

# WILLMAR CITY CHARTER

**November 19, 2012**  
(March 13, 2013 Eff. Date)  
**Amended March 4, 2013**  
(June 10, 2013 Eff. Date)  
**Amended June 20, 2016**  
(September 18, 2016 Eff. Date)  
**Amended October 2, 2018**  
(January 9, 2019 Eff. Date)

## **PREAMBLE**

We the people of the City of Willmar, pursuant to the laws of our state, do adopt the Charter in order to secure the benefits of local self-government and we confer upon the City the following powers, subject to the following restrictions, procedures, and governmental structure. We hereby secure the benefits of home rule and thereby affirm the values of representative democracy. (Ord. No. 1337, § 1, 11-19-2012)

## **ARTICLE I. POWERS OF THE CITY**

### **Section 1.01. Corporate name; boundaries.**

The corporate name of the City shall be City of Willmar. Its boundaries shall be as presently existing and as added to from time to time by annexation proceedings pursuant to law. (Ord. No. 1027, § 1, 7-15-92)

### **Section 1.02. Powers of the City.**

The City of Willmar, hereinafter called the City, shall have all the powers, functions, rights and privileges possible for a city to have under the constitution and laws of the State of Minnesota as fully and completely as though they were specifically enumerated in this Charter. (Ord. No. 1027, § 1, 7-15-92)

### **Section 1.03. Form of Government.**

The City of Willmar intends to follow the form of government known as the "Weak Mayor-Council" form. (Ord. No. 1337, § 1, 11-19-2012)

### **Section 1.04. 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 this Charter, or in amendments thereof, shall not be construed as limiting in any way the general power stated in this Article. (Ord. No. 1027, § 1, 7-15-92)

### **Section 1.05. Intergovernmental relations.**

The City, except where prohibited by law, 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 the State of Minnesota or any one or more states, or civil divisions or agencies thereof, or the United States or any agency thereof, or of any municipal corporation or political subdivision.

(Ord. No. 1027, § 1, 7-15-92)

## **ARTICLE II. CITY COUNCIL**

### **Section 2.01. Composition of the Council and terms of Council members.**

There shall be eight (8) members of the City Council, two (2) from each Ward, elected for four (4) year terms with the terms staggered so that one Council member from each Ward is elected at each biennial election.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 2.02. Eligibility of Council members.**

Any individual, 21 years of age or older, residing in each Ward shall be eligible to hold the office of Council member for that Ward.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 2.03. General powers and duties of the Council.**

All powers of the City shall be vested in the 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 duties and obligations imposed on the City by law.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 2.04. Prohibitions; incompatible offices.**

Except where authorized by law or this Charter, a Council member shall not hold any other City office or City employment during the term of office for which they were elected. No Council member or former Council member shall be appointed to or hold any compensated appointive City office or employment which was created or the benefits of which were increased during the term for which they were elected, until the expiration of one year from the expiration of the term to which they were elected. A Council member shall not hold any office which is by law or by this Charter incompatible with the office of Council member and the acceptance of such office shall be a prohibition which shall result in the forfeiture of their office as a Council member.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 2.05. Forfeiture of office.**

Subdivision 1. Grounds of forfeiture. A Council member shall forfeit their office if they (A) lack at any time during their term of office any qualification for the office prescribed by this Charter or by law;

(B) violate any express prohibition of this Charter;

(C) are convicted of a crime involving moral turpitude;

(D) fail to attend three (3) consecutive regular meetings of the Council without being excused by the Council;

(E) fail without good cause to perform the duties of office for a period of 90 consecutive days: or

(F) terminate residency in the city.

A Council member shall not forfeit their office as Council member when the geographic boundaries of his/her Ward are changed so as to change the Ward that they reside in. If a Council member moves their residence to a Ward other than the Ward they were elected in and

if there is more than one (1) year left in their term when they move, their term shall expire on the first Monday after the first Tuesday of the first January immediately following the next general election occurring after their change of residence.

Subdivision 2. Procedure, uncontested. The Mayor, City Attorney or any Council member may make complaint to the Council that any member of the Council has forfeited the right to office. The complaint shall be in writing, shall be verified under oath and shall be filed with the City Clerk. The City Clerk shall cause a copy thereof to be served forthwith, in the manner of the service of a summons in the District Court, upon the charged Council member. If the charged Council member shall not have filed an answer thereto and made a demand for a hearing following the expiration of ten (10) days from the date of service, the City Clerk shall lay before the Council the complaint, evidence of service, and a certificate that no answer and demand for hearing has been received. The Council shall thereupon proceed to consider the matter and shall by resolution make its determination thereon. Its determination shall include specific findings and, if it finds that the Council member has forfeited their office, it shall so state and the grounds on which its decision is based. The office of the Council member shall be vacant upon the filing of the resolution with the City Clerk.

Subdivision 3. Procedure, contested. If the Council member shall answer, the Council shall forthwith at its next regular meeting, set a date for the hearing of the matter, and give notice thereof to the affected Council member by causing a notice of the hearing to be served upon him/her in the manner of the service of a summons in District Court and by publishing the said notice in the official newspaper of the City at least ten (10) days before the said hearing. At the hearing, the Council member shall have the right to appear and be represented by counsel and present witnesses and evidence in their own behalf, but they shall not participate as a member of the Council. After the hearing, the Council shall proceed to consider the matter and to make its decision and findings as provided in Subdivision 2 hereinabove.

Subdivision 4. Appeal. If the Council determines that the office of a Council member shall be forfeited, the Council member shall have the right to appeal to the District Court. The appeal shall be perfected upon the filing of a Notice of Appeal with the Clerk of the District Court and by copy with the City Clerk within twenty (20) days of the filing of the Resolution of the Council with the City Clerk. Upon filing of the copy of Notice of Appeal, the City Clerk shall forthwith certify to the District Court the complete record of the proceedings before the City Council, including a certified copy of the resolution of the Council. The matter in District Court shall be heard by the Court, and the Court shall have the right to determine the matter upon the record submitted or at its discretion on the taking of additional evidence.

Subdivision 5. Reasonable attorney's fees chargeable to City, when. If the determination, either by the Council or by the Court, is in favor of the Council member, the reasonable attorney's fees incurred by a Council member shall be the obligation of the City, and the Council shall appropriate funds for the payment thereof.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

## **Section 2.06. Vacancies.**

Subdivision 1. Determination of vacancy. The office of a Council member shall become vacant upon their death. A vacancy also automatically occurs when an incumbent submits a written resignation to the City Council. The vacancy will be created on the date specified in the written resignation, or if one is not specified, on the date of submittal to the City Council. If the date of submittal is unknown, then the vacancy will occur on the date the City Council receives the written resignation.

A vacancy in an office of Council member also exists in the following situations:

- (A) failure of an elected person to qualify on or before the first Monday after the first Tuesday of January immediately following a general election;
- (B) termination of residency in the city;
- (C) termination of a ward council member's residency in the ward from which elected except when a ward boundary change places a ward council member's residence in a different ward, the council member will continue in office until the next general municipal election, at which time the office must be filled for the remainder of that term;
- (D) continuous absence from the city for more than 90 days;
- (E) conviction of a felony either before or after qualification for office;
- (F) loss of qualifications for the elective office; or
- (G) failure without good cause to perform the duties of office for a period of 90 consecutive days. (Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

Subdivision 2. The Council must on its own motion declare by resolution that a vacancy exists when a vacancy occurs for a reason other than death or resignation. If the Council fails to act or is unaware of a vacancy, a resident who is an eligible voter in the city may submit a written verified request with supporting facts to the City Clerk, asking the Council to declare a vacancy. A written verified request submitted within 90 days after another request for the same Council position will not be considered under this section. The Council must act on the written verified request within 21 days after submission to the city clerk, unless a vote approved by 75% of the Council members present authorizes an additional 21 days. If the Council fails to act within the required time, the Mayor has seven days to act on the written verified request. If the Council and Mayor fail to act within the required time, a vacancy automatically occurs.

Subdivision 3. Within 45 days after the effective date of any vacancy on the Council, the Council must either (1) appoint an eligible person to fill the vacancy on an interim basis as more fully provided in this Section; or (2) schedule a special election to be held within 90 days to fill the vacancy for the unexpired portion of the term.

Subdivision 4. If the Council fills the vacancy through an interim appointment under Subdivision 3, a special election to elect a permanent replacement to serve for the unexpired portion of the term must be held at the next regular municipal election when each of the following conditions exist on the effective date of the vacancy:

- (a) more than two years remain in the unexpired term; and
- (b) the first day to file affidavits of candidacy for the next regular municipal election has not yet occurred.

If a special election is not required under this Subdivision, a Council member appointed on an interim basis under Subdivision 3 will serve until expiration of the position's term.

Subdivision 5. The term of a Council member elected at a special election begins as soon as the election results have been certified and the person has qualified for office.

Subdivision 6. For a special election held at a time other than a regular municipal election,

- (a) candidates must file for office no later than four weeks before the election,
  - (b) no primary will be held,
  - (c) the candidate receiving the highest number of votes is elected, and
  - (d) the election must be held on a Tuesday.
- (Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 2.07. Judge of qualifications.**

The Council shall be the judge of the election and qualifications of its members. In the event of an adverse determination, the Council shall proceed as provided in Section 2.05, and a Council member or electee to the Council shall have the right of appeal and the right of reimbursement for attorneys fees therein provided.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 2.08. Appointive offices of the Council.**

Subdivision 1. [City Administrator.] The City Council shall appoint an officer of the City who shall be called the City Administrator and shall approve the appointments of other Department Head positions that from time to time may be deemed appropriate. Such person shall perform the duties required by the City Council and such duties, including the enforcement of the City charter, shall be enumerated in a city Ordinance.

Subdivision 2. [City Attorney.] The City Council shall appoint a licensed attorney(s) who shall be an officer of the City and shall be called the City Attorney(s). Alternately, the City Council may contract for legal services with a licensed individual or law firm. Such attorney(s) shall perform the duties required of the City Council and such duties, including the enforcement of the City charter, shall be enumerated in a city Ordinance.

Subdivision 3. Votes required for appointments. All appointments shall require the affirmative votes of at least five (5) members of the Council.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1340, § 1, 03-04-2013)

### **Section 2.09. Independent audit and Financial Reporting.**

The Council shall provide for an independent annual audit of all City accounts and may provide for such more frequent audits as it deems necessary. The accounts of Rice Memorial Hospital and the Willmar Municipal Utilities shall be audited at least annually. Such audits shall be made by a certified public accountant or firm of such accountants who have no direct interest in the fiscal affairs of the City government or any of its officers. The annual audit of the City, the Willmar Municipal Utilities and Rice Memorial Hospital shall be certified by the accountant preparing the annual audit. Except as provided herein with respect to audits of Rice Memorial Hospital and the Willmar Municipal Utilities, the Council may, without requiring competitive bids, designate such accountant or firm for a period not exceeding three (3) years, provided that the designation for any particular fiscal year shall be made no later than thirty (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. The Rice Memorial Hospital Board and the Willmar Municipal Utilities Commission may select their respective certified public accountant and shall each pay their own audit fees incurred for the audits required by this Section. Copies of each annual audit of Rice Memorial Hospital and the Willmar Municipal Utilities shall be submitted to the Mayor, the City Council and the City Finance Director.

In addition to the annual audits herein provided for, the Willmar Municipal Utilities and the Rice Memorial Hospital Board shall prepare monthly statements, prepared on an accrual basis, and submit said statements to the City Council, the Mayor and the City Finance Director on or before the twenty-fifth (25th) day of the month following the month for which the statement was prepared. The annual audits of the City, the Willmar Municipal Utilities and the Rice Memorial Hospital shall be submitted to the Mayor, the City Council and the City Finance Director within One Hundred Twenty (120) days of the end of each year. The Willmar Municipal Utilities and the Rice Memorial Hospital Board shall submit financial statements to the City Council on a more frequent basis than is herein provided for when requested to do so by the City Council.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 2.10. Investigations.**

The Council may make audits and investigations into the affairs of the City and the conduct of any City department, office, agency, board or commission and for such purpose may employ such personnel as it deems necessary therefore. It may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Any person who is found, by a court of competent jurisdiction, to have failed or refused, without lawful excuse, to comply with an order of the Council in the exercise of this investigative power shall be guilty of a misdemeanor as defined in the Minnesota Criminal Code.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 2.11. Procedure.**

Subdivision 1. Meetings. On the first Monday after the first Tuesday of each January immediately following a general election, the Council shall meet for its biennial organizational meeting and the terms of Council members whose terms expire shall terminate at the opening of such meeting. The Council shall meet regularly at least twice in every month at such times and places as the Council shall prescribe by resolution at such biennial organizational meeting. Special meetings may be held on the call of the Mayor or of four (4) or more members of the Council, or by decision of the Council made at a regular or special meeting, upon no less than twelve (12) hours notice to each member. All meetings shall be public.

Subdivision 2. Rules and journal. The Council shall adopt, at the meeting prescribed in Subd. 1, an established set of parliamentary rules and shall provide for a journal of its proceedings, which journal shall be a public record. The rules adopted by the City Council are applicable to all Commissions, Boards, and Committees.

Subdivision 3. Voting and quorum. Five (5) members of the Council shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012) (Ord. No. 1388, § 1, 06-20-2016)

### **Section 2.12. Ordinances and resolutions.**

Subdivision 1. Action requiring an ordinance. In addition to other acts required by law or by specific provisions of this Charter to be done by ordinance, those acts of the Council shall be by ordinance which:

- (A) Adopt or amend an administrative code or establish, alter, or abolish any City department, office or agency.
- (B) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (C) Levy taxes, except as otherwise provided in Article V with respect to the property tax levied by adoption of the budget;
- (D) Grant, renew or extend a franchise;
- (E) Regulate the rates charged for utility services by the Willmar Municipal Utilities and City of Willmar;
- (F) Authorize the borrowing of money, incurring indebtedness, or authorizing of capital leases;
- (G) Authorize the conveyance of any lands of the City, provided, however, that leases and utility easements be excepted from this provision;
- (H) Adopt with or without amendment ordinances proposed under the initiative power; and
- (I) Amend or repeal any ordinance previously adopted, except as otherwise provided in Article VII with respect to repeal of ordinances adopted under the initiative power or reconsidered under the referendum power.

Acts other than those referred to in this subdivision may be done either by ordinance or by resolution.

Subdivision 2. Ordinances in general.

(A) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The City of Willmar hereby ordains . . . ." Any ordinance which amends an existing ordinance or part of the City Code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics. Any ordinance which repeals an entire existing ordinance shall either conform to the procedure set out in the preceding sentence or in the alternative, the ordinance may give a summary of the ordinance being repealed and its Municipal Code number.

(B) Procedure. An ordinance may be introduced by any member at any regular or special meeting of the Council. Upon introduction of any ordinance, the City Clerk shall distribute a copy to each Council member, to the Mayor and to the City Attorney, shall file a reasonable number of copies in the Office of the City Clerk and such other public places as the Council may designate, and shall publish the ordinance, together with a notice in the official City newspaper setting out the time and place for a public hearing thereon and for its consideration by the Council. The public hearing shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special meeting and may be continued from time to time; all persons interested shall have an opportunity to be heard. After the hearing the Council may adopt the ordinance with or without amendment or reject it, but, if it is amended as to any matter of substance, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a newly introduced ordinance. As soon as practicable after adoption of any ordinance, the City Clerk shall have it published as adopted, together with a notice of its adoption. In each instance where publication is required by this paragraph, the Council may, upon an affirmative vote of at least six (6) of its members, elect to publish a summary of an ordinance that, because of its length, would be unduly expensive to publish in its entirety. In any instance where a summary of an ordinance is published, the Council, at its own expense, shall furnish to the public the complete

text of the ordinance. The summary of the ordinance that is published shall state that the full text of the ordinance is available, at no cost to the public, at the City Clerk's Office.

(C) Effective date. Except as otherwise provided in this Charter, every adopted ordinance shall become effective upon publication, provided that the Council may provide in the ordinance for a later effective date.

(D) Vote required for adoption of ordinance. Except as provided by law ordinances shall require the affirmative votes of five (5) members of the Council for adoption.

Subdivision 3. Emergency ordinances. To meet a public emergency affecting life, health, property or the public peace, the 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 Section 5.07 of Article V. 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 shall contain, after the enacting clause, a declaration stating that an emergency exists 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 six (6) members of the Council shall be required for adoption, provided, the Mayor may vote affirmatively to provide one of the six votes. 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 the Council may specify therein. Every emergency ordinance, except one adopted pursuant to Section 5.07 of Article V shall automatically stand repealed as of the sixty-first (61st) day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this subdivision 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 subdivision for adoption of emergency ordinances.

Subdivision 4. Codes of technical regulations. The Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

(A) The requirements of Subdivision 2 of this section for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as the adopting ordinance;

(B) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the City Clerk pursuant to Subdivision 5 of this section; and

(C) The publication of the ordinance shall not be construed as requiring publication of the code of technical regulations, but the publication shall state and identify clearly the code adopted by the ordinance and shall state the location of the place or places where the code is available for inspection by the public.

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

Subdivision 5. Authentication and recording; codification; printing.

(A) Authentication and recording. The City Clerk shall authenticate by signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the Council.

(B) Codification. The Council shall maintain and keep current a general codification of all general ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the Council by ordinance and in the publication of the adopting ordinance the Code need not be published but the publication shall clearly state the place or places it is



available for inspection by the public. The general codification, together with this Charter and any amendments thereto, pertinent provisions of the constitution and other laws of the State of Minnesota, and such codes of technical regulations and other rules and regulations as the Council may specify shall be promptly published in bound or loose-leaf form. This compilation shall be known and cited officially as the Municipal Code of Willmar. Copies of the Code shall be furnished to City officers, placed in libraries and public offices and in the courts 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 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 to be fixed by the Council. Following publication of the Code and at 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 Minnesota, or the codes of technical regulations and other rules and regulations included in the Code.

Subdivision 6. Special ordinances. Ordinances of limited application such as zoning and annexation ordinances or of current interest only or which by their terms will expire within a definite period of time and emergency ordinances shall be classified for purposes of identification and codification as special ordinances and shall not be codified. They shall, however, have the full force and effect as all other ordinances, and the City Clerk shall index and record them so that they can be at all times readily inspected by the public. The City Clerk shall provide copies thereof to the public at a reasonable price fixed by the Council.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

## **ARTICLE III. THE MAYOR**

### **Section 3.01. Chief executive officer.**

The Mayor shall be the chief executive of the City and enjoy the powers given to the Mayor by this Charter and the laws of the State of Minnesota.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 3.02. Election and qualification.**

Residents, 21 years of age or older, of the City shall be eligible to hold the office of the Mayor. For the purposes of this section said resident need not be registered to vote. The Mayor shall be elected at the regular City election held every even-numbered year by the direct vote of the people for a term of four (4) years to begin on the first Monday after the first Tuesday of the year following the Mayor's election, but the incumbent Mayor shall continue to serve until a new Mayor has been elected and has qualified.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 3.03. Mayor's messages to the Council.**

The Mayor shall, at the beginning of each calendar year, and may at other times, present to the Council the state of the city message, providing information as to the affairs of the City and recommend measures he/she considers necessary and desirable.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 3.04. Powers and duties.**

The Mayor shall, in conjunction with the Council, supervise the administration of City affairs. The Mayor shall:

- (A) Appoint, subject to the approval of five (5) members of the Council, the members of all boards and commissions provided for by this Charter;
- (B) Preside at all Council meetings;
- (C) Prepare or cause to be prepared and submit the Mayor's annual budget and capital improvements program to the Council; and for this purpose all personnel of the City shall furnish to the Mayor such information as requested for the discharge of this duty;
- (D) Keep the Council fully advised as to the financial condition and future needs of the City and make such recommendations to the Council concerning the affairs of the City including those recommendations which may be suggested by the City Administrator;
- (E) Be recognized as the official head of the City for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the Governor of the State for the purposes of martial law;
- (F) In instances when the City Council cannot meet, the Mayor shall have the authority to expend public funds, without Council approval, during the time of a natural disaster, riot, civil disorder, enemy attack or any public emergency that affects a substantial number of residents in the City of Willmar.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 3.05. Mayor's power to veto legislation.**

Within seven (7) days after the adjournment of any Council meeting the City Clerk shall present to the Mayor the record of proceedings of the meeting and all ordinances, resolutions, and motions adopted at the meeting. The Mayor, within four (4) days of receipt of an ordinance or resolution, shall return it to the City Clerk with approval or with veto. If the Mayor does not return said ordinance, resolutions, and motion within four (4) days after receipt or returns it without a veto, it shall be considered approved, which fact shall be noted in any publication required thereof. If an ordinance, resolution, or motion is vetoed, the Mayor shall attach a written statement explaining the reason for the veto. Ordinances, resolutions, or motions vetoed by the Mayor shall be considered at the next regular meeting of the Council, and the Council may pass the ordinance, resolution, or motion over the veto by the affirmative vote of six (6) of its members. In the publication of an ordinance, resolution, or motion passed over the Mayor's veto, the publication shall recite the fact of the veto, and the vote by which the veto was overridden. The Mayor's veto power shall extend to disapproving or reducing individual appropriation items in the budget or any ordinance, resolution, or motion, except appropriations for auditing or investigating any part of the executive branch or for a zoning or land use decision. The Mayor shall not have the power to veto any emergency ordinance, nor any ordinance repealing an emergency ordinance.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 3.06. Mayor may vote in limited instances.**

The Mayor shall not be considered a member of the Council, for purposes of a quorum, or otherwise, but shall preside at the meetings thereof, and provided, further, in the event that a vote on any motion or resolution by the Council culminates in a tie vote, the Mayor shall have the right to vote on such motion or resolution, and to break the tie. If any appointment to be

made by the Council fails by one vote to make the required number of votes for the appointment, the Mayor is authorized to vote for the appointment, and the Mayor's vote shall thereby be recognized as a vote of the Council making the appointment.  
(Ord. No. 1027, § 1, 7-15-92)

### **Section 3.07. Prohibitions; incompatible offices; forfeitures of office.**

Subdivision 1. Prohibitions and incompatible offices. Except where authorized by law or this Charter, the Mayor shall not hold any other city office or City employment during the term of office for which he/she was elected. The Mayor shall not be appointed to or hold any compensated appointive City office or employment which was created or the benefits of which were increased during the term for which he/she was elected until one year shall have transpired from the expiration of the term to which elected. The Mayor shall not hold any office which is by law or by this Charter incompatible with the office of Mayor and the acceptance of such office shall be a prohibition which shall result in the forfeiture of his/her office as Mayor.

Subdivision 2. Forfeiture of office. The Mayor shall forfeit the office if he/she

- (A) lacks at any time during his/her term of office any qualifications for the office prescribed by this Charter or by law;
- (B) violates any express prohibition of this Charter; or
- (C) is convicted of a crime involving moral turpitude;
- (D) fails to attend three (3) consecutive regular meetings of the Council without being excused by the Council;
- (E) is continuously absent from the city for more than 90 days;
- (F) fails without good cause to perform the duties of office for a period of 90 consecutive days:  
or
- (G) terminates his/her residency in the city.

Upon written complaint being filed with the City Clerk alleging that the Mayor has forfeited the right to office and stating the grounds therefore, the Council shall immediately convene and proceed to determine the matter. The procedure for determination, procedure and appeal shall be the same as that provided in Section 2.05 of Article II with respect to a Council member, except that the sessions of the Council shall be presided over by the District Judge or a duly licensed attorney at law appointed by the Judge.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 3.08. Judge of qualifications and election.**

The Council shall be the judge of the election and qualifications of the Mayor. In the event of an adverse determination, the Council shall proceed as provided in Section 2.05 of Article II except that the District Judge or a duly licensed attorney at law appointed by the Judge shall preside, and the Mayor shall have the right of appeal therein provided.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 3.09. Mayor Pro Tempore.**

At the biennial organization meeting of the council following a general election, the Council shall elect one of its members as Mayor Pro Tempore, who shall serve, as hereinafter provided, in the temporary absence or disability of the Mayor, and upon the decease, resignation or removal from office of the Mayor shall succeed to the office of Mayor. In the absence or temporary disability of the Mayor, the Mayor Pro Tempore shall have and exercise all of the powers and duties of the Mayor except the power to remove or suspend board and commission members appointed by the Mayor and the Mayor Pro Tempore shall not have the power of veto. A Council member elected to the office of Mayor Pro Tempore shall not thereby,

even in the absence or temporary disability of the Mayor, lose any of his/her powers as Council member, and shall have the right to vote at all Council meetings at which the Mayor presides. Upon succession to the office of Mayor, the position as Council member shall thereby cease, and a vacancy thereof exist.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 3.10. Temporary disability of Mayor.**

In the event that the Mayor is temporarily disabled or unable to perform the duties of Mayor and so certifies to the Council, the Mayor Pro Tempore shall assume the duties and powers of the office of the Mayor hereinabove provided and shall continue to discharge said duties and hold said powers until the Mayor again assumes the duties and powers of Mayor. In the event that it becomes apparent to the Council that the Mayor is temporarily disabled or unable to perform the duties of the Mayor's office and the Mayor fails or refuses to so certify, the Council may by resolution set a hearing on the question as to whether the Mayor is able to discharge the duties and exercise the powers as Mayor. Notice of said hearing shall be served on the Mayor at least ten (10) days before the date of the hearing and shall be served in the manner of a District Court summons. The Mayor may appear with counsel of his/her own choosing, whose compensation shall be paid by the City. In the conduct of the said hearing the Mayor Pro Tempore shall not participate, and the District Judge, or a duly licensed attorney at law selected by the Court; shall preside, but without the right to vote. The decision of the Council shall be made by resolution, which, if adopted, shall be signed by the presiding officer. The resolution shall set forth with particularity the findings of the Council with respect to the disability. It shall require the affirmative vote of at least five (5) members of the Council to adopt a resolution declaring the Mayor temporarily disabled or unable to perform the duties of Mayor. If the decision of the Council is adverse to him/her, the Mayor shall have the right to appeal the decision to the District Court of Kandiyohi County, within ten (10) days after the adoption of the resolution. The appeal shall be perfected by serving a copy of the Notice of Appeal on the City Clerk or designee and by filing the Notice of Appeal with the District Court Administrator. Upon the perfecting of the appeal, the effect of the resolution shall be stayed until final determination by the Court, or until the making of such interlocutory order as the Court shall determine. The Court shall hear the matter, and there shall be no right of trial by jury. The Council shall have the power at any time in its discretion to adopt a resolution finding the Mayor is no longer temporarily disabled and is able to perform the duties of the office. This resolution shall have the effect of repealing any decision to the contrary previously made and shall withdraw the matter from the District Court. Any decision made by the Court with respect thereto, provided, however, that the Council shall not be required to review the matter for a period of three (3) months after expiration of the time for appeal, or, in the case of an appeal, after the decision of the District Court.

(Ord. No. 1027, § 1, 7-15-92)

## **ARTICLE IV. BOARDS AND COMMISSIONS**

### **Section 4.01. General provisions.**

There shall be established such boards and commissions as are provided in this Article and the Council may establish or activate such other boards and commissions as may be authorized by law. The Council shall have the authority to establish by ordinance such other advisory or administrative boards as it shall from time to time determine and to regulate and control and abolish the same insofar as permitted by law. The Council shall also have the authority to establish by resolution such committees as it may determine, of its own members or otherwise,

and to provide for their regulation and control. All boards and commissions shall keep a public record of all its actions, both written and audio recordings and video recordings where practical, and shall transmit to the Council promptly after each meeting true copies of its minutes and of all resolutions adopted by it. Members appointed to boards and commissions established by this Charter shall be appointed as provided in this Charter and otherwise as provided in the ordinance or resolution establishing the board or committee. Members appointed to specific terms shall not be subject to recall or suspension except for cause, and then only upon evidence of malfeasance, misfeasance, or nonfeasance presented at a hearing before the appointing power on notice to the member. If any member of a board or commission fails to attend three (3) consecutive regular meetings of the board or commission, without being excused by the board or commission, the City Council may remove said member by an affirmative vote of five (5) members of the Council. Vacancies shall be filled by the appointing power. With the exception of the licensed physician representing the Hospital Board, members shall be residents of the City and shall serve without pay, except as specifically provided in the Charter, ordinance, or resolution establishing the board, commission or committee. All appointees to boards and commissions shall, before undertaking to serve thereon, file with the City Clerk a written acceptance and oath of office. The required forms shall be available in the City Clerk's office.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

#### Section 4.02. The Planning Commission.

Subdivision 1. Members, qualifications, term. There shall be a City Planning Commission of nine (9) members, appointed for terms of three (3) years in such manner so that the terms of three (3) members expire each year, none of whom shall hold any other office or position in the City government. The Commission shall elect a chairman, vice-chairman and a secretary and such other officers as it shall from time to time determine. The officers shall be members of the Commission. No member shall serve more than two (2) consecutive terms on the Board. The serving of a term of two (2) years or more shall be considered a full term for purposes of the preceding sentence.

Subdivision 2. Meetings, reports, relationship to the Council. The Commission shall meet at least once a month at a time and place designated by it and publicly announced, and shall meet with the Council at such times as the Council or the Commission may request. It shall keep a public record of all its actions, and shall transmit to the Council promptly after each meeting true copies of its minutes and of all resolutions adopted by it and annually shall prepare and forward a comprehensive report to the Council.

Subdivision 3. The Comprehensive Land Use Plan; official map. The Commission shall review the Comprehensive Land Use Plan and the official City map annually, and shall at least once in every three (3) years, make a report to the Council containing any changes or revisions therein. The Commission shall promote public interest in and understanding of said map and plan, of planning, of zoning and of the physical development of the City.

Subdivision 4. Recommended capital improvements. The Commission shall prepare and submit annually to the Council and to the Rice Memorial Hospital Board and Municipal Utilities Commission where appropriate, a recommended capital improvements report which shall contain recommended capital improvements which in the opinion of the Commission are necessary or desirable in the forthcoming five (5) year period. The report shall include estimated budget requirements for such improvements, and it may contain a priority list and an arrangement of such improvements with respect to the year they are recommended to be begun.

Subdivision 5. Zoning ordinance and codes. The Commission shall review annually, the zoning ordinance and the codes of the City and shall upon request of the Council make report thereon with respect to proposed revisions and amendments.

Subdivision 6. Platting and subdivision control. No plat or subdivision of any territory of the City shall be approved by the Council until the same shall have been submitted to and approved by the Commission, provided that in the event that the Commission shall have failed to act thereon within a period of sixty (60) days after the adoption of the motion or resolution submitting or referring it to the Commission, it shall be deemed to have been approved as submitted. The Commission shall review from time to time and report thereon to the City Council the platting and subdivision control regulations of the City.

Subdivision 7. Powers to secure information and data. The Commission shall have power to require information to be furnished within a reasonable time from applicants and other boards, commissions and officials of the City and shall have the power to enter upon any land and make examinations and surveys as necessary to assist in their decisions.

Subdivision 8. Acquisition, sale, transfer or termination of public lands, buildings and property. No City street, park, public grounds or real estate, ways, streets, alleys or buildings shall be acquired, constructed, extended, sold, transferred, conveyed or vacated until the same shall have been submitted to and approved by the Commission. No City street, park, public grounds or real estate, ways, streets, alleys or buildings shall be leased for a period in excess of three (3) years until the same shall have been submitted to and approved by the Commission. In the event that the Commission shall affirmatively disapprove the same or shall determine to attach conditions thereto, the action thereon shall be by resolution setting forth its findings with respect thereto and its specific reasons for such disapproval. In the event that the Commission shall have failed to act thereon within a period of thirty (30) days after the adoption of the motion or resolution submitting or referring it to the Commission, it shall be deemed to have been approved as submitted.

Subdivision 9. Over-riding power of the Council. Any resolution or other action by the Commission may be overruled by the Council by the affirmative votes of five (5) members of the Council at any time within a period of thirty (30) days from the date of the regular Council meeting next following the receipt by the City Clerk of the copy of the motion, resolution or action of the Commission in question.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

#### Section 4.03. Park and Recreation Board.

There shall be an advisory board known as the Park and Recreation Board of seven (7) members appointed for terms of three (3) years, and so that the terms of no more than three (3) members and no fewer than two (2) members thereof shall expire in any single year. The Board shall advise and assist the Council in the development and maintenance of a park and recreation program for the City and its people, including acquisition of land for recreation activities. The Board shall prepare a five (5) year park and recreation plan, and shall submit written copies of said plan to the Planning Commission and the City Council. The Board shall have such powers and duties as the Council shall from time to time by ordinance give it. No member shall serve more than two (2) consecutive terms on the Board. The serving of a term of two (2) years or more shall be considered a full term for purposes of the preceding sentence.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012) (Ord. No. 1427, § 1, 10-1-2018)

#### Section 4.04. Rice Memorial Board.

Subdivision 1. Members, qualifications, term, officers. There shall be a Rice Memorial Hospital Board of seven (7) members appointed for terms of three (3) years, and so the terms of no more than three (3) members thereof shall expire each year, none of whom shall hold any

other office or position in the City government. One of the seven (7) members of the Rice Hospital Board shall be a licensed physician authorized to practice at Rice Memorial Hospital and whose primary practice is within the City of Willmar. The Board shall elect from its membership a Chair, Vice-Chair, Secretary, Treasurer and such other officers as it shall from time to time determine. The Chief of the Medical Staff of Rice Memorial Hospital or a representative appointed from time to time may attend all meetings of the Board and participate therein in a consultative capacity. No member shall serve more than three (3) consecutive terms on the Board. The serving of a term of two (2) years or more shall be considered a full term for purposes of the preceding sentence. After serving three (3) consecutive terms on the Board, a member may again be appointed to the Board when one (1) year has elapsed from the date of expiration of the member's most recent term.

Subdivision 2. Powers and duties. The Board shall have full control of the operation and management of Rice Memorial Hospital and of the employment of a qualified hospital chief executive officer. The Board shall at the request of the Planning commission prepare a five (5) year capital improvement budget and shall submit written copies of said budget to the Planning Commission and the City Council. It shall have the power to:

- (A) Sue and be sued, plead and be impleaded, answer and be answered to, appear, prosecute or defend any action or claim of any kind whether in contract or tort, in any court, administrative agency or tribunal of any kind in the name of the Board;
- (B) Contract for supplies, materials, equipment, facilities and labor, subject to such bidding as may be required of municipal corporations by law;
- (C) Make such bylaws as it may deem necessary for its own meetings except that it may not set a quorum for its own meeting of less than four (4) members, and adopt and promulgate such rules and regulations for the operation of the Hospital as it shall from time to time determine to be necessary;
- (D) In general, to have all the powers which the Council would have in the operation of said Hospital as a municipal hospital but subject in all respects to the over-riding power of the Council hereinafter provided.

Subdivision 3. Fiscal accounting. The Board shall designate a chief financial officer who shall be bonded in the amount determined by the Board, and who shall collect all funds received in the operation of the said Hospital and shall deposit the same in a legal depository to the account of the said Hospital. The chief financial officer shall keep, or cause to be kept, a complete set of books and accounts, and make report thereon as required by and to the Board, the Mayor and the Council. All such monies shall be kept and retained in the Hospital account by the chief financial officer and disbursed only upon appropriate orders signed by the chief executive officer and the chief financial officer. All proceeds from the sale of bonds and revenue warrants shall be collected by the City Clerk and deposited in the account(s) of Rice Memorial Hospital, and shall be disbursed only upon appropriate orders of the Rice Memorial Hospital Board. The financial records of the Hospital shall be open to inspection at all times by the Mayor and the Council, and shall be subject to the provisions of Sections 2.09 and 2.10 of Article II.

Subdivision 4. Participation by other agencies. In the event that any other agency of government or other agency shall determine to participate in the operation and management of the Rice Memorial Hospital, the Council shall have the power to act upon the same, and the Council may provide, in its discretion, by ordinance for representation on the Board of such agency or agencies. The Council shall have the power by ordinance to change the manner, mode and type of operation of said Hospital so as to permit the participation thereon of the said other agencies; provided, however, that this subdivision shall not permit the transfer of any

incidents of ownership from the City nor the control thereof to be vested in any agency other than the Board, subject to the over-riding power of the Council, without the approval of the voters in a referendum thereon submitted at any general or special election with at least six (6) weeks published notice thereof.

Subdivision 5. Over-riding power of the Council. The Council shall have the power to overrule by the affirmative vote of at least five (5) members thereof any action of the Board with the exception of personnel appointments, other than the appointment of the chief executive officer at the Council meeting next following the receipt by the City Clerk of the minutes of the Board containing such action. If the Council fails or refuses to overrule such action at the said meeting, the action shall be absolute; provided, however, that if the Council desires to consider the matter further, it may by resolution defer action on the matter for a period not to exceed thirty (30) days or to the next scheduled City Council meeting. No such action shall be deemed to have been presented to the Council unless it shall have included in the minutes of a duly constituted meeting of the Board and the text of any resolution, rule or regulation attached thereto in full. It shall be the duty of the City Clerk to transmit such minutes, resolutions, rules and regulations to the Council at the Council meeting next following receipt thereof. (Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

#### Section 4.05. Municipal Utilities Commission.

Subdivision 1. Members, qualifications, term, officers. There shall be a Municipal Utilities Commission of seven (7) members, appointed for terms of three (3) years, and so that the terms of no more than three (3) members thereof shall expire each year, none of whom shall hold any other office or position in the City government. The Commission shall elect from its membership a Chair, Vice-Chair, Secretary, Treasurer and such other officers as it shall from time to time determine. No member shall serve more than three (3) consecutive terms on the Commission. The serving of a term of two (2) years or more shall be considered a full term for the purposes of the preceding sentence. After serving three (3) consecutive terms on the Commission, a member may again be appointed to the Commission when one (1) year has elapsed from the date of expiration of the member's most recent term.

Subdivision 2. Powers and duties. The Commission shall have, subject to the over-riding power of the Council hereinafter provided, full control of the operation and management of the electric, water and district heating systems of the City and such other utilities as it may acquire; the full power of ownership and control of which in the City is hereby confirmed; and the employment of a General Manager. The Commission shall at the request of the Planning Commission prepare a five (5) year capital improvement budget and shall submit written copies of said budget to the Planning Commission and the City Council. It shall have the power to:

(A) Sue and be sued, plead and be impleaded, answer and be answered to, appear, prosecute or defend any action or claim of any kind whether in contract or tort in any court, administrative agency or tribunal of any kind in the name of the Commission;

(B) Contract for supplies, materials, equipment, facilities and labor subject to such bidding as may be required of municipal corporations by law.

(C) Make such bylaws as it may deem necessary for its own meetings, except that it may not set a quorum for its own meetings of less than four (4) members, and adopt and promulgate such rules and regulations for the operation of utilities of the City committed to its control as it shall from time to time determine to be necessary;



- (D) Control, operate and manage the electric, water, and district heating systems of the City, provided that this power shall not extend to the sanitary sewage system, the storm sewer system, or the municipal disposal plant of the City;
- (E) Determine upon the qualifications of the General Manager;
- (F) Have and exercise the power of eminent domain;
- (G) Recommend to the Council after having held hearings, rates to be charged for water, electricity, hot water heat and any other utility services sold by it; and
- (H) In general to have all the powers which the Council would have in the operation of said utilities as publicly owned utilities.

Subdivision 3. Fiscal accounting. The Municipal Utilities Commission shall designate a chief financial officer who shall be bonded in the amount determined by the Commission, and who shall collect all funds received in the operation of the utilities under the control of the Willmar Municipal Utilities and shall deposit the same in a legal depository to the account of the said Willmar Municipal Utilities. The chief financial officer shall keep, or cause to be kept, a complete set of books and accounts and make a report thereon as required by and to the Commission, the Mayor and the Council. All such monies shall be kept and retained in the Willmar Municipal Utilities account by the chief financial officer and disbursed only upon appropriate orders signed by the chief executive officer and the chief financial officer. All proceeds from the sale of bonds and revenue warrants shall be collected by the City Clerk and deposited in the account(s) of the Willmar Municipal Utilities, and shall be disbursed only upon appropriate orders of the Municipal Utilities Commission. The financial records of the Willmar Municipal Utilities shall be open to inspection at all times by the Mayor and Council and shall be subject to the provisions of Sections 2.09 and 2.10 of Article II. (Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

Subdivision 4. Participation by other utilities. The Commission shall have the power to enter into contracts and arrangements with other utility services, generating sources, owners of transmission lines and government agencies for the sale, purchase, exchange, transmission, acquisition and disposal of electric power and standby arrangements in connection therewith, subject to the over-riding power of the Council hereinbelow provided. However, this subdivision shall not permit the transfer of any incidents of ownership from the City nor the control thereof as to any utility service owned by the City without the approval of the voters in a referendum thereon submitted at any general or special election with at least six (6) weeks published notice thereof.

Subdivision 5. Over-riding power of the Council. The Council shall have the power to overrule, by the affirmative vote of at least five (5) members thereof, any decision, motion, resolution, rule, regulation or order of the Commission at the Council meeting next following the receipt by the City Clerk of the minutes of the Commission containing such action and if the Council fails or refuses to overrule such action at the said meeting, the action shall be absolute provided, however, that if the Council desires to consider the matter further it may by resolution defer action on the matter for a period not to exceed thirty (30) days or to the next scheduled City Council meeting. No such action shall be deemed to have been presented to the Council

unless it shall have been included in the minutes of a duly constituted meeting of the Commission and the text of any resolution, rule or regulation attached thereto in full. It shall be the duty of the City Clerk to transmit such minutes, resolutions, rules and regulations to the Council at the Council meeting next following receipt thereof.

Subdivision 6. Lien for unpaid utility bills. The Municipal Utilities shall have a lien on all real estate served by it for all unpaid utility bills of the owner of the real estate. After notice and opportunity for hearing has been provided, the amount of any unpaid utility bill shall be certified to the County Auditor for collection with the real estate taxes next coming due. The Council shall be ordinance make such detailed provisions as it may determine to be necessary to provide for effecting the provisions of this subdivision.

(Ord. No. 1027, § 1, 7-15-92)

#### Section 4.06. Board of Zoning Appeals.

Subdivision 1. Members, qualifications, term, officers. There shall be a Board of Zoning Appeals comprised of seven (7) members, appointed for terms of three (3) years, none of whom shall hold any other office or position in the City government. The Board shall elect a Chair, a Vice Chair, a Secretary and such other officers as it shall from time to time determine. No member shall serve more than two (2) consecutive terms on the Board. The serving of a term of two (2) years or more shall be considered a full term for purposes of the preceding sentence.

Subdivision 2. Powers and duties. The Board shall hear all applications for variances to the requirements of the zoning ordinance of the City. The Board shall have such other powers and duties as the City Council, by ordinance, may prescribe.

(Ord. No. 1027, § 1, 7-15-92)

### ARTICLE V. FINANCIAL PROCEDURES

#### Section 5.01. Fiscal year.

The fiscal year of the City shall be the calendar year.

(Ord. No. 1027, § 1, 7-15-92)

#### Section 5.02. Submission of budget and message.

Within the time frame established by State law, the Mayor shall prepare or cause to be prepared and submit to the Council the budget for the ensuing fiscal year and an accompanying message. The budget message shall explain the proposed 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 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 Finance Committee of the Council deems desirable. Prior to the submission of the proposed budget and budget message, notice thereof shall be published at least ten (10) days prior to the meeting at which it shall be presented and shall state the time and place of said meeting and shall state that said proposed budget is on file in the office of the City Clerk and open to inspection. At least one copy of the proposed budget and of the proposed capital program shall be filed with the City Clerk upon the publication of the notice and shall be kept available for public inspection until the budget and capital program are adopted.

(Ord. No. 1027, § 1, 7-15-92)

#### Section 5.03. The budget.

The budget shall provide a complete financial plan of all City funds and activities for the ensuing year and, except as required by law or this Charter, shall be in such form as the Council deems desirable or may require. The total of proposed expenditures shall not exceed the total of estimated income.

(Ord. No. 1027, § 1, 7-15-92)

Section 5.04. Capital program.

The Mayor shall prepare or cause to be prepared and submitted to the Council a five (5) year capital program at least three (3) months prior to the final date for submission of the proposed budget.

(Ord. No. 1027, § 1, 7-15-92)

Section 5.05. Adoption of the annual budget and capital program.

The Council shall hold public meetings on the budget and capital program. The meeting shall be conducted so as to give interested citizens a reasonable opportunity to be heard. The Council shall adopt the budget and capital program within the time limits established by State law and the adoption shall be by resolution.

(Ord. No. 1027, § 1, 7-15-92)

Section 5.06. Public records.

Copies of the budget and the capital program as adopted shall be public records and shall be available for inspection by the public at the offices of the City Clerk.

(Ord. No. 1027, § 1, 7-15-92)

Section 5.07. Amendments after adoption.

Subdivision 1. Supplemental appropriations. If during the fiscal year the City Administrator certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council by resolution may make supplemental appropriations for the year up to the amount of such excess.

Subdivision 2. Contingency Reserve. The Council shall be authorized to have a reserve fund which shall be called a contingency reserve in an amount not to exceed ten (10) percent of the current and subsequent budget, excluding such contingency reserve. In the event that any appropriation from any other fund shall be, in the judgment of the Council, insufficient to meet the demands of the City with respect to the program or budget item affected and provide for the orderly administration of the City, the Council by a vote of six (6) members thereof may transfer out of the contingency reserve to such fund such sums as it shall determine shall be reasonably necessary to effect the purpose.

Subdivision 3. Reduction of appropriations. If at any time during the fiscal year it appears to the Council that the revenues available will be insufficient to meet the amount appropriated, the Council shall then take such further action as it deems necessary to prevent or minimize any deficit for that purpose and may by resolution reduce one or more appropriations.

Subdivision 4. Transfer of appropriations. The Council may by resolution transfer part or all of any unencumbered appropriation balance from one department, office or agency to another.

Subdivision 5. Emergency appropriations; tax anticipation certificates. To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency

appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of Subdivision 3 of Section 2.12 of Article II of this Charter. To the extent that there are no available unappropriated revenues to meet such appropriation, the Council may by such emergency ordinance, authorize issuance of tax anticipation certificates in accordance with the provisions of law. Such tax anticipation certificates shall be paid not later than two (2) years succeeding that in which the emergency appropriation was made.

Subdivision 6. Limitations; effective date. No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the 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.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

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 the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if no disbursement or encumbrance of the appropriation is completed by the close of the third fiscal year following the fiscal year in which the funds were appropriated.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

Section 5.09. Administration of budget.

Subdivision 1. Work programs and allotments. At such time as the City Administrator shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The Council shall review and authorize such allotments with or without revision as early as possible in the fiscal year. Such allotments may be revised during the year if desirable and shall be revised in accordance with any supplemental, emergency, reduced or transferred appropriations made pursuant to this article.

Subdivision 2. Payments and obligations prohibited. No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the Council or its designee first certify that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds there from 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; such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and said officer shall also be liable to the City for any amount so paid. However, except where prohibited by law, 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, provided that such action is made or approved by ordinance.

## **ARTICLE VI. Save for Future Reference**

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

## **ARTICLE VII. INITIATIVE, REFERENDUM AND RECALL**

**Section 7.01. Powers reserved by the people.**

The people of the City of Willmar reserve to themselves the power of the initiative, the referendum and recall to be exercised in accordance with and as limited by the provisions of this Article.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.02. Limitations.**

Neither the initiative nor the referendum power shall extend to the budget, the capital program, appropriations, salaries or wages. Emergency ordinances shall not be subject to referendum.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.03. Initiative.**

The exercise in each instance of the power of initiative shall be by a committee of not less than five (5) registered voters of the City. None of the members of such committee shall accept any remuneration for the services performed on such committee, but the committee and its members shall be entitled to be reimbursed for and to expend a reasonable amount for legal services, supplies, printing and notarial fees. The City shall not be liable for the payment of any expenditures for or on behalf of the committee and the Council shall not make any appropriation therefor, except for the cost of any election that may result from the actions of such committee.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.03(a). Filing of certificate of intent.**

Before any petition for initiative is circulated, the committee shall file with the City Clerk a certification of intent, which certificate shall contain a true copy of the measure proposed to be circulated, the names and addresses of the members of the committee, the names and addresses of circulators other than committee members, a statement that the members of the committee and the circulators are registered voters of the City at the time the certificate is filed, and that the petition has not been circulated. Each member of the committee shall verify under oath the statements in the certificate. If any statement in the certificate is found to be false, the petition shall be void and of no effect. The committee may, subsequent to the filing of the certificate, file an addendum thereto certifying additional circulators and the fact that they are registered voters of the City at the time of the filing of the addendum, which addendum must be verified in the manner of the certificate. The City Clerk shall forthwith check whether the committee members and the circulators are registered voters and endorse his/her findings on the certificate or the addendum, as the case may be.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.03(b). The initiative measure.**

Any ordinance proposed for the initiative shall be set forth in such form as is consistent with the forms of ordinances in current use at the time the same is filed and shall conform to the provisions of law, this Charter and any ordinance governing the formulation of ordinances. Proposals for ordinances shall be formulated in accordance with the provisions of Section 2.12 of Article II of this Charter.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

**Section 7.03(c). The petition.**

The petition in each instance shall consist of the complete text of the measure proposed for initiative, appropriate spaces for the signature printed name and the street address of the person signing the same, an affidavit of the circulator that each signature thereon is genuine, was affixed by the person whose signature it purports to be, and that it was signed in the presence of the circulator verifying the same. The signatures verified by any circulator whose name does not appear on the certificate of intent or on an addendum thereto shall not be counted. Each signature page on the petition shall contain on the top thereof in prominent letters the words: I HAVE READ THE MEASURE ATTACHED HERETO AND KNOW THE IMPORT THEREOF. It shall be permissible for more than one set to be circulated, but each set shall contain all of the above-required elements and before filing all sets shall be combined and filed as one document.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.03(d). Qualifications, number of signatures required.**

Only voters who are properly registered to vote on the rolls of the City Clerk at the time the petition is filed shall be counted as qualified to sign the petition and for the determination of the required number of signatures. No petition for initiative shall be valid unless it shall be signed by at least fifteen percent (15%) of the total number of registered voters on file in the office of the City Clerk at the time of filing the petition.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.03(e). Filing of petition, determination of validity.**

Upon the filing of the petition, the City Clerk shall endorse thereon the date and hour of filing and shall thereupon freeze the registered voters register, which shall not have the names of registered voters removed from nor added thereto until the determination shall have been made that the number of valid signatures thereon are sufficient or insufficient as provided herein. Thereupon, the petition shall forthwith be referred to the City Attorney who shall examine the same for form and validity but without considering any questions of sufficiency of signatures nor the validity of the signatures thereon. The City Attorney shall within five (5) days return the petition with his/her findings with respect thereto and his/her conclusion that it is or is not a valid and legal petition, without reference to the question of the required number of signatures and to the validity of signatures on the petition. If the City Attorney determines that the petition is invalid, that shall end the matter unless the committee shall appeal to the District Court as hereinafter provided. If the City Attorney determines the petition to be valid, the City Clerk, a registered voter appointed by the Mayor and a registered voter appointed by the committee shall inspect the petition and make a determination thereon as to the sufficiency of the number of signatures thereon and the validity of each signature. The findings of a majority of the City Clerk and the registered voters so appointed shall be conclusive, subject only to appeal to the District Court as hereinafter provided.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.03(f). Appeal to District Court.**

If the committee is dissatisfied with the decision of the City Attorney or of the majority of the City Clerk and the appointed registered voters, it may appeal to the District Court of Kandiyohi County. The appeal must be perfected within ten (10) days of the filing of the decision from which the appeal is made. The appeal shall be perfected upon the service of the notice of appeal on the City Clerk or his/her Deputy in the manner of the service of a District Court summons and the filing of the notice with proof of service with the Kandiyohi County District Court Administrator. The Court shall summarily determine the matter after hearing on such

notice as the Court shall determine, and shall remand the same to the City Clerk with its findings and conclusions either confirming or overruling the decision appealed from.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.03(g). Procedure after determination.**

If the petition is finally determined to be valid and to contain the required number of valid signatures, the City Clerk shall present the same to the Council at its next meeting. The Council shall thereupon proceed to consider the matter and to make provision for the further proceedings hereinafter provided.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.03(h). Council procedure on initiative petitions.**

The Council shall forthwith refer the petition to an appropriate committee which shall consider the matter and report the same back to the Council, which shall act on the same within sixty-five (65) days after the submission of the same to the Council. If the Council shall adopt the measure as submitted or with such amendments as are certified by a majority of the committee to be agreeable to it, the proceeding shall be considered terminated, and the Council may not again consider amendment or repeal of the measure until one (1) year shall have transpired from the date of its adoption. If the Council shall reject the measure or adopt it in such form as is not certified as agreeable to a majority of the committee, the Council shall thereupon certify the measure proposed by the committee to be voted on at a special election called in accordance with the provisions of law for holding special elections, provided that if the Council action on the measure shall occur within one year prior to the next ensuing general or primary election or special election called for other purposes, the same may be certified for a vote at such election.

**Section 7.03(i). Election ballots.**

The Council shall formulate the election ballot, which ballot shall be printed in the call for the election. The ballot shall succinctly and clearly state the essentials of the measure to be voted on and the question shall be framed so as to be capable of understanding by the voter and the measure shall be published once, at least ten (10) days before the election.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.03(j). Time limitations.**

If the petition for initiative is not filed within a period of ninety (90) days from the date of filing of the certificate of intent, it shall be conclusively deemed to have been abandoned and shall not be valid for any purpose.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04. Referendum.**

The exercise in each instance of the power of referendum shall be by a committee of not less than five (5) registered voters of the City. None of the members of such committee shall accept any remuneration for the services performed on such committee, but the committee and its members shall be entitled to be reimbursed for and to expend a reasonable amount for legal services, supplies, printing and notarial fees. The City shall not be liable for the payment of any expenditures for or on behalf of the committee and the Council shall not make any appropriation therefore, except for the cost of any election that may result from the actions of such committee.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(a). Filing of certificate of intent.**

Before any petition for referendum is circulated, the committee shall file with the City Clerk a certificate of intent, which certificate shall contain a true copy of the measure proposed to be circulated, the names and addresses of the members of the committee, the names and addresses of circulators other than committee members, a statement that the members of the committee and the circulators are registered voters of the City at the time the certificate is filed, and that the petition has not been circulated. Each member of the committee shall verify under oath the statement in the certificate. If any statement in the certificate is found to be false, the petition shall be void and of no effect. The committee may, subsequent to the filing of the certificate, file an addendum thereto certifying additional circulators and the fact that they are registered voters of the City at the time of the filing of the addendum, which addendum must be verified in the manner of the certificate. The City Clerk shall forthwith check whether the committee members and the circulators are registered voters and endorse his/her findings on the certificate or the addendum, as the case may be.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(b). The Referendum measure.**

Any referendum proposal shall specify clearly the motion, resolution, or ordinance sought to be repealed, setting the same out in full, indicating the date of adoption and the date of publication, if the same has been published.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(c). The petition.**

The petition in each instance shall consist of the complete text of the measure proposed for referendum, appropriate spaces for the signature, printed name and the street address of the person signing the same, an affidavit of the circulator that each signature thereon is genuine, was affixed by the person whose signature it purports to be, and that it was signed in the presence of the circulator verifying the same. The signatures verified by any circulator whose name does not appear on the certificate of intent or on an addendum thereto shall not be counted. Each signature page on the petition shall contain on the top thereof in prominent letters the words: I HAVE READ THE MEASURE ATTACHED HERETO AND KNOW THE IMPORT THEREOF. It shall be permissible for more than one set to be circulated, but each set shall contain all of the above required elements and before filing, all sets shall be combined and filed as one document.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(d). Qualifications, numbers of signatures required.**

Only voters who are properly registered to vote on the rolls of the City Clerk at the time the petition is filed shall be counted as qualified to sign the petition and for the determination of the required number of signatures. No petition for referendum shall be valid unless it shall be signed by at least fifteen (15%) percent of the total number of registered voters on file in the office of the City Clerk at the time of filing the petition.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(e). Filing of petition, determination of validity.**

Upon the filing of the petition, the City Clerk shall endorse thereon the date and hour of filing and shall thereupon freeze the registered voters' register, which shall not have the names of registered voters removed from, nor added thereto, until the determination shall have been



made that the number of valid signatures thereon are sufficient or insufficient as provided herein. Thereupon, the petition shall forthwith be referred to the City Attorney, who shall examine the same for form and validity, but within considering any questions of sufficiency of signatures, nor the validity of the signatures thereon. The City Attorney shall within five (5) days return the petition with his/her findings with respect thereto and his/her conclusion that it is or is not a valid and legal petition, without reference to the question of the required number of signatures and to the validity of signatures on the petition. If the City Attorney determines that the petition is invalid, that shall end the matter unless the committee shall appeal to the District Court as hereinafter provided. If the City Attorney determines the petition to be valid, the city Clerk, a registered voter appointed by the Mayor, and a registered voter appointed by the committee shall inspect the petition and make a determination thereon as to the sufficiency of the number of signatures thereon and the validity of each signature. The findings of a majority of the City Clerk and the registered voter so appointed shall be conclusive, subject only to appeal to the District Court as hereinafter provided.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(f). Appeal to district court.**

If the committee is dissatisfied with the decision of the City Attorney or of the majority of the City Clerk and the appointed registered voters, it may appeal to the District Court of Kandiyohi County. The appeal must be perfected within ten (10) days on the filing of the decision from which the appeal is made. The appeal shall be perfected upon the service of the notice of appeal on the City Clerk or his/her deputy in the manner of the service of a District Court summons and the filing of the notice with proof of service with the Kandiyohi County District Court Administrator. The Court shall summarily determine the matter after hearing on such notice as the Court shall determine, and shall remand the same to the City Clerk with its findings and conclusions either confirming or overruling the decision appeal from.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(g). Procedure after determination.**

If the petition is finally determined to be valid and to contain the required number of valid signatures, the City Clerk shall present the same to the Council at its next meeting. The Council shall thereupon proceed to consider the matter and to make provisions for the further proceedings hereinafter provided.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(h). Council procedure on referendum petitions.**

On receipt of the petition, the Council shall lay the measure on the table until the next regular meeting thereof at which time the Council shall determine whether it shall sustain the committee and take the action required thereon or stand on its original decision. If the Council determines to stand on its decision, it shall certify the matter to be voted on at a special election called in accordance with the provisions of law for holding special elections, provided that if the Council action on the measure shall occur within one (1) year of the next ensuing general or primary election or special election called for other purposes, the same may be certified for a vote at such election. The filing of the referendum petition shall suspend the action of the Council as to which the referendum petition is addressed until the matter shall have been decided at the election.

(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(i). Election ballots.**

The Council shall formulate the election ballot, which ballot shall be printed in the call for the election. The ballot shall succinctly and clearly state the essentials of the measure to be voted on and the question shall be framed so as to be capable of understanding by the voter and the measure shall be published once, at least ten (10) days before the election.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.04(j). Time limitations.**

No petition for referendum shall be valid unless the Certificate of Intent with respect thereto shall have been filed within fifteen (15) days of the adoption of the motion or resolution and within fifteen (15) days of the publication of an ordinance. The filing of the Certificate of Intent shall suspend the action of the Council for a period of thirty (30) days. If the petition for a referendum is not filed with the City Clerk within said thirty (30) day period, it shall not be valid for any purpose.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.05. Recall.**

The exercise in each instance of the power of recall shall be by a committee of not less than five (5) registered voters of the City. None of the members of such committee shall accept any remuneration for the services performed on such committee. The City shall not be liable for the payment of any expenditures for or on behalf of the committee and the Council shall not make any appropriation therefore, except for the cost of any election that may result from the actions of such committee.  
(Ord. No. 1027, § 1, 7-15-92)(Ord. No. 1387)

**Section 7.05(a). Filing of certificate of intent.**

Before any petition for recall is circulated, the committee shall file with the City Clerk a certificate of intent, which certificate shall contain a true copy of the measure proposed to be circulated, the names and addresses of the members of the committee, the names and addresses of circulators other than committee members, a statement that the members of the committee and the circulators are registered voters of the City at the time the certificate is filed, and that the petition has not been circulated. Each member of the committee shall verify under oath the statements in the certificate. If any statement in the certificate is found to be false, the petition shall be void and of no effect. The committee may, subsequent to the filing of the certificate, file an addendum thereto certifying additional circulators and the fact that they are registered voters of the City at the time of the filing of the addendum, which addendum must be verified in the manner of the certificate. The City Clerk shall forthwith check whether the committee members and the circulators are registered voters and endorse his/her findings on the certificate or the addendum, as the case may be.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.05(b). The recall measure.**

The committee seeking the recall of any official elected under the provisions of this Charter shall formulate in clear and concise language a statement, not more than two hundred fifty (250) words, of its reasons for proposing the recall and which shall state that it intends to bring about his/her recall. The statement must clearly set out the alleged malfeasance or nonfeasance of the officeholder being proposed for recall.  
(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

**Section 7.05(c). The petition.**

The petition in each instance shall consist of the title of office and name of the officeholder being proposed for recall, appropriate spaces for the signature, printed name and the street address of the person signing the same, an affidavit of the circulator that each signature thereon is genuine, was affixed by the person whose signature it purports to be, and that it was signed in the presence of the circulator verifying the same. The signatures verified by any circulator whose name does not appear on the certificate of intent or on an addendum thereto shall not be counted. Each signature page on the petition shall contain on the top thereof in prominent letters the words: I HAVE READ THE MEASURE ATTACHED HERETO AND KNOW THE IMPORT THEREOF. It shall be permissible for more than one set to be circulated, but each set shall contain all of the above required elements and before filing, all sets shall be combined and filed as one document.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.05(d). Qualifications, number of signatures required.**

Recall petitions may be signed only by registered voters entitled to vote for the officeholder whose recall is proposed. No petition for recall shall be valid unless it shall be signed by at least twenty-five (25) percent of the total number of registered voters entitled to vote for the officeholder whose recall is proposed, on file in the office of the City Clerk at the time of filing of the petition.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.05(e). Filing of petition, determination of validity.**

Upon the filing of the petition, the City Clerk shall endorse thereon the date and hour of filing and shall thereupon freeze the registered voters' register, which shall not have the names of registered voters removed from, nor added thereto, until the determination shall have been made that the number of valid signatures thereon are sufficient or insufficient as provided herein. Thereupon, the petition shall forthwith be referred to the City Attorney, who shall examine the same for form and validity, but without considering any questions of sufficiency of signatures, nor the validity of the signatures thereon. The City Attorney shall within five (5) days return the petition with his findings with respect thereto and his conclusion that it is or is not a valid and legal petition, without reference to the question of the required number of signatures and to the validity of signatures on the petition. If the City Attorney determines that the petition is invalid, that shall end the matter unless the committee shall appeal to the District Court as hereinafter provided. If the City Attorney determines the petition to be valid, the City Clerk, a registered voter appointed by the Mayor, and a registered voter appointed by the committee shall inspect the petition and make a determination thereon as to the sufficiency of the number of signatures thereon and the validity of each signature. The findings of a majority of the City Clerk and the registered voter so appointed shall be conclusive, subject only to appeal to the District Court as hereinafter provided.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.05(f). Appeal to district court.**

If the committee is dissatisfied with the decision of the City Attorney or of the majority of the City Clerk and the appointed registered voters, it may appeal to the District Court of Kandiyohi County. The appeal must be perfected within ten (10) days of the filing of the decision from which the appeal is made. The appeal shall be perfected upon the service of the notice of appeal on the City Clerk or his/her deputy in the manner of the service of a District Court summons and the filing of the notice with proof of service with the Kandiyohi County District Court Administrator. The Court shall summarily determine the matter after hearing on such

notice as the Court shall determine, and shall remand the same to the City Clerk with its findings and conclusions either confirming or overruling the decision appealed from.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.05(g). Procedure after determination.**

If the petition is finally determined to be valid and to contain the required number of valid signatures, the City Clerk shall present the same to the Council at its next meeting. The Council shall thereupon proceed to consider the matter and to make provisions for the further proceedings hereinafter provided.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.05(h). Council procedure on recall petitions.**

On the determination of the validity of the recall petition, the City Clerk shall forward a copy of the same to the official whose recall is the subject of the petition and shall present the petition to the Council at its next meeting. The Council shall immediately proceed to set the matter up for a vote on the issue of recall at a special election called for that purpose in the precincts in which the registered voters are entitled to vote for the office in question, unless a general, primary or special election shall have been set within a period of sixty (60) days from the receipt of the Council of the petition, in which case the matter shall be voted on at such election. The official subject to recall may present to the Council a statement of not more than five hundred (500) words answering the charge contained in the petition, and both the statement of the committee and the answer of the official shall be published in the call for the election.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 7.05(i). Election ballots.**

The Council shall formulate the election ballot, which ballot shall be printed in the call for the election. The ballot shall state the name and title of the officeholder whose recall is to be voted on and the measure shall be published once, at least ten (10) days before the election.

**Section 7.05(j). Time limitations.**

If the petition for recall is not filed within a period of ninety (90) days from the date of filing of the certificate of intent, it shall be conclusively deemed to have been abandoned and shall not be valid for any purpose.  
(Ord. No. 1027, § 1, 7-15-92)

**ARTICLE VIII. FRANCHISES**

**Section 8.01. Franchise required.**

No municipal corporation, governmental agency or political subdivision other than the City, and no person, corporation, association or other agency or group shall place in, on or over any public street, alley or public property of any kind any utility service, communication line or tube, transportation facility or other service, of permanent or semipermanent nature, without first having obtained a franchise from the City.  
(Ord. No. 1027, § 1, 7-15-92)

**Section 8.02. Power of the Council.**

Only the Council shall have the power to grant franchises. The Council may impose such regulations and make the franchise subject to such terms, in addition to those herein set forth, as it in its discretion may determine. The franchise privilege and the power of the Council to

grant the same shall always be subject to the paramount right of the public in the public streets, alleys and other public property of the City, and the Council shall have the right and the power to regulate and control the exercise by the franchise holder of the franchise privilege, however or whenever acquired.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 8.03. Limitations.**

No franchise shall be granted for a term longer than twenty-five (25) years. A franchise may be transferred upon adoption by the Council of a resolution approving the transfer. Such resolution may be adopted only upon an affirmative showing, satisfactory to the Council, by the proposed transferee of moral and financial responsibility, and the execution and filing with the Clerk of an instrument, duly acknowledged, setting forth that the transferee accepts and agrees to perform all of the terms and conditions of the franchise. A franchise may not be granted by emergency ordinance.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 8.04. Procedure for grant of franchise.**

Application for franchises shall be made upon such forms as may be prescribed by the Council and prepared by the City Clerk under its direction. The ordinance shall contain all the terms and conditions of the franchise. The procedure for the adoption of franchise ordinances shall be the same as for other ordinances, except that before its adoption by the Council it shall be published once each week for two (2) successive weeks, the last publication of which must be at least one (1) week before it is adopted. The ordinance shall not be in effect until the grantee shall have filed with the City Clerk written acceptance of the same and all its terms and conditions.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 8.05. Conditions.**

All franchises shall be subject to the following conditions, which shall be incorporated in the text of the ordinance granting the same:

(A) The grantee shall be subject to all the terms and conditions set forth in the ordinance granting the franchise and to all provisions of law, this charter and the ordinances of the City that may be applicable to the operation of the franchise privilege;

(B) The grantee shall in no case claim or pretend to exercise any power to fix fares, rates, charges or penalties but all fares, rates, charges and penalties shall in all cases be fixed and determined as provided in this Article;

(C) The Council shall have the right to require reasonable extensions of the public service system operated by the grantee under the franchise and to make such rules and regulations as may be required to secure adequate and proper service and to provide adequate accommodations for the public;

(D) The grantee shall not issue any capital stock on account of the franchise or the value thereon, and the grantee shall have no right to receive, upon condemnation proceedings brought by the City to acquire the public utility exercising such franchise, any return on account of the franchise or its value;

(E) Every grant in the franchise of permission to construct facilities in, on or over the public streets, alleys or other public property shall be subject to the conditions that the same be done in such a manner so that the same shall be in as good condition as before and such further conditions as the Council may impose;

(F) Every grant in the franchise of permission to construct such facilities shall be subject to the condition that the Council shall have the power to require such alterations therein, or relocation or rerouting thereof, as the Council may at any time deem necessary for the safety, health or convenience of the public, without cost to, or reimbursement by, the City;

(G) The grantee shall file with the City Clerk, within a period of three (3) months after the close of its fiscal year, a statement, subscribed and sworn to by some officer or person who knows the facts, setting forth in detail for the fiscal year just closed the then actual cost of the plant or business operated by such grantee, the actual encumbrances, debts and obligations thereon, if any, the amount of stock issued and to whom, the gross earnings, the expenses, the net income and the total amount of outstanding stock of said grantee;

(H) The failure of the grantee to obey the provisions of the law, this Charter, or the ordinances of the City, or the violation of any of the terms and conditions set forth in or embraced within the franchise or the ordinance granting the same shall be a sufficient cause for the forfeiture, cancellation and revocation of the franchise by resolution of the Council.

### **Section 8.06. Regulation of rates and charges.**

All franchise holders shall give courteous, efficient, and adequate service at reasonable rates. A reasonable rate shall be construed to be one which will, with efficient management, normally yield, above all operating expenses and depreciation, a fair return upon all money honestly and efficiently invested in the plant and equipment used by the company in the public service with the City. This shall not be construed as a guarantee of a return and in no case shall there be any return upon franchise value. Within these limits, the determination of a maximum fare, rate, charge, or penalty to be charged by the grantee for service rendered to the City or to any person or persons within the City shall be made, if possible, by direct negotiations between the grantee and the Council at public hearings. In the event that the grantee and the Council shall fail to reach agreement by negotiation, either party may request that the matter be referred to arbitration. The matter shall be determined by one arbitrator appointed by the American Arbitration Association to hear the matter. The party requesting arbitration shall file, with the Minnesota Office of the American Arbitration Association, its request for arbitration, which shall be on forms provided by the American Arbitration Association. The rules of the American Arbitration Association shall govern the arbitration proceeding and the decision of the arbitrator shall be final subject to the right of appeal as provided by Minnesota Law. Each party shall share equally in the payment of the fees charged by the American Arbitration Association. The fare, rate, charge, or penalty fixed, either by negotiation or arbitration, shall be in force for such term as is provided in the franchise or by prior agreement of the parties, but in no event shall the period exceed five (5) years, provided, further, the parties may at any time, by mutual consent, revise any prior agreement or arbitration determination made.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 8.07. Additional procedures, filing fees.**

The Council may by ordinance establish such additional procedures not inconsistent with the provisions of this Article to effectuate more fully the provisions of this Article, and it may by resolution or ordinance prescribe a filing fee to be paid upon the filing of the application to cover the costs of processing the application and acting thereon.

(Ord. No. 1027, § 1, 7-15-92)

## **ARTICLE IX. GENERAL PROVISIONS**

## **Section 9.01. Procedure for vacating streets, utility easements, and public grounds.**

Subdivision 1. Power in the Council. The Council shall have exclusive power to vacate streets, alleys, roads, highways, parkways, public grounds and utility easements with the City.

Subdivision 2. Power to initiate. The proceedings to vacate may be initiated by a majority of the owners of land or by the owners of a majority of the land measured in feet fronting on the easement, abutting on the street, alley, road, highway, parkway or public ground, or in, on or through which the utility easement exists or by resolution of the Council.

Subdivision 3. Proceedings on initiation by the Council. If the Council determines to proceed on its own initiative, it shall cause to be prepared a resolution to which shall be attached a map of the area proposed to be vacated and of the area extending out therefrom in all directions a distance of six hundred (600) feet and a list of the property owners within the said total area, together with their addresses and legal descriptions of the property owned by each of such owners. The resolution may be introduced at any regular or special meeting of the Council, but no further action shall be taken thereon until the report from the Planning Commission shall have been received or the time for the consideration of the same by the Planning Commission shall have expired. Upon the introduction of the resolution, the Clerk shall promptly transmit two copies thereof; together with copies of the map and the list of property owners and any other appendix thereto attached, to the Planning Commission. The Planning Commission shall consider the same, and may hold hearings thereon, and shall return one copy thereof, together with its resolution containing its findings and its report thereon, within sixty (60) days, or such further time as the Council may permit, from the date of the introduction of the Council resolution. If the Planning Commission shall fail to so make its report within said period, it shall be deemed to have approved the same as submitted.

Subdivision 4. Proceedings on initiation by property owners.

(A) Municipal Utilities Commission and City of Willmar specific use easements to-wit: those easements acquired for electric distribution/transmission, water mains, sanitary sewer lines, storm sewer lines, and district heating lines. Proceedings by property owner to vacate an easement in total or in part. Anyone desiring to vacate all or any portion of a specific use easement being used by the Municipal Utilities Commission to provide a utility service shall prepare, in triplicate, a petition requesting the vacation, which petition shall describe the area sought to be vacated and shall have attached thereto a map of the area proposed to be vacated. The petition shall be signed by all of the owners of the land subject to the easement sought to be vacated. The petition shall be filed with the Municipal Utilities Commission General Manager, who together with the City Attorney shall determine its validity. Upon determination of its validity, at the next regular meeting of the Municipal Utilities Commission, the General Manager shall present the petition. Upon approval of the Municipal Utilities Commission, the petition shall be forwarded to the City Council. The Council shall at its next regular meeting consider the petition. If the Council determines to proceed, it shall adopt a resolution approving the vacation request. The City Clerk shall prepare and file a certified copy of the Resolution in the office of the Kandiyohi County Recorder. A request for vacation of a specific use easement being used by the City of Willmar to provide a utility service shall be initiated in the same manner except the petition shall be filed with the City Clerk who shall forward the petition to the City Engineer and City Attorney. Upon approval of the petition by the City Engineer and City Attorney the petition shall be forwarded to the Public Works/Public Safety Committee. After consideration by the committee, the petition shall be forwarded to the City Council for approval. The costs incurred by the Municipal Utilities Commission and City of Willmar to review a petition and record a resolution shall be paid by the petitioner.

(B) Proceedings by property owner to vacate a street, alley, road, highway, parkway or public ground. Anyone desiring to vacate any street, alley, road, highway, parkway or public ground shall cause to be prepared, in triplicate, a petition therefor, which petition shall describe the area sought to be vacated and shall have attached thereto a map of the area proposed to be vacated and of the area extending out therefrom in all directions a distance of six hundred (600) feet and a list of the property owners within the said total area, together with their addresses and the legal descriptions of the property owned by each of such owners. The petition shall be signed by a majority of the owners of land or by the owners of a majority of the land, measured in feet fronting the easement, abutting on the street, alley, road, highway, parkway or public ground, and it shall be verified by one of them. For the purposes of determining the validity of the petition, multiple owners of a tract shall be considered as one owner and all such multiple owners of a tract must sign the petition to be counted as a signer. The petition shall be filed with the City Clerk, who together with the City Attorney and the City Engineer shall determine its validity. Upon determination of the validity and at the next regular or special meeting of the Council, the Clerk shall transmit the same to the Council, which shall by motion refer the same in duplicate to the Planning Commission, and the Planning Commission shall consider the same in the manner and within the time provided in proceedings initiated by the Council. (Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

Subdivision 5. Proceedings after initiation. Upon the report and resolution of the Planning Commission, or in the event the Planning Commission shall fail to act within the period provided, at the end of the said period, the Council shall at its next regular meeting take up the matter. If the Planning Commission shall have disapproved the proposed vacation, or shall have attached conditions thereto or altered the area of the proposed vacation, the Council shall determine whether it shall proceed further by overruling the Planning Commission.

Subdivision 6. Notice and hearing. If the Council determines to proceed, it shall adopt a resolution setting the matter for a hearing at a regular meeting, which resolution shall clearly describe the area proposed to be vacated, and shall cause said resolution to be published once each week for two (2) successive weeks next following the week in which said resolution is adopted and shall cause a copy of the said resolution to be mailed to each of the property owners owning property within six hundred (600) feet in all directions of the area proposed to be vacated contained in said resolution, which mailing shall be made at least ten (10) days before the hearing. At the hearing proof by affidavit of publication and of mailing shall be filed as a part of the record of the proceedings. Opportunity shall be given to all who desire to be heard at the said hearing, and the hearing may be adjourned from time to time. Neither the failure to mail nor the failure to receive said notice shall invalidate the proceedings, provided the Council may take such action as it shall in its discretion determine to afford any objecting property owner a hearing.

Subdivision 7. Appeal. Any person aggrieved by the resolution of vacation shall have the right to appeal to the District Court of Kandiyohi County, within ten (10) days of the adoption of the resolution. The appeal shall be perfected by serving Notice of Appeal on the City Clerk in the manner of the service of a District Court summons and filing the same with proof of service with the District Court Administrator. Thereupon the City Clerk shall forward to the District Court all of the documents in the proceeding, and the same shall be considered by the Court as upon a petition in the nature of a writ of certiorari. The Court may affirm, overrule or modify the resolution, and upon making its determination shall remand the same, with the documents, to the City Clerk, together with a certified copy of its order.



Subdivision 8. Filings and recording. After the expiration of the time for appeal, if there is no appeal, or upon the receipt of the certified copy of the order of the District Court, in the event of appeal, and the area or any part thereof is by said resolution or order vacated, the City Clerk shall prepare and cause to be filed and recorded the notice required by Section 117.19, Minnesota Statutes.

Subdivision 9. Denial of access. No proceedings for the vacation of any street, alley, road, highway, parkway or public ground shall be had or continued if it shall result in any platted lot, or tract under one (1) ownership, at the time the petition is filed or the resolution initiating the proceedings is adopted, being deprived of access to a street or public road or highway unless and until the owner of such lot or tract shall have filed a consent thereto, containing a description of each such lot or tract and a statement that he/she is the owner thereof, duly acknowledged and witnessed in form so as to be acceptable for recording in the office of the Register of Deeds, with the City Clerk, who upon filing the notice provided for in Subdivision 8 herein, shall file the same for record with the Register of Deeds.  
(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

### **Section 9.02. Personal financial interest.**

Any City officials, Council members, board or commission members, or employees, who have a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to a contractor supplying the City, shall make known that interest and shall refrain from voting upon or otherwise participating in their capacity as a City officer or employee in the making of such sale or in the making of or performance of such contract. Those who willfully conceal such a substantial financial interest or willfully violate the requirements of this section shall be guilty of malfeasance in the office or position and shall forfeit their offices or positions. Violation of this section with the knowledge express or implied of the person or corporation contract--with or making a sale to the City shall render the contract or sale voidable by the Council.

(Ord. No. 1027, § 1, 7-15-92)

### **Section 9.03. Prohibitions.**

The following activities shall be prohibited:

(A) 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 position because of race, sex, political or religious opinions or affiliations, or other protected class.

(B) 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 thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

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

Any person who by himself/herself or with others has been found, by a court of competent jurisdiction, to have violated any of the provisions of this section shall be guilty of a misdemeanor as defined in the Minnesota Criminal Code.

Any person who is found, by a court of competent jurisdiction, to have failed or refused, without lawful excuse, to comply with an order of the Council in the exercise of this investigative power shall be guilty of a misdemeanor as defined in the Minnesota Criminal Code.  
(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012)

**Section 9.04. Oath of office.**

Every Council member, elected or appointed official, and board and commission member shall, before entering upon the duties of their office take and subscribe an oath of office in the following form: "I do solemnly swear (or affirm) that I will support the Constitutions of the United States and of the State of Minnesota, and the Willmar City Charter and that I will discharge faithfully the duties of the office of \_\_\_\_\_ of the City of Willmar to the best of my judgment and ability."

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012) (Ord. No. 1389, § 1, 06-20-2016)

**Section 9.05. Amendments to Charter.**

Amendments to this Charter shall be made as provided by law.

(Ord. No. 1027, § 1, 7-15-92)

**Section 9.06. Separability.**

If any provision of this Charter is held invalid or is by provision of law made of no effect, the other provisions of this Charter shall not be affected thereby. If the application of this Charter or any of its provisions to any person or circumstance is held invalid, the application of this Charter and its provisions to other persons or circumstances shall not be affected thereby.

(Ord. No. 1027, § 1, 7-15-92)

**ARTICLE X. TRANSITIONAL PROVISIONS**

**Section 10.01. State and municipal laws.**

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. All laws which are by their provisions to be effective only if they do not conflict with provisions of the City Charter or there is no Charter provision on the subject and which are inconsistent with or interfere with the effective operation of this Charter or of the ordinances or resolutions adopted pursuant thereto are superseded by this Charter. All laws which are permissive in nature and which do not interfere with the operation of this Charter or of ordinances or resolutions adopted pursuant thereto shall not be affected by the adoption of this Charter. All laws which are designed to be operative in conjunction with or as related to the Charter provisions of the Charter of this City shall be construed as though they were enacted at or after this Charter was adopted, notwithstanding that they were enacted prior to the adoption of this Charter.

(Ord. No. 1027, § 1, 7-15-92)

**Section 10.02. Ordinances and resolutions inconsistent with this Charter.**

The Council shall expressly repeal all ordinances and resolutions which are in conflict with this Charter and either repeal or amend ordinances and resolutions which are inconsistent herewith or which in their interpretation may lead to conflicting positions. Failure to expressly repeal shall not be construed to nullify the provisions of Section 10.01.

(Ord. No. 1027, § 1, 7-15-92)

**Section 10.03. Effective date of this Charter.**

The effective date of this Charter, upon ratification by the registered voters of Willmar, shall be the first Monday after the first Tuesday in January, A.D. 1969.

(Ord. No. 1027, § 1, 7-15-92) (Ord. No. 1337, § 1, 11-19-2012) (Ord. No. 1340, § 1, 03-04-2013)