

CHARTER REVIEWS AND UPDATES

PANEL DISCUSSION

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(The views expressed are solely those of the speaker.)

TOPICS

Amending a Charter – All at once or piecemeal?

Charter Review – Top down or bottom up?

Scope of Review – Broad or narrow?

Timing of Review – Scheduled or ad hoc?

Clauses to Consider:

- Structure – Council-Manager, Mayor-Council, Commission
- Number of council members
- Duties of council members
- Compensation – set by whom? internally, outside position, independent commission
- Representation – at large or by district
- Term limits – If yes, how many? How to implement as to current council members?
- Filling vacancies – Appointment or election?
- Ordinance adoption process

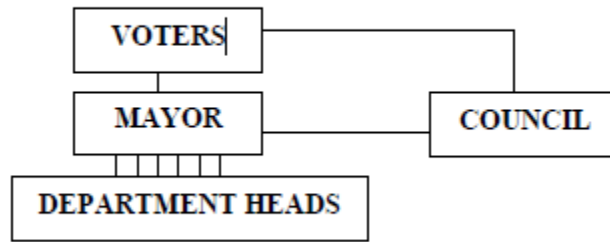
Referral to voters - examples

The explanatory statement - examples

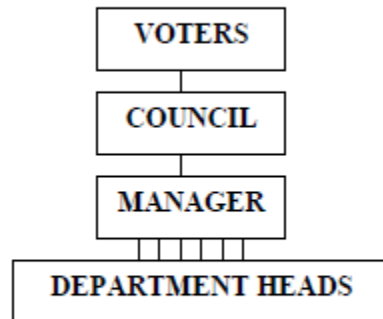
MATERIALS

- Beaverton Charter (1981)
- LOC Model Charter for Oregon Cities (7th Edition) 2018
Available online at no charge:
<https://www.orcities.org/application/files/3015/7228/7626/ModelCharterUpdate03-15-19.pdf>
(accessed May 7, 2022)
- Nation Civic League Model City Charter (8th Edition) 2011
The newly released 9th Edition is available online at no charge:
<https://www.nationalcivicleague.org/resources/model-city-charter-9th-edition/> (accessed May 7, 2022)
- BMRS and LOC Model Charter for Oregon Cities (Mayor-Council Form of Government) (1967)
- Comparison of charter clauses between Beaverton Charter of 1981, LOC Model Charter of 2018, and NCL Model City Charter of 2011
- Beaverton Agenda Bill 20047 - referring proposed charter to voters
- Beaverton Agenda Bill 20074 - approving an explanatory statement
- Washington County Voters' Pamphlet Ballot Measure 34-298 (May 2020)

Mayor-Council Organizational Structure



Council-Manager Organizational Structure



AGENDA BILL

Beaverton City Council Beaverton, Oregon

SUBJECT: Review of the Beaverton Charter
of 1981

FOR AGENDA OF: 09-03-19 **BILL NO:** 19226

MAYOR'S APPROVAL: 

DEPARTMENT OF ORIGIN: City Attorney 

DATE SUBMITTED: 08-26-19

CLEARANCES: Mayor's Office 

PROCEEDING: Work Session

EXHIBITS:

1. Beaverton Charter of 1981
2. Model Charter for Oregon Cities (Council-Manager)
3. Model City Charter
4. Model Charter for Oregon Cities (Mayor-Council)
5. Spreadsheet Showing City Charters by Topic

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$0	BUDGETED \$0	REQUIRED \$0

RECOMMENDED ACTION:

Hold a work session to review the Beaverton Charter of 1981 (Exhibit 1).

HISTORICAL PERSPECTIVE:

A city charter is like a constitution. Both are foundational documents that set out the principles, structures, and process of government. Article XI, section 2, of the Oregon Constitution grants "the legal voters of every city and town ... [the] power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon." Beaverton voters enacted the city's current charter in November 1980 and subsequently amended the charter once, in 2008, when voters amended section 44 relating to urban renewal.

The Beaverton Charter provides for a mayor-council form of government. The mayor-council system is characterized by having an executive mayor who is elected by the voters, and a separately elected legislative city council. The mayor has substantial administrative authority over the city and its departments and may veto council legislation. To assist in managing the city, the Beaverton Charter requires the mayor to appoint a chief administrative officer who "is the principle managerial aide to the mayor and shall perform such duties as may be assigned by the mayor."

INFORMATION FOR CONSIDERATION:

To assist in the review, model charters are included with this agenda bill. Exhibit 2 is the Model Charter for Oregon Cities, 7th ed., published in 2018 by the League of Oregon Cities. The model

charter establishes a council-manager form of government. In a council-manager form of government the elected city council appoints a city manager to oversee the administrative operations. The role of mayor is largely ceremonial in such a form of government.

Exhibit 3 is the Model City Charter, 8th ed., published in 2011 by the National Civic League. This model charter establishes a council-manager form of government, but includes an appendix that describes how the model charter can be modified to provide to a mayor-council form of government.

The League of Oregon Cities once published a model charter for a mayor-council form of government. Exhibit 4 is the League of Oregon Cities last published edition of a Model Charter for Oregon Cities for a mayor-council form of government.

Exhibit 5 is a spreadsheet that organizes by topic the charter provisions dispersed in Exhibits 1, 2 and 3, to allow the reader to systematically compare similarities and differences between the charters.

THE BEAVERTON CHARTER OF 1981

PREAMBLE

To provide for the government of the City of Beaverton, Washington County, Oregon, and to repeal all charter provisions of the city enacted prior to the time that this charter takes effect.

Be it enacted by the people of the City of Beaverton, Washington County, Oregon:

Chapter I NAME AND BOUNDARIES

Section 1. TITLE OF ENACTMENT.

This enactment may be referred to as the Beaverton Charter of 1981.

Section 2. NAME.

The City of Beaverton, Washington County, Oregon, shall continue to be a municipal corporation, with the name, "CITY OF BEAVERTON".

Section 3. BOUNDARIES.

The boundaries of the City of Beaverton shall remain the same as existed on the effective date of this act or as hereafter increased or decreased pursuant to law. There shall be maintained and available for public inspection at the repository of city records at least two copies of this charter containing an accurate, up-to-date description of the boundaries.

Chapter II POWERS

Section 4. POWERS OF THE CITY.

The city shall have all powers which the constitutions, statutes, and common law of the United States and of this state expressly or impliedly grant or allow municipalities, as fully as though this charter specifically enumerated each of those powers.

Section 5. CONSTRUCTION OF CHARTER.

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. This charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and the municipal home rule provisions of the state constitution.

Chapter III FORM OF GOVERNMENT

Section 6. WHERE POWERS VESTED.

Except as this charter provides otherwise, all powers of the city shall be vested in the council.

Section 7. THE COUNCIL.

The council shall be composed of five councilors elected at large to serve a four year term. If this charter is adopted, the councilors in office at the time of the effective date of this charter shall continue in office, each until the end of the councilor's term of office as fixed by the charter of the city in effect at the time this charter is adopted. Following adoption of this charter the four councilors in office at the time this charter is effective shall appoint the fifth councilor who shall serve from the effective date of this charter until a successor, elected to a four year term at the 1982 biennial November general election, takes office.

Section 8. MAYOR.

The mayor shall be elected at the regular biennial general November election every four years for a term of four years to begin on the first day of January following the election, but the mayor in office at the time this charter is effective shall continue in office until December 31, 1984, and until a successor is elected and qualified.

Section 9. OTHER OFFICERS.

A. The council, by majority vote of the entire council, shall appoint and may remove a municipal judge, city attorney and auditor for the city.

B. The mayor shall appoint and may remove an assistant to the mayor and such other officers as the mayor deems necessary. The assistant to the mayor is the principal managerial aide to the mayor and shall perform such duties as may be assigned by the mayor.

Section 10. SALARIES.

Except that the salary for the mayor shall not be set at less than eighty percent (80%) of the salary of a District Court Judge for the State of Oregon, compensation for the services of city officers and employees shall be fixed as the council may direct.

Section 11. QUALIFICATION OF ELECTIVE OFFICERS.

No person may fill an elective office of the city unless at the time of the election or appointment the person is a qualified elector of the state and has resided continuously in the

city during the six months immediately preceding the election or appointment. A person, after taking office, must remain a resident of the city and qualified elector of the state in order to continue to hold the office. The council is the final judge of the qualifications and election of its own members.

Chapter IV THE COUNCIL

Section 12. MEETINGS.

The council shall hold a regular meeting at least once each month in the city at a time and at a place which it designates. It shall adopt rules for the government of its proceedings. The mayor or two or more members of the council may call special meetings of the council in a manner prescribed by general ordinance adopted by the council.

Section 13. QUORUM.

A majority of the incumbent members of the council shall constitute a quorum to do business, but a smaller number may meet and compel attendance of the absent members in a manner provided by ordinance. Every member of the council who is present shall be counted for the purpose of constituting a quorum, even if the member does not vote on one or more issues.

Section 14. RECORD OF PROCEEDINGS.

The council shall keep a record of its proceedings and the ayes and nays upon a question before it shall be taken and entered in the record.

Section 15. PROCEEDINGS TO BE PUBLIC.

Except as state law may provide otherwise, the deliberations and proceedings of the council and other deliberative bodies of the city shall be public.

Section 16. MAYOR'S FUNCTION AT COUNCIL MEETINGS.

The mayor shall preside at council meetings. Except in case of a tie, the mayor shall not vote on matters before the council. In case of a tie, the mayor shall cast the deciding vote. The mayor shall preserve order, enforce the rules of the council and determine the order of business under the rules of the council.

Section 17. PRESIDENT OF THE COUNCIL.

At its first meeting after this charter takes effect and thereafter at its first meeting of each succeeding year, the council shall elect a president from its membership. Except as otherwise

provided in this charter, when the mayor is absent from the city or unable for any reason to function as mayor, the president shall:

- A. Preside at council meetings;
- B. Have a vote on all questions before the council, except that he or she shall not possess or exercise the mayor's vote to break a tie as set forth in section 16 of this charter; and
- C. Possess, with the exception of the veto power vested in the mayor by section 35 of this charter and the powers of the mayor pro tem provided in section 20 of this charter, the legal powers and be subject to the legal limitations incident to the office of mayor.

Section 18. EXCEPTION

Except as otherwise provided in this charter, the concurrence of a majority of the members of the council present who vote is necessary to determine a question before the council.

Chapter V
POWERS AND DUTIES OF CITY OFFICERS

Section 19. MAYOR.

Except as provided to the contrary in this charter, the mayor is the executive and administrative head of the government of the city. In exercising this power the mayor shall:

- A. Devote his entire time to the discharge of his official duties and, except when circumstances necessitate otherwise, attend all meetings of the council;
- B. At the beginning of each calendar year, and may at other times, report to the council as to the affairs and needs of the city and recommend legislation the mayor considers necessary and desirable;
- C. Appoint the committees provided by the rules of the council; appoint and remove all members of boards or commissions, subject to confirmation by the council; and, except as provided to the contrary in this charter, appoint and remove other appointive officers and employees; subject to the further requirements that:
 - 1. An appointment or removal made by the mayor to any board or commission does not take effect unless a majority of the members of the entire council confirm the appointment or removal or the council fails to act upon appointment or removal within fifteen (15) calendar days after the council's notice of the mayor's action; and

2. Unless waived by a majority vote of the entire council, a member of any committee, board or commission shall be a resident of the city;

D. Have, with the exception of the council, city attorney, city auditor or over the judicial activities of the municipal judge, general supervision and control over appointive city officers and employees and their work with power to transfer an employee from one department to another, to the end of obtaining the utmost efficiency in each of them;

E. Sign all records of proceedings approved by the council and all authorized writings;

F. See that all ordinances are enforced and that the provisions of all franchises, leases, contracts, permits and privileges granted by the city are observed;

G. Act as the purchasing agent for all departments of the city under his supervision and control;

H. Prepare and submit to the budget committee the annual budget estimates and such reports as that body requests;

I. Supervise the operation of all public utilities owned or operated by the city and have general supervision over all city property.

Section 20. OTHER MAYOR-RELATED PROVISIONS.

A. Mayor Pro Tem. Except as provided to the contrary by this charter, whenever the mayor is absent from the city, is unable to act as mayor, or whenever the office becomes vacant, the assistant to the mayor shall act as mayor pro tem and possess the administrative powers and duties of the mayor. Although the mayor pro tem shall not preside at council meetings, vote on questions before it, nor possess a veto, the mayor pro tem is entitled to sit with the council and take part in all council discussions. No mayor pro tem, however, may appoint or remove a city officer or employee except with the approval of a majority of the entire council.

B. Ineligible Persons. The mayor may not appoint or employ with the city his or her spouse nor any person related to him or her by consanguinity or affinity within the third degree.

Section 21. OTHER CITY OFFICERS.

A. Municipal Judge. The municipal judge is a judicial officer of the city and at all times shall be admitted to practice law in the State of Oregon. There shall be a municipal court of the City of Beaverton, Washington County, Oregon. The council, by intergovernmental agreement, may have some or all of the duties and responsibilities of the municipal judge or the functions of the municipal court performed by and through a branch of the state judicial system. The court shall

be open for the transaction of business at times specified by the council. All area within the city is within the territorial jurisdiction of the court. The municipal judge has jurisdiction over all infractions and offenses, whether civil or criminal in nature, defined and made punishable by ordinances of the city and over all actions brought to recover or enforce forfeitures or penalties defined or authorized by ordinances of the city. The municipal judge may issue process for the arrest of any person accused of an offense against the city, commit any such person to jail or admit such person to bail pending trial, issue subpoenas, compel witnesses to appear and testify in any cause before the court, compel obedience to such subpoenas, issue any process necessary to carry into effect the judgments of the court, and punish for contempt of court. Except as otherwise provided by ordinances or this charter all proceedings in the municipal court shall be governed by the applicable general laws of the state governing district courts.

B. City Attorney. The city attorney shall at all times be admitted to practice law in the State of Oregon.

C. Auditor. The auditor shall at all times be licensed to practice as an auditor under the state municipal audit law. The auditor shall perform the annual audit and examination required by the state municipal audit law and such other audit duties as may be designated by the council.

Chapter VI ELECTIONS

Section 22. REGULAR CITY ELECTIONS.

Regular city elections shall be held at the same time and places as biennial elections for electing state and county officers, in accordance with applicable state election laws. At each regular city election all elective officers to be nominated or elected and all matters submitted to the electors at that time shall be voted upon.

Section 23. SPECIAL ELECTIONS.

The council, by resolution, may call and provide the time, manner and means for holding a special election. Notice of such special election shall be given at least ten (10) days prior to the election in the manner provided by the action of the council ordering the election.

Section 24. QUALIFICATIONS OF ELECTORS.

Every person who is a resident of the city and who qualifies as a legal voter under state law may vote in city elections.

Section 25. CANVASS OF ELECTION RETURNS.

In all elections held in conjunction with state and county elections the state law governing the filing and canvassing of returns shall apply. The results of each election shall be entered in the record of the council. The record shall state the number of votes cast for and against each measure, the names of the officers elected, and the measures enacted or approved. In the event of a tie vote for candidates the election of a successful candidate shall be determined by a public drawing of lots.

Section 26. CERTIFICATE OF ELECTION.

Immediately after completion of the canvass the city elections officer shall issue a certificate of election to each person elected. The certificate shall be prima facie evidence of the facts which it states.

Section 27. COMMENCEMENT OF TERMS OF OFFICE.

The term of office of a person elected at a November general biennial election shall commence on the first day of January following the election.

Section 28. OATH OF OFFICER.

Each officer, upon entering office, shall take an oath or affirm that he or she will support the constitutions and laws of the United States and of Oregon and the charter and ordinances of the City, and that he or she will perform the duties of the office to the best of his or her ability.

Section 29. NOMINATIONS, NUMBERED COUNCIL POSITIONS AND NONPARTISAN PRIMARY AND GENERAL ELECTIONS.

A. Nominations. The name of any elector qualified for elective office as provided in Section 11 of this charter may be placed on the primary ballot for an elective office of the city. The name of such an elector shall be submitted to the county clerk to be printed upon the city ballot whenever a petition containing said candidate's nomination, written acceptance and signatures of not fewer than ten (10) nor more than twenty (20) qualified electors has been filed with the city elections officer. Said petition shall be in a form to be prescribed by the city council.

B. Primary Elections. A non-partisan primary election shall be held in each even numbered year, or as hereafter provided by the constitution or general laws of Oregon regulating state partisan primary elections, and on the day and month fixed for such state partisan primary elections.

C. Numbered Council Positions. The nomination of mayor and councilors shall be non-partisan and shall be made in conformity with methods hereinafter provided. Council positions shall be numbered in consecutive order. Each councilor shall be designated by the same position as the councilor whom he or she has succeeded or will succeed in office. In all proceedings for the

nominations of candidates for the office of councilor, every petition for nomination, nominee's acceptance and certificate of election, ballot or other document used in connection with nominations for councilors shall state the official number of the position as councilor to which such candidate aspires. His or her name shall appear on the ballot only for such designated position. At all elections each such office of councilor to be filled shall be separately designated on the ballot by official position number as herein provided, in addition to other matter required by law to appear thereon. In case no nomination is made at the primary election, nominations may be made for the general election by position in the same manner as herein set forth for primary elections. An incumbent councilor may not file for nomination for or election to any councilor position except the one he or she presently fills.

D. Limited Filing. A candidate may not file for more than one numbered position in any one year nor can a candidate file for another council position in the same year after withdrawing the original filing.

E. Majority of Votes Required. In all primary elections the two persons having the highest number of votes to any municipal office shall be deemed nominated for the run-off election for that office unless one candidate receives a majority of all votes cast at said primary election, in which event that person alone shall be deemed to have been nominated. If two persons have been nominated for any office and the nomination of one of those persons is disqualified for any reason, then the person receiving the third highest number of votes at the primary election for that office shall be deemed nominated for the run-off election for that office to replace the person who was disqualified.

Section 30. VOTER'S PAMPHLET.

A. All candidacies and measures submitted to the voters of the city in a primary, special, or general election shall be publicized by voter's pamphlet, in accordance with city ordinance. No voter's pamphlet shall be prepared for any election for which no city measures are submitted to the voters and not more than one person has filed or been nominated for any city office.

B. If the council finds that there was a material misstatement of fact published in the city voter's pamphlet which was submitted by or in behalf of a person nominated or elected to the council, the nomination or election of that person is nullified.

Section 31. WRITE-IN VOTES.

The ability of the voters of the city to nominate or elect a candidate by write-in vote shall be provided on all ballots.

Chapter VII VACANCIES IN OFFICE

Section 32. VACANCIES IN OFFICE.

A. An office becomes vacant:

1. Upon the incumbent's death; adjudicated incompetence; conviction of a crime pertaining to the office or unlawful destruction of public records; resignation; recall from office; or ceasing to possess the qualifications for the office;
2. Upon the failure of the person elected or appointed to the office to qualify therefor within ten (10) days after the time for the term of office to commence; or
3. In the case of a councilor, upon that person's absence from meetings of the council held within any consecutive sixty (60) days period without the consent of the council, and upon a declaration by the council of the vacancy.

B. Upon request of a majority of the members of the council, the municipal judge shall determine and find in writing whether under the provisions of this section a vacancy exists in the office of mayor.

Section 33. FILLING OF VACANCIES IN ELECTIVE OFFICES.

Vacancies shall be filled as follows:

A. If less than one year remains in the term of the person who held that vacant office, the vacancy shall be filled by majority vote of the remaining members of the council. The appointee shall serve the unexpired term of the predecessor to the office; or

B. If one year or more remains in the term of the person who held the vacant office or if the office is not filled and no person takes office under Section 27 of this charter for any reason, the vacancy shall be filled at a special election called and provided for by resolution of the council. The resolution of the council shall provide that the person:

1. Shall be elected at the first election date that meets all requirements of state and city election laws;
2. Shall serve the unexpired term of office of the predecessor to the office, or if no person has taken office, then the remaining term of office;

3. Is required to receive a majority of the votes cast for candidates for the office at the election at which the office is filled; if no candidate receives a majority at the first election, then a run-off election shall be held between the two candidates receiving the highest number of votes at the first state election date available thereafter; and

4. Shall serve until a successor to the office is duly elected and qualified therefor.

C. Until a vacancy is filled by the special election and a person takes office in accordance with subsection B of this Section, the remaining members of the council shall appoint a person to fill the vacancy for the interim period of time.

Chapter VIII ORDINANCES

Section 34. ORDAINING CLAUSE.

The adopting clause of all ordinances hereafter adopted shall be, "The City of Beaverton Ordains as Follows:".

Section 35. MODE OF ADOPTION; ATTESTATION AND APPROVAL; VETO; OVERRIDING OF VETO.

A. Mode of Adoption.

1. Except as provided to the contrary in subsections 2., 3., and 4. of this section, every ordinance of the council, before being finally adopted, shall be read fully and distinctly in open council meeting on two different days, provided that the second reading must be at least six days after the first reading.

2. Both readings may be by title only by unanimous vote of all councilors present and voting on the question, provided that, prior to first reading, a copy of the ordinance is provided for each councilor and three copies are filed for public inspection at the repository for city records.

3. An ordinance adopted after being read by title alone has no legal effect if it differs substantially from its terms as it was thus filed prior to such reading, unless each section incorporating such a difference is read fully and distinctly in open council meeting as finally amended prior to being adopted by the council.

4. An ordinance may be adopted at a single meeting of the council by unanimous vote of all councilors present and voting on the question upon being first read in full and then by title.

B. Attestation and Approval. Upon adoption of an ordinance by the council, the keeper of the record of proceedings shall endorse it with the date of council adoption, the attestor's name and title of office. Thereafter the ordinance shall be delivered to the mayor by personally serving a duplicate original upon the mayor as soon as practicable. The mayor, within ten (10) days of the date of actual receipt of the ordinance, shall return it to the keeper of the record of proceedings with or without the mayor's approval, or with a veto.

C. Veto. The mayor may veto an ordinance or other legislative enactment adopted by the council by endorsing the duplicate original as such and attaching a written statement to it explaining the reasons for the veto. If the ordinance is returned without approval or veto, the ordinance shall have legal effect as if approved.

D. Overriding of Veto. At the next regular meeting of the council after the mayor returns an ordinance vetoed, the council shall consider the ordinance and may adopt the ordinance over the veto of the mayor by a four-fifths (4/5ths) vote of all members of the council, and the ordinance then takes effect in accordance with Section 36 of this charter.

Section 36. WHEN ORDINANCES TAKE EFFECT.

An ordinance takes effect thirty (30) days after its adoption by the council and approval by the mayor or passage over the mayor's veto. When the council deems it advisable, an ordinance may provide a later time for it to take effect. In the event of any emergency, where the reasons for the emergency have been expressly stated, an ordinance may take effect immediately upon its adoption by the council and approval by the mayor or passage over a veto, or at any other designated time within thirty (30) days thereof.

Chapter IX PUBLIC IMPROVEMENTS

Section 37. CONDEMNATION.

The necessity for taking property by condemnation shall be determined by the council and declared by a resolution describing the property and stating the use to which it is to be devoted.

Section 38. PUBLIC IMPROVEMENTS AND SPECIAL ASSESSMENTS.

The procedures for making, altering, vacating or abandoning a public improvement, and levying, collecting and enforcing the payment of special assessments for public improvements or other services to be charged against real property, shall be governed by ordinance or, to the extent not so governed, by the applicable state laws. Action on any proposed public improvement, except a water or sewer improvement declared by the council to be needed at once because of an emergency, shall be abandoned and not reinitiated for six (6) months upon a remonstrance thereto by the owners of land which bears sixty percent (60%) of the estimated assessed cost of the improvement. In this section “owner” means the record holder of legal title or, where land is being purchased under a land sale contract recorded or verified in writing by the record holder of legal title to the land, the purchaser is deemed the “owner.”

Section 39. BIDS FOR PUBLIC CONTRACTS.

As defined and except as otherwise provided, governed or exempted by ordinance, any public contract in excess of \$5,000.00 may be let only to the lowest responsible bidder.

Chapter X
MISCELLANEOUS PROVISIONS

Section 40. LIMITATION ON INDEBTEDNESS.

A. Voluntary Floating Indebtedness. Except by consent of a majority of the voters at an election, the city’s voluntary floating indebtedness shall not exceed \$25,000.00 at any one time. For purposes of calculating the limitation, the legally authorized debt in existence at the time this charter takes effect shall not be considered. All city officials and employees who create or officially approve any indebtedness in excess of this limitation shall be jointly and severally liable for the excess.

B. Bonded Indebtedness. Except as authorized by state law, the city shall not issue and sell general obligation or revenue bonds unless authorized by the consent of a majority of the voters at an election.

Section 41. EXISTING ORDINANCES CONTINUED.

All ordinances and other enactments of the city consistent with this charter and in force when it takes effect shall remain in effect until amended or repealed.

Section 42. INITIATIVE AND REFERENDUM.

The Initiative and Referendum powers, which are reserved to the qualified voters of each municipality, shall be exercised under Article IV, Section 1(5) of the Oregon Constitution.

Section 43. ZONE CHANGE NOTICE.

Before initially hearing any proposed quasi-judicial amendment to the zoning map (hereafter “zone change”) pursuant to the Zoning Ordinance of the City of Beaverton, the council, or any board, commission or person delegated by the council to conduct the initial evidentiary hearing, shall cause the owners of record of the real property which is the subject of the proposed zone change to be notified of the date, time and place of the initial hearing. The notice shall be in writing, sent by certified mail, postmarked at least thirty (30) days before the date of the initial hearing, and shall inform the property owner of the right to testify for or against the proposed zone change.

Section 44. LIMITATION OF POWERS OF THE GOVERNING BODY OF THE CITY OF BEAVERTON IN REGARDS TO URBAN RENEWAL.

Section 1. The Governing Body of the City of Beaverton shall not approve any Urban Renewal Plan unless approved by a majority vote in the City of Beaverton at a November or May election. Further, any urban renewal agency shall not be comprised exclusively of members of the City Council. (Amendment approved by the voters November 4, 2008)

Section 45. REPEAL OF PREVIOUSLY ENACTED PROVISIONS.

All charter provisions of the city enacted prior to the time that this charter takes effect are hereby repealed.

Section 46. TIME OF EFFECT OF CHARTER.

This charter shall take effect January 2, 1981.



MODEL

LEAGUE OF OREGON CITIES

Model Charter for Oregon Cities

**SEVENTH EDITION
JANUARY 2018**



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FOREWORD

This is the 7th edition of the Model Charter for Oregon Cities. It is the second published by the League of Oregon Cities. Previous versions were published by the Bureau of Governmental Research and Service at the University of Oregon.¹

The purpose of the Model Charter is to serve as a guide for charter drafting by city officials and citizens by providing a foundation for meeting different needs and policy choices about city government structure. It is not intended for submission to community voters without discussion. Each city that undertakes charter revision or the preparation of a new charter must consider provisions and procedures that best serve its unique community.

This 2018 version contains several minor changes from the 6th edition of 2004. The format continues as one document. All models prior to 1988 had two separate versions: one for the mayor-council form of government and one for the council-manager form of government. Language for the council-manager form is now presented in the text. Except for the city manager section 8.1, this model is useful for cities without a city manager. Alternative mayor-council language is included in the footnotes.

This edition makes numerous clarifications, simplifications and style changes from previous versions including the addition of a table of contents and an updated section numbering system.

¹ The first Oregon Model Charter was published in 1947; revisions were published in 1951, 1959, 1967, 1988 and 2004.

PREAMBLE

We, the voters of _____, Oregon exercise our power to the fullest extent possible under the Oregon Constitution and laws of the state, and enact this Home Rule Charter.²

Section I NAMES AND BOUNDARIES

Section 1.1. Titles. This charter may be referred to as the 20____ Charter.³

Section 1.2. Names. The City of _____, Oregon, continues⁴ as a municipal corporation with the name City of _____.⁵

Section 1.3. Boundaries. The city includes all territory within its boundaries as they now exist or are legally modified. The city will maintain as a public record an accurate and current description of the boundaries.

Section II POWERS

Section 2.1. Powers. The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant⁶ or allow⁷ the city, as fully as though this charter specifically enumerated each of those powers.⁸

Section 2.2. Construction. The charter will be liberally construed⁹ so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.

Section 2.3. Distribution. The Oregon Constitution reserves initiative and referendum powers as

² This uses the “voters” language of Article XI, section 2 of the Oregon Constitution and makes clear the intent to use all the home rule power.

³ Insert the year the charter is adopted and the city name. For convenience, this may be used as the charter’s short title.

⁴ The continuity of a city’s existence is not broken by the adoption of a new charter.

⁵ If this section changes the name of the city, it may read: “The municipal corporation previously known as the City of _____ continues under this charter as a municipal corporation with the name ‘City of _____.’”

⁶ The city home rule amendments to the Oregon Constitution reserve powers to city voters. Oregon Constitution, Article XI, section 2 (1906, 1910). The Oregon Supreme Court has said that the amendments are a “continuous offer” of “all powers properly belonging to municipal government.” *Robertson v. City of Portland*, 77 Or 121, 127 (1915). The offer is conditional. City voters may accept the offer by adopting charter terms. This general grant of power accepts the offer completely.

⁷ The US Constitution does not mention cities, but does not restrict city actions. The Oregon Constitution imposes some restrictions, but also authorizes city actions. Federal and state statutes impose many requirements and restrictions on cities, but still authorize or allow them a wide range of action. “Allow” in this section is intended to provide a basis for city authority to act even though the city cannot identify clear statutory authority for the city action. It assumes the authority is municipal in nature and not prohibited by federal or state law.

⁸ Appendix A discusses the legal basis for general grants of authority.

⁹ This requirement that the charter be liberally construed is intended to negate the effect of a rule of strict construction of city charters known as Dillon’s Rule.

to all municipal legislation to city voters.¹⁰ This charter vests all other city powers in the council except as the charter otherwise provides. The council has legislative, administrative and quasi-judicial authority. The council exercises legislative authority by ordinance, administrative authority by resolution, and quasi-judicial authority by order. The council may not delegate its authority to adopt ordinances.¹¹

Section III COUNCIL

Section 3.1. Council. The council consists of a mayor¹² and six councilors¹³ nominated and elected from the city at large.¹⁴

Section 3.2. Mayor. The mayor presides over and facilitates council meetings, preserves order, enforces council rules, and determines the order of business under council rules. The mayor is a voting member of the council and has no veto authority.¹⁵

- a) With the consent of council, the mayor appoints members of commissions and committees established by ordinance or resolution.
- b) The mayor must sign all records of council decisions.¹⁶
- c) The mayor serves as the political head of the city government.¹⁷

Section 3.3. Council President. At its first meeting each year, the council must elect a president

¹⁰ Article IV, section 1, subsection (5) of the Oregon Constitution.

¹¹ While part of federal and state government structures, separation of powers is rarely found in cities. The council has powers analogous to those of the three branches of the federal government and the three departments of the Oregon government. The context, substance and form of council decisions determine the nature of the power exercised. Only the council may adopt ordinances and exercise its legislative authority. Only its legislative authority is subject to voter initiative and referendum. The council may by ordinance delegate its administrative and quasi-judicial authority.

¹² Although some charters provide that the mayor is not a member of the council, this model recommends that the council include the mayor as a member. This means that the mayor participates in and votes on matters before the council as do other council members. Section 3.2 states that the mayor is a voting member of the council. If the mayor is not to have a council vote, then section 3.1 should state that the council consists of a specified number of councilors elected from the city at large.

¹³ Some Oregon cities have five-member councils. If the council is to have five members, “six” needs to be changed to “four.” A city may want a larger council of nine members or more. If so, “six” needs to be changed accordingly.

¹⁴ Most Oregon cities nominate and elect councilors at large. Some nominate and elect councilors by district or ward. A third option is to nominate by district and elect at large. If there are districts, then the district boundaries must be specified. The most efficient way of doing this is by ordinance. For that purpose, this section could read: “The council consists of a mayor nominated and elected at large, and six councilors nominated and elected by districts with the boundaries fixed by ordinance.” District boundaries must be periodically adjusted to meet equal protection requirements. Most charters that provide for election of councilors by district also require as a qualification that each councilor reside in the district the councilor represents and continue to so reside for the term of office.

¹⁵ Some charters permit the mayor to vote only to break a tie. If the mayor’s vote is to be so limited, this section needs to be changed accordingly.

¹⁶ The council may assign by ordinance or council rules additional duties to the mayor for authenticating ordinances, resolutions, orders, and other council documents.

¹⁷ This section adds facilitator and political leader to enhance the role of the mayor. It makes specific the apparent and inherent authority of the office of mayor. It also parallels the administrative authority of city manager in section 8.1. It follows the example of the 8th edition of National Civic League (NCL) Model Charter (2011).

from its membership. The president presides in the absence of the mayor and acts as mayor when the mayor is unable to perform duties.

Section 3.4. Rules. The council must by resolution adopt rules to govern its meetings.^{18, 19}

Section 3.5. Meetings. The council must meet at least once a month at a time and place designated by its rules, and may meet at other times in accordance with the rules and laws of the state of Oregon.

Section 3.6. Quorum. A majority of the council members is a quorum to conduct business.²⁰ In the event of a vacancy due to resignation or other events, the quorum is reduced accordingly.²¹ In the event of an absence, a smaller number may meet and compel attendance of absent members as prescribed by council rules.²²

Section 3.7. Vote Required. The express²³ approval of a majority of a quorum of the council is necessary for any council decision,²⁴ except when this charter requires approval by a majority of the council.²⁵

Section 3.8. Record. A record of council meetings must be kept in a manner prescribed by the council rules and the laws of the state of Oregon.²⁶

¹⁸ Council meetings must comply with the requirements of the Oregon Public Meetings Law. ORS 192.610 –192.710. Council rules should be considered administrative and adopted by resolution. They are easier to keep updated and less formal than if adopted by ordinance. Also, they are not subject to initiative and referendum.

¹⁹ The League has published a set of Model Rules of Procedure for Council Meetings available at:

<http://www.orcities.org/Portals/17/Library/Model%20Procedures%20for%20Council%20Meetings%203-31-17.pdf>.

²⁰ A majority is more than half of the council. For a seven-member council, a quorum is four or more.

²¹ For example, if a seven-member council has one vacant position due to resignation or other events, the quorum remains at four. If there are two vacant positions, the quorum is reduced to three. If a five-member council has one vacant position, the quorum remains at three. If there are two vacant positions, the quorum is reduced to two.

²² For example, council rules may state that the members present may order a city police officer to find and bring an absent member to the meeting. The rules may also provide a penalty for the absent member.

²³ “Express” is used here to clarify the effect of abstention from voting. At common law abstention from voting was regarded as concurrence with the decision. Thus, the concurrence could be either affirmative or negative depending on how the majority voted on a decision. “Express” is intended to make clear that an abstention from voting on a question may not contribute to answering the question affirmatively; it amounts to a “no” vote. Use of the word “express” means that no vote less than a majority of a quorum may decide affirmatively a question before the council.

²⁴ A “decision” is any action taken by council vote. This includes votes on formal documents such as ordinances, resolutions, orders and contracts. It also includes votes to direct city staff, and other questions and motions before the council. Unless the charter provides otherwise, the council may act affirmatively through less than a majority of its positions. A seven-member council thus may act through three councilors; its quorum is four. A five-member council may so act through two members; its quorum is three. A question may be decided negatively by fewer councilors than required to decide it affirmatively. For example, a 2 to 2 vote or a 2 to 1 vote when the quorum is four councilors, and one councilor is absent.

²⁵ Some charter sections require a vote of a majority of the council to make certain decisions. In this model, they are sections 4.2(a), 7.9, 8.1(b) and (d), 8.2 and 8.3(a). Section 4.2(b) requires a unanimous vote of at least a council quorum to adopt an ordinance at one meeting.

²⁶ The Oregon Public Meetings Law, ORS 192.650, requires cities to provide for sound, video, digital recording or the taking of written minutes. This section provides an independent requirement for council records and authorizes the council to adopt requirements in addition to those of state law.

Section IV LEGISLATIVE AUTHORITY²⁷

Section 4.1. Ordinances. The council will exercise its legislative authority by adopting ordinances. The enacting clause for all ordinances must state “The City of _____ ordains as follows:”.

Section 4.2. Ordinance Adoption.

- a) Except as authorized by subsection (b), adoption of an ordinance requires approval by a majority of the council at two meetings.²⁸
- b) The council may adopt an ordinance at a single meeting by the unanimous approval of at least a quorum of the council,²⁹ provided the proposed ordinance is available in writing to the public at least one week before the meeting.
- c) Any substantive amendment to a proposed ordinance must be read aloud or made available in writing to the public before the council adopts the ordinance at that meeting.
- d) After the adoption of an ordinance, the vote of each member must be entered into the council minutes.
- e) After adoption of an ordinance, the city custodian of records must endorse it with the date of adoption and the custodian’s name and title.

Section 4.3. Effective Date of Ordinances. Ordinances normally take effect on the 30th day after adoption, or on a later day provided in the ordinance. An ordinance may take effect as soon as adopted or other date less than 30 days after adoption if it contains an emergency clause.³⁰

²⁷ The most significant power granted to cities is the authority to adopt legislation. Legislation is local law that applies throughout a city. Legislative authority is properly exercised in the form of ordinances. City charters traditionally prescribe specific requirements for adoption of ordinances, and no provisions for approval of resolutions (administrative) or orders (quasi-judicial). Only using ordinances for legislation and using other forms for non-legislative decisions makes clear which council actions are subject to referendum. Oregon Constitution, Article IV, section 1(5) gives voters initiative and referendum powers over “municipal legislation.”

²⁸ Under section 3.6, the majority of the council membership must be present at the time a decision is made. If there is one or more unfilled council vacancy, the majority is calculated on the temporarily diminished membership. However, action by a majority of a quorum (e.g. three votes when quorum of four is present) is not sufficient to enact an ordinance under this section. See note 21 above.

²⁹ This section requires the presence of at least four councilors and a unanimous vote to adopt an ordinance at one meeting when there is a seven-member council. The presence of three councilors and a unanimous vote is required when the council has five members.

³⁰ Ordinances containing an emergency clause take effect immediately and are not subject to referendum. Legislation may not take effect when it is subject to referendum. Procedures for city initiative and referendum are found in ORS 250.255 to 250.355, and city ordinances. Emergency clauses are legislative and not subject to judicial review. *Kaddery v. City of Portland*, 44 Or 118 (1903). City use of an emergency clause preventing a referendum on the ordinance is not subject to federal court review as a violation of civil rights. *Stone v. City of Prescott*, 173 F3d 1172 (9th Cir 1999).

Section V ADMINISTRATIVE AUTHORITY³¹

Section 5.1. Resolutions. The council will normally exercise its administrative authority by approving resolutions.³² The approving clause for resolutions may state “The City of _____ resolves as follows:”

Section 5.2. Resolution Approval.

- a) Approval of a resolution or any other council administrative decision requires approval by the council at one meeting.³³
- b) Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the council adopts the resolution at that meeting.
- c) After approval of a resolution or other administrative decision, the vote of each member must be entered into the council minutes.
- d) After approval of a resolution, the city custodian of records must endorse it with the date of approval and the custodian’s name and title.

Section 5.3. Effective Date of Resolutions. Resolutions and other administrative decisions take effect on the date of approval, or on a later day provided in the resolution.³⁴

³¹ Councils formally exercise their administrative authority in the form of resolutions. Administrative decisions normally implement requirements of city ordinances and state statutes. Examples include city budgets, budget amendments, financial transfers, public contracts, fees and charges, council rules, and city personnel rules. Administrative decisions often are “internal” and relate to the city government. City charters traditionally prescribe specific requirements for adoption of ordinances (legislative), and include no provisions for approval of resolutions (administrative). This model suggests that charters specifically recognize council resolutions as the proper form for the exercise of its administrative authority. Use of this form for non-legislative decisions makes clear which council actions are subject to referendum. Oregon Constitution, Article IV, section 1(5) gives voters initiative and referendum powers over “municipal legislation”, but not municipal administration.

³² The preferred method for the council to exercise its administrative authority is by resolution. However, “normally” is used in this sentence to allow the council to approve contracts and other documents, give direction to the city manager, city attorney and city employees, and make other administrative decisions by approving a motion without adopting a resolution.

³³ Under section 3.6, the majority of the council membership must be present at the time a decision is made. If there is one or more unfilled council vacancy, the majority is of the temporarily diminished membership. Action by a majority of a quorum (e.g. three votes when quorum of four is present) is sufficient to approve a resolution under this section. See note 19 above.

³⁴ ORS 221.310(3) applies to cities of 2,000 or more. It provides that a resolution may take effect any time after passage by the city council. The resolution must state the resolution effective date in a separate section.

Section V QUASI-JUDICIAL AUTHORITY³⁵

Section 6.1. Orders. The council will normally exercise its quasi-judicial authority by approving orders. The approving clause for orders may state “The City of _____ orders as follows:”

Section 6.2. Order Approval.

- a) Approval of an order or any other council quasi-judicial decision requires approval by the council at one meeting.³⁶
- b) Any substantive amendment to an order must be read aloud or made available in writing to the public at the meeting before the council adopts the order.
- c) After approval of an order or other council quasi-judicial decision, the vote of each member must be entered in the council minutes.
- d) After approval of an order, the city custodian of records must endorse it with the date of approval and the custodian’s name and title.

Section 6.3. Effective Date of Orders. Orders and other quasi-judicial decisions take effect on the date of final approval, or on a later day provided in the order.

Section VII ELECTIONS

Section 7.1. Councilors. The term of a councilor in office when this charter is adopted is the term for which the councilor was elected.³⁷ At each general election after the adoption, three councilors will be elected³⁸ for four-year terms.³⁹

³⁵ Quasi-judicial authority is normally exercised in the form of orders. Under this authority, the council holds hearings and is required to make decisions. The most common examples are land use matters and nuisance proceedings. City charters traditionally prescribe specific requirements for adoption of ordinances (legislative) and include no provisions for adoption of orders (quasi-judicial). This model suggests that charters specifically recognize council orders as the proper form for the exercise of quasi-judicial authority. Use of this form for non-legislative decisions helps make clear which council actions are subject to referendum. Oregon Constitution, Article IV, section 1(5) gives voters initiative and referendum powers over “municipal legislation,” but not municipal quasi-judicial decisions.

³⁶ Under section 3.6, the majority of the council membership must be present at the time a decision is made. If there is one or more unfilled council vacancy, the majority is of the temporarily diminished membership. Action by a majority of a quorum (e.g. three votes when quorum of four is present) is sufficient to approve an order under this section. See note 22 above.

³⁷ This sentence anticipates the charter vote at a primary or special election. If the charter vote is at a general election, the words “or is elected at the time of adoption” should be added.

³⁸ Oregon Constitution, Article II, section 14a requires cities to hold their regular elections for officers at the same time as the general biennial elections for state and county officers are held. ORS 254.035 implements this provision. ORS 254.056 states that general elections are held on the first Tuesday after the first Monday in November of even-numbered years. It further states that primary elections may be held on the third Tuesday in May of even-numbered years.

³⁹ This language assumes that adoption of the charter will not affect the council size or terms of office. It does provide a transition from the city government before charter adoption to the city government under the charter.

Section 7.2. Mayor. The term of the mayor in office when this charter is adopted continues until the beginning of the first odd-numbered year after adoption. At every other general election after the adoption, a mayor will be elected for a four-year term.⁴⁰

Section 7.3. State Law. City elections must conform to state law except as this charter or ordinances provide otherwise. All elections for city offices must be nonpartisan.⁴¹

Section 7.4. Qualifications.

- a) The mayor and each councilor must be a qualified elector under state law, and reside within the city for at least one year immediately before election or appointment to office.⁴²
- b) No person may be a candidate at a single election for more than one city office.
- c) Neither the mayor nor a councilor may be employed by the city.⁴³
- d) The council is the final judge of the election and qualifications of its members.

Section 7.5. Nominations. The council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city councilor position.⁴⁴

Section 7.6. Terms. The term of an officer elected at a general election begins at the first council meeting of the year immediately after the election, and continues until the successor qualifies and assumes the office.⁴⁵

Section 7.7. Oath. The mayor and each councilor must swear or affirm to faithfully perform the duties of the office and support the constitutions and laws of the United States and Oregon.

⁴⁰ A four-year term for the mayor and four-year staggered terms for an even-number of councilors gives the voters an opportunity to vote for a majority of the council positions at every other general election. It may also be necessary to change “first” to “second” in the first sentence. A mayor elected to a four-year term when this charter provision is adopted would serve until the beginning of the second odd-numbered year after adoption. If the mayor is to have a two-year term, the second sentence of this section needs to be changed. The mayor is appointed from the council by the councilors under the Incorporation Act, ORS 221.130. If this is to continue under the charter, then the second sentence of section 7.2 needs to be replaced by the sentence: “At the first meeting of the council in each odd-numbered year, the council must appoint one of its members to serve as mayor for a term of two years.” If the mayor is appointed from the council, the council should have an odd number of members, and section 3.1 should be changed.

⁴¹ The last sentence of this section makes specific the Oregon tradition that local government elections are nonpartisan. This provision is included in the county model home rule charter and county charters. It is also consistent with the 8th edition of the NCL Model Charter (2011).

⁴² Courts have consistently invalidated residency qualifications of more than 12 months.

⁴³ This prohibition is intended to avoid certain conflicts of interest in city service. It bars full-time or part-time employees from serving as mayor or councilor. It does not, however, prevent the mayor or a councilor from receiving reimbursement of expenses for services.

⁴⁴ This model charter does not prescribe a nominating procedure. It allows flexibility by requiring that an ordinance govern the nominating process.

⁴⁵ These words allow for a successor to be appointed as well as elected, and require that the successor meet the necessary qualifications for the office at the time of election or appointment. Some charters have provisions limiting the number of terms or years that a citizen may serve in an elected office.

Section 7.8. Vacancies. The mayor or a council office becomes vacant:

a) Upon the incumbent's:

- 1) Death;
- 2) Adjudicated incompetence;⁴⁶ or
- 3) Recall from the office.⁴⁷

b) Upon declaration by the council after the incumbent's:

- 1) Failure to qualify for the office within 10 days of the time the term of office is to begin;
- 2) Absence from the city for 30 days without council consent, or from all council meetings within a 60-day period;
- 3) Ceasing to reside in the city;⁴⁸
- 4) Ceasing to be a qualified elector under state law;
- 5) Conviction of a misdemeanor or felony crime;
- 6) Resignation from the office; or
- 7) Removal under Section 8.1(i).

Section 7.9. Filling Vacancies. A mayor or councilor vacancy will be filled by appointment by a majority of the remaining council members.⁴⁹ The appointee's term of office runs from appointment until expiration of the term of office of the last person elected to that office. If a disability prevents a council member from attending council meetings or a member is absent from the city, a majority of the council may appoint a councilor pro tem.⁵⁰

⁴⁶ "Adjudicated incompetence" means inability or unfitness to manage one's affairs because of mental condition determined in a court proceeding.

⁴⁷ Recall of elective officers is governed by Oregon Constitution, Article II, section 18, and ORS 249.865 to 249.877.

⁴⁸ Section 7.4 requires each member to be a qualified voter and resident of the city. Under subsections (3) and (4) of section 7.8(b), moving outside the city or allowing voter registration to lapse permits the council to declare a council position vacant.

⁴⁹ Normally a single vacancy is filled at one time. This section permits the council to fill multiple vacancies at the same time. Most vacancies are created in positions filled by election. However, this section also applies to appointments to fill vacancies created in positions previously filled by an appointee to the council.

⁵⁰ A member's disability under this section is usually temporary. If the disability is permanent, it often results in the resignation of the disabled member. A permanent disability does not create a vacancy unless the member resigns. However, the council may appoint a pro tem councilor, and the appointment may continue until a successor to the disabled member is elected and takes office.

Section VIII APPOINTIVE OFFICERS

Section 8.1. City Manager.

- a) The office of city manager is established as the administrative head of the city government.⁵¹ The city manager is responsible to the mayor and council for the proper administration of all city business. The city manager will assist the mayor and council in the development of city policies, and carry out policies established by ordinances and resolutions.⁵²
- b) A majority of the council must appoint and may remove the manager. The appointment must be made without regard to political considerations and solely on the basis of education and experience in competencies and practices of local government management.⁵³
- c) The manager need not reside in the city.⁵⁴
- d) The manager may be appointed for a definite or an indefinite term, and may be removed at any time by a majority of the council. The council must fill the office by appointment as soon as practicable after the vacancy occurs.
- e) The manager must:
 - 1) Attend all council meetings unless excused by the mayor or council;
 - 2) Make reports and recommendations to the mayor and council about the needs of the city;
 - 3) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits and other city decisions;
 - 4) Appoint, supervise and remove city employees;⁵⁵
 - 5) Organize city departments and administrative structure;
 - 6) Prepare and administer the annual city budget;

⁵¹ The city manager exercises the administrative authority delegated by the city charter and the city council. The manager and the council both exercise administrative authority. Only the council may exercise legislative authority.

⁵² This gives the manager a role in policy development consistent with the 8th edition of the NCL Model Charter (2011). It makes the manager responsible for carrying out city policy adopted by council resolution or ordinance.

⁵³ This section adds more specific qualifications for city manager consistent with the 8th edition of the NCL Model Charter (2011).

⁵⁴ If the city wants the charter to require the manager to live in the city, the following may be added: “but must become and remain a resident of the city while manager.” In the alternative, if a residency requirement is desired but is not practicable due to a housing shortage or other condition, the following may be added: “but must live within 30 miles of the city.” Either requirement can be imposed more flexibly by ordinance or contract.

⁵⁵ Note that the manager appoints, supervises and removes city employees. The council appoints, supervises and removes city officers.

- 7) Administer city utilities and property;
 - 8) Encourage and support regional and intergovernmental cooperation;
 - 9) Promote cooperation among the council, staff and citizens in developing city policies and building a sense of community;⁵⁶
 - 10) Perform other duties as directed by the council; and
 - 11) Delegate duties, but remain responsible for actions of all subordinates.
- f) The manger has no authority over the council or over the judicial functions of the municipal judge.⁵⁷
 - g) The manager and other employees designated by the council may sit at council meetings but have no vote. The manager may take part in all council discussions.
 - h) When the manger is temporarily disabled from acting as manager or when the office of the manager becomes vacant, the council must appoint a manager pro tem. The manager pro tem has the authority and duties of manger, except that a pro tem manager may appoint or remove employees only with council approval.
 - i) No council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in the appointment or removal of any city employee, or in administrative decisions regarding city property or contracts.⁵⁸ Violation of this prohibition is grounds for removal from office by a majority of the council after a public hearing. In council meetings, councilors may discuss or suggest anything with the manager relating to city business.⁵⁹

Section 8.2. City Attorney. The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney. The attorney may appoint, supervise, and may remove any employees who work in and for the city attorney's office.⁶⁰

⁵⁶ Subsections (8) and (9) of this section add provisions that update the charter by recognizing the increasing importance of regional and intergovernmental issues, and the participatory nature of policy development. They are consistent with the 8th edition of the NCL Model Charter (2011).

⁵⁷ Municipal judges have administrative duties incidental to their judicial functions such as record keeping and accounting for certain funds. These administrative duties may be supervised by the city manager.

⁵⁸ A similar charter restriction was the basis for damages in *Still v. Benton*, 251 Or 463, 445 P2d 492 (1968). The court found that the mayor did not act within the scope of his authority in pressuring the manager to discharge the police chief. The chief was awarded punitive as well as general damages.

⁵⁹ This does not affect the ability of a council member to obtain information from the manager or other city employees. Council members also have at least as much right to public records as other members of the public under the Oregon Public Records Law, ORS 192.410 to 192.505.

⁶⁰ If a city attorney office is established by the charter, it is independent of the wishes of the council or manager. This language places office employees under the supervision of the attorney rather than the manager. The charter could establish the office and provide for appointment by the manager. If not created by charter, the city attorney office may

Section 8.3. Municipal Court and Judge.

- a) A majority of the council may appoint and remove a municipal judge. A municipal judge will hold court in the city at such place as the council directs. The court will be known as the Municipal Court.
- b) All proceedings of this court will conform to state laws governing justices of the peace and justice courts.
- c) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court.
- d) The municipal court has jurisdiction over every offense created by city ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court also has jurisdiction under state law unless limited by city ordinance.⁶¹
- e) The municipal judge may:
 - 1) Render judgments and impose sanctions on persons and property;
 - 2) Order the arrest of anyone accused of an offense against the city;
 - 3) Commit to jail or admit to bail anyone accused of a city offense;
 - 4) Issue and compel obedience to subpoenas;
 - 5) Compel witnesses to appear and testify and jurors to serve for trials before the court;
 - 6) Penalize contempt of court;
 - 7) Issue processes necessary to enforce judgments and orders of the court;
 - 8) Issue search warrants; and
 - 9) Perform other judicial and quasi-judicial functions assigned by ordinance.
- f) The council may appoint and may remove municipal judges pro tem.
- g) The council may transfer some or all of the functions of the municipal court to an appropriate state court.⁶²

be created by ordinance. The ordinance may provide for city attorney appointment by the council or manager. Attorney duties may be assigned by ordinance and contract.

⁶¹ ORS 221.339 gives municipal courts jurisdiction over violations and misdemeanors committed or triable in the city. Municipal courts do not have jurisdiction over felonies or designated drug-related misdemeanors as defined in ORS 423.478. The section provides that jurisdiction over misdemeanors may be limited by city ordinance.

⁶² ORS 51.035.

Section IX PERSONNEL

Section 9.1. Compensation. The council must authorize the compensation of city officers and employees as part of its approval of the annual city budget.⁶³

Section 9.2. Merit Systems. The council⁶⁴ by resolution will determine the rules governing recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees based on merit and fitness.⁶⁵

Section X PUBLIC IMPROVEMENTS

Section 10.1. Procedure. The council may by ordinance provide for procedures governing the making, altering, vacating, or abandoning of a public improvement.⁶⁶ A proposed public improvement may be suspended for six months upon remonstrance by owners of the real property to be specially assessed for the improvement. The number of owners necessary to suspend the action will be determined by ordinance.

Section 10.2. Special Assessments. The procedure for levying, collecting and enforcing special assessments for public improvements or other services charged against real property will be governed by ordinance.

Section XI MISCELLANEOUS PROVISIONS

Section 11.1. Debt. City indebtedness may not exceed debt limits imposed by state law.⁶⁷ A charter amendment is not required to authorize city indebtedness.

Section 11.2. Ordinance Continuation. All ordinances consistent with this charter in force when it takes effect remain in effect until amended or repealed.

Section 11.3. Repeal. All charter provisions adopted before this charter takes effect are repealed.⁶⁸

Section 11.4. Severability. The terms of this charter are severable. If any provision is held invalid

⁶³ ORS 294.388(5) requires that the budget list the salary for each officer and employee. If councilors are to receive no compensation for their services to the city, the following may be added to this section: "However, no councilor may receive compensation for serving in that capacity." This prohibition does not prevent reimbursement for expenses.

⁶⁴ If there is a city manager, the manager may be substituted for the council. Rules adopted by the manager may be made subject to council approval. The council may also delegate authority to the city manager or city administrator to adopt rules.

⁶⁵ "Merit and fitness" allows wide discretion in the interpretation and application of personnel rules and practices.

⁶⁶ Few procedures applicable to cities appear in state statute. ORS 223.387 to 223.401 apply to assessments for local improvements. ORS 223.805 to 223.845 relate to city motor vehicle parking facilities. ORS 271.080 to 271.230 apply to vacation of certain public property.

⁶⁷ Bancroft bonds may not "exceed .03 of the latest true cash valuation of the city." ORS 223.295(1).

⁶⁸ It may be necessary to continue unusual charter provisions such as bond approvals, special levies or annexations.

by a court, the invalidity does not affect any other part of the charter.

Section 11.5. Time of Effect. This charter takes effect _____, 20____.

APPENDIX A

GENERAL GRANTS OF POWER

The first version of the Model Charter for Oregon Cities was published in 1947. It was drafted to confer powers on cities in general terms rather than by a detailed enumeration of specific powers. All subsequent revisions have continued this practice.

Since about 1910, a city charter has been viewed as a city constitution. For this reason, city powers have generally been stated in general, comprehensive terms. The charter should deal only with the basic, broad fundamentals of city government. The charter should be as concise as possible, and adaptable to changing conditions to avoid the need for frequent amendment.

Most Oregon cities have charters that grant authority for their activities under general grants of powers. In 1934, Huntington adopted a general powers charter quite similar to the 1947 model charter. Since then, almost all Oregon cities have adopted charters that resemble this model.

The Oregon Incorporation Act (now ORS 224.010-221.100) provides that cities without a home rule charter have comprehensive power and need no grants of specific powers.

A general grant of power allows a city to assume extraterritorial powers granted by statute and conditioned upon the existence of charter authority. ORS 225.020 authorizes a city to own and operate utilities outside city limits if its charter allows it such power. *Kassel v. City of Salem*, 34 Or. App. 739, 579 P.2d 875 (1978) construes this section and states that Salem's charter "accepts this offer [of extramural powers] in broad terms." These broad terms were more specific than the general grant of powers in the model. No city with a general grant has been challenged in its exercise of the power offered by ORS 225.020.

Constitutional Grants in General Terms

The 1906 home rule amendments to the Oregon Constitution empower "the legal voters of every city * * * to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State."^a They also empower "the qualified voters of each municipality" to exercise the powers of initiative and referendum "as to all local, special and municipal legislation of every character in or for their municipality[.]"^b These grants of power are general in terms.

Specific Power Derived from General Grants

Courts have often held that a general grant of power confers a particular power not specified in the grant. Such specific powers include the following:

- 1) To regulate amusement devices.^c

^a Or. Const. art. XI, sec. 2.

^b Or. Const. art. IV, sec. 1a (1906), sec. 1(5) (1968).

^c *Terry v. City of Portland*, 204 Or 478, 269 P2d 544 (1955); 33 Or Op Atty Gen 174 (1967).

- 2) To levy special assessments.^d
- 3) To develop a program of free parking using tax revenues.^e
- 4) To govern labor relations with public employees.^f
- 5) To license certain businesses or occupations.^g
- 6) To levy license taxes for revenue.^h
- 7) To provide police protection.ⁱ
- 8) To control disposal of refuse.^j
- 9) To regulate the storage of gasoline and kerosene.^k
- 10) To control streets.^l
- 11) To levy taxes in the form of licenses.^m
- 12) To adopt taxes on sales and incomes.ⁿ
- 13) To supply water.^o
- 14) To impose registration and license fees.^p
- 15) To impose fees and regulatory requirements on telecommunications providers.^q

^d *Paget v. City of Pendleton*, 219 Or 253 346 P2d 1111 (1959).

^e *Jarvill v. City of Eugene*, 289 Or 157, 613 P2d 1 (1980), US cert den at 449 US 1013 (1980). Although the majority opinion in this case relies on a specific grant of power stemming from a 1973 amendment to the Eugene city charter, this charter has been repealed. At the court of appeals level, the majority opinion relied on the general grant of power in the 1976 revised city charter to explain the city's ability to levy taxes. "In those cases, it was held that a general grant of powers in a city charter, like that contained in the Eugene charter, carries with it the power to impose revenue taxes." 40 Or App 185, 198-99, 594 P2d 1261 (1979).

^f *Beaverton v. International Assoc. of Firefighters*, 20 Or App 293, 531 P2d 730 (1975).

^g *Davidson Baking Co. v. Jenkins*, 216 Or 51, 337 P2d 352 (1959).

^h *City of Idanha v. Consumers Power, Inc.* 8 Or App 551, 495 P2d 294 (1972), aff'd, 13 Or App 431 (1973).

ⁱ *City of East Portland v. County of Multnomah*, 6 Or 62, 64 (1876).

^j *Dunn v. Gray*, 238 Or 71, 392 P2d 1018 (1964); *City of Tigard v. Werner*, 15 Or App 335, 515 P2d 934 (1973).

^k Cf. *Leathers v. City of Burns*, 251 Or 206, 444 P2d 1010 (1968).

^l *City of East Portland v. County of Multnomah*, 6 Or 62, 64 (1876).

^m *City of Idanha v. Consumers Power, Inc.* 8 Or App 551, 495 P2d 294 (1972), aff'd 13 Or App 431 (1973).

ⁿ *City of Idanha v. Consumers Power, Inc.* 8 Or App 551, 495 P2d 294 (1972), aff'd 13 Or App 431 (1973).

^o *Paget v. City of Pendleton*, 219 Or 253, 346 P2d 1111 (1959).

^p *AT & T Communications v. City of Eugene*, 177 Or App 379 (2001), rev den, 334 Or 491 (2002). The court held that a general power charter gave the city power to impose registration and license fees. The court relied on *Multnomah Kennel Club v. Department of Revenue*, 295 Or 279 (1983), a case that involved a general power county home rule charter that provided authority to impose a business income tax.

^q *Sprint Spectrum v. City of Eugene*, 177 Or App 417 (2001), rev den, 334 Or 491 (2002). The court found that home rule authority includes the taxation of businesses that conduct business within city boundaries.

APPENDIX B

PROVISIONS NOT INCLUDED IN THE MODEL CHARTER

This model charter omits many provisions contained in city charters granted by the Oregon Legislature prior to 1906, and charters adopted soon after the 1906 home rule amendments took effect. A general grant of powers replaced specific grants of authority. Subjects and procedures covered by state statutes are generally no longer included in charters. The model charter also omits provisions better left to adoption by ordinance.

Annexation Procedure

An Oregon city may not assume extramural power under its home rule charter unless authorized by state statute.⁸⁶ City power under the home rule amendments is only intramural in character.⁸⁷ A city may only exercise extramural power delegated by the Legislature.⁸⁸ A home rule charter may provide a procedure for the intramural aspects of annexation, such as the manner of acceptance of the annexation by the city. The model charter contains no provision relating to annexation of territory to a city because state statutes control annexation procedures.

Elections

Elections in Oregon are generally under the control of the Secretary of State. The conduct of elections is governed by ORS chapter 254. Many duties relating to the conduct of elections are delegated to county clerks. Time of elections, wording of ballot titles, printing of ballots and fixing of precinct boundaries are examples of matters governed by state law. City initiative and referendum requirements and process are found in ORS Chapter 250. Therefore, the model charter contains no sections relating to elections in general. Sections 7.2 and 7.5 do authorize the council to govern certain election matters by ordinance.

Subjects Covered by State Law

This model charter contains no provisions on several other subjects covered by state law:

Budgeting.....	ORS 294.305 to 294.565
Public contracts.....	ORS Chapters 279A, 279B and 279C
Assessments bonding and lien enforcement...	ORS 223.205 to 223.295 and 223.505 to 223.650
Tort liability.....	ORS 30.260 to 30.300

⁸⁶ *Thurber v. Henderson*, 63 Or 410, 415-16, 128 P 43 (1912); *State ex rel Mullins v. Port of Astoria*, 79 Or 1, 19-20, 154 P 399 (1916); *Morsman v. City of Madras*, 203 Or App 546 (2006) (holding that the state has the authority to decide whether residents of an area subject to annexation get to vote on the annexation); and *Costco Wholesale Corp. v. City of Beaverton*, 343 Or 18, 25 (2007) (stating that cities lack “inherent home-rule authority to impose * * * obligations on those outside their borders.”).

⁸⁷ *Kiernan v. City of Portland*, 57 Or 454, 464, 111 P379, 112 P 402 (1910); *State ex rel Mullins v. Port of Astoria*, 79 Or 1, 18-19, 154 P 399 (1916); *Curtis v. Tillamook City*, 88 Or 443, 454-55, 171 P574, 172 P 122 (1918).

⁸⁸ *Couch v. Marvin*, 67 Or 341, 136 P 6 (1913); *McBee v. Town of Springfield*, 58 Pr 459, 114 P 637 (1911); *Landess v. City Cottage Grove*, 64 Or 155, 129 P 537 (1913).

Debt limitations.....	ORS 223.295
Ethics.....	ORS Chapter 244
Public meetings and records.....	ORS 192.410 to 192.710
Land use planning and regulation.....	ORS Chapters 92, 197, 197A and 227
Street vacation.....	ORS 271.080 to 271.230
Condemnation.....	ORS Chapter 35; 223.005 to 223.105, 226.310 to 226.380 and 227.300.
Collective bargaining.....	ORS 243.650 to 243.782
Public Employee's Retirement System.....	ORS Chapter 238 and 238A

Other Subjects

The model charter contains no provisions on a number of other subjects that may be covered as well or better by ordinance. Such subjects include council rules, personnel rules, procedures for local improvements, levying and collecting special assessments and city commissions and committees.

Municipal Judge as Ex Officio Justice of the Peace

Some Oregon charters enacted as special legislative acts prior to 1906 provide that the municipal judge has the jurisdiction and authority of an ex officio justice of the peace. This model charter contains no such provision. A home rule charter may not grant such authority to a municipal judge; such authority may only be granted by state statute.

The decision in *In re Application of Boalt*⁸⁹ suggests that once a municipal judge is given the jurisdiction and authority of an ex officio justice of the peace by a special legislative act, it continues regardless of a subsequent home rule charter. It may be withdrawn by the Legislature. A city in this situation may retain its charter provisions conferring jurisdiction and authority of an ex officio justice of the peace on its municipal judge by enacting its new charter as an amendment to its former legislative charter. A municipal judge may continue to exercise this authority under this Supreme Court decision.

⁸⁹ 123 Or 1, 260 P 1004 (1927).

**Eighth Edition
Second Printing 2011**

Model City Charter

**A Publication of the
National Civic League**

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The 2011 Guide for Charter Commissions helps local leaders and civic activists through the complex but essential process of convening a charter or charter revision commission, explaining the role of commissioners and the elements of charter making.

**Dedicated to the memory of
Betty Jane Narver**

A National Civic League Board member of long standing, Betty Jane Narver was also the Director of the Institute for Public Policy and Management of the University of Washington. She was the first chair of the committee that advised NCL staff on the development of the *Model City Charter, Eighth Edition, First Printing*. She passed away before the work was completed; however, her wisdom is reflected within both publications.

Thank you!

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SUMMARY OF MODEL CITY CHARTER, EIGHTH EDITION

In this *Second Printing (2011), Eighth Edition, of the Model City Charter*, NCL has expanded diversity and inclusiveness language in the charter preamble to underscore the right of every individual to equal opportunities and establish policies to prohibit discrimination based on race, color, religion, national origin, gender, age, sexual orientation, gender expression, marital status, military status or physical or mental disability. Also, there is now an addendum featuring the diversity and inclusiveness language currently being used by Colorado cities and the results of a survey of Colorado municipalities conducted in 2010/2011. The survey and the *Second Printing, Eighth Edition, of the Model City Charter* were made possible with the support of The Gay & Lesbian Fund For Colorado.

In 2002, the *Model City Charter, Eighth Edition, First Printing (2002)*, presented a number of important changes made in accordance with the changing needs of communities in the 21st Century, including, diversity, community engagement and collaboration. The *Model* itself is now more than a century old, but its importance as a guide for communities remains as relevant as ever.

The Model City Charter has exerted enormous influence over the structuring of municipal governance for more than a century. Published in 2003, the eighth edition recommends the “council-manager” structure of municipal government first proposed in the 1915 model. It has become the most widely used governmental structure in American cities with a population over 10,000. The model has been refined over the years, but the fundamental principle, that all powers of the city be vested in a popularly elected council, which appoints a professional manager who is continuously responsible to and removable by the council, remains the same.

City Council: The model does not advance a preferred method for electing the council but does underscore the value of at-large elections. In keeping with the seventh edition, the eighth edition recognizes that the use of single-member districts remains popular for selecting council members as a means of ensuring compliance with the Voting Rights Act, and the benefits of the mixed form (combining at-large and single-member elections) are highlighted.

City Manager: A new emphasis was given to recognizing the professionalism of the city manager. A new emphasis on promoting long-term goals, regional and intergovernmental cooperation, and greater citizen participation is exemplified by the addition of the following tasks to the duties of the city manager: 1) Assist the council to develop long-term goals for the city and strategies to implement these goals; 2) Encourage and provide staff support for regional and intergovernmental cooperation, and 3) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community.

Mayor: The Eighth Edition emphasizes the need to further clarify the role of the mayor. It specifies certain duties of the nonexecutive mayor that are entirely consistent with the basic concept of the council-manager plan. The mayor in the council-manager government is the chief legislator, the leader of the policy-making team. The model presents two alternatives for choosing the mayor without stating a preference: direct election of the mayor by the voters and election by and from the council.

Regionalism: In the commentary sections of the eighth edition of the model charter, particular attention is paid to the increasing salience of regionalism, new information technologies, improvements in performance measurement, citizen participation in public life, and the fostering of interaction among neighborhoods.

A MODEL FOR THE 21ST CENTURY

The realization that the *Model City Charter* has exerted enormous influence in promoting the municipal reform agenda for more than a century made those responsible for the *Eighth Edition* acutely aware of the *Model's* evolution and of the obligation to make it an effective force for the future. Reforming reform is a delicate undertaking. To make revisions in the specifics of reform measures and to suggest alternatives to strongly held positions should not be viewed as rejecting the past but as building on it to meet changing circumstances with the benefit of wider experience. Institutions must be adapted to address new priorities and new concerns, and to be useful, models must assist in the process of adaptation.

As the National Civic League's Model City Charter Revision Committee undertook development of the *Eight Edition*, participants considered the concept of a model. Back in 1944, on the occasion of the National Civic League's 50th anniversary, Harold Dodds, then president of Princeton University and a former executive director and president of the National Municipal League, described the purpose of a model as being:

—... to set patterns clearly and specifically, delineating the best practice and the best thought on a problem, to correct existing defects, to set high standards which provide something to fight for instead of against ... the model laws brought stability, dignity and scientific fact to reform.⁴ They made readily available to officials and citizens the product of the able thinkers on governmental problems.”

There have been two views as to how best to fulfill this purpose. One insists that a model presents the ideal structure of local government, while the other sees a model as being based on a general principle of organization or process. In the latter case, the *Model* presents alternative means for achieving the basic end.

The first view was an essential part of the tactics of the zealous reformers of the Progressive Era. They were promoting new approaches with limited proven records, and they advocated the adoption of the new package in its entirety to ensure that the innovative logic for government reorganization was given a chance to work. At a time when the council-manager plan was a novel form of government, this view of the *Model City Charter* was quite understandable. The successors to the Progressive reformers advocated what they considered to be a tried-and-true approach and felt that alternatives deviating from this ideal were invitations to dilution and distortion that could undermine the basic reform goal. With the widespread acceptance of the council-manager form of government and its use in communities of varying size and circumstance, the current situation is quite different. A more pressing need today is to consider whether and how the council-manager plan might be adapted to respond to contemporary challenges. Such response may include using alternatives that depart from the original reform formulation.

Beginning with the 1964 edition of the *Model City Charter*, a modification of the view of the earlier reformers was evident. The foreword to that edition stated:

—For the first time, the *Model* presents, in addition to the preferred provisions, alternatives on such matters as the composition and election of the council and the selection of mayor. Some advisors and consultants objected to the inclusion of legal texts which depart from the stated preferences, but the overwhelming majority agreed that it is advisable to provide guidance for adapting the council-manager plan to a variety

of local circumstances without sacrificing the fundamental principle that the top professional serves at the pleasure of the governing body.”

The *Eighth Edition of the Model City Charter* continues to endorse the council-manager plan, but it presents alternatives for certain key provisions without indicating an absolute preference.

A Model with Alternatives

One of the changes made in the *Eighth Edition* is the inclusion of a preamble, which emphasizes that the charter is the constitution of the municipality adopted by its citizens. Some of the more important changes to the model provisions dealing with the council and the mayor are considered below:

The Council. Out of a concern for increasing the capacity for governance, the *Second Edition* stressed the importance of a small council whose members had a perspective that was greater than that of a particular neighborhood or small section of city. At the same time, proportional representation from the city at-large, or from multi-member districts in “great” cities, was included to insure that the governing body provides “fair representation of all large minorities” and is “truly representative of all elements and groups of opinion.” The option of using districts was dropped until the *Sixth Edition*, but through 1941, the Hare system of proportional representation was endorsed as the preferred way to elect the council. The current edition offers five alternatives. The importance of the at-large principle is emphasized, but the need for geographical representation or even more flexible proportional representation under certain circumstances is explained.

There is strong support for the all at-large council alternative in smaller municipalities and in those cities where assuring fair representation of minority populations is not an issue. In cities where minority representation is enhanced by election from districts, consideration of the alternatives for mixed systems, with some council members elected at large and some by districts, is recommended.

It is also recognized that councils elected entirely from districts frequently have been mandated by the U.S. Justice Department or by court decisions to assure equitable representation of racial minorities. Therefore, the all-district alternative is included in the article on elections and a special emphasis is given to districting criteria and procedures. The proportional representation alternative is continued. Concern for representation of minorities and the possibility of technological improvements that will simplify the voting process have renewed interest in proportional representation.

Whatever the alternative used to determine the composition of the council, the wide use of the council-manager plan has emphasized the central importance of the municipal council in local government. The basic principle that the executive is appointed by and responsible to the council has meant that particular attention is given to the composition of the council when local charters are under review.

The Mayor. The basic theory of the council-manager plan, which rejects the separation of powers concept with powers divided between the council and an elected chief executive, has been ambivalent on the role of the mayor in council-manager cities. Beginning in 1915, the *Model City Charter* provided that the mayor would be chosen by and from the council and would be the presiding officer of the council and head of the city for ceremonial purposes and for purposes of military law. No consideration was given to the role of the mayor as a policy leader.

The 1964 edition recognized that in practice more than half of the council-manager cities had mayors elected directly by the voters. A direct election alternative was provided, but the preference for election by council was continued.

The 1964 commentary on the mayor did take notice of the policy leadership role of the mayor and cited the fact that many mayors elected by the council --the preferred model --had provided dynamic leadership. One such mayor was Murray Seasongood of Cincinnati, who in the early 1960s said, "I am on record over the years as believing that the mayor should be a person of real importance in the council-manager plan and is as essential to its proper operation as is the manager.... The emphasis should be on giving the mayor greater stature than he now possesses in the ordinary council-manager government."

This edition of the *Model Charter* emphasizes the need to further clarify the role of the mayor. It specifies certain duties of the non-executive mayor that are entirely consistent with the basic concept of the council-manager plan. The office is quite different from that of the elected chief executive in a system that separates executive and legislative powers. Rather, the mayor in the council-manager form is the chief legislator, the leader of the policy making team. This mayor can be a "strong" mayor who, not having to overcome the offsetting power of the council or not being bogged down with the details of managing the city's staff, can focus on facilitative leadership. The mayor is effective by helping the council and staff perform better. High involvement by the council and the manager and constructive relationships among officials are indicators of successful leadership by the mayor. Effectiveness does not mean charting an independent path or taking over tasks from the manager.

The new *Model* also specifically addresses the importance of strong political leadership and the potential for such leadership by the mayor in council-manager cities. This is based on three premises. First, relationships among officials in council-manager cities are cooperative rather than contentious because powers are not divided among officials. Second, this approach to mayoral leadership stresses the contributions of all officials rather than focusing on the mayor as the driving force in city government. Third, the potential for mayoral leadership is inherent in the council-manager form so long as the office is not actually hamstrung by arbitrary limitations. The mayor occupies a strategic location shaped by his or her close relationships with the council, manager, and individual citizens and groups in the community. The mayor is able to promote communications among officials and with the public. Unusual powers are not needed for leadership and may actually curtail leadership by separating the mayor from other officials. Any augmentation of the role of the mayor must not be construed as reducing the power of the council but rather as a way to provide focus and leadership in the development of city policy. Nor should the role of the mayor intrude on the management of the city's operations by the manager.

The *Model* presents two alternative methods for choosing the mayor without stating a preference: direct election by the voters and election by and from the council. Communities are advised to consider the local situation in choosing between the two alternatives, determining which would be most conducive to the development of strong political leadership and effective professional administration.

Looking Ahead

The *Eighth Edition* was undertaken with the recognition that most municipalities now operate in a regional context that makes intergovernmental cooperation a necessity. This understanding led members of the revision committee to specify that along with his or her other duties the city manager should encourage regional and intergovernmental cooperation. A greater role for citizen participation in local governance has also been emphasized in the new model. While a time will certainly come for this edition to be revised in turn, there is no doubt that it ensures continuity with the purposes of the *Model City Charter* even as it recommends changes to meet the challenges of a new century.

MODEL BUILDING: A CONTINUING PROCESS

The influence of the *Model City Charter*, direct and indirect, can be measured in the ever-increasing use of the form of government it advocates. When it was proposed that the National Municipal League (League) endorse the council-manager plan as its model form, fewer than 50 cities had adopted the plan; by 2002 the number exceeded 3,000. Hundreds more communities operate with essential features of the plan, particularly the provision of responsible professional management. It has always been made quite clear that the model is not an absolute. It must be tailored to fit local circumstances, traditions, and legal restraints, and features of it may be used to strengthen governments, even those that do not follow the basic council-manager form.

The *Model City Charter* through its several editions has been the product of many minds and has reflected an enormous diversity of experience and preferences. It has always been informed by an abiding and unanimous commitment to the strengthening of self-government in America.

The Beginning

The publication of this new edition of the *Model* is the latest stage in the continuing process that began in 1894 with the establishment of the League. At the conclave that launched the organization, Theodore Roosevelt told his fellow founders, the leaders of municipal reform: "There are two gospels I always preach to reformers.... The first is the gospel of morality; the next is the gospel of efficiency.... I don't have to tell you to be upright, but I do think I have to tell you to be practical and efficient...."

These 1894 reformers agreed that to be practical and efficient "more was required than Roosevelt's exhortation for the 'vindication of public virtue and popular rights of conscience and duty in public life....' They had a determination 'to change the conditions which prevent good government [and] to simplify the machinery which interferes with free expression and practical enforcement of the intelligent will of the majority'" (Horace E. Deming, *City Club of New York*). This group of farsighted leaders was clearly focused on the new century just ahead. They knew that they must develop a method for addressing not only the immediate crisis in city government but also a means for giving systematic attention to the fundamental elements in the machinery of local government. Thus began the process of model building that has endured for over a century.

The "elements of a model charter for American cities" were first laid out by Edmund James James, then a University of Pennsylvania political scientist and later the president of the University of Illinois. He emphasized that "a model city charter must be...adapted to local and temporal conditions...That scheme of government is the ideal one...which under any given set of conditions makes the working of good influence easy and of bad influence hard --a form of government under which all the excellences of which a people or community is capable in a political sense can be realized...a city charter should give the people of the city the greatest degree of self-determination, both as to the form of government and as to the things which the government shall do...."

The First *Model City Charter*

In 1897, a committee of distinguished scholars and civic reformers was given the task of developing a municipal program embodying "the essential principles that must underlie successful municipal government and ... set forth a working plan or system ... for putting such

principles into practical operation....” In 1899 the committee reported its recommendations, which were published in 1900 as *A Model Municipal Program*. It included a proposed state constitutional amendment defining the relation of the municipality to the state and a model charter in the form of “a municipal corporations act.” This first *Model City Charter* called for a council elected for six-year staggered terms, a strong, elected chief executive system with very extensive powers assigned to the mayor, including appointment of all major municipal officials (except the comptroller) without advice and consent of the council. An independent civil service commission and civil service regulations were also recommended.

The recommendation of a strong elected executive was such a drastic departure from prevailing practice that it gained little acceptance. Indeed, there not only was an unwillingness to entrust such extensive powers to a mayor but there were also strong movements to interpose boards or commissions between the executive and the operating department heads to provide protective cover for many services, e.g., boards of public works, health, parks, recreation and planning. The desire was to prevent scandal, but the result was to diffuse responsibility.

A New Municipal Program and a New Model Charter. In the same year (1900) that the League published its first *Model City Charter*, the reform agenda was affected by the aftermath of a tidal wave in Galveston, Texas. The special commission used to deal with that emergency evolved into the commission form of municipal government. The legislative and executive functions were merged in a commission. The ballot was shortened and separately elected and independent boards were eliminated. It became a popular reform in the early years of the century. There was pressure for the League to endorse the commission plan model. Then as now, however, the League rejected the commission plan because it fragmented the executive and permitted too little attention to policy development. The question was how to combine the “short ballot” result that characterized the commission plan with the integrated, responsible executive provided in the League’s first model.

The answer to this question was seen clearly by Richard S. Childs as he built on the short ballot principle that he had been espousing with Woodrow Wilson and others. He promoted the ingenious combination of experience in commission-governed cities and the basic organizational feature of private business -- the appointed chief executive officer.

The Childs position was most persuasive in the deliberations of a new League Committee on Municipal Program, which was established in 1913 to review the first *Model* and other reform experience. The committee’s first report in 1914 endorsed what became known as the council-manager plan. In 1915 the League adopted a new municipal program presenting the second *Model City Charter*, which provided that all powers be vested in the council and that the administration of the city’s operations be by a city manager appointed by and serving at the pleasure of the council.

The committee was not only convinced that the new form of government was sound in theory but was also able to observe it in operation in a few pioneering cities. The committee was unaware of a proposal made by the first secretary of the League of California Cities, Haven S. Mason, in 1899 for a “distinct profession of municipal managers” to administer the affairs of a city or the fact that the small town of Ukiah, California, in 1904 established the position of “executive officer,” who was responsible to its governing body, to administer its activities. The committee was aware that beginning in 1908, Staunton, Virginia, had a general “city manager” serving a two-house council and sharing the executive function with the mayor. The first city to have a manager responsible to a single elected council was Sumter, South Carolina, in 1912. It was followed two years later by Dayton, Ohio, the first city of substantial size to adopt the plan.

By the end of 1915, the council-manager plan had been adopted by 82 cities, with the number almost doubling by 1920.

Unquestionably, the League made the important shift in its model charter from endorsement of an elected chief executive to advocacy of an appointed manager because of the conviction that the latter provided the most desirable arrangement for securing a responsible chief executive. In describing the 1915 *Model*, it was stated: "... the most distinguishing characteristic of the form of city government advocated in the *New Municipal Program* is to be found in the concentration of administrative powers and responsibilities in the hands of a city manager ... declaring that the city manager shall be the chief executive of the city." It was clearly recognized, however, that the new *Model* rejected the "separation of powers" concept which characterized the national and state governments, stating: "The dominant note in our new *Model City Charter* is elimination of the system of checks and balances in the organization of our cities and the substitution therefore of responsible government under a small legislative chamber which in turn selects a single administrative head. The city manager plan not merely represents the type in common use in business corporations but also in parliamentary government."

The *Model* has continued to endorse the unitary structure provided in the council-manager plan, although alternative approaches within this structure are now provided.

Evolution of the Reform Agenda

In addition to the provisions for the basic form of municipal government --the legislative body and executive structure -- the *Model* has addressed other aspects of the reform agenda.

Civil Service. The architects of the first two model charters included some of the leaders of the civil service reform movement. Indeed, the chairman of the committee that developed the 1915 *Model* was William Dudley Foulke, who served as a member of the U.S. Civil Service Commission under Theodore Roosevelt and was president of the National Civil Service Reform League. Thus, it is not surprising that the early models contained detailed provisions for municipal civil service systems, including an independent civil service commission with extensive rule making authority with respect to "the appointment, promotion, transfer, layoff, reinstatement, suspension, and removal of city officials and employees ... [and the duty] to supervise the execution of the civil service sections [of the charter] and the rules made thereunder...."

The manner in which municipal personnel organization and procedure are treated in the successive editions of the *Model City Charter* (1900, 1915, 1927, 1933, 1941, 1964, 1989, and 2002) shows how the reform agenda evolved during the 20th century. From the first two editions with an independent civil service commission, the *Model* moved in 1927 to an organization with a personnel director appointed by the city manager and a personnel board with limited powers. This was the approach followed in the 1933 and 1941 editions, but the provisions continued to be extremely detailed, covering classification procedures, promotions, pay plans, pensions and retirement systems. Notes accompanying these provisions indicated that some advisors were even then urging greater simplicity. This was done in the 1964 edition, which contained only a listing of the elements of personnel rules, restricted the personnel board to an advisory role, and recommended that details of personnel organization and procedure should be included in the administrative code.

The *Model* now recognizes that personnel systems in some states are controlled in large part by state law and everywhere are subject to certain federal regulations. The charter simply states a

commitment to the merit principle and mandates the council to provide by ordinance for a personnel system based on the merit system and consistent with state and federal law. Thus, the *Model's* treatment of municipal personnel administration has evolved from prescribing in detail an organization and procedures concerned with the elimination of spoils to a general and flexible provision permitting the city to provide by ordinance an adaptable system that will increase the competence of the public service in meeting changing needs.

Planning. Treatment of planning in the *Model City Charter* has had a somewhat different evolution. In early editions the provisions were quite general, with new sections on zoning and other detailed aspects of planning not being added until 1927. The 1941 edition had the most detailed planning provisions, continuing to call for an independent planning commission with specific powers but with the planning director appointed by the city manager rather than by the commission. There were provisions for the master plan, official map, subdivision control, plat approval, zoning, slum clearance, blighted areas, housing, neighborhood redevelopment and disaster areas.

By 1964, the approach was substantially changed, with the *Model* indicating that planning should be considered preeminently a staff function tied directly to the city's executive, with the planning board's role being exclusively advisory. Further, it was indicated that planning policy is finally expressed and carried out by the council through various enactments. The *Model* did continue to provide procedures for adoption, modification and implementation of the comprehensive plan.

The 1989 *Model* recognized that land use development and environmental protection are increasingly the subject of regulation by state and federal statutes. This continues to be the case. In order to permit the municipality the greatest possible flexibility to carry out the planning function effectively, the *Model* does not provide for a specific structure. The city council is mandated to establish the planning organization and procedures.

The *Eighth Edition* emphasizes the importance of integrating municipal planning with the planning of other local jurisdictions and regional agencies.

Finance. The *Model's* treatment of financial procedures has undergone an evolution from relatively simple prescriptions in the early editions to highly detailed and restrictive procedures in 1941 and back to much simpler procedures in recent and current editions. The 1941 edition was closer in time to the local government financial crises in the 1930s. Its provisions seemed overly rigid and unnecessarily complicated to those developing the next edition 20 years later, when economic conditions and fiscal procedures in local governments were substantially improved. The 1964 edition emphasized the importance of developing a comprehensive financial program and maximum flexibility within the boundaries of sound fiscal practices.

The 1989 edition made only minor modifications, clarifying some procedures and taking note of the need to provide for revenue ordinances covering non-property tax revenues.

The *Eighth Edition* further clarifies financial procedures, renaming the relevant article "Financial Management." The provision for an independent audit, previously found in Article II dealing with the city council now appears in Article V with new emphasis. The *Model* places attention on long-term goals and community priorities in the budget process and the importance of methods to measure outcomes and performance.

Initiative, Referendum, and Recall. The enthusiasm for some reform measures has varied over

time. Provisions for the initiative, referendum, and recall were first included in 1915. Initiative and referendum have been provided in all subsequent editions of the *Model* but support for their inclusion has been far from unanimous. The commentary on the 1964 provision stated: “Since the initiative and referendum are more valuable in their availability than in their use, this *Model* sets up an exacting procedure.”

The 1989 and 2002 editions have a simple provision that takes note of the fact that in most states where the initiative and referendum are available they are governed by the state election law. The recall was eliminated in the 1941 edition and was considered and rejected for inclusion in 1964 and 1989 but has been restored in the *Eighth Edition*.

Ethics. Since its early editions, the *Model* has had provisions prohibiting municipal officers from having conflicts of financial interest. The 1989 edition replaced statutory language in the charter with a mandate for council passage of ordinances covering ethics issues and measures for their enforcement. The eighth edition continues this approach and provides additional guidance for the council.

Campaign Finance. The eighth edition adds campaign finance disclosure and limitation provisions.

Progress and Continuity

The continuity of the model-building process is well illustrated by Luther H. Gulick (then chairman of the Advisory Committee on the Revision of the *Model City Charter* and subsequently chairman of the Institute of Public Administration), in the statement which introduced the 1964 edition:

“The American people have worked long and hard to achieve good city government. When the first edition of this *Model City Charter* was presented by the National Municipal League in 1900, the chairman of the drafting committee observed, “It has been confidently claimed by many that the most conspicuous failure of democracy ... is demonstrated by the American city....”

No one could make that statement today because it is no longer true. We now have many conspicuously successful local governments.... [A] new or modernized city charter...not only presents a concise and workable legal framework for the government but also sets before citizens a clear picture of their own responsibilities and powers and before the officials and employees a statement of their duties and mutual interrelations. Thus the adoption of a good city charter is both an affirmation by the citizens that they mean to have good government and is the legal framework within which such government can be won and the more easily maintained.

The objective of the *Model City Charter* is to present in the form of a legal document a general plan of municipal government which is (a) democratic -- that is to say responsive to the electorate and the community -- and at the same time

(b) capable of doing the work of the city effectively and translating the voters' intentions into efficient administrative action as promptly and economically as possible.

Accordingly, the *Model* embodies the provisions and tested legal language, which in theory and practice have helped to realize this double objective --democracy and effective management. And, following the precedent established by the founding fathers when they wrote the Constitution of the United States, it does this with the fewest possible words....

This charter is based on the principles of the council-manager plan because the National Municipal League has found during many years of experience that this arrangement of powers, responsibilities and duties best fits the good government needs of the American city.... There are cities, especially in the largest population class, where the strong mayor plan is preferred. Provisions of this *Model* are appropriate for such a charter, or may be readily adapted....

The machinery of government, designed by constitutions and charters, is not an end in itself. It is rather an agreed-upon framework through which [citizens] work together to govern and to service themselves. The importance of the machinery is that these institutions when properly designed facilitate self-government and encourage effective management.

Participation by citizens will take many forms --as voters, as members of local political or civic organizations, as elected officials, as appointed officials and employees, and as members of official and unofficial advisory bodies. The *Model* endeavors to present a fabric within which each type of participation and leadership can have its appropriate place. As [the *Model*] is used to aid charter drafting, each city should think in terms of how its particular resources of participating civic manpower will operate to make a new charter a vital going enterprise. There will be wide variation from city to city.

Leadership. Those engaged in charter preparation will be particularly concerned with a search for leadership to achieve municipal progress. Local government problems today more than ever challenge imagination and courage. The task is more than one simply of reflecting popular sentiment and administering the resulting programs. Increasingly, the task must begin with an aggressive campaign to inform and educate the electorate on new programs. The *Model* presents no absolute prescription for the organization conducive to the development of necessary leadership. Nor can this be done from afar by anyone for a specific community.

Another problem of overriding importance is how the city fits into the general framework of government. Few if any functions of government today are the absolute preserve of a city. Aspects of virtually all functions are distributed among all levels of government and frequently among several local units. The *Model* recognizes this fact of urban life. Again, it offers no formula, but suggests that charter commissions must look beyond the legal and geographical jurisdiction of the municipality. The effectiveness of local political leadership may well be judged ultimately by its capacity to mesh municipal programs with those of other jurisdictions.

Responsibility. Finally, this *Model*...asserts that the ultimate responsibility for all basic policy decisions should be assigned to a single responsible legislative body, the city council. It also insists that within the executive structure all officials be

appointed by and under the direction of the chief executive...It endorses the use of advisory bodies, with no operating powers but with significant duties, which can utilize the talents of citizens to assess the implications of future programs.

This...edition endeavors to refine and update the conception of municipal government and its component parts presented in earlier editions. It reaffirms the position that a municipality should have discretion to design the form and structure of its own local government directly or through a "home rule" charter. It sounds a warning, however, and emphasizes that home rule today does not mean isolation from neighboring local governments. The goal of efficient, economic and progressive municipal government is meaningful only when viewed as part of the local, state and federal partnership.

Section written by Terrell Blodgett and William N. Cassella, Jr.

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MODEL CITY CHARTER, EIGHTH EDITION, SECOND PRINTING

PREAMBLE TO THE CHARTER

Introduction.

A preamble typically consists of three elements: an identification of the source of authority for the charter, a statement of the action that is to be taken, and a declaration of the intent of the charter. The source of authority for a city charter is the state constitution or statutory law. The action that is to be taken is the adoption of the charter. The declaration of the intent of the charter comprises subjective statements (not enforceable by law) that underscore or illuminate the characteristics of a municipality, such as the values of the city, lofty goals, or even the “personality” of the drafting commission. Charters within the same state often use the same language in their preambles; the type of language used and the manner in which issues are addressed often provide a glimpse of regional characteristics.

PREAMBLE

We the people of the [city/town] of _____, under the constitution and laws of the state of _____, in order to secure the benefits of local self-government and to provide for an honest and accountable council-manager government do hereby adopt this charter and confer upon the city the following powers, subject to the following restrictions, and prescribed by the following procedures and governmental structure. By this action, we secure the benefits of home rule and affirm the values of representative democracy, professional management, strong political leadership, citizen participation, diversity and inclusiveness and regional cooperation.

Commentary.

Source of Authority

Identification of the source of authority tends to be standard: ~~We the people of Your City, under the constitution and laws of the state. . . .~~

Occasionally, however, the source of authority is embellished with descriptive elements that reflect valued characteristics of the community. Two examples follow:

~~We the people of Your City, with our geographical and cultural diversity. . . .~~

~~Treasuring the many wonders of our unique environment and realizing that the power and duty to govern and protect this region is inherent in its people, we the citizens of Your City. . . .~~

Action Taken

The standard phrasing for the action statement is ~~do hereby adopt~~ or some variation. Following are two examples of action taken by the source of authority:

. . . do hereby adopt this charter.”

. . . do hereby adopt this home rule charter.”

Intent

This can be the most creative section of the preamble (and of the charter itself). The standard beginning of the intent section is: “By this action, we . . .” An expression of objectives, goals, purposes, and/or values typically follows. The intent section can contain merely a reference to home rule or self-determination, or it can contain a combination of purposes, goals, values, and even civic aspirations. Preambles typically reflect values such as self-determination, diversity and inclusiveness, justice, equality, efficiency, responsiveness, citizen participation, and environmental stewardship. Diversity and inclusiveness references should address the right of every individual to equal opportunities and establish nondiscrimination rules. Examples follow.

By this action, we:

provide for local government responsive to the will and values of the people and to the continuing needs of the surrounding communities. . . .”

secure the benefits of home rule, increase citizen participation reflecting rights or equal opportunity of the broad diversity of the city, improve efficiency and effectiveness, and provide for a responsible and cooperative government. . . .”

—each individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the city and to have an equal opportunity to participate in all aspects of life...”

—discrimination is prohibited based on race, color, religion, national origin, gender, age, sexual orientation, gender expression, marital status, military status or physical or mental disability...”

establish a government which advances justice, inspires confidence, and fosters responsibility. . . .”

Preambles should contain all three elements. The intent section at the least should contain a reference to home rule or self-determination (very few do) and could suggest elements of contemporary governing values such as regional cooperation, economic vitality, diversity and inclusiveness, comprehensive representation, strong community leadership, and citizen participation.

Article I POWERS OF THE CITY

Introduction.

A charter should begin by defining the scope of the city’s powers. It should address the context in which such powers operate, including the effect of state law and the desirability of cooperation with other localities.

Section 1.01. Powers of the City.

The city shall have all powers possible for a city to have under the constitution and laws of

this state as fully and completely as though they were specifically enumerated in this charter.

Commentary.

The city should lay claim to all powers it may legally exercise under the state's constitution and laws.

Nevertheless, some cities, particularly smaller ones, may not wish to exercise all available powers. Cities may restrict their own power: (1) by specific provisions in the appropriate parts of the charter; (2) by ordinance, since the section does not require that all the powers claimed be exercised; or (3) by inaction—i.e., failure to exercise powers. The powers of the city may also be limited by state or federal court decisions.

This section insures that the city claims the entirety of the grant of authority available to it from the state. Through this means, the charter is restricted from embracing less in its terms than the constitutional home rule grant allows or from containing an inadvertent omission or ambiguity that could open the door to restrictive judicial interpretation. This is the most that the charter can do as the extent of the powers available to the city will depend on the state's constitution and statutes and judicial decisions.

The general powers provision of a charter must be tailored to the law of each state. The courts of some states do not give effect to a charter statement of powers expressed in general terms. Instead, they require that the charter enumerate all of the powers claimed. The words “as fully and completely as though they were specifically enumerated in this charter,” at the end of § 1.01, cannot be used in a charter in a state that requires the enumeration of powers.

Charter drafters should carefully study their state's law on local government powers before using this *Model* provision. To reduce the likelihood of restrictive judicial interpretation, a section like § 1.02 below should accompany this section.

Questions of restrictive court interpretation aside, and assuming that a state's law does not require an enumeration, this section may be utilized effectively under any of the existing types of home rule grant, as well as that of the *Model State Constitution* (6th Edition, 1968) published by the National Municipal League. It may be used regardless of whether the home rule grant appears in a constitution, optional charter law, or other general enabling act.

Section 1.02. Construction.

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

Commentary.

A charter should encourage courts to interpret the powers of the city as broadly as possible. Such a provision discourages a restrictive interpretation of the general powers statement in § 1.01. If the charter enumerates powers, this section may prevent courts from interpreting the list of specific powers as evidencing intent to exclude other or broader powers.

Section 1.03. Intergovernmental Relations.

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

Commentary.

This section empowers the city to participate in intergovernmental relationships—to receive assistance from the federal, state, and other local governments, to be represented in regional agencies established under federal or state law or intergovernmental agreements, and to perform jointly with any other governmental jurisdiction any function which any of the participating jurisdictions may perform alone.

The nature of intergovernmental relations is rapidly changing. Most cities are an integral part of a region. In that regard, engaging in cooperative intergovernmental relations is fundamental to the effective functioning of a city and the region of which it is a part. Although the purpose of engaging in intergovernmental relations is primarily to further the ends of the city, the health of the region should also be of concern to the city.

Superior state statutes (such as a general powers provision), which cannot be altered by a charter provision, may govern an intergovernmental relations provision. States may enact these on an *ad hoc* basis, each dealing with a particular project, program, or regional or metropolitan agency. With intergovernmental agreements becoming more common, states may have general intergovernmental authorizing statutes or constitutional provisions. For example, New Hampshire state law provides:

N.H.R.S. Title 3, Chapter 53-A:1 Agreements between government units.

Purpose. – It is the purpose of this chapter to permit municipalities and counties to make the most efficient use of their powers by enabling them to cooperate with other municipalities and counties on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

If states have neither specific nor general authorization, charter drafters should look for court opinions on intergovernmental agreements in the state. Courts may provide guidance on the extent of a city's power to cooperate with other governments in the absence of enabling state legislation.

Specific legislation on intergovernmental agreements often involves political questions and considerations of state constitutional and statutory limitations on cities' financial and borrowing powers. In joint federal-municipal projects involving substantial sums, state legislative control over municipal powers, coupled with restrictive judicial doctrines, may require specific state legislative approval.

Article II CITY COUNCIL

Introduction.

The city council, elected by, representative of, and responsible to the citizens of the city is the fundamental democratic element of the council-manager plan.

Section 2.01. General Powers and Duties.

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

Commentary.

This section does not specifically enumerate the powers of the council. An enumeration of specific powers in this article will not enlarge the powers of the council and may operate to diminish them if utilized by the courts to support restrictive interpretations (see commentary to § 1.02).

In his commentary on the first *Model City Charter* endorsing the council-manager plan (“The City Council” in *The New Municipal Program*, 1919), William Bennet Munro noted that

—So far as the composition and powers of the city council are concerned the plan set forth in the *Model City Charter* rests upon the conviction that there should be a place in the municipal framework for a body which will be avowedly deliberative, supervisory, and policy-determining, which will be wieldy enough to perform these functions properly and yet large enough to be truly representative of the community’s options. . . . The *Model City Charter* accordingly provides for a council with a membership which can be enlarged or contracted according to the varying size and needs of different cities. This council is to be the pivot of the municipal system. It is to be the final source of local authority, not sharing its powers but delegating some of them. That is to say, to a city manager chosen by the council and holding office during the council’s pleasure, it assigns the entire charge of administrative affairs . . . As for the powers of the city council . . . It is designed to embody, as it were, the sovereignty of the community. It is the legislative organ of the city exercising all the authority which the municipal corporation possesses—with one important exception only. This restriction is that the city council, once it selects a city manager, devolves all direct administrative authority upon him.”

Recognizing that all of the powers that can be exercised by the city rest in the popularly elected city council, the charter must provide for a council, which is truly representative of the community. Therefore, the *Model* presents several alternatives without expressing an absolute preference for any one, which was done in earlier editions. Each city’s population pattern—economic level, racial, ethnicity, geographical, etc.—has implication for the method of electing the council to assure equitable representation. While the Voting Rights Act governs all jurisdictions, in some cities the problem of compliance with its provisions and avoidance of court challenges is a matter of particular concern. Just as there is no absolute model for providing

competent and effective legislators, there is no absolute pattern which will assure equitable representation.

As the body charged with making municipal policy, the council can create permanent or ad hoc mechanisms to assist in that process. For example, it can create planning and recreation boards or study committees. Likewise it can create agencies with quasi-legislative or quasi-judicial status, such as a human rights commission or a zoning appeals board.

The *Model* makes no provision for specific instrumentalities designed to provide input at the neighborhood level for policy-making or service delivery evaluation. Nor does it list as charter agencies any advisory boards and commissions. The council has the power to establish such agencies.

The *Model* provides that the mayor, however elected, shall be the presiding officer and a voting member of the council and shall perform certain specific duties which will enhance the mayor's role as policy leader.

Section 2.02. Eligibility, Terms, and Composition.

(a) Eligibility. Only registered voters of the city shall be eligible to hold the office of council member or mayor.

Commentary.

This section does not include length of residence requirements for city council candidates. In an era of great mobility in which people frequently live in one place and work in another, length of residence requirements lose what little validity they may once have had. A prospective council member need only be a registered voter of the city.

(b) Terms. The term of office of elected officials shall be four years elected in accordance with Article VI.

Commentary.

The *Model* recommends four-year, staggered terms (§ 6.03). Under this approach, elections of council members take place every two years. In the seventh edition, the *Model* listed concurrent terms as an alternative. However, a strong majority of cities today—82.6% of cities surveyed according to the 2001 ICMA Form of Government Survey—have chosen staggered terms over concurrent terms to avoid dramatic changes in council composition at each election.

The *Model* does not restrict reelection to subsequent four-year terms. Limiting reelection restricts the citizens' opportunity to keep in office council members of whom they approve. Unlimited terms allow voters to provide a vote of confidence for council members who represent majority sentiment and a vote of opposition for members in the minority. Finally, the city benefits from the institutional memory of reelected council members.

(c) Composition. There shall be a city council composed of [] members [see alternatives below].

Commentary.

The *Model* does not specify the exact number of council members but recommends that the council be small – ranging from five to nine members. If the mayor were elected by and from the council (§ 2.03(b), Alternative I), there would be an odd number of council members. In the largest cities, a greater number of council members may be necessary to assure equitable representation. However, smaller city councils are more effective instruments for the development of programs and conduct of municipal business than large local legislative bodies. In the United States, it has been an exceptional situation when a large municipal council, broken into many committees handling specific subjects, has been able to discharge its responsibilities promptly and effectively. In large councils, members usually represent relatively small districts with the frequent result that parochialism and “log-rolling”—bargaining for and exchanging votes on a quid pro quo basis—distract attention from the problems of the whole city.

In determining the size of the council, charter drafters should consider the diversity of population elements to be represented and the size of the city.

Alternative I – Option A – Council Elected At Large; Mayor Elected by the Council

The council shall be composed of [odd number] members elected by the voters of the city at large in accordance with provisions of Article VI. The mayor shall be elected as provided in § 2.03(b), Alternative I.

Alternative I – Option B – Council Elected At Large; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large in accordance with provisions of Article VI. The mayor shall be elected as provided in § 2.03(b), Alternative II.

Commentary.

The *Model* continues to stress the value of the at-large principle in designing the composition of a city council, while recognizing the necessity of providing for representation of geographical areas under certain circumstances. In considering the appropriateness of using the at-large system, each city must assess its own situation. The at-large system has generally allowed citizens to choose council members best qualified to represent the interests of the city as a whole.

Nevertheless, in larger cities, citizens may feel isolated from and unconnected to their government without some geographical basis of representation. Cities with significant differences in or conflicts among ethnic, racial, or economic groups may wish to consider whether one of the alternative systems may achieve more equitable representation of the city's population and avoid legal challenges under the Voting Rights Act without sacrificing council effectiveness.

Alternative II – Option A – Council Elected At Large with District Residency Requirement; Mayor Elected by the Council

The council shall be composed of [odd number] members elected by the voters of the city at large in accordance with provisions of Article VI. Not more than one council member shall reside in each district. The mayor shall be elected as provided in § 2.03(b),

Alternative I.

Alternative II – Option B – Council Elected At Large with District Residency Requirement; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large in accordance with provisions of Article VI. Not more than one council member shall reside in each district. The mayor shall be elected as provided in § 2.03(b), Alternative II.

Commentary.

A complaint frequently lodged against the all at-large council system is that a majority of the council may live in the same area of the city. This may give rise to questions concerning the equitable distribution of services with allegations that particular sections receive partial treatment. This objection can be met while still maintaining a council elected at-large by establishing districts of equal population and requiring that one council member reside in each district.

Although this alternative builds geographical representation into an at-large system, depending upon the local situation, it may be subject to the same objections under § 2 and § 5 of the Voting Rights Act as Alternative I.

Alternative III – Option A - Mixed At-Large and Single Member District System; Mayor Elected by the Council

The council shall be composed of [odd number] of council members elected by the voters of the city at large and one member from each of the even-numbered council districts elected by the voters of those districts, as provided in Article VI. The mayor shall be elected from among the at-large members as provided in § 2.03(b), Alternative I [specifying that the mayor is an at-large member].

Alternative III – Option B – Mixed At-Large and Single Member District System; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large and one member from each of the even-numbered council districts elected by the voters of those districts, as provided in Article VI. The mayor shall be elected as provided in § 2.03(b), Alternative II.

Commentary.

The mixed system for a council with members elected at large and members elected by and from districts has become increasingly popular since the U. S. Department of Justice approved it as a method of electing the city council that is compliant with the requirements of the Voting Rights Act. This makes the mixed method suitable in places where the at-large system has been challenged but where change to a single-member district system is opposed.

The mixed system combines the citywide perspective of the at-large council members with the local concerns and accountability of district council members. It can allow minorities who live in

concentrated areas to influence or even determine the outcome of elections in their districts.

A problem can arise in mixed systems when at-large council members consider their position to be superior to that of district members and are perceived as rivals to the mayor. To prevent this, at-large and district council members should have equal status with respect to offices, services, and length of terms.

Local preference should decide the ratio of at-large to district members. Opinion ranges from favoring a majority being elected at large to a majority being elected by and from districts. However, for jurisdictions concerned about scrutiny by the U. S. Department of Justice or the courts under either § 2 or § 5 of the Voting Rights Act, precedent shows a clear preference for the majority of the council to be elected by and from districts.

Alternative IV – Single-Member District System

The council shall be composed of an even number of members each of whom shall be elected by district by the voters in that district. The mayor shall be elected in accordance with the provisions of § 2.03(b), Alternative II.

Commentary.

If communities adopt the district system, the mayor should be elected separately by the voters of the city at large and not chosen by and from the council. This provides a necessary at-large element in an otherwise all district system.

The growing recognition that membership on councils should represent all racial and ethnic groups more adequately has spurred increased use of the single-member district system. With racial minorities concentrated in particular sections of the city, it is easier to elect minority council members. Also, because district campaigns cost substantially less than citywide campaigns, single-member districts can open the way for greater diversity among candidates. Citizens feel closer to district elected council members, whom they can hold responsible for addressing their community concerns.

In cities where courts have found that the at-large method of electing the city council violates the Voting Rights Act, the Justice Department has regularly approved the single-member district system as a replacement.

The single-member system has drawbacks. An inherent problem is the danger that district elected members will subordinate citywide concerns to parochial problems. Single-member systems also have potential for the classic problem of "log-rolling" or vote swapping. Whenever districts are used, the drawing of district lines to provide "fair and equal" districts is of utmost importance and may involve litigation. Section 6.03 provides districting procedures and criteria designed to prevent gerrymandering and unequal districts, which are unconstitutional under the one person, one vote doctrine.

Section 2.03. Mayor.

(a) Powers and Duties. The mayor shall be a voting member of the city council and shall attend and preside at meetings of the council, represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of citizen advisory boards and commissions, present an annual state of the city message, appoint

the members and officers of council committees, assign subject to the consent of council agenda items to committees, and perform other duties specified by the council. The mayor shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties.

(b) Election -Alternative I – Mayor Elected by the Council. The city council shall elect from among its members officers of the city who shall have the titles of mayor and deputy mayor, each of whom shall serve at the pleasure of the council. The deputy mayor shall act as mayor during the absence or disability of the mayor.

Alternative II – Mayor Elected At Large. At each regular election the voters of the city shall elect a mayor at large for a term of [the same term as other council members] years. The council shall elect from among its members a deputy mayor who shall act as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become mayor for the remainder of the unexpired term.

Commentary.

(a) The office of mayor in cities having the council-manager form assumes a different character from city to city depending upon local political, economic, and social conditions. This variation has meant that the office is not well understood, and its potential has too often gone unrecognized.

While the mayor of a council-manager city is not an executive as in the mayor-council form, he or she is uniquely positioned to be the political and policy leader of the city. As the presiding officer of the council and ceremonial head of the city, the mayor is the most conspicuous official of the city. Freedom from executive responsibilities for the day-to-day municipal operations allows the mayor to focus attention on major policy issues and important facilitative activities.

The mayor fills three facilitative roles that offer enormous leadership opportunities. First, the mayor may coordinate the activities of other officials by providing liaison between the city manager and the council, fostering a sense of cohesion among council members, and educating the public about the needs and prospects of the city. Second, the mayor may facilitate policy guidance through setting goals for the council and advocating the adoption of policies that address the city's problems. Third, the mayor is an ambassador who promotes the city and represents it in dealing with other governments as well as the public.

The specific responsibilities of the mayor listed in the *Model* enhance the mayor's leadership position. The traditional responsibility of presiding at council meetings allows the mayor to set the tone for city government and help the council make decisions. Designation of the mayor as intergovernmental representative reflects the increased importance of relationships with other local governments as well as with the state and federal governments. Mayoral appointment of boards and commissions with council advice and consent, and of the membership of council committees, creates the opportunity for purposeful balanced representation and can be used to forge coalitions and tap into networks of community activity.

Finally, the mayor delivers the state of the city message. When the state of the city message includes the setting out of needs and goals for the city, it should reflect the thinking of the council and information provided by the staff, as well as the mayor's own priorities. In presenting the state of the city message, the mayor acts as spokesperson, educator, team leader, goal setter, and policy advocate. To avoid confusion, the time of delivery of the message should be sufficiently distanced from the presentation of the budget by the manager.

(b) As with mayoral responsibilities, the method of election of the mayor has implications for office effectiveness. The *Model* provides two alternative methods for electing the mayor. A community's choice of election method depends on local preference and tradition and to some extent on the method chosen to elect the council (see Article VI).

Many communities feel that local policy leadership can best function when a cohesive team of council members chooses its leader as mayor. These cities use Alternative I, election of the mayor by and from the council, and thus avoid the possibility of conflict between the mayor and the council majority. Such an approach may be best suited for cities with at-large council elections. In cities with councils elected from districts, council selection of the mayor presents the mayor with conflicting roles—district and citywide.

Cities that provide for council selection of the mayor should avoid two practices which diminish the prospect of effective leadership. First is rotation of the office of mayor among members. This approach may hinder the emergence of a respected leader by preventing any one member from acquiring experience and increasing competence in the exercise of leadership skills. It can also mean that the true leader of the council is not the mayor, which may create a misperception of inside dealing and secret manipulation. The second practice is to automatically designate as mayor the council member who receives the largest number of votes. This awkward approach prevents the council from choosing its leader and does not give voters full knowledge for which office—council member or mayor—they were casting votes.

More than half of the cities operating with the council-manager form use the direct election at-large alternative (Alternative II). Many cities, particularly larger ones, believe that this method increases the potential for mayoral leadership by giving the mayor a citywide popular support base. This is particularly important when all or most of the council members are elected from districts. A potential disadvantage of this method is that the mayor may have views that diverge widely from those of a majority of the council on some important issues.

Whatever the method of election or the strength of the mayor's leadership role, the mayor is preeminently a legislator, a member, and leader of the council; the mayor is not an executive. However, the office may require some special staff support. Whatever arrangements are made for support either through the city manager or staff in the mayor's office should be consistent with two premises. First, the mayor should not encroach on the executive responsibilities of the manager. Second, the mayor and council collectively, as a body, oversee the operations of the city by the manager.

Communities should avoid granting special voting status to the mayor (e.g., vote on council only to make or break a tie). Such power will likely impede rather than enhance the mayor's capacity to lead. Similarly, giving the mayor veto power in a council-manager city cannot help but confuse his or her role with that of the executive mayor in a mayor-council city.

No structural arrangement for government will insure effective mayoral leadership. The person who occupies the office must understand the nature of the job—its possibilities, interdependencies, and limitations—and have the personal inclination, energy, and talent to exercise necessary leadership. Without that, no amount of structural support will produce a leader. However, the method of selection and the statement of responsibilities provided in the charter should help insure the selection of a capable person with recognized leadership abilities who will make a significant contribution to the operation of the city.

Section 2.04. Compensation; Expenses.

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

Commentary.

Under the *Model*, council members are part-time officials and do not direct city departments. Council salary level depends on a variety of factors specific to each community, including the part-time nature of the position and the emphasis on policy-making rather than administration. The city should reimburse council members for expenses incurred in performing their duties, e.g., travel to the state capital to testify on behalf of the city.

The *Model* rejects the setting of the actual amount of compensation in the charter except for the salary of the first council after the charter goes into effect (see § 9.05(f)). The delay in the effective date of any salary increases provides ample protection.

The city should provide extra compensation for the mayor because, in addition to regular responsibilities as a council member, the mayor has intergovernmental, ceremonial, and city-related promotional responsibilities.

Section 2.05. Prohibitions.

(a) Holding Other Office. Except where authorized by law, no council member shall hold any other elected public office during the term for which the member was elected to the council. No council member shall hold any other city office or employment during the term for which the member was elected to the council. No former council member shall hold any compensated appointive office or employment with the city until one year after the expiration of the term for which the member was elected to the council, unless granted a waiver by the Board of Ethics.

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

(b) Appointments and Removals. Neither the city council nor any of its members shall in any manner control or demand the appointment or removal of any city administrative officer or employee whom the city manager or any subordinate of the city manager is empowered to appoint, but the council may express its views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.

(c) Interference with Administration. Except for the purpose of inquiries, and investigations under § 2.09, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

Commentary.

(a) This provision prohibits council members from concurrently holding other elective office, such as state legislator, as occurs in some states. Also prohibited is holding any other city office or employment during one's council term or for one year after leaving office. These provisions are designed to avoid conflict of interest situations. The charter is specific, however, that these prohibitions do not restrict any current or former officeholder from service on the boards of regional or other intergovernmental agencies. Such service is particularly valuable in accomplishing the objectives of intergovernmental cooperation.

(b) and (c) The prohibition against interference by council members in the appointment and removal of employees and in the administration of city programs does not include the broad language of earlier editions of the *Model* because it was considered too rigid and unrealistic. This provision, while expressing the general policy of noninterference, does not exclude communication between council members and the manager on questions of appointment and removal. The manager may seek advice from the council regarding appointments. Council members are strictly prohibited from giving orders to city officers or employees. However, the prohibition against interference with administration does not prevent council members from making inquiries of department heads or employees for the purpose of obtaining information needed by them in the discharge of their duties including response to constituent requests. Information provided to one council member should be shared with the entire council as warranted. The council and manager should define the parameters for such requests and establish reasonable boundaries. In some cities, automated information systems make information on aspects of departmental operations readily available to council members on computer terminals.

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

(a) Vacancies. The office of a council member shall become vacant upon the member's death, resignation, or removal from office or forfeiture of office in any manner authorized by law.

(b) Forfeiture of Office. A council member shall forfeit that office if the council member:

- (1) Fails to meet the residency requirements,
- (2) Violates any express prohibition of this charter,
- (3) Is convicted of a crime involving moral turpitude, or
- (4) Fails to attend three consecutive regular meetings of the council without being excused by the council.

(c) Filling of Vacancies. A vacancy in the city council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than sixty days upon the occurrence of the vacancy, but the council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the council fails to do so within thirty days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than ninety days and not later than 120 days following the occurrence of the vacancy, and to be otherwise governed by law. Notwithstanding the requirement in § 2.11(c), if at any time the membership of the council is reduced to less than _____, the remaining members may by majority action

appoint additional members to raise the membership to _____.

Commentary.

The section specifies the events or conditions, which create a vacancy, the grounds for forfeiture of office, and the manner by which the council shall fill vacancies.

Subsection (b)(3) requires forfeiture of office for crimes involving ~~–moral turpitude.~~” This is a legal standard that in most jurisdictions means the crime – felony or misdemeanor – violates community standards of morality and involves an element of knowing intent by the perpetrator. Court findings include *In re Flannery*, 334 Or. 224 (2002) (misrepresenting address in renewing driver license to obtain valid license to rent a car was not a crime involving moral turpitude); *Klontz v. Ashcroft*, 37 Fed. Appx. 259 (9th Cir. 2002) (petty theft and grand theft are both crimes of moral turpitude); *Antorietto v. Regents of the University of California*, 2002 WL 1265552 (Cal. App. 4 Dist. June 7, 2002) (misuse of university funds and fraudulent diversion of donor funds intended for the university are crimes that involve moral turpitude). Another approach focuses on felonies, as in Kansas City’s charter, which reads: ~~–No member of the council shall, during the term for which he is elected, be found guilty or enter a plea of guilty or nolo contendere to a felony under the laws of the United States or of any state, even if subsequently followed by the suspended imposition of the sentence.~~”

The council shall temporarily fill vacancies until the next regular election, when the voters will fill such vacancies for the remainder of the term (unless that election occurs within sixty days of the vacancy, in which case the candidates would have insufficient time to file). The provision calls for a special election if the council fails to fill a vacancy within thirty days. This provision should insure that the council will act, but in the event of a deadlock a special election will resolve the situation.

Finally, the section provides for filling vacancies by council action even if the membership falls below the quorum otherwise required for council action by § 2.11(c).

Section 2.07. Judge of Qualifications.

The city council shall be the judge of the election and qualifications of its members, and of the grounds for forfeiture of their office. In order to exercise these powers, the council shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the city at least one week in advance of the hearing.

Commentary.

This section makes council the judge of qualifications for office and of grounds for forfeiture. It provides procedural safeguards to protect a member charged with conduct constituting grounds for forfeiture. The provision authorizing the council to set additional standards for the conduct of its members empowers the council to impose on itself the highest possible ethical standards.

Section 2.08. City Clerk.

The city council or the city manager shall appoint an officer of the city who shall have the

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

Commentary.

See §§ 2.15 and 2.16 for other duties assigned to the city clerk. In a number of states, certain statutory duties may be assigned to the city clerk, even in cities operating with their own charters.

Section 2.09. Investigations.

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

Commentary.

This section gives the council, but not the manager, the power to make investigations. The manager has the power to appoint, remove, and suspend officers, but it is inappropriate for the manager to have the power to subpoena witnesses and compel production of evidence.

Section 2.10. Independent Audit.

The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits as it deems necessary. Such audits shall be carried out in accordance with § 5.12.

Commentary.

The necessity for annual independent audits of the city's financial affairs has long been accepted. This section authorizes and charges the council to conduct them.

Section 2.11. Procedure.

(a) Meetings. The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or of _____ or more members and, whenever practicable, upon no less than twelve hours' notice to each member. Except as allowed by state law, all meetings shall be public; however, the council may recess for the purpose of discussing in a closed or executive session limited to its own membership any matter which would tend to defame or prejudice the character or reputation of any person, if the general subject matter for consideration is expressed in the motion calling for such session and final action on such motion is not taken by the council until the matter is placed on the agenda.

(b) Rules and Journal. The city council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. _____ members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council, except as otherwise provided in the preceding sentence and in § 2.06(c), shall be valid or binding unless adopted by the affirmative vote of _____ or more members of the council.

Commentary.

This section sets forth what are, for the most part, standardized and well accepted procedural rules to govern the official action of the council. The frequency of meetings can, of course, be suited to the needs of the particular city. The section contains the important, standard protection that meetings must be public and that a journal of proceedings be kept as a public record. Most states have open meeting laws which specify the circumstances when closed or executive sessions may be held; such meetings are sometimes necessary for effective council functioning. This charter and state law contain ample safeguards to assure open meetings. All council actions require majority vote, except actions to adjourn, to compel attendance of members in the absence of a quorum, and to appoint additional members if the membership falls below a majority of the total authorized membership as provided in § 2.06(c).

Section 2.12. Action Requiring an Ordinance.

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

- (1) Adopt or amend an administrative code or establish, alter, or abolish any city department, office, or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Levy taxes;
- (4) Grant, renew, or extend a franchise;
- (5) Regulate the rate charged for its services by a public utility;
- (6) Authorize the borrowing of money;
- (7) Convey or lease or authorize the conveyance or lease of any lands of the city;
- (8) Regulate land use and development;
- (9) Amend or repeal any ordinance previously adopted; or
- (10) Adopt, with or without amendment, ordinances proposed under the initiative power.

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

Commentary.

This section assures that the enumerated types of council action be taken only after compliance with all the procedural safeguards required for passage of an ordinance by the succeeding sections.

Other subjects requiring an ordinance are not mentioned here because the requirement is specifically stated elsewhere in the charter. These include adoption of codes of technical regulations (§ 2.15), appropriation and revenue ordinances (§ 5.06), supplemental and emergency appropriations and reduction of appropriations (§ 5.07), and creation of a charter commission or proposal of charter amendments (§ 8.01).

Council may act via ordinance or resolution on matters other than those enumerated in this section or as required by law or by specific provision in the charter to be by ordinance. This does not preclude motions relating to matters of council procedure, which may involve even less formality than resolutions.

Section 2.13. Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be "The city of _____ hereby ordains . . ." Any ordinance which repeals or amends an existing ordinance or part of the city code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matters by underscoring or by italics.

(b) Procedure. Any member at any regular or special meeting of the council may introduce an ordinance. Upon introduction of any ordinance, the city clerk shall distribute a copy to each council member and to the city manager, shall file a reasonable number of copies in the office of the city clerk and such other public places as the council may designate, and shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the council. The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing, the council may adopt the ordinance with or without amendment or reject it, but if it is amended as to any matter of substance, the council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures herein before required in the case of a newly introduced ordinance. As soon as practicable after adoption, the clerk shall have the ordinance and a notice of its adoption published and available at a reasonable price.

(c) Effective Date. Except as otherwise provided in this charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

(d) "Publish" Defined. As used in this section, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the city, and, if available, in a web site: (1) the ordinance or a brief summary thereof, and (2) the places where copies of it have been filed and the times when they are available for public inspection and purchase at a reasonable price.

Commentary.

This section dispenses with the unnecessary and cumbersome requirements of a full reading of all ordinances and publication of their full text both before and after adoption. Distribution of a copy to each council member obviates the need for a full reading. Permitting the printing of a brief summary, together with notice of the times and places where copies are available for public inspection, simplifies publication. Further simplification occurs in §§ 2.14 and 2.15, which contain special provisions for expeditious handling of emergency ordinances and for adoption by reference of standard codes of technical regulations.

The section retains the basic safeguards of a public hearing following notice by publication, and a second publication with notice of adoption. It does not go so far as charters that dispense with publication or that permit adoption at the same meeting at which a non-emergency ordinance is introduced. It retains protective features deemed necessary for full and careful consideration. Section 2.14 provides sufficient leeway for emergency situations.

Section 2.14. Emergency Ordinances.

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

Commentary.

To facilitate timely action, the charter permits an extraordinary majority to introduce and adopt such ordinances at the same meeting. Ordinances passed pursuant to this section may also have an immediate effective date.

Section 2.15. Codes of Technical Regulations.

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

- (1) The requirements of § 2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical

- regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city clerk pursuant to § 2.16(a).

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

Commentary.

This provision permits adoption of standard and often lengthy, detailed, and technical regulations, such as building and sanitary codes, by an ordinance which simply incorporates and adopts the code by reference. Publication of the adopting ordinance satisfies publication requirements. The adopting ordinance should indicate the nature of the code. The council is not required to include all such technical codes in the general city code pursuant to § 2.15. This approach minimizes burden and expense while at the same time preserving the essential safeguards of the general ordinance procedure of § 2.12.

Section 2.16. Authentication and Recording; Codification; Printing of Ordinances and Resolutions.

(a) Authentication and Recording. The city clerk shall authenticate by signing and shall record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the city council.

(b) Codification. Within three years after adoption of this charter and at least every ten years thereafter, the city council shall provide for the preparation of a general codification of all city ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published, together with this charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of _____, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the _____ city code. Copies of the code shall be furnished to city officers, placed in libraries, public offices, and, if available, in a web site for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

(c) Printing of Ordinances and Resolutions. The city council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the council. Following publication of the first _____ city code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the state of _____, or the codes of technical regulations and other rules and regulations included in the code.

Commentary.

Subsections (a) and (c) of this section state essential procedures for maintaining legally

authenticated records of all ordinances and resolutions and for making them available to the public.

The merits of the general codification provided for in subsection (b) speak for themselves. The *Model* provides for inclusion of pertinent parts of the constitution and state statutes, thus envisioning a city code to which people may turn for all state and local legislation governing the city. This contrasts to the situation still existing in many cities where much of this legislation, particularly state laws of limited application, are nowhere collected and are often out of print, unavailable, or difficult to find.

Article III CITY MANAGER

Introduction.

In the council-manager plan, the city manager is continuously responsible to the city council, the elected representatives of the people.

Section 3.01. Appointment; Qualifications; Compensation.

The city council by a majority vote of its total membership shall appoint a city manager for an indefinite term and fix the manager's compensation. The city manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local government management. The manager need not be a resident of the city or state at the time of appointment, but may reside outside the city while in office only with the approval of the council.

Commentary.

Six of the twelve items in the Code of Ethics established by the International City/County Management Association (ICMA) for members of the city management profession refer to the manager's relationships to the popularly elected officials:

Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement municipal policies adopted by elected officials.

Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with members [of ICMA, i.e., city managers]. Refrain from all political activities, which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body [including the mayor].

Keep the community informed on local government affairs; encourage communication between citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

(The ICMA Code of Ethics can be found online at www.icma.org. The other items in the code refer to the manager's personal and professional beliefs and conduct.)

As a professional administrator, the manager must be trained and experienced in the effective management of public service delivery. The manager must use this expertise to efficiently and effectively execute the policies adopted by the elected city council. Furthermore, the manager's breadth of knowledge and experience in the increasingly complex areas of local government operations obligates him or her to assist the elected council in the policy-making process. The policy role of managers has been central to the definition of the manager's position from the beginning and continues to be readily acknowledged.

Appointment of the manager by majority vote of the entire membership of the council, not simply a majority of a quorum, assures undisputed support for the appointee. Appointment ~~for an indefinite term~~ discourages contracting for a specified term or an arrangement that reduces the discretion of the council to remove a manager.

The requirement that the manager be ~~appointed solely on the basis of education and experience in the accepted competencies and practices of local public management~~ was added to the Eighth Edition to stress the basic principle of the council-manager form that the manager is a qualified professional executive. The precise level of education and experience required for the manager will vary from one municipality to the other depending on such factors as size of population and finances.

A useful guideline for the minimum qualifications for a city manager would be:

A master's degree with a concentration in public administration, public affairs or public policy and two years' experience in an appointed managerial or administrative position in a local government or a bachelor's degree and 5 years of such experience (for more information see ICMA's voluntary credentialing program at www.icma.org).

While it is preferable for a manager to live in the community during employment, the Model does not require it. This flexible approach allows communities to attract and retain the most qualified individuals and accommodates the problem of housing availability and cost. It also enables two or more communities to employ a single manager.

Increasingly, appointment of the manager involves an employment agreement between the municipality and the manager. These agreements can cover all aspects of the manager's job, including salary, other forms of compensation, duties, performance standards, evaluation, and severance procedures. Employment agreements provide mutual protection for the manager and the local government. However, they are not tenure agreements and do not impede the council's power to remove the manager. A model employment agreement can be found at http://icma.org/documents/icma_model_employee_agreement.doc.

Section 3.02. Removal.

If the city manager declines to resign at the request of the city council, the city council may suspend the manager by a resolution approved by the majority of the total membership of the city council. Such resolution shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the city manager. The city manager shall have fifteen days in which to reply thereto in writing, and upon request, shall be afforded a public hearing, which shall occur not earlier than ten days nor later than fifteen days after such hearing is requested. After the public hearing, if one is requested, and after full consideration, the city council by a majority vote of its total membership may adopt a final resolution of removal. The city manager shall continue to receive full salary until the effective date of a final resolution of removal.

Commentary.

This section provides an orderly removal procedure when a manager declines to resign at the request of the council. This section does not protect the city manager's tenure. However, it assures that any unjust charges will come to light and be answered, by providing for presentation to the manager of a statement of reasons for removal in the preliminary resolution and the opportunity for the manager to be heard if he or she so requests. As an additional protection, this section requires a vote of a majority of all the members to pass a removal resolution, thereby preventing a minority from acting as the majority in a quorum.

The council may delay the effective date of the final removal resolution in order to provide for termination pay. When an employment agreement exists between the city and the city manager, termination pay should be covered in that agreement.

Section 3.03. Acting City Manager.

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

Commentary.

To remove doubt as to the identity of the acting city manager, the manager must designate a city officer or employee to serve as acting city manager during the temporary absence or disability of the manager. The council is free, of course, to replace the acting city manager if it is dissatisfied with performance. The acting city manager is not entitled to the protection of the removal procedure afforded the manager by § 3.02.

Section 3.04. Powers and Duties of the City Manager.

The city manager shall be the chief executive officer of the city, responsible to the council for the management of all city affairs placed in the manager's charge by or under this charter. The city manager shall:

- (1) Appoint and suspend or remove all city employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant

- to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (2) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;
 - (3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;
 - (4) See that all laws, provisions of this charter and acts of the city council, subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;
 - (5) Prepare and submit the annual budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;
 - (6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;
 - (7) Make such other reports as the city council may require concerning operations;
 - (8) Keep the city council fully advised as to the financial condition and future needs of the city;
 - (9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;
 - (10) Provide staff support services for the mayor and council members;
 - (11) Assist the council to develop long term goals for the city and strategies to implement these goals;
 - (12) Encourage and provide staff support for regional and intergovernmental cooperation;
 - (13) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community; and
 - (14) Perform such other duties as are specified in this charter or may be required by the city council.

Commentary.

Although this section equips the manager with the necessary legal authority to discharge administrative responsibilities, the manager's authority may be limited in some states by provisions of state constitutions or laws. The listing of the manager's powers and duties assumes that the manager will not only perform managerial duties in the city's operations but will also have a significant role in the development of policy. There are important policy implications in the manager's duties to prepare and submit the budget; to report on the city's finances, administrative activities, departmental operations and future needs; and to make recommendations on city affairs. The duty to provide staff support for the mayor and council members includes providing information on policy issues before the council.

The expanded duties listed in items 9, 11, and 13 of the eighth edition reflect the complex responsibilities assigned to managers to make the processes of governance work in the community. Constructive interactions among the local government, businesses, non-profits, faith-based and special interest organizations and neighborhood groups define a successful community. In a similar manner, the responsibilities anticipated in item 12 charge the manager with placing each community in the context of its region and promoting both community and regional interests.

Article IV DEPARTMENTS, OFFICES, AND AGENCIES

Introduction.

This Article provides for the creation of the departments, offices, and agencies which perform the day-to-day operations of the city. It provides that the city manager appoint and supervise department heads. It makes exceptions in the case of the city attorney, acknowledging the close relationship of the department of law and the city council in some cities. Finally, the Article addresses planning, focusing on environmentally sensitive planning that takes the needs of the surrounding region into account.

Section 4.01. General Provisions.

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

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

Commentary.

This section authorizes the city council to establish city departments, offices, and agencies. It neither enumerates the operating departments nor details their internal organization. It provides that the manager appoint, direct, and supervise the officer who administers city departments, thus precluding administration by a board or commission. The number of departments will vary in accordance with local needs as well as the distribution of functions among units of local government; for example, in some cases, cities or special districts will be responsible for services elsewhere performed by counties.

An administrative code adopted by the council is the appropriate place for the details of departmental organization and operating rules and regulations; this allows for change without necessitating a charter amendment. In addition, many aspects of the internal organization of specific departments or divisions should be governed by administrative order rather than by council action.

In a full service city, operating departments typically will include public works, parks and recreation, police, fire, health, library, water and other utilities. In large cities, public works may be subdivided into separate departments such as roads and streets, buildings, and sanitation. State law generally will prescribe the organizational arrangement for housing and urban renewal functions.

The staff departments—such as finance, personnel, planning and law—likewise should be covered by the administrative code. To varying degrees, their organization may depend upon

state law. For example, it may not be possible to provide for an integrated finance department which includes all aspects of finance administration. Instead it may be necessary to provide for a city assessor and tax collector.

Section 4.02. Personnel System.

(a) Merit Principle. All appointments and promotions of city officers and employees shall be made solely on the basis of merit and fitness demonstrated by a valid and reliable examination or other evidence of competence.

(b) Merit System. Consistent with all applicable federal and state laws the city council shall provide by ordinance for the establishment, regulation, and maintenance of a merit system governing personnel policies necessary to effective administration of the employees of the city's departments, offices and agencies, including but not limited to classification and pay plans, examinations, force reduction, removals, working conditions, provisional and exempt appointments, in-service training, grievances and relationships with employee organizations.

Commentary.

The personnel provisions are designed to provide a flexible system which will encourage the development of competent staff. As personnel systems are increasingly controlled by state law and are subject to federal regulatory authority, the charter should not impose additional constraints and details affecting personnel administration. It should, however, strongly state the commitment to the merit principle. The *Model* states that commitment and calls on the council to provide, by ordinance, for the organization and procedures of the personnel system. It lists subjects that may be covered by personnel policies. Particularly in smaller jurisdictions, state law may cover some of these adequately, and their inclusion in the local ordinance could be unnecessary.

Section 4.03. Legal Officer.

(a) Appointment.

Alternative I

There shall be a legal officer of the city appointed by the city manager as provided in § 4.01(b).

Alternative II

There shall be a legal officer of the city appointed by the city manager subject to confirmation by the city council.

Alternative III

There shall be a legal officer of the city appointed by the city council.

(b) Role. The legal officer shall serve as chief legal adviser to the council, the manager and all city departments, offices and agencies, shall represent the city in all legal proceedings and shall perform any other duties prescribed by state law, by this charter or by ordinance.

Commentary.

Every municipality must have either a full-time or part-time legal officer, depending on the size of the city and the volume of legal problems. This officer normally will head the city's law department. Both the title and the precise nature of the legal officer's duties will depend on state law, local practice, and the organization of the court systems.

Because of wide variations in local practice and state law, subsection (a) provides three alternatives for who appoints the legal officer. Strong arguments can be made for Alternatives I and II.

Proponents of Alternative I point out that the legal officer, as a city department head, should have the same relationship to the manager as other department heads. The manager and the manager's top staff members, including the city attorney, serve as advisors to the council. Alternative II, which requires confirmation by the council, focuses on the special role of the legal officer as the city's attorney who must provide legal advice to the council and represent the council in legal proceedings. This means that the legal officer has a different relationship to the council than other department heads.

Alternative III is included as an option, though not a preferred one.

Subsection (b) describes the role of the legal officer in advising and representing the city and its offices, departments, and agencies. Some communities allow the legal officer to represent, in addition to the city, individual officers, and agencies in legal proceedings. For example, the charter of the Town of Avon, Connecticut, states:

The Town Attorney shall:

With approval of the Town Council based on criteria determined by said Town Council appear for and protect the rights of individual officers, members of boards, commissions, committees and agencies in all actions, suits or proceedings brought by or against them. Avon Town Charter, 6.1.1(v)(b).

Other situations, such as dealing with labor relations or bond issues, may justify retaining outside counsel rather than adding to the city attorney's responsibilities. Implicit in the council's power to make investigations of the conduct of a city department (§ 2.09) is the power to engage special counsel in the unusual circumstances in which the council requires independent legal assistance, for example, if the city attorney would otherwise have a conflict of interest.

Some cities have proposed creating separate positions of city attorney, one for city council, and one for the city manager or mayor. The eighth edition discourages this because of the belief that local government should be unitary.

Section 4.04. Land Use, Development, and Environmental Planning.

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

- (1) Designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by ordinance;
- (2) Adopt a comprehensive plan and determine to what extent zoning and other

- land use control ordinances must be consistent with the plan;
- (3) Determine to what extent the comprehensive plan and zoning and other land Use ordinances must be consistent with regional plan(s); and
- (4) Adopt development regulations, to be specified by ordinance, to implement the plan.

The designated agency, the city manager, and the mayor and council shall seek to act in cooperation with other jurisdictions and organizations in their region to promote integrated approaches to regional issues.

Commentary.

Regulation of land use and development is a council function and an important aspect of home rule, allowing local governments to manage growth and enhance quality of life in the community. However, federal and state laws on land use, development, and environmental protection impose not only regulation but in some cases specific procedures on local governments. The Model provision provides the needed flexibility for the city to establish workable structures and procedures for exercising the planning function within the context of constraints imposed by higher levels of government.

Most cities are integral parts of metropolitan and other regions. The planning and development policies of a city have implications beyond its boundaries. The overall health of a metropolitan region is dependent on some integration of local and regional planning. In addition to establishing appropriate processes and relevant agencies, a city should seek consistency with regional plans in its planning endeavors.

Article V FINANCIAL MANAGEMENT

Introduction.

This article provides for the development of a comprehensive financial program, allowing maximum flexibility within the boundaries of sound fiscal practices. The budget and the budget approval process constitute the most visible and important activity undertaken by the government. The annual operating budget and multi-year capital plan are the products of the translation of disparate and often conflicting community goals and objectives into comprehensive financial documents. The financial planning process establishes a set of short- and long-term goals for the community and aids in resolving disagreements that arise in the execution of the operations of the government.

The complete financial plan involves two major elements: 1) the current annual budget, and 2) the multi-year capital program which is coordinated with the annual budget.

Section 5.01. Fiscal Year.

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

Commentary.

It is strongly recommended that the fiscal year be set so that fiscally sound municipalities will not have to borrow for short terms in anticipation of taxes except in emergency situations. It is recognized, however, that before changes in the fiscal year can be made consideration must be given to the fiscal patterns of the other taxing jurisdictions affecting the city. The dates when the state usually pays significant amounts of grants in aid to the municipality should also be considered in developing an advantageous fiscal calendar.

Section 5.02. Submission of Budget and Budget Message.

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

Commentary.

The specific submission date will depend upon the fiscal year but in any case it is suggested that it be at least 45 days prior to the beginning of the fiscal year to allow time for public input and council deliberation.

Section 5.03. Budget Message.

The city manager's message shall explain the budget both in fiscal terms and in terms of the work programs, linking those programs to organizational goals and community priorities. It shall outline the proposed financial policies of the city for the ensuing fiscal year and the impact of those policies on future years. It shall describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the city's debt position, including factors affecting the ability to raise resources through debt issues, and include such other material as the city manager deems desirable.

Commentary.

The budget message should clearly present the manager's program for accomplishing the council's goals and priorities for the community for the coming year as translated into financial terms. Programs of the various city departments should be explained and the city's debt position summarized. From a careful reading of the budget message, members of the council and citizens should be able to obtain a clear and concise picture of what the manager expects to accomplish in the coming year, the estimated cost, sources of revenue and changes in the city debt.

Section 5.04. Budget.

The budget shall provide a complete financial plan of all city funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the city manager deems desirable or the city council may require for effective management and an understanding of the relationship between the budget and the city's strategic goals. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the

current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

- (1) The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by department or by other organization unit, and program, purpose or activity, method of financing such expenditures, and methods to measure outcomes and performance related to the goals;
- (2) Proposed longer-term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department or by other organization unit when practical, the proposed method of financing each such capital expenditure, and methods to measure outcomes and performance related to the goals; and
- (3) The proposed goals, anticipated income and expense, profit and loss for the ensuing year for each utility or other enterprise fund or internal service fund operated by the city, and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance exclusive of reserves.

Commentary.

The budget is the translation of disparate and often conflicting community aspirations into a comprehensive financial document that reflects the governing body's goals. It is a complete financial plan for all funds and activities that includes both revenues and expenditures.

Expenditures for current operations and capital outlays should be shown separately with the source of financing indicated.

The *Model* does not provide a detailed classification of revenues, expenditures, and specific funds because classifications will be developed by ordinance or administrative order, if they are not established by state agencies concerned with local finance as part of a uniform accounting system. Proposed current expenditures are to be presented in terms of the work programs of the respective offices, departments and agencies; this approach is the fundamental feature of program or performance budgeting.

Performance measures used in the budget may include input, output, efficiency, and outcome measures with comparisons over time so as to encourage the government to benchmark its performance for continuous improvement. A city should strive toward development of outcome measures which reflect actual impact of a program, service, or project on its citizens. Citizens, council, and city staff should work together to undertake performance measurement subject to the year-to-year needs and demands of the community.

Section 5.05. City Council Action on Budget.

(a) Notice and Hearing. The city council shall publish the general summary of the budget and a notice stating:

- (1) The times and places where copies of the message and budget are available for inspection by the public, and
- (2) The time and place, not less than two weeks after such publication, for a public hearing(s) on the budget.

(b) Amendment Before Adoption. After the public hearing, the city council may adopt the

budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income.

(c) Adoption. The city council shall adopt the budget on or before the _____ day of the _____ month of the fiscal year currently ending. If it fails to adopt the budget by this date, the budget proposed by the city manager shall go into effect.

(d) "Publish" defined. As used in this article, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the city, and, if available, in a web site.

Commentary.

The only restrictions placed on the council with respect to action on the budget are those governing the adoption procedure, the requirement that certain mandatory expenditures may not be decreased or deleted, and the requirement that total authorized expenditures may not exceed the total of estimated income.

No specific date as the deadline for adoption of the budget has been included. Setting a deadline for adoption does not preclude the earlier completion of action on the budget with ample time for public hearings and council consideration of the budget, if the manager submits it early enough.

When amendments are made following public hearing but before adoption that result in significant changes in the budget which the public would not have anticipated, the council should consider holding an additional public hearing to consider the amendments.

The *Model* promotes a favored course of action for dealing with the failure of the council to adopt the budget by the prescribed deadline. It recommends that the budget as submitted by the manager be deemed adopted. Among other possibilities in such a situation are (1) for the amounts appropriated for operations in the current fiscal year to be deemed adopted; (2) for the manager's budget to be deemed adopted but with amendments by the council being permitted during the first month of the new fiscal year; (3) to authorize the council to make temporary appropriations for a period not to exceed one month, during which time it would presumably complete adoption of the budget for the remainder of the fiscal year; and (4) to provide that the budget of the preceding fiscal year should be applicable automatically for the first month of the ensuing year, with the presumption that action will be completed during that time.

The city is required to publish and make the budget publicly available. In doing this, as with any publishing, the city should also consider translating the budget into other languages to communicate better with residents if necessary.

Section 5.06. Appropriation and Revenue Ordinances.

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

- (a) an appropriation ordinance making appropriations by department, fund,

service, strategy or other organizational unit and authorizing an allocation for each program or activity;

- (b) a tax levy ordinance authorizing the property tax levy or levies and setting the tax rate or rates; and
- (c) any other ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

Commentary.

The previous edition of the *Model* in the adoption subsection provided: –Adoption of the budget shall constitute appropriations of amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed.” It took note that some states required that appropriations and the tax levy be by ordinance. Alternative language to cover that requirement was included. This edition specifically calls for appropriation ordinances and revenue ordinances and that appropriations be by department, fund, service, strategy or major organizational unit within each fund. The appropriations for each department or unit would not be broken down in the same detail as the budget. There would be a property tax levy ordinance and other revenue ordinances authorizing revenues from non-property taxes.

Section 5.07. Amendments after Adoption.

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

(b) Emergency Appropriations. To address a public emergency affecting life, health, property or the public peace, the city council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of § 2.14. To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid or refinanced as long-term debt not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

(c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the city manager that the revenues or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the manager shall report to the city council without delay, indicating the estimated amount of the deficit, any remedial action taken by the manager and recommendations as to any other steps to be taken. The council shall then take such further action as it deems necessary to prevent or reduce any deficit and for that purpose it may by ordinance reduce or eliminate one or more appropriations.

(d) Transfer of Appropriations. At any time during or before the fiscal year, the city council may by resolution transfer part or all of the unencumbered appropriation balance from one department, fund, service, strategy or organizational unit to the appropriation for other departments or organizational units or a new appropriation. The manager may

transfer funds among programs within a department, fund, service, strategy or organizational unit and shall report such transfers to the council in writing in a timely manner.

(e) Limitation; Effective Date. No appropriation for debt service may be reduced or transferred, except to the extent that the debt is refinanced and less debt service is required, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

Commentary.

Supplemental appropriations, which can be the bane of any good budget procedure, are restricted to situations in which the manager certifies to council the availability of money in excess of the total revenues estimated in the budget. Another possibility for use of such “windfall” sums is to require their use in the succeeding year’s budget as revenue, which would have the effect of reducing the tax levy. Supplemental appropriations may be made only by ordinance and all the provisions regarding publication, notice of hearing, etc., applicable to other ordinances must be followed. Emergency appropriations may be budgeted in accordance with the procedure for emergency ordinances.

Provision is made for reduction of appropriations when the manager believes available revenues will not cover appropriations and a deficit is likely. The primary responsibility is clearly the manager’s but it is his or her duty to inform the council and then implement any ordinances or resolutions the council may enact.

With appropriations being made by departments, funds, services, strategies and major organizational units and not by objects, the manager has the freedom to make transfers from unencumbered balances within departments of units but must notify the council of transfers. When an unencumbered balance exists in one department or unit, all or part of it may be transferred to the appropriation of another department or unit by council resolution.

Section 5.08. Administration and Fiduciary Oversight of the Budget.

The city council shall provide by ordinance the procedures for administration and fiduciary oversight of the budget.

Commentary.

The council will by ordinance establish the procedures and controls for implementation of the budget. The council is entrusted with the fiduciary responsibility for the city and as such must provide review and oversight of the budget. The city manager administers the budget and manages the work programs and spending by departments within the policy goals and appropriations set by the council.

Proposed work programs and requested allotments should be submitted to the manager by department heads following adoption of the budget. The manager should review the programs and allot portions of the total appropriation based upon the work expected to be performed during a particular period of time, usually three months. As chief administrator, the manager must have the authority to revise the allotments at any time during the year and for any reason.

Section 5.09. Capital Program.

(a) Submission to City Council. The city manager shall prepare and submit to the city council a multi-year capital program no later than three months before the final date for submission of the budget.

(b) Contents. The capital program shall include:

- (1) A clear general summary of its contents;
- (2) Identification of the long-term goals of the community;
- (3) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the fiscal years next ensuing, with appropriate supporting information as to the necessity for each;
- (4) Cost estimates and recommended time schedules for each improvement or other capital expenditure;
- (5) Method of financing upon which each capital expenditure is to be reliant;
- (6) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired;
- (7) A commentary on how the plan addresses the sustainability of the community and the region of which it is a part; and
- (8) Methods to measure outcomes and performance of the capital plan related to the long-term goals of the community.

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

Commentary.

The *Model's* multi-year capital program provisions should compel long-range, goal-oriented, regionally sensitive planning of capital improvements. They should also help develop a meaningful relationship between capital and current operating expenditures. Finally, they should provide adequate time for systematic consideration of capital projects by the council.

The *Model* requires that the manager submit the capital program three months prior to the final date for submission of the budget. This gives the council an opportunity to review the proposed projects and their cost and the methods of finance before the manager submits the annual budget. Actual capital expenditures are carried each year as the capital outlay section of the current budget. These expenditures may be in the form of direct capital outlays from current revenues or debt service payments.

A sixth edition innovation, continued in the seventh and eighth editions, requires that the capital program include estimated operating and maintenance costs of proposed capital facilities. This forces more realistic projections of expenditures, because sometimes the operating cost of a facility will exceed the amortized annual capital charge. It also discourages neglect of maintenance.

Section 5.10. City Council Action on Capital Program.

(a) Notice and Hearing. The city council shall publish the general summary of the capital

program and a notice stating:

- (1) The times and places where copies of the capital program are available for inspection by the public, and
- (2) The time and place, not less than two weeks after such publication, for a public hearing(s) on the capital program.

(b) Adoption. The city council by resolution shall adopt the capital program with or without amendment after the public hearing and on or before the _____ day of the ____ month of the current fiscal year.

Commentary.

The capital program's adoption, which must be preceded by required publication, notice and hearing, means a positive commitment by the council to undertake a scheduled multi-year capital improvement program. The methods of financing the improvements will be detailed. Bond issues authorized by either a bond ordinance or by a popular referendum will finance major improvements. Most projects requiring bond issues will extend over a period of more than one year.

Other projects, to be financed from current income, also may extend over more than one year and will normally involve construction contracts with adequate safeguards for both parties. Still other capital projects may be completed within a single fiscal period as part of the work program of various city departments. In all cases, actual disbursements for capital items during a single fiscal year, whether in the form of debt service or direct outlays, are carried as the capital outlay section of the budget for that year.

The requirement that the capital program each year be submitted well in advance of the budget enables the council to consider the proposed improvements, the methods for financing them, and the recommended priorities in sufficient time to make decisions on capital items which will be subsequently reflected in the budget. The fact that most capital improvement decisions must be made well in advance of actual disbursements means that the bulk of the capital items in a particular budget will be the result of decisions made several year earlier. Changes, often of a relatively minor nature, may be made each year.

Because all states regulate borrowing for capital improvements by general legislation, no article on this subject is included.

Section 5.11 Independent Audit.

The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits as it deems necessary. An independent certified public accountant or firm of such accountants shall make such audits. Such audits should be performed in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted Governmental Auditing Standards (GAGAS).

The Council shall designate no fewer than three of its members to serve as an Audit Committee. This Committee shall:

- (1) Lead the process of selecting an independent auditor;
- (2) Direct the work of the independent auditor as to the scope of the

- annual audit and any matters of concern with respect to internal controls; and
- (3) Receive the report of the internal auditor and present that report to the council with any recommendations from the Committee.

The council shall, using competitive bidding, designate such accountant or firm annually, or for a period not exceeding five years, but the designation for any particular fiscal year shall be made no later than 30 days after the beginning of such fiscal year. The standard for independence is that the auditor must be capable of exercising objective and impartial judgment on all issues encompassed within the audit engagement. No accountant or firm may provide any other services to the city during the time it is retained to provide independent audits to the city. The city council may waive this requirement by a majority vote at a public hearing. If the state makes such an audit, the council may accept it as satisfying the requirements of this section.

Commentary.

Since the value of independent audits is directly related to the caliber of those who conduct them, it is provided that certified public accountants be retained, except when a state audit is required. Selection of a professional accountant or firm does not lend itself to the usual requirement, however, of choosing the lowest responsible bidder." While the council should not disregard cost, this is a case where the factors of competence, reliability and reputation are more significant. For an audit to be most beneficial, some of it must extend over the entire year, which necessitates designation of the auditor during the first month. If the state conducts periodic audits of the city's finances that meet council-established requirements, the state audit may be an acceptable and money-saving substitute for an audit by a private firm.

While the *Model* emphasizes financial audits, the council also has a responsibility to institute performance and management audits to evaluate the operations of departments, services, and programs.

Section 5.12. Public Records.

Copies of the budget, capital program, independent audits, and appropriation and revenue ordinances shall be public records.

Commentary.

In addition to compliance with the formal legal requirement that copies of the budget document and capital program be made available, many cities prepare and widely distribute popular summaries, which provide citizens with essential general information.

Article VI ELECTIONS

Introduction.

Previous editions of the *Model* contained detailed provisions on the nomination and election process. Since the election laws of each state apply to municipalities whether or not they operate with a local charter, these provisions from earlier editions have been removed. The text

on methods of electing council members that appears below has been moved from Article II in the earlier editions of the *Model*. Provision for nonpartisan elections and control over the timing of elections are among the few aspects of elections that remain under local discretion. Operating within the limitations imposed by state law, the city may by ordinance adopt regulations deemed desirable.

Section 6.01. City Elections.

(a) Regular Elections. The regular city election shall be held [at the time established by state law] on the first _____ [day of week], in _____ [fall or spring month of odd-or even- numbered year], and every 2 years thereafter.

(b) Registered Voter Defined. All citizens legally registered under the constitution and laws of the state of _____ to vote in the city shall be registered voters of the city within the meaning of this charter.

(c) Conduct of Elections. The provisions of the general election laws of the state of _____ shall apply to elections held under this charter. All elections provided for by the charter shall be conducted by the election authorities established by law. Candidates shall run for office without party designation. For the conduct of city elections, for the prevention of fraud in such elections and for the recount of ballots in cases of doubt or fraud, the city council shall adopt ordinances consistent with law and this charter, and the election authorities may adopt further regulations consistent with law and this charter and the ordinances of the council. Such ordinances and regulations pertaining to elections shall be publicized in the manner of city ordinances generally.

(d) Proportional Representation. The council may be elected by proportional representation by the method of the single transferable vote.

(e) Beginning of term. The terms of council members shall begin the ___ day of ___ after their election.

Commentary.

(a-c) Although most states regulate local elections entirely or to a very substantial extent by state statutes, a local charter may provide certain variations. For example, home rule charters may provide for nonpartisan local elections as provided in this section. Traditionally, the *Model* has advocated separating municipal elections from state and national elections to allow a clear focus on local issues. State election laws and city charters frequently schedule municipal elections in the fall of odd-numbered years or in the spring of the year. However, recent evidence suggests that turnout is higher during state and national elections. Some now advocate moving local elections to coincide with state and national elections to increase participation in local races. The Committee that developed this *Model* recognized the trade-off involved with each choice and decided not to express a preference. If permissible under the state election laws, such timing should be specified in the charter.

(d) As in the sixth and seventh editions, the eighth edition includes proportional representation (PR) via the single transferable vote method as an alternative means for electing the council. Until 1964 (when the sixth edition of the *Model City Charter* was published), the *Model* recommended the Hare system (also known as preference voting, choice voting, and the single

transferable vote system) of PR as the preferred method of electing city councils. It had been used in 22 American cities but by the early 1960s had been discarded in all but Cambridge, Massachusetts, where it is still used to elect the city council and school committee. The Republic of Ireland also uses it to elect members of the House of Parliament. Unquestionably, PR provides the greatest equity in representing all sectors of the community. However, the relative complexity of PR when using antiquated voting procedures and the long and expensive process of counting ballots by hand concerned some voters where it was used and prevented it from becoming a widespread reform measure. There is renewed interest in PR because of its potential to assure representation of minority populations and because technological developments now allow a computerized voting and counting system, thus eliminating the major objection to PR.

The single transferable vote method allows voters to rank candidates in a multi-member district by preference. The method depends on creation of a winning threshold—a share of votes that each council member must receive to be elected. Election officials determine the threshold after all votes are counted, using a formula to determine the fewest number of votes that only the winning number of candidates can receive. In Cambridge, for example, officials divide the total number of valid ballots cast by the number of positions to be elected plus one. Under this approach, in an election for nine council seats where voters cast 15,000 valid ballots, the winning threshold is 1,501, or 15,000 divided by ten, plus one. Ten candidates theoretically could receive 1,500 votes, but only nine can obtain 1,501. Once a particular candidate receives the designated threshold of first choices, ballot counters redistribute any surplus votes for that candidate to another candidate based upon the voter's preferential ranking. Cambridge redistributes some ballots at full value, but modern technology now allows a more precise redistribution of the calculated share of every ballot at an equally reduced value.

After all surplus votes are redistributed, the weakest candidate is eliminated, and ballots from that candidate are counted for the next choice candidate on those voters' ballots. This process of redistributing votes from winning candidates and weak candidates continues until the necessary number of candidates have reached the threshold, or only nine candidates remain. In Cambridge, this has consistently led to ninety percent of voters helping to elect a candidate, more than sixty-five percent of voters having their first choice candidate win, and more than ninety-five percent of voters seeing one of their top three choices win.

The PR alternative assumes that the mayor will be elected by and from the council and thus calls for an odd-number of council members. If PR is used in conjunction with a separately elected mayor who serves on the council, there should be an even number of council members elected by PR. When considering the PR alternative, charter reviewers may also wish to investigate semi-proportional representation systems—the limited vote and cumulative vote—which have been adopted in more than 75 localities since 1985 to settle voting rights cases, including in Peoria (IL), Amarillo (TX), and Chilton County (AL). While more uneven in their results than PR, these systems increase minorities' access to representation and may boost turnout. More information about the mechanics of PR can be obtained from the Center for Voting and Democracy, www.fairvote.org.

Another relatively new voting procedure that incorporates the transferable vote method is the instant runoff. It can be used in single member districts or single office elections, such as the mayor's office. Instant runoff voting eliminates the need for costly runoff elections and the typical drop-off in turnout in runoffs. Voters rank candidates for a single office; if no candidate wins a majority of votes, election officials remove the candidate with the fewest first-place votes and redistribute those votes to other candidates based upon their second-place designations until

one candidate achieves a majority. This ensures that a vote cast for a voter's favorite candidate does not potentially contribute to the election of that voter's least favorite candidate. It also means that the victor has a credible claim of majority support without recourse to a runoff. In 2002, San Francisco became the first major U.S. city to adopt instant runoff voting to elect its mayor, board of supervisors, district attorney, city attorney, treasurer, sheriff, assessor-recorder and public defender. The disadvantage is that voters may have difficulty sorting out the candidates in a large field of contenders and cannot rely on the runoff campaign to learn in more detail how the two remaining contenders differ in their characteristics and positions.

Section 6.02. Council Districts; Adjustment of Districts (for use with Alternatives II, III and IV of § 6.03).

(a) Number of Districts. There shall be _____ city council districts.

(b) Districting Commission; Composition; Appointment; Terms; Vacancies; Compensation.

- (1) There shall be a districting commission consisting of five members. No more than two commission members may belong to the same political party. The city council shall appoint four members. These four members shall, with the affirmative vote of at least three, choose the fifth member who shall be chairman.
- (2) No member of the commission shall be employed by the city or hold any other elected or appointed position in the city.
- (3) The city council shall appoint the commission no later than one year and five months before the first general election of the city council after each federal decennial census. The commission's term shall end upon adoption of a districting plan, as set forth in § 6.02(c).
- (3) In the event of a vacancy on the commission by death, resignation or otherwise, the city council shall appoint a new member enrolled in the same political party from which his or her predecessor was selected to serve the balance of the term remaining.
- (5) No member of the districting commission shall be removed from office by the city council except for cause and upon notice and hearing.
- (6) The members of the commission shall serve without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges.
- (7) The commission may hire or contract for necessary staff assistance and may require agencies of city government to provide technical assistance. The commission shall have a budget as provided by the city council.

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

- (1) Following each decennial census, the commission shall consult the city council and shall prepare a plan for dividing the city into districts for the election of council members. In preparing the plan, the commission shall be guided by the criteria set forth in § 6.02(d). The report on the plan shall include a map and description of districts recommended.
- (2) The commission shall hold one or more public hearings not less than one month before it submits the plan to the city council. The commission shall

- make its plan available to the public for inspection and comment not less than one month before its public hearing.
- (3) The commission shall submit its plan to the city council not less than one year before the first general election of the city council after each decennial census.
 - (4) The plan shall be deemed adopted by the city council unless disapproved within three weeks by the vote of the majority of all members of the city council. If the city council fails to adopt the plan, it shall return the plan to the commission with its objections and with the objections of individual members of the council.
 - (5) Upon rejection of its plan, the commission shall prepare a revised plan and shall submit such revised plan to the city council no later than nine months before the first general election of the city council after the decennial census. Such revised plan shall be deemed adopted by the city council unless disapproved within two weeks by the vote of two-thirds of all of the members of the city council and unless, by a vote of two-thirds of all of its members, the city council votes to file a petition in the _____ Court, _____ County, for a determination that the plan fails to meet the requirements of this charter. The city council shall file its petition no later than ten days after its disapproval of the plan. Upon a final determination upon appeal, if any, that the plan meets the requirements of this charter, the plan shall be deemed adopted by the city council and the commission shall deliver the plan to the city clerk. The plan delivered to the city clerk shall include a map and description of the districts.
 - (6) If in any year population figures are not available at least one year and five months before the first general election following the decennial census, the city council may, by local law, shorten the time periods provided for districting commission action in paragraphs (2), (3), (4), and (5) of this subsection.

(d) Districting Plan; Criteria. In preparation of its plan for dividing the city into districts for the election of council members, the commission shall apply the following criteria which, to the extent practicable, shall be applied and given priority in the order in which they are herein set forth.

- (1) Districts shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent of the average population for all city council districts according to the figures available from the most recent census.
- (2) Districts shall consist of contiguous territory; but land areas separated by waterways shall not be included in the same district unless said waterways are traversed by highway bridges, tunnels or regularly scheduled ferry services both termini of which are within the district, except that, population permitting, islands not connected to the mainland or to other islands by bridge, tunnel or regular ferry services shall be included in the same district as the nearest land area within the city and, where such subdivisions exist, within the same ward or equivalent subdivision as described in paragraph (5) below.
- (3) In cities whose territory encompasses more than one county or portions of more than one county, the number of districts, which include territory in more than one county, shall be as small as possible.

- (4) In the establishment of districts within cities whose territory is divided into wards or equivalent subdivisions whose boundaries have remained substantially unaltered for at least fifteen years, the number of such wards or equivalent subdivisions whose territory is divided among more than one district shall be as small as possible.
- (5) Consistent with the foregoing provisions, the aggregate length of all district boundaries shall be as short as possible.

(e) Effect of Enactment. The new city council districts and boundaries as of the date of enactment shall supersede previous council districts and boundaries for all purposes of the next regular city election, including nominations. The new districts and boundaries shall supersede previous districts and boundaries for all other purposes as of the date on which all council members elected at that regular city election take office.

Commentary.

With three of the five alternatives provided for the election of the city council involving districts, the provision for drawing and redrawing district lines assumes particular importance.

The process of drawing districts described in this edition and in the seventh edition differs from that of earlier editions, in response to the Voting Rights Act and related court decisions. Rather than a two-part process with an advisory commission recommending a plan, followed by city council passage of a plan (which might or might not resemble that of the advisory commission), the *Model* provides for a more direct process – redistricting by an independent commission. The lead time for redistricting should provide sufficient time to resolve some of the increasing number of local government redistricting suits and allow sufficient time to comply with the requirements of § 5 of the Voting Rights Act if applicable. In addition, the *Model* provides for ordered, specific criteria for redistricting based on population rather than the “qualified voter” standard of the sixth edition.

The *Model* provides for a bipartisan commission. Even cities with nonpartisan elections may have problems with political parties (either local or national) wanting to dominate the process to achieve advantage. To facilitate the commission’s ability to work together despite partisan differences, the *Model* recommends that the four council appointees (and mandates that at least three of the four) agree on the choice of chairman.

Once the bipartisan commission submits its plan to the city council, the council can neither approve nor veto the result. This avoids the conflict of interest created when council members consider new districts whose lines may materially affect their political futures. The council may, however, prevent implementation of the plan if it finds the plan in violation of the charter and files with the courts for such a determination.

Subsection (d) lists the criteria that the commission must abide by when it draws the new districts. The criteria are designed to preclude gerrymandering that either protects or punishes incumbents or that prevents particular voting groups from gaining power. With the proper ordered criteria, the redistricting process is less open to manipulation. Flagrant gerrymandering will be almost impossible without a clear violation of the mandated criteria. The criteria concerning waterways and islands should be included in charters where appropriate. The exact terminology for election administration subdivisions (e.g., wards or equivalent subdivisions) should be adjusted to conform to state law. Depending on the jurisdiction, wards and districts sometimes have the same meaning and sometimes have different meanings.

Some cities prefer that the city council perform redistricting. This may stem from a belief that the redistricting process essentially involves a series of political decisions, and that attempts to separate the process from the politics is futile and foolish. Or, where the city council has historically performed this function without causing unrest, such a preference may derive from the sense that there is no need for change. When a city opts for redistricting by the city council, the following provisions should be substituted in § 6.02(b) and (c) and a new § 6.02(d) be added as follows.

(b) Council to Redistrict. Following each decennial census, the city council shall, by ordinance, adjust the boundaries of the city council districts using the criteria set forth in § 6.02(e).

(c) Procedures.

- (1) The city council shall hold one or more public hearings prior to bringing any proposed plan to a vote. Proposed plans must be available to the public for inspection and comment not less than one month before the first public hearing on said plan. The plan shall include a map and description of the districts recommended.
- (2) The city council shall approve a districting plan no later than 10 months (300 days) prior to the first regular city election following the decennial census.

(d) Failure to Enact Ordinance. If the city council fails to enact a redistricting plan within the required time, the city attorney shall, the following business day, inform the _____ Court, _____ County, and ask that a special master be appointed to do the redistricting. The special master shall, within sixty days, provide the Court with a plan drawn in accordance with the criteria set forth in § 6.02(e). That plan shall have the force of law unless the court finds it does not comply with said criteria. The court shall cause an approved plan to go into effect no later than 210 days prior to the first regular city election after the decennial census. The city shall be liable for all reasonable costs incurred by the special master in preparing the plan for the court.

Subsections 6.03(d) and (e) of the *Model* should be retained, relettered (e) and (f), respectively, and the words “city council” substituted for “commission.”

Subsection 6.03(d) of the substitute language (Failure to Enact Ordinance) gives incentive for the council to complete redistricting on time. Failure to redistrict will not result in another election using the old districts, as earlier editions provided. Even the most divided of city councils would probably prefer to compromise than have a special master redistrict for them—and few would want to explain the additional cost of paying someone else to draw up a plan that probably would not improve upon their own compromise.

Section 6.03. Methods of Electing Council Members.

The text in this section complements the information on the composition of the council found in Article II, § 2.02(c).

Alternative I – Option A – Council Elected At Large; Mayor Elected By the Council

At the first election under this charter _____ council members shall be elected; the _____ [one-half plus one] candidates receiving the greatest number of votes shall serve for terms of four years, and the _____ [remainder of the council] candidates receiving the next greatest number of votes shall serve for terms of two years. Commencing at the next regular election and at all subsequent elections, all council members shall be elected for four-year terms.

Alternative I – Option B – Council Elected At Large; Mayor Elected Separately

At the first election under this charter _____ council members shall be elected; the _____ [one-half the number of council members] candidates receiving the greatest number of votes shall serve for terms of four years, and the _____ [one-half the number of council members] candidates receiving the next greatest number of votes shall serve for terms of two years. Commencing at the next regular election and at all subsequent elections, all council members shall be elected for four-year terms.

Alternative II – Option A – Council Elected At Large with District Residency Requirement; Mayor Elected By the Council

At the first election under this charter _____ council members shall be elected; the _____ [one-half plus one] candidates receiving the greatest number of votes shall serve for terms of four years, and the _____ [remainder of the council] candidates receiving the next greatest number of votes shall serve for terms of two years. Commencing at the next regular election and at all subsequent elections, all council members shall be elected for four-year terms.

Alternative II – Option B – Council Elected At Large with District Residency Requirement; Mayor Elected Separately

At the first election under this charter _____ council members shall be elected; the _____ [one-half the number of council members] candidates receiving the greatest number of votes shall serve for terms of four years, and the _____ [one-half the number of council members] candidates receiving the next greatest number of votes shall serve for terms of two years. Commencing at the next regular election and at all subsequent elections, all council members shall serve for terms of four years.

Alternative III – Option A – Mixed At-Large and Single Member District System; Mayor Elected by the Council

At the first election under this charter _____ council members shall be elected; all district candidates and the _____ at-large candidates receiving the greatest number of votes shall serve for terms of four years, and the _____ at-large candidates receiving the next greatest number of votes shall serve for terms of two years. Commencing at the next regular election and at all subsequent elections, all council members shall be elected for four-year terms.

Alternative III – Option B – Mixed At-Large and Single Member District System; Mayor Elected Separately

At the first election under this charter _____ council members shall be elected; all district candidates and the _____ at-large candidates receiving the greatest number of votes shall serve for terms of four years, and the _____ at-large candidates receiving the next greatest number of votes shall serve for terms of two years. Commencing at the next regular election and at all subsequent elections, all council members shall be elected for four-year terms.

Alternative IV – Single-Member District System

At the first election under this charter _____ council members shall be elected; council members from odd-numbered districts shall serve for terms of two years, and council members from even-numbered districts shall serve for terms of four years. Commencing at the next regular election and at all subsequent elections, all council members shall serve for terms of four years.

Commentary.

The single-member district system should be used only where the mayor is elected at large as provided in Alternative II of § 2.03.

Section 6.04. Initiative, Citizen Referendum, and Recall.

(a) Alternative I – Provisions Provided by State Law. The powers of initiative, citizen referendum, and recall are hereby reserved to the electors of the city.

Alternative II - General Authority for Initiative, Citizen Referendum, and Recall.

(1) Initiative. The registered voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.

(2) Citizen Referendum. The registered voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

(3) Recall. The registered voters of the city shall have power to recall elected officials of the city, but no recall petition shall be filed against any official within six months after the official takes office, nor, in case of a member subjected to a recall election and not removed, until at least six months after the election.

(b) Commencement of Proceeding; Petitioners' Committee; Affidavit. Any five registered voters may commence initiative, citizen referendum, or recall proceedings by

filing with the city clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance, citing the ordinance sought to be reconsidered, or stating the name and title of the officer sought to be recalled accompanied by a statement, not to exceed 200 words, of the reasons for the recall. Grounds for recall should relate to and affect the administration of the official's office, and be of a substantial nature directly affecting the rights and interests of the public. Promptly after receipt of a recall petition, the clerk shall serve, personally or by certified mail, a copy of the affidavit on the elected officer sought to be recalled. Within 10 days of service of the affidavit, the elected officer sought to be recalled may file a statement with the city clerk, not to exceed 200 words, in response. Promptly after the affidavit of the petitioners' committee is filed, and the response, if any, of the elected official sought to be recalled is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.

(c) Petitions.

(1) Number of Signatures. Initiative and citizen referendum petitions must be signed by registered voters of the city equal in number to at least [5 to 10] percent of the total number of registered voters to vote at the last regular election. Recall petitions must be signed by registered voters of the city equal in number to at least [10 to 20] percent of the total number of registered voters to vote at the last regular election.

(2) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Initiative and citizen referendum petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered. Recall petitions shall contain the name and title of the official sought to be recalled, the statement of grounds for the recall, and the response of the official sought to be recalled, if any. If no response was filed, the petition shall so state.

(3) Affidavit of Circulator. Each paper of a petition shall have attached to it when filed an affidavit executed by the person circulating it stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(4) Time for Filing Referendum and Recall Petitions. Referendum petitions must be filed within 30 days after adoption by the council of the ordinance sought to be reconsidered. Recall petitions must be filed within [40 to 160] days of the filing of the petitioners' affidavit initiating the recall procedure.

(d) Procedure after Filing.

(1) Certificate of Clerk; Amendment. Within twenty days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying,

if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his or her certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of paragraphs (2) and (3) of § 6.04(c), and within five days after it is filed the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under paragraph (2) of this subsection within the time required, the clerk shall promptly present his or her certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.

(2) Council Review. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition. A council member who is the subject of a recall petition shall not be eligible to act in the determination of sufficiency or insufficiency of the petition.

(3) Court Review; New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

(e) Referendum Petitions; Suspension of Effect of Ordinance. When a referendum petition is filed with the city clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (i) There is a final determination of insufficiency of the petition, or
- (ii) The petitioners' committee withdraws the petition, or
- (iii) The council repeals the ordinance, or
- (iv) Thirty days have elapsed after a vote of the city on the ordinance.

(f) Action on Petitions.

(1) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner provided in Article II or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance within sixty days or fails to repeal the referred ordinance within thirty days after the date the petition

was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the city. The council shall promptly order a recall election to occur within _____ [30 to 90] days of the date the recall petition was finally determined sufficient.

(2) Submission to Voters of Proposed or Referred Ordinances. The vote of the city on a proposed or referred ordinance shall be held not less than 30 days and not later than one year from the date of the final council vote thereon. If no regular city election is to be held within the period prescribed in this subsection, the council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

(3) Withdrawal of Petitions. An initiative, referendum, or recall petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the city by filing with the city clerk a request for withdrawal signed by at least two-thirds of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

(g) Results of Election.

(1) Initiative. If a majority of the registered voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(2) Referendum. If a majority of the registered voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

(3) Recall. Ballots used at recall elections shall read: ~~Shall~~ [name] be recalled (removed) from the office of _____?" If a majority of the registered voters voting on a proposed recall vote in its favor, the official is removed and the winning candidate for successor, if any, shall be elected as a replacement for the duration of the unexpired term. Otherwise the vacancy shall be filled in accordance with § 2.06 (c).

Commentary.

Unlike other provisions, this article must be completely self-executing. Detail should not be filled in by the council because these devices guard against possible inadequacies of council.

(a) Neither the initiative nor the referendum should be applicable to the budget, capital program, any ordinance relating to the appropriation of money or the levy of taxes, or, of course, to salaries of city officers or employees, for this would interfere with responsible officials striving to

achieve a properly balanced long-range fiscal program. Recall should not apply to recently elected officials, because officials need time to establish themselves in office, and because election results should not be promptly challenged by another election.

(b) Requiring a petitioners' committee places clear responsibility for the undertaking of initiative, citizen referendum, or recall proceedings.

(c) The number of signatures required for initiative and referendum petitions in the seventh edition was fifteen percent of the total number registered to vote at the last regular city election. The eighth edition permits charter drafters to decide upon a reasonable threshold for their city, chosen from a range equal to or greater than five percent but less than or equal to ten percent of registered voters to vote at the last city election. The percentage used should neither be too easy nor too burdensome. Communities typically require more signatures for recall petitions than for initiative and referendum petitions. In determining the recall percentage, drafters should consider distinguishing between at-large and district offices.

Limiting the period for filing a referendum petition to thirty days after passage insures that the effective date of an ordinance will not be delayed unless the referendum effort is of serious proportions. The timing of the recall procedure prevents the threat of recall from pending without limitation. The time period for signature collection should be reasonably related to the signature requirement and the size of the city, within the provided range of 40 to 160 days.

(d) The mandatory language prevents the city clerk from delaying certification of the sufficiency or insufficiency of petitions beyond the twenty days specified.

(e) The fact that filing a referendum petition with the city clerk suspends the effective date of an ordinance will spur the city clerk and the council into prompt action on the question of sufficiency. When an ordinance is subjected to a referendum vote and the council's action is sustained, termination of the suspension must be delayed until sufficient time has passed for official determination of the election results. This will vary with local practice. The thirty days indicated in § 6.04(e) (iv) is arbitrary. If there is a definite provision for the official reporting of election results, the lifting of the suspension should probably coincide with the reporting.

(f) This section mandates council consideration of the proposed "initiative ordinance" and reconsideration of the ~~referred ordinance~~ prior to the circulation of petitions and the ensuing ballot question. The words ~~adopt a proposed initiative ordinance without any change in substance~~ permit correction of technical imperfections.

If an election is necessary, provisions for submitting a proposed or referred ordinance to the voters, or ordering a recall election, permit considerable latitude as to the election date to encourage holding the vote at a regular election if possible.

One of the most important reasons for requiring a petitioners' committee is to provide a mechanism for withdrawing an initiative, referendum, or recall petition if those originating the proceedings change their minds or feel that action of the council satisfies the need which prompted the petition.

(g) Initiative ordinances approved by the electorate become effective, just as is the case with an ordinance passed by council, in thirty days or at whatever later date is specified.

Article VII GENERAL PROVISIONS

Introduction.

All communities should have fully developed provisions dealing with the ethical expectations essential to responsible government. Ethics provisions foster public trust in the integrity of city government and serve as a check on improper or abusive behavior by city officials and employees. Communities should also have a comprehensive campaign finance code requiring, at the least, disclosure of sources of money used in the campaign for city office. The amount of money flowing into local races continues to grow and must be regulated to help avoid the public perception of corruption.

Section 7.01. Conflicts of Interest; Board of Ethics.

(a) Conflicts of Interest. The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance, the terms of which shall include, but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official; the use of confidential information; and appearances by city officials before other city agencies on behalf of private interests. This ordinance shall include a statement of purpose and shall provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual and regulatory matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations.

(b) Board of Ethics. The city council shall, by ordinance, establish an independent board of ethics to administer and enforce the conflict of interest and financial disclosure ordinances. No member of the board may hold elective or appointed office under the city or any other government or hold any political party office. Insofar as possible under state law, the city council shall authorize the board to issue binding advisory opinions, conduct investigations on its own initiative and on referral or complaint from officials or citizens, subpoena witnesses and documents, refer cases for prosecution, impose administrative fines, and to hire independent counsel. The city council shall appropriate sufficient funds to the board of ethics to enable it to perform the duties assigned to it and to provide annual training and education of city officials and employees, including candidates for public office, regarding the ethics code.

Commentary.

Many states have conflict of interest and financial disclosure laws which include local officials as well as state officials. Cities in these states may wish to modify this section accordingly by either eliminating duplication with state law or providing for local filing of state forms to provide local access to the information.

Instead of providing essentially statutory language, this section mandates council passage of ordinances covering certain basic subjects and which provide for a specific mechanism to administer and enforce the law. This permits amendment as may be required without a referendum, which would be necessary if the charter covered the subject in detail. This provision shows that the charter is serious about the need for dealing with ethics problems but at the same time leaves it to the city council to adopt the formulation most appropriate for the

specific situation. It makes a provision for a Board of Ethics but leaves details on the board's composition and procedure to the council.

Other provisions councils could adopt, but not listed in the *Model*, relate to acting in an official capacity over any campaign donor who contributes \$_____ or more to the official's campaign; the hiring of relatives; acting in an official capacity on matters affecting a prior employer within a designated time period after leaving the employer; accepting outside employment while in office; and accepting employment with an employer over whom the official or employee acted in an official capacity, within a designated time period after leaving office. Westminster, Colorado, pioneered the conflict of interest approach to limiting campaign contributions, via charter amendment, and other cities have expressed interest in following its example either by charter or ordinance. A substantial number of cities restrict hiring of relatives and prior, outside, and subsequent employment arrangements.

Section 7.02. Prohibitions.

(a) Activities Prohibited.

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

(b) Penalties. Any person convicted of a violation of this section shall be ineligible for a period of five years following such conviction to hold any city office or position and, if an officer or employee of the city, shall immediately forfeit his or her office or position. The city council shall establish by ordinance such further penalties as it may deem appropriate.

Commentary.

The activities prohibited by this section are antithetical to the maintenance of a sound, permanent municipal service. The prohibition against discrimination states basic municipal policy which applies to all personnel relationships. Prohibiting fraud or attempted fraud and bribery in connection with appointments and promotions by charter provision stresses the importance of maintaining the integrity of the public service. Prohibitions against political solicitation and participation in political campaigns afford protection for the employee as well as the integrity of the system. State law of general application may be sufficiently comprehensive to cover the activities prohibited by this section. If so, the charter need not contain these provisions except to give confirmation of public acceptance of these policies.

Section 7.03. Campaign Finance.

(a) Disclosure. The city council shall enact ordinances to protect the ability of city residents to be informed of the financing used in support of, or against, campaigns for locally elected office. The terms of such ordinances shall include, but not be limited to, requirements upon candidates and candidate committees to report in a timely manner to the appropriate city office: contributions received, including the name, address, employer, and occupation of each contributor who has contributed _____ or more; expenditures made; and obligations entered into by such candidate or candidate committee. In so far as is permissible under state law, such regulations shall also provide for fines and imprisonment for violations. The ordinance shall provide for convenient public disclosure of such information by the most appropriate means available to the city.

(b) Contribution and Spending Limitations. In order to combat the potential for, and appearance of, corruption, and to preserve the ability of all qualified citizens to run for public office, the city shall, in so far as is permitted by state and federal law, have the authority to enact ordinances designed to limit contributions and expenditures by, or on behalf of, candidates for locally elected office. Ordinances pursuant to this section may include, but are not limited to: limitations on candidate and candidate committees that affect the amount, time, place, and source of financial and in-kind contributions; and, voluntary limitations on candidate and candidate committee expenditures tied to financial or non-financial incentives.

Commentary.

This section was added to the eighth edition in recognition of the substantial number of cities that have enacted campaign finance laws since the seventh edition. This trend indicates that increasingly large amounts of private money have permeated local elections and reflects public perception that such money has had a distorting influence on the democratic process.

Section 7.03(a) provides for disclosure of candidate contributions and expenditures. A strong majority of cities in the United States have some form of campaign contribution and expenditure disclosure requirements. This section of the charter requires the city to provide for timely disclosure of such funds. It further requires that disclosure of contributions above a certain threshold include the donor's employer and occupation. Such information allows citizens to identify the sources of funding that influence local elections. The requirement that the city provide for "convenient public disclosure" is meant to encourage electronic disclosure over city web sites when such technology and resources are available.

Section 7.03(b) provides the city with express authority, but not a mandate, to enact any of the several innovative campaign finance laws that cities have enacted over the last three decades. This includes options such as contribution limitations, time limits on fund raising, and public financing as an incentive for candidates to adhere to voluntary spending limits.

Article VIII CHARTER AMENDMENT

Introduction.

All charters require modification from time to time. In states where the constitution or statutes prohibit cities from adopting their own methods of charter revision, this article cannot be used.

Section 8.01. Proposal of Amendment.

Amendments to this charter may be framed and proposed:

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

Proposal of an amendment by the voters of the city shall be by petition containing the full text of the proposed amendment and shall be governed by the same procedures and requirements prescribed in Article VI for initiative petitions until such time as a final determination as to the sufficiency of the petition is made, except that there shall be no limitation as to subject matter and that the petition must be signed by registered voters of the city equal in number to at least [5 to 10] percent of the total number of those registered to vote at the last regular city election. The petitioners' committee may withdraw the petition at any time before the fifteenth day immediately preceding the day scheduled for the city vote on the amendment.

Commentary.

This article lists four methods for proposing charter amendments. The first references any methods which are provided by state law, and the second is by the council itself. The third is by a charter commission, which in many states may be created by the council. Depending on the state, the procedures binding the charter commission may be found in the constitution or state law. Often the procedures allow formation of the charter commission by petition or by ordinance.

The final method of charter amendment is by a voter-initiated petition. The signature requirement for charter amendment petitions should be a fixed percentage between five and ten percent of registered city voters. It is important that the number of signatures required be substantial. It should be relatively difficult to amend the charter, and charter amendments should not be used to harass officials.

Section 8.02. Election.

Upon delivery to the city election authorities of the report of a charter commission or

delivery by the city clerk of an adopted ordinance or a petition finally determined sufficient, proposing an amendment pursuant to § 8.01, the election authorities shall submit the proposed amendment to the voters of the city at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the city at least thirty days prior to the date of the election. The election shall be held not less than 60 and not more than 120 days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be as specified in state law.

Section 8.03. Adoption of Amendment.

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

Article IX TRANSITION AND SEVERABILITY

Introduction.

Many charters do not facilitate transition from an old to a new form of government organization. More than almost any other part of the charter, the article containing transitional provisions needs to be tailored to existing law and organization. The *Model* makes no claim to being complete in this regard but calls attention to matters that must be considered and provides a basic pattern for a transition article. Care in the preparation of this article will have important benefits. It can disarm arguments that adoption of a new charter will harm existing personnel and the processes of the government. It may also save the city from costly litigation and administrative confusion.

Section 9.01. Officers and Employees.

(a) Rights and Privileges Preserved. Nothing in this charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are city officers or employees at the time of its adoption.

(b) Continuance of Office or Employment. Except as specifically provided by this charter, if at the time this charter takes full effect, a city administrative officer or employee holds any office or position which is or can be abolished by or under this charter, he or she shall continue in such office or position until the taking effect of some specific provision under this charter directing that he or she vacate the office or position.

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

Section 9.02. Departments, Offices, and Agencies.

(a) Transfer of Powers. If a city department, office or agency is abolished by this charter, the powers and duties given it by law shall be transferred to the city department, office or agency designated in this charter or, if the charter makes no provision, designated by the city council.

(b) Property and Records. All property, records and equipment of any department, office or agency existing when this charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the city council in accordance with this charter.

Section 9.03. Pending Matters.

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

Section 9.04. State and Municipal Laws.

(a) In General. All city ordinances, resolutions, orders and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto. To the extent that the constitution and laws of the state of _____ permit, all laws relating to or affecting this city or its agencies, officers or employees which are in force when this charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto.

(b) Specific Provisions. Without limitation of the general operation of subsection (a) or of the number or nature of the provisions to which it applies:

- (1) The following laws and parts of laws generally affecting counties or city agencies, officers or employees are inapplicable to the city of _____ or its agencies, officers or employees: [enumeration]
- (2) The following public local laws relating to the city of _____ are superseded: [enumeration]
- (3) The following ordinances, resolutions, orders, and regulations of _____ [former city governing body] are repealed: [enumeration]

Section 9.05. Schedule.

(a) First Election. At the time of its adoption, this charter shall be in effect to the extent necessary in order that the first election of members of the city council may be conducted in accordance with the provisions of this charter. The first election shall be held on the _____ of _____. The [city officials to be designated] shall prepare and adopt temporary regulations that are applicable only to the first election and designed to insure

its proper conduct and to prevent fraud and provide for a recount of ballots in cases of doubt or fraud.

(b) Time of Taking Full Effect. The charter shall be in full effect for all purposes on and after the date and time of the first meeting of the newly elected city council provided in § 9.05(c).

(c) First Council Meeting. On the _____ of _____ following the first election of city council members under this charter, the newly elected members of the council shall meet at _____ [time] at _____ [place]:

- (1) For the purpose of electing the [mayor and] deputy mayor, appointing or considering the appointment of a city manager or acting city manager, and choosing, if it so desires, one of its members to act as temporary clerk pending appointment of a city clerk pursuant to § 2.08; and **Note: Omit bracketed words if § 2.03, Alternative II is used.**
- (2) For the purpose of adopting ordinances and resolutions necessary to effect the transition of government under this charter and to maintain effective city government during that transition.

(d) Temporary Ordinances. In adopting ordinances as provided in § 9.05(c), the city council shall follow the procedures prescribed in § 2.12, except that at its first meeting or any meeting held within sixty days thereafter, the council may adopt temporary ordinances to deal with cases in which there is an urgent need for prompt action in connection with the transition of government and in which the delay incident to the appropriate ordinance procedure would probably cause serious hardship or impairment of effective city government. Every temporary ordinance shall be plainly labeled as such but shall be introduced in the form and manner prescribed for ordinances generally. A temporary ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption of a temporary ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances. A temporary ordinance shall become effective upon adoption or at such later time preceding automatic repeal under this subsection as it may specify, and the referendum power shall not extend to any such ordinance. Every temporary ordinance, including any amendments made thereto after adoption, shall automatically stand repealed as of the ninety-first day following the date on which it was adopted, renewed, or otherwise continued except by adoption in the manner prescribed in § 2.12 for ordinances of the kind concerned.

(e) Initial Expenses. The initial expenses of the city council, including the expense of recruiting a city manager, shall be paid by the city on vouchers signed by the council chairman.

(f) Initial Salary of Mayor and Council Members. The mayor shall receive an annual salary in the amount of \$_____ and each other council member in the amount of \$_____, until such amount is changed by the council in accordance with the provisions of this charter.

Section 9.06. Severability.

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

Commentary.

A severability clause is a necessary precaution and should be included in every charter.

Appendix

OPTIONS FOR MAYOR-COUNCIL CITIES

Since 1915, the *Model City Charter* has been based on the council-manager form of government. Some cities have a tradition of using or prefer to use the mayor-council form, and in some states the adoption of council-manager government may be limited by state statutes.¹ Cities that use the mayor-council form can make choices to “reform” their city government within the framework of this form of government. There are structural approaches that can clarify the structure and improve the performance of the mayor-council city government.

The mayor-council form of government is based on principles of separation of powers and checks and balances similar to those found in American national and state governments. Certain powers are assigned to the mayor and others to the council in cities that use this form. In addition, some mayor-council charters provide for other officials such as appointed boards or administrators who have independent authority to make specified decisions. It was common in the nineteenth century for cities to divide authority among many officials in the belief that the more power was divided and the more officials were directly elected, the more democratic the process of city government would be. In practice, complex structures with highly fragmented authority created ineffective government in which it was difficult to hold anyone responsible for the failure of city government as a whole. In certain cities, the fragmented structure created a vacuum that party organizations filled with unified control. In other cities—probably more numerous than those with control by party organizations—the prevailing structure simply contributed to a lack of competent and farsighted leadership and contributed to city governments that were neither effective nor efficient in their delivery of services to citizens. Some cities still retain these features in their charter.

The first *Model City Charter* proposed replacing the fragmented authority and confused assignment of responsibility of existing nineteenth century city governments with simplified and centralized executive authority exercised by an elected mayor. After the first edition, the model charter assigned this centralized executive authority to an appointed city manager. From the second through the fourth editions of the charter, no provisions were proposed for mayor-council cities. With the fifth edition, the strong mayor-council form from the first edition reappeared as an alternative for those cities that chose not to use the preferred council-manager form with the suggestion that a “vice mayor” or what would later often be called a chief administrative officer (CAO) might be appointed by the mayor. These recommendations appeared in the sixth and seventh editions as well.

The approach taken in this edition is different. Officials and citizens who are reviewing a mayor-council charter are given analytical questions to guide their assessment of the governmental structure. In contrast to exclusive reliance on the strong mayor alternative, two options for organizing the mayor-council form are now proposed.

Analytical Questions about Mayor-Council Governments

For cities that prefer to use the mayor-council form of government, there are two questions to answer in designing a charter.

- o First, how should authority be divided between the mayor and the council? The Model Charter Committee recommends two options for the division of authority: the first option is to provide for a blend of separation and sharing of authority

between the mayor and the council; the second option is the classic strong mayor-council approach.

- o Second, should a chief administrative officer be appointed? The Model Charter Committee recommends the addition of a CAO to all types of mayor-council governments. How the CAO is appointed and the responsibilities of the position are determined by which of the two optional approaches is taken to dividing authority between the mayor and council.

To provide background information, each of these questions is discussed in more detail. Then the optional approaches and an assessment of them are presented.

A. How is authority divided between the mayor and the council?

There are several broad patterns of dividing authority in mayor-council cities. Although these cities are commonly divided into “strong mayor” and “weak mayor” variations, this two-way division is misleading. Some cities have a strong executive and clearly separated powers, and some have true “weak” mayor governments in which the authority is extensively fragmented and assigned to the mayor, council, and other officials. Most cities, however, have both separated and shared powers between the mayor and the council. Thus, distinctions can be made between the strong mayor, the “standard” mayor-council, and the weak mayor subtypes of the mayor-council form. Each of these patterns has a different internal logic.

The first pattern is the original reform ideal of a strong elected executive with centralized authority. In this approach, the mayor is a strong chief executive officer who provides the functions filled by the city manager in the council-manager form of government. This “pure” strong mayor approach clearly divides powers between the mayor and the council. If there is a CAO, this official is an extension of the mayor’s office. This approach is used in approximately one-quarter of the mayor-council cities.² For simplicity, this subtype of the mayor-council form is called the strong mayor-council or strong mayor-CAO-council form, depending on whether a CAO is present. In the latter label, the CAO is placed next to the mayor to signify the close connection between the mayor and the CAO. In sum, the strong mayor type is characterized by clear separation of powers and substantial independent authority for the mayor.

The second pattern is based on separated and shared authority between the mayor and the council. This is the standard mayor-council pattern in the sense that it is used by a large majority of mayor-council cities.³ The mayor has separate executive authority but major decisions are either proposed by the mayor and approved by the council or made jointly by the mayor and council. When the mayor proposes and the council approves, the approach is similar to the “advice and consent” authority of the Senate in handling nominations by the President for Supreme Court judges or cabinet secretaries. In other cities in this pattern, the mayor and council make major decisions jointly. If there is a CAO in these cities, this official is nominated by the mayor and approved by the council or chosen jointly. Potentially, this official serves as a bridge between the mayor and the council. For simplicity, this subtype of the mayor-council form is called the mayor-council or mayor-council-CAO form. In the latter label, the CAO is placed after both mayor and council to signify the mutual responsibility the CAO has to both sets of officials.⁴ In sum, the standard mayor-council form is characterized by a combination of separated and shared powers. Commonly, the staff support and organizational authority of the mayor and the high visibility of the office make the mayor the recognized leader of city government. Still there is less independent authority concentrated in the mayor’s office than in the strong mayor type.

The term weak mayor-council is reserved for cities in which there is substantial fragmentation of authority. Beyond separated and shared authority between the mayor and the council, there are other features that divide authority widely. These include direct election of certain department heads or commissions and the assignment of independent policy-making authority to some commissions. A committee that is controlled by neither the mayor nor the council may formulate the budget. This is the kind of structure that was common in the late nineteenth century. The early municipal reformers sought to overcome the extreme decentralization that characterizes it. Although it is based on the premise that extensive checks will prevent excessive concentration of power and direct election of many offices will promote democratic control, in practice many weak mayor cities functioned poorly and it was difficult to pin down who was responsible for problems in performance. It is difficult to estimate how many cities still use these approaches, but the proportion is fairly small.⁵

B. Should the mayor-council city have a CAO?

An increasing proportion of cities have added a central administrative position occupied by a CAO to their governmental structure.⁶ Experience has demonstrated that it is beneficial for cities to have an administrative officer. This officer can offer assistance to the mayor in filling the executive responsibilities such as preparing the budget. The officer will provide central coordination of administrative functions and may also assist the council in handling its policy-making authority. Adding a chief administrative officer to city government is consistent with the longstanding reform principle of providing for both political and professional leadership. A central administrative official is able to contribute to sound governance as well as directing service delivery. Professional managers serving elected officials and the public bring distinctive values that enrich and elevate the governmental process in both policymaking and service delivery. These professional values include the commitment to basing policy and service delivery on need rather than demand, to stressing the long-term interests of the community as a whole, to promoting equity and fairness, to recognizing the interconnection among policies, and to advancing citizen participation that is broad and inclusive. There are benefits from having a professional chief administrator who channels these values into the governmental process at the highest and most general level through interactions with both the mayor and the council.

There are other advantages as well. It is difficult to find candidates for mayors who are equally adept at providing both political and also administrative leadership to city government. It is also hard for voters to assess the administrative capabilities of candidates before they have served in the mayor's office. Mayors (except in the largest cities), unlike new presidents and governors, are not supported by large transition teams. Nor can they persuade prominent leaders from the public and private sectors to accept key appointments for the duration of that executive's administration. Adding administrative assistance through a CAO helps to solve these problems. The office of CAO builds into the charter a support position for the mayor and institutionalizes the professional coordination of the departments of city government.

Recommended Structures in Mayor-Council Cities

To clarify responsibility and clarify the governmental process, mayor-council cities should assign policy-making, executive, and oversight authority to the mayor, council, and CAO. Practices associated with traditional weak-mayor forms should be eliminated. These practices include direct election of department heads and commissions, appointment of administrative officials by commissions, having a body other than the mayor and council formulate the budget (e.g., a board of finance), and assigning other policy-making authority to commissions.

The preferred approach in mayor-council cities is to promote shared authority between the mayor and the council along with the separation of powers that defines the mayor-council form. In the shared authority mayor-council cities, both the mayor and the council play an active role. The alternative approach is to have a strong mayor with greater separation of powers between the mayor and the council. In the strong mayor-council cities, leadership is concentrated in the mayor's office and council reviews and approves the mayor's recommendations.

In both options, it is recommended that provisions be made for the appointment of a CAO in a manner consistent with the overall division of authority between the mayor and the council. In the shared authority mayor-council cities, the CAO is nominated by the mayor and approved by the council. This official serves as a bridge between the two sets of officials and is assigned administrative responsibilities. In the strong mayor-council cities, the CAO is appointed by the mayor and provides professional assistance to the mayor.

Option 1: Mayor-Council-CAO government

This option is based on the combination of separated and shared powers between the mayor and the council found in most mayor-council cities. Some modifications will need to be made to the Model City Charter by charter drafters to accommodate this approach. The mayor is the chief executive officer who oversees the work of the CAO. The CAO is nominated by the mayor and approved by the council (a corresponding change to §§ 2.03 and 3.01 of the Model City Charter should be made). The mayor may remove the CAO (change §§ 2.03 and 3.01). The charter should provide for the CAO to have the same professional qualifications as the city manager (as described in § 3.01). The CAO formulates the budget and the capital program for the mayor (change §§ 2.03, 3.04(5), 5.02, 5.03, 5.04, 5.05(c), and 5.09), and the mayor presents the budget and capital program to the council with his or her own recommendations added to those of the CAO (change §§ 2.03, 5.02, 5.03, 5.04, 5.05(c), and 5.09). The CAO recommends major personnel appointments to the mayor who presents them to the council for approval (change §§ 2.03 and 3.04(1)). The mayor may remove department heads (change § 2.03).⁷ Other changes should be made in accordance with the General Provisions, see below.

When appointed in this way, the CAO helps to link the mayor and council and promotes communication between them. The CAO serves as a bridge to span the separation of powers between the mayor and the council. The CAO provides professional advice and detached assessment regarding key decisions to both the mayor and the council. The CAO can promote a higher level of performance and shared information by both sets of officials. The CAO assists the mayor in preparing policy recommendations to the council but is cognizant of his or her responsibility to provide information that the council needs to make policy decisions.⁸ The CAO is responsible directly to the mayor for administrative matters and to the council for providing information to support their oversight function, i.e., the assessment of how well policies are working and how well services are being delivered. It should be acknowledged that the position occupied by the CAO can be difficult if there is conflict between the mayor and council. The CAO can get caught in the middle. Still, the presence of a CAO who feels a sense of accountability to both the mayor and the council can reduce the level of conflict compared to conditions in mayor-council cities without a CAO.

The mayor-council-CAO government is not a ~~weak~~ mayor structure but rather one in which the mayor and council share authority in a number of areas. On the other hand, this option is also not a ~~strong~~ mayor structure. That approach is described in the next option.

Option 2: Strong Mayor-Council or Strong Mayor-CAO-Council Government

This is the approach recommended in the first *Model City Charter*, and it is the basis for the commentary that appeared in the seventh edition. Under this option the city government is organized around the mayor as the central force. As stated in the seventh edition, ~~in~~ the strong mayor and council form, the mayor must have sufficient authority to operate as a genuinely responsible executive.” There are no provisions for having major appointments be subject to the ~~advice and consent~~” of the council. In this view, it is important that the mayor be left relatively free to provide leadership subject to the final approval of the city council. Essentially, the mayor in this type of mayor-council city assumes the authority assigned to the city manager in the model charter. It is possible to change the word ~~city manager~~” to ~~mayor~~” throughout the charter, except in Article III, which must be substantially altered to provide for election of the mayor. (See General Provisions below.)⁹

There is value to having a CAO in the strong mayor-council form. Consistent with the principle of promoting a strong central executive in this option, the CAO should serve the mayor and be appointed and removed by the mayor alone. The seventh edition recommends, ~~The~~ mayor should be solely responsible for the appointment and removal of the administrator without any requirement of approval by the council.” A CAO appointed under this option would be strictly accountable to the mayor. The mayor has maximum flexibility in making the appointment and deciding what tasks to delegate to the CAO. Consistent with the strong-mayor principle of undiluted mayoral power, the CAO’s duties under this option are not specified in the charter.

Assessment of the two mayor-council options

The first option of mayor-council-CAO government combines separation of powers with shared powers, particularly ~~advice and consent~~” provisions for top appointments or joint authority for appointments. The mayor and top administrators are made more accountable to the council by shared powers, and the council has a greater opportunity to shape mayoral decisions and oversee administrative performance. Shared power provisions may serve to knit the separate branches more closely together. The CAO, although ultimately accountable to the mayor, serves both sets of officials and can promote closer interaction between them. The option promotes leadership by both the mayor and council and provides for both political and professional leadership.

This approach to appointing the CAO makes this official responsive to both the mayor and the council, since both are involved in the hiring decision. Furthermore, the CAO is given a formal role in budget preparation and appointment of department heads. This approach is advantageous for several reasons. First, accountability is broadened to include the council. Second, the professional qualifications of the person selected may be higher if the council has to approve the choice. The mayor is not free to simply choose a person to advance his or her electoral interests. Third, the professional contributions of the CAO to both the mayor and the council are assured when the CAO fills specified duties. The CAO is involved in important administrative matters.

The pure strong-mayor approach concentrates a substantial amount of authority in one office. The approach also limits the contribution of the council to accepting or rejecting policy and budget proposals from the mayor and overriding the mayor’s veto. Although the council has

a general oversight role, the fact that the mayor appoints all top administrators may limit the flow of information to the council to support its exercise of this role. There is concentrated power with limited checks on the exercise of the power.

The case for the strong mayor option is based on the need for strong centralized leadership. The mayor-council-CAO option with more shared powers can be criticized on the grounds that it creates confusion over who is responsible for exercise of powers between the mayor and the council when they are both involved in certain key areas of decision-making. Additionally, the mayor's ability to recruit administrative staff may be reduced if the appointees have to be approved by the council. In view of the tendency for separation of powers to generate conflict between branches, having more actions that must be carried out by the mayor and council simply creates additional opportunities for conflict.

General Provisions

There are certain provisions that would be common to all mayor-council cities. Election of the mayor and veto are found in both options of the mayor-council form.

Election of the mayor and chair of the council

The provisions in the *Model City Charter* for direct election of the mayor should be used in mayor-council cities (§ 2.03, Alternative I). The council chair and presiding officer should be elected by the council from among its members.¹⁰

Veto

One basic difference between the mayor-council and council-manager forms of government is the ~~veto~~ power for the mayor. This power is not consistent with the basic principle of the council-manager form that all powers are assigned to the council. In the mayor-council form, the mayor has an assigned role in the legislative process and must make a decision on each ordinance to sign it, veto it, or let it become law without signature. The veto should be included in the legislative article of a mayor-council charter and listed among the mayor's powers in the executive article (Article II of the *Model City Charter*, § 2.03). The council may override the veto by a two-thirds vote of its members.

CHANGE WITH CONTINUITY IN THE VALUES OF LOCAL GOVERNMENT REFORM

Participants in the urban reform movement seek to promote certain values in local government. From its inception in 1899, the *Model City Charter* has been distinguished from other local government reform efforts by the conviction that structure matters. Advocates of this view argue that the legal arrangements for cities and the features included in a charter can, at the margins, make it more likely that preferred values will be actualized in the governmental process. The first model charter was built on the bedrock value of local self-governance with an emphasis on home rule and broad assignment of authority to cities as the foundation of reform. All subsequent editions assume this value as well. The first edition also stressed the value of simplification and centralization of city government structure. It sought to replace the condition common in cities at the time of having multiple elected officials and the assignment of authority to a number of officials and boards. With centralization, all governmental authority is assigned to the mayor and council. Other boards are advisory, and all administrative officials and departments report to the executive. This value is also present in all subsequent editions.

The first charter organized the governmental form around the principle of the strong elected executive. This approach accomplished the objectives of concentrating authority and strengthening leadership, but reformers recognized limitations in this approach and soon sought an alternative that moved beyond the separation of powers between a powerful mayor and a council with a limited legislative function. The second *Model City Charter*, adopted in 1915, recommended the council-manager form with unified authority in the hands of the council. The second edition was based on fundamental values of representative democracy and responsible professionalism.¹¹ Rather than relying on a powerful elected executive, the reformers now broadened the base of political leadership and provided for an appointed executive who could be both effective and directly accountable to the council. Council appointment of the city manager strengthened the council and the executive without perpetuating separation of powers. Each value is briefly explained as follows:

Representative democracy. Democratically accountable representatives who make policy on behalf of the citizenry constitute the core component of representative democracy. At the local government level, the council should be relatively small so it can act in a deliberative way. Council members are connected to citizens through election and regular interaction during their terms in office. They act as a body of trustees who govern the city and select the executive. The early model charters stressed collective leadership and assumed that citizens would participate in the governmental process through the election of their representatives and the contact they had with council members between elections. The goal was to have a cohesive council that concentrated on the good of the city as a whole. To strengthen these qualities, the current edition recommends four-year, staggered terms—features that reinforce continuity and somewhat greater detachment from the electoral process since only half of the council stands for election in any election and all have longer terms. A small cohesive council would also be better able to provide regular and comprehensive supervision of the appointed executive.

Responsible professionalism. The early editions of the *Model Charter* envisioned the city manager as a professional chosen on the basis of appropriate training and experience. Responsibility would come from balancing the need to be accountable to the city council with the need to serve the public and advance the best interests of the community as a whole. To strengthen these qualities, the current edition specifies in more detail than previous editions the qualifications the city manager should have. The city manager is expected to offer policy advice and recommendations to the council in its enactment of legislation and to achieve a high level of effectiveness and efficiency in city government. Furthermore, this edition provides specific recommendations that the city manager should focus on goals, performance, and outcomes in policy recommendations, budget formulation, and organizational leadership.

A key feature that links representative democracy to professionalism is to make the city manager accountable to the entire council. Another change in the eighth edition is to apply these values to mayor-council government. The preferred option in mayor-council cities is to have a chief administrative officer (CAO) with professional qualifications who is responsible to both the mayor and the council (either the mayor would appoint the CAO and the council would approve the selection or the appointment would be made jointly). The CAO would also inform the council of budget and personnel recommendations developed by the CAO for the mayor.

The values of representative democracy to provide collective political leadership and professional leadership by an appointed chief executive were dominant from the second through

the fifth editions. They continue to be central—and as noted above have been strengthened in the eighth edition. Still, in this edition and the previous two, other values have received increased attention as well. Although early reformers were convinced that a cohesive board of governors could provide appropriate leadership and link citizens to government, beginning with the sixth model charter efforts have been made to strengthen democratic leadership and further enhance representativeness among the mayor and members of the city council. Political leadership and representativeness emerged as important values in their own right.

Political leadership. In the early editions of the *Model Charter* no special role was assigned to the mayor except to be presiding officer of the council, which provided collective leadership in functioning like a board of governors. Direct election of the mayor was an alternative in the *Sixth Edition* and by the time of the seventh edition, it was clear that special provision needed to be made for the value of political leadership. The mayor does not supplant the council but has more resources to draw upon in leading the council and the city as a whole. As problems became more complex and councils more diverse, the charter has been revised to provide options that can make the mayor the focal point for leadership. To more closely link the mayor to the council, the eighth edition recommends that the mayor have the same voting power as other members of the city council. If direct election of the mayor is used and all the activities enumerated in section 2.03 are assigned to the mayor, this official has charter support to promote cohesion on the council and lead the council to set clear goals for the city.

Representativeness. The *Sixth Edition* also started the process of enhancing the representativeness of the council. Although the charter has always supported representative democracy over direct democracy as noted earlier, the concern in the past three charter revisions has been to ensure that the officials who are making decisions more closely reflect the characteristics and preferences of the citizenry. District elections used exclusively or in combination with at-large seats ensure direct representation of all parts of the city. In addition, the long-standing endorsement of proportional representation has been reaffirmed in the current edition, and it is linked to a number of other measures designed to improve the way that elections translate citizen preferences into the membership of the governing body. Whereas district elections can only address geographical representativeness and provide voice for groups concentrated in particular neighborhoods, proportional representation allows the election of representatives from any sufficiently large group with a common bond. Efforts to increase the fairness of the electoral process, through allowing local government to undertake campaign reform and to increase the number of voters who participate in the selection of leaders, also reflect the emphasis on enhancing representativeness. For example, since voter participation rates are greater during general elections than in runoff elections, the use of instant runoff voting to eliminate the need for a subsequent runoff election would ensure that electoral outcomes are more representative (instant runoff voting allows voters to decide the winner of the election by indicating their first choice and their backup choice). Local governments are encouraged to look for other ways to increase turnout including holding local elections at the same time as state and national elections.

The current edition includes two additional values. Just as the sixth edition offered initial recognition of the option of mayoral election and district elections and thus began strengthening the values of political leadership and representativeness, the current edition directs attention to citizen participation and the integration of urban regions.

Citizen participation. There is widespread recognition that it is not sufficient for cities to rely on elections and the representational activities of council members, as important as these activities are. Exclusive reliance on representative democracy as the basis for citizen participation raises three concerns: some voices are not heard and, therefore, do not get represented, representation of citizen views by council members is not a complete substitute for the direct expression of views by citizens, and citizens need to have the opportunity to take part directly in the work of government. Opportunities for direct citizen participation in the process of making and implementing policy in cities can be a positive supplement to the conscientious work of representatives. The current edition reexamines the traditional mechanisms of direct democracy—the initiative, referendum, and recall—and offers recommended guidelines that would make these mechanisms uniformly available but would discourage capricious use of citizen-initiated actions that might undermine the continuing importance of representative democracy.

Over most of the history of the Reform Movement, citizen participation has been subsumed under representative democracy. In this view, the primary channels for citizen participation are voting and the ongoing interaction with elected representatives. Without diminishing the importance of effective and responsive representation, there are many ways that cities can promote citizen participation and enrich the quality and increase the inclusiveness of the community's dialogue concerning its current needs and its future aspirations. In the 8th edition, officials are encouraged to join with citizens in exploring which of these ways best match the conditions of their city.

Regional integration. Governance of urban regions with multiple jurisdictions is a longstanding challenge that is becoming ever more critical—and perplexing—as metropolitan areas continue to sprawl farther from the urban core. Previous model charters have addressed this only as a matter of intergovernmental relations. The eighth edition seeks to promote the value of regional integration through a number of new provisions. City governments are encouraged to find ways to cooperate and enter into agreements with each other; the city manager has the responsibility to "encourage and provide staff support for regional and intergovernmental cooperation" and to include in the capital program "a commentary on how the plan addresses the sustainability of the community and the region of which it is a part." Finally, elected officials and administrators should take into account how the comprehensive plan and zoning and other land use ordinances relate to regional plans.

In sum, the *Eighth Edition of the Model City Charter* seeks to promote the values of local self-governance, centralization, representative democracy, responsible professionalism—the bedrock values of reform—along with political leadership (or executive democracy in mayor-council cities), representativeness, citizen participation, and regional integration. Each of these values is important and has adherents who might claim that one should be given precedence of the others. Over the course of its revision the *Model City Charter* has incorporated an expanding range of values and provided for balance among them. Political leadership by the mayor should not undermine representative democracy. Citizen participation should not undermine representative democracy and the responsibility of all elected officials for setting the course of government. Changes to strengthen political leadership and representativeness should not infringe on responsible professionalism. The smoothing out of the governmental process through centralization and clear assignment of authority should not preclude effective citizen participation and neither should citizen participation lead to a fragmentation of governmental authority. The effort to promote the integration of a single city with its urban region does not

mean the abandonment of local self-governance. Indeed, increased cooperation can contribute to the redefinition of “local” and “self-governance” in a world of blurring boundaries.

With a wider range of values to consider, the challenge of preventing contradictions among them increases, but the *Model Charter* offers guidance in doing so. The eighth edition is the current statement about what values are important in local government and how to promote them in a balanced, mutually reinforcing way.

James H. Svara

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Appendix

INCLUSIVITY & DIVERSITY SURVEY FINDINGS, 2011: CHARTER AND MUNICIPAL CODE LANGUAGE OF COLORADO CITIES

Goal of the Research

In 2010 and 2011, the National Civic League, with funding from the Gay & Lesbian Fund For Colorado, conducted an outreach and research initiative about diversity and inclusiveness. The goal of the research was to determine what inclusive policies, programs and leadership actions are currently in place in charters and municipal codes throughout Colorado and then share this information with other civic leaders interested in revising or enhancing their own policies.

The survey of Colorado cities, with populations of 10,000 or more, provides a baseline of understanding of policies currently in place, as a sample for other cities across the country to acknowledge the growing diversity of America's cities and to promote inclusive policies.

The National Civic League is committed to a policy of equal employment opportunity and does not discriminate in the terms, conditions, or privileges of employment on account of race, color, religion, gender, gender expression, sexual orientation, national origin, age, physical or mental disability, or otherwise as may be prohibited by federal and state law.

By including the *Inclusivity & Diversity Survey Findings, 2011: Colorado Cities Share Charter and Municipal Code Language* in the *Model City Charter*, NCL continues in its support of and commitment to equality. Additionally, NCL has made this information available as a stand-alone document, and in its the *Guide for Charter Commissions*; and, the *Civic Index*.

The research was conducted under the direction of the National Civic League's Senior Vice President Derek Okubo, with the assistance of Karmen Carter.

Methodology and Findings

The research was conducted through a combination of telephone inquiries and searches of individual Colorado municipality websites, on which their city/town charters were posted. Only in a few cases was inclusive language found within their charters, typically in sections pertaining to the hiring of employees and/or the appointment of residents to boards and commissions.

These specific articles/policies are included later in this report. In some cases, inclusive language could be found in the city/town or municipal/town code and not in the charter, itself.

Some municipalities had “**standard language**” of protected populations, while others took it a step further to include “**sexual orientation, gender (variance/expression)**.” A large number of municipalities had **no non-discriminatory language** at all in their municipal code or city charter.

The overall findings are summarized below:

Standard Language of Protected Populations: Municipalities with Standard Non-Discriminatory Language in Municipal Code and/or City Charter

The standard language for protected populations included the following: race, creed, color, sex, national origin, marital status, religion, ancestry or age. Disability, affiliations, military status and national origin were other categories listed.

Municipalities that had this “standard” type of language, included Aurora, Colorado Springs, Fort Collins and Pueblo.

Sexual Orientation, Gender (Variance/Expression): Municipalities with Standard Language and Other Protections

Other municipalities included language that covered the federally mandated protections AND the areas of sexual orientation and gender variance/expression.

Municipalities in this category included: Arvada, Boulder, Broomfield, Denver, Lakewood, Longmont and Thornton. Breckenridge was the one municipality in which we found a code that specifically prohibited discrimination in employment on the basis of sexual orientation. Grand Junction had a municipal code barring discrimination in a cable contract that listed sexual orientation.

No Non-Discriminatory Language: Municipalities with No Anti-Discrimination Language in Municipal Code and/or City Charter

Most of the charters and municipal codes we surveyed did not contain language protecting specific population groups. Our initial research was followed up with calls to municipalities as to why there was no such language in the municipal code and city charters. Many clerks did not know if there was any language; and, when informed that there was not, provided some insight as to why they thought it wasn’t included. Among the reasons:

- City charters are old. Many were adopted decades ago. Much like the by-laws of non-profits, they were written; and then, they were rarely reviewed for updates.
- Some noted they are aware updates are needed, but they suspect change has not been initiated because of the fear of conflict that may occur if changes are proposed. If the change of language is within the charter, it must be brought to the public for a vote.
- As we found, some language may not be in the charter, but it can be found in the municipal code or employee handbooks. Some councils approach the change with ordinance or policy, so the inclusive language does not have to be brought up for a public vote.
- Some felt the vagueness or lack of language at all also served a purpose in that it provided the flexibility to practice inclusivity without bringing up the issue for public

debate. (The assistance in explaining reasons for unchanged language was very useful to this research; and, the list of cities in this category is found later.)

Standard Language of Protected Populations: Municipalities with Standard Non-Discriminatory Language in Municipal Code and/or City Charter

Aurora City Charter Sec. 102-3. Selection System.

Appointments and promotions to all career service positions shall be made according to merit and fitness, without regard to race, creed, color, religion, national origin, ancestry, or age, and without regard to sex or disability, except as provided by law.

Article III – Discrimination, Section 82-57 Definitions – Municipal Code

Discriminate, discrimination, discriminatory practice means any difference in treatment based on one or more of the following: race, creed, color, sex, national origin, marital status, religion, ancestry or age.

Colorado Springs City Charter 3-60. Prohibitions.

(a) Activities Prohibited.

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, sex, political or religious opinions or affiliations. (1979)

Fort Collins No prohibitions or inclusive language found in City Charter

Municipal Code, Chapter 13 Human Relations, Article II. Discrimination, Sec. 13-16. Definitions (utilized in employment, housing, public accommodations, etc.)

Discriminate and discriminate against, discriminatory reason or reason of discrimination shall mean under the given circumstances, a person makes a limitation or specification as to another because of the latter person's race, color, religion, national origin, sex or marital status or because of the race, color, religion, national origin, sex or marital status of the other person's friends or associates. The term *discriminatory reason or reason of discrimination* may be used to have the following sense or meaning and at the same time save repeated use of the term based upon or because of the race, color, religion, national origin, sex or marital status of the other person, or because of the race, color, religion, national origin, sex or marital status of such other person's friends or associates.

Pueblo City Charter Section 8-9. Prohibitions.

---. prohibited from discrimination because of his race, his political or religious opinions or other affiliations or non-affiliations; . . .”

Sexual Orientation, Gender (Variance/Expression): Municipalities with Standard Language and Other Protections**Arvada Municipal Code****Sec. 30-13. - Voluntary code of fair campaign practices.**

- (a) Persons who are candidates for public office in the city or persons representing organizations who campaign in support or opposition of a ballot issue may voluntarily commit to conduct themselves in accordance with a code of fair campaign practices. The Arvada Voluntary Code of Fair Campaign Practices shall include the following statements:

"As I seek public office in Arvada, (as I seek to support/oppose _____ ballot issue) I honor and will abide by the following principles as a guide to my conduct.

- (7) I will neither use nor permit the use of appeals to bigotry in any form, and specifically to prejudice based on race, sex, sexual orientation, religion, or national origin.

Sec. 70-143. - Employee conduct.

- (a) The city expects all employees to be accountable for their work related conduct and for performing their job duties to the highest professional standards at all times. The city reserves the right, in all instances, to impose discipline, up to and including dismissal. Discipline is imposed solely at the discretion of the city, based on its evaluation and in consideration of relevant factors and circumstances.
- (b) The disciplinary procedures set forth in the next section apply only to regular employees; probationary, temporary, and non-benefited employees will be given performance expectations and feedback as deemed appropriate by the city, but at all times will be deemed as at-will employees. However, standards of conduct set forth in this section apply to all city employees. Under no circumstances should this rule/regulation be construed to create "for cause" employment for probationary, temporary, or non-benefited employees.
- (c) A supervisor may reprimand a regular employee for cause. An appointing authority or his/her designee may discipline a regular employee for cause. Such discipline may include reprimand, suspension without pay, disciplinary fine, step reduction in pay, demotion, or dismissal. Examples of performance or conduct that may warrant disciplinary action are presented in the list below. This list is not considered all-inclusive as the city cannot anticipate all behaviors of an employee. Other actions that have a negative impact on an employee's performance or the effective functioning of the city may result in

disciplinary action. Individual departments may also have specific rules, regulations, and/or policies that describe performance or conduct. The violation of these departmental rules, regulations, and/or policies may also warrant disciplinary action.

- (6) Abusive treatment and/or disrespect of any person including, but not limited to, physical or verbal confrontations, insults, or derogatory comments based on race, religion, gender, sexual orientation, ethnicity, and/or disability.

Sec. 70-31. - Equal employment opportunity.

- (a) Equal employment opportunity has been, and will continue to be, a fundamental principle at the city of Arvada, where employment is based upon personal capabilities and qualifications without discrimination because of race, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, citizenship status, marital status, pregnancy, age, medical condition, handicap, or disability or any other protected characteristic as established by law.

Sec. 24.0 - Rate discrimination.

All grantee rates and charges shall be published (in the form of a publicly-available rate card), made available to the public and nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law and, subject to the provisions of section 23.0, with similar rates and charges for all subscribers receiving similar cable services, without regard to race, color, ethnic, or national origin, religion, age, sex, sexual orientation, marital, military, or economic status, or physical or mental disability or geographic location in grantee's franchise area. Grantee shall provide equipment cable services to all residential subscribers at similar rates and to commercial subscribers as authorized by FCC rules. Grantee shall permit Subscribers to make any in-residence connections the subscriber chooses without additional charge nor penalizing the subscriber therefore. However, if any in-home connection requires service from grantee due to signal quality, signal leakage, or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the subscriber may be charged appropriate service charges by grantee.

Boulder City Charter Title 12-1-3 Discrimination in Employment Practices Prohibited.

- (a) It is a discriminatory or unfair employment practice, and no person:

- (1) Shall fail or refuse to hire, shall discharge, shall promote or demote, or shall discriminate in matters of compensation, terms, conditions, or privileges of employment against any individual otherwise qualified or to limit, segregate, or classify employees or applicants for employment in

any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for a person to act as provided in this paragraph if there is no reasonable accommodation that such person can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;

(2) Shall refuse to list and properly classify for employment or refer an individual for employment in a known available job for which such individual is otherwise qualified because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates or to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for an employment agency to refuse to list and properly classify for employment or refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;

Note for Boulder: Language referring to “race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates” is also prominent in Municipal Code, Chapter 12, housing and domestic partnerships sections.

Breckenridge

No prohibitions or inclusive language found in City Charter.

Town Code

Town Code 1-20-2: TOWN SHALL NOT DISCRIMINATE:

It shall be unlawful for the town to fail or refuse to hire or to discharge any person from town employment, or otherwise to discriminate against any individual with

respect to his or her compensation, terms, conditions or privileges of employment, because of such person's sexual orientation. (Ord. 41, Series 2004)

Broomfield Municipal Code 2-14-440 Equal opportunity employment; policy & procedure

(A) *Equal opportunity.*

(1) The city is an equal opportunity employer and shall not fail or refuse to hire or to discharge any employee or otherwise discriminate against any employee with respect to his or her compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, gender, marital status, national origin, age, or disability, as provided in federal and state laws and regulations.

(2) Prohibited harassment. *Prohibited harassment* means unwelcome conduct, including physical, verbal, or written conduct, that constitutes race/color harassment, national origin harassment, gender harassment, sexual harassment, sexual orientation harassment, religious harassment, disability harassment, age harassment, or marital status harassment, or that constitutes harassment based on other status under the equal employment opportunity laws, including but not limited to protection against retaliation for activities such as opposing a practice made unlawful by an equal employment opportunity law or participation in an investigation or other proceeding under the equal employment opportunity laws, or association with a protected individual.

(3) Reporting. Any employee experiencing or witnessing a violation of the equal opportunity policy shall report such conduct to the employee's immediate supervisor, any other supervisor, or the human resources department if the supervisor is the subject of the complaint. All reports will be thoroughly investigated, and the investigation and any results shall, to the extent practicable, be kept confidential.

(4) Corrective or disciplinary action. Any employee or supervisor who violates this policy shall be subject to corrective or disciplinary action as provided in section 2-14-300, B.M.C. Any manager or supervisor who participates in or who fails to take appropriate action on any reported incidents, or retaliates against an employee who reports an incident or who files a complaint, shall be subject to corrective or disciplinary action.

Denver City Charter

Article II. Agency for Human Rights and Community Relations

Sec. 28-17. - Powers and duties.

The powers and duties of the agency are:

- (1) At the request of the mayor, or of the council acting by resolution, to investigate incidents or patterns of discrimination by city agencies based on age, race, ethnicity, religion, disability, sexual orientation, gender or gender

variance, and to report such findings within a reasonable time to the mayor and council.

Article IV. – Prohibition of Discrimination in Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and Health and Welfare Services

Sec. 28-91. – Intent of Council

It is the intent of the council that every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the city and to have an equal opportunity to participate in all aspects of life, including but not limited to employment, housing and commercial space, public accommodations, education and health and welfare services.

- (b) It is the intent of the council in enacting this article to eliminate within the city discrimination by reason of race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability. Discriminatory practices as defined in this article may be subject to investigation, conciliation, administrative hearings and orders or other enforcement procedures.

Sec. 28-93. - Discriminatory practices in employment.

Generally, it shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual who is otherwise qualified:

- (1) By an employer: To fail or refuse to hire an applicant or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion; or to limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect status as an employee; but with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job and the disability has a significant impact on the job;

- (2) By an employment agency: To fail or refuse to refer for employment or to classify or refer for employment any individual or otherwise to discriminate against any individual; but with regard to a disability, it is not a discriminatory or an unfair employment practice for an employment agency to refuse to list and properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make

with regard to the disability, the disability actually disqualifies the applicant from the job and the disability has a significant impact on the job;

(3) By a labor organization: To exclude or to expel from its membership or otherwise to discriminate against any individual or to limit, segregate or classify its membership or fail or refuse to refer any individual to employment or to classify any individual in any way which would deprive such individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment; or

(4) By an employer, employment agency, apprenticeship program, labor organization or joint labor/management council:

a. To discriminate against any individual in admission to or employment in any program established to provide apprenticeship or other training or retraining, including an on-the-job training program; but with regard to a disability, it is not a discriminatory or an unfair employment practice to deny or withhold the right to be admitted to or participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the applicant from the program and the disability has a significant impact on participation in the program; and

b. To communicate, print or publish or cause to be communicated, printed or published any notice or advertisement or use any publication form relating to employment by such employer or to membership in or any classification or referral for employment by such a labor organization or to any classification or referral for employment by such an employment agency indicating any preference, limitation, specification or distinction based on the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual who is otherwise qualified.

Article IX. Employment Part 1, Career Service

B. All appointments and promotions of employees in the Career Service shall be made solely on the basis of merit and ability. Dismissals, suspensions or disciplinary demotions of non-probationary employees in the Career Service shall be made only for cause, including the good of the service. The Career Service personnel system shall provide for equal employment opportunity without regard to race, color, creed, national origin, gender, sexual orientation, age, disability, or political affiliation or any other status protected by federal, state or local laws.

Other language in ordinances regarding Denver Pre-School Program, Public Art Program, Office of Independent Monitor, Acceso-Spanish Language Voter Advisory Board.

Grand Junction Charter**ARTICLE XIII OFFICERS AND EMPLOYEES****102. Opinions Not Affect Appointments.**

No appointment to any position under the city government shall be made or withheld by reason of any religious or political opinions, or affiliations, or political service; and no appointment or election to, or removal from, any office or employment, and no transfer, promotion, reduction, reward or punishment shall be in any manner affected or made by reason of such opinions, affiliations, or service.

**Sec. 4.3 Rate discrimination from a contract with Bresnan Communications –
Municipal Code**

All of grantee's rates and charges shall be published (in the form of a publicly available rate card) and be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with identical rates and charges for all subscribers receiving identical cable services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same cable services to all residential subscribers at identical rates and to multiple dwelling unit subscribers as authorized by FCC rules. Grantee shall permit subscribers to make any lawful in-residence connections the subscriber chooses without additional charge nor penalty to the subscriber there for. However, if any in-home connection requires service from grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the subscriber may be charged reasonable service charges by grantee.

Lakewood Municipal Code**4.14.010 Policy.**

The City of Lakewood provides equal employment opportunities to all persons without regard to race, color, creed, national origin, religion, ancestry, sex, sexual orientation or gender expression, age, military service, veteran status, marital status, disability, or any other applicable status protected by state or federal law. The City does not tolerate unlawful discrimination or harassment of any kind.

The City promotes an atmosphere of respect and acceptance in all interactions both internally and externally. The City recognizes that its citizens and employees have varied backgrounds, experiences, and differences and works hard to create a culture of inclusion. The City strives to reflect its community while fostering the development and advancement of qualified individuals.

Any employee who believes s/he has been the subject of discrimination should immediately file a formal written complaint to report the alleged act to his/her supervisor or department director, or the Department of Employee Relations. Supervisors who receive these complaints shall immediately contact the Department of Employee Relations. The City of Lakewood, nor any of its employees, will not in any way retaliate against any individual who files such a complaint. Any individual found to have retaliated against an individual for filing such a complaint may be subject to whatever action the City deems appropriate, up to and including termination. The City will act promptly to investigate reported discrimination. Based on its investigation, the City may take whatever action it deems appropriate, up to and including termination, to achieve an immediate remedy when an allegation is determined to be valid. Refer to Administrative Regulation –Equal Employment Opportunity.” (Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § (part), 1999).

Longmont City Charter

3.04.075. - Equal employment opportunity.

The city is an equal opportunity employer. The city affirms its commitment to diversity and to complying with all applicable federal and state laws regarding nondiscrimination in employment. The city will not discriminate against any person in recruiting, examining, appointing, hiring, training, promoting, compensating, retaining, disciplining, or any other personnel action on the basis of race, color, creed, religion, sex, age, sexual orientation, national origin, ancestry, veteran status, or disability, except when any of these categories constitutes a bona fide occupational qualification (i.e., an actual qualification for performing a job).

Thornton No prohibitions or inclusive language in City Charter

Municipal Code

Article IX. Equal Employment Opportunity and Affirmative Action Programs

Sec. 54-271. - Policy.

- (a) *Equal employment opportunity.* The City is an equal opportunity employer. The City reaffirms its commitment to comply with all appropriate federal and State laws and regulations regarding nondiscrimination in employment, including such laws and regulations prohibiting discrimination against any person in recruitment, examination, hiring, classification, training, promotion, retention, assignment of duties, granting of rights and benefits, or any other personnel action because of race, color, religion, sex, creed, age, national origin, disability, sexual orientation or veteran status, except for bona fide occupational reasons. The City further reaffirms its intent to provide reasonable accommodations for disabled employees or employee applicants as required by law in an effort to enhance accessibility to the work place. It shall be the duty of every official, supervisor and employee of the City to foster to the best of such person's ability

equal treatment in hiring, training, promotion, disciplinary action, separation, transfer, duties assignment, performance evaluation and all other relationships between and among employees, supervisors and officials.

Sec. 54-182. - Grounds for disciplinary actions.

(a) *Definition.* A disciplinary action is an action administered by the Appointing Authority as a disciplinary measure which may affect an employee's status, pay or tenure and may include but is not limited to suspension, demotion or discharge.

(b) *Grounds for disciplinary actions.* Grounds for disciplinary actions include acts involving unsatisfactory work performance by an employee, or employee conduct which would prejudice the public interest, including but not limited to:

(21) Depriving or intending to deprive any other employee or a member of the public with whom an employee comes in contact during the performance of such employee's duties of an employment opportunity or otherwise adversely affecting that person's status as an employee because of race, color, religion, sex, national origin, ancestry, alienage, handicap, marital status, political affiliation, sexual orientation, or age except where such disparate treatment is required by a bona fide occupational qualification permitted by law.

Sec. 54-8. - Employee development.

(a) *Policy.* It shall be the policy of the City to encourage and provide educational and training opportunities to all employees without regard to race, color, sex, national origin, age, religion, sexual orientation or handicap. To effectuate this policy, the City will provide intra-city training programs and outside educational opportunities with the intent to increase the proficiency, knowledge, skills and abilities of employees.

No Non-Discriminatory Language: Municipalities with No Anti-Discrimination Language in Municipal Code and/or City Charter

Many of the following cities offered assistance in explaining reasons why their code and charter language is not updated. Their reasons reflect the challenges many municipalities face in making any modifications and updates to these complex and historic documents.

Aspen, Brighton, Castle Rock, Centennial, Durango, Glenwood Springs, Greeley, Highlands Ranch, Lamar, Limon, Littleton, Loveland, Montrose, Parker, Steamboat Springs, Telluride and Trinidad.

Conclusion

This survey provides important examples of how many municipalities in Colorado are playing a leadership role in inclusivity and diversity by ensuring that critical language is in their charter or

in their municipal code. National Civic League provides this survey and the examples to encourage other municipalities to build inclusive communities.

THE 8TH EDITION MODEL CITY CHARTER REVISION COMMITTEE (2000-2002)

(Special Note: Committee members' affiliations and identifiers were current as of 2002.)

Chair: Betty Jane Narver

Chair: Bob O'Neill, Executive Director, International City/County Management Association

Senior Advisors:

Terrell Blodgett, professor emeritus at the Lyndon B. Johnson School of Public Affairs, University of Texas, Austin, served as one of the senior advisors for the revision project. Blodgett also chaired the revision committee that produced the *Seventh Edition of the Model*, and he was the chairman of the National Civic League in 1986 and 1987.

William Cassella, Jr., former executive director of the National Civic League (1969-1985) and coordinator for both the *Sixth and Seventh Editions of the Model*, also served as a senior advisor.

Robert Kipp, group vice president at Hallmark Cards, Inc.

James Svava, department head of political science and public administration at North Carolina State University.

Committee Members:

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 Linda Barton, City Manager, City of Livermore, California;
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 Bill Schechter, Director, Community Services, Washington D.C.; and,
 Christopher T. Gates, President.

Endnotes:

¹ Two examples illustrate how state statutes can affect the choice of form of government. Indiana law prescribes that all cities use the mayor-council form; small towns have an option in the choice of form. In Wisconsin, state statute specifies that the "council-manager" optional charter have a council president rather than mayor and gives the manager unusual powers such as the authority to appoint council committees. Only ten of 190 cities in Wisconsin operate under the council-manager form. In Dale Krane, Platon Rigos, and Melvin Hill, Jr., Eds., *Home Rule in America: A Fifty-State Handbook* (Washington: CQ Press, 2001), see chapters on Indiana by William Blomquist and on Wisconsin by Stephen E. C. Hintz.

² According to the 2001 Form of Government (FOG) Survey of the International City Management Association, thirty-eight percent of cities over 2,500 in population use the mayor-council form. Of these, the mayor has separate authority for appointing department heads and preparing the budget in fifteen percent of the cities and controls one function and shares the other in another eight percent. Thus, twenty-three percent of the cities have more or less strong mayors. Using somewhat different criteria, Steve Leach and Donald F. Norris, "Elected Mayors in England: A Contribution to the Debate," *Public Policy and Administration*, 17 (Spring, 2002), pp. 30-31, report similar findings based on 1996 data—twenty-seven percent have budget and staff appointment authority alone or shared with a CAO as well as veto authority. Only 1.8% of mayor-council cities have "very strong mayors."

³ In the 2001 FOG Survey, the mayor shares the exercise of authority for appointing department heads and preparing the budget with the city council in forty-three percent of the mayor-council cities. Finally, in thirty-three percent of the cities, the council or other officials are responsible and the mayor has no separate authority.

⁴ In cities that have a CAO in 2001, the mayor and council appointed the CAO in forty-four percent of the cities and by the council in thirty-nine percent. The mayor alone appoints the CAO in only sixteen percent of the cities. Although appointment by the mayor is much more common in cities over 100,000 in population, even in these cities the mayor has sole appointment authority in less than half the cases.

⁵ In 2001, fourteen percent of mayor-council cities elected some or all department heads. A finance committee for formulating the budget appears to be used by approximately three percent of cities.

⁶ In 2001, fifty-six percent of the mayor-council cities over 2,500 in population have a CAO or equivalent position. City administrator is another common title.

⁷ Some cities, particularly smaller ones, prefer to have even greater shared authority with the mayor and the council acting together on most decisions. Under this approach, the mayor and council jointly appoint the CAO. The council approves the removal of the CAO. The CAO formulates the budget for the mayor and council as a whole, and recommends major personnel appointments to the mayor and council for approval. Governments operating in this way share many characteristics with the council-manager form.

⁸ A survey of CAOs indicates that with nomination by the mayor and approval by the council, the CAO is likely to simultaneously see himself or herself as the agent of the mayor and also as being accountable to both the mayor and the council. Seven in ten CAOs agree with these positions. If the mayor does not nominate the CAO, only thirty-seven percent of the CAOs see themselves as the mayor's agent. If the council does not approve the appointment, only twenty-eight percent of the CAOs see themselves as accountable to the council. See James H. Svara, "Do We Still Need Model Charters? The Meaning and Relevance of Reform in the Twenty-First Century," *National Civic Review*, 90 (Spring, 2001), pp. 19-33.

⁹ It should be noted that giving the mayor the same powers as the city manager (plus the veto power as well) does not make the offices comparable as to the centralized executives. The strong mayor is not accountable to the council in the exercise of his or her powers. The mayor is not selected by the council and subject to removal by the council as the city manager is.

¹⁰ This would not be the case in cities where the mayor and council jointly exercise authority. In these cities,

the mayor presides in the council.

¹¹ In mayor-council cities, the dominant value continued to be ~~“executive democracy,”~~ i.e., a reliance on the elected chief executive to be the primary force in policy-making.

Excerpts from the Oregon Constitution . . .

"The legislative assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the constitution and criminal laws of the state of Oregon." Or. Const. art. XI, sec. 2.

"The initiative and referendum powers reserved to the people by this constitution, are hereby further reserved to the legal voters of every municipality and district, as to all local, special and municipal legislation, of every character, in or for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum nor more than fifteen per cent to propose any measure, by the initiative, in any city or town." Or. Const. art. IV, sec. 1a.

Excerpts from opinions of the Oregon Supreme Court . . .

"We now expressly hold that the legislative assembly does not have the authority to enact a law relating to city government even though it is of general applicability to all cities in the state unless the subject matter of the enactment is of general concern to the state as a whole, that is to say that it is a matter of more than local concern to each of the municipalities purported to be regulated by the enactment . . . we hold that the people of a city are not 'subject to the will of the legislature in the management of purely local municipal business in which the state at large is not interested, and which is not of any interest to any outside the local municipality.'" State ex rel. Heinig v. City of Milwaukie, 231 Or. 473, 479, 373 P.2d 680 (1962).

"Although the language in State ex rel. Heinig v. City of Milwaukie . . . states broadly the inhibition on state legislation relating to local matters, the case stands only for the proposition that a statute is inoperative to the extent that it conflicts with an ordinance on a matter of local concern." Boyle v. City of Bend, 234 Or. 91, 98, 380 P.2d 625 (1963).

"An enactment is not of state-wide interest simply because the legislature decides that each of the cities in the state should be governed by the same law. In the appropriate case the need for uniformity in the operation of the law may be a sufficient basis for legislative pre-emption. But uniformity in itself is no virtue, and a municipality is entitled to shape its local law as it sees fit if there is no discernible pervading state interest involved." State ex rel. Heinig v. City of Milwaukie, 231 Or. 473, 479, 373 P.2d 680 (1962).

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Foreword

In 1934 the Bureau of Municipal Research and Service was asked to assist the officials of the city of Huntington with financial problems involved in the development of a new water supply source. Restrictions contained in the Huntington charter and procedures prescribed by it presented obstacles that seemed to be insurmountable. It was agreed that a new charter was needed, and the Bureau was asked to draft its provisions.

In view of the problems that had been encountered by the city of Huntington and also by other cities as a result of charter restrictions and outmoded provisions, the charter drafted by the Bureau suggested a new approach in several respects. It provided a general grant of powers rather than an enumeration of specific powers. It omitted entirely reference to various subjects then covered by the state constitution and by general state statutes. It omitted various detailed procedures that could be prescribed by ordinance so as to permit greater flexibility in meeting changing conditions and technology. It was a short document compared to the charters of Oregon cities then in effect and has sometimes been referred to as a "streamlined" charter.

The charter prepared for the city of Huntington was adopted by the voters of that city on December 27, 1934. It was later suggested as a guide to various cities that requested assistance in the revision of their charters or in the preparation of new charters. During this period the various aspects of the charter needs of Oregon cities under home rule received further intensive study. New charters prepared with the assistance of the Bureau were adopted in Bandon, Union, Silverton, and Independence in 1940; in Reedsport in 1942; in Freewater and Sweet Home in 1943; in West Linn, Molalla, Coos Bay, and Beaverton in 1944; in Nehalem, La Grande, Astoria, and Pendleton in 1946; and in Sheridan and Madras in 1947.

Since all of these charters followed the same general pattern, the basic concepts developed in the Bureau's charter work were

incorporated in a *Model Charter for Oregon Cities* which was published in 1947 in two versions. One version provided for the mayor-council form of government and the other version provided for the council-manager form of government. These model charters were provided as guides for those responsible for charter drafting in various cities and were not intended as documents to be submitted without change. Each city that undertakes a revision of its present charter or the preparation of a new charter should consider carefully the framework of government and the procedures and limitations which will best serve its citizens.

Since 1947 the model charter has been used as a guide by many Oregon cities. Nearly half of the cities of Oregon now have charters in effect which follow the general principles it suggests. As the supply of the published document had become exhausted, the Bureau published revisions in 1951 and in 1959. These revisions incorporated various changes suggested by staff members and city attorneys and also changes required by constitutional amendments, new statutes, and new court decisions. A few additional changes are made in the current revision.

The contributions of many persons in developing the model charter should be acknowledged. The Huntington charter was prepared with the assistance and advice of Eugene V. Slattery, who was serving at that time as the Bureau's legal consultant; William M. Briggs, then field consultant for the League of Oregon Cities; and James T. Donald, then city attorney of Huntington. Various members of the staff of the Bureau of Municipal Research and Service and of the League of Oregon Cities have participated in the charter research and consultation work through the years and in the development and review of the model charter. Special mention should be made of the work of Orval Etter, who joined the Bureau staff in September, 1939, and who has been associated with the Bureau either as full-time employe or as a consultant during most of the years since then. Mr. Etter assisted in developing the 1947 publication and has collaborated in the preparation of each of the revisions. Raymond P. Underwood, legal consultant for the Bureau and League from 1948 to 1952, had principal

responsibility for preparing the 1951 revision. The important contributions of other staff members, both Bureau and League, and of city attorneys who have reviewed both the general principles and the detailed language of Bureau drafts should also be acknowledged.

Respectfully submitted,
HERMAN KEHRLI
Director

August, 1967

A Model Charter For Oregon Cities

MAYOR-COUNCIL FORM OF GOVERNMENT

* * * * *

A CHARTER

To provide for the government of the city¹ of _____,
_____ County, Oregon; and to repeal all² charter provisions of the city enacted prior³ to the time that this charter takes effect.

Be it enacted by the people of the city⁴ of _____,
_____ County, Oregon:

¹ If the municipality is one which immediately prior to adopting this charter is called a town, the term "city" in this title may be replaced with the term "municipality."

In this charter the term "city" or "municipality" is used to the complete exclusion of the term "town." In many instances Oregon statutes and court opinions use the term "town." This practice tends to cause confusion in that it suggests that the Oregon law, like the law in certain other states, classifies municipalities under various headings, including cities and towns, and differentiates the city from the town on the basis of the legal characteristics of the two. This the Oregon law does not do. It classifies municipalities into certain groups for certain purposes, most commonly on the basis of population; and a few municipalities in the state are called towns rather than cities. Legal characteristics afford no basis in Oregon, however, for differentiating the town from the city. The only common difference between them is that of name. No legal obstacle, therefore, prevents a municipality that is called a town from changing its charter in such a manner as to provide that thereafter it be called a city; and to make the change helps to minimize the confusion already mentioned.

² If it is not desired that all previously enacted charter provisions of the city be repealed, then, of course, this term "all" should be qualified. One way to do this would be to add at the end of this title a clause excepting in particular or general terms the provisions to be retained. In this connection see footnote 50.

³ A city that has merely been incorporated under the state law on formation of new cities and has never had a charter will, of course, have no previous charter provisions to repeal. For such a city the latter phrase in the title should be omitted.

⁴ If the municipality is one which immediately prior to adopting this charter is called a town, the term "city" in this enacting clause may be replaced with the term "municipality."

MODEL CHARTER

CHAPTER I

NAME AND BOUNDARIES

Section 1. TITLE OF ENACTMENT. This enactment may be referred to as the _____ Charter of 19 _____.

Section 2. NAME OF CITY. The municipality of _____, _____ County, Oregon, shall continue⁵ to be a municipal corporation with the name "City of _____."⁶

Section 3. BOUNDARIES. The city shall include all territory encompassed by its boundaries as they now exist or hereafter are modified by voters, by the council, or by any other agency with legal power to modify them. The recorder shall keep in his office at the city hall at least two copies of this charter in each of which he shall maintain an accurate, up-to-date description of the boundaries. The copies and descriptions shall be available for public inspection at any time during regular office hours of the recorder.

CHAPTER II

POWERS⁷

Section 4. POWERS OF THE CITY. The city shall have all powers

⁵ The adoption of a new charter by a city does not break the continuity of the city's existence.

"... a municipal corporation does not lose its identity or become relieved of its liabilities by any change of its charter or by the substitution of a new charter in place of the old, unless there is an express legislative declaration to that effect." 6 *McQuillin, Municipal Corporations*, sec. 21.25 (3rd ed. rev. 1949).

"Unless otherwise provided by statute, when a municipal corporation surrenders its special charter and elects to be governed by the general incorporation laws applicable, or advances to a higher class, or is reduced to a lower municipal grade, all its rights, liabilities, property, suits, etc., remain unaffected by the change." 2 *McQuillin, Municipal Corporations*, sec. 9.33 (3rd ed. rev. 1949).

⁶ If the municipality is changing its name from "Town of _____" to "City of _____," this section may read:

Section 2. NAME OF CITY. The city in _____ County, Oregon, now known as the "Town of _____" shall continue to be a municipal corporation, but after this charter takes effect shall be known as the "City of _____."

⁷ For a discussion of general grants of municipal power like the one in this chapter, see Appendix A.

MAYOR-COUNCIL FORM

which the constitutions, statutes, and common law of the United States and of this state expressly or impliedly grant or allow municipalities, as fully as though this charter specifically enumerated each of those powers.

Section 5. CONSTRUCTION OF CHARTER. In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state constitution.

CHAPTER III

FORM OF GOVERNMENT

Section 6. WHERE POWERS VESTED. Except as this charter provides otherwise, all powers of the city shall be vested in the council.

Section 7. COUNCIL. The council shall be composed of a mayor and six⁸ councilmen elected from the city at large.

Section 8. COUNCILMEN. The term of office of each councilman in office when this charter is adopted shall continue until the beginning of the first odd-numbered year after that time.⁹ At the

⁸ A small city may desire to reduce this number to four. A city of larger size may desire to increase it. If the mayor is to be chosen by the council rather than by the electorate, this number should be odd instead of even; for instance, five or seven.

⁹ This provision will commonly terminate some offices of councilmen at a time when the persons filling them still have, according to the terms of the charter in effect when they were elected, two years to occupy the offices. The question is frequently raised whether it is legally possible thus to deprive an incumbent of part of his tenure of office. The question can be answered in the affirmative.

"... in the absence of constitutional or statutory restrictions, when a municipal corporation has power to create an office, it may abolish it." 37 *Am. Jur.* 857 (1941).

first biennial general election after the charter is adopted, six councilmen shall be elected. Of the six, the three¹⁰ receiving the three highest numbers of votes shall each hold office for four years, and the three receiving the next three highest numbers of votes shall each hold office for two years. At each subsequent biennial general election, three councilmen shall be elected, each for a term of four years.¹¹

"The power to abolish an office may be exercised at any time and even while the office is occupied by a duly elected or appointed incumbent. . . . By abolishing the office the legislature does not deprive the incumbent of any constitutional rights, for he has no contractual right or property interest in the office. He accepts it with the understanding that it may be abolished at any time, and the tenure of the office is not protected by constitutional provisions which prohibit impairment of the obligation of contract." 42 *Am. Jur.* 905 (1942).

¹⁰ A small city may desire four instead of six councilmen. If so, the number "three" in this section should be replaced with the number "two." If the charter provides for eight councilmen, the number "three" in this section should be replaced with the number "four."

¹¹ A new charter should provide, of course, that the terms of office of councilmen in office at the time the charter is adopted shall end exactly at the time that the terms of office of councilmen elected pursuant to the charter commence. The provisions for achieving this must vary according to circumstances. This section sets forth only one of several possible plans for achieving the desired result.

In some situations it may not be necessary or desirable to terminate at once all the terms of office of councilmen in office at the time the new charter is adopted. Where this is so and where, under the charter or statute in effect at the time the new charter is adopted, half of a council of six is elected at each biennial general election for a four-year term, this section may read:

Section 8. COUNCILMEN. The councilmen in office at the time this charter is adopted shall continue in office, each until the end of his term of office as fixed by the charter of the city in effect at the time this charter is adopted. At each biennial general election after this charter takes effect, three councilmen shall be elected, each for a term of four years.

In situations where the mayor is to be chosen by the council rather than by the electorate, where the number of councilmen consequently is to be odd instead of even, and where the new charter is not voted upon at a biennial general election, one possible wording of these sections is:

Section 7. COUNCIL. The council shall be composed of seven councilmen elected from the city at large.

Section 8. COUNCILMEN. The councilmen in office at the time this charter is adopted shall continue in office until the beginning of the first odd-numbered year after that time. At the first biennial general election after the charter is adopted, seven councilmen shall be elected. Of the seven, the three receiving the three highest numbers of votes shall each hold office for

Section 9. MAYOR. At each biennial general election a mayor shall be elected for a term of two years.¹²

Section 10. OTHER OFFICERS. Additional officers of the city shall be a municipal judge, a recorder, and such other officers as the council deems necessary.¹³ Each of these officers shall be appointed and may be removed by the mayor with the consent of the council.¹⁴ The council may combine any two or more appointive city offices. The council may designate any appointive officer

four years, and the four receiving the next four highest numbers of votes shall each hold office for two years. At each subsequent biennial general election, four councilmen shall be elected. Of the four, the three receiving the three highest numbers of votes shall each hold office for four years, and the one receiving the fourth highest number of votes shall hold office for two years.

All of these wordings of Section 8 provide for electing a majority of the municipal legislative body every two years, a practice conducive to keeping it constantly subject to popular control. As Section 9 helps to illustrate, where the number of councilmen is even and half the number are elected every two years, the same result can be achieved by electing the mayor for a two-year term.

¹² Sometimes the mayor is chosen by the council rather than by the electorate. To achieve this result, Section 9 may read:

Section 9. MAYOR. At its first meeting of each odd-numbered year, the council shall choose from its membership a chairman, who shall be mayor. The mayor's term of office shall be two years.

If, under the charter in effect at the time the new charter is adopted, the mayor is serving a four-year term and if it is desired to continue his term of office at that length, changes appropriate to that objective must be made in Section 9. One wording to accomplish this is as follows:

Section 9. MAYOR. At the biennial general election held in 19..... and every fourth year thereafter, a mayor shall be elected for a term of four years. The term of office of the mayor incumbent at the time this charter is adopted shall continue until the beginning of 19.....

¹³ Some cities may desire to list additional officers, such as fire chief, police chief, city attorney, treasurer, street superintendent, and water superintendent. Failure to list an office in the charter would place nothing in the way of the council's establishing the office upon its own initiative.

¹⁴ This provision allows the removal of such an officer by the appointing authorities. *Venable v. Police Commissioners*, 40 Or. 458, 463, 67 P. 203, (1902); 4 *McQuillin, Municipal Corporations*, sec. 12.249 (3rd ed. 1949).

The charter provides for appointing rather than electing these officers because experience has shown that popular election is not a satisfactory method for filling offices requiring technical competence on the part of the persons holding the offices. The entire electorate is not in nearly so favorable a position as an appointing authority, like a city council, to pass judgment as to whether a given person is a competent engineer, attorney, foreman, or accountant.

to supervise any other appointive officer except the municipal judge in the exercise of his judicial functions.¹⁵

Section 11. SALARIES. The compensation for the services of each city officer and employe shall be the amount fixed by the council.¹⁶

Section 12. QUALIFICATIONS OF OFFICERS. No person shall be eligible for an elective office of the city unless at the time of his election he is a qualified elector within the meaning of the state constitution¹⁷ and has resided in the city during the twelve months immediately preceding the election.¹⁸ The council shall be final judge of the qualifications and election of its own members.¹⁹

¹⁵ The general power that the charter confers upon the city and the city council includes power to create city offices and to abolish city offices not established by charter. This power includes power to combine offices. 37 *Am. Jur.* 858 (1941).

¹⁶ Salaries can be fixed most conveniently and simply by the regular budget-making process. ORS 294.351(4) requires the annual budget to include salaries among the items of estimated expenditures.

Sometimes it is desired that the council's power to fix salaries for its own members be qualified as follows:

No increase in the compensation of councilmen, however, shall take effect until the first day of the odd-numbered year following the first biennial general election after the increase is ordered.

Sometimes it is desired that councilmen receive no compensation for their services as such. In that event, a provision like the following may be added to Section 11:

No councilman, however, shall receive compensation for serving in that capacity.

If it is desired that councilmen receive compensation for serving on the council, then it is recommended that the compensation be a fixed amount per year and payable quarterly.

¹⁷ The state constitution sets forth the qualifications of voters in these terms:

"In all elections, not otherwise provided for by this constitution, every citizen of the United States, of the age of 21 years and upwards, who shall have resided in the state during the six months immediately preceding such election, and who shall be duly registered prior to such election in the manner provided by law, shall be entitled to vote, provided such citizen is able to read and write the English language. . . ." *Or. Const.* art. II, sec. 2.

¹⁸ This residential requirement does not apply to appointive officers, because it is often necessary or desirable to appoint persons who are not residents of the city to positions requiring technical skill.

¹⁹ For a discussion of the role of the council in reviewing the qualifications of its members see *Simon v. Portland Common Council*, 9 Or. 437 (1881), *State ex rel. Heath v. Kraft*, 18 Or. 550, 20 Or. 28, 23 P. 663 (1890), and *Livesley v. Landon*, 69 Or. 275, 138 P. 853 (1914).

CHAPTER IV

COUNCIL

Section 13. MEETINGS. The council shall hold a regular meeting at least once each month in the city at a time and at a place which it designates. It shall adopt rules for the government of its members and proceedings. The mayor upon his own motion may, or at the request of three²⁰ members of the council shall, by giving notice thereof to all members of the council then in the city, call a special meeting of the council for a time not earlier than three nor later than forty-eight hours after the notice is given. Special meetings of the council may also be held at any time by the common consent of all the members of the council.

Section 14. QUORUM. A majority of members of the council²¹ shall constitute a quorum for its business, but a smaller number may meet and compel the attendance of absent members in a manner provided by ordinance.²²

Section 15. RECORD OF PROCEEDINGS. The council shall cause a record of its proceedings to be kept. Upon the request of any of its members, the ayes and nays upon any question before it shall be taken and entered in the record.

Section 16. PROCEEDINGS TO BE PUBLIC. No action by the council shall have legal effect unless the motion for the action and the vote by which it is disposed of take place at proceedings open to the public.

Section 17. MAYOR'S FUNCTIONS AT COUNCIL MEETINGS. The mayor shall be chairman of the council and preside over its deliberations. He shall have a vote on all questions before it. He

²⁰ If the council consists of fewer than six members, this number may be reduced to two. If the council consists of eight members, this number may be increased to four.

²¹ Here and elsewhere in this charter the phrase "members of the council" means incumbent members.

²² Such an ordinance might, for instance, specify what should constitute cause for absence from council meetings and provide that a councilman absent without such cause should forfeit certain compensation due him from the city or pay the city a penalty.

shall have authority to preserve order, enforce the rules of the council, and determine the order of business under the rules of the council.

Section 18. PRESIDENT OF THE COUNCIL. At its first meeting after this charter takes effect and thereafter at its first meeting of each odd-numbered year, the council by ballot shall elect a president from its membership. In the mayor's absence from a council meeting, the president shall preside over it. Whenever the mayor is unable to perform the functions of his office, the president shall act as mayor.

Section 19. VOTE REQUIRED. Except as this charter otherwise provides, the concurrence of a majority of the members of the council present at a council meeting shall be necessary to decide any question before the council.

CHAPTER V

POWERS AND DUTIES OF OFFICERS

Section 20. MAYOR. The mayor shall appoint the committees provided by the rules of the council. He shall sign all records of proceedings approved by the council.²³ He shall have no veto power and shall sign all ordinances passed by the council within three days after their passage.²⁴ After the council approves a bond of a city officer or a bond for a license, contract, or proposal, the mayor shall endorse the bond.

Section 21. MUNICIPAL JUDGE. The municipal judge shall be the judicial officer of the city. He shall hold within the city a court known as the municipal court for the city of _____,

²³ Small cities may find it advisable to require by charter or ordinance that the mayor countersign all orders on the treasury. This may be accomplished by adding the following words at this point: "and countersign all orders on the treasury."

²⁴ The purpose of the signature is simply to provide a means of authenticating the ordinance signed. The signature does not indicate approval or disapproval of the ordinance on the part of the mayor, nor does it add to or detract from the legal effect of the ordinance.

_____ County, Oregon. The court shall be open for the transaction of judicial business at times specified by the council.²⁵ All area within the city shall be within the territorial jurisdiction of the court. The municipal judge shall exercise original and exclusive jurisdiction of all offenses defined and made punishable by ordinances of the city and of all actions brought to recover or enforce forfeitures or penalties defined or authorized by ordinances of the city. He shall have authority to issue process for the arrest of any person accused of an offense against the ordinances of the city, to commit any such person to jail or admit him to bail pending trial, to issue subpoenas, to compel witnesses to appear and testify in court on the trial of any cause before him, to compel obedience to such subpoenas, to issue any process necessary to carry into effect the judgments of the court, and to punish witnesses and others for contempt of court.²⁶ When not governed by ordinances or this charter, all proceedings in the municipal court for the violation of a city ordinance shall be governed by the applicable general laws of the state governing justices of the peace and justice courts.²⁷

Section 22. RECORDER. The recorder shall serve ex officio as clerk of the council, attend all its meetings unless excused therefrom by the council, keep an accurate record of its proceedings, and sign all orders on the treasury. In the recorder's absence from a council meeting, the mayor shall appoint a clerk of the council pro tem who, while acting in that capacity, shall have all the authority and duties of the recorder.

²⁵ This provision allows more flexibility than if the time the court is to be open is stated in the charter. It makes it possible for the council either to provide that the court shall be open on only certain days of the week or to provide that it shall be open every day except nonjudicial days.

²⁶ For further information regarding the municipal court see Bureau of Municipal Research and Service, *Municipal Court Procedure in Oregon* (1966 revision).

²⁷ A similar provision is set forth in ORS 221.918. For general laws of the state relating to justices of the peace and justice courts, see ORS 51.010 *et seq.*

CHAPTER VI ELECTIONS

Section 23. REGULAR ELECTIONS. Regular city elections shall be held at the same times and places as biennial general state elections, in accordance with applicable state election laws.²⁸

Section 24. NOTICE OF REGULAR ELECTIONS. The recorder, pursuant to directions from the council, shall give at least ten days' notice of each regular city election by posting notice thereof at a conspicuous place in the city hall and in one public place in each voting precinct of the city.²⁹ The notice shall state the officers to be elected, the ballot title of each measure to be voted upon, and the time and place of the election.

Section 25. SPECIAL ELECTIONS. The council shall provide the time, manner, and means for holding any special election. The recorder shall give at least ten days' notice of each special election in the manner provided by the action of the council ordering the election.³⁰

²⁸ The state constitution requires that "election precincts and officers shall be the same for all elections held at the same time" and that incorporated cities "shall hold their nominating and regular elections for their several elective officers at the same time that the primary and general biennial elections for state and county officers are held. . . ." *Or. Const.* art. II, sec. 14a.

²⁹ A city of 2,000 or more population can have this notice given as part of the county election procedure if it observes the following provisions of the state election laws:

"The city clerk, recorder or auditor, as the case may be, of any city with a population of 2,000 or more . . . shall, not later than the sixty-first day before any general election, or not later than the twentieth day before any special election, prepare and furnish to the county clerk of each county in which the city or any part thereof is located, a certified statement showing the city offices to be filled in the city at the election and the names and other information concerning all candidates for such offices to be voted on at the election." ORS 250.030.

³⁰ "In the case of special elections . . . all the statutory requirements as to . . . notice are . . . mandatory and must be observed in order to render the vote of the electors participating therein valid. Where . . . an election is special . . . a compliance with all the statutory requirements in respect to the performance of the conditions precedent is mandatory in order to validate the election." *Marsden v. Harlocker*, 48 Or. 90, 85 P. 328, 329-30, 120 Am.St.Rep. 780 (1906).

Substantial compliance, however, is sufficient:

" . . . Substantial but not exact compliance with the provisions of the statute

Section 26. REGULATION OF ELECTIONS. Except as this charter provides otherwise and as the council provides otherwise by ordinances relating to elections, the general laws of the state shall apply to the conduct of all city elections, recounts of the returns therefrom, and contests thereof.

Section 27. CANVASS OF RETURNS. In all elections held in conjunction with state and county elections, the state laws governing the filing of returns by the county clerk shall apply. In each special city election the returns therefrom shall be filed with the recorder on or before noon of the day following, and not later than five days after the election the council shall meet and canvass the returns. The results of all elections shall be entered in the record of the proceedings of the council. The entry shall state the total number of votes cast at the election, the votes cast for each person and for and against each proposition, the name of each person elected to office, the office to which he has been elected, and a reference to each measure enacted or approved. Immediately after the canvass is completed, the recorder shall make and sign a certificate of election of each person elected and deliver the certificate to him within one day after the canvass. A certificate so made and delivered shall be prima facie evidence of the truth of the statements contained in it.

Section 28. TIE VOTES. In the event of a tie vote for candidates for an elective office, the successful candidate shall be determined by a public drawing of lots in a manner prescribed by the council.

Section 29. COMMENCEMENT OF TERMS OF OFFICE. The term of office of a person elected at a regular city election shall com-

relative to notice is sufficient if it is reasonably probable that the irregularities would not have affected the outcome.

" . . . Substantial but not exact compliance with the provisions of the statute relative to notice is sufficient if in fact upon the evidence the irregularities did not change the result.

" . . . Substantial compliance in good faith is sufficient." *Witham v. McNutt*, 186 Or. 668, 675, 208 P.2d 459 (1949).

mence the first of the year immediately following the election.³¹

Section 30. OATH OF OFFICE. Before entering upon the duties of his office, each officer shall take an oath or shall affirm that he will support the constitutions and laws of the United States and of Oregon and that he will faithfully perform the duties of his office.

Section 31. NOMINATIONS. A qualified elector who has resided in the city during the 12 months immediately preceding an election may be nominated for an elective city office to be filled at the election. The nomination shall be by a petition that specifies the office sought and shall be in a form prescribed by the council.³² The petition shall be signed by not fewer than 20 electors. No elector shall sign more than one petition for each office to be filled at the election. If he does so, his signature shall be valid only on the first sufficient petition filed for the office. The signatures to a nomination petition need not all be appended to one paper, but to each separate paper of the petition shall be attached an affidavit of the circulator thereof, indicating the number of signers of the paper and stating that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. Opposite each signature shall be stated the signer's place of residence, identified by its street and number or other sufficient designation. All nomination papers comprising a petition shall be assembled and filed with the recorder as one instrument not earlier than 90 nor later than 30 days before the election.³³ The recorder shall

³¹ It might be provided that terms of elective offices begin earlier than the first day of the year following the election in order to eliminate "lame duck" sessions of the council after the election and prior to the first of the next year. However, if such a change were to be made, Section 8 would have to be changed accordingly.

³² See form in footnote 33.

³³ The petition would need to be filed not less than sixty-one (61) days in advance of the election if the city wished to have the names of candidates printed on the ballot prepared by the county. See footnote 29.

The nomination petition might take this form:

We, the undersigned electors of the city of _____, hereby nominate _____, whose residence is _____, to be a candidate for election

make a record of the exact time at which each petition is filed and shall take and preserve the name and address of the person by whom it is filed. If the petition is not signed by the required number of qualified electors, the recorder shall notify the candidate and the person who filed the petition within five days after the filing. If the petition is insufficient in any other particular, the recorder shall return it immediately to the person who filed it, certifying in writing wherein the petition is insufficient. The deficient petition may be amended and filed again as a new petition, or a substitute petition for the same candidate may be filed, within the regular time for filing nomination petitions. The recorder shall notify an eligible person of his nomination, and that person shall file with the recorder his written acceptance of nomination, in such form as the council may require, within five days of notification of nomination. Upon receipt of the acceptance of nomination, the recorder shall cause the nominee's name to

to the office of _____, to be voted for at the election to be held in the city on the _____ day of _____, 19____.

We individually certify that we are qualified to vote for a candidate for the office named and that we have not signed any other nomination petition for a candidate for the office.

_____ name _____ street and number
(provide twenty such lines as these)
State of Oregon }
County of _____ } ss.

_____, being duly sworn, says that his address is _____, that he is the circulator of the foregoing petition containing _____ signatures, and that the signatures appended thereto were made in his presence and are, to the best of his information and belief, the signatures of these persons whose names they purport to be.

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public for Oregon

This petition is filed by _____, whose address is _____
The acceptance of nomination might take this form:

I hereby accept nomination as a candidate for election to the office of _____ of the city of _____ and agree to serve in such office if so elected.

_____, 19____.

be printed on the ballots. The petition of nomination for a successful candidate at an election shall be preserved in the office of the recorder until the term of office for which the candidate is elected expires.³⁴

CHAPTER VII

VACANCIES IN OFFICE

Section 32. WHAT CREATES VACANCY. An office shall be deemed vacant upon the incumbent's death; adjudicated incompetence;³⁵ conviction of a felony, other offense pertaining to his office, or unlawful destruction of public records; resignation; recall from

³⁴ In lieu of this detailed section the charter might provide simply:

Section 31. NOMINATIONS. The council shall provide by ordinance the mode for nominating elective officers.

The state law provides the following alternative procedures for making nominations for municipal offices:

"... In a city not required by law to hold a primary election for municipal offices, all nominations for elective offices within the city may be made in any of the following ways:

"(a) By any regularly called convention of delegates representing the several wards of the city.

"(b) By any convention of voters met for such purpose in any ward of the city making ward nominations.

"(c) By any convention of voters met in city convention and representing the several wards in the city.

"(d) By certificates of nominations signed by at least 25 voters in each ward in case of ward nominations or by at least 25 voters of the city in case of nominations at large.

"(2) In any event, a certificate of nomination shall be made out and signed by at least 25 voters of the city and filed with the appropriate city officer on or before the tenth day preceding the day of any regular election, to entitle the names of candidates nominated to be placed upon the ballot." ORS 221.190.

In view, however, of the requirement in Section 31 that "nomination shall be by . . . petition . . . signed by not fewer than 20 electors" it appears that the statutory alternatives would not be available in a city whose charter contained the section. *State ex rel. Duniway v. City of Portland*, 65 Or. 273, 133 P. 62, 66 (1913); *State ex rel. Heinig v. City of Milwaukie*, 231 Or. 473, 479, 373 P.2d 680 (1962); *Boyle v. City of Bend*, 234 Or. 91, 98, 380 P.2d 625 (1963).

³⁵ "Adjudicated incompetence" is intended to mean the determination by a court of competent jurisdiction that a person is unable or unfit to manage his affairs by reason of his mental condition.

office;³⁶ or ceasing to possess the qualifications for the office; upon the failure of the person elected or appointed to the office to qualify therefor within ten days after the time for his term of office to commence; or in the case of a mayor or councilman, upon his absence from the city for 30 days without the consent of the council or upon his absence from meetings of the council for 60 days without like consent, and upon a declaration by the council of the vacancy.

Section 33. FILLING OF VACANCIES. Vacant elective offices in the city shall be filled by appointment. A majority vote of the council shall be required to validate the appointment. The appointee's term of office shall begin immediately upon his appointment and shall continue throughout the unexpired term of his predecessor.³⁷ During the temporary disability of any officer or during his absence temporarily from the city for any cause, his office may be filled pro tem in the manner provided for filling vacancies in office permanently.

³⁶ Every elective public officer in Oregon is subject to recall by the legal voters of the state or of the electoral district from which he is elected, pursuant to *Or. Const.* art. II, sec. 18.

³⁷ If the city wishes to impose a shorter limitation on the length of the appointee's term of office, Section 33 may read as follows:

Section 33. FILLING OF VACANCIES. Vacant elective offices in the city shall be filled by appointment. A majority vote of the council shall be required to validate the appointment. The appointee's term shall begin immediately upon his appointment and shall continue until the beginning of the year following the next general biennial election and until his successor is qualified, and his successor for the unexpired term shall be chosen at the next general biennial election after said appointment. During the temporary disability of any officer or during his absence temporarily from the city for any cause, his office may be filled pro tem in the manner provided for filling vacancies in office permanently.

If the appointee's term is so limited, the following clause should be added to the last sentence of Section 8:

and at each biennial general election the number of councilmen to be elected to fill vacancies pursuant to Section 33 of this charter shall be elected.

If the appointee's term is so limited, it would be necessary for the council, pursuant to the provision of Section 31, to require that nomination petitions designate clearly the position sought, whether it be for a regular term or for the vacated term.

CHAPTER VIII

ORDINANCES

Section 34. ENACTING CLAUSE. The enacting clause of all ordinances hereafter enacted shall be, "The city of _____ ordains as follows:"³⁸

Section 35. MODE OF ENACTMENT. (1) Except as the second and third paragraphs of this section provide to the contrary, every ordinance of the council shall, before being put upon its final passage, be read fully and distinctly in open council meeting on two different days.

(2) Except as the third paragraph of this section provides to the contrary, an ordinance may be enacted at a single meeting of the council by unanimous vote of all council members present, upon being read first in full and then by title.

(3) Any of the readings may be by title only if no council member present at the meeting requests to have the ordinance read in full or if a copy of the ordinance is provided for each council member and three copies are provided for public inspection in the office of the city recorder not later than one week before the first reading of the ordinance and if notice of their availability is given forthwith upon the filing, by written notice posted at the city hall and two other public places in the city or by advertisement in a newspaper of general circulation in the city. An ordinance enacted after being read by title alone may have no legal effect if it differs substantially from its terms as it was thus filed prior to such reading, unless each section incorporating such a difference is read fully and distinctly in open council meeting as finally amended prior to being approved by the council.

(4) Upon the final vote on an ordinance, the ayes and nays

³⁸ Under a charter provision such as this, an ordinance must have an enacting clause in order to be valid. *Colby v. City of Medford*, 85 Or. 485, 508, 167 Pac. 487 (1917). Substantial compliance with a requirement for a particular enacting clause is, however, sufficient. *State ex rel. Beeman v. Kelsey*, 66 Or. 70, 77, 133 Pac. 806 (1903); *Colby v. City of Medford*, 85 Or. 485, 508, 167 Pac. 487 (1917).

of the members shall be taken and entered in the record of proceedings.

(5) Upon the enactment of an ordinance the recorder shall sign it with the date of its passage and his name and title of office, and within three days thereafter the mayor shall sign it with the date of his signature, his name and the title of his office.

Section 36. WHEN ORDINANCES TAKE EFFECT. An ordinance enacted by the council shall take effect on the thirtieth day after its enactment.³⁹ When the council deems it advisable, however, an ordinance may provide a later time for it to take effect, and in case of an emergency, it may take effect immediately.⁴⁰

CHAPTER IX

PUBLIC IMPROVEMENTS

Section 37. CONDEMNATION. Any necessity of taking property for the city by condemnation shall be determined by the council and declared by a resolution of the council describing the property and stating the uses to which it shall be devoted.

Section 38. IMPROVEMENTS. The procedure for making, altering, vacating, or abandoning a public improvement shall be governed by general ordinance or, to the extent not so governed, by the applicable general laws of the state.⁴¹ Action on any proposed

³⁹ In connection with this provision see the Note and Comment entitled "Computation of Time—Statutory Construction," 26 *Or. L. Rev.* 202 (Apr. 1947).

⁴⁰ Only emergency legislation can take effect immediately. Municipal legislation of a nonemergency nature is subject to the referendum. A certain amount of time—the courts have never specified the precise amount—must be allowed for invoking the referendum against such legislation, and it cannot take effect so long as there is a possibility that the referendum may be so invoked. *Or. Const.* art. IV, sec. 1a; *Sears v. Multnomah County*, 49 Or. 42, 88 Pac. 522 (1907); *Long v. City of Portland*, 53 Or. 92, 98 Pac. 324, 98 Pac. 1111 (1909).

⁴¹ Though such procedures are not usually prescribed by state law in Oregon, there are some instances of applicable statutory procedure as, for instance, in the case of the procedure for street vacations in ORS 271.080-271.170.

public improvement, except a sidewalk or except an improvement unanimously declared by the council to be needed at once because of an emergency, shall be suspended for six months upon a remonstrance thereto by the owners of two-thirds of the land to be specially assessed therefor.⁴² In this section "owner" shall mean the record holder of legal title or, where land is being purchased under a land sale contract recorded or verified to the recorder in writing by the record holder of legal title to the land, the purchaser shall be deemed the "owner."⁴³

Section 39. SPECIAL ASSESSMENTS. The procedure for levying, collecting, and enforcing the payment of special assessments for public improvements or other services to be charged against real property shall be governed by general ordinance.

Section 40. BIDS. A contract in excess of \$_____ ⁴⁴ for a public improvement to be made by a private contractor shall be let to the lowest responsible bidder⁴⁵ for the contract and shall

⁴² This remonstrance provision might be eliminated altogether or the terms thereof changed as desired.

⁴³ Since the term "owner" does not have a single, fixed meaning in the law, its intended meaning should be made clear by the charter. "Owner" might be limited in meaning by the charter to the record holder of legal title to the land. However, the suggested provision regards the contract buyer of land as the "owner" when the land is being sold under a land sale contract, since he generally has a greater interest in the improvement and assessment than the record holder of legal title. In order to avoid administrative problems for the city recorder, it is provided that the purchaser, in order to be eligible to remonstrate instead of the record holder of legal title, would either have to record his contract or obtain and file with the city recorder a verified statement by the record holder of legal title that the claimant was the purchaser under a land sale contract. See *Harder v. City of Springfield*, 192 Or. 676, 236 P.2d 432 (1951).

⁴⁴ Various Oregon cities have placed maximum limits of from \$100 to \$1,000 upon the letting without bids of public improvement contracts. The most common limitation has been \$500. The limit should be high enough to permit the letting without bids of contracts for small public improvements which would be unlikely to attract bids sufficiently low to justify the extra expense and effort of calling for bids. Yet the limit should be low enough to assure competition for the larger public improvement contracts of the city.

⁴⁵ For a recent explanation by the Oregon Supreme Court of the term "lowest responsible bidder" see *Hanson v. Mosser*, 84 Or. Adv. Sh. 757, 763-64 (1967).

be done in accordance with plans and specifications approved by the council.⁴⁶

CHAPTER X

MISCELLANEOUS PROVISIONS

Section 41. DEBT LIMIT. Except by consent of the voters, the city's voluntary floating indebtedness⁴⁷ shall not exceed \$_____ ; nor its bonded indebtedness,⁴⁸ \$_____ at any one time. For purposes of calculating the limitation, however, the legally authorized debt of the city in existence at the time this charter takes effect shall not be considered. All city officials and employees who create or officially approve any indebtedness in excess of this limitation shall be jointly and severally liable for the excess.

Section 42. TORTS. In no event shall the city be liable in damages for an injury to person, a damage to property, or a death, caused by a defect or a dangerous condition in a public thoroughfare, site, or facility, unless the city has had actual notice prior to the injury, damage or death that the defect or condition existed and has had a reasonable time thereafter in which to repair or remove it. In no case shall more than \$500 be recovered as dam-

⁴⁶ This provision does not apply to construction carried out directly by city forces or to purchases of equipment or supplies.

⁴⁷ The term "floating indebtedness" here means "that mass of lawful and valid claims against the corporation for the payment of which there is no money in the corporate treasury specifically designated, nor any taxation nor other means of providing money to pay particularly provided." *Black's Law Dictionary* 768 (4th ed. 1951).

The limitation is intended to prevent the accumulation of a large non-bonded debt due to the overestimation of, or failure to receive, anticipated and budgeted revenue.

⁴⁸ Section 4 and Section 6, which contain the general grant of powers and vest those powers in the mayor and council, are intended to confer upon the city and the city council power to issue bonds. For examples of similar provisions that have been held to confer power to issue bonds, see *Morgan v. City of Los Angeles*, 182 Cal. 301, 187 Pac. 1050 (1920); *Newton v. City of Ft. Collins*, 78 Colo. 380, 241 Pac. 1114 (1925). However, it should be noted that bond attorneys have not been willing to regard the general grant of power as authorizing bond issues. Therefore, it is advisable to prepare all proposals for specific bond issues as charter amendments until the Oregon Supreme Court has ruled on this point.

ages for an injury, damage or death resulting from such a defect or dangerous place.⁴⁹ No action shall be maintained against the city for damages growing out of such injury, damage or death unless the claimant first gives written notice to the council within 30 days after the injury, damage or death is sustained, stating specifically the time when, the place where, and the circumstances under which it was sustained, and that he will claim damages therefor of the city in an amount which he specifies. But in no event shall the action be started until 30 days have elapsed after the presentation of this notice to the council.

Section 43. EXISTING ORDINANCES CONTINUED. All ordinances of the city consistent with this charter and in force when it takes effect shall remain in effect until amended or repealed.

Section 44. REPEAL OF PREVIOUSLY ENACTED PROVISIONS. All charter provisions of the city enacted prior to the time that this charter takes effect are hereby repealed.⁵⁰

⁴⁹ Charter provisions like this, limiting and prescribing conditions precedent to the liability of cities for injuries and damages caused by defective public thoroughfares and other public facilities, have been upheld by the Oregon Supreme Court. *Platt v. City of Newberg*, 104 Or. 148, 205 Pac. 296 (1922); *Noonan v. City of Portland*, 161 Or. 213, 88 P.2d 808 (1939); *Pomeroy v. City of Independence*, 209 Or. 587, 307 P.2d 760 (1957). Such a provision does not, however, confer any immunity from liability upon the officers or agents of the city who by their negligence are responsible for defects. *Platt v. City of Newberg*, 104 Or. 148, 154-55, 205 Pac. 296 (1922); *Pomeroy v. City of Independence*, 209 Or. 587, 590-91, 307 P.2d 760 (1957). The immunity of the city may, indeed, increase the chances of legal actions against city officers and employees on account of defects. *Pomeroy v. City of Independence*, 209 Or. 587, 593, 307 P.2d 760 (1957). For this reason it may be desirable to reject all provisions attempting to limit the city's tort liability.

Liability insurance can be carried to cover the risks that the city and its officers and employees run with reference to tort liability.

Also, see Chapter 627, Oregon Laws 1967, relating to the tort liability of governmental entities. This act will be in effect after July 1, 1968. Depending on decisions of the courts with reference to the application of this act to cities, even municipal charter provisions governing procedures may be superseded.

⁵⁰ It may be desirable to except certain previously enacted charter provisions from this repeal. Some cities, for instance, enjoy legislative exemptions from the county road tax of which they do not wish to deprive themselves. If it is desired that any previously enacted charter provision be retained, that result can be achieved by indicating in specific or general terms the provisions to be excepted from the repeal. To that end Section 44 might read:

Section 45. TIME OF EFFECT OF CHARTER. This charter shall take effect _____, 19____.

Section 44. REPEAL OF PREVIOUSLY ENACTED PROVISIONS. All charter provisions of the city enacted prior to the time that this charter takes effect are hereby repealed, except the provisions of the legislative charter of 19____ relating to annexation of territory to the city and except sec. _____ of an Act beginning at p. _____, Special Laws of Oregon 19____, exempting the city from the provisions of the general law on county road districts and taxes.

Appendix A

GENERAL GRANTS OF MUNICIPAL POWER¹

The MODEL CHARTER FOR OREGON CITIES is drawn to confer powers on cities in general terms rather than by means of a detailed enumeration of specific powers. Although general grants of power to cities existed in charters one hundred years ago and were broadly interpreted by the courts, the practice of conferring powers upon cities by means of specific enumeration became the general practice in this country during the latter part of the 19th century, when municipal charters were granted by special enactment of the legislature.

Along with the trend toward more and more specific enumeration of municipal powers went a trend in the courts to interpret charters more and more strictly. Partly for this reason, not even the most detailed enumeration of powers sufficed to keep the authority of cities adequate and adapted to changing conditions. As a consequence cities frequently felt it necessary to amend their charters to get some necessary power or to prevail upon the state legislature to confer the power by general law. Each process was cumbersome.

As a result a counter trend developed of stating the powers of a city in more general and, at the same time, more comprehensive terms. This trend has been gaining momentum since 1910. It is based in part on the idea that the charter—the constitution of the city—ought to deal just with the basic, broad fundamentals of city government, that it ought to be as concise as possible, and that it ought to be as adaptable as possible to changing conditions in order not to be constantly undergoing the cumbersome process of amendment.

In the process of revising their charters to remove numerous provisions, including many specific grants of power which had become obsolete through the passage of time or of legislative acts, in adopting their first charters an increasing number of Oregon municipalities have provided authority for their city activities by grants of power expressed in general terms. In 1934 Huntington adopted a charter which expressed the powers of that city in terms quite similar to, and quite as general as,² the terms expressing the grant of powers in this Model Charter.³ The purpose of this provision was to confer upon Huntington as comprehensive and adequate authority as possible for the conduct of its affairs. Since that

¹ A condensation of the article "General Grants of Municipal Power in Oregon" by Orval Etter in April, 1947, issue of *Oregon Law Review*, supplemented with information about subsequent cases giving extended effect to general grants of power. The article is available in many libraries, particularly law libraries, and from the editorial offices of the University of Oregon School of Law in Eugene.

² *Huntington Charter* (1934) sec. 2.

³ *Model Charter for Oregon Cities* (3rd rev. 1967) secs. 4 and 5.

time, many Oregon cities have adopted new charters. To a considerable but varying degree, each of these resembles the Huntington charter and this Model Charter by relying exclusively or primarily upon a general grant of powers to confer authority upon the adopting city. In some of these charters the provision corresponding closely to the general grant in the Huntington charter and in this Model Charter is supplemented with a list of a few more specific, but still quite general powers.⁴

A number of Oregon cities derive their powers primarily from the general grant of power set forth in the 1941 law on incorporation of new cities.⁵ This law, which provides what power and governmental structure a city incorporated under the law shall have until the city adopts a home rule charter, states:

"Except as limited by express provision or necessary implication of general law, a city shall have power to take all action necessary or convenient for the government of its local affairs."⁶

No other part of the law attempts to supplement this expression, for it was intended by its framers to be so comprehensive as to make unnecessary any attempt to supplement it with grants of specific powers.

Reliance solely or primarily by cities on general grants of power has become common in other states during the last 50 years. One of the most notable instances is the provision of the charter of Cincinnati, Ohio, to the effect that the people of that city shall have "all powers of local self-government" and "all powers possible for a city to have" under the state constitution, as well as "all powers that now or hereafter may be granted to municipalities" by the laws of the state.⁷ Similar provisions appear with notable frequency in the charters of cities in Minnesota, California, and Michigan.

BASIS OF GENERAL GRANTS IN OREGON

How Can Powers Be Granted in General Terms? The generality of the grants of power characterizing this Model Charter and municipal charters recently enacted in Oregon contrasts sharply with the enumeration of specific powers characteristic of older Oregon city charters and naturally raises the question: What legal basis can there be in this state for giving the intended effect to a general grant of municipal power? More particularly, how can this effect be given in view of statements by the Oregon Supreme Court that municipal charters are grants of power, that municipalities have only express and necessarily implied powers, and that any doubt about whether a municipality has a given power is to be resolved against the municipality?

⁴ For example, see *Beaverton Charter* (1962) sec. 5.

⁵ Or. Laws 1941, c. 453, as amended by Or. Laws 1947, c. 33; ORS 221.010 to 221.150 and 221.410.

⁶ Or. Laws 1941, c. 453, sec. 5 (1); ORS 221.410.

⁷ *Cincinnati Charter* (1926) art. I.

Legislative Grants in General Terms. The Oregon Legislature repeatedly has conferred power on municipalities in general terms. That this can be done with its intended effect was made quite clear over half a century ago in an opinion of the United States Supreme Court. The opinion, concerning an Oregon city, declared that "it is enough if . . . the power [of a city] is granted in general terms."⁸

Constitutional Grants in General Terms. The home rule amendments to the Oregon Constitution in 1906 empowered "the legal voters of every city . . . to enact and amend their municipal charter, subject to the constitution and criminal laws of the state."⁹ They also empowered "the legal voters of every municipality" to exercise the powers of initiative and referendum "as to all local, special and municipal legislation, of every character, in and for their respective municipalities."¹⁰ These grants of power obviously are general in terms, and the Oregon Supreme Court repeatedly had alluded to their comprehensiveness. In 1910 the court stated that a city might, under the home rule amendments, within its corporate limits and for municipal purposes, "include in its charter by amendment any provision or right that the legislature might have granted before the constitution was so amended."¹¹ Five years later the court stated:

"When they amended the Constitution the . . . people . . . in effect declared that all the powers properly belonging to municipal government are at all times made available by a continuous offer to each city; that the legal voters of each municipal corporation may exercise all those available powers or take hold of only a part of them; and that the extent of the powers accepted, assumed, and exercised by the electors is made known, measured and determined by the charter."¹²

In the same vein about a year later the court continued:

". . . the whole sum of intramural authority is set at large and the legal voters may exercise all of that authority or only such part of it as they may desire. . . ."¹³

At least twice later the court expressed this idea in almost identical terms.¹⁴ Thus did the court half a century ago, in a series of opinions over a thirteen-year period, remove all cause for doubt that the people of Oregon had, by means of the home rule amendments, granted municipal power to all the cities of the state in the most general terms.

⁸ Paulsen v. City of Portland, 149 U. S. 30, 38 (1893).

⁹ Or. Const. art. XI, sec. 2.

¹⁰ Or. Const. art. IV, sec. 1a.

¹¹ Kiernan v. City of Portland, 57 Or. 454, 464, 111 Pac. 379, 112 Pac. 402 (1910).

¹² Robertson v. City of Portland, 77 Or. 121, 127, 149 Pac. 545 (1915).

¹³ State ex rel. Mullins v. Port of Astoria, 79 Or. 1, 18-19, 154 Pac. 399 (1916).

¹⁴ Curtis v. Tillamook City, 88 Or. 443, 454-55, 171 Pac. 574, 172 Pac. 122 (1918); and Wilson v. City of Medford, 107 Or. 624, 645, 647, 215 Pac. 184 (1923).

Charter Grants in General Terms. At the same time, in the same opinions, even in the parts already quoted or alluded to, the court laid a solid foundation for the proposition that the people of a city can, through charter enactment or amendment, effectually confer power upon the municipality in the most general terms. When the court discussed limitations on charter grants of power, in no place did it say that they had to be specific. In declaring that a city might include in its charter any provision which the legislature might previously have included, it is clear, on the basis of the legislature's authority to confer municipal power in general terms, that the court was recognizing that the people of a city itself might by charter confer power in equally general terms. In connection with the repeated statement that the home rule amendments set "the whole sum" of intramural municipal authority at large for the people by charter to take in whole or in part, the question arises: How, except in general terms, could the whole be taken? Considerations like these make it clear that implicit in the home rule amendments to the Oregon Constitution is a feature more explicit in the home rule provisions in certain other state constitutions; namely, that through their charters the people of a municipality may in general terms confer comprehensive power of local self-government upon their municipal authorities.¹⁵

The court made this power explicitly clear in 1959 in two cases involving the cities of Oceanlake and Pendleton. In the Oceanlake case¹⁶ the court held that under both the general grant of power in the 1941 law on municipal incorporation and the general grant of power in the Oceanlake charter the city had power to impose an occupational tax on the operators of bread trucks. In the Pendleton case¹⁷ the court held that under the general grant of powers in the Pendleton charter the city could extend its water system and finance the extension by special assessments.

Additional Questions. The conclusion that municipal power can be granted in the most general terms usually raises questions based on certain long established principles in the law of municipal corporations and on certain statements of the Oregon Supreme Court. One of the principles is that a charter must be strictly construed and that doubts about what powers it confers must be resolved against the city. Another, perhaps the one most commonly referred to in discussions of general grants of power, is the one that cities have only express powers and powers necessarily implied from express powers. Related to these principles are such statements as the one that "a charter enumerating the powers to be exercised is indispensable" and the one that a charter is a grant and not a limitation of power.

¹⁵ A detailed explanation of the points set forth in this paragraph, which can be stated only by going into legal technicalities, appears on pages 159-61 of the article in the *Oregon Law Review* from which this condensation has been made. Attorneys in particular are referred to the article for further study.

¹⁶ Davidson Baking Co. v. Jenkins, 216 Or. 51, 337 P.2d 352 (1959).

¹⁷ Paget v. City of Pendleton, 219 Or. 253, 346 P.2d 1111 (1959).

Part of the answer to the questions arising out of these principles and statements appears in the home rule amendments already quoted and in the elucidations of the amendments by the Oregon Supreme Court, quoted and referred to above.

The balance of the answer involves a close examination of the basis for each question. General powers may, for instance, be clear and therefore free from doubt. General powers may also be express, because the terms "express" and "specific," while sometimes used synonymously, are not necessarily synonymous. And some of the statements out of which questions about general grants of power arise were made in circumstances which show that they do not carry the implications which they appear at first glance to carry.¹⁸ As to strict construction, the Model Charter says it is to be liberally construed. In the Pendleton case quoted above the court gave intended effect to a like requirement in the Pendleton charter.¹⁹

POWERS CONFERRED BY GENERAL GRANTS IN OTHER JURISDICTIONS

Jurisdictions in Which General Grants Appear. The jurisprudence of other jurisdictions, as it relates to municipal powers, varies in the extent to which it resembles the jurisprudence of Oregon. But since there are not a few parallels of varying degree between Oregon and other jurisdictions in this respect, it is worth noting here that general grants of municipal power have been given more or less their intended effect over a period of many decades, particularly since 1910, in the following states: Alabama, Arizona, California, Colorado, Georgia, Iowa, Maine, Michigan, Minnesota, Nebraska, North Carolina, Ohio, Texas, and Wisconsin. In Canada general grants have been given presumably their intended effect in Alberta, Ontario, and Quebec. There is an extensive record of their use in England.²⁰

Specific Power Derived from General Grants. In these other jurisdictions as well as in Oregon, the courts on many occasions have indicated that a given general grant of power has conferred a particular power not specified in the grant. Thus general grants of power have been regarded as conferring the following unspecified particular powers:

- (1) To engage an agency to make scientific appraisals.²¹
- (2) To regulate amusement devices.²²

¹⁸ The questions to which the preceding two paragraphs refer are narrow ones of concern primarily to attorneys. It is hardly appropriate to set them and the answers to them forth here in further detail. Anyone wishing to go into them further may do so at pages 162-69 of the article in the *Oregon Law Review* from which this condensation has been taken.

¹⁹ *Paget v. City of Pendleton*, 219 Or. 253, 346 P.2d 1111 (1959).

²⁰ For a more extensive treatment of the record of general grants of power in other jurisdictions, see pages 170-87 of the article in the *Oregon Law Review* from which this condensation has been taken.

²¹ *Conroy v. City of Battle Creek*, 314 Mich. 210, 22 N. W. 2d 275 (1946).

²² *Teale v. Harris*, 60 J. P. 744 (Q. B. 1896).

- (3) To regulate or prohibit the sale of alcoholic liquors.²³
- (4) To levy special assessments.²⁴
- (5) To erect a municipal auditorium.²⁵
- (6) To issue bonds.²⁶
- (7) To pay bonuses to employes and heroes.²⁷
- (8) To condemn land.²⁸
- (9) To regulate embalming and undertaking businesses.²⁹
- (10) To provide extraterritorial site for federal project.³⁰
- (11) To prohibit gambling.³¹
- (12) To permit gas pumps on streets.³²
- (13) To protect public health.³³
- (14) To manufacture and sell ice.³⁴
- (15) To pay an indemnity to the heirs of an employe killed in line of duty.³⁵
- (16) To regulate hours and conditions of labor for municipal work.³⁶
- (17) To acquire land.³⁷
- (18) To prohibit language of obscene or profane nature in public places.³⁸

²³ *Ex parte Walter*, 65 Cal. 269, 3 Pac. 894 (1884); *People v. Dwyer*, 65 Cal. 20, 4 Pac. 451 (1884); *State ex rel. Zein v. City of Duluth*, 134 Minn. 355, 159 N. W. 171 (1920); *State v. Austin*, 114 N.C. 855, 19 S. E. 919, 14 Am. St. Rep. 817 (1894); *Heppel v. City of Columbus*, 106 Ohio St. 107, 140 N. E. 169 (1922); *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N. E. 519 (1923); *City of Akron v. Scalera*, 135 Ohio St. 65, 19 N. E. 2d 279 (1939).

²⁴ *Paget v. City of Pendleton*, 219 Or. 253, 346 P.2d 1111 (1959); *Londoner v. City and County of Denver*, 52 Colo. 15, 24, 119 Pac. 156 (1911); *Board of Commissioners of El Paso County v. City of Colorado Springs*, 66 Colo. 111, 180 Pac. 301 (1919).

²⁵ *City and County of Denver v. Hallett*, 34 Colo. 393, 83 Pac. 1066 (1905).

²⁶ *Morgan v. City of Los Angeles*, 182 Cal. 301, 187 Pac. 1050 (1920); *Newton v. City of Ft. Collins*, 78 Colo. 380, 241 Pac. 1114 (1925).

²⁷ *Bellamy v. City of Edmonton*, 16 Alta. L. R. 213, 59 D. L. R. 611 (1921); *State ex rel. Morgan v. Rusk*, 37 Ohio App. 109, 174 N. E. 142 (1930); *Enright v. City of Montreal*, 37 Queb. Sup. Ct. 488 (1909).

²⁸ *Londoner v. City and County of Denver*, 52 Colo. 15, 24, 119 Pac. 156 (1911); *Fishel v. City and County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940).

²⁹ *City of St. Paul v. Kessler*, 146 Minn. 124, 178 N. W. 171 (1920).

³⁰ *Fishel v. City and County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940).

³¹ *Scott v. Pilliner*, (1904) 2 K. B. 855, 856, 858; *Thomas v. Sutters*, (1930) 1 Ch. 10.

³² *Re Bennett and City of Hamilton*, 52 Ont. L. R. 229, (1923) D. L. R. 1173, 11 B. R. C. 799 (1922).

³³ *Dubois v. City of Augusta*, Dudley 30 (Richmond, Va., Super. Ct. 1831); *City of East Portland v. County of Multnomah*, 6 Or. 62, 64 (1876).

³⁴ *City of Denton v. Denton Home Ice Co.*, 119 Tex. 193, 27 S. W. 2d 119, 68 A. L. R. 866 (1930).

³⁵ *Enright v. City of Montreal*, 37 Queb. Sup. Ct. 448 (1909).

³⁶ *Stange v. City of Cleveland*, 94 Ohio St. 377, 114 N. E. 261 (1916); *Village of Struthers v. Sokol*, 108 Ohio St. 263, 266, 140 N. E. 519 (1923).

³⁷ *Londoner v. City and County of Denver*, 52 Colo. 15, 24, 119 Pac. 156 (1911); *Fishel v. City and County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940); *City of Pontiac v. Ducharme*, 278 Mich. 474, 270 N. W. 754 (1936).

³⁸ *Mantle v. Jordan*, (1897) 1 Q. B. 248.

- (19) To punish *larceny*.³⁹
- (20) To pay dues to *leagues* of municipalities.⁴⁰
- (21) To *license* certain businesses and occupations.⁴¹
- (22) To levy *license taxes* for revenue.⁴²
- (23) To provide *officials*.⁴³
- (24) To establish *parks*.⁴⁴
- (25) To provide *police protection*.⁴⁵
- (26) To maintain *publicity services*.⁴⁶
- (27) To regulate *quarries*.⁴⁷
- (28) To require flagman at *railroad crossings*.⁴⁸
- (29) To regulate *rates* of public utilities.⁴⁹
- (30) To control disposal of *refuse*.⁵⁰
- (31) To provide a *retirement plan* for employees.⁵¹
- (32) To fix *salaries* of officials.⁵²
- (33) To control *sidewalks*.⁵³
- (34) To control *streets*.⁵⁴
- (35) To levy *taxes on businesses*.⁵⁵
- (36) To levy *taxes in the form of licenses*.⁵⁶

³⁹ Village of Struthers v. Sokol, 108 Ohio St. 263, 266, 140 N. E. 519 (1923).

⁴⁰ Hays v. City of Kalamazoo, 25 N. W. 2d 787 (Mich. 1947).

⁴¹ Davidson Baking Co. v. Jenkins, 216 Or. 51, 337 P.2d 352 (1959); State v. Dirnberger, 152 Minn. 44, 187 N. W. 922 (1922); State v. Morrow, 175 Minn. 386, 221 N. W. 423 (1928); Crescent Oil Co. v. City of Minneapolis, 175 Minn. 276, 221 N. W. 6 (1928); State ex rel. Remick v. Clousing, 205 Minn. 296, 285 N. W. 711, 123 A. L. R. 465 (1939).

⁴² West Coast Advertising Co. v. City and County of San Francisco, 14 Cal. 2d 516, 95 P.2d 138 (1939).

⁴³ Fitzgerald v. City of Cleveland, 38 Ohio St. 338, 103 N. E. 512, 514 (1913); State ex rel. Frankenstein v. Hillenbrand, 100 Ohio St. 339, 344, 126 N. E. 309 (1919).

⁴⁴ Londoner v. City and County of Denver, 52 Colo. 15, 24, 119 Pac. 156 (1911).

⁴⁵ City of East Portland v. County of Multnomah, 6 Or. 62, 64 (1876).

⁴⁶ City of Montreal v. Tremblay, 15 Queb. K. B. 425 (1906).

⁴⁷ State v. Bjork, 157 Minn. 276, 195 N. W. 926 (1923); Meyers v. City of Minneapolis, 154 Minn. 238, 191 N. W. 609 (1923).

⁴⁸ Green v. Eastern Railway Co., 52 Minn. 79, 53 N. W. 808 (1892).

⁴⁹ City of Ft. Collins v. Public Utilities Commission, 69 Colo. 554, 195 Pac. 1099 (1921).

⁵⁰ Batchelor v. Sturley, 69 J. P. 398 (K. B. 1905).

⁵¹ Bellamy v. City of Edmonton, 16 Alta. L. R. 213, 59 D. L. R. 611 (1921); Bowler v. Nagel, 228 Mich. 434, 200 N. W. 258, 37 A. L. R. 1154 (1924); State ex rel. Daly v. City of Toledo, 142 Ohio St. 123, 128, 50 N. E. 2d 338 (1943).

⁵² Burton v. City of Detroit, 190 Mich. 195, 177 N. W. 722 (1916).

⁵³ State v. Sugarman, 126 Minn. 477, 148 N. W. 466 (1914).

⁵⁴ Village of Perrysburg v. Ridgway, 108 Ohio St. 245, 255, 140 N. E. 595 (1923); Mantle v. Jordan, (1897) 1 Q. B. 248; Teale v. Harris, 60 J. P. 744 (Q. B. 1896); Scott v. Pilliner, (1904) 2 K. B. 855, 856, 858; Thomas v. Sutters, (1900) 1 Ch. 10; Batchelor v. Sturley, 69 J. P. 398 (K. B. 1905). See also City of East Portland v. County of Multnomah, 6 Or. 62, 64 (1876).

⁵⁵ See citations on occupational taxes, below at note 57.

⁵⁶ West Coast Advertising Co. v. City and County of San Francisco, 14 Cal. 2d 516, 95 P.2d 138 (1939).

- (37) To levy *taxes on occupations*.⁵⁷
- (38) To levy *taxes on property*.⁵⁸
- (39) To levy *taxes on vehicles*.⁵⁹
- (40) To establish a standard of *time* for the conduct of municipal affairs.⁶⁰
- (41) To preserve *trees*.⁶¹
- (42) To regulate motor *vehicles*.⁶²
- (43) To supply *water*.⁶³
- (44) To establish *woman suffrage*.⁶⁴

⁵⁷ Ex parte Galusha, 184 Cal. 697, 195 Pac. 406 (1921); Ex parte Nowak, 184 Cal. 701, 195 Pac. 402 (1921); State ex rel. Zielonka v. Carrell, 99 Ohio St. 220, 124 N. E. 134 (1919); Globe Security & Loan Co. v. Carrell, 106 Ohio St. 43, 47, 138 N. E. 364 (1922); Marion Foundry Co. v. Landes, 112 Ohio St. 166, 171, 147 N. E. 302 (1925); City of Cincinnati v. American Telephone & Telegraph Co., 112 Ohio St. 493, 497, 147 N. E. 806 (1925).

⁵⁸ By inference, State ex rel. City of Dayton v. Bish, 104 Ohio St. 206, 135 N. E. 816 (1922).

⁵⁹ Park v. City of Duluth, 134 Minn. 296, 159 N. W. 627 (1916).

⁶⁰ State ex rel. Cist v. City of Cincinnati, 101 Ohio St. 354, 129 N. E. 595 (1920).

⁶¹ State v. Merrill, 37 Me. 329 (1853).

⁶² State v. O'Mara, 105 Ohio St. 94, 98, 136 N. E. 885 (1922); Village of Struthers v. Sokol, 108 Ohio St. 263, 140 N. E. 519 (1923).

⁶³ Paget v. City of Pendleton, 219 Or. 253, 346 P.2d 1111 (1959); Intendant and Town Council of Livingston v. Pippin, 31 Ala. 542 (1858); Newton v. City of Ft. Collins, 78 Colo. 380, 241 Pac. 1114 (1925); City of Joseph v. Joseph Water Works Co., 57 Or. 586, 111 Pac. 864, 112 Pac. 1083 (1911).

⁶⁴ State ex rel. Frankenstein v. Hillenbrand, 100 Ohio St. 338, 103 N. E. 512, 514 (1913).

Appendix B

COMMENTS ON PROVISIONS OMITTED FROM THE MODEL CHARTER

The MODEL CHARTER FOR OREGON CITIES omits many provisions which are contained in the traditional type of Oregon city charter that was granted by the legislature prior to 1906 or adopted under the home rule amendments to the state constitution during the early years after those amendments took effect. Specific grants of authority are replaced in the Model Charter by a general grant of powers, discussed in Appendix A. Subjects and procedures covered by state law are generally not included in the Charter, and the following explanatory notes refer to these omissions. In addition, the Model Charter omits certain procedural provisions, such as those on local improvement procedure, which can best be provided by ordinance.

ANNEXATION PROCEDURE

An Oregon city cannot by home rule charter assume any extramural power unless the state legislature first authorizes it to do so.¹ The power made available to cities by the home rule amendments to the state constitution is intramural only in character.² To the extent that the annexation of territory to a city involves an exercise of extramural power, it is a subject with reference to which a city apparently cannot assume power unless first authorized to do so by the legislature.³ It might be possible for an Oregon city to provide by home rule charter its own procedure for the intramural aspects of annexation, such as the manner of acceptance of the annexation on the part of the city. However, the Model Charter contains no provision relating specifically to the annexation of additional territory to a city, since it is necessary to look to the statutes for the authority or procedure for annexation in its extramural aspects and since the statutes provide a complete procedure for annexation in both its extramural and intramural aspects.

A city which has a legislative charter in which the legislature has given that city some special authority or procedures with reference to annexation has the alternative of retaining such authority or procedures in

¹ *Thurber v. Henderson*, 63 Or. 410, 415-16, 128 Pac. 43 (1912); *State ex rel. Mullins v. Port of Astoria*, 79 Or. 1, 19-20, 154 Pac. 399 (1916).

² *Kiernan v. City of Portland*, 57 Or. 454, 464, 111 Pac. 379, 112 Pac. 402 (1910); *State ex rel. Mullins v. Port of Astoria*, 79 Or. 1, 18-19, 154 Pac. 399 (1916); *Curtis v. Tillamook City*, 88 Or. 443, 454-55, 171 Pac. 574, 172 Pac. 122 (1918).

³ *Couch v. Marvin*, 67 Or. 341, 136 Pac. 6 (1913); *McBee v. Town of Springfield*, 58 Or. 459, 114 Pac. 637 (1911); *Landess v. City of Cottage Grove*, 64 Or. 155, 129 Pac. 537 (1913). See *McColdrick, The Law and Practice of Municipal Home Rule*, 1916-1930, 173-5 (1933).

adopting a home rule charter. If the city chooses this alternative, it would be advisable to incorporate in the home rule charter the exact wording of the legislative charter provisions with reference to annexations and to indicate in the enacting clause of the new charter that the specific provisions of the legislative charter relating to annexation were not to be repealed or impaired in any manner by the new enactment.

QUALIFICATIONS OF ELECTORS

The MODEL CHARTER FOR OREGON CITIES contains no provision relating to the qualifications of electors. The state constitution covers this subject by a provision reading:

"In all elections, not otherwise provided for by this constitution, every citizen of the United States, of the age of 21 years and upwards, who shall have resided in the state during the six months immediately preceding such election, and who shall be duly registered prior to such election in the manner provided by law, shall be entitled to vote, provided such citizen is able to read and write the English language."⁴

This provision applies to municipal elections and to electors voting thereat.⁵ A citizen possessing the qualifications of an elector as defined by the state constitution "is entitled to the right of suffrage, and it is not within the power of the legislature to deny, abridge, extend or change the qualifications so prescribed. . . ."⁶ The attorney general has accordingly ruled that "any requirement in a city charter of residence for any particular period of time, as a qualification for voting, or any other requirement for such purpose, in addition to those expressed in section 2 of article II of the constitution, is void and of no effect."⁷ Provisions in city charters requiring 30 days' residence in a city as a prerequisite to voting there are consequently of extremely doubtful validity. The result which they seek to achieve is, nevertheless, brought about by the state law on registration of voters, for that law provides:

"No elector may register within 30 days preceding any election held throughout the county in which he resides for the purpose of voting at such election. No elector residing in any precinct in which any election not held throughout the county is to be held may register within 30 days preceding such election for the purpose of voting at such election."⁸

This provision clearly implies that if an elector moves into a city later

⁴ *Or. Const.* art. II, sec. 2.

⁵ *Livesley v. Litchfield*, 47 Or. 248, 83 Pac. 142 (1905); *Opinions of the Attorney General* (1922-24) 42.

⁶ *Livesley v. Litchfield*, 47 Or. 248, 249-50, 83 Pac. 142 (1905).

⁷ *Opinions of the Attorney General* (1922-24) 42.

⁸ ORS 247.070.

than 30 days before an election is to be held there, he cannot register for the election and consequently cannot vote at it.

INTEREST OF CITY OFFICERS IN CITY CONTRACTS

City charters frequently prohibit conflicts of interest in city contracts—that is, prohibit city officers and employees from having any special interest in contracts entered into by the city. The suggested charter contains no such prohibition, because of case law and statutes governing conflicts of interest in Oregon.

The general rule of case law on conflicts of interest reads:

“... it is well settled that municipal officers cannot be interested in contracts of any character with the municipality. This rule has been adopted to a considerable extent in the various jurisdictions by statutory or charter provisions which are merely declaratory of the rule at common law. If one of the parties to a city contract is a municipal officer, the courts enforce the rule without hesitation, and will not permit it to be evaded by a mere device.”⁹

This general prohibition has been liberalized in Oregon by the following statute:

“Except as otherwise provided by law, no officer, agent or employee of the state or of any political subdivision of the state shall have any interest in any contract made by him in his official capacity or by any public committee, board, commission or department of which he is a member, agent or employee, except that the employment of the officer, agent or employee shall not be considered a contract for the purposes of this section, and except that the governing body of a city with a population of less than 5,000 may, notwithstanding the provisions of ORS 162.240 and 279.362, by unanimous vote contract for goods and services with an interested officer of the city, provided the consideration to be paid the officer for the goods and services does not exceed \$500 during any fiscal year.”¹⁰

MUNICIPAL JUDGE AS EX OFFICIO JUSTICE OF THE PEACE

Many of the Oregon charters that were enacted as special acts of the legislature prior to 1906 provide that the municipal judge shall have the jurisdiction and authority of an ex officio justice of the peace. The MODEL CHARTER FOR OREGON CITIES contains no such provision. Inasmuch as such authority concerns the state's system of courts, it cannot be given to the municipal judge by a home rule charter.

The decision of the supreme court in the case of *In re Application of Boalt*¹¹ suggests, however, that once the municipal judge of any city has

⁹ 10 McQuillin, *Municipal Corporations*, sec. 29.97 (3rd ed. rev. 1950).

¹⁰ ORS 279.360.

¹¹ 123 Or. 1, 260 Pac. 1004 (1927).

been given the jurisdiction and authority of an ex officio justice of the peace by a special legislative act, that jurisdiction, unless withdrawn by the legislature, continues to exist regardless of the provisions of a subsequent home rule charter. A city in this situation may retain in its charter the provisions of the legislative charter conferring the jurisdiction and authority of an ex officio justice of the peace on its municipal judge by enacting its new charter as an amendment to its former legislative charter and retaining this specific feature. Or its municipal judge may continue to exercise this authority by relying on the supreme court decision, in which the court stated:

“In order [to provide] for the enforcement of the criminal laws of the state, the legislature in its wisdom has provided that the municipal judge of the City of Portland shall have the jurisdiction and authority of an ex officio justice of the peace. The city may as well repeal a portion of the criminal laws as to minimize or lessen their enforcement. We, therefore, hold that the Municipal Court of the City of Portland is a duly constituted court authorized to act as an ex officio justice of the peace.”

Attention is called also to the case of *Claypool v. McCauley*¹² which held that the municipal judge of Bend was an ex officio justice of the peace regardless of the fact that this authority had been eliminated for a time from the Bend home rule charter. The court held that the provision of the general incorporation act of 1893 under which Bend was incorporated, conferring the jurisdiction and authority of an ex officio justice of the peace on municipal judges of cities incorporated under this act, applied to every city in the state. There is some question, however, whether the ruling in this case would be followed except as to cities incorporated under the 1893 act or to cities in existence at the time the act became effective.¹³

MISCELLANEOUS SUBJECTS COVERED BY STATE LAW

The MODEL CHARTER FOR OREGON CITIES contains no provision on the following subjects because each of them is extensively covered by the laws of the state:

Municipal budgets, the making of which the state law controls.¹⁴

The procedure for vacating streets, which the state law prescribes.¹⁵

Zoning, on which the state law contains a number of provisions.¹⁶

¹² 131 Or. 371, 283 Pac. 751 (1929).

¹³ *Albany v. McGoldrick*, 79 Or. 462, 155 Pac. 717 (1916); *Colby v. Medford*, 85 Or. 485, 167 Pac. 487 (1917); *Grants Pass v. Rogue River Public Service Corp.*, 87 Or. 637, 171 Pac. 400 (1918); *Fenwick v. Klamath Falls*, 135 Or. 571, 297 Pac. 833 (1931); *Umphlette v. Silverton*, 154 Or. 156, 59 P.2d 244 (1936); *Noonan v. Portland*, 161 Or. 213, 88 P.2d 808 (1939).

¹⁴ ORS 294.305-294.520.

¹⁵ ORS 271.080-271.170.

¹⁶ ORS 227.210-227.310.

MODEL CHARTER

Exercise of the power of eminent domain by cities, on which the state law contains a number of provisions.¹⁷

The enforcement of assessment liens,¹⁸ and the bonding of assessments for public improvements.¹⁹

OTHER MISCELLANEOUS SUBJECTS

The MODEL CHARTER FOR OREGON CITIES contains no provision on a number of other subjects, for the reason that each of them can as well or better be covered by ordinance than by charter. Some of these subjects are the procedure for making local improvements, the procedure for levying and collecting special assessments, and certain rules of procedure for the council.

¹⁷ ORS 223.005-223.175, 226.310-226.380, 227.300, 281.010, 281.510-281.550.

¹⁸ ORS 223.505-223.650.

¹⁹ ORS 223.205-223.385.

A	B	C	D	E	F	G	H	I
1		Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
2	PREAMBLE		PREAMBLE			PREAMBLE		
3				We, the voters of Beaverton, Oregon exercise our power to the fullest extent possible under the Oregon Constitution and laws of the state, and enact this Home Rule Charter.			We the people of the City of Beaverton, under the constitution and laws of the state of Oregon, in order to secure the benefits of local self-government and to provide for an honest and accountable council-manager government do hereby adopt this charter and confer upon the city the following powers, subject to the following restrictions, and prescribed by the following procedures and governmental structure. By this action, we secure the benefits of home rule and affirm the values of representative democracy, professional management, strong political leadership, citizen participation, diversity and inclusiveness and regional cooperation.	
4	Enactment Clause							
5								
6	Title of Enactment	1	Title		1.1			
7				This charter may be referred to as the 20__ Beaverton Charter.				
8	Name	2	Names		1.2			
9				The City of Beaverton, Oregon, continues as a municipal corporation with the name City of Beaverton.				
10	Boundaries	3	Boundaries		1.3			
11				The city includes all territory within its boundaries as they now exist or are legally modified. The city will maintain as a public record an accurate and current description of the boundaries.				
12	Powers of the City	4	Powers		2.1	Powers of the City		1.01
13				The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.			The city shall have all powers possible for a city to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter.	
14	Construction of Charter	5	Construction		2.2	Construction		1.02
15				The charter will be liberally construed so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.			The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this article.	
16	WHERE POWERS VESTED	6	Distribution		2.3	General Powers and Duties of the Council		2.01
17				The Oregon Constitution reserves initiative and referendum powers as to all municipal legislation to city voters. This charter vests all other city powers in the council except as the charter otherwise provides. The council has legislative, administrative and quasi- judicial authority. The council exercises legislative authority by ordinance, administrative authority by resolution, and quasi-judicial authority by order. The council may not delegate its authority to adopt ordinances.			All powers of the city shall be vested in the city council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.	
18	THE COUNCIL.	7	Council		3.1 & 7.1	Composition & Term		2.02(b) and (c)
19				The council consists of a mayor and six councilors nominated and elected from the city at large. [3.1] The term of a councilor in office when this charter is adopted is the term for which the councilor was elected. At each general election after the adoption, three councilors will be elected38 for four-year terms. [7.1 - Councilors]			There shall be a city council composed of [] members. The term of office of elected officials shall be four years in accordance with Artile VI.	
20	Mayor	8	Mayor		3.2 & 7.2	Mayor		2.03
21				The mayor presides over and facilitates council meetings, preserves order, enforces council rules, and determines the order of business under council rules. The mayor is a voting member of the council and has no veto authority. a) With the consent of council, the mayor appoints members of commissions and committees established by ordinance or resolution. b) The mayor must sign all records of council decisions. c) The mayor serves as the political head of the city government. [3.2] The term of the mayor in office when this charter is adopted continues until the beginning of the first odd-numbered year after adoption. At every other general election after the adoption, a mayor will be elected for a four-year term. [7.2 - Mayor]			Two Alaternatives: (a) The mayor shall be a voting member of the city council and shall attend and preside at meetings of the council, represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of citizen advisory boards and commissions, present an annual state of the city message, appoint the members and officers of council committees, assign subject to the consent of council agenda items to committees, and perform other duties specified by the council. The mayor shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. OR (b) At each regular election the voters of the city shall elect a mayor at large for a term of [the same term as other council members] years. The council shall elect from among its members a deputy mayor who shall act as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become mayor for the remainder of the unexpired term.	
22	Other Officials	9	City Attorney		8.2	Legal Officer		4.03
23				The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney. The attorney may appoint, supervise, and may remove any employees who work in and for the city attorney's office.			(a) Appointment. Three Alternatives: (1) There shall be a legal officer of the city appointed by the city manager as provided in § 4.01(b); (2) There shall be a legal officer of the city appointed by the city manager subject to confirmation by the city council; (3) There shall be a legal officer of the city appointed by the city council.	
24							(b) Role. The legal officer shall serve as chief legal adviser to the council, the manager and all city departments, offices and agencies, shall represent the city in all legal proceedings and shall perform any other duties prescribed by state law, by this charter or by ordinance.	
25	Salaries	10	Compensation		9.1	Compensation		2.04
26				The council must authorize the compensation of city officers and employees as part of its approval of the annual city budget.			The city council may determine the annual salary of the mayor and council members by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of council members elected at the next regular election. The mayor and council members shall receive 154 their actual and necessary expenses incurred in the performance of their duties of office.	

	A	B	C	D	E	F	G	H	I
1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
27	Qualifications		11	Qualifications		7.4	Eligibility		2.02(a) & 2.07
28		No person may fill an elective office of the city unless at the time of the election or appointment the person is a qualified elector of the state and has resided continuously in the city during the six months immediately preceding the election or appointment. A person, after taking office, must remain a resident of the city and qualified elector of the state in order to continue to hold the office. The council is the final judge of the qualifications and election of its own members.			a) The mayor and each councilor must be a qualified elector under state law, and reside within the city for at least one year immediately before election or appointment to office. b) No person may be a candidate at a single election for more than one city office. c) Neither the mayor nor a councilor may be employed by the city. d) The council is the final judge of the election and qualifications of its members.			Only registered voters of the city shall be eligible to hold the office of council member or mayor. The city council shall be the judge of the election and qualifications of its members, and of the grounds for forfeiture of their office. In order to exercise these powers, the council shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the city at least one week in advance of the hearing. [2.07 - Judge of Qualificatons]	
29	Meetings		12	Rules & Meetings		3.4 & 3.5	Procedures		2.11(a)
30		The council shall hold a regular meeting at least once each month in the city at a time and at a place which it designates. It shall adopt rules for the government of its proceedings. The mayor or two or more members of the council may call special meetings of the council in a manner prescribed by general ordinance adopted by the council.			The council must by resolution adopt rules to govern its meetings. [3.4] The council must meet at least once a month at a time and place designated by its rules, and may meet at other times in accordance with the rules and laws of the state of Oregon. [3.5]			The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or of _____ or more members and, whenever practicable, upon no less than twelve hours’ notice to each member. Except as allowed by state law, all meetings shall be public; however, the council may recess for the purpose of discussing in a closed or executive session limited to its own membership any matter which would tend to defame or prejudice the character or reputation of any person, if the general subject matter for consideration is expressed in the motion calling for such session and final action on such motion is not taken by the council until the matter is placed on the agenda.	
31	Quorum		13	Quorum		3.6			
32		A majority of the incumbent members of the council shall constitute a quorum to do business, but a smaller number may meet and compel attendance of the absent members in a manner provided by ordinance. Every member of the council who is present shall be counted for the purpose of constituting a quorum, even if the member does not vote on one or more issues.			A majority of the council members is a quorum to conduct business. In the event of a vacancy due to resignation or other events, the quorum is reduced accordingly. In the event of an absence, a smaller number may meet and compel attendance of absent members as prescribed by council rules.				
33	Record of Proceeding			Record		3.8 & 4.2	Rules and Journal		2.11(b)
34		The council shall keep a record of its proceedings and the ayes and nays upon a question before it shall be taken and entered in the record.	14		A record of council meetings must be kept in a manner prescribed by the council rules and the laws of the state of Oregon. [3.8] After the adoption of an ordinance, the vote of each member must be entered into the council minutes. [4.2(d)]			The city council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.	
35	Proceeding to be public		15						
36		Except as state law may provide otherwise, the deliberations and proceedings of the council and other deliberative bodies of the city shall be public.							
37	MAYOR’S FUNCTION AT COUNCIL MEETINGS.		16						
38		The mayor shall preside at council meetings. Except in case of a tie, the mayor shall not vote on matters before the council. In case of a tie, the mayor shall cast the deciding vote. The mayor shall preserve order, enforce the rules of the council and determine the order of business under the rules of the council.							
39	President of Council		17	Council President		3.3			
40		At its first meeting after this charter takes effect and thereafter at its first meeting of each succeeding year, the council shall elect a president from its membership. Except as otherwise provided in this charter, when the mayor is absent from the city or unable for any reason to function as mayor, the president shall: A. Preside at council meetings; B. Have a vote on all questions before the council, except that he or she shall not possess or exercise the mayor’s vote to break a tie as set forth in section 16 of this charter; and C. Possess, with the exception of the veto power vested in the mayor by section 35 of this charter and the powers of the mayor pro tem provided in section 20 of this charter, the legal powers and be subject to the legal limitations incident to the office of mayor.			At its first meeting each year, the council must elect a president from its membership. The president presides in the absence of the mayor and acts as mayor when the mayor is unable to perform duties.				
41	Voting [miscellaneous]		18	Vote Required		3.7	Voting		2.11(c)
42		Except as otherwise provided in this charter, the concurrence of a majority of the members of the council present who vote is necessary to determine a question before the council.			The express approval of a majority of a quorum of the council is necessary for any council decision, except when this charter requires approval by a majority of the council.			Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. _____ members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council, except as otherwise provided in the preceding sentence and in § 2.06(c), shall be valid or binding unless adopted by the affirmative vote of _____ or more members of the council	

	A	B	C	D	E	F	G	H	I
1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
43	Mayor		19						
44		Except as provided to the contrary in this charter, the mayor is the executive and administrative head of the government of the city. In exercising this power the mayor shall:							
45		A. Devote his entire time to the discharge of his official duties and, except when circumstances necessitate otherwise, attend all meetings of the council;							
46		B. At the beginning of each calendar year, and may at other times, report to the council as to the affairs and needs of the city and recommend legislation the mayor considers necessary and desirable;							
47		C. Appoint the committees provided by the rules of the council; appoint and remove all members of boards or commissions, subject to confirmation by the council; and, except as provided to the contrary in this charter, appoint and remove other appointive officers and employees; subject to the further requirements that:							
48		1. An appointment or removal made by the mayor to any board or commission does not take effect unless a majority of the members of the entire council confirm the appointment or removal or the council fails to act upon appointment or removal within fifteen (15) calendar days after the council's notice of the mayor's action; and							
49		2. Unless waived by a majority vote of the entire council, a member of any committee, board or commission shall be a resident of the city;							
50		D. Have, with the exception of the council, city attorney, city auditor or over the judicial activities of the municipal judge, general supervision and control over appointive city officers and employees and their work with power to transfer an employee from one department to another, to the end of obtaining the utmost efficiency in each of them;							
51									
52		E. Sign all records of proceedings approved by the council and all authorized writings;							
53		F. See that all ordinances are enforced and that the provisions of all franchises, leases, contracts, permits and privileges granted by the city are observed;							
54		G. Act as the purchasing agent for all departments of the city under his supervision and control;							
55		H. Prepare and submit to the budget committee the annual budget estimates and such reports as that body requests;							
56		I. Supervise the operation of all public utilities owned or operated by the city and have general supervision over all city property.							
57	Mayor Pro-Tem		20						
58		A. Mayor Pro Tem. Except as provided to the contrary by this charter, whenever the mayor is absent from the city, is unable to act as mayor, or whenever the office becomes vacant, the assistant to the mayor shall act as mayor pro tem and possess the administrative powers and duties of the mayor. Although the mayor pro tem shall not preside at council meetings, vote on questions before it, nor possess a veto, the mayor pro tem is entitled to sit with the council and take part in all council discussions. No mayor pro tem, however, may appoint or remove a city officer or employee except with the approval of a majority of the entire council.							
59		B. Ineligible Persons. The mayor may not appoint or employ with the city his or her spouse nor any person related to him or her by consanguinity or affinity within the third degree.							
60	Other Officers			Municipal Court and Judge		8.3			
61		A. Municipal Judge. The municipal judge is a judicial officer of the city and at all times shall be admitted to practice law in the State of Oregon. There shall be a municipal court of the City of Beaverton, Washington County, Oregon. The council, by intergovernmental agreement, may have some or all of the duties and responsibilities of the municipal judge or the functions of the municipal court performed by and through a branch of the state judicial system. The court shall be open for the transaction of business at times specified by the council. All area within the city is within the territorial jurisdiction of the court. The municipal judge has jurisdiction over all infractions and offenses, whether civil or criminal in nature, defined and made punishable by ordinances of the city and over all actions brought to recover or enforce forfeitures or penalties defined or authorized by ordinances of the city. The municipal judge may issue process for the arrest of any person accused of an offense against the city, commit any such person to jail or admit such person to bail pending trial, issue subpoenas, compel witnesses to appear and testify in any cause before the court, compel obedience to such subpoenas, issue any process necessary to carry into effect the judgments of the court, and punish for contempt of court. Except as otherwise provided by ordinances or this charter all proceedings in the municipal court shall be governed by the applicable general laws of the state governing district courts.			a) A majority of the council may appoint and remove a municipal judge. A municipal judge will hold court in the city at such place as the council directs. The court will be known as the Municipal Court. b) All proceedings of this court will conform to state laws governing justices of the peace and justice courts. c) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court. d) The municipal court has jurisdiction over every offense created by city ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court also has jurisdiction under state law unless limited by city ordinance.61 e) The municipal judge may: 1) Render judgments and impose sanctions on persons and property; 2) Order the arrest of anyone accused of an offense against the city; 3) Commit to jail or admit to bail anyone accused of a city offense; 4) Issue and compel obedience to subpoenas; 5) Compel witnesses to appear and testify and jurors to serve for trials before the court; 6) Penalize contempt of court; 7) Issue processes necessary to enforce judgments and orders of the court; 8) Issue search warrants; and 9) Perform other judicial and quasi-judicial functions assigned by ordinance. f) The council may appoint and may remove municipal judges pro tem. g) The council may transfer some or all of the functions of the municipal court to an appropriate state court.				
62		B. City Attorney. The city attorney shall at all times be admitted to practice law in the State of Oregon.							
63		C. Auditor. The auditor shall at all times be licensed to practice as an auditor under the state municipal audit law. The auditor shall perform the annual audit and examination required by the state municipal audit law and such other audit duties as may be designated by the council.						The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits as it deems necessary. Such audits shall be carried out in accordance with § 5.12.	

	A	B	C	D	E	F	G	H	I
1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
64	REGULAR CITY ELECTIONS.		22	State Law		7.3	City Elections		6.01(a)
65		Regular city elections shall be held at the same time and places as biennial elections for electing state and county officers, in accordance with applicable state election laws. At each regular city election all elective officers to be nominated or elected and all matters submitted to the electors at that time shall be voted upon			City elections must conform to state law except as this charter or ordinances provide otherwise. All elections for city offices must be nonpartisan.41			The regular city election shall be held [at the time established by state law] on the first _____ [day of week], in _____ [fall or spring month of odd- or even- numbered year], and every 2 years thereafter.	
66	Special Elections		23						
67		The council, by resolution, may call and provide the time, manner and means for holding a special election. Notice of such special election shall be given at least ten (10) days prior to the election in the manner provided by the action of the council ordering the election.							
68	Qualificatons of Electors		24				Registered Voter Defined		6.01(b)
69		Every person who is a resident of the city and who qualifies as a legal voter under state law may vote in city elections.						All citizens legally registered under the constitution and laws of the state of _____ to vote in the city shall be registered voters of the city within the meaning of this charter.	
70	CANVASS OF ELECTION RETURNS.		25						
71		In all elections held in conjunction with state and county elections the state law governing the filing and canvassing of returns shall apply. The results of each election shall be entered in the record of the council. The record shall state the number of votes cast for and against each measure, the names of the officers elected, and the measures enacted or approved. In the event of a tie vote for candidates the election of a successful candidate shall be determined by a public drawing of lots.							
72	CERTIFICATE OF ELECTION.		26						
73		Immediately after completion of the canvass the city elections officer shall issue a certificate of election to each person elected. The certificate shall be prima facie evidence of the facts which it states.							
74	COMMENCEMENT OF TERMS OF OFFICE.		27	Terms		7.6	Beginning of Term		6.01e
75		The term of office of a person elected at a November general biennial election shall commence on the first day of January following the election.			The term of an officer elected at a general election begins at the first council meeting of the year immediately after the election, and continues until the successor qualifies and assumes the office.			The terms of council members shall begin the __ day of __ after their election.	
76	Oath of Officer		28	Oath		7.7			
77		Each officer, upon entering office, shall take an oath or affirm that he or she will support the constitutions and laws of the United States and of Oregon and the charter and ordinances of the City, and that he or she will perform the duties of the office to the best of his or her ability.			The mayor and each councilor must swear or affirm to faithfully perform the duties of the office and support the constitutions and laws of the United States and Oregon.				
78	NOMINATIONS, NUMBERED COUNCIL POSITIONS AND NONPARTISAN PRIMARY AND GENERAL ELECTIONS.		29	Nominations		7.5	Conduct of Elections		6.01(c)
79		A. Nominations. The name of any elector qualified for elective office as provided in Section 11 of this charter may be placed on the primary ballot for an elective office of the city. The name of such an elector shall be submitted to the county clerk to be printed upon the city ballot whenever a petition containing said candidate’s nomination, written acceptance and signatures of not fewer than ten (10) nor more than twenty (20) qualified electors has been filed with the city elections officer. Said petition shall be in a form to be prescribed by the city council.			The council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city councilor position.			The provisions of the general election laws of the state of _____ shall apply to elections held under this charter. All elections provided for by the charter shall be conducted by the election authorities established by law. Candidates shall run for office without party designation. For the conduct of city elections, for the prevention of fraud in such elections and for the recount of ballots in cases of doubt or fraud, the city council shall adopt ordinances consistent with law and this charter, and the election authorities may adopt further regulations consistent with law and this charter and the ordinances of the council. Such ordinances and regulations pertaining to elections shall be publicized in the manner of city ordinances generally.	
80		B. Primary Elections. A non-partisan primary election shall be held in each even numbered year, or as hereafter provided by the constitution or general laws of Oregon regulating state partisan primary elections, and on the day and month fixed for such state partisan primary elections.							
81							Method of Electing Council Members		6.03
82		C. Numbered Council Positions. The nomination of mayor and councilors shall be non-partisan and shall be made in conformity with methods hereinafter provided. Council positions shall be numbered in consecutive order. Each councilor shall be designated by the same position as the councilor whom he or she has succeeded or will succeed in office. In all proceedings for the nominations of candidates for the office of councilor, every petition for nomination, nominee’s acceptance and certificate of election, ballot or other document used in connection with nominations for councilors shall state the official number of the position as councilor to which such candidate aspires. His or her name shall appear on the ballot only for such designated position. At all elections each such office of councilor to be filled shall be separately designated on the ballot by official position number as herein provided, in addition to other matter required by law to appear thereon. In case no nomination is made at the primary election, nominations may be made for the general election by position in the same manner as herein set forth for primary elections. An incumbent councilor may not file for nomination for or election to any councilor position except the one he or she presently fills.						Seven Alternatives: (1) Council elected at large; mayor elected by the council. (2) Council elected at large; mayor elected separately. (3) Council elected at large with district residency requirement; mayor elected by the council. (4) Council elected at large with district residency requirement; mayor elected separately. (5) Mixed at-large and single member district system; mayor elected by the council. (6) Mixed at-large and single member district system; mayor elected separately. (7) Single-member district system.	

	A	B	C	D	E	F	G	H	I
1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
83		D. Limited Filing. A candidate may not file for more than one numbered position in any one year nor can a candidate file for another council position in the same year after withdrawing the original filing.							
84		E. Majority of Votes Required. In all primary elections the two persons having the highest number of votes to any municipal office shall be deemed nominated for the run-off election for that office unless one candidate receives a majority of all votes cast at said primary election, in which event that person alone shall be deemed to have been nominated. If two persons have been nominated for any office and the nomination of one of those persons is disqualified for any reason, then the person receiving the third highest number of votes at the primary election for that office shall be deemed nominated for the run-off election for that office to replace the person who was disqualified.						Proportional Representation. The council may be elected by proportional representation by the method of the single transferable vote.	
85	Voters Pamphlet		30						
86		A. All candidacies and measures submitted to the voters of the city in a primary, special, or general election shall be publicized by voter’s pamphlet, in accordance with city ordinance. No voter’s pamphlet shall be prepared for any election for which no city measures are submitted to the voters and not more than one person has filed or been nominated for any city office.							
87		B. If the council finds that there was a material misstatement of fact published in the city voter’s pamphlet which was submitted by or in behalf of a person nominated or elected to the council, the nomination or election of that person is nullified.							
88	Write-Ins		31						
89		The ability of the voters of the city to nominate or elect a candidate by write-in vote shall be provided on all ballots.							
90	VACANCIES IN OFFICE.		32	Vacancies		7.8	Vacancies & Forfeiture of Office		2.06 (a)&(b)
91		A. An office becomes vacant:			The mayor or a council office becomes vacant:			The office of a council member shall become vacant upon the member’s death, resignation, or removal from office or forfeiture of office in any manner authorized by law.	
92		1. Upon the incumbent’s death; adjudicated incompetence; conviction of a crime pertaining to the office or unlawful destruction of public records; resignation; recall from office; or ceasing to possess the qualifications for the office; 2. Upon the failure of the person elected or appointed to the office to qualify therefor within ten (10) days after the time for the term of office to commence; or 3. In the case of a councilor, upon that person’s absence from meetings of the council held within any consecutive sixty (60) days period without the consent of the council, and upon a declaration by the council of the vacancy.			a) Upon the incumbent’s: (1) Death; (2) Adjudication of incompetence; or (3) Recall from Office.			A council member shall forfeit that office if the council member: (1) Fails to meet the residency requirements, (2) Violates any express prohibition of this charter, (3) Is convicted of a crime involving moral turpitude, or (4) Fails to attend three consecutive regular meetings of the council without being excused by the council.	
93		B. Upon request of a majority of the members of the council, the municipal judge shall determine and find in writing whether under the provisions of this section a vacancy exists in the office of mayor.			b) Upon declaration by the council after the incumbent’s: (1) Failure to qualify for the office within 10 days of the time the term of office is to begin; (2) Absence from the city for 30 days without council consent, or from all council meetings within a 60-day period; (3) Ceasing to reside in the city; (4) Ceasing to be a qualified elector under state law; (5) Conviction of a misdemeanor or felony crime; (6) Resignation from the office; or (7) Removal under Section 8.1(i).				
94	FILLING OF VACANCIES IN ELECTIVE OFFICES.		33	Filling Vacancies		7.9	Filling of Vacancies		2.06(c)
95		Vacancies shall be filled as follows:			A mayor or councilor vacancy will be filled by appointment by a majority of the remaining council members.49 The appointee’s term of office runs from appointment until expiration of the term of office of the last person elected to that office. If a disability prevents a council member from attending council meetings or a member is absent from the city, a majority of the council may appoint a councilor pro tem.			A vacancy in the city council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than sixty days upon the occurrence of the vacancy, but the council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the council fails to do so within thirty days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than ninety days and not later than 120 days following the occurrence of the vacancy, and to be otherwise governed by law. Notwithstanding the requirement in § 2.11(c), if at any time the membership of the council is reduced to less than _____, the remaining members may by majority action appoint additional members to raise the membership to _____.	
96		A. If less than one year remains in the term of the person who held that vacant office, the vacancy shall be filled by majority vote of the remaining members of the council. The appointee shall serve the unexpired term of the predecessor to the office; or							
97		B. If one year or more remains in the term of the person who held the vacant office or if the office is not filled and no person takes office under Section 27 of this charter for any reason, the vacancy shall be filled at a special election called and provided for by resolution of the council. The resolution of the council shall provide that the person: (1) Shall be elected at the first election date that meets all requirements of state and city election laws; (2) Shall serve the unexpired term of office of the predecessor to the office, or if no person has taken office, then the remaining term of office; (3) Is required to receive a majority of the votes cast for candidates for the office at the election at which the office is filled; if no candidate receives a majority at the first election, then a run-off election shall be held between the two candidates receiving the highest number of votes at the first state election date available thereafter; and (4)Shall serve until a successor to the office is duly elected and qualified therefor.							
98		C. Until a vacancy is filled by the special election and a person takes office in accordance with subsection B of this Section, the remaining members of the council shall appoint a person to fill the vacancy for the interim period of time.							

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
99	ORDAINING CLAUSE		34	Ordinances		4.1	Form of Ordinance		2.13(a)
100		The adopting clause of all ordinances hereafter adopted shall be, “The City of Beaverton Ordains as Follows:”.			The council will exercise its legislative authority by adopting ordinances. The enacting clause for all ordinances must state “The City of Beaverton ordains as follows:”.			Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be "The city of _____ hereby ordains . . ." Any ordinance which repeals or amends an existing ordinance or part of the city code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matters by underscoring or by italics.	
101	MODE OF ADOPTION; ATTESTATION AND APPROVAL; VETO; OVERRIDING OF VETO		35						
102	Adoption		35	Ordinance Adoption		4.2	Procedure		2.13 (b) & (d)
103		Adoption. 1. Except as provided to the contrary in subsections 2., 3., and 4. of this section, every ordinance of the council, before being finally adopted, shall be read fully and distinctly in open council meeting on two different days, provided that the second reading must be at least six days after the first reading.			Except as authorized by subsection (b), adoption of an ordinance requires approval by a majority of the council at two meetings.	a		Any member at any regular or special meeting of the council may introduce an ordinance. Upon introduction of any ordinance, the city clerk shall distribute a copy to each council member and to the city manager, shall file a reasonable number of copies in the office of the city clerk and such other public places as the council may designate, and shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the council. The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing, the council may adopt the ordinance with or without amendment or reject it, but if it is amended as to any matter of substance, the council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures herein before required in the case of a newly introduced ordinance. As soon as practicable after adoption, the clerk shall have the ordinance and a notice of its adoption published and available at a reasonable price. As used in this section, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the city, and, if available, in a web site: (1) the ordinance or a brief summary thereof, and (2) the places where copies of it have been filed and the times when they are available for public inspection and purchase at a reasonable price. [2.13(d) - "Publish" Defined	
104		2. Both readings may be by title only by unanimous vote of all councilors present and voting on the question, provided that, prior to first reading, a copy of the ordinance is provided for each councilor and three copies are filed for public inspection at the repository for city records.							
105		3. An ordinance adopted after being read by title alone has no legal effect if it differs substantially from its terms as it was thus filed prior to such reading, unless each section incorporating such a difference is read fully and distinctly in open council meeting as finally amended prior to being adopted by the council.			Any substantive amendment to a proposed ordinance must be read aloud or made available in writing to the public before the council adopts the ordinance at that meeting.	c			
106		4. An ordinance may be adopted at a single meeting of the council by unanimous vote of all councilors present and voting on the question upon being first read in full and then by title.			b) The council may adopt an ordinance at a single meeting by the unanimous approval of at least a quorum of the council,29 provided the proposed ordinance is available in writing to the public at least one week before the meeting.	b		To meet a public emergency affecting life, health, property or the public peace, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in § 5.07(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least _____ members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to § 5.07(b) shall automatically stand repealed as of the sixty-first day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.	
107	Attestation & Approval		35			4.2			
108		B. Attestation and Approval. Upon adoption of an ordinance by the council, the keeper of the record of proceedings shall endorse it with the date of council adoption, the attestor’s name and title of office. Thereafter the ordinance shall be delivered to the mayor by personally serving a duplicate original upon the mayor as soon as practicable. The mayor, within ten (10) days of the date of actual receipt of the ordinance, shall return it to the keeper of the record of proceedings with or without the mayor’s approval, or with a veto.			After adoption of an ordinance, the city custodian of records must endorse it with the date of adoption and the custodian’s name and title.	e			
109	Veto		35						
110		C. Veto. The mayor may veto an ordinance or other legislative enactment adopted by the council by endorsing the duplicate original as such and attaching a written statement to it explaining the reasons for the veto. If the ordinance is returned without approval or veto, the ordinance shall have legal effect as if approved.							

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
111	Veto Override		35						
112		D. Overriding of Veto. At the next regular meeting of the council after the mayor returns an ordinance vetoed, the council shall consider the ordinance and may adopt the ordinance over the veto of the mayor by a four-fifths (4/5ths) vote of all members of the council, and the ordinance then takes effect in accordance with Section 36 of this charter.							
113	When Ordinances take effect		36	Effective Date of Ordinances		4.3	Effective Date; Emergency Ordinances		2.13(c) & 2.14
114		An ordinance takes effect thirty (30) days after its adoption by the council and approval by the mayor or passage over the mayor’s veto. When the council deems it advisable, an ordinance may provide a later time for it to take effect. In the event of any emergency, where the reasons for the emergency have been expressly stated, an ordinance may take effect immediately upon its adoption by the council and approval by the mayor or passage over a veto, or at any other designated time within thirty (30) days thereof.			Ordinances normally take effect on the 30th day after adoption, or on a later day provided in the ordinance. An ordinance may take effect as soon as adopted or other date less than 30 days after adoption if it contains an emergency clause.30			Except as otherwise provided in this charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein. To meet a public emergency affecting life, health, property or the public peace, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in § 5.07(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least _____ members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to § 5.07(b) shall automatically stand repealed as of the sixty-first day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances. [2.14 - Emergency Ordinances]	
115	Condemnation		37						
116		The necessity for taking property by condemnation shall be determined by the council and declared by a resolution describing the property and stating the use to which it is to be devoted							
117	PUBLIC IMPROVEMENTS AND SPECIAL ASSESSMENTS.		38	Procedure & Special Assessments		10.1 & 10.2			
118		The procedures for making, altering, vacating or abandoning a public improvement, and levying, collecting and enforcing the payment of special assessments for public improvements or other services to be charged against real property, shall be governed by ordinance or, to the extent not so governed, by the applicable state laws. Action on any proposed public improvement, except a water or sewer improvement declared by the council to be needed at once because of an emergency, shall be abandoned and not reinitiated for six (6) months upon a remonstrance thereto by the owners of land which bears sixty percent (60%) of the estimated assessed cost of the improvement. In this section “owner” means the record holder of legal title or, where land is being purchased under a land sale contract recorded or verified in writing by the record holder of legal title to the land, the purchaser is deemed the “owner.”			The council may by ordinance provide for procedures governing the making, altering, vacating, or abandoning of a public improvement.66 A proposed public improvement may be suspended for six months upon remonstrance by owners of the real property to be specially assessed for the improvement. The number of owners necessary to suspend the action will be determined by ordinance. The procedure for levying, collecting and enforcing special assessments for public improvements or other services charged against real property will be governed by ordinance. [10.2 - Special Assessments]				
119	BIDS FOR PUBLIC CONTRACTS		39						
120		As defined and except as otherwise provided, governed or exempted by ordinance, any public contract in excess of \$5,000.00 may be let only to the lowest responsible bidder.							
121	LIMITATION ON INDEBTEDNESS.		40	Debt		11.1			
122		A. Voluntary Floating Indebtedness. Except by consent of a majority of the voters at an election, the city’s voluntary floating indebtedness shall not exceed \$25,000.00 at any one time. For purposes of calculating the limitation, the legally authorized debt in existence at the time this charter takes effect shall not be considered. All city officials and employees who create or officially approve any indebtedness in excess of this limitation shall be jointly and severally liable for the excess.							
123		B. Bonded Indebtedness. Except as authorized by state law, the city shall not issue and sell general obligation or revenue bonds unless authorized by the consent of a majority of the voters at an election.			City indebtedness may not exceed debt limits imposed by state law. A charter amendment is not required to authorize city indebtedness				
124	EXISTING ORDINANCES CONTINUED.		41	Ordinance Continuation		11.2			
125		All ordinances and other enactments of the city consistent with this charter and in force when it takes effect shall remain in effect until amended or repealed.			All ordinances consistent with this charter in force when it takes effect remain in effect until amended or repealed				
126	INITIATIVE AND REFERENDUM.		42			2.03			6.04
127		The Initiative and Referendum powers, which are reserved to the qualified voters of each municipality, shall be exercised under Article IV, Section 1(5) of the Oregon Constitution.			The Oregon Constitution reserves initiative and referendum powers as to all municipal legislation to city voters.			The powers of initiative, citizen referendum, and recall are hereby reserved to the electors of the city.	

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
128	ZONE CHANGE NOTICE.		43						
129		Before initially hearing any proposed quasi-judicial amendment to the zoning map (hereafter “zone change”) pursuant to the Zoning Ordinance of the City of Beaverton, the council, or any board, commission or person delegated by the council to conduct the initial evidentiary hearing, shall cause the owners of record of the real property which is the subject of the proposed zone change to be notified of the date, time and place of the initial hearing. The notice shall be in writing, sent by certified mail, postmarked at least thirty (30) days before the date of the initial hearing, and shall inform the property owner of the right to testify for or against the proposed zone change.							
130	URBAN RENEWAL.		44						
131		The Governing Body of the City of Beaverton shall not approve any Urban Renewal Plan unless approved by a majority vote in the City of Beaverton at a November or May election. Further, any urban renewal agency shall not be comprised exclusively of members of the City Council.							
132	REPEAL OF PREVIOUSLY ENACTED PROVISIONS.		45	Repeal		11.3			
133		All charter provisions of the city enacted prior to the time that this charter takes effect are hereby repealed.			All charter provisions adopted before this charter takes effect are repealed.				
134	TIME OF EFFECT OF CHARTER.		46	Time of Effect		11.5			
135		This charter shall take effect January 2, 1981.			This charter takes effect _____, 20____.				
136									

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
137					New Provisions				
138									
139				Resolutions		5.1	Prohibitions		2.05
140					The council will normally exercise its administrative authority by approving resolutions.32 The approving clause for resolutions may state “The City of Beaveton resolves as follows:”			(a) Holding Other Office. Except where authorized by law, no council member shall hold any other elected public office during the term for which the member was elected to the council. No council member shall hold any other city office or employment during the term for which the member was elected to the council. No former council member shall hold any compensated appointive office or employment with the city until one year after the expiration of the term for which the member was elected to the council, unless granted a waiver by the Board of Ethics. Nothing in this section shall be construed to prohibit the council from selecting any current or former council member to represent the city on the governing board of any regional or other intergovernmental agency.	
141				Resolution Approval		5.2		(b) Appointments and Removals. Neither the city council nor any of its members shall in any manner control or demand the appointment or removal of any city administrative officer or employee whom the city manager or any subordinate of the city manager is empowered to appoint, but the council may express its views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.	
142					a) Approval of a resolution or any other council administrative decision requires approval by the council at one meeting.			(c) Interference with Administration. Except for the purpose of inquiries, and investigations under § 2.09, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.	
143					b) Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the council adopts the resolution at that meeting.		City Clerk		2.08
144					c) After approval of a resolution or other administrative decision, the vote of each member must be entered into the council minutes.			The city council or the city manager shall appoint an officer of the city who shall have the title of city clerk. The city clerk shall give notice of council meetings to its members and the public, keep the journal of its proceedings and perform such other duties as are assigned by this charter or by the council or by state law.	
145					d) After approval of a resolution, the city custodian of records must endorse it with the date of approval and the custodian’s name and title.		Investigations		2.09
146				Effective Date of Resolutions		5.3		The city council may make investigations into the affairs of the city and the conduct of any city department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Failure or refusal to obey a lawful order issued in the exercise of these powers by the council shall be a misdemeanor punishable by a fine of not more than \$_____, or by imprisonment for not more than _____ or both.	
147					Resolutions and other administrative decisions take effect on the date of approval, or on a later day provided in the resolution.		Action Requiring an Ordinance		2.12
148				Orders		6.1		In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of the city council shall be by ordinance which: (1) Adopt or amend an administrative code or establish, alter, or abolish any city department, office, or agency; (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed; (3) Levy taxes; (4) Grant, renew, or extend a franchise; (5) Regulate the rate charged for its services by a public utility; (6) Authorize the borrowing of money; (7) Convey or lease or authorize the conveyance or lease of any lands of the city; (8) Regulate land use and development; (9) Amend or repeal any ordinance previously adopted; or (10) Adopt, with or without amendment, ordinances proposed under the initiative power. Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution.	
149					The council will normally exercise its quasi-judicial authority by approving orders. The approving clause for orders may state “The City of Beaverton orders as follows:”		Codes of Technical Regulations		2.15
150				Order Approval		6.2		The city council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that: (1) The requirements of § 2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical 19 regulations as well as of the adopting ordinance, and (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city clerk pursuant to § 2.16(a). Copies of any adopted code of technical regulations shall be made available by the city clerk for distribution or for purchase at a reasonable price.	
151					a) Approval of an order or any other council quasi-judicial decision requires approval by the council at one meeting.				
152					b) Any substantive amendment to an order must be read aloud or made available in writing to the public at the meeting before the council adopts the order.				
153					c) After approval of an order or other council quasi-judicial decision, the vote of each member must be entered in the council minutes.				
154					d) After approval of an order, the city custodian of records must endorse it with the date of approval and the custodian’s name and title.				
155				Effective Date of Order		6.3			
156					Orders and other quasi-judicial decisions take effect on the date of final approval, or on a later day provided in the order				

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
157				City Manager		8.1	City Manager-Appointment; Qualifications; Compensation		3.01
158					a) The office of city manager is established as the administrative head of the city government.51 The city manager is responsible to the mayor and council for the proper administration of all city business. The city manager will assist the mayor and council in the development of city policies, and carry out policies established by ordinances and resolutions.52			The city council by a majority vote of its total membership shall appoint a city manager for an indefinite term and fix the manager's compensation. The city manager shall be appointed solely on the basis of education and experience in the accepted competencies and practices of local government management. The manager need not be a resident of the city or state at the time of appointment, but may reside outside the city while in office only with the approval of the council.	
159					b) A majority of the council must appoint and may remove the manager. The appointment must be made without regard to political considerations and solely on the basis of education and experience in competencies and practices of local government management.53		City Manager-Removal		3.02
160					c) The manager need not reside in the city.54			If the city manager declines to resign at the request of the city council, the city council may suspend the manager by a resolution approved by the majority of the total membership of the city council. Such resolution shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the city manager. The city manager shall have fifteen days in which to reply thereto in writing, and upon request, shall be afforded a public hearing, which shall occur not earlier than ten days nor later than fifteen days after such hearing is requested. After the public hearing, if one is requested, and after full consideration, the city council by a majority vote of its total membership may adopt a final resolution of removal. The city manager shall continue to receive full salary until the effective date of a final resolution of removal.	
161					d) The manager may be appointed for a definite or an indefinite term, and may be removed at any time by a majority of the council. The council must fill the office by appointment as soon as practicable after the vacancy occurs.		Powers and Duties of the City Manager		3.04
162					e) The manager must:			The city manager shall be the chief executive officer of the city, responsible to the council for the management of all city affairs placed in the manager's charge by or under this charter. The city manager shall:	
163					1) Attend all council meetings unless excused by the mayor or council;			(1) Appoint and suspend or remove all city employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;	
164					2) Make reports and recommendations to the mayor and council about the needs of the city;			(2) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;	
165					3) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits and other city decisions;			(3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;	
166					4) Appoint, supervise and remove city employees; 55			(4) See that all laws, provisions of this charter and acts of the city council, subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;	
167					5) Organize city departments and administrative structure;			(5) Prepare and submit the annual budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;	
168					6) Prepare and administer the annual city budget;			(6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;	
169					7) Administer city utilities and property;			(7) Make such other reports as the city council may require concerning operations;	
170					8) Encourage and support regional and intergovernmental cooperation;			(8) Keep the city council fully advised as to the financial condition and future needs of the city;	
171					9) Promote cooperation among the council, staff and citizens in developing city policies and building a sense of community; 56			(9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy; (
172					10) Perform other duties as directed by the council; and			10) Provide staff support services for the mayor and council members; (
173					11) Delegate duties, but remain responsible for actions of all subordinates.			11) Assist the council to develop long term goals for the city and strategies to implement these goals;	
174					f) The manger has no authority over the council or over the judicial functions of the municipal judge. 57			(12) Encourage and provide staff support for regional and intergovernmental cooperation;	
175					g) The manager and other employees designated by the council may sit at council meetings but have no vote. The manager may take part in all council discussions.			(13) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community;	
176					h) When the manger is temporarily disabled from acting as manager or when the office of the manager becomes vacant, the council must appoint a manager pro tem. The manager pro tem has the authority and duties of manger, except that a pro tem manager may appoint or remove employees only with council approval.			(14) Perform such other duties as are specified in this charter or may be required by the city council.	
177					i) No council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in the appointment or removal of any city employee, or in administrative decisions regarding city property or contracts. 58 Violation of this prohibition is grounds for removal from office by a majority of the council after a public hearing. In council meetings, councilors may discuss or suggest anything with the manager relating to city business. 59		Acting City Manager		3.03
178								By letter filed with the city clerk, the city manager shall designate a city officer or employee to exercise the powers and perform the duties of city manager during the manager's temporary absence or disability; the city council may revoke such designation at any time and appoint another officer of the city to serve until the city manager returns.	
179				Severability		11.4	Severability		9.06
180					The terms of this charter are severable. If any provision is held invalid by a court, the invalidity does not affect any other part of the charter.			If any provision of this charter is held invalid, the other provisions of the charter shall not be affected. If the application of the charter or any of its provisions to any person or circumstance is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected.	

	A	B	C	D	E	F	G	H	I
1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
181				Merit Systems		9.2	Personnel System		4.02
182					The council by resolution will determine the rules governing recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees based on merit and fitness.			(a) Merit Principle. All appointments and promotions of city officers and employees shall be made solely on the basis of merit and fitness demonstrated by a valid and reliable examination or other evidence of competence.	
183								(b) Merit System. Consistent with all applicable federal and state laws the city council shall provide by ordinance for the establishment, regulation, and maintenance of a merit system governing personnel policies necessary to effective administration of the employees of the city's departments, offices and agencies, including but not limited to classification and pay plans, examinations, force reduction, removals, working conditions, provisional and exempt appointments, in-service training, grievances and relationships with employee organizations	
184							Land Use, Development, and Environmental Planning		4.04
185								Consistent with all applicable federal and state laws with respect to land use, development, and environmental planning, the city council shall: (1) Designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by ordinance; (2) Adopt a comprehensive plan and determine to what extent zoning and other land use control ordinances must be consistent with the plan; (3) Determine to what extent the comprehensive plan and zoning and other land use ordinances must be consistent with regional plan(s); and (4) Adopt development regulations, to be specified by ordinance, to implement the plan.	
186								The designated agency, the city manager, and the mayor and council shall seek to act in cooperation with other jurisdictions and organizations in their region to promote integrated approaches to regional issues	
187							Authentication and Recording; Codification; Printing of Ordinances and Resolutions.		2.16
188								(a) Authentication and Recording. The city clerk shall authenticate by signing and shall record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the city council.	
189								(b) Codification. Within three years after adoption of this charter and at least every ten years thereafter, the city council shall provide for the preparation of a general codification of all city ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published, together with this charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of _____, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the _____ city code. Copies of the code shall be furnished to city officers, placed in libraries, public offices, and, if available, in a web site for free public reference and made available for purchase by the public at a reasonable price fixed by the council.	
190								(c) Printing of Ordinances and Resolutions. The city council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the council. Following publication of the first _____ city code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the state of _____, or the codes of technical regulations and other rules and regulations included in the code.	
191							Fiscal Year		5.01
192								The fiscal year of the city shall begin on the first day of _____ and end on the last day of _____.	
193							Submission of Budget and Budget Message.		5.02
194								On or before the _____day of_____ of each year, the city manager shall submit to the city council a budget for the ensuing fiscal year and an accompanying message.	

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
195							Budget Message		5.03
								The city manager's message shall explain the budget both in fiscal terms and in terms of the work programs, linking those programs to organizational goals and community priorities. It shall outline the proposed financial policies of the city for the ensuing fiscal year and the impact of those policies on future years. It shall describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the city's debt position, including factors affecting the ability to raise resources through debt issues, and include such other material as the city manager deems desirable.	
196									
197							Budget		5.04
								The budget shall provide a complete financial plan of all city funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the city manager deems desirable or the city council may require for effective management and an understanding of the relationship between the budget and the city's strategic goals. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections: (1) The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by department or by other organization unit, and program, purpose or activity, method of financing such expenditures, and methods to measure outcomes and performance related to the goals; (2) Proposed longer-term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department or by other organization unit when practical, the proposed method of financing each such capital expenditure, and methods to measure outcomes and performance related to the goals; and (3) The proposed goals, anticipated income and expense, profit and loss for the ensuing year for each utility or other enterprise fund or internal service fund operated by the city, and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance exclusive of reserves.	
198									
199							City Council Action on Budget		5.05
								(a) Notice and Hearing. The city council shall publish the general summary of the budget and a notice stating: (1) The times and places where copies of the message and budget are available for inspection by the public, and (2) The time and place, not less than two weeks after such publication, for a public hearing(s) on the budget.	
200								(b) Amendment Before Adoption. After the public hearing, the city council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income.	
201								(c) Adoption. The city council shall adopt the budget on or before the ____ day of the ____ month of the fiscal year currently ending. If it fails to adopt the budget by this date, the budget proposed by the city manager shall go into effect.	
202								(d) "Publish" defined. As used in this article, the term "publish" means to print in the contemporary means of information sharing, which includes but is not limited to, one or more newspapers of general circulation in the city, and, if available, in a web site.	
203									
204							Appropriation and Revenue Ordinances		5.06
								To implement the adopted budget, the city council shall adopt, prior to the beginning of the fiscal year: (a) an appropriation ordinance making appropriations by department, fund, service, strategy or other organizational unit and authorizing an allocation for each program or activity; (b) a tax levy ordinance authorizing the property tax levy or levies and setting the tax rate or rates; and (c) any other ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.	
205									
206							Budget Amendments after Adoption.		5.07
								(a) Supplemental Appropriations. If during or before the fiscal year the city manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the city council by ordinance may make supplemental appropriations for the year up to the amount of such excess.	
207								(b) Emergency Appropriations. To address a public emergency affecting life, health, property or the public peace, the city council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of § 2.14. To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid or refinanced as longterm debt not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.	
208								(c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the city manager that the revenues or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the manager shall report to the city council without delay, indicating the estimated amount of the deficit, any remedial action taken by the manager and recommendations as to any other steps to be taken. The council shall then take such further action as it deems necessary to prevent or reduce any deficit and for that purpose it may by ordinance reduce or eliminate one or more appropriations.	
209									

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
210								(d) Transfer of Appropriations. At any time during or before the fiscal year, the city council may by resolution transfer part or all of the unencumbered appropriation balance from one department, fund, service, strategy or organizational unit to the appropriation for other departments or organizational units or a new appropriation. The manager may transfer funds among programs within a department, fund, service, strategy or organizational unit and shall report such transfers to the council in writing in a timely manner.	
211								(e) Limitation; Effective Date. No appropriation for debt service may be reduced or transferred, except to the extent that the debt is refinanced and less debt service is required, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption	
212							Administration and Fiduciary Oversight of the Budget.		5.08
213								The city council shall provide by ordinance the procedures for administration and fiduciary oversight of the budget.	
214							Capital Program.		5.09
215								(a) Submission to City Council. The city manager shall prepare and submit to the city council a multi-year capital program no later than three months before the final date for submission of the budget.	
216								(b) Contents. The capital program shall include: (1) A clear general summary of its contents; (2) Identification of the long-term goals of the community; (3) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the fiscal years next ensuing, with appropriate supporting information as to the necessity for each; (4) Cost estimates and recommended time schedules for each improvement or other capital expenditure; (5) Method of financing upon which each capital expenditure is to be reliant; (6) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired; (7) A commentary on how the plan addresses the sustainability of the community and the region of which it is a part; and (8) Methods to measure outcomes and performance of the capital plan related to the long-term goals of the community. The above shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.	
217							City Council Action on Capital Program.		5.1
218								(a) Notice and Hearing. The city council shall publish the general summary of the capital program and a notice stating: (1) The times and places where copies of the capital program are available for inspection by the public, and (2) The time and place, not less than two weeks after such publication, for a public hearing(s) on the capital program. (b) Adoption. The city council by resolution shall adopt the capital program with or without amendment after the public hearing and on or before the ____ day of the ____ month of the current fiscal year.	
219							Independent Audit.		5.11
220								The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits as it deems necessary. An independent certified public accountant or firm of such accountants shall make such audits. Such audits should be performed in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted Governmental Auditing Standards (GAGAS).	
221								The Council shall designate no fewer than three of its members to serve as an Audit Committee. This Committee shall: (1) Lead the process of selecting an independent auditor; (2) Direct the work of the independent auditor as to the scope of the annual audit and any matters of concern with respect to internal controls; and (3) Receive the report of the internal auditor and present that report to the council with any recommendations from the Committee.	
222								The council shall, using competitive bidding, designate such accountant or firm annually, or for a period not exceeding five years, but the designation for any particular fiscal year shall be made no later than 30 days after the beginning of such fiscal year. The standard for independence is that the auditor must be capable of exercising objective and impartial judgment on all issues encompassed within the audit engagement. No accountant or firm may provide any other services to the city during the time it is retained to provide independent audits to the city. The city council may waive this requirement by a majority vote at a public hearing. If the state makes such an audit, the council may accept it as satisfying the requirements of this section.	
223							Public Records		5.12
224								Copies of the budget, capital program, independent audits, and appropriation and revenue ordinances shall be public records	
225							Proportional Representtion		6.01(d)
226								The council may be elected by proportional representation by the method of the single transferable vote.	

	A	B	C	D	E	F	G	H	I
1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
227							Council Districts		6.02
228								The council may be elected by proportional representation by the method of the single transferable vote.	
								(1) There shall be a districting commission consisting of five members. No more than two commission members may belong to the same political party. The city council shall appoint four members. These four members shall, with the affirmative vote of at least three, choose the fifth member who shall be chair. (2) No member of the commission shall be employed by the city or hold any other elected or appointed position in the city. (3) The city council shall appoint the commission no later than one year and five months before the first general election of the city council after each federal decennial census. The commission's term shall end upon adoption of a districting plan, as set forth in § 6.02(c). (4) In the event of a vacancy on the commission by death, resignation or otherwise, the city council shall appoint a new member enrolled in the same political party from which his or her predecessor was selected to serve the balance of the term remaining. (5) No member of the districting commission shall be removed from office by the city council except for cause and upon notice and hearing. (6) The members of the commission shall serve without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges. (7) The commission may hire or contract for necessary staff assistance and may require agencies of city government to provide technical assistance. The commission shall have a budget as provided by the city council.	
229									
								(1) Following each decennial census, the commission shall consult the city council and shall prepare a plan for dividing the city into districts for the election of council members. In preparing the plan, the commission shall be guided by the criteria set forth in § 6.02(d). The report on the plan shall include a map and description of districts recommended. (2) The commission shall hold one or more public hearings not less than one month before it submits the plan to the city council. The commission shall make its plan available to the public for inspection and comment not less than one month before its public hearing. (3) The commission shall submit its plan to the city council not less than one year before the first general election of the city council after each decennial census. (4) The plan shall be deemed adopted by the city council unless disapproved within three weeks by the vote of the majority of all members of the city council. If the city council fails to adopt the plan, it shall return the plan to the commission with its objections and with the objections of individual members of the council. (5) Upon rejection of its plan, the commission shall prepare a revised plan and shall submit such revised plan to the city council no later than nine months before the first general election of the city council after the decennial census. Such revised plan shall be deemed adopted by the city council unless disapproved within two weeks by the vote of two-thirds of all of the members of the city council and unless, by a vote of two-thirds of all of its members, the city council votes to file a petition in the _____ Court, _____ County, for a determination that the plan fails to meet the requirements of this charter. The city council shall file its petition no later than ten days after its disapproval of the plan. Upon a final determination upon appeal, if any, that the plan meets the requirements of this charter, the plan shall be deemed adopted by the city council and the commission shall deliver the plan to the city clerk. The plan delivered to the city clerk shall include a map and description of the districts. (6) If in any year population figures are not available at least one year and five months before the first general election following the decennial census, the city council may, by local law, shorten the time periods provided for districting commission action in paragraphs (2), (3), (4), and (5) of this subsection.	
230									
								In preparation of its plan for dividing the city into districts for the election of council members, the commission shall apply the following criteria which, to the extent practicable, shall be applied and given priority in the order in which they are herein set forth. (1) Districts shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent of the average population for all city council districts according to the figures available from the most recent census. (2) Districts shall consist of contiguous territory; but land areas separated by waterways shall not be included in the same district unless said waterways are traversed by highway bridges, tunnels or regularly scheduled ferry services both termini of which are within the district, except that, population permitting, islands not connected to the mainland or to other islands by bridge, tunnel or regular ferry services shall be included in the same district as the nearest land area within the city and, where such subdivisions exist, within the same ward or equivalent subdivision as described in paragraph (5) below. (3) In cities whose territory encompasses more than one county or portions of more than one county, the number of districts, which include territory in more than one county, shall be as small as possible. (4) In the establishment of districts within cities whose territory is divided into wards or equivalent subdivisions whose boundaries have remained substantially unaltered for at least fifteen years, the number of such wards or equivalent subdivisions whose territory is divided among more than one district shall be as small as possible. (5) Consistent with the foregoing provisions, the aggregate length of all district boundaries shall be as short as possible.	
231									
								The new city council districts and boundaries as of the date of enactment shall supersede previous council districts and boundaries for all purposes of the next regular city election, including nominations. The new districts and boundaries shall supersede previous districts and boundaries for all other purposes as of the date on which all council members elected at that regular city election take office.	
232									

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
233							Initiative, Citizen Referendum, and Recall		6.04 (b)-(g)
234								(b) Commencement of Proceeding; Petitioners' Committee; Affidavit. Any five registered voters may commence initiative, citizen referendum, or recall proceedings by filing with the city clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance, citing the ordinance sought to be reconsidered, or stating the name and title of the officer sought to be recalled accompanied by a statement, not to exceed 200 words, of the reasons for the recall. Grounds for recall should relate to and affect the administration of the official's office, and be of a substantial nature directly affecting the rights and interests of the public. Promptly after receipt of a recall petition, the clerk shall serve, personally or by certified mail, a copy of the affidavit on the elected officer sought to be recalled. Within 10 days of service of the affidavit, the elected officer sought to be recalled may file a statement with the city clerk, not to exceed 200 words, in response. Promptly after the affidavit of the petitioners' committee is filed, and the response, if any, of the elected official sought to be recalled is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.	
235								(c) Petitions. (1) Number of Signatures. Initiative and citizen referendum petitions must be signed by registered voters of the city equal in number to at least [5 to 10] percent of the total number of registered voters to vote at the last regular election. Recall petitions must be signed by registered voters of the city equal in number to at least [10 to 20] percent of the total number of registered voters to vote at the last regular election. (2) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Initiative and citizen referendum petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered. Recall petitions shall contain the name and title of the official sought to be recalled, the statement of grounds for the recall, and the response of the official sought to be recalled, if any. If no response was filed, the petition shall so state. (3) Affidavit of Circulator. Each paper of a petition shall have attached to it when filed an affidavit executed by the person circulating it stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered. (4) Time for Filing Referendum and Recall Petitions. Referendum petitions must be filed within 30 days after adoption by the council of the ordinance sought to be reconsidered. Recall petitions must be filed within [40 to 160] days of the filing of the petitioners' affidavit initiating the recall procedure.	
236								(d) Procedure after Filing. (1) Certificate of Clerk; Amendment. Within twenty days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his or her certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of paragraphs (2) and (3) of § 6.04(c), and within five days after it is filed the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under paragraph (2) of this subsection within the time required, the clerk shall promptly present his or her certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition. (2) Council Review. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition. A council member who is the subject of a recall petition shall not be eligible to act in the determination of sufficiency or insufficiency of the petition. (3) Court Review; New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.	
237								(e) Referendum Petitions; Suspension of Effect of Ordinance. When a referendum petition is filed with the city clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when: (i) There is a final determination of insufficiency of the petition, or (ii) The petitioners' committee withdraws the petition, or (iii) The council repeals the ordinance, or (iv) Thirty days have elapsed after a vote of the city on the ordinance.	

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
238								(f) Action on Petitions. (1) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner provided in Article II or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance within sixty days or fails to repeal the referred ordinance within thirty days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the city. The council shall promptly order a recall election to occur within _____ [30 to 90] days of the date the recall petition was finally determined sufficient. (2) Submission to Voters of Proposed or Referred Ordinances. The vote of the city on a proposed or referred ordinance shall be held not less than 30 days and not later than one year from the date of the final council vote thereon. If no regular city election is to be held within the period prescribed in this subsection, the council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls. (3) Withdrawal of Petitions. An initiative, referendum, or recall petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the city by filing with the city clerk a request for withdrawal signed by at least two-thirds of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.	
239								(g) Results of Election. (1) Initiative. If a majority of the registered voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict. (2) Referendum. If a majority of the registered voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results. (3) Recall. Ballots used at recall elections shall read: "Shall [name] be recalled (removed) from the office of _____?" If a majority of the registered voters voting on a proposed recall vote in its favor, the official is removed and the winning candidate for successor, if any, shall be elected as a replacement for the duration of the unexpired term. Otherwise the vacancy shall be filled in accordance with § 2.06 (c).	
240							Conflicts of Interest; Board of Ethics		7.01
241								(a) Conflicts of Interest. The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance, the terms of which shall include, but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official; the use of confidential information; and appearances by city officials before other city agencies on behalf of private interests. This ordinance shall include a statement of purpose and shall provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual and regulatory matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations	

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1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
242								(b) Board of Ethics. The city council shall, by ordinance, establish an independent board of ethics to administer and enforce the conflict of interest and financial disclosure ordinances. No member of the board may hold elective or appointed office under the city or any other government or hold any political party office. Insofar as possible under state law, the city council shall authorize the board to issue binding advisory opinions, conduct investigations on its own initiative and on referral or complaint from officials or citizens, subpoena witnesses and documents, refer cases for prosecution, impose administrative fines, and to hire independent counsel. The city council shall appropriate sufficient funds to the board of ethics to enable it to perform the duties assigned to it and to provide annual training and education of city officials and employees, including candidates for public office, regarding the ethics code.	
243							Prohibitions		7.02
244								(a) Activities Prohibited. (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, gender, age, sexual orientation, disability, religion, country of origin, or political affiliation. (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this charter or the rules and regulations made there under, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations. (3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion. (4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any city election from any city officer or city employee. (5) No city officer or city employee shall knowingly or willfully make, solicit or receive any contribution to the campaign funds of any political party or committee to be used in a city election or to campaign funds to be used in support of or opposition to any candidate for election to city office or city ballot issue. Further, no city employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for city office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.	
245								(b) Penalties. Any person convicted of a violation of this section shall be ineligible for a period of five years following such conviction to hold any city office or position and, if an officer or employee of the city, shall immediately forfeit his or her office or position. The city council shall establish by ordinance such further penalties as it may deem appropriate.	
246							Campaign Finance		
247								(a) Disclosure. The city council shall enact ordinances to protect the ability of city residents to be informed of the financing used in support of, or against, campaigns for locally elected office. The terms of such ordinances shall include, but not be limited to, requirements upon candidates and candidate committees to report in a timely manner to the appropriate city office: contributions received, including the name, address, employer, and occupation of each contributor who has contributed _____ or more; expenditures made; and obligations entered into by such candidate or candidate committee. In so far as is permissible under state law, such regulations shall also provide for fines and imprisonment for violations. The ordinance shall provide for convenient public disclosure of such information by the most appropriate means available to the city.	
248								(b) Contribution and Spending Limitations. In order to combat the potential for, and appearance of, corruption, and to preserve the ability of all qualified citizens to run for public office, the city shall, in so far as is permitted by state and federal law, have the authority to enact ordinances designed to limit contributions and expenditures by, or on behalf of, candidates for locally elected office. Ordinances pursuant to this section may include, but are not limited to: limitations on candidate and candidate committees that affect the amount, time, place, and source of financial and in-kind contributions; and, voluntary limitations on candidate and candidate committee expenditures tied to financial or non-financial incentives.	
249							Proposal of Charter Amendment		8.01
250								Amendments to this charter may be framed and proposed: (a) In the manner provided by law, or (b) By ordinance of the council containing the full text of the proposed amendment and effective upon adoption, or (c) By report of a charter commission created by ordinance, or (d) By the voters of the city. Proposal of an amendment by the voters of the city shall be by petition containing the full text of the proposed amendment and shall be governed by the same procedures and requirements prescribed in Article VI for initiative petitions until such time as a final determination as to the sufficiency of the petition is made, except that there shall be no limitation as to subject matter and that the petition must be signed by registered voters of the city equal in number to at least [5 to 10] percent of the total number of those registered to vote at the last regular city election. The petitioners' committee may withdraw the petition at any time before the fifteenth day immediately preceding the day scheduled for the city vote on the amendment.	

	A	B	C	D	E	F	G	H	I
1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
251							Election on Charter Amendment		8.02
								Upon delivery to the city election authorities of the report of a charter commission or delivery by the city clerk of an adopted ordinance or a petition finally determined sufficient, proposing an amendment pursuant to § 8.01, the election authorities shall submit the proposed amendment to the voters of the city at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the city at least thirty days prior to the date of the election. The election shall be held not less than 60 and not more than 120 days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be as specified in state law.	
252							Adoption of Amendment		8.03
253								If a majority of those voting upon a proposed charter amendment vote in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, 30 days after its adoption by the voters.	
254							Transition: Officers and Employees		9.01
255								(a) Rights and Privileges Preserved. Nothing in this charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are city officers or employees at the time of its adoption. (b) Continuance of Office or Employment. Except as specifically provided by this charter, if at the time this charter takes full effect, a city administrative officer or employee holds any office or position which is or can be abolished by or under this charter, he or she shall continue in such office or position until the taking effect of some specific provision under this charter directing that he or she vacate the office or position. (c) Personnel System. An employee holding a city position at the time this charter takes full effect, who was serving in that same or a comparable position at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position but in all other respects shall be subject to the personnel system provided for in § 4.02.	
256							Transition: Departments, Offices, and Agencies		9.02
257								(a) Transfer of Powers. If a city department, office or agency is abolished by this charter, the powers and duties given it by law shall be transferred to the city department, office or agency designated in this charter or, if the charter makes no provision, designated by the city council. (b) Property and Records. All property, records and equipment of any department, office or agency existing when this charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the city council in accordance with this charter.	
258							Transition: Pending Matters		9.03
259								All rights, claims, actions, orders, contracts, and legal administrative proceedings shall continue except as modified pursuant to the provisions of this charter and in each case shall be maintained, carried on or dealt with by the city department, office or agency appropriate under this charter.	
260							Transition: State and Municipal Laws		9.04
261								(a) In General. All city ordinances, resolutions, orders and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto. To the extent that the constitution and laws of the state of _____ permit, all laws relating to or affecting this city or its agencies, officers or employees which are in force when this charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto. (b) Specific Provisions. Without limitation of the general operation of subsection (a) or of the number of nature of the provisions to which it applies: (1) The following laws and parts of laws generally affecting counties or city agencies, officers or employees are inapplicable to the city of _____ or its agencies, officers or employees: [enumeration] (2) The following public local laws relating to the city of _____ are superseded: [enumeration] (3) The following ordinances, resolutions, orders, and regulations of _____ [former city governing body] are repealed: [enumeration]	
262									

	A	B	C	D	E	F	G	H	I
1		Beaverton Charter 1981	Section		LOC Charter 2018	Section		NCL Model City Charter 2011 (stoppted at 8.03)	Section
263							Transition: Schedule		9.05
264								(a) First Election. At the time of its adoption, this charter shall be in effect to the extent necessary in order that the first election of members of the city council may be conducted in accordance with the provisions of this charter. The first election shall be held on the _____ of _____. The [city officials to be designated] shall prepare and adopt temporary regulations that are applicable only to the first election and designed to insure its proper conduct and to prevent fraud and provide for a recount of ballots in cases of doubt or fraud. (b) Time of Taking Full Effect. The charter shall be in full effect for all purposes on and after the date and time of the first meeting of the newly elected city council provided in § 9.05(c). (c) First Council Meeting. On the _____ of _____ following the first election of city council members under this charter, the newly elected members of the council shall meet at _____ [time] at _____ [place]: (1) For the purpose of electing the [mayor and] deputy mayor, appointing or considering the appointment of a city manager or acting city manager, and choosing, if it so desires, one of its members to act as temporary clerk pending appointment of a city clerk pursuant to § 2.08; and (2) For the purpose of adopting ordinances and resolutions necessary to effect the transition of government under this charter and to maintain effective city government during that transition. (d) Temporary Ordinances. In adopting ordinances as provided in § 9.05(c), the city council shall follow the procedures prescribed in § 2.12, except that at its first meeting or any meeting held within sixty days thereafter, the council may adopt temporary ordinances to deal with cases in which there is an urgent need for prompt action in connection with the transition of government and in which the delay incident to the appropriate ordinance procedure would probably cause serious hardship or impairment of effective city government. Every temporary ordinance shall be plainly labeled as such but shall be introduced in the form and manner prescribed for ordinances generally. A temporary ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption of a temporary ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances. A temporary ordinance shall become effective upon adoption or at such later time preceding automatic repeal under this subsection as it may specify, and the referendum power shall not extend to any such ordinance. Every temporary ordinance, including any amendments made thereto after adoption, shall automatically stand repealed as of the ninety-first day following the	
265							Intergovernmental Relations		
266								The city may participate by contract or otherwise with any governmental entity of this state or any other state or states or the United States in the performance of any activity which one or more of such entities has the authority to undertake	


AGENDA BILL

Beaverton City Council Beaverton, Oregon

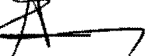
SUBJECT: A Resolution Referring to the Voters of Beaverton a Measure Proposing a New City Charter, Adopting a Ballot Title, and Authorizing Related Matters

FOR AGENDA OF: 02-11-20 **BILL NO:** 20047

MAYOR'S APPROVAL: 

DEPARTMENT OF ORIGIN: City Attorney 

DATE SUBMITTED: 02-05-20

CLEARANCES: Mayor's Office 

PROCEEDING: ACTION ITEM

EXHIBITS: 1. Resolution with Exhibit
2. Proposed Charter with Footnotes

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$0	BUDGETED \$0	REQUIRED \$0

RECOMMENDED ACTION:

Vote on whether to adopt the attached resolution referring a new city charter to voters.

HISTORICAL PERSPECTIVE:

Since September 2019, the Beaverton City Council has held nine work sessions and two public hearings regarding the city charter. Based on those work sessions and hearings, the Council is prepared to consider whether to submit to the voters of Beaverton a ballot measure proposing a new city charter. If adopted, the new charter would change the city's form of government and effect other changes, including:

- The mayor would no longer be the city's administrative head. Instead, the city council would appoint a full-time city manager to oversee the city's day-to-day operations.
- The council would expand from five members to seven members: six part-time city councilors and one full-time mayor with voting privileges. The council would serve as the city's governing body and be responsible for the city's legislative functions. In addition to serving on the council, the mayor would serve as the city's chief elected official.
- All council positions would remain nonpartisan and elected at-large by Beaverton voters. The councilors and the mayor would be limited to three consecutive four-year terms in office for their respective positions.
- The new charter would no longer use gender-exclusive references as are found in the city's current charter.

A complete copy of the proposed new charter is set out in the attached Resolution as Exhibit 1.

INFORMATION FOR CONSIDERATION:

The governing body of a city may refer a measure to city electors and prepare the ballot title for the measure. ORS 250.285(1). The form of the ballot title must consist of (a) a caption of not more than 10 words which reasonably identifies the subject of the measure; (b) a question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure; and (c) a concise and impartial statement of not more than 175 words summarizing the measure and its major effect. ORS 250.035(1).

If the Council adopts the resolution and refers the ballot title, the resolution will be filed with the City Elections Officer (the City Recorder). Then, the next step would be for staff to draft an explanatory statement of this measure. By law, the statement cannot exceed 500 words. The draft explanatory statement will be presented to Council for its consideration and approval at a future Council meeting. The ballot title and explanatory statement must be adopted and filed with the County by March 19, 2020, to be included in the City and County's voters' pamphlets for the May primary election.

To help explain the proposed new charter, a version with explanatory footnotes is attached as Exhibit 2.

RESOLUTION NO. 4627

A RESOLUTION REFERRING TO THE VOTERS OF BEAVERTON A MEASURE PROPOSING A NEW CITY CHARTER, ADOPTING A BALLOT TITLE, AND AUTHORIZING RELATED MATTERS

Whereas, Beaverton's current city charter provides for a mayor-council form of government with an elected full-time mayor serving as the administrative head of the city; and

Whereas, the Beaverton City Council met in eleven open public meetings on September 3, 2019; September 10, 2019; October 1, 2019; October 15, 2019; November 5, 2019; December 3, 2019; December 17, 2019; January 7, 2020; January 14, 2020; January 28, 2020; and February 4, 2020 to review the city's current charter and receive public feedback; and

Whereas, based on the foregoing, the Council determined to submit to the voters of Beaverton a ballot measure proposing a new city charter that provides for a council-manager form of government and makes other changes; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF BEAVERTON, OREGON:

Section 1. The Council refers to the May 19, 2020, election a measure proposing a new city charter to the voters of Beaverton.

Section 2. The Council adopts the following ballot title for the referral:

CAPTION:

ADOPTS NEW CHARTER FOR BEAVERTON CITY GOVERNMENT

QUESTION:

Shall the city of Beaverton adopt a new charter to replace its current city charter?

SUMMARY:

If adopted, this measure would provide a new charter for the city. The new charter would change the city's form of government. The mayor would no longer be the city's administrative head. Instead, the city council would appoint a full-time city manager to oversee the city's day-to-day operations.

The new charter also makes other changes. The council would expand from five to seven members: six part-time city councilors and one full-time mayor. The council would serve as the city's governing body and be responsible for the city's legislative functions. In addition to serving on the council, the mayor would serve as the city's chief elected official.

All council positions would be nonpartisan and elected at-large by Beaverton voters. The councilors and the mayor would be limited to three consecutive four-year terms in office for their respective positions.

Beaverton's current charter uses gender-exclusive references. The proposed charter contains no gender-exclusive references.

Complete copies of the proposed charter showing all changes are available from the city recorder's office and at www.BeavertonOregon.gov.

Section 3. The ballot title adopted by this resolution shall be filed with the city elections officer. The city attorney and the city elections officer are jointly and severally authorized and directed to take all necessary steps for and on behalf of the city to effectuate this resolution, including by providing public notice and submitting required materials to the county and city elections officers so as to cause the measure to appear on the ballot for the May 19, 2020, election and to otherwise carry out the intent and purpose of this resolution.

Section 4. The council authorizes and directs the city attorney to draft an impartial, simple and understandable statement of 500 words or less explaining this measure and its effect. The council shall review and, at its discretion, revise the draft explanatory statement and adopt by resolution the final form of the explanatory statement for publication in the City and County voters' pamphlets for the May 19, 2020, election.

Section 5. The proposed charter that is the subject of this referral is set forth in full in the attached Exhibit A.

Section 6. This resolution takes effect immediately upon passage.

Adopted by the City Council this ____ day of February _____ 2020.

Approved by the Mayor this _____ day of February 2020.

Ayes: _____

Nays: _____

Attest:

Approved:

Catherine Jansen, City Recorder

Denny Doyle, Mayor

The Beaverton Charter of 2021

PREAMBLE

We, the voters of the City of Beaverton, Oregon, exercise our power to the fullest extent possible under the constitution and laws of the State of Oregon and enact this home rule charter.

Article 1
Names and Boundaries

- 1.1 **Titles.** This enactment may be referred to as the Beaverton Charter of 2021.
- 1.2 **Name.** The City of Beaverton, Oregon, continues as a municipal corporation with the name City of Beaverton.
- 1.3 **Boundaries.** The city includes all territory within its boundaries as they now exist or are legally modified in the future.

Article 2
Powers

- 2.1 **Powers.** The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.
- 2.2 **Construction.** This charter is liberally construed so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.
- 2.3 **Where Powers Vest.** All powers of the city are vested in the city council, except as otherwise provided by law or this charter.

Article 3
Council

- 3.1 **Council Composition and Powers.** The council is comprised of a mayor and six councilors nominated and elected from the city at large.
- (a) A majority of the entire council must appoint, manage and remove the city manager. The council may appoint a city manager for a definite or an indefinite term. The council must fill the office of city manager by appointment as soon as practicable after a vacancy occurs.
 - (b) The council must conduct an annual review of the performance of the city manager.

- (c) The council's appointment or removal of the city manager must be made without regard to political considerations and solely on the basis of matters relating to or arising out of the city manager's demonstrated skill, knowledge, experience, performance, and conduct in local government management.
- (d) When the city manager is temporarily disabled from acting as city manager or when the office of the city manager becomes vacant, the council must appoint a city manager pro tempore. The city manager pro tempore has the authority and duties of city manager, except that a pro tempore city manager may appoint or remove direct reports to the city manager only with council approval.
- (e) A majority of the entire council must appoint, manage and remove the city attorney.
- (f) A majority of the entire council must appoint, manage and remove a municipal judge and designate one municipal judge to serve as the court's presiding judge.
- (g) A majority of the entire council must appoint, manage and remove the city auditor.
- (h) A minimum of five affirmative votes is required to censure or discipline a council member.
- (i) A minimum number of five affirmative votes is required to remove a council member pursuant to 3.10.
- (j) A majority of the entire council may appoint, manage and remove council support staff.
- (k) The council must determine the compensation of the mayor and councilors, but no change in compensation is effective for the mayor or councilors in office when the decision is made. The changes in compensation take effect at the start of the term following the end of the term of each council member in office when the determination was made.

3.2 Council President. At its first meeting each calendar year, the council must elect a councilor to serve as the council president. The president presides in the absence of the mayor and acts as mayor when the mayor is unable or unavailable to perform duties.

3.3 Mayor. Except as otherwise provided in this charter, the mayor is the full-time official head of the city for political, ceremonial, emergency management, and military purposes. The mayor is a voting council member and has no veto authority.

- (a) In exercising the powers of the mayor, the mayor must:
 - (1) Attend all meetings of the council, except when circumstances necessitate otherwise.
 - (2) Preside over and facilitate council meetings, preserve order, enforce council rules, and determine the order of business under council rules.
 - (3) Sign the authorized writings and records of council decisions.
 - (4) Work with the city manager and councilors to develop and implement short and long-term goals for the city.

- (5) Work with the city manager and councilors to define roles and responsibilities of individual councilors on intergovernmental issues.
- (6) Annually report to the community, and as needed to council, as to the affairs and needs of the city and such legislation, policies, or measures the mayor deems necessary or desirable.
- (7) With the consent of the council, appoint and remove members of boards, commissions, and committees established by ordinance or resolution. An appointment or removal made by the mayor to any board, commission, or committee does not take effect unless the council confirms the appointment or removal or the council fails to act upon an appointment or removal within 15 calendar days after the council's notice of the mayor's action.
- (b) In exercising the powers of the mayor, the mayor may:
 - (1) Engage in other employment, business, or activities unless the council determines that the outside employment, business, or activities interfere with the mayor's performance or ability to meet the needs of the city, in which instance the mayor must terminate or curtail the outside employment, business, or activities.
 - (2) Appoint, manage and remove support staff.
 - (3) Have other lawful powers and duties that are conferred or imposed by ordinance or resolution of the city.
- (c) Except for support staff of the mayor or council, the mayor must not direct or order any employee or official of the city, including the city manager.

3.4 No Interference. No council member may directly or indirectly attempt to coerce the city manager or a candidate for the office of city manager in executing the city manager's powers and duties. In council meetings, council members may discuss or suggest anything with the city manager relating to city business.

3.5 Rules and Meetings. The council must determine its own rules and order of business. The council must meet at least once a month at a time and place designated by its rules, and it may meet at other times in accordance with its rules and Oregon law.

3.6 Quorum. A majority of the council members is a quorum to conduct business, but a smaller number may meet and compel attendance of the absent council members in a manner provided by law. In the event of a vacancy due to death, resignation, or loss of contact during a state or federal state of emergency within the city, the quorum is reduced accordingly. Every council member who is present must be counted for the purpose of constituting a quorum, even if the council member does not vote on one or more issues.

3.7 Record. A record of council meetings must be kept in a manner prescribed by the council rules and Oregon law.

3.8 Voting. Except as otherwise provided in this charter, the express approval of a majority of the council members present and voting is necessary for any council decision.

3.9 Representing the City. When taking a position on a city issue outside of a council meeting, a council member must express the majority position of the city council, but may also express the individual's personal opinion on the issue.

3.10 Removal from Office. In addition to censure and discipline, the council may remove a council member, after notice and an opportunity to be heard, if a minimum of five members of the council determines that the council member:

- (a) Is convicted of a crime punishable by a term of imprisonment;
- (b) Has violated any applicable rule of governmental ethics;
- (c) Fails to participate in at least one council meeting within a 60-day period without notifying the council;
- (d) Fails to qualify for the office within 30 days of the scheduled date of assuming office;
- (e) Coerces the city manager in violation of Section 3.4.

Article 4

Powers and Duties of City Officers

4.1 City Manager. The office of city manager is established as the administrative head of the city government. The city manager is responsible to the council for the proper administration of all city business.

- (a) The city manager has no authority over:
 - (1) The mayor,
 - (2) The councilors,
 - (3) The support staff of the mayor or council,
 - (4) The city attorney,
 - (5) The auditor,
 - (6) The municipal judges,
 - (7) The judicial functions of the municipal judges, or
 - (8) The legal services functions of the city attorneys.
- (b) The city manager must:
 - (1) Provide high quality professional management and leadership to city government.
 - (2) Assist the council in the development of city policies and carry out policies established by ordinances, resolutions, and orders.
 - (3) Attend all council meetings unless excused by the mayor.
 - (4) Make reports and recommendations to the council about the needs of the city.
 - (5) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits, codes, and other city decisions.

- (6) Determine the personnel rules and practices of the city and appoint, manage, and remove all city employees over which the city manager has authority.
- (7) Organize departments and administrative structure over which the city manager has authority.
- (8) Propose and administer the city budget.
- (9) Administer city utilities and property.
- (10) Consistent with council direction and in cooperation with the mayor, encourage regional and intergovernmental cooperation.
- (11) Involve the council in the development and implementation of short and long-term goals for the city; the short and long-term agenda process; and the development of budget principles and priorities.
- (12) Promote cooperation among the mayor, council, staff, and residents in developing city policies and building a sense of community.
- (13) Perform other duties as directed by the council.
- (14) Delegate duties but remain responsible for actions of all subordinates.
- (15) Permit conversation between council members and city staff, to include suggestions, opinions, and information, with the understanding that no individual council member shall give orders to the city manager or to any city staff member.
- (16) Express the majority position of the city council when taking a position on a city issue, but may at the same time, express the city manager's personal opinion on the issue.

4.2 City Attorney. The office of city attorney is established and remains and continues as the chief legal officer of the city government. The city attorney appoints, manages, and may remove any employees who work in and for the city attorney's office. The city attorney must be a member in good standing of the bar of the state of Oregon.

4.3 Municipal Court and Judges. The Municipal Court of the City of Beaverton, Washington County, Oregon, is established and remains and continues to operate as a municipal court.

- (a) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court. The municipal court has subject matter jurisdiction over every offense created by city ordinance and to the fullest extent allowed by law over all misdemeanors and violations defined and made punishable under state law, unless limited by city ordinance.
- (b) All municipal judges must be members in good standing of the bar of the state of Oregon. The presiding judge exercises general supervision over the judicial functions of the municipal court and its judges and has authority over the dockets and assignment of cases. The council may assign other duties to the presiding judge.

- (c) A municipal judge may render judgments and impose sanctions on persons and property; order the arrest of anyone accused of an offense against the city; commit to jail or admit to bail anyone accused of a city offense; issue and compel obedience to subpoenas; compel witnesses to appear and testify and jurors to serve for trials before the court; penalize contempt of court; issue processes necessary to enforce judgments and orders of the court; issue search warrants; and perform other judicial and quasi-judicial functions as allowed by law.

4.4 Auditor. The city council must provide for an independent, annual financial audit of all city accounts and may provide for more frequent audits and such other audits and studies as the council deems appropriate. The auditor or firm conducting a financial audit must be duly licensed to practice as an auditor under state law.

4.5 Compensation. The council must authorize the compensation of city officers and employees pursuant to the city budget process.

Article 5 Elections

5.1 City Elections. City elections must conform to state law, unless this charter or city ordinances provide otherwise. All elections for city offices are nonpartisan.

5.2 Qualification of Electors. Every person who is a resident of the city and who qualifies as a legal voter under state law may vote in a city election.

5.3 Eligibility. Each council member must be a qualified elector under state law and reside within the city for at least six months immediately before election or appointment to office. A person, after taking office, must remain a resident of the city and qualified elector of the state to continue to hold office. No person may be a candidate at a single election for more than one city office. Except when a state trial court has jurisdiction over the matter, the council is the final judge of the election and eligibility of its members.

5.4 Nominations. The council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city councilor position.

5.5 Voters' Pamphlet. All candidacies and measures submitted to the voters of the city in a primary, general, or special election must be publicized by a voters' pamphlet published by the city in accordance with city ordinance. No voters' pamphlet will be prepared for any election for which no city measure is submitted to the voters and not more than one person has filed or been nominated for any city office.

5.6 Oath. The mayor and each councilor must subscribe and swear or affirm an oath to the effect that the person will faithfully discharge to the best of the person's ability the duties of the office being assumed and will support the constitutions and laws of the United States and the State of Oregon and the charter and ordinances of the City of Beaverton. The oath

must be administered and attested to by a notary public or other person duly authorized to administer oaths. The oath may be taken up to 30 days prior to the scheduled date of assuming office.

5.7 Terms. After January 1, 2020, council positions one, two, and five will be elected every four years starting with the 2022 general election and the mayor and council positions three, four, and six will be elected every four years starting at the 2024 general election. The mayor and each councilor's term of office is four years and commences on the first day of January after the election to office. A mayor may serve no more than three consecutively-elected four-year terms. A councilor may serve no more than three consecutively-elected four-year terms; the limit applies even if one or more of the consecutive terms is served in different numbered council positions. If a mayor or a councilor is appointed or elected for a term that is less than three years, the partial term does not count as a term; in addition to the partial term, a mayor or a councilor may also serve three consecutively-elected four-year terms.

5.8 Vacancies in Office. The mayor or a council office becomes vacant upon the mayor or councilor's:

- (a) Death;
- (b) Resignation from the office;
- (c) Recall from office;
- (d) Ceasing to reside in the city;
- (e) Ceasing to be a qualified elector under state law; or
- (f) Removal from office pursuant to Section 3.10.

5.9 Filling Vacancies. Vacancies must be filled as follows:

- (a) If less than one year remains in the term of the person who held that vacant office, the council may fill the vacancy by majority vote of the remaining council members, and the appointee will serve the unexpired term of the predecessor to the office; or
- (b) If one year or more remains in the term of the person who held the vacant office or if for any reason the office is not filled and no person takes office when the term of office otherwise would have commenced, council may fill the vacancy by majority vote of the remaining council members, and the appointee will serve as an interim city councilor until a successor to the office is duly elected and is qualified to take office.
- (c) The election to fill the vacancy for the unexpired term of office must be held at the election that is next available pursuant to state law which occurs no sooner than the one hundred twentieth day after the date upon which the vacancy occurred. At the election, the person elected must receive a majority of the votes cast for all candidates for the office. If no candidate receives a majority, then a run-off election between the two candidates receiving the highest number of votes must be held at the election that is next available pursuant to state law.

The term of office for a person elected to fill a vacancy for an unexpired term of office commences upon the certification of the election.

Article 6 Ordinances

6.1 Ordaining Clause. The council exercises its legislative authority by adopting ordinances. The enacting clause for all ordinances must state “The City of Beaverton ordains as follows:”.

6.2 Adoption. Except as otherwise provided in this charter, the council must do the following to adopt an ordinance:

- (a) Publish a draft of the proposed ordinance for public inspection at least seven days before a public hearing on the proposed ordinance;
- (b) Read the ordinance by title only and announce the public hearing date at a council meeting;
- (c) Publish, in accordance with applicable law, the title of the ordinance in a written meeting agenda for a subsequent meeting;
- (d) Hold a public hearing at a subsequent meeting;
- (e) Move to adopt the ordinance at the same meeting the public hearing is held or at a subsequent meeting; and
- (f) Vote whether to adopt the ordinance.

6.3 Immediate Adoption. The council may adopt an ordinance at a single meeting by the unanimous approval of the council members present and voting on the matter, provided the proposed ordinance is available in writing to the public at least seven days before the meeting, unless there is an emergency. With the consent of the councilors present, the council may adopt an ordinance to address the emergency with such abbreviated notice and process as the council determines to be necessary under the circumstances.

6.4 Amendment to Proposed Ordinance. Any substantive amendment to a proposed ordinance must be read aloud or made available in writing to the public before the council adopts the ordinance at that meeting.

6.5 Record of Vote. After the adoption of an ordinance:

- (a) the mayor must sign the ordinance.
- (b) the city recorder must attest to the adoption and date of adoption of the ordinance and enter into the council minutes the vote of each council member regarding the adoption of the ordinance.

6.6 Effective Date of Ordinances. Ordinances normally take effect on the 30th day after adoption, or on a later day provided in the ordinance. An ordinance may take effect as soon

as adopted or on another date less than 30 days after adoption if it contains an emergency clause.

Article 7

Public Improvements; Urban Renewal; Debt

7.1 Public Improvements. The council must order the making of a public improvement upon petition of the owners of 60% of the area of the real property that would be subject to special assessments for the cost of the improvement.

7.2 Urban Renewal. The council shall not approve any urban renewal plan unless approved by a majority vote in the City of Beaverton at a general or primary election. Further, any urban renewal agency board shall not be comprised exclusively of council members.

7.3 Debt. City indebtedness may not exceed debt limits imposed by state law.

Article 8

General Provisions

8.1 Ordinance Continuation. All ordinances and other enactments consistent with this charter and in force when this charter takes effect remain in effect until amended or repealed.

8.2 Pending Matters. All rights, claims, causes of actions, duties, contracts, and legal administrative proceedings that exist when this charter takes effect continue and are unimpaired by this charter, except as modified pursuant to the provisions of this charter and in each case shall be maintained, carried on or dealt with by the city department, office, or agency appropriate under this charter.

8.3 Severability. The terms of this charter are severable. If any provision of this charter is held invalid by a court, the invalidity does not affect the validity of the remaining parts of the charter.

8.4 Time of Effect. This charter takes effect 30 days after the day on which it is approved by a majority of voters, and except as otherwise provided is operative January 1, 2021. The city may take any action before this charter's operative date that is necessary to enable the city on or after the operative date to exercise all duties, functions, and powers conferred on the city by this charter.

8.5 Saving Clause. All charter provisions adopted before this charter takes effect continue in force and effect until repealed.

8.6 Repeal. All charter provisions adopted before this charter takes effect are repealed when this charter becomes operative on January 1, 2021.

Article 9

Transition

9.1 **Terms.** For each elected official in office on January 1, 2020, all preceding consecutive terms served by the elected official will apply towards the maximum of three consecutively-elected four-year terms allowed under the 2021 charter.

9.2 **Compensation.** The compensation of the mayor and each councilor when this charter takes effect must continue in effect until changed in accordance with the provisions of this charter.

9.3 **New Council Position.** The city must hold an election the same day as the 2020 general election to fill the sixth councilor position. The person elected to council position six will serve a four-year term of office to begin on the first day of January following the election and receive the same compensation as other councilors.

9.4 **Codification.** The provisions of this Article 9 shall not be codified.

The Beaverton Charter of 2021¹

PREAMBLE

We, the voters of the City of Beaverton, Oregon, exercise our power to the fullest extent possible under the constitution and laws of the State of Oregon and enact this home rule charter.

Article 12 Names and Boundaries

- 1.1 **Titles.** This enactment may be referred to as the Beaverton Charter of 2021.
- 1.2 **Name.** The City of Beaverton, Oregon, continues as a municipal corporation with the name City of Beaverton.³
- 1.3 **Boundaries.** The city includes all territory within its boundaries as they now exist or are legally modified in the future.

Article 24 Powers

- 2.1 **Powers.** The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.
- 2.2 **Construction.** This charter is liberally construed so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.
- 2.3 **Where Powers Vest.** All powers of the city are vested in the city council, except as otherwise provided by law⁵ or this charter.

¹ 2021 would be the year the charter becomes operative if approved by voters at the May 2020 primary election.

² Compared to the city's current charter, editorial changes were made to Article 1, but no substantive changes.

³ The continuation of the city as the city of Beaverton is intended to assign all rights and delegate all duties by operation of law from the old to the new. Specific transitional matters are addressed separately in the measure referred to voters asking whether to adopt this charter.

⁴ Compared to the city's current charter, editorial changes were made to Article 2, but no substantive changes.

⁵ The phrase "by law" includes the Oregon Constitution. No mention is made in this charter of the initiative or referendum powers reserved to the qualified voters of every city in Article IV, section 1(5) of the Oregon Constitution, or the recall power held by electors over every public officer under Article II, section 18 of the Oregon Constitution. No city charter can deny these powers to city electors.

Article 3 Council

3.1 Council Composition and Powers. The council is comprised of a mayor and six councilors nominated and elected from the city at large.

- (a) A majority of the entire council must appoint, manage and remove the city manager. The council may appoint a city manager for a definite or an indefinite term. The council must fill the office of city manager by appointment as soon as practicable after a vacancy occurs.
- (b) The council must conduct an annual review of the performance of the city manager.
- (c) The council's appointment or removal of the city manager must be made without regard to political considerations and solely on the basis of matters relating to or arising out of the city manager's demonstrated skill, knowledge, experience, performance, and conduct in local government management.⁶
- (d) When the city manager is temporarily disabled from acting as city manager or when the office of the city manager becomes vacant, the council must appoint a city manager pro tempore. The city manager pro tempore has the authority and duties of city manager, except that a pro tempore city manager may appoint or remove direct reports to the city manager only with council approval.⁷
- (e) A majority of the entire council must appoint, manage and remove the city attorney.⁸
- (f) A majority of the entire council must appoint, manage and remove a municipal judge and designate one municipal judge to serve as the court's presiding judge.⁹
- (g) A majority of the entire council must appoint, manage and remove the city auditor.¹⁰
- (h) A minimum of five affirmative votes is required to censure or discipline a council member.
- (i) A minimum number of five affirmative votes is required to remove a council member pursuant to 3.10.
- (j) A majority of the entire council may appoint, manage and remove council support staff.

⁶ Any one of the listed five factors (skill, knowledge, experience, performance, and conduct) in local government management may serve as grounds to appoint or remove a city manager.

⁷ The exception on the power of the city manager pro tempore relating to appointing or removing employees essentially would limit the city manager pro tempore's authority relating to hiring or firing department heads.

⁸ The title "city attorney" can apply to a natural person or an entity, such as a firm.

⁹ This language does not require the council to appoint pro-tempore judges.

¹⁰ The title "city auditor" can apply to a natural person or an entity, such as a firm.

- (k) The council must determine the compensation¹¹ of the mayor and councilors, but no change¹² in compensation is effective for the mayor or councilors in office when the decision is made. The changes in compensation take effect¹³ at the start of the term following the end of the term of each council member in office when the determination was made.¹⁴

3.2 Council President. At its first meeting each calendar year, the council must elect a councilor to serve as the council president. The president presides in the absence of the mayor and acts as mayor when the mayor is unable or unavailable to perform duties.¹⁵

3.3 Mayor. Except as otherwise provided in this charter, the mayor is the full-time official head of the city for political, ceremonial, emergency management, and military purposes. The mayor is a voting council member and has no veto authority.

- (a) In exercising the powers of the mayor, the mayor must:
- (1) Attend all meetings of the council, except when circumstances necessitate otherwise.¹⁶
 - (2) Preside over and facilitate council meetings, preserve order, enforce council rules, and determine the order of business under council rules.
 - (3) Sign the authorized writings and records of council decisions.¹⁷
 - (4) Work with the city manager and councilors to develop and implement short and long-term goals for the city.
 - (5) Work with the city manager and councilors to define roles and responsibilities of individual councilors on intergovernmental issues.

¹¹ "Compensation" includes base salary and all other benefits.

¹² "Change" includes increases and decreases in compensation – *i.e.*, whether to the private financial benefit or detriment of the public official.

¹³ Since council members have staggered terms, changes in compensation "will take effect" on different dates. The change in compensation could take effect two years later for some council members compared to others.

¹⁴ This section is intended to be consistent with Oregon Government Ethics Commission staff advisory opinions 14S-002 and 19-001 and is similar to the twenty-seventh amendment to the US Constitution ("No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened").

¹⁵ This section allows the council president to act as mayor when the mayor is unable or unavailable, in which event the council president will fulfill and complete all enumerated duties of the mayor, including signing the authorized writings and records of council.

¹⁶ Outside employment of the mayor is addressed in subsection (b)(1) of this section.

¹⁷ If the mayor is unable or unavailable to sign, the council president is authorized to sign in lieu of the mayor. See Section 3.2.

- (6) Annually report to the community, and as needed to council, as to the affairs and needs of the city and such legislation, policies, or measures the mayor deems necessary or desirable.
- (7) With the consent of the council, appoint and remove members of boards, commissions, and committees established by ordinance or resolution. An appointment or removal made by the mayor to any board, commission, or committee does not take effect unless the council confirms the appointment or removal or the council fails to act upon an appointment or removal within 15 calendar days after the council's notice of the mayor's action.¹⁸
- (b) In exercising the powers of the mayor, the mayor may:
 - (1) Engage in other employment, business, or activities unless the council determines that the outside employment, business, or activities interfere with the mayor's performance or ability to meet the needs of the city, in which instance the mayor must terminate or curtail the outside employment, business, or activities.²⁰
 - (2) Appoint, manage and remove support staff.
 - (3) Have other lawful powers and duties that are conferred or imposed by ordinance or resolution of the city.
- (c) Except for support staff of the mayor or council, the mayor must not direct or order any employee or official of the city, including the city manager.

3.4 No Interference. No council member may directly or indirectly attempt to coerce the city manager or a candidate for the office of city manager in executing the city manager's powers and duties. In council meetings, council members may discuss or suggest anything with the city manager relating to city business.

3.5 Rules and Meetings. The council must determine its own rules and order of business. The council must meet at least once a month at a time and place designated by its rules, and it may meet at other times in accordance with its rules and Oregon law.

3.6 Quorum. A majority of the council members is a quorum to conduct business, but a smaller number may meet and compel attendance of the absent council members in a manner provided by law. In the event of a vacancy due to death, resignation, or loss of contact during a state or federal state of emergency within the city, the quorum is reduced accordingly. Every

¹⁸ A majority of the council members present and voting is sufficient to confirm the appointment or removal of a board, commission, or committee member. The mayor is a council member and is allowed to vote on the matter.

²⁰ This charter allows for the mayor's outside employment, provided it does not interfere with mayor's work for the city. Council may order the mayor to terminate or reduce outside work if the outside work does interfere. If mayor does not follow the order, the remedy could entail council censure or other discipline of the mayor.

council member who is present must be counted for the purpose of constituting a quorum, even if the council member does not vote on one or more issues.²¹

3.7 Record. A record of council meetings must be kept in a manner prescribed by the council rules and Oregon law.

3.8 Voting. Except as otherwise provided in this charter, the express approval of a majority of the council members present and voting is necessary for any council decision.

3.9 Representing the City. When taking a position on a city issue outside of a council meeting, a council member must express the majority position of the city council, but may also express the individual's personal opinion on the issue.²²

3.10 Removal from Office. In addition to censure and discipline, the council may remove a council member, after notice and an opportunity to be heard, if a minimum of five members of the council determines that the council member:

- (a) Is convicted of a crime punishable by a term of imprisonment;
- (b) Has violated any applicable rule of governmental ethics;²³
- (c) Fails to participate in at least one council meeting within a 60-day period without notifying the council;²⁴
- (d) Fails to qualify for the office within 30 days of the scheduled date of assuming office;
- (e) Coerces the city manager in violation of Section 3.4.

Article 4

Powers and Duties of City Officers

4.1 City Manager. The office of city manager is established as the administrative head of the city government. The city manager is responsible to the council for the proper administration of all city business.

- (a) The city manager has no authority over:

²¹ The abstention or recusal of the mayor or a councilor on a particular matter does not result in a reduced quorum.

²² A similar provision applies to the City Manager's obligations.

²³ Presently, ORS chapter 244 relating to government ethics applies to the mayor and each councilor. Among other things, the chapter regulates how public officials lobby, receive gifts, use their office, hire or work alongside relatives, and resolve conflicts of interests.

²⁴ If there were circumstances that precluded a council member from participating for a period of time, such as for a reason that would be covered by protected leave, notifying the council likely would allow for the absence. The council can further specify in its rules situations that require notice if it chooses to.

- (1) The mayor,
 - (2) The councilors,
 - (3) The support staff of the mayor or council,
 - (4) The city attorney,
 - (5) The auditor,
 - (6) The municipal judges,
 - (7) The judicial functions of the municipal judges, or
 - (8) The legal services functions of the city attorneys.
- (b) The city manager must:
- (1) Provide high quality professional management and leadership to city government.
 - (2) Assist the council in the development of city policies and carry out policies established by ordinances, resolutions, and orders.²⁵
 - (3) Attend all council meetings unless excused by the mayor.
 - (4) Make reports and recommendations to the council about the needs of the city.
 - (5) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits, codes, and other city decisions.
 - (6) Determine the personnel rules and practices of the city and appoint, manage, and remove all city employees over which the city manager has authority.
 - (7) Organize departments and administrative structure over which the city manager has authority.
 - (8) Propose and administer the city budget.
 - (9) Administer city utilities and property.
 - (10) Consistent with council direction and in cooperation with the mayor, encourage regional and intergovernmental cooperation.
 - (11) Involve the council in the development and implementation of short and long-term goals for the city; the short and long-term agenda process; and the development of budget principles and priorities.
 - (12) Promote cooperation among the mayor, council, staff, and residents in developing city policies and building a sense of community.
 - (13) Perform other duties as directed by the council.
 - (14) Delegate duties but remain responsible for actions of all subordinates.
 - (15) Permit conversation between council members and city staff, to include suggestions, opinions, and information, with the understanding that no individual council member shall give orders to the city manager or to any city staff member.

²⁵ This makes the city manager responsible for carrying out city policy adopted by council ordinance, resolution, or order.

- (16) Express the majority position of the city council when taking a position on a city issue, but may at the same time, express the city manager's personal opinion on the issue.²⁶

4.2 City Attorney. The office of city attorney is established and remains and continues as the chief legal officer of the city government. The city attorney appoints, manages, and may remove any employees who work in and for the city attorney's office. The city attorney must be a member in good standing of the bar of the state of Oregon.

4.3 Municipal Court and Judges. The Municipal Court of the City of Beaverton, Washington County, Oregon, is established and remains and continues to operate as a municipal court.

- (a) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court. The municipal court has subject matter jurisdiction over every offense created by city ordinance and to the fullest extent allowed by law over all misdemeanors and violations defined and made punishable under state law, unless limited by city ordinance.
- (b) All municipal judges must be members in good standing of the bar of the state of Oregon. The presiding judge exercises general supervision over the judicial functions of the municipal court and its judges and has authority over the dockets and assignment of cases. The council may assign other duties to the presiding judge.²⁷
- (c) A municipal judge may render judgments and impose sanctions on persons and property; order the arrest of anyone accused of an offense against the city; commit to jail or admit to bail anyone accused of a city offense; issue and compel obedience to subpoenas; compel witnesses to appear and testify and jurors to serve for trials before the court; penalize contempt of court; issue processes necessary to enforce judgments and orders of the court; issue search warrants; and perform other judicial and quasi-judicial functions as allowed by law.

4.4 Auditor. The city council must provide for an independent, annual financial audit of all city accounts and may provide for more frequent audits and such other audits and studies as the council deems appropriate. The auditor or firm conducting a financial audit must be duly licensed to practice as an auditor under state law.

²⁶ This provision was added at the direction of the council.

²⁷ The council discussed granting authority to the presiding judge to participate in the selection and supervision of pro tempore judges. Instead of including such a provision in this charter, this section would allow the council to assign additional duties to the presiding judge. For example, the council could approve a job description for the presiding judge that includes supervision of pro tempore judges.

4.5 Compensation. The council must authorize the compensation²⁸ of city officers and employees pursuant to the city budget process.²⁹

Article 5 Elections

5.1 City Elections. City elections must conform to state law, unless this charter or city ordinances provide otherwise.³⁰ All elections for city offices are nonpartisan.

5.2 Qualification of Electors. Every person who is a resident of the city and who qualifies as a legal voter under state law may vote in a city election.³¹

5.3 Eligibility. Each council member must be a qualified elector under state law and reside within the city for at least six months immediately before election or appointment to office.³² A person, after taking office, must remain a resident of the city and qualified elector of the state to continue to hold office. No person may be a candidate at a single election for more than one city office. Except when a state trial court has jurisdiction over the matter, the council is the final judge of the election and eligibility of its members.³³

²⁸ Compensation includes base salary and any other benefits. See footnote 11.

²⁹ As part of the budget process, council would continue to approve FTE counts and pay classifications. Council would not participate in appointing or managing employees other than those who by charter report directly to council.

³⁰ Oregon Constitution, Article II, section 14a ("Time of holding elections in incorporated cities and towns") requires cities to hold their regular elections for officers at the same time as the general biennial elections for state and county officers are held. ORS 254.035 implements this provision. ORS 254.056 states that general elections are held on the first Tuesday after the first Monday in November of even-numbered years. It further states that primary elections may be held on the third Tuesday in May of even-numbered years.

³¹ The State of Oregon defines a legal voter as an "elector." See ORS chapter 247. An elector is "an individual qualified to vote under Article II, section 2, Oregon Constitution" (which provides in relevant part: "Every citizen of the United States is entitled to vote in all elections not otherwise provided for by this Constitution if such citizen: (a) Is 18 years of age or older; (b) Has resided in this state during the six months immediately preceding the election, except that provision may be made by law to permit a person who has resided in this state less than 30 days immediately preceding the election, but who is otherwise qualified under this subsection, to vote in the election for candidates for nomination or election for President or Vice President of the United States or elector of President and Vice President of the United States; and (c) Is registered not less than 20 calendar days immediately preceding any election in the manner provided by law.")

³² At its December 17 work session, the council asked staff to consider specifying when the residency requirement is measured for state officials. Article IV, Section 8, of the Oregon Constitution states that: "a person may not be a Senator or Representative if the person at the time of election: (A) Is not a citizen of the United States; and (B) Has not been for one year next preceding the election an inhabitant of the district from which the Senator or Representative may be chosen."

³³ Election disputes that can be addressed by a trial court under state law would not be handled by the council.

5.4 Nominations. The council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city councilor position.

5.5 Voters' Pamphlet. All candidacies and measures submitted to the voters of the city in a primary, general, or special election must be publicized by a voters' pamphlet published by the city in accordance with city ordinance. No voters' pamphlet will be prepared for any election for which no city measure is submitted to the voters and not more than one person has filed or been nominated for any city office.³⁴

5.6 Oath. The mayor and each councilor must subscribe and swear or affirm an oath to the effect that the person will faithfully discharge to the best of the person's ability the duties of the office being assumed and will support the constitutions and laws of the United States and the State of Oregon and the charter and ordinances of the City of Beaverton.³⁵ The oath must be administered and attested to by a notary public or other person duly authorized to administer oaths.³⁶ The oath may be taken up to 30 days prior to the scheduled date of assuming office.³⁷

5.7 Terms. After January 1, 2020, council positions one, two, and five will be elected every four years starting with the 2022 general election and the mayor and council positions three, four, and six will be elected every four years starting at the 2024 general election.³⁸ The mayor and each councilor's term of office is four years and commences on the first day of January after the election to office.³⁹ A mayor may serve no more than three consecutively-elected four-year terms.⁴⁰ A councilor may serve no more than three consecutively-elected four-year terms; the limit applies even if one or more of the consecutive terms is served in different numbered council positions.⁴¹ If a mayor or a councilor is appointed or elected for a term that is

³⁴ If, for example, three council members stood for re-election unopposed, no city voters' pamphlet would be prepared on account of the three races.

³⁵ Oregon does not require public employees or elected officials to take an oath before assuming office. This section could be omitted from the charter in whole or in part or relocated to a city ordinance.

³⁶ In addition to a notary public, ORS 44.320, authorizes the following persons to administer an oath of office: judge, justice of the peace, court clerk, and certified shorthand reporter.

³⁷ The grace period is borrowed from the Washington State, but may be unnecessary. If a person fails to take a required oath, Oregon recognizes the "*de facto* officer" doctrine. A *de facto* officer is one who "has the possession of an office and performs the duties thereof under color of right, without being actually qualified in law so to act." *Smith v. City of Jefferson*, 75 Or. 179, 187 (1915). The official actions of a *de facto* officer have the same legal effect as the official actions of a duly qualified officer.

³⁸ The general election is the election held "on the first Tuesday after the first Monday in November of each even-numbered year." ORS 254.056(1).

³⁹ The wording makes it irrelevant whether the person is elected at the primary or general election. Special elections to fill vacancies are dealt with specifically under section 5.9.

⁴⁰ Time in office as an appointed mayor or councilor is included in the term limit calculation if the time in office following the appointment is three years or more.

⁴¹ As drafted, a councilor who holds a numbered council position cannot run for another numbered council position and avoid application of the three consecutively-elected four-year term limit. Also, as currently drafted, any

less than three years, the partial term does not count as a term; in addition to the partial term, a mayor or a councilor may also serve three consecutively-elected four-year terms.

5.8 Vacancies in Office.⁴² The mayor or a council office becomes vacant upon the mayor or councilor's:⁴³

- (a) Death;
- (b) Resignation from the office;
- (c) Recall from office;
- (d) Ceasing to reside in the city;
- (e) Ceasing to be a qualified elector under state law; or⁴⁴
- (f) Removal from office pursuant to Section 3.10.

5.9 Filling Vacancies.⁴⁵ Vacancies must be filled as follows:

- (a) If less than one year remains in the term of the person who held that vacant office, the council may fill the vacancy by majority vote of the remaining council members, and the appointee will serve the unexpired term of the predecessor to the office; or
- (b) If one year or more remains in the term of the person who held the vacant office or if for any reason the office is not filled and no person takes office when the term of office otherwise would have commenced, council may fill the vacancy by majority vote of the remaining council members, and the appointee will serve as an interim city councilor until a successor to the office is duly elected and is qualified to take office.⁴⁸
- (c) The election to fill the vacancy for the unexpired term of office must be held at the election that is next available pursuant to state law which occurs no sooner than the one hundred twentieth day after the date upon which the vacancy occurred. At the election, the person elected must receive a majority of the votes cast for all candidates for the office. If no candidate receives a majority, then a run-off election between the two candidates receiving the highest number of

gap in service would allow the termed-out councilor or mayor to be appointed. Moreover, a termed out mayor may immediately run for a councilor position, and a termed out councilor may immediately run for mayor.

⁴² Grounds listed in 5.8 are automatic grounds for declaring an office vacant. The events are intended to be easily established, without much opportunity for factual disputes. The events could equally justify the removal of either a councilor or a mayor.

⁴³ Use of the term "upon" in subsection (a) means the vacancy occurs on the day of the listed event.

⁴⁴ See note 31 for a full definition of "a qualified elector under state law." Essentially, a person who is age 18 or older, duly registered to vote, and an Oregon resident during the six months immediately preceding the election.

⁴⁵ This section is derived from the city's existing charter.

⁴⁸ The office could remain vacant instead of appointing a short-term interim councilor.

votes must be held at the election that is next available pursuant to state law. The term of office for a person elected to fill a vacancy for an unexpired term of office commences upon the certification of the election.

Article 6 Ordinances

6.1 Ordaining Clause. The council exercises its legislative authority by adopting ordinances. The enacting clause for all ordinances must state “The City of Beaverton ordains as follows:”.

6.2 Adoption. Except as otherwise provided in this charter, the council must do the following to adopt an ordinance:

- (a) Publish a draft of the proposed ordinance for public inspection at least seven days before a public hearing on the proposed ordinance;
- (b) Read the ordinance by title only and announce the public hearing date at a council meeting;
- (c) Publish, in accordance with applicable law, the title of the ordinance in a written meeting agenda for a subsequent meeting;
- (d) Hold a public hearing at a subsequent meeting;
- (e) Move to adopt the ordinance at the same meeting the public hearing is held or at a subsequent meeting; and
- (f) Vote whether to adopt the ordinance.

6.3 Immediate Adoption. The council may adopt an ordinance at a single meeting by the unanimous approval of the council members present and voting on the matter, provided the proposed ordinance is available in writing to the public at least seven days before the meeting, unless there is an emergency. With the consent of the councilors present, the council may adopt an ordinance to address the emergency with such abbreviated notice and process as the council determines to be necessary under the circumstances.

6.4 Amendment to Proposed Ordinance. Any substantive amendment to a proposed ordinance must be read aloud or made available in writing to the public before the council adopts the ordinance at that meeting.

6.5 Record of Vote. After the adoption of an ordinance:

- (a) the mayor must sign the ordinance.^{49 50}

⁴⁹ Pursuant to Section 3.2, the council president will sign ordinances when the mayor is unable or unavailable.

⁵⁰ In lieu of giving the mayor veto power over legislation, some council-city manager forms of government allow the mayor the power to require the council to reconsider an ordinance if the mayor does not endorse it. That process is described in these steps: If the mayor approves the ordinance, the mayor must sign and date it. If the mayor requires reconsideration of the ordinance, the mayor must return it to the recorder with written reasons for

- (b) the city recorder must attest to the adoption and date of adoption of the ordinance and enter into the council minutes the vote of each council member regarding the adoption of the ordinance.

6.6 Effective Date of Ordinances. Ordinances normally take effect on the 30th day after adoption, or on a later day provided in the ordinance. An ordinance may take effect as soon as adopted or on another date less than 30 days after adoption if it contains an emergency clause.

Article 7

Public Improvements; Urban Renewal; Debt

7.1 Public Improvements. The council must order the making of a public improvement upon petition of the owners of 60% of the area of the real property that would be subject to special assessments for the cost of the improvement.⁵²

7.2 Urban Renewal. The council shall not approve any urban renewal plan unless approved by a majority vote in the City of Beaverton at a general or primary election. Further, any urban renewal agency board shall not be comprised exclusively of council members.⁵³

7.3 Debt. City indebtedness may not exceed debt limits imposed by state law.

Article 8

General Provisions

8.1 Ordinance Continuation. All ordinances and other enactments consistent with this charter and in force when this charter takes effect remain in effect until amended or repealed.

8.2 Pending Matters. All rights, claims, causes of actions, duties, contracts, and legal administrative proceedings that exist when this charter takes effect continue and are unimpaired by this charter, except as modified pursuant to the provisions of this charter and in each case

reconsideration within ten days of receipt of the ordinance. If the ordinance is not so returned, it takes effect as if approved. At the first council meeting after demand for reconsideration by the mayor, the councilors will consider the reasons of the mayor and again vote on the ordinance. If at least a majority of all councilors vote to adopt the ordinance, it will take effect. (Note: the number of votes comprised of "a majority of all councilors" is not necessarily the same number of votes as "a majority of those councilors present and voting.")

⁵² As written, this section is not required but may be an appropriate policy to include in a charter. Hillsboro has a similar provision. The balance of Beaverton's existing charter provision on public improvements is not required. Two of the existing provisions provide that ordinances will address certain matters. There's little value in such provisions being in a charter, other than to direct readers to look at city ordinances for information about a given topic. The other provision allows residents a limited ability to remonstrate against some public improvements. There is no requirement to include such a provision in a city charter in Oregon. The provision has been included in the Beaverton Charter for decades and has seldom, if ever, been exercised.

⁵³ This section's wording is consistent with a provision of the Beaverton Charter of 1981, but is not identical to it.

shall be maintained, carried on or dealt with by the city department, office, or agency appropriate under this charter.

8.3 Severability. The terms of this charter are severable. If any provision of this charter is held invalid by a court, the invalidity does not affect the validity of the remaining parts of the charter.

8.4 Time of Effect. This charter takes effect 30 days after the day on which it is approved by a majority of voters, and except as otherwise provided is operative January 1, 2021. The city may take any action before this charter's operative date that is necessary to enable the city on or after the operative date to exercise all duties, functions, and powers conferred on the city by this charter.

8.5 Saving Clause. All charter provisions adopted before this charter takes effect continue in force and effect until repealed.

8.6 Repeal. All charter provisions adopted before this charter takes effect are repealed when this charter becomes operative on January 1, 2021.

Article 9 Transition

9.1 Terms. For each elected official in office on January 1, 2020, all preceding consecutive terms served by the elected official will apply towards the maximum of three consecutively-elected four-year terms allowed under the 2021 charter.⁵⁵

9.2 Compensation. The compensation of the mayor and each councilor when this charter takes effect must continue in effect until changed in accordance with the provisions of this charter.⁵⁶

9.3 New Council Position. The city must hold an election the same day as the 2020 general election to fill the sixth councilor position. The person elected to council position six will

⁵⁵ This provision relates to how term limits operate as to the city's current mayor and councilors. As to the current mayor or a councilor who runs for re-election in 2020, the term limit imposed by this 2021 charter do not apply to the 2020 election. If re-elected in 2020, the mayor or councilor may take office in 2021 and serve an entire four-year term in office. Thereafter, all preceding consecutive terms served by the official (including any term served before January 1, 2021) will apply towards the maximum of three consecutively-elected four-year terms. As to any councilor who runs for re-election in 2022, all preceding consecutive terms served by the councilor (including any terms served before January 1, 2021) will apply towards the term limit provided under the 2021 charter.

⁵⁶ If the measure referring the charter to the voters passes, the charter would take effect on June 18, 2020. The compensation of the mayor and councilors in effect on June 18 would remain in effect unless changed in accordance with sections 3.1(k) and 4.5 of this charter.

serve a four-year term of office to begin on the first day of January following the election and receive the same compensation as other councilors.⁵⁷

9.4 **Codification.** The provisions of this Article 9 shall not be codified.⁵⁸

⁵⁷ If the city holds a special election on a date other than the primary election or general election, it must bear the expense of the election. ORS 254.046.

⁵⁸ The provisions of Article 9 would still have the full force of law, but because of their temporary, transitional nature would not be published in copies of the charter for use after January 1, 2021.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: A Resolution Approving the Explanatory Statement for the City of Beaverton Ballot Measure "Adopts New Charter for Beaverton City Government" for the May 2020 Primary Election

FOR AGENDA OF: 03-03-20 **BILL NO:** 20074

MAYOR'S APPROVAL: 

DEPARTMENT OF ORIGIN: City Attorney 

DATE SUBMITTED: 02-25-20

CLEARANCES: Mayor's Office 

PROCEEDING: Action Item

EXHIBITS: Resolution

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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RECOMMENDED ACTION:

City Council adopts the attached resolution.

HISTORICAL PERSPECTIVE:

On February 11, 2020, Council approved Resolution 4627, which referred to the voters a measure proposing a new city charter to the voters of Beaverton. The resolution referring the measure also adopted a ballot title and directed staff to draft an explanatory statement for inclusion in the voters' pamphlet.

INFORMATION FOR CONSIDERATION:

State law allows the city to include an explanatory statement to be printed in the Beaverton and Washington County voters' pamphlets. By law, the statement cannot exceed 500 words. The explanatory statement must be fair and impartial, providing accurate and unbiased information about the purpose of the measure. The council may, in its discretion, revise the draft explanatory statement. The final form of the explanatory statement must be adopted and filed with the county 61 days prior to the primary election date of May 19, 2020 (i.e., on or before Thursday, March 19, 2020).

RESOLUTION NO. 4634

**A RESOLUTION APPROVING THE EXPLANATORY STATEMENT FOR THE CITY OF BEAVERTON
BALLOT MEASURE "ADOPTS NEW CHARTER FOR BEAVERTON CITY GOVERNMENT" FOR THE
MAY 2020 PRIMARY ELECTION**

Whereas, section 2 of the Charter of the City of Beaverton provides that the city shall have all powers which the constitutions, statutes, and common law of the United States and of this state expressly or impliedly grant or allow municipalities, as fully as though this charter specifically enumerated each of those powers; and

Whereas, on February 11, 2020, the City Council adopted Resolution No. 4627, referring to the voters of Beaverton a measure proposing a new city charter and adopting a ballot title for the referral; and

Whereas, the City Council has directed staff to prepare an explanatory statement to accompany the ballot title for inclusion in the voters' pamphlets prepared for Beaverton voters; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF BEAVERTON, OREGON:

The Beaverton City Council adopts the following explanatory statement for the ballot measure "Adopts New Charter for Beaverton City Government" on the May 2020 primary election ballot:

EXPLANATORY STATEMENT

This measure would provide a new city charter for Beaverton. A charter is the foundational document of the city that outlines the principles, structures and processes of the city's government. Oregon law essentially allows city voters to organize their city government as the majority of voters consider best suited to meet the needs of the city. The proposed charter would become operative January 1, 2021.

If adopted, the proposed charter would, among other things:

- Change the city's form of government from a mayor-council form of government to a council-manager form of government. Currently, Beaverton voters elect a mayor who serves as the city's administrative head. The mayor manages, hires, and may dismiss most senior city staff. Under the proposed charter, voters would elect a city council, including the mayor, who would then appoint a full-time city manager for an indefinite term to oversee the city's day-to-day operations and implement council policies. The city manager, not the mayor, would then manage, hire, or dismiss most senior city staff. The city manager would not be an elected position.
- Add a new council seat and make the mayor a voting member of the council. The council would have seven members: six part-time city councilors and one full-

time mayor. The council would serve as the city's governing body and be responsible for its legislative functions. The city council would continue to oversee the city attorney, municipal court judges, and auditor. The mayor, besides serving on the council, would serve as the city's chief elected official. The mayor and councilor positions would be nonpartisan and elected at-large.

- Limit each councilor and the mayor to three consecutive four-year terms. A councilor or mayor who reaches the three-term limit would be allowed to run again for election to the same office only after a break in service. The term limit would not prevent a term-limited mayor from running for election as a councilor, or a term-limited councilor from running for election as mayor.
- Specify that the mayor or a councilor could be removed from office for unethical or criminal conduct.
- Remove gender-exclusive references found in the city's current charter.
- Limit city indebtedness to not exceed debt limits imposed by state law.
- Require a public hearing before the council considers adopting any ordinance.

If the proposed charter is not adopted, the city's present mayor-council form of government would remain in place and none of the described charter changes would occur.

If the proposed charter is adopted, the financial impact would be minimal given the proposed changes to city positions would modify or replace existing positions included in the city's current charter.

The referral follows a series of nine work sessions and two public hearings held in open public meetings that began in fall 2019 regarding potential changes to the city's existing charter. Beaverton voters enacted the city's current charter in November 1980 and amended the charter once, in 2008, when voters amended a section relating to urban renewal.

Adopted by the City Council this ____ day of March 2020.

Approved by the Mayor this _____ day of March 2020.

Ayes: _____

Nays: _____

Attest:

Approved:

Catherine Jansen, City Recorder

Denny Doyle, Mayor

City of Beaverton

Measure No. 34-298

Ballot Title

Adopts New Charter for Beaverton City Government

Question: Shall the city of Beaverton adopt a new charter to replace its current city charter?

Summary: If adopted, this measure would provide a new charter for the city. The new charter would change the city's form of government. The mayor would no longer be the city's administrative head. Instead, the city council would appoint a full-time city manager to oversee the city's day-to-day operations.

The new charter also makes other changes. The council would expand from five to seven members: six part-time city councilors and one full-time mayor. The council would serve as the city's governing body and be responsible for the city's legislative functions. In addition to serving on the council, the mayor would serve as the city's chief elected official.

All council positions would be nonpartisan and elected at-large by Beaverton voters. The councilors and the mayor would be limited to three consecutive four-year terms in office for their respective positions.

Beaverton's current charter uses gender-exclusive references. The proposed charter contains no gender-exclusive references.

Complete copies of the proposed charter showing all changes are available from the city recorder's office and at www.BeavertonOregon.gov.

occurring after the proposed charter takes effect in 2021. A person who runs in calendar year 2020 for a fourth or fifth consecutive term in office and wins would serve the full term to which elected.

- Specify that the mayor or a councilor could be removed from office for unethical or criminal conduct.
- Remove gender-exclusive references found in the city's current charter.
- Limit city indebtedness to not exceed debt limits imposed by state law.
- Require a public hearing before the council considers adopting any ordinance.

If the proposed charter is not adopted, the city's present mayor-council form of government would remain in place and none of the described charter changes would occur.

If the proposed charter is adopted, the financial impact would be minimal given the proposed changes to city positions would modify or replace existing positions included in the city's current charter.

The referral follows a series of nine public work sessions and two public hearings that began in fall 2019 regarding potential changes to the city's existing charter. Beaverton voters enacted the city's current charter in 1980 and amended a section in 2008 relating to urban renewal.

Submitted by:
Catherine Jansen, City Elections Officer

Explanatory Statement

This measure would provide a new city charter for Beaverton. A charter is a city's foundational document that outlines the principles, structures and processes of the city's government. Oregon law essentially allows city voters to organize their city government as the majority of voters consider best suited to meet the city's needs. The proposed charter would become operative January 1, 2021.

If adopted, the proposed charter would, among other things:

- Change the city's form of government from a mayor-council form of government to a council-manager form of government. Currently, Beaverton voters elect a mayor who serves as the city's administrative head. The mayor manages, hires, and may dismiss most senior city staff. Under the proposed charter, voters would elect a city council, including the mayor, who would then appoint a full-time city manager for an indefinite term to oversee the city's day-to-day operations and implement council policies. The city manager, not the mayor, would then manage, hire, or dismiss most senior city staff. The city manager would not be an elected position.
- Add a new council seat and make the mayor a voting member of the council. The council would have seven members: six part-time city councilors and one full-time mayor. The council would serve as the city's governing body and be responsible for its legislative functions. The city council would continue to oversee the city attorney, municipal court judges, and auditor. The mayor, besides serving on the council, would serve as the city's chief elected official. The mayor and councilor positions would be nonpartisan and elected at-large.
- Limit each councilor and the mayor to three consecutive four-year terms. The term limits would apply only to elections

City of Beaverton

Measure No. 34-298 Arguments

Argument in Favor

I served as full-time Strong Mayor/CEO of Beaverton from 1993 through 2008. In reviewing the National League of Cities (NLC) website, the Council-Manager form of government is the most common in the United States where 55% of the reporting cities are managed by a professional city manager.

My comments are not pointed to any particular person who served the City of Beaverton. It is a very challenging position as a full-time Mayor/CEO for a City of 100,000 residents. The City has 611 employees and large revised budget of \$389 million.

Our current form of government allows almost anyone to run for the City's top management position with no qualifications other than being at least 18-years old, living in the City for six-months and registered to vote. Any large private business with over 600 employees and large budget would require a qualifying background. We have been fortunate that previous Mayors/CEO's who managed the City have been responsible and mostly effective managers and leaders. There is no guarantee that someone with the necessary background will run for the Mayor/CEO position. My only opponent during one of my re-election campaigns was a senior at Beaverton High. This person would likely have been elected if I had gotten ill or dropped out, leaving the City with no viable government management experience for Mayor with the remaining single candidate.

This Mayor/CEO position is far too important to leave to chance, which is why I believe that the Council-Manager form of government would ensure that the Mayor and City Council could appoint a properly qualified and seasoned City Manager for the position. A city with Beaverton's high quality of life, adequate funding and strong position in the metropolitan region would likely draw very strong candidates to fill the position.

Please vote for Ballot Measure 34-298 to update our form of government and ensure that a qualified candidate is appointed to serve as City Manager!

Rob Drake
Former Mayor

This information furnished by:
Rob Drake

Argument in Favor

Did you know Beaverton is the only city in the State of Oregon with a Mayor who also performs the duties of City Manager?

It's a big job! 40 years ago, when our current charter was adopted, Beaverton was a much smaller city. Beginning last Fall, the city council started work on updating our charter. Working with our City Attorney and a consultant from PSU, we held work sessions at many of our council meetings. The result of our work sessions is that we now have an updated charter that we are asking you to vote on.

The proposed charter uses modern language, recommended by the Oregon League of Cities, the National Civics League, the Beaverton City Attorney's Office, and other city staff.

There are a few important changes in the proposed charter.

City Manager: The new charter would establish the position of City Manager. This person would be hired by and report to the Mayor and council.

Term limits: The proposed charter has a consecutive 3 term limit on each position, which would mean 12 consecutive years.

Number of Councilors: The proposed charter would add an additional member to council. The Mayor would now have a vote on matters before council, as of today our mayor can only vote if there is a tie. To prevent ties, an odd number of votes are needed.

Gender Neutral Language: Our current charter refers to the mayor as "he". It refers to councilors as "he/she". The proposed charter fixes this situation with more current language.

The position of Mayor is now too big for one person, we need an experienced and professionally trained City Manager. The is about the position of Mayor, not the current Mayor.

As our city continues to grow, I strongly feel the charter we are referring to you will vastly benefit our City.

Thank you for your time, consideration and engagement in our community.

Sincerely,
Mark Fagin
Beaverton City Councilor

This information furnished by:
Mark Fagin

Argument in Favor

PROTECT SERVICES, MODERNIZE OUR CHARTER

PROTECT SERVICES: Our Strong Mayor Form of government, where the Mayor operates with relative impunity, is antiquated, creates unbridled influence and makes us highly susceptible to corruption and loss of critical services. I have served on your City Council since 2005 and since 2007 advocated for updating our City Charter from a Strong Mayor form of government to a professional, vetted, City Manager.

TIME TO MODERNIZE OUR CHARTER:

Other critical Charter changes needed to improve your government's efficiency and effectiveness:

1. ADD TERM LIMITS OF 3, FOUR-YEAR TERMS:

Limiting the Mayor and Councilors to 3 terms opens the opportunity for new people and new ideas.

2. ALLOWS THE COUNCIL TO ADJUST SALARIES OF THE MAYOR AND COUNCILORS STARTING IN THE NEXT TERM:

Right now our Mayor earns more than any other elected official, almost 2x as the Governor! The old charter has a minimum salary for the mayor. Mayors should be inspired to serve, rather than earn lucrative salaries.

3. REQUIRES ALL NEW LAWS TO HAVE A PUBLIC HEARING:

Giving citizens a voice in their government is the bedrock of democracy.

4. INSTITUTES GENDER NEUTRAL LANGUAGE:

Gender neutral language updates old bias language with non-sexist, inclusive terms.

5. PROTECTS AGAINST CORRUPTION AND WASTE

In 2018/2019 three Pennsylvania Mayors were convicted of pay-to-play schemes including bribery, extortion, wire fraud, and conspiracy. **Under our antiquated City Charter, this could happen to us!**

City of Beaverton

Measure No. 34-298 Arguments

NOT IN BEAVERTON! NOT ON MY WATCH!

We can protect against this by changing our charter to a Council / Manager form where the City Manager answers to the Council and the ICMA. Like a State Bar, they investigate seriously flawed or corrupt practices of an ICMA manager. If they find fault, it is published and if criminal, referred to authorities. That manager will never be hired again.

IT'S TIME FOR TRANSPARENCY AND ACCOUNTABILITY!

Chartering for a Better Beaverton!

Vote Yes on 34-298 Beaverton Charter for 2021

Councilor Cate Arnold

This information furnished by:
Cate Arnold

Argument in Opposition

BEAVERTON CHAMBER of COMMERCE urges a "NO" vote on Charter Change

The voters of Beaverton have important choices in front of them on this ballot and with this proposed Charter change they have an impossible choice.

Timing for the newly proposed Beaverton City Charter could not be worse for the voters to consider this significant change to our current form of government. By placing this on the ballot in May, the City Council has forced Beaverton voters to potentially change the form of our city government as well roles, responsibilities and powers of the Mayor and City Council positions with open seats in contested elections simultaneously on the same ballot.

As recommended by citizens for, against and neutral on the Charter changes at the two public comment sessions held by City Council, these changes would be better placed on the ballot when there are no contested races impacted by the outcome of the proposed Charter changes.

While the Council cites "best practices" of the League of Cities to support changing the form of government from an elected "strong Mayor" government to a hired professional city manager who reports to the City Council, they ignored the customary process of engaging a charter review committee to assist in drafting these sweeping changes, better educate the public and gain community consensus.

Whether you support or oppose our current "strong Mayor" form of government, prefer a paid city manager reporting to a "strong Council" (the new form of government proposed by the City Council); whether for or against adding another paid City Councilor, paid staff for Councilors, term limits or any of the positive language changes in this charter, **it is still an impossible choice** to change our City Charter on the same ballot we are electing candidates for positions that materially change before the elected leader even takes office.

It is for that sole reason that the **Beaverton Chamber of Commerce urges a "NO" vote on this measure.**

This information furnished by:
Lorraine Clarno
Beaverton Area Chamber of Commerce