present an initial districing plan prior to the first general election of the city council after approval of this Charter.
- (4) **Appointment of Later Districing Commissions:** Thereafter, a commission shall be appointed within six (6) months after the federal decennial census shall be made available or data shows increase of fifteen (15) percent.
- (5) The commission's term shall end upon adoption of a districing plan, as set forth in §6.03(c).
- (6) In the event of a vacancy on the commission by death, resignation, or otherwise, the city council shall appoint a new member enrolled in the same political party from which his or her predecessor was selected, to serve the balance of the term remaining.
- (7) No member of the districing commission shall be removed from office by the city council except for cause and upon notice and hearing.
- (8) The member of the commission shall serve without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges.
- (9) The commission may hire or contract for necessary staff and may require agencies of city government to provide technical assistance. The commission shall have a budget as provided by the city council.

(c) **Powers and Duties of the Districing Commission; Hearings, Submissions, and Approval of Plan.**

- (1) Following each decennial census or upon reliable evidence that the city's population has increased more than 15% since the last redistricting, the commission shall consult the city council and shall prepare a plan for dividing the city into districts for the election of council members. In preparing the plan, the commission shall be guided by the criteria set forth in §6.03(d). The report on the plan shall include a map and description of districts recommended.
- (2) The commission shall hold one (1) or more public hearings before it submits the plan to the city council. The commission shall make its plan available to the public for inspection and comment not less than thirty (30) days before its public hearing.
- (3) **Initial Districing Commission Plan Presentation:** The commission shall submit its plan to the city council not less than three (3) months before the first general election of the city council.
- (4) **Later Districing Commission Plan Presentation:** The commission shall submit its plan to the city council not less than nine (9) months before the first general election of the city council after each decennial census. The commission shall submit its plan to the city

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council not less than three (3) months before the first general election of the city council after the adoption of this charter.

- (5) The plan shall be deemed adopted by the city council unless disapproved within 21 days by a vote of the majority of all members of the city council. If the city council fails to adopt the plan, it shall return the plan to the commission with its objections, and with the objections of individual members or the council.
 - (6) If the plan is rejected by the city council, the commission shall prepare a revised plan and shall submit such revised plan to the city council no later than 21 days after the initial plan is rejected. Such revised plan shall be deemed adopted by the city council unless disapproved within 14 days by the vote of two-thirds of all of the members of the city council and unless, by a vote of two-thirds of all members, the city council votes to file a petition in the Circuit Court in Brown County for a determination that the plan fails to meet the requirements of this charter. The city council shall file its petition no later than 10 days after its disapproval of the plan. Upon a final determination upon appeal, if any, that the plan meets the requirements of this charter, the plan shall be deemed adopted by the city council and the commission shall deliver the plan to the city finance officer. The plan delivered to the city finance officer shall include a map and description of the districts.
 - (7) If in any year population figures are not available at least nine (9) months before the first general election following the decennial census, the city council may by local law shorten the time periods provided for districting commission action in subsections (2), (4), (5), and (6) of this section.
- (d) Districting Plan; Criteria.** In preparation of its plan for dividing the city into districts for the election of council members, the commission shall apply the following criteria which, to the extent practicable, shall be applied and given priority in the order in which they are herein set forth.
- (1) Districts shall be equal in population except where deviation from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five (5) percent of the average population for all city council districts according to the figures available from the most recent census.
 - (2) Districts shall consist of contiguous territory.
 - (3) No voting precinct (as set by the counties) shall be divided in the formation of districts.
 - (4) The number of districts which include territory in more than one (1) county shall be a few as possible.
 - (5) Consistent with the foregoing provisions, the aggregate length of all district boundaries shall be as short as possible.
- (e) Initial Election following Charter Adoption:** The Districting Commission shall establish staggered terms for the initial election of council members following the adoption of this charter. The terms of office shall be clearly announced for each district and spread proportionately to provide for each district in a fair manner.
- (f) Effect of Enactment.** The new city council districts and boundaries as of the date of enactment shall supersede previous council districts and boundaries for all purposes of the next regular city election, including nominations. The new districts and boundaries shall supersede previous districts and boundaries for all other purposes as of the date on which all council members elected at that regular city election take office.

ARTICLE VII: GENERAL PROVISIONS

Section 7.01. Conflicts of Interest.

The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance. Regulations to this end shall include but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official, the use of confidential information; and appearances by city officials before other city agencies on behalf of private interests. This ordinance shall provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations. Municipal officials shall be, at a minimum be restricted from conflict of interest to the same extent that state public officials are bound by state law; provided however, that the city council may adopt an ordinance setting a stricter standard.

Section 7.02. Prohibitions.

(a) Activities prohibited:

- (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, gender, age, handicap, religion, country of origin or political affiliation.
- (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this charter or the rules and regulations made hereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.
- (3) 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 his or her test, appointment, proposed appointment, promotion or proposed promotion.
- (4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any city election from any city employee.
- (5) No city employee shall knowingly or willfully make, solicit or receive any contribution to the campaign funds of any political party or committee to be used in a city election or to campaign funds to be used in support for opposition to any candidate for election to city office or city ballot issue. Further, no city employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for city office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.

- (b) **Penalties.** Any person convicted of a violation of this section shall be ineligible for a period of five years following such conviction to hold any city office or position and, if no officer or employee of the city, shall immediately forfeit his or her office or position. The city council shall establish by ordinance such further penalties, as it may deem appropriate.

ARTICLE VIII: CHARTER AMENDMENT

Section 8.01. Proposal of Amendment.

Amendments to this charter may be framed and proposed as follows:

- (a) In the manner provided by law, or
- (b) By ordinance of the city council containing the full text of the proposed amendment and effective upon adoption, or
- (c) By report of a charter commission created by ordinance; or
- (d) By the voters of the city.

When five percent (5%) of qualified voters initiate proceedings to amend the charter by filing with the finance officer a petition and filing it in proper form, stating their names and addresses and specifying the address of the circulators, and setting out in full the proposed charter amendment. The petitions shall contain or have attached thereto throughout their circulation the full text of the proposed charter amendment and must be signed by registered voters of the city in the number of at least five percent (5%) of the total number of registered voters at the last regular city election.

Section 8.02. Election.

Upon delivery to the city election authorities of the report of a charter commission or delivery by the finance officer of an adopted ordinance proposing an amendment pursuant to §8.01(b) or a petition finally determined sufficient proposing an amendment pursuant to §8.01(d), the election authorities shall submit the proposed amendment to the voters of the city at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the city at least 30 days prior to the date of the election. If the amendment is proposed by petition, the amendment may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for the election by filing with the finance officer a request for withdrawal signed by at least four members of the petitioners' committee. The election shall be held not less than 60 and not more than 120 days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the city council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be as specified in the state election law.

Section 8.03. Adoption of Amendment.

If a majority of the registered voters of the city voting upon a proposed charter amendment vote in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, 30 days after its adoption by the voters.

ARTICLE IX: TRANSITION/SEPARABILITY PROVISION

Section 9.01. Officers and Employees.

- (a) **Rights and Privileges Preserved.** Nothing in this charter, except as otherwise specifically provided, shall affect or impair the rights or privileges of persons who are city officers or employees at the time of its adoption.
- (b) **Continuance of Office or Employment.** Except as specifically provided by this charter, if at the time this charter takes full effect a city administrative officer or employee holds any

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office or position which is or can be abolished by or under this charter, he or she shall continue in such office or position until the taking effect of some specific provision under this charter directing that he or she vacate the office or position.

- (c) **Personnel System.** An employee holding a city position at the time this charter takes full effect, who was serving in that same or a comparable position at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position but in all other respects shall be subject to the personnel system provided for in §4.02.

Section 9.02. Departments, Office and Agencies.

- (a) **Transfer of Powers.** If any city department, office, or agency is abolished by this charter, the powers and duties given it by law shall be transferred to the city department, office or agency designated in this charter or, if the charter makes no provision, designated by the city council.
- (b) **Property and Records.** All property, records and equipment of any department, office or agency existing when this charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the city council in accordance with this charter.

Section 9.03. Pending Matters.

All rights, claims, actions, orders, contracts and legal administrative proceedings shall continue except as modified pursuant to the provisions of this charter and in each case shall be maintained, carried on or dealt with by the city department, office or agency appropriate under this charter.

Section 9.04. State and Municipal Laws.

- (a) **In General.** All city ordinances, resolutions, orders and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto. To the extent that the constitution and laws of the state of South Dakota permit, all laws relating to or affecting this city or its agencies, officers or employees which are in force when this charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto.
- (b) **Exceptions:** All city ordinances, resolutions, orders and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto. To the extent that the constitution and law of the state of South Dakota permit, all laws relating to or affecting this city or its agencies, officers, or employees which are in force when this charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this charger or of ordinances or resolutions adopted pursuant thereto.
- (c) The term “board of commissioners” or “city commission” in all city ordinances, resolutions, policies, orders, and regulations which are in force when this charter becomes fully effective is hereby replaced by the term “city council”.

Section 9.05. Schedule.

- (a) **First Election.** At the time of its adoption, this charter shall be in effect to the extent necessary in order that the first election of members of the city council may be conducted in accordance with the provisions of this charter. The first election shall be held on the first Tuesday of June, 2005. The Finance Officer and Auditor shall prepare and adopt temporary regulations applicable only to the first election and designed to insure its proper conduct and to prevent fraud and provide for recount of ballots in cases of doubt or fraud.
- (b) **Time of Taking full Effect.** The charter shall be in full effect for all purposes on and after the date and time of the first meeting of the newly elected city council provided in §9.05(c).
- (c) **First Council Meeting.** On the first Monday of the month following the first election of city council members under this charter, the newly elected members of the council shall meet at 5:30 p.m. at City Hall of the City of Aberdeen:
 - (1) For the purpose of electing a deputy mayor and appointing or considering the appointment of a city manager or acting city manager, and choosing, if it so desires, one of its members to act as temporary clerk pending appointment of a finance officer pursuant to §2.08; and
 - (2) For the purpose of adopting ordinances and resolutions necessary to effect the transition of government under this charter and to maintain effective city government during that transition.
- (d) **Temporary Ordinances.** In adopting ordinances as provided in §9.05(c), the city council shall follow the procedures prescribed in Article II, except that at its first meeting or any meeting held within 60 days thereafter, the council may adopt temporary ordinances to deal with cases in which there is an urgent need for prompt action in connection with the transition of government and in which the delay incident to the appropriate ordinance procedure would probably cause serious hardship or impairment of effective city government. Every temporary ordinance shall be plainly labeled as such but shall be introduced in the form and manner prescribed for ordinances generally. A temporary ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption of a temporary ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances. A temporary ordinance shall become effective upon adoption or at such later time preceding automatic repeal under this subsection as it may specify, and the referendum power shall not extend to any such ordinance. Every temporary ordinance, including any amendments made thereto after adoption, shall automatically stand repealed as of the 91st day following the date on which it was adopted, renewed or otherwise continued except by adoption in the manner prescribed in Article II for ordinances of the kind concerned.
- (e) **Initial Expenses.** The initial expenses of the city council, including the expense of recruiting a city manager, shall be paid by the city on vouchers signed by the council chairman.
- (f) **Initial Salary of Mayor and Council Members.** The Mayor shall receive an annual salary as currently budgeted, and each other council member elected to the full council after the first general election following the adoption of this charter shall be compensated in the amount of \$8,500 annually, until such amount is changed by the council in accordance with the provisions of the charter.

Section 9.06. Separability.

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby. If the application of the charter of any of its provisions to any person or circumstance is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected thereby.