

**NANTICOKE CITY  
GOVERNMENT STUDY COMMISSION**

**REPORT  
AND  
RECOMMENDED  
HOME RULE CHARTER  
FOR  
THE CITY OF NANTICOKE**

---

**August 16, 2011**



## NANTICOKE CITY GOVERNMENT STUDY COMMISSION

15 E. Ridge Street, Nanticoke, Pennsylvania 18634

August 16, 2011

Dear Residents of Nanticoke City:

The Nanticoke City Government Study Commission (GSC) has completed its study of the City's government and drafting of a Home Rule Charter and is included with the Final Report for your consideration.

The Nanticoke GSC has spent the last 16 months interviewing current Nanticoke officials, studying our current form and structure of government, interviewing officials from other Home Rule municipalities and studying other forms of government.

The Recommended Home Rule Charter would change our city government from its current City Council Commission form, to a Strong Mayor/City Manager/City Council form.

The proposed charter will improve efficiencies in City operations on multiple fronts and establish a clear, well defined chain-of-command. The Charter also establishes a litany of enhancements over our current Third-Class City form government.

The question of adopting the Recommended Home Rule Charter will be on the November 8, 2011 election ballot, and we strongly recommend its adoption by the voters of Nanticoke.

On behalf of the members of the Nanticoke GSC, thank you for allowing us the privilege to serve our City in undertaking this important responsibility.

On behalf of the Nanticoke GSC,

A handwritten signature in black ink, appearing to read "Gerald Hudak".

Gerald Hudak, Chairman

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# **THE FINAL REPORT OF THE NANTICOKE CITY GOVERNMENT STUDY COMMISSION**

## **I. PURPOSE OF HOME RULE**

The Commonwealth of Pennsylvania's Constitution was amended in 1968 to include a provision for local governments to opt-out of state legislated control and enact self or home rule control. The Home Rule Charter and Optional Plans Law was formally enacted in 1972.

The Home Rule law allows a municipality to set its own government framework as deemed best suited by itself, subject to certain restrictions, instead of being legislated by a set of standard codes adopted by the State Legislature.

The Home Rule process and creation of a Home Rule Charter is best analogized to the creation and adoption of the United States Constitution on a local level.

The Home Rule process exists so that local municipalities may address issues that are either not addressed or ineffectively addressed by the governing Code of the municipality. It also allows the citizens residing within the municipality to decide for themselves what form of government best serves them and not legislators from afar making that decision for them.

## **II. THE NANTICOKE CITY GOVERNMENT STUDY COMMISSION**

On May 18, 2010 the voters approved the formation of a Government Study Commission and the election of seven members: Gerald Hudak, Leonard Omolecki, Yvonne Bozinski, William Brown, Robert Katra, Linda Prushinski and Gary Smith. Later in May, the elected members met and organized electing Gerald Hudak as Chairman, Leonard Omolecki as Vice-Chairman, Yvonne Bozinski as Treasurer and William Brown as Secretary.

The GSC set a twice monthly meeting schedule convening on the second and fourth Tuesday of the month at 7:00 PM. Commencing with their first meeting through October 2010, the GSC laid the groundwork of its activities by seeking out and hiring professionals to assist in the process. The GSC engaged the Northeastern Pennsylvania Alliance (NEPA) as its consultant, Attorney Jeffrey J. Malak as its legal counsel and Donna Wall as its Recording Secretary.

From October 2010 through January 2011, the GSC studied Nanticoke's existing form of government (Third Class City – Commission-form), interviewed Nanticoke officials and explored alternatives.

The GSC held a public hearing on January 25, 2011 to discuss their findings and to receive input and opinions from the public. Then on February 8, 2011 the GSC voted to proceed with drafting a home rule charter.

The GSC then interviewed government officials from other home rule municipalities, studied existing charters, deliberated and made decisions regarding the contents of the Charter from February 2011 through June 2011.

The GSC held a public hearing on July 12, 2011 presenting the rough draft of the recommended home rule charter and to solicit the public's comments and opinions.

The GSC made minor modifications to the charter based on those comments and then formally approved and recommended the Home Rule Charter and Final Report at their August 16, 2011 meeting.

The GSC met on approximately 30 separate occasions, interviewed over 20 individuals and held 2 hearings (all open to the public) through the course of their work.

### **III. SUMMARY OF FINDINGS**

Below is a brief summary of the most significant issues that currently exist within the City that led the Commission to recommend the drafting of a home rule charter.

#### **Lack of Clear Operational Leadership and Singular Chain of Command**

This matter was reflected in several interviews, especially with employee representatives. In conducting its research, the GSC learned that there lacked a clearly defined leadership in city operations characterized by a fractured chain of command, resulting with miscommunications, inefficiencies, employee demoralization and unevenly applied policies. This is due to how the commission form of government places each member of Council and the Mayor in charge of a specific area of city operations. It is noted that the City had adopted a City Administrator Ordinance that relinquished Council/Mayor control over city operations to a professional manager, but could be repealed at the will of City Council.

#### **Taxation**

The restrictions of the Third-Class City Code and Act 511 (Local Tax Enabling Act) limit the City's taxing abilities. This, coupled with previously poor financial and operational management, led the City into financial catastrophe. The City entered into Act 47 Financial Distress status which provided the city relief from the Act 511 tax restrictions and enabled the city to levy taxes at more appropriate levels to meet operational expenses. Under Act 47, the City engaged a professional consulting firm to provide direction, assistance and best practice recommendations.



### Fractured Operations

The GSC learned that the structure of the Third-Class City government coupled with the current internal operating procedures of the City led to serious communication breakdowns, distrust and disagreements between elected officials and departments, and most importantly, operational inefficiencies.

### Management

As revealed during the course of the GSC's deliberations, the city can strongly benefit from strengthening its leadership and operational structure with a more clearly defined unity of command and professional management.

### Third-Class City Code

The Third-Class City Code was best summarized in an interview as "old and archaic". Forcing the City to comply with the provisions of the Third-Class City Code that was mostly written prior to the 1940s by the State Legislature has over time, caused frustration, inefficiencies and a fractured government structure. Simply stated, Nanticoke outgrew the laws and provisions of the Third-Class City Code and were now hamstrung by a set of municipal laws that no longer served the city's current needs and will most certainly not work in the decades to come.

## **IV. SUMMARY OF RECOMMENDATIONS**

Below is a representation of the most significant and critical proposed changes within the Recommended Home Rule Charter.

### Form of Government

Nanticoke City is currently operating under the Third-Class City Code which provides for a Commission Form of government. Under this form, the electors of the City elect a Mayor, four City Council Members, a Treasurer and a Controller. The Mayor serves as the commission chairperson and the four members of city council each head at least one department. The Mayor heads public affairs while the other City Council Members cover public safety, accounts and finance, streets & public improvements, and parks & public property.

The Recommended Home Rule Charter proposes a Strong Mayor with a City Manager and City Council form of government. Under this form, the electors will elect a Mayor and five members of City Council. The Mayor shall be responsible for all executive matters and overall operations of the City. The Mayor shall also hire and appoint a City Manager that shall work under the Mayor's direction who shall be responsible for all

administrative matters of the City. The City Council shall be solely responsible for legislative matters.

### Mayor

The Mayor shall have all executive powers and be responsible for all aspects of the City government. The Mayor shall also hire, appoint and supervise the City Manager. Additionally, the Mayor will be ultimately responsible for all personnel actions including hiring, disciplining and terminating staff. The Mayor shall have veto power when considering legislation adopted by the City Council.

The Office of Mayor shall be a part-time position with required minimum posted weekly office hours. An individual serving as Mayor shall be term-limited to three consecutive terms.

### City Council

City Council shall now consist of five members elected at-large and shall have all legislative powers, which include the approval of borrowing money, approving non-administrative contracts, adopting the budget, reviewing financial reports, engaging in studies and audits, conduct investigations and exercise subpoena power.

An individual serving as a City Council Member shall be term-limited to three consecutive terms.

### City Manager

The Mayor shall hire and appoint the City Manager, except for the initial city manager which shall be hired and appointed by the Transition Committee. The City Manager shall report directly to the Mayor and have all administrative powers, oversee the day-to-day operations of the City.

The City Manager shall be a City resident or shall become a City resident within one year of hire.

### Budget & Finance

The Mayor and City Manager are responsible for the preparation of the City's annual budget. The budget shall include all sources of income and expenditures collected or spent by the City regardless of the fund. The budget must also include a summary or description of items within it. The budget must receive final approval from City Council who also has the ability to make changes.

The City shall not be able to increase revenues, defined as all taxes, fees and regular income, by more than 8% above the preceding year. The charter also permits the ability for the City to institute a homestead exemption for owner-occupied residences.

The charter also requires the development, adoption and maintenance of a comprehensive, long-range plan.

#### Administrative Code

The Charter requires the adoption of an administrative code. The initial administrative code will be drafted and adopted by the Transitional Committee and will remain unchanged for at least two years after adoption.

The administrative code will include at a minimum, a code of ethics, conflict of interest policy, personnel policy, procurement (purchasing) policy, and a competitive bidding process.

#### Citizen Actions

The charter provides for optional actions to be taken by the electors of Nanticoke City that are not available to them under the Third-Class City Code. These actions are Initiative, Referendum and if or when constitutionally permitted, Recall.

The Initiative option allows residents to petition City Council, upon the attainment of 100 qualified signatures, to address a matter that for whatever reason they have refused to consider.

The Referendum option allows residents to circulate petitions and upon the attainment of 250 signatures, permits a question to appear on the ballot as to whether to approve a citizen-proposed ordinance or to repeal an existing or recently adopted ordinance.

The Recall option is not currently allowed by the Commonwealth Constitution, but is included in the charter in the event it does become permitted. This option allows the residents to circulate petitions and upon the attainment of 300 signatures, a question will appear on the ballot as to whether remove or not a currently elected official.

#### Transitional Committee

The Recommended Home Rule Charter includes a provision for the smooth transition from the current Third-Class City government to the new government structure contained within the charter.

The transitional committee will consist of nine members that will include the seven current GSC members, the Mayor and one member of City Council chosen from amongst

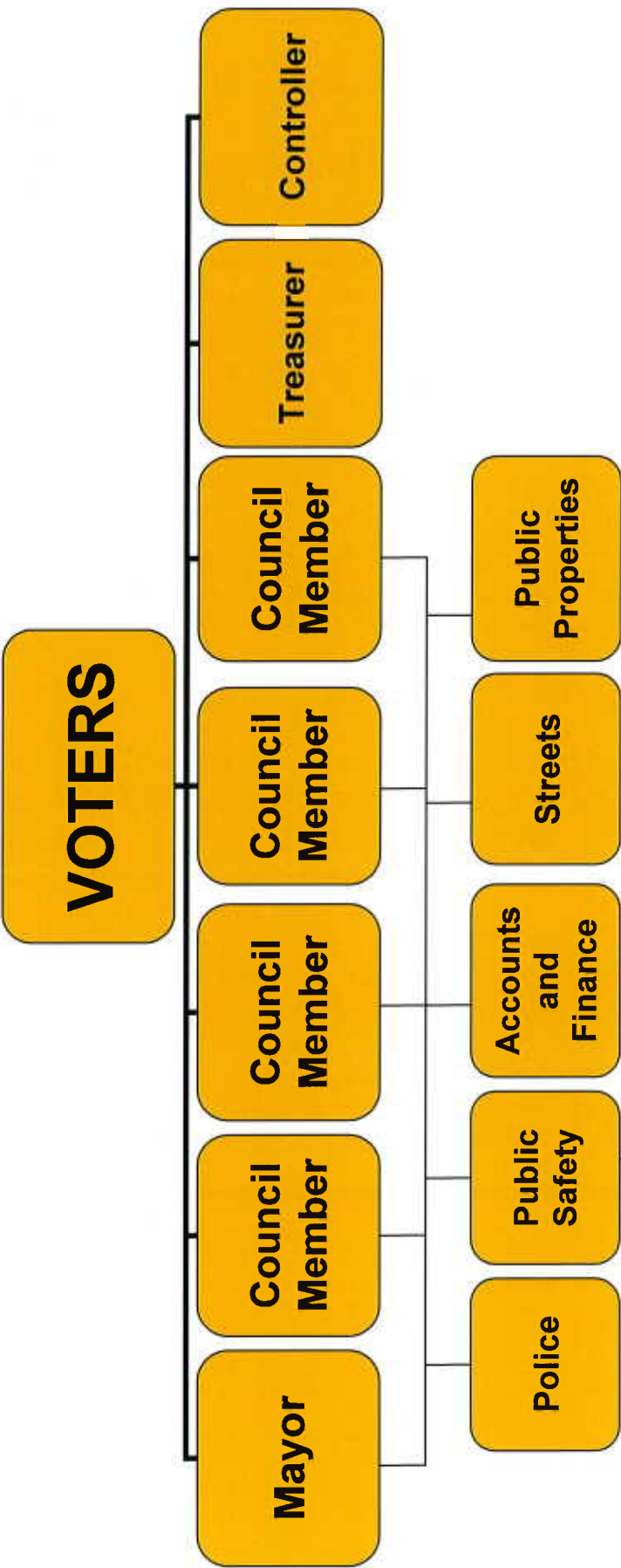


themselves. The transitional committee must complete all of their assigned tasks by no later than January 1, 2013.

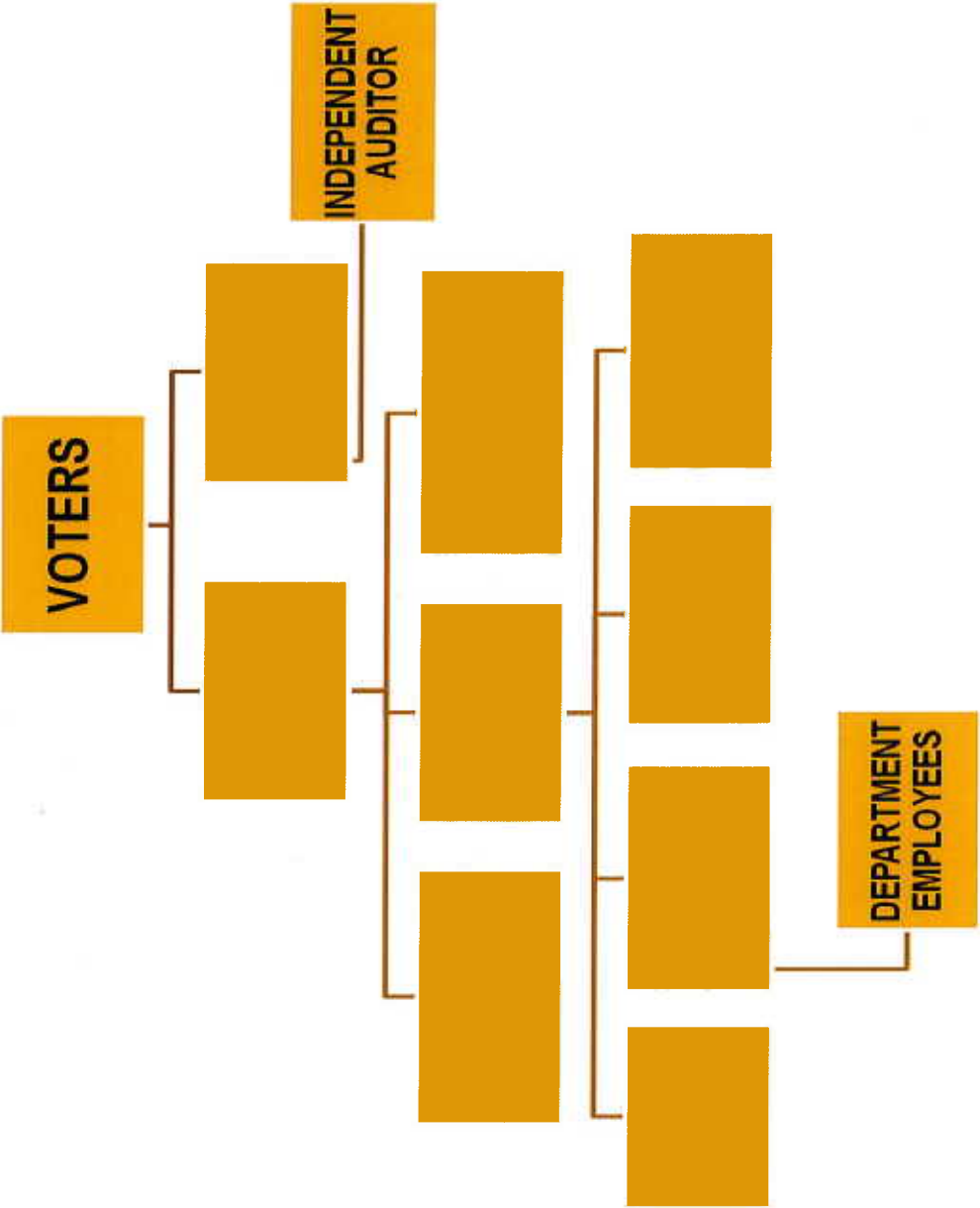
The main tasks of the transitional committee include the drafting and adopting of the administrative code (code of ethics, conflict of interest, personnel policy, procurement policy, competitive bidding process, and any other policy, rule, regulation and procedure necessary or desirable); the search, recruitment, hiring and appointment of the initial city manager; and engage in other activities deemed appropriate and have the power to make binding decisions within its authority.

V. ORGANIZATIONAL CHARTS

This Chart displays the hierarchy, interconnections and fractured nature of Nanticoke’s current Third-Class City, Commission Form of government.



This chart displays the hierarchy and more efficient structure created under the Recommended Home Rule Charter.



## **VI. QUESTION TO BE PLACED ON THE BALLOT**

Pursuant to 53 Pa.C.S. Section 2923 (2), the Nanticoke City Government Study Commission recommends that a referendum shall be held to submit to the electors of Nanticoke City, the question of adopting the Recommended Home Rule Charter prepared by the GSC and as authorized by 53 Pa.C.S. Chapter 29, Subpart B (the Pennsylvania Home Rule Charter and Optional Plans Law, Act of April 13, 1972, PL 883, as amended).

By action of the Nanticoke City Government Study Commission, the following question shall appear on the ballot and be submitted to the voters of Nanticoke City for adoption at the election to be held on November 8, 2011.

“Shall the Home Rule Charter contained in the report, dated August 9, 2011, of the government study commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by Nanticoke City?”

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

## **VII. CONCLUSION**

For all of the reasons listed and discussed in this report and to ensure the establishment of a professional, effective, accountable, responsible and efficient government in Nanticoke City, the members of the Nanticoke City Government Study Commission hereby call for the adoption of the Recommended Home Rule Charter by the voters of Nanticoke City.

## **VIII. STATEMENT OF FINANCES AND RESOURCES**

The Nanticoke Government Study Commission expended \$32,874.43 from inception through July 2011 for the operations of the GSC. It is expected the GSC may expend approximately \$14,000 more to fulfill its requirements under the law. This would bring the GSC's total spending to about \$47,000.

The following is an actual expenditure breakdown as of July 31, 2011.:

LEGAL SERVICES	\$ 9,147.63
ADVERTISING	\$ 1,469.85
RECORDING SECRETARY	\$ 3,187.00
PROFESSIONAL CONSULTANT	\$19,000.00
SUPPLIES	\$ 69.95
<b>TOTAL</b>	<b>\$32,874.43</b>

The following is a list of resources used by the Nanticoke GSC as of July 31, 2011, as well as estimates of additional resources to be used:

### Actual Expenses

<u>ITEM OR SERVICE</u>	<u>SUPPLIER OR VENDOR</u>	<u>AMOUNT</u>
Legal	Pugliese, Finnegan & Shafer	\$ 1,306.50
Legal	Chariton, Schwager & Malak	\$ 7,841.13
Advertising	Citizens' Voice – Home Rule Question	\$ 184.50
Advertising	Citizens' Voice – GSC meeting notice	\$ 22.50
Advertising	Citizens' Voice – GSC meeting notice	\$ 24.00
Advertising	Citizens' Voice – Meeting Schedule (2010)	\$ 28.50
Advertising	Citizens' Voice – Meeting Schedule (Jan-Feb)	\$ 36.00
Advertising	Citizens' Voice – January Public Hearing	\$ 37.50
Advertising	Citizens' Voice – Meeting Schedule (2011)	\$ 42.00
Advertising	Citizens' Voice – Hearing Display Ad	\$ 190.35
Advertising	Citizens' Voice – Meeting Schedule	\$ 51.00
Advertising	Wilkes-Barre Publishing Co. – Hearing Ad	\$ 750.00
Advertising	Citizens' Voice – Hearing Ad	\$ 66.00
Advertising	Citizens' Voice – Draft Hearing Ad	\$ 37.50
Recording Secretary	Anne P. Zoltewicz	\$ 312.00
Recording Secretary	Donna Wall	\$ 2,875.00
Professional Consultant	NEPA Alliance	\$19,000.00
Supplies	Staples (Recorder, tapes, batteries)	\$ 55.97
Supplies	Staples (Binders)	\$ 13.98

### Estimated Expenses (August – November 2011)

<u>ITEM OR SERVICE</u>	<u>SUPPLIER OR VENDOR</u>	<u>AMOUNT</u>
Legal	Chariton, Schwager & Malak	\$ 1,000.00
Advertising	Citizens' Voice	\$ 750.00
Printing/Distribution of Report	Unknown at this time	\$ 2,500.00
Recording Secretary	Donna Wall	\$ 750.00
Professional Consultant	NEPA Alliance	\$ 9,000.00

*In addition, the Nanticoke GSC received in-kind services from the South Valley Chamber of Commerce and Nanticoke City for meeting and office space.*



We, the members of the Nanticoke City Government Study Commission, being duly sworn according to law, depose and say the foregoing statement of funds, goods, materials, services, and suppliers used by the Nanticoke City Government Study Commission is correct to the best of our knowledge and belief.

Gerald Hudak, Chairman Gerald Hudak

Leonard Omolecki, Vice-Chairman Leonard Omolecki

William Brown, Secretary William Brown

Yvonne Bozinski, Treasurer Yvonne Bozinski

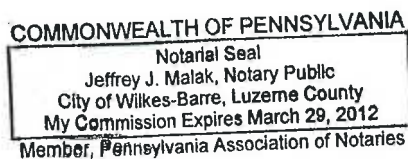
Robert Katra Robert Katra

Linda Prushinski Linda Prushinski

Gary Smith Gary Smith

Sworn to and subscribed before me this 16<sup>th</sup> day of August, 2011.

Jeffrey J. Malak  
Notary Public



# **CITY OF NANTICOKE**

## **HOME RULE CHARTER**

**Prepared and Recommended by  
The Nanticoke City Government Study Commission**

**August 16, 2011**

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## **PREAMBLE**

The citizens of Nanticoke City have the privilege, right and responsibility to participate in all aspects of City government and have come together with a desire and willingness to improve their government through the enactment of this Charter.

This Charter shall guide Nanticoke for years to come and has addressed the inefficiencies and ineffectiveness in our government which have arisen over the years.

We, the people of Nanticoke City, agree to uphold and enforce the principles embodied in this Charter with the full force of law.

## **ARTICLE I**

### **APPLICABILITY AND POWERS OF THE CITY**

#### **§ 1.01 Applicability.**

This charter shall apply to Nanticoke City, Luzerne County, Pennsylvania, which shall include all territory within the boundaries of the City at the time when this charter shall take effect, and all territory that may lawfully be added to the City at any time thereafter.

#### **§ 1.02 Powers of the City.**

The City shall have all powers possible for a home rule municipality under the Constitution and laws of the Commonwealth of Pennsylvania as fully and completely as though they were specifically enumerated in this Charter.

#### **§ 1.03 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 shall not be construed as limiting in any way the general power stated in this article.

#### **§ 1.04 Intergovernmental Relations.**

The City may participate by contract or otherwise with any governmental entity of this state or any other state or states of the United States in the performance of any activity with Nanticoke City and one or more of such other entities has the authority to undertake.

## **ARTICLE II**

### **CITY COUNCIL**

#### **§ 2.01 Status and Title.**

The legislative branch of the government of Nanticoke City shall consist of an elective governing body which shall be known as the City Council.

#### **§ 2.02 Composition.**

The City Council shall be composed of five (5) members elected at-large by the electors of the City.

#### **§ 2.03 Staggered Term.**

Members of City Council shall be elected to serve staggered terms of four (4) years. At the first municipal election subsequent to the adoption of this charter in 2013, the offices of three (3) current members of City Council (2 members of City Council and the Mayor) are then expiring and shall be filled. Two (2) City Council offices shall be for four year terms and the third City Council office shall be a one-time two (2) year term that shall be a four (4) year term in subsequent years. In the second municipal election subsequent to the adoption of this charter in 2015, the offices of three (3) members of City Council are then expiring and shall be filled. Thereafter, at each municipal election two (2) and then three (3) members of City Council shall be elected as the case may be. Their terms of office shall begin on the first Monday in January next following their election. If the first Monday is a legal holiday, the term of office shall begin the next day following the holiday.

#### **§ 2.04 Qualifications.**

All members of City Council shall be electors of the City, at least the age of twenty-one (21) and shall have been residents continuously in the City for at least one (1) year immediately preceding their election and must maintain all qualifications through the duration of their term.

#### **§ 2.05 Powers and Duties.**

The City Council shall have, but not by way of limitation, the following powers and duties:

- A. To adopt, amend, and/or repeal motions, resolutions, ordinances and other materials of legislative intent.
- B. To approve debt.
- C. To approve contracts outside of normal day-to-day administrative, operational contracts.

- D. To adopt the budget.
- E. Review and approve monthly financial reports and the payment of bills as submitted by the Mayor.
- F. To make, or cause to be made, such studies, audits and investigations as it deems to be in the best interest of the City.
- G. To have subpoena power to compel records and testimony of City officials, employees and representatives.

#### **§ 2.06 Salaries.**

Initial annual base salary compensation for a member of City Council shall be \$2,000. Members of City Council shall be also paid an additional fifty dollars (\$50) per meeting in physical attendance. Total annual compensation shall not exceed \$3,400. Any change in compensation of City Council shall only become effective for any member of City Council following the expiration of the term of their current seat. Members of City Council shall receive no other City compensation, direct or indirect; they shall receive no reimbursements for expenses unless previously approved by City Council and the Mayor at a public meeting; and they shall receive no pensions, personal or family insurances, unless otherwise required by law, nor other forms of fringe benefits. City Council shall have the power to fix the salary and meeting compensation of its members by Ordinance.

#### **§ 2.07 Prohibitions.**

No member of City Council, during their City Council term, shall hold any other elected public office or employment with the City whether paid or unpaid.

#### **§ 2.08 Vacancies.**

The office of member of City Council shall become vacant through death, resignation, recall (if permitted by Constitutional amendment), or forfeiture. Forfeiture occurs when a member of City Council lacks the qualifications of the offices as defined by the charter or violates an express prohibition of the charter.

#### **§ 2.09 Filling of Vacancies.**

The City Council shall, by an affirmative vote of three members of City Council, fill any vacancy in the office of member of City Council. Should the City Council fail to reach three affirmative votes, the Mayor shall be granted the authority to cast the third affirmative vote. Should this process fail, for any reason whatsoever, to fill a vacancy within thirty (30) days after the vacancy occurs, then the Court of Common Pleas shall fill the vacancy.

Any person filling a City Council vacancy shall be an elector that meets all of the Charter's qualifications for City Council membership regardless of political affiliation.

The person appointed to fill a vacancy shall take office immediately upon appointment and shall fill the term only until the next municipal election at which time the unexpired term, if applicable, shall be filled by the electors of the City.

#### **§ 2.10 Term limits.**

Members of City Council may not serve more than three (3) elected, consecutive City Council terms.

#### **§ 2.11 Organization.**

The City Council shall meet to organize on the first Monday of January of each even-numbered year. If the first Monday is a legal holiday, the City Council shall meet to organize the next day following the holiday.

The City Council at this organization meeting shall elect from its membership a President and a Vice-President. The President or, in his/her absence, the Vice-President shall preside at all meetings of City Council. Whenever any action by the City Council shall result in a specific written contract or agreement or requirement for a signature from City Council, the President or, in his/her absence, the Vice-President shall be authorized to and shall affix his/her signature.

#### **§ 2.12 Meetings.**

The City Council shall convene a regular Business Meeting at least once a month and shall convene a regular Work Session at least once a month. All meetings of the City Council shall be open to the public. All regular meetings must occur at or after 7:00 P.M. A meeting can only be held if at least three (3) members of City Council are physically in attendance which shall constitute a quorum. Special meetings of City Council may be held if they are publicly advertised in the legal section of a newspaper, on the City's website and posted in the municipal building at least seven (7) days in advance.

#### **§ 2.13 Ordinances.**

- A. Notice of legislation considered for adoption as an ordinance must be advertised in the legal section of a newspaper of general circulation within the City, on the City's website and posted within the municipal building in a conspicuous location at least seven (7) calendar days prior to consideration of adoption. The City Clerk shall be responsible for the legal notice to be published. Full text of the ordinance shall be available at the office of the City Clerk and posted on the City's website.
- B. Ordinances and other legislation shall require three (3) affirmative votes of City Council to be considered passed and adopted.



- C. The power to approve or veto an ordinance is subject to the provisions of this charter. If the Mayor deems it to be in the public's or City's best interest to veto an ordinance, the Mayor shall have ten (10) calendar days after City Council adoption to exercise a veto or it shall be deemed approved.
- D. In the event the Mayor vetoes an ordinance or legislation, the City Council may override the veto with at least four (4) affirmative votes.
- E. Legislation shall take effect 30 days after enactment, unless qualified as an emergency pursuant to the emergency section of this Charter.

#### **§ 2.14 Emergency Ordinances.**

Upon written declaration by the Mayor that an emergency exists within the City, City Council may, without regard to any other provisions contained in §2.13, adopt a related ordinance upon the affirmative and majority vote of at least three (3) members of City Council who shall be physically present at a meeting of City Council. The ordinance shall become effective immediately upon its adoption and shall cease to be effective upon the Mayor's declaration the emergency has ceased or on the thirtieth (30th) day following its adoption, whichever shall occur first.

#### **§ 2.15 Recording.**

All ordinances and resolutions of the City shall be entered, as approved, in the record books of the City. The record books shall be open and available to the public for inspection during posted business hours. The books shall be in the custody and control of the City Clerk and City Manager. All entries shall be made by the City Clerk. All ordinances and resolutions having legislative effect shall be codified. Codification shall be maintained on a regular basis and updated annually.

#### **§ 2.16 Residents' and Taxpayers' Right To Be Heard.**

City Council shall provide reasonable opportunity for interested residents, taxpayers and interested parties to address the City Council and Mayor at all meetings.



## **ARTICLE III**

### **MAYOR**

#### **§ 3.01 Executive Power.**

The executive power of the City shall be vested in the Mayor.

#### **§ 3.02 Election and Term.**

The Mayor shall be elected at-large by the electors of the City to a four (4) year term.

#### **§ 3.03 Qualifications.**

The Mayor shall be an elector of the City, at least the age of twenty-one (21) and shall have been a resident continuously in the City for at least three (3) years immediately preceding his/her election and must maintain all qualifications through the duration of his/her term.

#### **§ 3.04 Powers and Duties.**

The Mayor shall be responsible for the supervision of the City Manager and the City Government and shall have all executive powers and duties of the City including but not limited to the following:

- A. The duty to enforce the charter and ordinances of the municipality and the laws of the Commonwealth of Pennsylvania and the United States of America.
- B. The duty to make and submit a monthly report to City Council and the public for the regularly scheduled Business Meeting of City Council of the work being done and on the conditions and needs of the City.
- C. The power to make recommendations for action by City Council as deemed in the best interest of the public.
- D. Shall physically be in attendance at one regular meeting of City Council per quarter annum.
- E. The power to approve or veto ordinances pursuant to § 2.13 (C).
- F. Shall upon taking office establish minimum regular weekly office hours that shall be posted on the City's website and within City Hall.
- G. The duty to appoint/hire the City Manager for an indefinite term, subject to the approval of a majority of the total number of City Council members, and the power to

dismiss the City Manager subject to the approval of a supermajority vote of the total number of seated City Council members.

- H. The duty to appoint members to authorities, boards, commissions and committees and submit to City Council for confirmation.
- I. The duty to appoint/hire the engineer subject to the confirmation of a majority of the total number of City Council members.
- J. The duty to hire and appoint the solicitor and treasurer.
- K. The duty to hire, discipline and terminate all employees, other than those specifically addressed in this charter, based upon the City Manager's recommendations.
- L. The duty to cause to be prepared the annual budget and capital program and other financial elements required in this charter and submit the same to City Council as provided for in this charter.
- M. The duty to set the level of bonding required for employees and officials.
- N. The power to declare a state of emergency in the event of a natural disaster or force majeure.

### **§ 3.05 Salary.**

City Council shall from time-to-time fix and determine the compensation of the part-time Mayor, which during his/her current term of office shall neither be increased nor decreased. No change in the compensation of the Mayor shall be adopted by ordinance less than twelve (12) months prior to the commencement of a new term of office of the Mayor. The mayor shall receive no other City compensation, direct or indirect, and shall receive no pension or other form of fringe benefits.

The initial total compensation of the Mayor shall be Ten-Thousand Dollars (\$10,000) per annum. The salary of the Mayor shall not be less than ten-thousand dollars (\$10,000) per annum.

### **§ 3.06 Prohibitions.**

The Mayor, during his/her term, shall not hold any other elected public office. The Mayor cannot be employed by the City in any other capacity, nor can he/she be an employee of any other municipality or any derivative of a municipality.

### **§ 3.07 Vacancies.**

The office of Mayor shall become vacant through death, resignation, recall (if Constitutional amendment permits it), or forfeiture. Forfeiture occurs when a Mayor lacks the qualifications of the offices as defined by the charter or violates an express prohibition of the charter.

### **§ 3.08 Filling of Vacancies.**

- A. In the event of a permanent vacancy, the City Council shall, by a majority vote of the total number of the City Council members which shall be three (3) affirmative votes, fill a vacancy within the office of Mayor. Should the City Council fail to reach a majority vote or if City Council fails, for any reason whatsoever, to fill a vacancy within thirty (30) days after the vacancy occurs, then the Court of Common Pleas shall fill the vacancy.

Any person filling the vacancy may be an elector that meets all of the Charter's qualifications for the Office of the Mayor regardless of political affiliation.

The person appointed to fill a vacancy shall take office immediately upon appointment and shall fill the term only until the next municipal election at which time the unexpired term, if applicable, shall be filled by the electors of the City.

- B. The Mayor shall appoint a designee upon taking the oath of office who shall provisionally fulfill the duties of the office of Mayor in the event of a temporary incapacitation of the Mayor.

### **§ 3.09 Term Limits.**

A Mayor may not serve more than three (3) elected, consecutive Mayoral terms.

## **ARTICLE IV**

### **CITY MANAGER**

#### **§ 4.01 Hiring and Appointment of City Manager.**

There shall be a City Manager who shall be hired and appointed by the Mayor and chosen on the merits of his/her executive and administrative qualifications and experience. The Mayor's appointment of the City Manager shall be subject to the confirmation of the City Council. If the City Council fails to act on the appointment within thirty (30) days thereafter, the Mayor's appointment shall be deemed approved. The City Manager shall serve the City on a full-time basis and shall be responsible directly to the Mayor. The City Manager shall serve for an indefinite term.

## **§ 4.02 Qualifications.**

The City Manager shall be chosen on the basis of executive and administrative qualifications and experience. The City Manager shall be a City resident or become a City resident within one (1) year of appointment and shall reside within the City for the duration of his/her appointment. A candidate for the position of City Manager shall have the following minimum qualifications:

### **A. Education and Experience**

- a. A bachelor's degree in local government, public administration, or political science or related discipline shall be required, a master's degree preferred.
- b. A minimum of three years of public administration experience is required, with five years preferred.
- c. Past local government experience of individual must show performance in areas that include budgeting and finance, human resource management, information technology, risk management, grants procurement and administration, economic development strategies, understanding of state laws, and other related matters including land use planning, zoning regulations, engineering, and public works.
- d. Experience and knowledge in local government accounting is desirable.

### **B. Skills and Past Performance**

- a. Administrative ability. Must have demonstrated performance in human resources and/or collective bargaining for a community having not less than 10 employees. Good communication skills, including the ability to listen, communicate with various segments of the community, and develop good relations with the business community. Person must be willing to devote whatever time is necessary to achieve the goals and guidelines established by the Mayor. Candidate must have knowledge of how to organize departments and demonstrate leadership qualities.
- b. City Council and Mayoral relations. Ability to take time and interest in working with the Mayor and City Council Members to keep them informed and explain technical processes. Should be able to adequately inform the Mayor and City Council Members on a regular basis. Both written and oral communications with the Mayor and City Council Members are essential. Candidate must be open and honest with the Mayor and City Council Members and be able to present all sides of an issue that affect the city. The individual must be able to carry out the intentions and directions of the Mayor enthusiastically.
- c. Budget and finance. Should have demonstrated prior experience in managing a municipal budget. Experience and expertise in grant procurement is desirable, as well as dealing with locally-owned utility finances.
- d. Collective bargaining/human resource management. Must have some knowledge of labor relations law, with preferred demonstrated ability in the collective bargaining process. Must demonstrate a personality that can communicate the local government's goals and needs to employees.
- e. Community relations. Candidate must have demonstrated involvement in community activities. Experience working with and understanding the needs of the business community is highly desirable. Candidate should be able to present a



confident image of the local government to the city at-large. Must be able to demonstrate a positive, productive attitude to citizens of the city.

- f. Intergovernmental relations. Must be able to relate to and develop a good working relationship with other local governments, county governments, community organizations, schools, and state and federal agencies.

#### **§ 4.03 Prohibitions.**

The City Manager shall not hold any other public or political office during his/her tenure.

#### **§ 4.04 Powers and Duties.**

The City Manager shall have all administrative powers and duties over the operations of the City including but not limited to the following:

- A. Shall direct and supervise the activities of the departments and employees of the City pursuant to the Mayor's policies and direction.
- B. Shall prepare the annual budget(s) pursuant to the Mayor's policies and direction.
- C. Shall receive, review and evaluate job applications and conduct interviews. The City Manager shall make hiring recommendations to the Mayor.
- D. Shall administer the personnel policy and procedures.
- E. Shall be responsible for the establishment and maintenance of an accounting system, which shall be designed to accurately reflect the assets, liabilities, receipts, and expenditures of the City.
- F. Shall be responsible for the collection, custody and disbursement of all City funds and the preparation of monthly financial reports to be provided to the Mayor and City Council.
- F. Shall administer the purchasing policy and program.
- G. Shall attend all regularly scheduled meetings of the City Council.
- H. Shall be responsible for the proper execution all policies set forth in the Administrative Code.
- I. Shall perform and/or be responsible for any and all other duties as may be required by the Mayor, this charter and the Administrative Code.



#### **§ 4.05 Salary.**

The Mayor shall set the salary of the City Manager with City Council approval. Any adjustment to the salary of the City Manager shall be made following an annual review and recommendation by the Mayor, subject to approval of City Council by resolution.

#### **§ 4.06 Termination.**

If so desired, the Mayor shall recommend to City Council the termination of the City Manager and submit the reasons of dismissal for City Council's consideration. The City Manager shall have the opportunity to address City Council at a public meeting and respond to the issues set forth for his/her dismissal. The City Council must vote to terminate the City Manager by a supermajority vote of the entire City Council, which shall be four (4) affirmative votes, in order for the termination to become effective.

### **ARTICLE V**

#### **SOLICITOR**

##### **§ 5.01 Appointment and Qualifications of Solicitor.**

The Mayor shall appoint a solicitor for an indefinite period. The solicitor shall be a person or firm of persons licensed to practice law in Pennsylvania. The Mayor may remove the solicitor at any time, with or without cause.

##### **§ 5.02 Powers and Duties.**

The Solicitor shall be the chief legal officer of the City and shall furnish legal advice to the Mayor, City Council and City Manager concerning any matter arising in connection with the exercise of their official powers and duties. The Solicitor shall have the right to access the records of any officer, department, board, or commission of the City as necessary in the performance of their duties.

##### **§ 5.03 City Council Conflict Solicitor.**

City Council shall have the authority to appoint a Solicitor to represent their interests in the event of a dispute or conflict between the City Council and the Mayor. This Solicitor shall be only permitted to be employed to work for City Council on a specific issue for a defined period of time.

##### **§ 5.04 Compensation.**

The Mayor shall set the compensation of the Solicitor with approval of City Council.

## **ARTICLE VI**

### **ENGINEER**

#### **§ 6.01 Appointment and Qualifications of Engineer.**

The Mayor, with the confirmation of City Council, shall appoint an Engineer for an indefinite period. The Engineer shall be a person or firm of persons that shall be a Pennsylvania registered Professional Engineer (P.E.). The Mayor may remove the engineer at any time, with or without cause, with approval by a majority vote of the total number of Council.

#### **§ 6.02 Powers and Duties.**

The Engineer shall have the superintendence, direction and control of the civil engineering matters of the City at the direction of the Mayor.

#### **§ 6.03 Compensation.**

The Mayor shall set the compensation of the Engineer with Council approval.

## **ARTICLE VII**

### **AUTHORITIES, BOARDS, COMMISSIONS AND COMMITTEES**

#### **§ 7.01 Appointment.**

The Mayor shall, with the confirmation of the City Council, appoint the members of authorities, boards, commissions and committees of the City. If the City Council fails to act on the appointment(s) within thirty (30) days of the Mayor's recommendation, the appointment(s) shall be deemed approved. All such appointments shall serve at the pleasure of the Mayor except where a definite term has been established by law. If a vacancy occurs, the Mayor shall recommend a candidate to fill such vacancy within ninety (90) days. If after ninety (90) days the Mayor fails to nominate or fill any position, the City Council shall make the appointment to fill the vacancy.

#### **§ 7.02 Qualifications.**

Appointees shall be a City resident for at least one (1) year prior to appointment and shall be at least eighteen (18) years of age, unless the position is governed by in the Pennsylvania Municipal Authorities Act, which shall then prevail.

## **ARTICLE VIII**

### **CITY CLERK**

#### **§ 8.01 Appointment of City Clerk.**

The Mayor shall, pursuant to the City Manager's recommendation, hire and appoint the City Clerk.

#### **§ 8.02 Qualifications.**

The City Clerk shall be a resident of the City for at least one (1) year immediately preceding their appointment and shall continue to reside within the City during his/her tenure.

#### **§ 8.03 Responsibilities and Duties.**

The City Clerk shall have the responsibilities and duties including but not limited to the following:

- A. Shall report directly to the City Manager.
- B. Responsible for all publishing and advertising requirements.
- C. Shall record meeting minutes, resolutions, ordinances and other documents.
- D. Shall be responsible to receive and send correspondence of and for the City Council.
- E. Shall administer oaths.
- F. Shall certify records and documents.
- G. Shall attest signatures and certify ordinances and resolutions.
- H. Shall perform and be responsible for any and all other duties as may be required by the City Manager, this charter and the administrative code.

#### **§ 8.04 Salary and Position.**

The position shall be a part-time position and may be an independent position or incorporated into an existing staff position within the City. The salary shall be set by the Mayor and approved by the City Council.

## **ARTICLE IX**

### **TAX COLLECTOR**

#### **§ 9.01 Appointment.**

The Mayor shall, pursuant to the City Manager's recommendation, hire and appoint the Tax Collector.

#### **§ 9.02 Responsibilities and Duties.**

The tax collector, by virtue of his/her office, shall be the tax collector of the city and may be the collector of county, school, and institution district taxes, assessed or levied in the city by the proper authorities therein.

#### **§ 9.03 Salary.**

The position of Tax Collector shall be a part-time position and may be an independent position or incorporated into an existing staff position within the City. The Mayor shall set the salary of the Tax Collector with approval by City Council.

## **ARTICLE X**

### **INDEPENDENT AUDITOR**

#### **§ 10.01 Appointment and Qualifications.**

The City Council shall hire and appoint the Independent Auditor through a Request for Proposal (RFP) process. The Independent Auditor shall be a person or firm of persons that shall be at least a Certified Public Accountant (CPA).

#### **§ 10.02 Responsibilities and Duties.**

The Independent Auditor shall have the responsibilities and duties including but not limited to the following:

- A. Shall perform an audit on the City's financial statements to express an opinion on the fair presentation of the City's basic financial statements as a whole, annually or as more often as directed to do so by the Mayor or City Manager, examine and audit the accounts of all bureaus, officers, and departments which collect, receive, and disburse public moneys, or who are charged with the management, control, or custody thereof, and in every case shall report of such examination, audit and settlement to the Mayor. The independent auditor shall likewise audit and report upon the accounts of any such officer upon the death, resignation, removal or expiration of the term of the said officers. The

independent auditor shall likewise audit and report upon the accounts of any library to which the city makes appropriations, those of any institution owned by the city, and those of National Guard units to which the city makes appropriations.

- B. Shall audit all the accounts of any municipal officer in any department of the city government who may be charged with the duty, or who may perform the services, of receiving and disbursing the funds of any association, society, or organization of municipal employees or persons, directly or indirectly connected with the municipal government, for the benefit, relief, or pensioning of firemen, policemen, or other municipal employees or persons as aforesaid.
- C. All such audits shall be made within as short a time as possible after the close of the fiscal year, and be annually reported to the Mayor and City Council at its first meeting in March.
- D. Shall make a report to the Mayor and City Council, at its first meeting in March in each year, of the audits which shall have made of the accounts of the officers having charge, custody, control or disbursement of such public moneys and other funds, showing the balance in their hands respectively, and, within ninety days of the close of the fiscal year, the independent auditor shall file a copy of the said Annual Report to Mayor and City Council with the Department of Community and Economic Development. It shall be lawful for the city or any taxpayer thereof on its behalf or any officer whose account is settled or audited to appeal from the settlement or audit to the Court Of Common Pleas of Luzerne County within forty-five (45) days after the said annual report to the Mayor and City Council has been filed. If the appellant is a taxpayer or any officer charged as aforesaid, he shall file a bond, with one or more sufficient sureties, conditioned to pay all costs thereafter accruing in case a decision shall not be obtained more favorable to the party on whose behalf the appeal shall be taken than that contained in the said report. The independent auditor shall also prepare an intelligible summary of said reports, showing the fiscal condition of the affairs of the city, and post one copy of said summary in a conspicuous place in the City Hall.
- E. May conduct quarterly audits or reviews of any and all of the City's funds and financials as directed by the City Manager and/or Mayor.

#### **§ 10.03 Compensation.**

The City Council shall set the compensation through an approved contract awarded through the Request for Proposal (RFP) process.



## **ARTICLE XI**

### **BUDGET AND FINANCE**

#### **§ 11.01 Fiscal Year.**

The fiscal year of the City shall commence on the first day of January and conclude on the last day of December of each year.

#### **§ 11.02 Budget.**

The Mayor and City Manager shall be responsible for the preparation of the annual budget and shall present to the City Council the proposed budget of the next fiscal year and an accompanying budget message by the October Business Meeting or October 15, whichever shall occur first.

The budget shall be a complete financial plan and shall consist of an operating budget, a capital budget and any other budgets of the city as well as all funds, taxes, anticipated revenues and expenditures. The budget shall be balanced. The budget shall include the tax levies necessary to produce anticipated revenues.

The budget format shall be detailed within the Administrative Code.

The budget shall also include a simple, clear general summary of the detailed contents of the budget in addition to the budget and budget message.

#### **§ 11.03 Budget Message.**

The budget message shall explain the programs to be undertaken and their financial implications. It shall describe the important features of the budget; indicate any major changes from the current fiscal year; summarize the borough's debt position; and include such other material as the Mayor deems necessary.

#### **§ 11.04 Budget Hearing.**

City Council must schedule a public budget hearing prior to the final adoption of the budget. The hearing must be scheduled in accordance with § 2.12 Meetings.

#### **§ 11.05 Adoption.**

The budget shall be available for public inspection for at least thirty (30) days prior to final adoption. Upon completion of the budget hearing and the lapsing of the thirty (30) days public inspection period, but not later than December 15 of the year in which the proposed budget is submitted, City Council shall adopt the budget by ordinance with or without amendment. City Council may add to, delete from, increase or decrease any appropriation item in the operating or

capital budget. No amendment to the budget shall increase authorized expenditures to an amount greater than the total of estimated income and cash reserve unless action is also taken to increase revenue to such a level. No amendment shall change expenditures required by law or collective bargaining agreements or for debt service or for any estimated unpaid obligations. The budget shall become effective on January 1 of the following year.

#### **§ 11.06 Failure to Adopt.**

If the City Council fails to adopt a budget on or before December 15 of the year in which the budget is submitted, the proposed budget as submitted by the Mayor and City Manager shall be deemed approved.

Funds for the proposed expenditures shall stand appropriated to the same extent as if favorable action thereon had been taken by the City Council.

#### **§ 11.07 Budget Veto.**

Upon adoption of the budget by City Council, it shall be delivered to the Mayor within one (1) business day. The Mayor shall then either approve or veto the budget pursuant to § 3.04 (E). If the Mayor vetoes the budget, he shall return it to the City Council with explicit reasons for the veto immediately. The City Council may override the veto, pursuant to § 2.13 (D). A special meeting of City Council may be scheduled to only override the budget veto of the Mayor with twenty-four hours notice to the Mayor, City Manager and a public posting within City Hall and on the City's website, but not later than December 31.

#### **§ 11.08 Revenues.**

The City shall not increase all sources of revenues by more than one hundred-eight percent (108%) of the preceding year. Revenues shall be construed as all taxes, fees and regular income and shall not include grants, one-time sources, proceeds from the sale of assets, sewer fees, solid waste fees and other restricted revenues. Total revenues combined from said sources shall not exceed one hundred-eight percent (108%) of the preceding year unless the Council by majority vote of the whole, which shall be three (3), shall, upon due cause shown by resolution, petition the Court of Common Pleas, in which case the court may order that revenues may exceed one hundred-eight percent (108%) of the preceding year for one year and those additional revenues shall not be used to determine the one hundred-eight percent (108%) ceiling for the succeeding year.

The City may enact a Homestead Exemption pursuant to the Homestead Exemption Law of the Commonwealth.

#### **§ 11.09 Emergency Appropriations.**

To meet a public emergency as declared by the Mayor, the City Council may, by emergency ordinance, make emergency appropriations from contingent funds, revenue received from

budgeted sources but in excess of estimates, revenue received from sources not budgeted, or revenue from any other source available to the City in an emergency.

#### **§ 11.10 Payment of Funds.**

No payment shall be made or obligation incurred against any appropriation unless there is a sufficient unencumbered balance in such appropriation. No payment of any funds of the City shall be made except upon the recommendation of the City Manager or his/her designee and the approval of the City Council. The City Manager shall be responsible for the preparation of checks or drafts of the City. In order to be valid, all checks and/or drafts of the municipality shall bear the signature of any two (2) of the four (4) officials of the City hereinafter designated from time to time by the Mayor. Designated signatories for all checks and/or drafts of the City are the Mayor, City Manager, City Clerk and City Council President.

#### **§ 11.11 Lapse of Appropriations.**

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent 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, but it shall lapse if three years pass without any disbursement from or encumbrance of the appropriation.

#### **§ 11.12 Comprehensive and Long Range Plan**

The Mayor and City Manager shall be required to draft a comprehensive long-range plan setting forth a plan for public services, community and economic development, future land use, capital improvements and fiscal policy based upon the current conditions, forecasted trends and desired goals and objectives of the City. A detailed description of the scope of the plan shall be included in the Administrative Code.

The plan shall be submitted to the City Council for consideration and adoption by ordinance. The plan shall be updated every five years.

All planning ordinances, such as the Subdivision and Land Development Ordinance, Zoning Ordinance and all other related ordinances shall be updated in accordance with the City's Comprehensive Plan.

#### **§ 11.13 Accounting System.**

The City Manager shall be responsible for the City's accounting system and a complete description of the accounting system shall be detailed in the Administrative Code and at a minimum it shall conform with General Accepted Accounting Principles (GAAP).

## **ARTICLE XII**

### **INITIATIVE, REFERENDUM AND RECALL**

#### **§ 12.01 General Powers.**

In accordance with the procedures hereinafter provided, the citizens of Nanticoke reserve the power to propose agenda items; the power to propose and enact or reject ordinances independent of the City Council and Mayor; and to recall any elective municipal officer (if by amendment to the Commonwealth's Constitution is permitted to do so).

#### **§ 12.02 Initiative.**

Initiative petitions may, except as otherwise provided herein, propose City Council agenda items on any subject. Such petitions shall be signed by a minimum of one hundred (100) qualified electors registered within the City. Each petition shall contain the specific agenda item and details.

#### **§ 12.03 Referendum.**

Referendum petitions may, except as otherwise provided herein, propose ordinances on any subject or challenge a proposed and subsequently adopted ordinance. Such petitions shall be signed by a minimum of two hundred fifty (250) qualified electors registered within the City.

Each petition circulated to propose an ordinance shall contain the full text of the measure and enacting clause which shall read as follows: "Be it enacted by the people of Nanticoke City". No signature contained in a petition or initiative shall be valid unless affixed to the petition within sixty (60) days prior to filing of the petition. The affirmative vote of the majority of those voting on the proposed ordinances shall be sufficient for its adoption, and upon certification by the County Board of Elections the ordinance shall become effective.

Each petition circulated to prevent, challenge or overturn a proposed and subsequently adopted ordinance shall contain the specific name of the challenged ordinance and the stated reasons for challenge and shall be presented to the office of the Mayor no later than sixty (60) days after adoption. If a challenge petition is presented to the Mayor with the required signatures, the ordinance in question shall be temporarily delayed from becoming effective until after the referendum vote. No signature contained in a petition to challenge shall be valid unless affixed to the petition within ninety (90) days prior to filing of the petition. The affirmative vote of the majority of those voting on the proposed challenge shall be sufficient for its overturn, and upon certification by the County Board of Elections the ordinance shall be overturned.

#### **§ 12.04 Recall.**

This section shall only be valid if and when the Commonwealth of Pennsylvania's Constitution is amended or changed to permit recall.



Petitions demanding the recall of any elective municipal officer shall be signed by a minimum of three hundred (300) qualified electors within the City. No signature contained in a petition on recall shall be valid unless affixed to the petition within ninety (90) days prior to filing of the petition. If the majority of the votes cast on the question are in favor of recall, the office shall become vacant immediately upon certification of the results by the County Board of Elections. Any vacancy created by recall shall be filled in accordance with § 2.09 or § 3.08 of this Charter.

#### **§ 12.05 Procedures, Form and Sufficiency.**

Initiative, referendum and recall shall be governed by the procedures and rules for form and sufficiency of petitions set forth in the Article. All initiative petitions shall be filed with the City Clerk. An initiative filed with the City Clerk and meets all the requirements as set forth shall appear on the next monthly Business Meeting's agenda. All referendum and recall petitions shall be filed with the County Board of Elections, which shall be the judge for their sufficiency. Any duly proposed ordinance, or any question challenging an ordinance or any question on recall, shall be submitted to the voters of the City at the next regularly scheduled election held at least forty-five (45) days after the petitions are filed at the County Board of Elections.

#### **§ 12.06 Limitations.**

Initiative and referendum powers shall not extend to:

- A. The budget or capital program, or any ordinance relating to the appropriation of money or levy of taxes. In addition, initiative shall not extend to any issue relating to the salaries of municipal officials or employees, and referendum shall not extend to emergency ordinances.
- B. No recall petition shall be filed against any incumbent of an elective office within the first year or last year of the term of their office, nor shall such petition be filed more than once during their term of office; but an officer who has been re-elected for a successive term shall be subject to recall at any time, but not more than once, during such term.

#### **§ 12.07 Repeal and Amendment of Ordinances.**

Any ordinance adopted or approved by the voters of the City under this Article may not be amended or repealed within two (2) years of the effective date, except upon vote of the electorate.

Any ordinance repealed through referendum shall not be re-enacted within two (2) years of the effective date of the repeal, except through referendum procedures.



### **§ 12.08 Conflicts.**

If two or more conflicting ordinances are approved or adopted in the same election, City Council shall, within sixty (60) days, enact amendments or repeals or both as may be necessary to remove the conflict between these two or more ordinances. In so doing, City Council shall whenever reasonably possible, preserve the provisions of that ordinance which, among those in conflict, was adopted or approved by the greatest number of affirmative votes.

## **ARTICLE XIII**

### **GENERAL PROVISIONS**

#### **§ 13.01 Rights and Liabilities of the City.**

Nanticoke City shall own, possess, and control rights to property of every kind owned, possessed or controlled by Nanticoke City when this Charter takes effect. It shall be subject to all debts, liabilities, and duties prior to the Charter taking effect.

#### **§ 13.02 Amendment.**

This Charter may be amended as provided by the Pennsylvania Home Rule Charter and Optional Plans Law, Act 62 of 1972, as amended from time to time, or as otherwise provided by law.

#### **§ 13.03 Definitions and Rules of Construction.**

- A. Where a public hearing is required by this Charter or by ordinance, it shall consist of a special meeting held by the City Council, at which there will be only one order of business, and at which the public shall be permitted to speak on the subject specified.
- B. Public notice of the schedule of regular meetings shall be given once for each calendar year, and shall show the regular dates and times for meetings and the place at which meetings are held and shall be advertised in the same manner as an ordinance in § 2.13.
- C. Adoption of an ordinance occurs when City Council has completed all action necessary prior to submission of the ordinance to the Mayor for his consent or veto.
- F. Enactment of an ordinance occurs when it is adopted by the City Council and signed by the Mayor; or it is passed by the City Council by an affirmative vote of a majority plus one of the total number of City Council, which shall be four (4), over the veto of the Mayor; or the Mayor fails to either veto or sign a measure adopted by City Council within the ten (10) day period provided in § 2.13 (C) of this Charter.

- G. Applicable law and applicable laws shall refer to those laws of the United States of America and/or the Commonwealth of Pennsylvania that the City is required to observe and adhere to in the exercise of its home rule powers.
- H. Charter shall mean the Home Rule Charter of Nanticoke City.
- I. Days shall mean calendar days unless business days are specifically referenced. A calendar day is any day including a Saturday, Sunday and legal Holiday. If action is required on a calendar day that is not a City business day, action shall be required by the next business day, which shall mean any day not Saturday, Sunday or legal Holiday.
- J. An elector is a person who is legally qualified and eligible to vote, having met the age, residency and registration requirements as set forth by law.
- K. The singular shall be construed to be the plural whenever the context shall require and the plural shall be construed to be the singular whenever the context shall require.

#### **§ 13.04 Authorities, Boards, Commissions and Committees.**

There shall be such authorities, boards, commissions and committees as shall be established from time to time by applicable state law or by action of the City Council and/or Mayor. Appointments shall be made as provided in § 3.04 (H) and Article 7 of this Charter.

All authorities, boards, commissions and committees shall be required to submit an annual written report of the previous year's actions and activities and the current year's proposed actions and activities to the Mayor by February of each year. All reports shall be shared with the City Council and public.

#### **§ 13.05 Departments and Direction.**

The Mayor may establish 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.

The City Manager shall direct and supervise all departments, offices, agencies and employees unless otherwise expressly stated differently in this charter. The City Manager may, with the consent of the Mayor, appoint an officer, who is subject to the City Manager's direction and supervision, to assist in the supervision and direction of all departments, offices, agencies and employees.

#### **§ 13.06 Ordinance Updates.**

The Subdivision and Land Development Ordinance (SALDO), the zoning ordinance and all other planning ordinances shall be reviewed and updated at least every five (5) years.

### **§ 13.07 Failure to Comply with Charter.**

Any official, employee or agent who fails to comply knowingly or unknowingly with any provision, clause, section, or article of this Charter commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding one hundred dollars (\$100) plus costs of prosecution.

If the court determines that an official, employee or agent willfully or with wanton disregard violated a provision, clause, section or article of this Charter, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs that shall be the official's, employee's or agent's personal responsibility to pay. If the court finds that the legal challenge was of a frivolous nature or was brought with no substantial justification, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs.

### **§ 13.08 Severability.**

If any Article, Section, Subsection, sentence, clause or phrase in this Charter shall be held unconstitutional, invalid, or inapplicable by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder of this Charter.

### **§ 13.09 Charter Amendment**

This Charter may be amended pursuant to the Home Rule Charter and Optional Plans Law (53 Pa. C.S. 2901 to 3171).

## **ARTICLE XIV**

### **ADMINISTRATIVE CODE**

#### **§ 14.01 Procedure for Adoption.**

Within twelve months after the effective date of this Charter, the Transitional Committee shall propose and adopt an administrative code for the City government consistent with the provisions, spirit, and purpose of this Charter. At any time, and from time to time, the City Council may adopt, by ordinance, amendments to the administrative code at least two (2) years after initial adoption.

#### **§ 14.02 Provisions.**

The administrative code shall set forth the organization and administrative structure and procedures of the City government and shall include, among other things, an enumeration of departments, offices and other administrative units of the City government and the division of

powers among them; the internal procedures for their operations; the duties of the department heads and their relationship to the City Manager and/or Mayor.

In addition, the administrative code shall, at all times, make adequate and specific provisions for, but not be limited to, the following:

- A. Code of Ethics
- B. Conflict of Interest
- C. Personnel Policy
- D. Procurement Policy
- E. Competitive Bidding Process
- F. Interim Administrative Department Structure and Process
- G. And any other policies, rules, regulations, and procedures necessary and desirable to the efficient administration of the City.

## **ARTICLE XV**

### **TRANSITION**

#### **§ 15.01 Nature of Article.**

The provisions of this Article shall relate to the transition from the existing form of government (Third Class City Code) to the form of government provided in this Charter, the provisions of this article shall constitute temporary exceptions thereto.

#### **§ 15.02 Election to Adopt Charter.**

This Charter shall be submitted to a vote of the electors of Nanticoke City at the general election to be held on the eighth (8<sup>th</sup>) day of November 2011. The affirmative vote of a majority of those voting on the proposed charter shall be sufficient for its adoption.

#### **§ 15.03 Effective Date of the Charter.**

This Charter shall, upon approval by referendum in the manner provided by law, become effective as of January 1, 2012.



#### **§ 15.04 Continuity.**

All ordinances, resolutions, rules and regulations, which are in force at the time this Charter becomes effective and are not inconsistent with the provisions of this Charter shall continue in force until amended or repealed. Unless forbidden by the Constitution of the Commonwealth of Pennsylvania or an Act of the General Assembly of Pennsylvania, all laws relating to or affecting this City or any of its divisions, agencies, offices, departments, or employees, which are in force when this Charter becomes effective, are superseded to the extent that they are inconsistent or interfere with the effective operation of this Charter or of ordinances or resolutions adopted pursuant thereto.

All City departments, units, offices, agencies, authorities, boards, commissions and committees shall continue to exercise the powers conferred upon them, unless modified by the provisions of this Charter or by action taken hereunder.

#### **§ 15.05 Authority of Existing Elected Officials.**

All elected officials in office at the time this Charter becomes effective shall remain in office for the full term to which they were elected.

The current Mayor shall assume the duties, powers and responsibilities of the Mayor set forth in this Charter except for § 3.04 (G), the initial hiring of the City Manager, which shall be completed by the Transitional Committee.

The current City Council members and those City Council members that shall take a new term effective January 2, 2012 shall assume the duties, power and responsibilities of the City Council set forth in this Charter. The one (1) vacancy in the City Council shall be filled by a majority vote of the total number of City Council no later than the February 2012 Business Meeting. With consideration that the elected positions of the City Controller and City Treasurer are abolished under this Charter and their duties and responsibilities are to be assigned by the Mayor under this Charter, City Council shall first select from the current elected City Controller or City Treasurer for the City Council vacancy. In the event the Controller and Treasurer refuse the appointment to the City Council, the City Council shall fill the vacancy pursuant to §2.09 of this Charter.

If the Controller and Treasurer refuse the appointment or are not selected to be appointed to the City Council, they shall complete their respective terms of office as required by state law. The Mayor shall resolve any disputes that may arise between the elected Controller and elected Treasurer and the individuals and/or departments to which their duties and responsibilities have been assigned.

When current elected offices shall become vacant that are no longer an elective position under this Charter, those offices shall cease to exist, and the duties shall be assumed by the executive and/or administrative branch of the City as deemed necessary.



### **§ 15.06 Transitional Committee**

Upon approval of this Charter by the voters of Nanticoke City, a Transitional Committee shall be formed to help ensure that necessary and desirable transitional activities are successfully completed to the ends that this Charter shall become fully operational on its effective date resulting in a smooth, orderly, and seamless transition from the City's existing form of government to the form provided under this Charter.

The Transitional Committee shall be comprised of the seven (7) members of the Government Study Commission, one of whom shall be designated as the Chair of the Committee, one (1) member of the City Council who shall be selected by the City Council at its January 2012 Business Meeting and the Mayor, totaling nine (9) members.

Any vacancy on the Transitional Committee shall be filled by a majority vote of the remaining members of the Transitional Committee. Any person filling a Transitional Committee vacancy shall be an elector of the City of Nanticoke.

### **§ 15.07 Transitional Powers and Procedures**

The Transitional Committee shall have the following powers and duties:

- A. Shall be responsible for drafting and adopting the Administrative Code, Code of Ethics, Conflict of Interest, Personnel Policy, Procurement Policy, Competitive Bidding Process and any other policy, rule, regulation and procedure that is necessary or desirable to advance the efficient transition of the administration of the City under the Charter. No changes shall be made to codes, policies, rules, regulations, and procedures adopted by the Transitional Committee until at least two (2) years have elapsed after adoption.
- B. Shall undertake the search, recruitment, hiring and appointment of the initial City Manager.
- C. Shall hire a legal advisor, recording secretary and consultant to guide and assist the Transitional Committee, and the City Council shall appropriate funds and approve payment for the legal advisor, recording secretary and consultant services pursuant to the terms and conditions accepted and approved by the Transitional Committee.
- D. Shall engage in other activities it deems appropriate for ensuring transitional activities are successfully completed.
- E. Shall incur and authorize expenses necessary to effectively carry out transitional activities.
- F. Shall have the authority to make binding decisions in order to effectually carry out transitional activities.
- G. Shall complete all tasks and responsibilities by January 1, 2013 and the Transitional Committee shall be dissolved on said date.

H. Members of the transitional committee shall serve in their capacity without compensation.

#### **§ 15.08 Officers and Employees.**

- A. Nothing in this Charter, except as otherwise specifically provided, shall affect or impair the rights or privileges of persons who are city elected officials or employed by the City under the terms of a collective bargaining agreement at the time this Charter is adopted; and nothing shall diminish the rights or privileges of any former employee or any present employee relative to their pension or retirement benefits.
- B. Employees holding a municipal position on the effective date as well as the adoptive date of this Charter shall not be subject to competitive tests as a condition for continuance in the same position, but in all other respects such employees shall be subject to the personnel policy and other sections provided for in this Charter.
- C. The City Administrator holding that position on the effective and adoptive date of this Charter shall become the City Manager on an interim basis with the full duties, responsibilities and powers as outlined in this Charter and shall serve in that capacity until the Transitional Committee makes a permanent hiring and appointment of the City Manager.
- D. Members of authorities, boards, commissions or committees in office at the time this Charter takes effect shall remain in office for as long as their respective terms of appointment shall continue, unless and until an authority, board, commission or committee shall be abolished, combined with another, or reconstituted, pursuant to this charter, in which the case the members thereof shall vacate their respective offices upon written notice from the Mayor.

#### **§ 15.09 Administrative Organization.**

Subject to provisions of this Charter and until the effective date of the administrative code, the Mayor shall have the authority to provide for the issuance of written directives for the administration of the executive branch in such a manner as the Mayor shall deem necessary for the most efficient operation of the City. All directives shall be copied to the Transitional Committee and the City Council upon issuance.

#### **§ 15.10 Personnel Actions.**

Subject to provisions of this Charter and until the effective date of the personnel policy required by Article XV of this Charter, the Mayor shall have the authority to establish by written directive a personnel policy for City employees with regard to the hiring, discharging, disciplining and promotion of such employees. All personnel actions shall be made on the basis of merit and in accordance with the provisions of said personnel policy established by written directive. A copy of the directive shall be copied to the Transitional Committee and the City Council upon issuance.

## CERTIFICATION

This is certified to be a true and correct copy of the Recommended Home Rule Charter as approved by the Nanticoke City Government Study Commission at its meeting held on August 16, 2011, for submission to the voters of Nanticoke City at the general election to be held on November 8, 2011.

### NANTICOKE CITY GOVERNMENT STUDY COMMISSION

GERALD HUDAK, CHAIRMAN



LEONARD OMOLECKI, VICE-CHAIRMAN



WILLIAM BROWN, SECRETARY



YVONNE BOZINSKI, TREASURER



ROBERT KATRA



LINDA PRUSHINSKI



GARY SMITH



Attorney Jeffrey J. Malak served as the Commission's Solicitor.

Jeffrey K. Box, President & CEO, Alan Baranski, AICP, Vice-President and Joe Chacke, Government Services Manager of the Northeastern Pennsylvania Alliance (NEPA) served as the Commission's Professional Consultant.

Donna Wall served as the Commission's Recording Secretary.