

CHARTER

ARTICLE I. - IN GENERAL

Sec. 1.01. - Incorporation.

The inhabitants of Mary Esther, Florida, as its limits now or as the same may be hereafter established, shall continue to be a body politic under the municipal corporate name of the City of Mary Esther, Florida, and as such shall have perpetual succession, may sue or be sued, plead and be impleaded and use a common seal.

Sec. 1.02. - General powers.

The city council of the City of Mary Esther as the governing body, pursuant to the provisions of Article VIII, Section 2(b) of the State Constitution and the provisions of the Municipal Home Rule Powers Act, Chapter 73.129, Laws of Florida, has the power to enact any legislation concerning any subject matter upon which the state legislature may act except when expressly prohibited by law and shall have the governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services and exercise any powers for municipal purposes as provided by law except where expressly prohibited by law.

ARTICLE II. - CORPORATE LIMITS

Sec. 2.01. - Boundaries.

The corporate limits of the City of Mary Esther shall be those presently existing or as the same may be established hereafter.

ARTICLE III. - LEGISLATIVE.

Sec. 3.01. - City council.

There shall be a city council with all legislative powers of the city vested therein consisting of five (5) electors of the city, to be elected at large, who shall hold office and be elected as hereinafter provided; and providing, also, that those now holding office as council members may hold office as such, subject to the provisions of this charter, for the terms for which they were respectively elected. In all succeeding elections, council members shall be elected for the terms hereinafter provided. The presiding officer of the city council shall be the mayor.

Sec. 3.02. - Functions, powers, and duties of the mayor.

The mayor shall preside at all meetings of the council and shall perform such other duties consistent with the office as may be imposed by it, and he/she shall have no vote in matters considered by the council. The mayor shall exercise no veto power.

He/she shall be recognized as head of the city government for all ceremonial purposes, by the governor for purposes of military law, for service of process, execution of contracts, deeds and other documents, and as the city official designated to represent the city in all agreements with other governmental entities or certifications to other governmental entities, but shall have no administrative duties except as required to carry out the responsibilities herein. The powers and duties of the mayor shall be such as are conferred upon him/her by the council in pursuance of the provisions of this charter, and no other. In the absence of the mayor, the selected mayor pro tem shall perform his/her duties.

Sec. 3.03. - Election, functions, powers and general duties of mayor pro tem.

The mayor pro tem shall be chosen by and from the members of the council at the legislative meeting in April of each year to serve during the ensuing year. He/she shall perform the functions, exercise the powers, and carry out the duties of the mayor only in the mayor's absence.

The mayor pro-tem shall be allowed to vote as council member when fulfilling the duties of the mayor during the mayor's absence.

The council shall be allowed to count the mayor pro-tem for purposes of establishing a quorum when the mayor pro-tem is fulfilling the duties of the mayor during the mayor's absence.

Sec. 3.04. - Qualification of members.

Members of the city council and the mayor shall be bona fide residents and qualified electors of the City of Mary Esther. The office of any council member or the mayor who should move from the City of Mary Esther during the term for which he/she was elected shall automatically become vacant from the date of such removal.

Sec. 3.05. - Election and terms.

The regular election of the city council members and mayor shall be held on the second Tuesday of March of each even numbered year in the manner provided in Article VIII of this charter. When a Presidential Preference Primary occurs prior to a scheduled city election, the city council may change by resolution the date of the City's upcoming election so as to coincide with the Presidential Preference Primary. The council shall consist of five (5) seats. Three (3) seats will be filled at one election and the remaining two (2) seats will be filled at the next regularly scheduled election. The terms of office for the city council shall be for four (4) years. The term of office for the mayor shall be for two (2) years.

Sec. 3.06. - Compensation.

The council may determine the annual salary of council members and the mayor by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of the council members and mayor elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six (6) months.

Sec. 3.07. - Prohibitions.

In the event Article IV of this charter becomes effective in accordance with the provisions of Section 4.01 herein:

(a) *Appointment and Removals:* Neither the council nor any of its members nor the mayor shall in any manner dictate the appointment or removal of any city administrative officers or employees whom the city manager or any of his subordinates are empowered to appoint, but the council or the mayor may express their views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.

(b) *Interference with Administration:* The mayor and council and its members shall deal with the city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the council nor any member thereof nor the mayor shall give orders to, nor make requests of, any of the subordinates of the city manager either publicly or privately. Any such dictation, order, request, or other interference upon the part of a member of the city council or the mayor with the administration of the city shall be brought to the attention of the council for appropriate action including warning, reprimand or action under Article III, Section 3.08, of this charter.

Sec. 3.08. - Vacancies, forfeiture of office, filling of vacancies.

(a) *Vacancies:* The office of a council member or mayor shall become vacant upon his/her death, resignation, or forfeiture of office, such forfeiture to be declared by the remaining members of the council.

(b) *Forfeiture of office:* A council member or mayor shall forfeit his/her office if he/she lacks at any time during his/her term of office any qualification for the office prescribed by this charter or by law.

(c) *Filling of vacancies:* A vacancy in the council and office of the mayor shall be filled within ten (10) days by the council who shall select, by affirmative vote of not less than three (3) of the members, a person to fill the vacancy. The appointee shall serve until the next regular election following the occurrence of the vacancy. At such next election that vacancy shall be filled by election for the remainder of the term existing for that seat, provided, however, if such vacancy occurs within forty-five (45) days of the next election such appointment shall be for the balance, if any, of the unexpired term. An appointee shall be a bona fide resident and qualified elector of the City of Mary Esther.

Whenever two (2) or more vacancies in the council shall occur at the same time, the mayor shall within fourteen (14) days call a special election to fill the vacancies. At this election the seats shall be filled as provided herein for the balance, if any, of the unexpired terms. Such election shall be conducted in accordance with the procedures for elections. (See Article VIII). In no event shall the council consist of more than two (2) members serving on an appointive basis. If such an event occurs, a special election will be held as provided herein.

Sec. 3.09. - Procedure.

(a) *Meetings of the council members.* The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. The mayor or any three (3) council members or the city manager may call special meetings of the council upon notice to each member and the public.

(b) *Penalty for absence.* Absence from three (3) consecutive regular meetings of the city council shall operate to vacate the seat of a member or the mayor, unless such absence is excused by council resolution setting forth the facts of such excuse duly entered upon the minutes.

(c) *Rules and minutes.* The council shall determine its own rules and order of business and shall provide for keeping a minute book of its proceedings. The minute book shall be a public record.

(d) *Council action and voting.* All official action of the council shall be effected by ordinance, resolution, or motion as required or appropriate under the applicable law. Voting on ordinances, resolutions, and motions shall be by vote of the city council on final action and shall be reported in the minutes. A majority of the council shall constitute a quorum. While a majority of the council (being a minimum of three (3) members) constitutes a quorum, the affirmative vote of a minimum of three (3) members shall be necessary to enact any ordinance or resolution, approve any motion, or take any other official action. In the event less than a quorum is present for any regular or special meeting of the council, the said meeting cannot be called to order and the minutes shall so reflect and record the names of the council members present.

(e) *Ordinances and resolutions.* Unless otherwise provided by future ordinance, the procedure for adoption of ordinances and resolutions, including emergency ordinances and ordinances which rezone private real property, the definitions of ordinances and resolutions, the manner and procedure for adoption thereof, the effective date, the notice of enactment, and publication of same shall be in accordance with and conform to Section 166.041, Florida Statutes, now in effect or as subsequently amended except as provided, however, that the affirmative vote of at least three (3) members of the council shall be necessary to enact any ordinance, resolution, approve any motion, or take any other official action.

Sec. 3.10. - Investigations.

The council may make investigations into the affairs of the city and the conduct of any city department, office, or agency including volunteer workers, committee members, or board members, and for this purpose may subpoena witness, administer oaths, take testimony and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the council shall be guilty of a misdemeanor and punishable as provided by law.

ARTICLE IV. - CITY MANAGER

Sec. 4.01. - Appointment of city manager.

The city council, upon an affirmative vote of at least three (3) members, will appoint an individual to the position of city manager when the position becomes vacant.

Sec. 4.02. - City manager – Qualifications.

The city manager shall be the chief administrative officer of the city. He/she shall be responsible to the council for the administration of all city affairs. He/she shall be appointed by the city council on the basis of his/her executive and administrative qualifications, and shall serve at the pleasure of the city council. The city manager cannot hold an elected public office during the time he/she is serving as city manager. The compensation of the city manager shall be fixed by the council. He/she need not be a resident of the city or the state of Florida at the time of his/her appointment but may reside outside the city while in office only with the approval of the council.

Sec. 4.03. - Removal.

The council may upon an affirmative vote of at least three (3) members remove the city manager from office in accordance with procedures adopted by the council.

Sec. 4.04. - Acting city manager.

By letter filed with the city clerk, the council shall designate a qualified city administrative officer to exercise the powers and perform the duties of manager during his/her temporary absence or disability. During such absence or disability, the council may revoke such designation at any time and appoint another officer of the city to serve until the manager shall return or the disability shall cease.

Sec. 4.05. - Powers and duties of the city manager.

The city manager will exercise such powers and perform such duties as may be prescribed by the city council and this charter.

ARTICLE V. - ADMINISTRATIVE DEPARTMENTS

Sec. 5.01. - General provisions.

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

(b) *Direction-city manager.* All departments, offices, and agencies under the direction and supervision of the city manager shall be administered by an officer appointed by and subject to the direction and supervision of the manager. With the consent of the council, the manager may serve as head of one (1) or more such departments, offices or agencies or appoint one (1) person as head of two (2) or more of them.

(c) *Surety bond.* The council, by resolution, shall fix the amount of a surety bond to be posted by the officers and employees of the city which the council shall require to post such bond at the council's discretion.

Sec. 5.02. - Personnel system.

All appointments and promotions of municipal officers and employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence.

Sec. 5.03. - City clerk.

Upon an affirmative vote of at least three (3) members, the council shall appoint an officer of the city who shall have the title of city clerk, and who shall serve during the pleasure of the council. The city clerk shall serve under the supervision of the city council and shall give notice of council meetings to its members and to the public, shall be responsible for the keeping of the minutes of its proceedings, and perform such other duties as are assigned to him/her by this charter or by the council.

Sec. 5.04. - City attorney.

Upon an affirmative vote of at least three (3) members, the city council may employ an attorney or attorneys from time to time, or by the year, to perform such legal services as the council may authorize and designate, and pay such attorney for services rendered.

ARTICLE VI. - FINANCIAL PROCEDURES

Sec. 6.01. - Fiscal year.

The fiscal year of the municipality shall begin on the first day of October and end on the last day of the following September.

Sec. 6.02. - Submission of budget and budget report.

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

Sec. 6.03. - Budget report.

The manager's report shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the city for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenue together with the reasons for such changes, summarize the city's debt position and include such other material as the manager deems desirable.

Sec. 6.04. - Budget.

The budget shall provide a complete financial plan of all municipal funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the manager deems desirable or the council may require. The budget shall be compiled from detailed information and in its arrangement the classification of expenditures shall be as nearly uniform as possible for the main functional divisions and departments of the city and shall give in parallel columns the following information:

(a) Proposed expenditures for current operations during the ensuing fiscal year for each department and division of the municipal government, including all public utilities and enterprises conducted by the municipality.

(b) Expenditures for corresponding items during the two (2) fiscal years last past.

(c) Proposed capital expenditures during the ensuing fiscal year for each department and division of the municipal government, including all public utilities and enterprises conducted by the municipality.

(d) Anticipated net surplus or deficit for the ensuing fiscal year of each utility owned or operated by the city and the proposed method of its disposition; subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached as appendices to the budget.

(e) Increase of demand compared with the corresponding appropriation for the last fiscal year.

(f) Such other information as is required by the city council or as the city manager may deem it advisable to submit. The total of proposed expenditures shall not exceed the total of estimated income.

Sec. 6.05. - Capital program.

(a) *Submission to council.* The city council may require the city manager to prepare and submit to the council a five-year capital program at least three (3) months prior to the final date for submission of the budget.

(b) *Contents.* The capital program shall include:

(1) A clear summary of its content;

- (2) A list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
- (3) Cost estimates, method of financing, and recommended time schedules for such improvements; and
- (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

If required by the council, the above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

Sec. 6.06. - Council action on budget and capital programs.

The city council shall by resolution adopt its annual budget and, if required by the city council, a capital program.

Sec. 6.07. - Amendments after adoption.

(a) *Supplemental appropriations.* If during the fiscal year the manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the council by resolution may make up supplemental appropriations for the year up to the amount of such excess.

Sec. 6.08. - Lapse of appropriations.

Every appropriation shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered.

Sec. 6.09. - Administration of budget.

(a) *Work programs and allotments.* At such time as the city manager 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 city manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He/she may revise such allotments during the year if he/she deems it is desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations made pursuant to section 6.07.

(b) *Payments and obligations prohibited.* No payment shall be made or obligation incurred against any allotment or appropriation duly made unless the city manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this charter shall be void and any payment so made illegal; such action shall be cause for removal of any officer who authorized or made such payment or incurred such obligation, and he/she 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 or resolution.

(c) All city officials shall exercise due diligence in the expenditure of public funds to achieve the maximum benefit to the city in obtaining goods and services in the most economical manner. Competitive bids shall be utilized by the city when necessary to achieve this objective; and all such bids shall be in the manner prescribed by ordinance and shall comply with the minimum requirements of the Florida law governing municipalities.

ARTICLE VII. - MUNICIPAL BORROWING, FINANCE AND TAXATION

Sec. 7.01. - Authority to borrow.

(a) The council shall have the authority to borrow money, contract loans, and issue bonds as defined by general law, from time to time to finance the undertaking of any capital or other project for the purposes permitted by the State Constitution, general law, and this charter and may pledge the funds, credit, property, and taxing power of the municipality for the payment of such debts and bonds.

(b) The total amount of general obligations bonds of the city, which may at any time be outstanding, shall be no more than twenty-five (25) percent of the assessed valuation of the nonexempt real and personal property within the corporate limits of the city.

Sec. 7.02. - Taxes and charges.

The council shall have the authority to raise, by taxation and licenses authorized by the Constitution or general law, or by user charges or fees authorized by resolution, amounts of money which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by resolution not inconsistent with the law.

ARTICLE VIII. - NOMINATIONS AND ELECTIONS

Sec. 8.01. - Electors.

Any person who is a resident of this city, who has qualified as an elector of this state, and who registers in the procedural manner prescribed by general law and ordinance of the city, shall be an elector of the city.

Sec. 8.02. - Nonpartisan elections.

All nominations and elections for the office of city council member and mayor shall be conducted on a nonpartisan basis without regard for political party affiliation. No designation of political party affiliation of any nominee shall appear on any campaign literature, nomination petition, or ballot.

Sec. 8.03. - Composition, nomination and qualifications.

The mayor and the council, consisting of five (5) members shall be elected at large by the qualified voters of the city. They shall be bona fide residents and qualified electors of the City of Mary Esther prior to the date of their qualifying for office.

(a) *Nominations.* A candidate for mayor or council member shall file with the Supervisor of Elections, Okaloosa County, a nominating petition signed by five (5) qualified electors of the City of Mary Esther prior to the date of their qualifying for office. Nominating petitions may be submitted at any time after noon of the first day of qualifying as specified by the Florida Election Laws, but no later than noon on the last day of qualifying.

(b) *Qualifications.* Each candidate for the public office of mayor or council member shall comply with the applicable election laws of the State of Florida and shall meet the qualification requirements as set out herein before being certified as qualified for the office for which the candidate is seeking election. Failure to comply with these laws is cause for removal of the candidate's name from the ballots.

(c) *Judge of qualifications and election results.* The Office of the Supervisor of Elections shall be the judge of whether candidates have met the qualifications for election to the council or to the office of mayor and of the election results. The results of the election will be read into the council minutes at the first meeting immediately following the city's election.

Sec. 8.04. - Procedures.

The council, by ordinance or resolution, shall prescribe rules and regulations for the conduct of elections including the form of the ballot and the method of listing candidates for city council elections. Council members shall convene as a canvassing board at the request of the Supervisor of Elections.

Sec. 8.05. - Elections.

The candidate for the office of mayor receiving the highest number of votes shall be declared elected. The candidates for the council receiving the highest number of votes shall be declared elected to the council seats up for election. In the event there exists a tie vote between two (2) or more candidates which precludes a determination of the successful candidate for such seat, such persons shall draw lots to determine who shall be elected to the office as soon as possible after the required ballot recount by the Office of the Supervisor of Elections.

In the event there are no more candidates than there are council seats up for election, such candidate or candidates shall be declared elected and shall not be listed on the regular city election ballot.

Sec. 8.06. - Ballots for charter amendments.

Charter amendments to be voted on by the city shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title and shall be a clear, concise statement describing the substance of the measure without argument or prejudice. Below the ballot shall appear the following question: "Shall the above described amendment be adopted?" Immediately below such question shall appear, in the following order, the word "FOR" and also the word "AGAINST" with a blank square after each for the placing of the symbol "X" to indicate the voter's choice.

Sec. 8.07. - Special election.

The city council shall, by ordinance or resolution, prescribe the manner and method of holding special elections in the municipality which are not provided for by the terms of this charter, and shall in such ordinance or resolution prescribe when and how such special election shall be called and held.

Sec. 8.08. - Oath of office.

Every officer of the city shall before entering upon the duties of his office, take and subscribe the following oath or affirmation:

I, _____, do solemnly (swear) (affirm) that I will support, protect and defend the constitution and government of the United States and of the State of Florida against all enemies, domestic and foreign and that I will pledge my faith, loyalty and allegiance to the same, and that I am entitled to hold office under the Charter of this city and that I will faithfully perform all the duties of the office of _____ of the City of Mary Esther, Florida, on which I am about to enter, so help me God!

Sworn to and subscribed before me this; ____ day of _____; A.D., 20_____.

(Notary Public)

ARTICLE IX. - GENERAL PROVISIONS

Sec. 9.01. - Severability.

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

Sec. 9.02. - Conflicting ordinances.

All ordinances and resolutions insofar as they conflict with or are inconsistent with the provisions of this charter shall be and the same are hereby repealed.

Sec. 9.03. - Continuation in force of nonconflicting ordinances.

All ordinances and resolutions now in force which are not in conflict with the provisions of this charter shall remain in force until they expire by their terms or are repealed.

Sec. 9.04. - Charter amendments and revisions – Filing of same with original.

This charter or any portion thereof may be amended or revised in accordance with the general laws of the state. Any amendments or revisions shall be filed, together with the original of this charter, in the office of the city clerk.

Sec. 9.05. - Standards of ethics.

The general laws of the state governing the standards of conduct of public officers and employees apply to all elected officials, public officers, and employees of the city. In addition, the council may, by ordinance or resolution, establish a code of ethics supplemental to general law for such officials, officers, and employees.

Sec. 9.06. - Existing Rights, Obligations, Duties and Relationships.

All rights, claims, actions, orders, contracts and legal or administrative proceedings involving the city shall continue except as modified pursuant to the provisions of this Charter. No debt, contract obligation, or assessment by the City shall be impaired by adoption of this Charter. All existing debts, obligations and assessments shall remain valid and enforceable, according to their terms, obligations and assessments shall remain valid and enforceable, according to their terms, under the Charter provisions applicable at the time the debt was incurred, contract signed, or assessment imposed. All obligations and rights arising in connection with projects financed under former Charter provisions shall be unaffected and remain in full force and effect as if the borrowing, taxing, bonding or other financing provisions had survived the adoption of this Charter.