

## 2025 CHARTER REVIEW COMMITTEE

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April 12, 2025

TO: Woodburn Charter Review Committee

FROM: Scott Derickson, City Administrator  
McKenzie Granum, City Attorney

SUBJECT: **Charter Committee Welcome Memo**

## **BACKGROUND:**

On February 22, 2025, the City Council held a goal setting session to set 2025-2026 Council Goals. An objective identified during that goal setting session was the formation of a Charter Review Committee to consider and recommend timely or necessary charter amendments to the Council as part of a referral to the voters, no later than November 2025.

On March 24, 2025, the Council voted to adopt Resolution No. 2248 to formally establish the City of Woodburn Charter Review Committee, set expectations for the Committee, and appoint members to the Committee.

A Committee Chair and Vice-Chair will be selected from the membership of the Committee. Committee members will serve at the pleasure of the Mayor.

Staff identified to support the work of the Committee include the following:

Scott Derickson, City Administrator  
McKenzie Granum, City Attorney  
Heather Pierson, City Recorder

## **DISCUSSION:**

The City of Woodburn Charter establishes the governmental structure for the City and is equivalent to the constitution for the City.

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." Woodburn voters

enacted the city's current charter in 1982, with the previous version dating back to 1909.

The Committee is authorized to review the entire Charter, using the most recent League of Oregon Cities Model Charter as a template, and to make recommendations to the Council on any aspect of the Charter. In addition, staff would recommend that the Committee provide specific recommendations on the following issues/subjects:

- a) The City Administrator's Duties & Functions and the Residency Requirement for the City Administrator;
- b) The Mayor's Duties & Functions at Council Meetings;
- c) The procedures and methods for removing Councilors from Office;
- d) If time allows, consider whether to recommend a separate ordinance that would establish and set a financial stipend for future elected officials.

To assist the Committee with reviewing and evaluating the Charter, staff has provided the following materials in your Committee Binder:

**a) Resolution Establishing Charter Review Committee**

The Council Resolution (No. 2248) establishing the Charter Review Committee and setting the expectations of the Committee.

**b) City of Woodburn Charter**

The City's current Charter, adopted in 1982.

**c) League of Oregon Cities, Home Rule Fundamentals**

An excerpt from the LOC's Local Government Fundamentals Guide that covers the basics on home rule authority and the history of home rule charters.

**d) League of Oregon Cities Model Charter (7th Ed., 2018)**

The 7th and most recent edition of the LOC's model charter, which can serve as a comparative tool in the Committee's examination and evaluation of the City's current Charter. The model Charter includes a number of footnotes throughout that provide valuable context and



information regarding the recommendations and options within the model Charter.

## **e) National Civic League Resources**

### **i. Guide for Charter Commissions**

This guide from the National Civic League is a useful resource for local governments that are considering undertaking a charter review process. It includes background on the different forms and structures of municipal governments, qualities and essential elements that make a good charter, and helpful advice for charter review committee members.

### **ii. Model Charter (9th Ed., 2021)**

Like the LOC's model charter, the National Civic League also provides a model document that cities can utilize as a comparative resource and research tool when considering their own charter amendments and updates. Each section of the NCL's model charter also includes commentary that discusses recognized best practices; often advocates for the use of certain language; includes variations or options for certain charter sections; and explains the goals of the model charter's recommended text, language, or position.

## **f) Comparison Chart of Charter Clauses**

This document was prepared to show direct comparisons between sections of the City's current Charter and that in the LOC and NCL model charters. References to specific sections of each charter are included, so the reader can locate the original text in the respective source documents.

Where parts of the LOC and NCL model charters do not have corresponding sections in the City's charter, they will either appear at the end of the document or may be omitted entirely from the chart (e.g. where Oregon state law directly controls a municipal function, like with budget law).

## **g) Woodburn City Council Bylaws**

This document is provided to exemplify areas of the City's governance structure that exist outside the City Charter. The Council Bylaws have

impacts on both the Council's proceedings and the administrative functions of the City. Unlike Charter amendments that must be referred through an election process, Council Bylaws can be changed at any time through an ordinance amendment passed by the City Council.

#### **h) Materials on Stipends for Elected Officials**

##### **i. City Council Agenda Report, December 9, 2019**

This December 2019 staff report was prepared in response to an information request from the City Council at that time and was intended to discuss and provide guidance on the implementation procedure for the Council to adopt a stipend program for future elected officials. No action was taken at that time on the information provided in the report. The legal procedures discussed in the report are still applicable today.

##### **ii. Updated Stipend Survey**

Included with the materials on stipends is an updated survey report that provides current stipend amounts for 29 cities in Oregon.

#### **(i) Woodburn Historical Documents**

##### **i. Pre-1982 Woodburn Charter**

The pre-1982 Woodburn Charter, which includes numerous amendments dating back to 1911, 1926, 1962, 1966, 1970, and 1978.

##### **ii. Oregon Legislative Act to Incorporate the Town of Woodburn (1889)**

The 1889 Legislative Act that incorporated Woodburn into a town under the laws of the State of Oregon.

#### **(j) League of Oregon Cities Legal & Ethical Resources for Elected Officials & Volunteers**

The below documents are included as resources from the League of Oregon Cities regarding public meetings law, public records law, and ethics that apply to members of the Charter Review Committee. Should you have any questions concerning these matters, please do not hesitate to ask the City Attorney.

##### **i. Public Meetings: What Elected Officials Need to Know**

- ii. Guide on Public Meetings Law
- iii. Five Things to Know About Public Records
- iv. Guide on Ethics

**NEXT STEPS:**

This Committee has been given a directive to return a Final Report to the City Council by June 30, 2025. The Report should include any Charter amendments that the Committee believes should be referred to the voters as part of the November election.

Future Committee meetings dates will be set as determined by the majority of the Committee members.



**COUNCIL BILL NO.**

**RESOLUTION NO.**

**A RESOLUTION ESTABLISHING THE CITY OF WOODBURN CHARTER REVIEW COMMITTEE.**

**WHEREAS**, the City of Woodburn's Charter is equivalent to the constitution for the City; and

**WHEREAS**, the voters of Woodburn adopted the most current City Charter in November 1982; and

**WHEREAS**, the City Council desires to establish a Charter Review Committee for the purpose of evaluating the existing City Charter and providing any recommendations for changes to the City Council; and

**WHEREAS**, this will be a temporary committee, meeting as necessary over the next 2–4-month period; and

**WHEREAS**, the City Council may later choose to accept all or part of the Committee's recommendation(s) and take any and all actions necessary to adopt ballot titles and refer proposed Charter amendments to the voters; and

**WHEREAS**, all meetings of the Woodburn Charter Review Committee will be noticed and open to the public; **NOW, THEREFORE**,

**THE CITY OF WOODBURN RESOLVES AS FOLLOWS:**

**Section 1.** A City of Woodburn Charter Review Committee ("Committee") is hereby established for the purpose of advising the City Council on proposed amendments to the Woodburn City Charter and the possible referral of said amendments to City voters at the future November 2025 election.

**Section 2.** The Committee will consist of the following members: the Mayor, three (3) City Councilors, and two (2) at-large members. The City Council, therefore, appoints to serve as members of the Woodburn Charter Review Committee, the following individuals:

Frank Lonergan, Woodburn Mayor  
Mark Wilk, Woodburn City Councilor, Ward II  
Sharon Shaub, Woodburn City Councilor, Ward IV  
Alma Grijalva, Woodburn City Councilor, Ward VI  
Kathy Figley

John Zobrist

**Section 3.** The Committee will be an official public body of the City of Woodburn and shall be governed by Oregon Public Meetings Law and other applicable statutes. Meetings of the Committee will be publicly noticed and minutes shall be kept in accordance with applicable law.

**Section 4.** The Committee shall be subject to and follow the Expectations of the Charter Review Committee, attached as Exhibit A.

**Section 5.** Should the Committee determine that changes to the City Charter are warranted, it shall prepare and submit a report of recommended draft amendments to the City Council, who may then, in their discretion, advance any recommended Charter amendments to the voters.

**Section 6.** The Committee shall terminate at the time charter amendments are voted on by the people of Woodburn, unless the Committee determines changes are not warranted. In such case, the Committee shall terminate when it makes such report to the City Council.

Approved as to Form: \_\_\_\_\_  
City Attorney Date

APPROVED: \_\_\_\_\_  
Frank Lonergan, Mayor

Passed by the Council \_\_\_\_\_  
Submitted to the Mayor \_\_\_\_\_  
Approved by the Mayor \_\_\_\_\_  
Filed in the Office of the Recorder \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Heather Pierson, City Recorder  
City of Woodburn, Oregon

## **EXHIBIT A**

### **Expectations of the Charter Review Committee**

#### **I. PURPOSE.**

The primary function of the Charter Review Committee ("Committee") is to review the existing Woodburn City Charter ("Charter") to determine if it will adequately serve the interests of the community into the future. The Committee is to review, evaluate, and recommend to the City Council any Charter amendment(s) it deems necessary or prudent, or recommend no changes to the Charter.

The Committee will have the following advisory duties and responsibilities:

- a) Serve as an advisory body to the City Council concerning the preparation and adoption of Charter amendments;
- b) Inform and educate the community about the process and purpose of the City Charter and the importance of the Charter; and
- c) Solicit community input concerning the City Charter.

#### **II. MEMBERSHIP.**

The Charter review committee shall consist of 6 voting members who shall be appointed by the Council. The Committee will consist of the following members: the Mayor, three (3) City Councilors, and two (2) at-large members.

A Committee Chair and Vice-Chair will be selected from the membership of the Committee at the Committee's first scheduled meeting. The Chair presides at all meetings and signs all correspondence on behalf of the Committee. The Vice-Chair will perform the duties of the Chair in their absence.

Committee members will serve at the pleasure of the Mayor.

#### **III. SCOPE OF REVIEW.**

The Committee is authorized to review the entire Charter, using the most recent League of Oregon Cities Model Charter as a template, and to make recommendations to the Council on any aspect of the Charter. In addition, staff would recommend that the Committee provide specific recommendations on the following issues/subjects:

- a) The City Administrator's Duties & Functions and the Residency Requirement for the City Administrator;

- b) The Mayor's Duties & Functions at Council Meetings;
- c) The procedures and methods for removing Councilors from Office; and
- d) If time allows, consider whether to recommend a separate ordinance that would establish and set a financial stipend for future elected officials.

#### IV. MEETINGS.

The Committee will be an official public body of the City of Woodburn and shall be governed by Oregon Public Meetings Law and other applicable statutes. Meetings of the Committee will be publicly noticed and minutes shall be kept in accordance with applicable law.

Meetings dates will be set as determined by the majority of the Committee members. Meetings will be held in the Woodburn City Council Chambers at City Hall. Meetings will be open to the public. At the discretion of the Chair, the Committee may designate certain time during meetings to accept public comment on the Committee's work and the Charter review process.

#### V. DECISION-MAKING.

A quorum must be present at Committee meetings to conduct business and is necessary to adopt a motion. A majority of the members of the Committee will constitute a quorum.

The Committee Chair will strive to reach consensus of the Committee whenever possible. Motions on proposed changes to the Charter constitute tentative approval of such changes pending approval of a final report that contains all the recommendations to the City Council. The Final Report shall be completed and delivered to the City Administrator on or before June 30, 2025, whereafter, the Council shall review the Committee's recommendations and may, in their discretion, advance any recommended Charter amendments to the voters.

#### VI. STAFFING.

Staff identified to support the work of the Committee include the following:

Scott Derickson, City Administrator  
McKenzie Granum, City Attorney  
Heather Pierson, City Recorder

In providing staff support, the City Attorney shall undertake the following:

- a) Act in an advisory role to the Committee and attend all Committee meetings.



- b) Support the work of the Committee and assist the Chair/Vice Chair in preparing the agenda. Agendas will be mailed electronically to the Committee in advance of the meetings.
- c) Conduct research as needed.
- d) Review the existing Charter and identify housekeeping changes and present the changes to the Committee for its review.
- e) Prepare and explain substantive provisions for consideration and draft alternative provisions for discussion and consideration.
- f) Prepare a final version of the new recommended Charter for Committee review and Council consideration.
- g) Prepare the ballot title and explanatory statement.

In addition, staff will prepare minutes for the Committee meetings and will post to the City's web page all information related to the Committee's proceedings.



## **WOODBURN CHARTER**

### **CHAPTER I** **NAMES AND BOUNDARIES**

**Section 1. TITLE OF ENACTMENT.** This enactment may be referred to as the City of Woodburn Charter of 1982.

**Section 2. NAME OF CITY.** The municipality of the City of Woodburn, Marion County, Oregon, shall continue to be a municipal corporation with the name "City of Woodburn."

**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 any other agency with legal power to modify them. The recorder shall keep in his or her office at the city hall at least two copies of this charter, in each of which he or she 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** **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. 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 six councilors. The city shall be apportioned into six wards for nomination and election of councilors. The Council of Woodburn shall alter the ward boundaries to maintain an equal population distribution not less than once every ten years.

**Section 8. COUNCILORS.** The councilors in office at the time this charter is adopted shall continue in office, each until the end of his or her 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 councilors shall be elected, each for a term of four years.

**Section 9. MAYOR.** At each biennial general election, a mayor shall be elected from the city at large for a term of two years.

**Section 10. ADMINISTRATOR, JUDGE, CITY ATTORNEY, AND OTHER OFFICERS.** Additional officers of the city shall be a city administrator, a municipal judge, and a city attorney, each of whom the council shall appoint, and such other officers as the council deems necessary. The council may combine any two or more appointive offices, except the offices of city administrator and judge, or the offices of city attorney and judge. The municipal judge shall not be subject in judicial functions to supervision by any other officer.

**Section 11. SALARIES.** The compensation for the services and legitimate expenses of the mayor and councilors and each city officer and employee shall be the amount fixed by the council.

**Section 12. QUALIFICATION OF OFFICERS.** No person shall be eligible for an elective office of the city unless at the time of his or her election, he or she is a qualified elector within the meaning of the state constitution and has resided in the city during the twelve months immediately preceding the election. Persons shall not be eligible for election as councilor unless at the time of his or her election the person is a resident of the ward from which he or she is elected. The council shall be the final judge of the qualifications and the election of the mayor and its own members. No person shall hold elective office of the city while an employee of the city. No former mayor or councilor may be employed by the city in any capacity for at least one (1) year after leaving office.

#### **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 three 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 the incumbent members of the council 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.

**Section 15. RECORD OF PROCEEDINGS.** The council shall cause a record of its proceedings to be kept. Upon request of any of its members, ayes and nays upon any question before it shall be taken and entered into the record.

**Section 16. PROCEEDINGS TO THE 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. The mayor shall vote only in case of a tie. The mayor shall have the authority to preserve order, enforce 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 regular meeting in the month following a biennial general election, 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 office, the president shall act as mayor. In any event, the president of the council shall retain the right to vote as a councilor.

**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 be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of writs and other legal actions, however, this shall not be construed as conferring upon the office of mayor any powers or functions in conflict with other provisions of this

charter. The mayor shall appoint the committees of the council as provided by the rules of the council. The mayor shall appoint the members of the boards, committees, and commissions as provided by ordinance. The mayor shall sign all records of proceedings approved by the council. After the council approves a bond of a city officer or a bond for license, contract, or proposal, the mayor shall endorse the bond. In time of public danger or emergency, if so authorized by council, the mayor shall take command of the police and other departments of the city to maintain law and enforce order. The mayor shall, from time to time, communicate to the council such information and recommend such measures as, in his or her opinion, may tend to the improvement of the finances, the protection, the health, the security, the ornament, the comfort, the administrative management and the general welfare and prosperity of the city. The mayor shall establish a cooperative arrangement to interact between the council and the administrator, to assist in the interpretation of the council's objectives so that the implementation of the council's actions will derive the greatest benefit to the city. This does not preclude the administrator discussing problems with council members. All ordinances and resolutions shall, before they take effect, be presented to the mayor. If the mayor approves thereof, he or she shall sign the same, and such as he or she shall not sign shall be returned to the council with written objections thereto, by depositing the same with the city recorder to be presented to the council at their next regular meeting thereafter. Upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be deemed to have been reconsidered and the questions shall again be put upon the passage of same notwithstanding the objections of the mayor; and if, upon such vote, the council shall pass the same by a majority vote of the incumbent members of the council, it shall have the same effect as if approved by the mayor. If any ordinance or resolution shall not be returned to the city recorder by the mayor within five working days after it shall have been presented to him or her, the same shall have the same force and effect as if approved by the mayor. It shall be the duty of the city recorder to endorse upon each ordinance or resolution upon the records of the proceedings of the council the time when such ordinance or resolution was delivered to the mayor, and the time when the same shall be returned to the recorder's office by the mayor.

## **Section 21. CITY ADMINISTRATOR.**

**(A) Qualifications.** The city administrator shall be the administrative head of the government of the city. The administrator shall be chosen by the mayor and the council, collectively, and as a group, without regard to political considerations and solely with reference to his or her executive and administrative qualifications. The administrator need not be a resident of the city or of the state at the time of appointment but promptly thereafter shall become and during his or her tenure remain a resident of the city. Before taking

office, he or she shall give a bond in such amount and with such surety as may be approved by the council. The premiums on such bond shall be paid by the city.

**(B) Term.** The administrator shall be appointed for an indefinite term and may be removed at the pleasure of the mayor and council, collectively and as a group. Upon any vacancy occurring in the office of administrator after the first appointment pursuant to this charter, the council, at its next meeting, shall adopt a resolution of its intention to appoint another administrator.

**(C) Powers and Duties:** The powers and duties of the administrator shall be as follows:

(1) He or she shall devote his or her entire time to the discharge of official duties, attend all meetings of the council unless excused therefrom by the council or mayor, keep the council advised at all times of the affairs and needs of the city and make reports annually or more frequently if requested by the council, of all the affairs and departments of the city.

(2) He or she shall see that all ordinances are enforced and that the provisions of all franchises, leases, contracts, permits and privileges granted by the city are observed.

(3) He or she shall appoint and may remove a City Recorder, Police Chief, Fire Chief, Director of Finance, Director of Public Works, Library Director and Director of Recreation and Parks. Such appointment or removal shall be with the consent of the council. The administrator shall appoint and may remove all other city officers and employees except as this charter otherwise provides, and shall have general supervision and control over them and their work with power to transfer an employee from one department to another. He or she shall supervise the departments to the end of obtaining the utmost efficiency in each of them. He or she shall have no control, however, over the mayor, the council, or the judicial activities of the municipal judge.

(4) He or she shall act as purchasing agent for all departments of the city. All purchases shall be made by requisition signed by him or her or a designee.

(5) He or she shall be responsible for preparing and submitting to the budget committee the annual budget estimates and such reports as that body requests.

(6) He or she shall supervise the operation of all public utilities owned and operated by the city and shall have general supervision over all city property.

(7) He or she may delegate certain management powers to any department head; however, the final responsibility for all management actions shall rest with the administrator.

**(D) Seats at Council Meetings.** The administrator and such other officers as the council designates shall be entitled to sit with the council but shall have no vote on questions before it. The administrator may take part in all council discussions.

**(E) Administrator Pro Tem.** Whenever the administrator is absent from the city, is temporarily disabled from acting as administrator, or whenever his or her office becomes vacant, the council shall appoint an administrator pro tem, who shall possess the powers and duties of the administrator. No administrator pro tem, however, may appoint or remove a city officer or employee except with the approval of the majority of the incumbent members of the council. No administrator pro tem shall hold his position as such for more than four months, and no appointment of an administrator pro tem shall be renewed more than one time.

**(F) Interference in Administration and Elections.** No member of the council shall directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the administrator in the making of any appointment or removal of any officer or employee or in the purchase of supplies; or attempt to exact any promise relative to any appointment from any candidate for administrator; or discuss directly or indirectly with him the matter of specific appointments to any city office or employment. A violation of the foregoing provisions of this section shall be grounds for forfeiture of the office of the offending member of the council. Nothing in this section shall be construed, however, as prohibiting the council, while in session, from fully and freely discussing with or suggesting to the administrator anything pertaining to city affairs or interest of the city. No employee of the city shall take part in securing, or contributing any money toward, the nomination or election of any candidate for a municipal office.

**(G) Ineligible Persons.** Neither the administrator's spouse nor any person related to the administrator or his or her spouse by consanguinity with affinity within the third degree may hold any appointive office or employment within the city.



**Section 22. MUNICIPAL JUDGE.** The municipal judge shall be the judicial officer of the city. He or she must be a member of the Oregon State Bar. He or she must be a resident of the State of Oregon, but need not be a resident of the city. He or she shall hold within the city a court known as the municipal court for the city of Woodburn, Marion County, Oregon. The court shall be open for the transaction of judicial business at times specified by the council. 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 or she 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 or her to bail pending trial, to issue subpoenas, to compel witnesses to appear and testify in court on the trial of any cause before the court, 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. When not governed by ordinances or this charter, all proceedings in the municipal court for violation of a city ordinance shall be governed by the applicable general laws of the state governing justices of the peace and justice courts.

**Section 23. 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 or inability to perform duties of office, the administrator shall appoint a recorder pro tem, who while acting in that capacity, shall have all the authority and duties of the recorder.

**Section 24. CITY ATTORNEY.** The City attorney shall perform all professional services incidental to the office, and shall appear and conduct all suits, prosecutions, and proceedings, civil or criminal, in which the City of Woodburn is directly or indirectly interested; and shall, when required, furnish opinions upon any subject pertaining to the affairs of the said city submitted by the council or its committees; he or she shall also advise with and counsel all city officers in respect to their official duties and attend the regular meetings of the council and of such committees and boards as shall request his or assistance.

## **CHAPTER VI**

### **ELECTIONS**

**Section 25. REGULAR ELECTIONS.** City elections shall be held in accordance with applicable state election laws. The recorder, pursuant to directions from the council, shall give at least ten days' notice of each city election by posting notice thereof at a conspicuous place in the city hall and in

two other public places within the city. 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 26. TIE VOTES.** In the event of a tie vote for candidates for elective office, the successful candidate shall be determined by a public drawing of lots in a manner prescribed by the council.

**Section 27. COMMENCEMENT OF TERMS OF OFFICE.** The term of office of a person elected at a regular city election shall commence with the first regular council meeting in the month following the election.

**Section 28. OATH OR AFFIRMATION.** All elective officers, the municipal judge, the city administrator, and the city attorney, before entering upon the duties of their offices, shall subscribe and file with the head of the department in charge of city records, an oath or affirmation of office. The oath shall read: "I \_\_\_\_\_, do solemnly swear that I will support the constitution of the United States and of the State of Oregon, uphold the charter and ordinances of the City, and that I will, to the best of my ability, faithfully perform the duties of \_\_\_\_\_ during my continuance therein, so help me God." If the person affirms, instead of the last clause of the oath, there shall be stated: "And this I do affirm under the pains and penalties of perjury."

**Section 29. NOMINATION.** Nomination of a candidate for an elective office shall be in a manner prescribed by ordinance.

## **CHAPTER VII**

### **VACANCIES IN OFFICE**

**Section 30. WHAT CREATES A VACANCY.** An office shall be deemed vacant upon the incumbent's death; adjudicated incompetence; conviction of a felony; other offense pertaining to his or her office, or unlawful destruction of public records; resignation; recall from office; in the case of elected officers or the city administrator, discontinuance of residency within the city limits or the ward in which he or she was elected; 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 or her term of office to commence; or in the case of a mayor or councilor, upon his or her absence from the city for 30 calendar days without the consent of the council or upon his or her absence from meetings of the council for 60 calendar days without consent, and upon a declaration by the council of the vacancy.

**Section 31. FILLING OF VACANCIES.** Vacant elective offices in the city shall be filled by appointment by the mayor. A majority vote of the council shall be required to approve the appointment. The appointee's term of office shall begin immediately upon his or her appointment and shall continue throughout the unexpired term of his or her predecessor.

## **CHAPTER VIII** **ORDINANCES**

**Section 32. ENACTING CLAUSE.** The enacting clause of all ordinances hereafter enacted shall be, "The City of Woodburn ordains as follows:".

### **Section 33. 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 fully and distinctly read 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 first read 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 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 or her name and title of office.

**Section 34. WHEN ORDINANCES TAKE EFFECT.** An ordinance enacted by the council shall take effect on the thirtieth day after its enactment. When the council deems it advisable, however, an ordinance may provide a later time for it to take effect, and in case of emergency, it may take effect immediately.

## **CHAPTER IX** **PUBLIC IMPROVEMENTS**

**Section 35. 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 36. 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. Action on any proposed 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 a majority of the land to be specially assessed therefor. 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."

**Section 37. 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 ordinance.

**Section 38. DEBT LIMIT.** Except by the consent of the voters, the city's voluntary floating indebtedness shall not exceed \$5,000.00 at any one time except as permitted by State Law. 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. The council shall have the authority to issue bonds in an amount that has been approved by a majority of the voters at an election held for that purpose. 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.

## **CHAPTER X**

### **MISCELLANEOUS PROVISIONS**

**Section 39. EXISTING ORDINANCE 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 40. 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 provision of Chapter IV, Section 25 of the previous charter as added by amendment adopted at an election held on May 17, 1946, and an amendment adopted at an election held on May 18, 1962, as follows:

"Section 25. POWER TO LEVY TAX. The common council shall have power to assess, levy, and collect taxes for general municipal purposes upon all property both real and personal which is taxable by law for state and county purposes; provided, in addition thereto, the council may annually assess, levy, and collect a tax not to exceed three mills on the dollar of such taxable property to provide for and maintain a public library, provided further, in addition to the taxes above provided for, the council may at any time the city shall have outstanding bonds, assess, levy, and collect annually, a tax not to exceed one-tenth of such outstanding bonds, and annual interest thereon, for the purpose of redeeming such bonds and the payment of the interest thereon."

And the provision of Chapter X, Section 11, of the previous charter as added by amendment adopted at an election held on March 26, 1948, as follows:

Section 11. In addition to all other taxes authorized by the charter of the City of Woodburn and provided for in the budget of said city, the common council shall levy a tax of 5 mills upon each dollar of taxable property within the corporate limits of the City of Woodburn in the fiscal year 1948-49 for the purpose of providing necessary or expedient maintenance for and supervision of the parks, playgrounds, and other public recreational facilities of said city, and authorizing the common council to include in its budget for fiscal years succeeding the fiscal year 1948-49 a special levy not exceeding 5 mills for such purpose. The funds derived from such tax shall be turned over by the common council to a board known as the Woodburn Recreation and Park Board, which board shall be appointed by the mayor under the provisions of an ordinance covering such appointment, which shall have been or shall be passed by the council."





# Home Rule Fundamentals

**T**he League of Oregon Cities (LOC) was established in 1925 to protect against the erosion of local “home rule” by the state Legislature. The LOC has fought to protect home rule since that time. But what, exactly, is “home rule,” and why does it matter?

In Oregon, home rule forms the legal basis for city governments to act. Thus, home rule is an important legal concept with real-world implications for a city’s ability to serve the needs of its citizens. This article briefly explains the origins of Oregon’s home rule, how home rule impacts city government authority, and the continuing fight between city and state government over the scope of local authority.

## CITIES DERIVE THEIR EXISTENCE FROM THE STATES

The United States of America is a “federal republic,” meaning that government authority is divided between the federal government and the states. The United States Constitution grants limited powers to the federal government and reserves the remaining powers to the state governments. But what about local governments, such as cities and counties?

Interestingly, the United States Constitution makes no mention of local governments. Instead, it places all government authority not granted to the federal government with the states. Thus, the courts have uniformly concluded that cities derive their authority and existence from state governments and lack any inherent authority. In fact, the Supreme Court of the United States has stated that cities are simply “convenient agencies”<sup>1</sup> of their states, and states may abolish or reorganize cities at any time.

## DILLON’S RULE

Under the United States Constitution, cities derive their authority from the states. For that reason, judges and legal scholars took the view that city governments could only act in areas expressly authorized by a state legislature. That principle is often called “Dillon’s Rule,”<sup>2</sup> and is still followed in many states.

In a Dillon’s Rule state, local governments lack authority to act unless they can show how a state law allows them to take an action, such as levying property taxes, maintaining a fire department, or operating a parks system.

The Dillon’s Rule model allows a state legislature to closely control local government structure, the methods of financing local government activities, local procedures, and local government authority to address local problems.

## DILLON’S RULE IN OREGON

In the late 1800s, the Oregon Supreme Court formally endorsed the Dillon’s Rule model of state-local relations.<sup>3</sup> Under Dillon’s Rule, Oregon’s cities were not able to effectively respond to local problems, as no local action could be undertaken without express permission from the Oregon Legislature, which only met for short biennial sessions.

## HOME RULE INCLUDES THE POWERS TO:

- Regulate for protection of public health, safety, morals & welfare;
- To license;
- To tax; and
- To incur debt.

Home rule is the right to local self-government, without express or implied legislative authorization.

## OREGON’S SHIFT TOWARDS HOME RULE

In the early 20th century, a wave of political populism began to sweep the country. As a part of that political movement, cities and political reformers in Oregon began to push for a “home rule” amendment to the Oregon Constitution.

Frustrated by the special interests that dominated the Legislature and by the time it took to address local problems, a group of Oregonians, led by William Simon U’Ren, sought to amend the Oregon Constitution. Their goal was to vest authority over local affairs in the voters, through the adoption of home rule charters. In U’Ren’s view, cities would exist independently from the Legislature and would derive their authority from the city charter, not from the Legislature.

<sup>1</sup> *Hunter v. City of Pittsburg*, 207 US 161, 178-79 (1907).

<sup>2</sup> Dillon’s Rule is named for John F. Dillon, a Justice of the Iowa Supreme Court and later federal judge. See 1 John F. Dillon, *THE LAW OF MUNICIPAL CORPORATIONS*, § 9(b), at 93 (2d ed 1873).

<sup>3</sup> *City of Corvallis v Carlile*, 10 Or 139 (1882).



“The legal voters of every city and town are hereby granted power to enact and amend their municipal charter.”

– Oregon Constitution

In 1906, consistent with a wave of home rule reform sweeping the nation, the voters of Oregon adopted a constitutional amendment that granted the people the right to draft and amend municipal charters. That provision states:

“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[.]”<sup>4</sup>

At the same election, the voters of Oregon “reserved” initiative and referendum powers “to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district.”<sup>5</sup>

Note that the home rule amendments do not use the term “home rule,” nor do they specifically confer substantive lawmaking authority. Rather, the amendments prevent the Legislature from enacting or amending municipal charters, and free cities from the burden of seeking approval from the state before amending their charter. What that means, in practice, is that cities—and their voters—now possess substantial lawmaking authority independent of the state, although the precise relationship between cities and the state has evolved over the last 100-plus years, primarily through judicial interpretation of the home rule amendments. One of the most significant aspects of that relationship is the ability of the Legislature to preempt certain municipal policy decisions.

## HOME RULE CHARTERS

For a city to become a home rule city, its residents must vote to adopt a home rule charter. By doing so, a community vests all possible legal authority in its city government. A city charter operates much like a state constitution in apportioning authorities to various officials and setting out the system of government for that community, whether it be a commission, mayor-council, council-manager, or strong mayor form of government. Today, all 241 cities in Oregon have home rule charters.

<sup>4</sup> Or Const, Art XI, § 2.

<sup>5</sup> Or Const, Art IV, § 1(5).

## ONLINE RESOURCES

### ORIGINS, EVOLUTION AND FUTURE OF HOME RULE



This white paper examines the origin of the “home rule” doctrine in Oregon, how that doctrine has changed over time, and the current legal fight over the meaning of Oregon’s home rule provisions. Available in the LOC’s online Reference Library: [tinyurl.com/home-rule](https://tinyurl.com/home-rule)

### HOME RULE 101

A two-page overview of home rule in Oregon. Available at: [tinyurl.com/home-rule-101](https://tinyurl.com/home-rule-101)

### GUIDE TO STATUTORY PREEMPTION OF HOME RULE

This legal guide is designed to provide city leaders with general information regarding specific examples of how and when municipalities are preempted from taking certain actions or regulating particular conduct. Available at: [tinyurl.com/preempt-guide](https://tinyurl.com/preempt-guide)

### OREGON MUNICIPAL HANDBOOK – Chapter 2: Home Rule & Its Limits

This Handbook chapter explores in detail the “home rule” authority granted to cities by the Oregon Constitution and the limits placed on it by state and federal authority.

Find it online at: [tinyurl.com/handbook-2](https://tinyurl.com/handbook-2)

Once adopted, a home rule charter vests in the city the authority to do all things necessary to address matters of local concern without legislative authorization. The LOC’s model charter, based on the council-manager form of government, was written to provide a city with as much authority as permitted under the Oregon Constitution.





# All 241 cities in Oregon have home rule charters

Oregon is a home rule state, which gives voters the authority to establish their own form of local government and empowers that government to enact substantive policies. Unlike a Dillon's Rule state, home rule authority allows cities to act as policy innovators and quickly address social problems, especially when faced with inaction from the state and federal government.

## PREEMPTION

The following list highlights some of the areas in which the state has preempted local governments from acting. Please note that the list is not comprehensive. For a comprehensive list of preemptions on local authority, please see the LOC's Legal Guide to Oregon's Statutory Preemptions of Home Rule ([tinyurl.com/yc83xkxn](https://tinyurl.com/yc83xkxn)).

### Taxing

- ▶ Cities may not impose or collect a business license tax from licensed real estate brokers.
- ▶ The state has the exclusive right to tax tobacco products.
- ▶ The state has the exclusive right to tax alcoholic beverages.

### General Governance

- ▶ Cities must hold elections in compliance with Oregon election law.
- ▶ Public officials, including city officials, must comply with the Oregon Ethics Code.
- ▶ City government must comply with Oregon's public records and meetings law.

### Land Use

- ▶ Cities are required to comply with statewide land use and development goals.
- ▶ Cities may not prohibit certain types of housing.

### Personnel

- ▶ Cities must offer PERS coverage to police and firefighters.
- ▶ State minimum wage laws preempt contrary city ordinances or charter provisions.
- ▶ State sick leave requirements preempt contrary city ordinances or charter provisions.
- ▶ State law restricts the use of credit score reports for hiring purposes.

### Regulatory Authority

- ▶ State preemption of regulations on vending machines that dispense tobacco or e-cigarette systems.
- ▶ State preemption of local laws concerning various liquor uses and consumption.
- ▶ State building code preempts local ordinances.
- ▶ State preemption of local ordinances that makes a shooting range a nuisance or trespass.
- ▶ State preemption of local regulations on cell phone use in vehicles. ■





# CITY HALL



# Model Charter for Oregon Cities

SEVENTH EDITION  
JANUARY 2018

Last reviewed by LOC attorneys November 2023



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## FOREWORD

This is the 8<sup>th</sup> 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.<sup>1</sup>

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 6<sup>th</sup> 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. Additionally, the National Civic League (NCL) Model City Charter, Ninth Edition (2021), provides for options for mayor-council cities in Appendix 1.

Updates made to this Model in November 2023 were made in consultation with the NCL Model City Charter, Ninth Edition (2021).<sup>2</sup> The new Model published by the NCL focused on structuring the Model Charter to reflect social equity and expanding civic engagement and, although not included herein, does offer an additional section regarding roles of public engagement that could be included or incorporated.

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<sup>1</sup> The first Oregon Model Charter was published in 1947. Revisions were published in 1951, 1959, 1967, 1988, and 2004.

<sup>2</sup> <https://www.nationalcivicleague.org/wp-content/uploads/2021/12/Model-City-Charter—9th-Edition.pdf>.

## **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.<sup>3</sup>

## **Section I NAMES AND BOUNDARIES**

Section 1.1. Titles. This charter may be referred to as the 20\_\_\_\_ Charter.<sup>4</sup>

Section 1.2. Names. The City of \_\_\_\_\_, Oregon, continues<sup>5</sup> as a municipal corporation with the name City of \_\_\_\_\_.<sup>6</sup>

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 grant<sup>7</sup> or allow<sup>8</sup> the city, as fully as though this charter specifically enumerated each of those powers.<sup>9</sup>

Section 2.2. Construction. The charter will be liberally construed<sup>10</sup> 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

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<sup>3</sup> 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.

<sup>4</sup> Insert the year the charter is adopted and the city name. For convenience, this may be used as the charter’s short title.

<sup>5</sup> The continuity of a city’s existence is not broken by the adoption of a new charter.

<sup>6</sup> 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 \_\_\_\_\_.’”

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> Appendix A discusses the legal basis for general grants of authority.

<sup>10</sup> 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.



of particular powers in the charter shall not be construed as limiting in any way the general power granted in this article.<sup>11</sup> This Charter's interpretation shall be examined in its entirety.

Section 2.3. Distribution. The Oregon Constitution reserves initiative and referendum powers as to all municipal legislation to city voters.<sup>12</sup> 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.<sup>13</sup>

### **Section III CITY COUNCIL**

Section 3.1. 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.<sup>14</sup>

Section 3.2. Council. The council consists of a mayor<sup>15</sup> and six councilors<sup>16</sup> nominated and elected from the city at large.<sup>17</sup>

Section 3.3. Mayor. The mayor presides over and facilitates council meetings, preserves order,

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<sup>11</sup> This clause encourages courts to interpret the powers of the city as broadly as possible and discourages restrictive interpretations of general powers statement in § 2.1. 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.

<sup>12</sup> Oregon Constitution, Article IV, Section 1, Subsection (5).

<sup>13</sup> 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.

<sup>14</sup> 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 in a restrictive interpretation.

<sup>15</sup> 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.

<sup>16</sup> 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. NCL Model Charter suggests council composition to range from five to nine members, with larger cities contemplating additional members to assure equitable representation. Cities with significant differences in/conflicts among ethnic, racial, or economic groups should consider which equitable representation of city's population to promote sound governance and avoid legal challenges under the Federal Voting Rights Act.

<sup>17</sup> 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.

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.<sup>18</sup>

- a) With the consent of the council, the mayor appoints members of commissions and committees established by ordinance or resolution.
- b) The mayor must sign all records of council decisions.<sup>19</sup>
- c) The mayor serves as the political head of the city government but shall have no administrative duties.<sup>20</sup>

Section 3.4. Council President. 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.

Section 3.5. Rules. The council must by resolution adopt rules to govern its meetings.<sup>21, 22</sup>

Section 3.6. 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 3.7. Quorum. Except as specifically addressed here and in Section 7.9, a majority of the council members is a quorum to conduct business.<sup>23</sup> In the event of an absence, a smaller number may meet and compel attendance of absent members as prescribed by council rules.<sup>24</sup> In the event of a vacancy due to resignation or other events, the quorum is reduced accordingly solely for the purpose to make necessary appointment(s) to reach the required quorum as outlined in Section 7.9.<sup>25</sup>

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<sup>18</sup> 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.

<sup>19</sup> The council may assign by ordinance or council rules additional duties to the mayor for authenticating ordinances, resolutions, orders, and other council documents.

<sup>20</sup> 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 National Civic League (NCL) Model Charter (2011), 8th edition, and the NCL Model Charter (2021), 9<sup>th</sup> edition.

<sup>21</sup> 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.

<sup>22</sup> The League has published a set of Model Rules of Procedure for Council Meetings available at: <https://www.orcities.org/application/files/7316/9222/9843/ModelRulesofProcedureforCouncilMeetings-updated8-15-23.pdf>.

<sup>23</sup> A majority is more than half of the council. For a seven-member council, a quorum is four or more.

<sup>24</sup> 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.

<sup>25</sup> This language is an example of a voting requirement that is separate from the quorum requirement and is important if the charter is judicially examined for governance purposes. The purpose of this separate voting requirement is to prescribe a process that addresses the scenario of when a council has insufficient council members to support council operations and to avoid judicial adjudication and/or county intervention.

Section 3.8. Vote Required. The express<sup>26</sup> approval of a majority of a quorum of the council is necessary for any council decision,<sup>27</sup> except when this charter requires approval by a majority of the council.<sup>28</sup> The voting requirement to fill council member vacancies, if there is less than a majority of council member remaining, is separate from the quorum requirement required to conduct all remaining city business unless otherwise stated.

Section 3.9. 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.<sup>29</sup>

## **Section IV LEGISLATIVE AUTHORITY<sup>30</sup>**

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.<sup>31</sup>
- b) The council may adopt an ordinance at a single meeting by the unanimous approval of at least a

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<sup>26</sup> “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.

<sup>27</sup> 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.

<sup>28</sup> 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.

<sup>29</sup> 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.

<sup>30</sup> 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.”

<sup>31</sup> 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 insufficient to enact an ordinance under this section. See footnote 21 above.

quorum of the council,<sup>32</sup> 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 thirty days 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 thirty days after adoption if it contains an emergency clause.<sup>33</sup>

## **Section V ADMINISTRATIVE AUTHORITY<sup>34</sup>**

Section 5.1. Resolutions. The council will normally exercise its administrative authority by approving resolutions.<sup>35</sup> 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

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<sup>32</sup> 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.

<sup>33</sup> 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. *Kadderly v. City of Portland*, 44 Or 118 (1904). 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).

<sup>34</sup> 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.

<sup>35</sup> 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.

council at one meeting.<sup>36</sup>

- 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.<sup>37</sup>

## **Section VI QUASI-JUDICIAL AUTHORITY<sup>38</sup>**

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.<sup>39</sup>
- 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.

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<sup>36</sup> 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.

<sup>37</sup> 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.

<sup>38</sup> 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.

<sup>39</sup> 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.

- 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.<sup>40</sup> At each general election after the adoption, three councilors will be elected<sup>41</sup> for four-year terms.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup>

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.<sup>45</sup>
- b) No person may be a candidate at a single election for more than one city office.

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<sup>40</sup> 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.

<sup>41</sup> 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.

<sup>42</sup> 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.

<sup>43</sup> 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.

<sup>44</sup> 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 NCL Model Charter (2011), Eighth Edition, and Ninth Edition (2021).

<sup>45</sup> Courts have consistently invalidated residency qualifications of more than 12 months.

- c) Neither the mayor nor a councilor may be employed by the city.<sup>46</sup>
- 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.<sup>47</sup>

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.<sup>48</sup>

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.

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

- a) Upon the incumbent's:
  - 1) Death;
  - 2) Adjudicated incompetence;<sup>49</sup> or
  - 3) Recall from the office.<sup>50</sup>
- 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;<sup>51</sup>

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<sup>46</sup> 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.

<sup>47</sup> This model charter does not prescribe a nominating procedure. It allows flexibility by requiring that an ordinance govern the nominating process.

<sup>48</sup> 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. NLC Model Charter does not restrict reelection to subsequent terms as it restricts the voters' opportunity to keep in office council members of whom they approve.

<sup>49</sup> "Adjudicated incompetence" means inability or unfitness to manage one's affairs because of mental condition determined in a court proceeding.

<sup>50</sup> Recall of elective officers is governed by Oregon Constitution, Article II, Section 18 and ORS 249.865 to ORS 249.877.

<sup>51</sup> Section 7.4 requires each member to be a qualified voter and resident of the city. Under Section 7.8(b)(3)(4), moving outside the city or allowing voter registration to lapse permits the council to declare a council position vacant.

- 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 shall be filled by appointment by a majority of the remaining council members.<sup>52</sup> Notwithstanding the quorum requirement set forth in Section 3.7, if at any time council membership is reduced to less than \_\_\_\_ [*insert number based on total council membership required for majority*], the remaining members may, by majority action, appoint additional members to raise the membership to \_\_\_\_ [*insert majority council number*].<sup>53</sup> As little as a single council member may constitute a majority for purposes of filling vacant council seat(s), if all other council seats are vacant. 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.<sup>54</sup>

## **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.<sup>55</sup> 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.<sup>56</sup>
- 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.<sup>57</sup>

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<sup>52</sup> 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.

<sup>53</sup> The clause provides clear voting/quorum requirement for filling vacancies by council action if the membership falls below the quorum otherwise required for council action as set forth in Section 3.7.

<sup>54</sup> 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.

<sup>55</sup> 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.

<sup>56</sup> This gives the manager a role in policy development consistent with the NCL Model Charter (2011), Eighth Edition and Ninth Edition (2021). It makes the manager responsible for carrying out city policy adopted by council resolution or ordinance.

<sup>57</sup> This section adds more specific qualifications for city manager consistent with the NCL Model Charter (2011), Eighth Edition and Ninth Edition (2021).



- c) The manager need not reside in the city.<sup>58</sup>
- 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;<sup>59</sup>
  - 5) Organize city departments and administrative structure;
  - 6) Prepare and administer the annual city budget;
  - 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;<sup>60</sup>
  - 10) Perform other duties as directed by the council; and
  - 11) Delegate duties but remain responsible for actions of all subordinates.
- f) The manager has no authority over the council or over the judicial functions of the municipal judge.<sup>61</sup>

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<sup>58</sup> 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.

<sup>59</sup> Note that the manager appoints, supervises and removes city employees. The council appoints, supervises and removes city officers.

<sup>60</sup> 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 NCL Model Charter (2011), Eighth Edition, and Ninth Edition (2021).

<sup>61</sup> 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.

- 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 manager 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 manager, 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.<sup>62</sup> 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.<sup>63</sup>

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.<sup>64</sup>

### 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.<sup>65</sup>

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<sup>62</sup> A similar charter restriction was the basis for damages in *Still v. Benton*, 251 Or 463 (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.

<sup>63</sup> 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 192.311 to ORS 192.431.

<sup>64</sup> 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 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.

<sup>65</sup> 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.

- 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.<sup>66</sup>

## **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.<sup>67</sup>

**Section 9.2. Merit Systems.** The council<sup>68</sup> by resolution will determine the rules governing recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees based on merit and fitness.<sup>69</sup>

## **Section X PUBLIC IMPROVEMENTS**

**Section 10.1. Procedure.** The council may by ordinance provide for procedures governing the

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<sup>66</sup> ORS 51.035.

<sup>67</sup> 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.

<sup>68</sup> 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.

<sup>69</sup> "Merit and fitness" allows wide discretion in the interpretation and application of personnel rules and practices.

making, altering, vacating, or abandoning of a public improvement.<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup>

Section 11.4. Severability. 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.

Section 11.5. Time of Effect. This charter takes effect \_\_\_\_\_, 20\_\_\_\_.

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<sup>70</sup> Few procedures applicable to cities appear in state statute. ORS 223.387 to ORS 223.401 apply to assessments for local improvements. ORS 223.805 to ORS 223.845 relate to city motor vehicle parking facilities. ORS 271.080 to ORS 271.230 apply to vacation of certain public property.

<sup>71</sup> Bancroft bonds may not “exceed .03 of the latest true cash valuation of the city.” ORS 223.295(1).

<sup>72</sup> It may be necessary to continue unusual charter provisions such as bond approvals, special levies or annexations.

## 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*, construes this section and states that Salem's charter "accepts this offer [of extramural powers] in broad terms." 34 Or App 739 (1978). 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."<sup>a</sup> 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[.]"<sup>b</sup> 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.<sup>c</sup>

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<sup>a</sup> Or. Const. Art. XI, Sec. 2.

<sup>b</sup> Or. Const. Art. IV, Sec. 1a (1906), Sec. 1(5) (1968).

<sup>c</sup> *Terry v. City of Portland*, 204 Or 478 (1955); 33 Or Op Atty Gen 174 (1967).

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

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<sup>d</sup> *Paget v. City of Pendleton*, 219 Or 253 (1959).

<sup>e</sup> *Jarvill v. City of Eugene*, 289 Or 157 (1980), *US cert den*, 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 (1979).

<sup>f</sup> *Beaverton v. International Assoc. of Firefighters*, 20 Or App 293 (1975).

<sup>g</sup> *Davidson Baking Co. v. Jenkins*, 216 Or 51 (1959).

<sup>h</sup> *City of Idanha v. Consumers Power, Inc.* 8 Or App 551 (1972), *aff'd*, 13 Or App 431 (1973).

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

<sup>j</sup> *Dunn v. Gray*, 238 Or 71 (1964); *City of Tigard v. Werner*, 15 Or App 335 (1973).

<sup>k</sup> Cf. *Leathers v. City of Burns*, 251 Or 206 (1968).

<sup>l</sup> *City of East Portland v. County of Multnomah*, 6 Or 62, 64 (1876).

<sup>m</sup> *City of Idanha v. Consumers Power, Inc.* 8 Or App 551 (1972), *aff'd* 13 Or App 431 (1973).

<sup>n</sup> *City of Idanha v. Consumers Power, Inc.* 8 Or App 551 (1972), *aff'd* 13 Or App 431 (1973).

<sup>o</sup> *Paget v. City of Pendleton*, 219 Or 253 (1959).

<sup>p</sup> *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.

<sup>q</sup> *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.<sup>90</sup> City power under the home rule amendments is only intramural in character.<sup>91</sup> A city may only exercise extramural power delegated by the Legislature.<sup>92</sup> 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

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<sup>90</sup> *Thurber v. Henderson*, 63 Or 410, 415-16 (1912); *State ex rel Mullins v. Port of Astoria*, 79 Or 1, 19-20 (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.”).

<sup>91</sup> *Kiernan v. City of Portland*, 57 Or 454, 464 (1910); *State ex rel Mullins v. Port of Astoria*, 79 Or 1, 18-19 (1916); *Curtis v. Tillamook City*, 88 Or 443, 454-55 (1918).

<sup>92</sup> *Couch v. Marvin*, 67 Or 341 (1913); *McBee v. Town of Springfield*, 58 Or 459 (1911); *Landess v. City Cottage Grove*, 64 Or 155 (1913).

Debt limitations.....	ORS 223.295
Ethics.....	ORS Chapter 244
Public meetings and records.....	ORS 192.311 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*<sup>93</sup> 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.

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<sup>93</sup> 123 Or 1 (1927).





SIXTH EDITION

# Guide for Charter Commissions





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# Foreword

3

Imagine being a member of the Constitutional Convention in Philadelphia and having to make critical decisions that would determine the course of American politics and government for generations to come. It's not too much of an exaggeration to suggest that serving on a local charter commission is the closest thing we have to being part of a constitutional convention. In home rule cities, residents are able to draft and revise their own governing charters and make decisions about election procedures, ethical codes, legislative methods and administrative structures.

Most of us learn about the "separation of powers" approach of the framers in our civics or American history classes, but few of us are given much information about the various theories and structures of local government. The federal constitution is mute on how cities should be governed. The "city council/city manager" form of government, which a majority of cities have adopted, has a very different set of arrangements from the constitutional framework. It's not surprising that when members of the public call us for information on charters, their questions often betray a surprising lack of knowledge about how and why local government works the way it does.

When the framers met in 1787, they were working without blueprints, armed only with their knowledge of classical history and their familiarity with works of Locke and Montesquieu. Since the early 1900s, charter commissioners have had the benefit of models and research materials developed by the National Civic League. The league published its first Guide to Charter Commissions in 1945. During the years that followed, the various editions of the guide have served as the most widely used and recognized source on the complex process of reviewing and revising local charters. The last edition, issued in 1991, was one of our top selling publications.

When it came time to republish it, however, we decided enough years had passed to justify a substantial revision and redrafting. Although the old edition served as a source for this document, the Sixth Edition represents a considerable change in tone, content and structure. The chapters have been revised and reordered and the language made less formal, so the guide will be more accessible for lay users. The primary author of the new guide is Wendy Hassett, Ph.D., who worked with us on the various drafts of the new document. Wendy is a Clinical Associate Professor of Public Affairs at The University of Texas at Dallas (UTD). Before joining the faculty at UTD, she worked as an assistant city manager and has over twelve years of experience in local government.

We would also offer our thanks to the reviewers of the guide. Terrell Blodgett, a former chairman of the National Civic League, and a Professor in Urban Management at the LBJ School of Public Affairs at the University of Texas at Austin, was instrumental in initiating this revision process. James Svava, Ph.D., a professor at the School of Public Affairs at Arizona State University and a participant in the committees to revise the 7th and 8th editions of the Model City Charter, served as primary reviewer of the document and offered key insights and feedback.

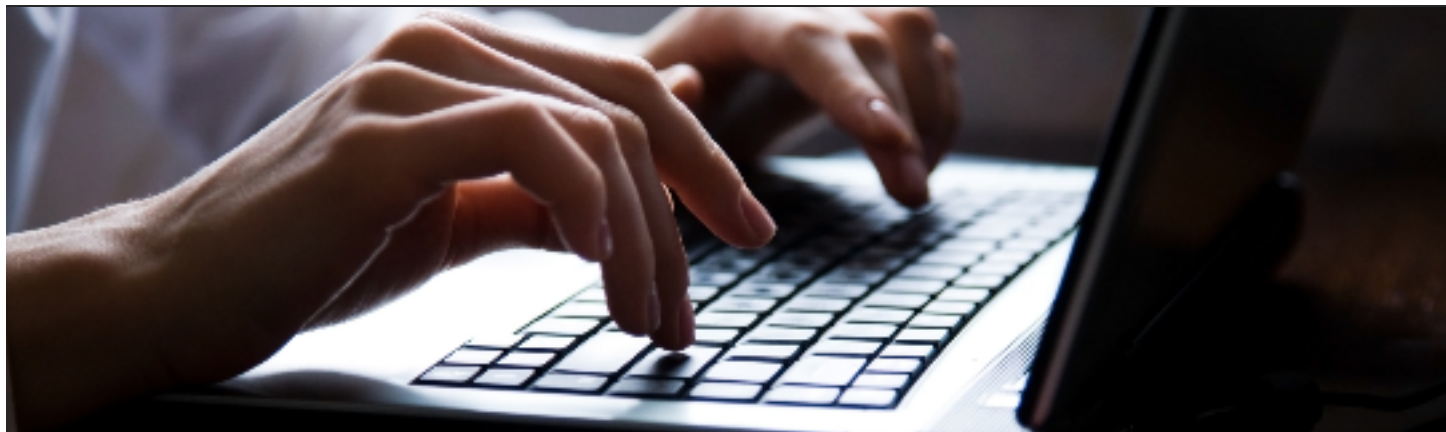
We also wish to thank an anonymous donor, the NCL Board, Council of Advisors and Board Chairs and NCL chief information officer Mike McGrath for their contributions to this project. The guide is intended to be used as a supplement to the Eight Edition of the Model City Charter, the "blueprint" for government structure used by thousands of community around the world.

Gloria Rubio-Cortés

President, National Civic League

# Chapter One

4



## Introduction to the Charter Process

**Of all levels of government, local government is by far the most common point of contact for the average citizen. In fact, it is difficult to imagine any important aspect of American life that is insulated from the influence of local government. An individual may interact with federal or state agencies a handful of times in an entire lifetime, but he or she will interact with local government employees on a much more frequent basis—while speaking to a police officer, paying a water bill or greeting the people who have come to collect the garbage.**

Quite a lot is expected from local governments. They provide a vast array of services to residents, everything from public safety to utilities, recreation, education, transportation, storm water management, zoning and land use regulation and enforcement, construction permitting and inspection, and much more. And while cities, towns, villages, and counties are increasingly expected to be self-reliant in providing these services, they are also expected to execute policy mandates handed down from state and federal governments.

Local governments are also expected to adjust to changing times and expectations. For example, there was a time when there were no cities providing recycling services. However, a heightened sensitivity to environmental concerns brought that issue to the forefront. Today, recycling is a common service provided at the local level that a growing number of citizens have come to expect. Without a doubt, managing and administering the business of local government is a challenging task that requires those in leadership positions to carry out an expanding array of public services efficiently and effectively day after day.

The journey of a local government is one fraught with challenges and achievements, successes and failures, risks and rewards. One of the most interesting things about local governments is the flexibility they have in forging their own paths. Within some constraints set by state law, municipal governments create their own futures through the decisions made by citizens and local elected officials. One important way that a local government controls its own destiny is through its charter.



A charter is the foundation of a local government and functions as the municipal equivalent of a state or federal constitution, setting forth guiding principles for governance. Composed by citizens, a charter specifies the most fundamental relationships between a government and its community. It establishes the framework for how a local government operates in terms of its structure, responsibilities, functions, and processes. The way public officials are elected, the form of government, and the role citizens play in local government are just a few examples of the important choices articulated in a charter.

Because a charter is the vehicle that allows a local government to officially control its operations, many cities adopt a charter soon after formal incorporation as a municipality. And, in spite of the differences in the legal status of cities and counties, many counties also adopt charters. This is particularly the case with counties that perform functions similar to those commonly provided by municipalities.

A charter can be amended by following the process set out in its respective state constitution and sometimes in the charter itself. Although some states permit the council to make charter changes, any charter amendment proposed by a charter commission must be formally considered by the citizens in an election, or referendum, before it can be officially incorporated into the charter. Citizen approval is important because a local government's charter influences virtually every aspect of its operations, for better or for worse.

Having competent, responsive, and effective individuals filling elected and administrative positions is critical to the success of any local government. The charter plays a role in this as well. If the local government runs efficiently, effectively, and openly, it is viewed in a positive light. Capable and civic-minded citizens are much more likely to volunteer their time and talents to an organization that is well-regarded. On the other hand, good men and women are reluctant to align themselves with a struggling government guided by an ineffective or out-of-date charter. Whether those in public positions are experienced or novice, they are much better positioned to be effective in moving the community forward if the locality is working with a well-constructed charter. Clearly, the benefits of an effective local charter are far-reaching.

## **Reviewing the Charter — The Big Picture**

When facing a new or unfamiliar task, it is often helpful to step back and examine the “big picture.” So, what brought you here? What has led your community or local government to the place where an examination of its charter is warranted? What are you trying to achieve?

Understanding the circumstances surrounding the charter process is important. There can be many different reasons behind the initiation of a charter commission. Here are a few examples:

- a law requires periodic evaluation of the charter
- a small (but growing) city becomes increasingly complex but is operating with an out-of-date charter that is simply not working any more
- residents desire a more representative body of elected officials
- a vocal group wants to change the existing form of government
- a newly-incorporated local government needs to draft its first charter
- widespread community discontent regarding a string of governmental policy or project debacles triggers an interest in making changes to the charter
- residents desire greater governmental accountability

- a newly-elected slate of public officials calls for change - including charter revisions
- poor governmental performance is linked to overly-restrictive charter provisions
- city officials realize that the charter conflicts with state law

Whatever has occurred in your local government to trigger an examination of its charter, it is critical that the reasons behind the effort be understood and carefully scrutinized. Initiating a process to change a local government charter should never be a “knee-jerk” reaction to a recent problem. If it is entered into by choice, a charter review should be undertaken only after serious consideration.

## Why Review the Charter?

Most local governments are fortunate to have charters that were written by civic-minded and well-meaning individuals who engaged in serious deliberation and thoughtful discussions as they made charter-related decisions. There are reasons behind why the charter of each community was written as it was. However, new generations come into leadership positions with new ideas. Leaders of each generation need to learn by precept and experience what the previous ones had come to accept as true through experiences of their own. And, as is so common in local governments, dissenters emerge from time to time and criticize the “outdated” charter document created in the distant past and question how it could be relevant and useful today. Reviewing the charter does not necessarily mean changing the charter if it is sound in design. In some cases, the charter review can be viewed as a routine “checkup” that may find the patient is healthy.

Many local governments have made changes to their charters since they were first adopted. Periodic general review can be a useful exercise. Some charters have added multiple revisions over time without a comprehensive review while other revisions resulted from earlier efforts to carefully reform the charter. While updating and changing a charter can be beneficial, it should only be done for the right reasons within the proper context. A charter commission carries a weighty burden in exercising its judgment to determine which features should change and which should be retained.

So, why are charter changes necessary? The easy answer is “because things change,” or “because we want to see real change in our local government.” But the easy answer is not always the right answer. Changing a charter is not a cure-all. Many local governments are able to turn things around and make sweeping organizational changes without changing their charters. Examples abound of newly-elected public officials, innovative city managers, and creative department heads making considerable positive impact on the communities they serve without modifying their respective city charters.

On the other hand, demographics, economics, and dynamics of cities, townships, and counties change over time. And, that may mean the values of the community have changed as well. For example, because of the unique characteristics of a growing number of residents living in different geographic pockets of the city, the public interest might be better served with council members elected by districts instead of at-large. Vocal representatives from the flourishing business community may join together to support the idea of adding a professional manager to the city administration.

Many consider the election of a fresh slate of public officials to be a solution to poor government performance, waste, or corruption. This kind of wholesale change certainly can and has made a difference in many local governments. However, sometimes efforts by even the most seasoned and well-intentioned elected officials can be stalled or thwarted by an overly-restrictive charter. In some cases, only after charter

revisions are in place can public officials make significant strides to improve governmental operations, processes, or policy. Things change with the passage of time, and so should charters.

The process of writing a charter or drafting charter amendments is not an easy undertaking. This is by design. A charter provides stability and consistency to a local government. The charter writing process is a major task that has long-lasting impacts - not just for the local government, but also for its residents. Therefore, broad community involvement is needed. The process requires the commitment, time, and talents of citizens and governmental staff. Ultimately, voter approval is necessary for the proposed charter or charter changes to take effect. It is not a task that should be entered into lightly.

### When to Consider Changing the Charter

Not every local government issue is a charter issue. Most problems governments face have nothing to do with the quality of the charter. Many concerns about the workings of local government can (and should) be handled other ways. There is a danger to making changes to a charter when those changes could be achieved another way. In as much as charter changes can bring about positive results, they can also produce overly cumbersome procedures, unjustifiable advantages for certain groups, and onerous restrictions on governmental leaders.

So, before a decision is made on whether or not to pursue a desired change through the charter, other possibilities should be considered first. The following questions are suggested to sort out how best to address the area(s) of concern:

- Can this problem be solved by the passage of an ordinance?
- Can this problem be addressed with an administrative measure (such as amending an existing departmental or city-wide administrative policy or procedure)?
- Does the mayor or city manager already have the authority to make changes that might address this problem?
- Should a solution to this problem be sought by getting new officials in office?
- Might state legislation address this problem more effectively than a change to the local charter?

If the answer to any of these questions is “yes,” that alternative should probably be tried first. While many problems could be solved through a charter amendment, most problems can be addressed more efficiently other ways. Furthermore, many local government services and regulations are mandated by federal or state law. In other words, altering a municipal charter cannot eliminate or change policies or requirements established at higher levels.

### What Charter Change Can and Can't Do

So what can charter change do? And, perhaps more importantly, what can it not do?  
Charter change CAN...



- alter a form of government so the new form is better aligned with the preferences of citizens
- restrict or increase options available to governmental leaders
- alter electoral representation
- clarify ambiguity or confusion caused by existing charter language
- redistribute powers among elected officials, appointed officials, and governing bodies as well as between city officials and citizens
- set the stage for governmental leaders to achieve desired changes
- convert elected governmental positions to appointed positions or vice versa

#### Charter change CAN'T...

- automatically increase the quality of governmental products and services
- eliminate political in-fighting and make elected officials achieve consensus (although governmental form can affect the likelihood of conflict)
- expand the scope of municipal powers in states without home rule
- jumpstart the local economy
- decrease local crime
- improve the school system
- stop a controversial public project
- change or eliminate state-mandated activities

A charter can easily become a tediously detailed document that hampers those in office as they work toward improving services, streamlining governmental functions, or reorganizing departments by severely limiting available options. While a certain level of control over governmental action is necessary and appropriate, balancing control with organizational and process flexibility and discretion should be the ultimate objective of any charter.

### ***Does Our Problem have a Charter Solution?***

Sometimes when a local government faces a difficult challenge, leaders consider conducting a charter review in an attempt to find a solution. In these cases, an objective and well-informed decision should be made that changing the charter is the best path to take. Some charters include a provision requiring a formal charter commission be appointed from time to time (every five or ten years, for example) to conduct a thorough review of the charter. In other cases, a charter review may be statutory - mandated by state law. This kind of routine examination may or may not involve an attempt to "fix" something that appears to be broken in the local government.

So, what kinds of challenges justify convening a charter commission? The following are a few issues faced by local governments that often warrant an examination of the charter.

**A Charter-Created Problem:** This kind of problem is one that originates in the charter. It, therefore, can only be addressed by a change to the charter. For example, a city with a charter that establishes a "rotating mayor" (in which the mayoral position rotates through council members every year) may determine that this system for selecting a mayor is no longer effective. Over time, it has become evident that while many competent individuals have served as mayor, recurring problems continue. It appears that the real problem has nothing to do with the actions or abilities of those who have served as mayor over the years. Instead, the problem appears to be the rotating mayor system established in the charter. To address this, the rotating

mayor system must be changed in the charter document.

**Lack of Formal Power:** Regardless of the home rule status of a state, all local governments are able to adopt a charter to establish basic principles for local governance. Local government powers cannot be assumed by adopting an ordinance, enacting state-enabling legislation, adopting a new administrative policy or procedure, or taking any other action emanating from the city council, county commission, the mayor, or the city manager. If the local government has not assumed the available state-specific powers through its charter, the city's authority will be limited unnecessarily. This challenge is faced by a recently-incorporated city functioning without a municipal charter. The city must adopt a charter that assumes all powers available to it so the city can exercise its legal authority and have formal control over all aspects of its operations.

**Form of Government:** Governmental structure matters. The way a local government is structured affects how decisions are made and how the everyday business of government is carried out. This is particularly true with the form of government. When the ideas held by citizens about how the government functions are not in line with the city's particular form of government, a local government may consider changing its structure. This kind of structural problem requires a charter solution.

A word of warning should be mentioned here. A form of government should never be changed in response to the desire, action, or inaction of a particular *person, for example a mayor or city manager*. Changing a form of government does not change a person's leadership style, personality, management approach, or preferred political strategies. For example, the current mayor in a council-manager city may argue that he or she needs more power to be an effective leader and changing to a mayor-council form will allow him or her to be more successful. This argument falls short for two reasons. First, future mayors may not be as effective as the current one. Changing a form of government is not a short-term solution. Once the form is changed to mayor-council, city government would depend heavily on the mayor's political and administrative leadership under the leadership of both effective mayors and ineffective mayors. Therefore, changing form of government should never be aimed at providing a person with more power. Second, mayors can exert substantial leadership within the council-manager form when they bring together a clear majority and set goals for the city manager. Finally, altering the city's form of government should never be used as a weapon to eliminate a person from the organization. If there is dissatisfaction with the person serving as city manager, for example, this person should be removed by the council rather than shifting from a council-manager to a mayor-council form and eliminating the position of city manager.

The question of whether change in form should be considered and, if so, which form should be chosen is a major issue in some charter reviews. A preliminary discussion of factors to consider in choosing form of government is presented as an appendix to this publication. For additional information, see *The Model City Charter* published by the National Civic League.

Once a general consensus exists that convening a charter *review commission* is the right approach or convening a commission is required by the charter, work may begin.

## The Road Ahead

Residents of a community have the right and responsibility to shape their local government. While the level and extent of citizen participation may vary, a process of actively and effectively engaging citizens should be at the heart of any charter creation or revision.

One of the first steps in changing a local government's charter is identifying a group of individuals who may be willing to serve on a charter review commission. A charter review commission is a body authorized by law and exists for the sole *purpose of drafting and ultimately* submitting to the voters either a new charter or revisions to an existing charter.

Like a constitutional convention at the state or national level, a charter review commission closely examines the government and its present charter, studies the experience of other cities or counties under their respective charters and forms of government, determines the best principles of local government to build into proposed charter changes, and then drafts a new charter, charter amendments, or a presumably improved charter. Because the commission is typically composed of community residents who are not involved in daily governmental operations, the commission, by design, is able to be objective and impartial in its evaluation.

While the individuals appointed to this commission may be chosen various ways, there are some common features of their work that are consistent across the country. For instance, there is typically a time constraint placed on the commission to complete its work, the commission encourages and solicits citizen input, and the final commission recommendations are considered by voters at the polls.

The group of individuals chosen to serve on this commission is charged with a unique and important civic-minded task. An opportunity to serve one's community in this way typically comes once in a lifetime. Furthermore, if voters approve the changes, the commission's work will have lasting impact for many years to come.

Because each local government is unique in its strengths, community dynamics, power structures, and personalities, there is not one "right" way to conduct a charter review. This Guide is designed to be used in conjunction with the latest edition of *The Model City Charter* published by the National Civic League. The *Model City Charter*, which is judiciously updated from time to time to remain current and relevant, has proven extremely useful to many local governments that have written new a new charter or amended an existing charter. This Guide is intended to complement the *Model City Charter* by providing helpful suggestions and strategies aimed at facilitating what many consider a complex and overwhelming task: the process of charter review.

# Chapter Two

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## The Charter Review

During the early 1900s, many cities faced serious challenges to effective governing. As a result, they became actively involved in charter reform. Since charter reform provides a way to redefine the basic rules of governmental operation, cities looked to their charters as a way of reducing corruption, enhancing local autonomy beyond what was granted by state governments, improving government efficiency and strengthening control over municipal finances. Over the twentieth century, more than eight cities in ten over 10,000 in population changed their form from the traditional weak mayor-council form or chose one of the new approaches as newly created cities.

Today's local governments also face challenges and often look to their charters for solutions. A well-functioning local government relies on established rules, regulations, practices, and precedent, and its charter is a large part of this. Sometimes a local "crisis" or series of public debacles bring into question some aspect of the charter. In other cases, a local government might be required to conduct a charter review every ten years, for example, to assess whether or not any changes should be considered. When a routine charter review is mandated, the review is necessary even if there is not a specific reason for a review. It is important to note that a charter review commission does not singlehandedly have the power to change the charter. Instead, this body has the ability to draft charter amendments or a new and presumably improved charter to be considered by local voters at the polls.

While a charter contains the enduring guiding principles for governmental operations, it also must be able to be adapted and changed. Although many good charters stand the test of time, they are documents crafted by flawed human beings who are unable to see into the future. Therefore, charters need to be revised and updated from time to time - in good times and in bad.

Charter review starts with the appointment of a commission made up of local residents who are tasked with methodically and objectively reviewing the existing charter and various aspects of local government operations. The scope of work assigned to charter commissions varies widely. As a result of the review, the group determines what (if any) changes should be considered for formal adoption. Because each community is different, there is not one "right" way to do this. Each charter review process will be unique to the community conducting it.

While writing or amending a charter requires the involvement of local residents, interestingly only a

handful of people have ever had any experience drafting a charter or changes to one. So, for most people involved in the process, it is their first and only experience with such a task. Without a doubt, this body is challenged with an uncommon and significant civic duty.

## Commission Membership

Opportunities for direct citizen involvement in local government often garner a healthy amount of attention. While citizen involvement in committees, advisory groups, public hearings and the like is a significant and valuable part of local government operations, membership on a charter commission offers an uncommon opportunity for public service to one's community. Participation in the charter process is citizen involvement at a higher level and with greater potential impact.

A charter commission is a body authorized by law and established for the single purpose of drafting and submitting to the voters a newly created local government charter or revisions to an existing charter. The appointment of this group of individuals, typically between 15-20 registered voters, is often governed by laws and regulations that specifically deal with charter creation and revision. For example, in some cases the commission members might be required to be appointed by the mayor. In other cases, it may be the council that appoints the members. In still other situations, these individuals are elected by the voters. In any case, this independent commission of citizens is empowered to organize its review within the assigned scope and establish its schedule in order to facilitate its study of the charter and certain aspects of the government.

Given the importance of the commission's task, the membership of the charter commission is worthy of careful consideration. Individuals chosen to serve on the commission have a special opportunity for local statesmanship. If voters ultimately approve the work of the commission, the efforts of this group will have lasting impact on the future of the community and the local government. Therefore, selection of the individuals to serve in the charter process is a crucial decision.

All participants should be eager to work hard and willing to share their talents and expertise. It is important to understand that participants bring with them unique value systems, biases, differing opinions on what "good government" is, good and bad life experiences living in different communities, and (in some cases) personal agendas. As a result, deeply-held beliefs and viewpoints set the stage for complex committee dynamics, passionate discussions, and heated debates.

At the heart of this process is the active and focused engagement of a diverse and representative group of community members. Diversity is important for several reasons. The involvement of diverse groups and perspectives will not only contribute to a better final product, but also lend credibility to the validity of the final outcome. Therefore, no group should be left out. All segments of the community should be represented and no one should be excluded based on race, creed, color, ethnicity, national origin, religion, sex, sexual orientation, gender expression, age, height, weight, disability status, veteran status, military obligations or marital status.

When the commission is composed of community residents who are not involved in day-to-day governmental operations, the commission is able to be detached, objective and impartial. The most effective charter commissions are not dominated by lawyers, scholars, and accountants, but made up of civic-minded, intelligent lay people with a common-sense approach to things. The members should a) be in touch with the perspectives present in the community; b) command respect from local residents; and c) bolster the confidence of citizens in the process and the work of the commission.

Special mention should be made about the role of local elected officials. While in many cases the mayor and/or council plays a role in the appointment of commission members, the involvement of elected officials should end at that point. The charter process functions best when it is rooted in citizen involvement rather than one influenced (intentionally or unintentionally) by political officials directly serving as members. In some cases, the commission's recommendations go back to the council, which has the authority to decide whether the proposal will go to the people for a vote or may determine the final language of proposals. Still, the commission should do its work independently and give the council and the voters its best thinking about charter change.

## Key Commission Players

**The Chairperson.** The chairperson of the commission will have a vital role to play. Because commission members are respected and intelligent individuals in their own right, it follows that they should be led by someone who is widely regarded as a person of integrity and good judgment who is politically neutral, accomplished, and widely-respected. The ability to collaborate is also valuable. This individual might be a former mayor or other well-known civic-minded individual who is level-headed and has a good sense of the work of a charter commission.

A number of real advantages come from the city council naming a chairperson and commission members simultaneously. However, if the council does not choose a chairperson, it is up to the commission to do so. Oftentimes a commission takes up the subject at its first meeting without much thought. Due to the significance of this position, the selection of the person to head the commission should not be taken lightly. The most successful charter commissions are led by a well-chosen chairperson. Unfortunately, instead of a thoughtful and deliberative decision, many times the selection of the chair is made quickly and relegated to a random selection from among those willing to be considered.

So, what makes for a good commission chair? A good chair is skilled at conducting well-run meetings. But there is much more to being a successful chair of a charter commission. A good chairperson has a sincere passion for the work of the commission and is able to translate that passion to its members. A good chair motivates commission members and speaks personal words of support and encouragement when needed. A good chairperson connects ideas, challenges opinions, helps define problems, and ultimately assists the group in reaching consensus on the issues that must be addressed.

These qualities are found when the chairperson uses a participatory style over an autocratic one to encourage active involvement among the members. This kind of chair acts more as a facilitator than as the local expert with all the answers. The chair leads the meetings, focuses the work of the commission, and keeps the process organized and on-track. The chair does not give up his or her right to participate in shaping the decisions of the commission but participates in a fair way. For example, the chair does not use the position to give advantage to some members nor to discourage members who hold different views. Further, the fair chairperson does not forcefully express his or her views in order to discourage others from expressing their opinions.

It is a lot to ask for the chairperson to singlehandedly address the myriad of issues that may arise during commission deliberations. Ideally, the commission chair will have the ability to call upon competent advisors to assist when needed. A discussion of two such advisors follows.



A Resource Person. The intensity and scope of the work of a charter commission make it ripe for conflict. The politically-charged task for which this body is responsible can easily result in communication breakdowns and gridlock. For this reason, many chairs have found it valuable to have a substantive resource person, consultant, or other expert sit alongside the chairperson and serve as a “go-to” person when a complex or substantive question arises. This person may also make early presentations to the commission on form of government alternatives and on other key issues as they arise. This person is not a member of the commission and does not have a vote.

A resource person might be educated in public affairs, political science, or public administration with experience in charter writing, such as a university professor or a senior staff member at an institute of government. In other cases, this person may be a consultant with a favorable record of involvement with charter commissions. If a charter commission does not have the luxury of engaging a paid resource person, a “pro bono” volunteer from a university or governmental institute with charter experience may be an option to consider. Regardless, an outside resource person is often an extremely useful addition to the commission as a source of technical guidance, suggestions, and advice. The key is that this person *has had experience with charter commissions* and is willing to bring that experience to the commission.

**A Legal Expert.** Every charter commission should have access to sound legal counsel. However, it is important to note that the study of law is by no means a study of local government, politics, and public administration. And, not just any lawyer can provide the information the commission will need.

For charter writers, it is highly important to be sensitive to the state-specific legal context in which the resulting charter must operate. A legal advisor can be invaluable in helping the group avoid potential conflicts with state provisions. Sometimes specific charter provisions must be included to allow a local government to take advantage of or to escape from laws established at the state level.

City or county attorneys are of particular value to the commission because they are familiar with the existing charter, the legal problems the local government may have had with it, and the applicable state laws. Furthermore, laws that govern the county, school districts, and other units may come into play. The detailed and sometimes complex arrangements that exist among a local government and its public sector components, quasi-governmental entities, and associations underscore the value of a knowledgeable, state-specific legal advisor who can address questions that arise.

However, not all legal experts are created equal when it comes to charter commissions. If the city attorney has experience drafting charters or charter revisions, that individual may be the preferable choice to serve as the commission’s legal expert because this individual will be affordable and responsive. However, if the city attorney does not have this kind of experience, the commission needs the ability to hire outside legal counsel with state-specific experience drafting new or revised charters.

If an outside attorney is hired, the city’s full-time attorney should still be involved in the process by providing testimony to the commission and reviewing and commenting on the final draft document. After all, long after the commission has dissolved, the city attorney will be the one to defend the charter if and when it is attacked. Therefore, ongoing involvement of the city’s own legal advisor is a critical part of the process.

Finally, a commission should not refrain from claiming power or including a provision in the charter just because there is doubt about how it will stand up in court. The powers of many local governments have

been unduly limited not by the laws or courts of the state but by the timidity of the charter commission or the commission's legal counsel.

## Funding

As a conscientious public body, the commission should make every attempt to minimize its financial obligations. However, every charter commission must have some money available to cover its necessary expenses.

As often as possible, the commission should use public buildings for its meetings. It is likely that the local government will make its office staff and equipment available to the commission so that secretarial services, stationery, copying, and postage can be handled in-house. Even more technical matters such as website updates and bulk email messages may be completed by local government staff. Instead of paying outside experts for their time, local government staff members (such as the finance director, for example) should be considered because they typically prove to be informative advisors willing to share their expertise with the commission at no cost.

While visits to other communities by commission members may occasionally be desirable, junkets at public expense are not appropriate. A better alternative is to invite speakers from outside the community to speak to the group during its meetings.

No commission member should be paid a salary or honorarium. Furthermore, commission members should never assume that they will be reimbursed for expenses without first consulting the appropriate government staff member.

If a significant cost is identified and deemed necessary or appropriate, the commission should make a formal request to the local authorities for the needed funds. Only necessary expenses should be reimbursed - such as consulting fees or outside technical assistance. Accounts of all receipts and all expenditures should be carefully maintained.

## Public Outreach

The best charter is of little value if voters do not approve it. For this reason, a concerted effort to win public understanding and acceptance should begin the day the charter commission is selected and continue until the day the vote is taken on the proposed charter or amendments. This may mean a small work group is charged with this task.

Many former charter commission members would likely agree that only half of their job was charter writing. The other half was sound public outreach. Many well-written charters have been defeated at the polls due to poor public relations and a lackluster voter education program.

Positive publicity and voter education can be achieved a number of ways. The most common and long-standing approach is through public hearings. Unfortunately, public hearings are notoriously poorly attended and are considered by many to be ineffective. Fortunately, there are a number of other ways to gather public input and share information. Neighborhood-based meetings and specially designed "dialogue" sessions can be organized. At the latter, participants discuss the qualities they would like to see promoted in their government and their community rather than suggesting specific charter provisions.



Local government newsletters, speakers' bureaus (including commission members), brochures, local magazines and newspaper articles, television and radio ads, public access television channels, and updates sent via email are other ways citizens can be informed of the process and invited to participate.

The local government website should include the most up-to-date information about commission meeting times, agendas, and minutes. Also through this site, residents should be able to sign up for charter-related email alerts, press releases, and meeting reminders. Another useful idea is to make available well-written speeches, white papers, PowerPoint presentations, and talking points addressing the commission's work and related efforts. An online forum can be set up to collect views about the charter revision. In sum, extensive information about commission meetings should be easily accessible to the community, ideally published electronically and available online.

It is not unusual for the work of charter commissions to pique the attention of schools and civic groups. Such an exercise in democracy is worthy of attention and serves as an excellent real-life case study of government in action. For example, junior charter commissions may be used as a learning tool for students. Of more immediate importance is that the attention of students will often indirectly invite the attention of their parents who, of course, are part of the voting public who will be asked to support the new charter at the polls. Therefore, the commission should willingly work with schools and civic groups to plan activities or projects related to the charter commission's work.

Residents deserve the fullest opportunity to be informed and to participate in the process. To this end, charter commission members should encourage the involvement and attention of a variety of community groups. Local residents can never have too much information concerning the vital charter-related issues being discussed in commission meetings. That said, the information released to the public must be easily understood and clearly organized to avoid confusion often caused by information overload.

Public involvement has many benefits. One important benefit of an aggressive public outreach and education process is that it often results in a constructive and thorough review of the commission's work which, if considered honestly, will improve the final product. Furthermore, when residents are afforded the opportunity to offer their opinions and suggestions in an environment in which ideas and input are taken seriously, residents are more likely to support the commission's recommendations at the polls.

Therefore, it is not enough to rely on just a few avenues to effectively educate and update the citizenry on the commission's work. Publicity and education efforts must be multi-pronged. In all cases, the message should be consistent: a charter commission is active; its members are hard at work; it is considering complex and substantive issues; citizens are encouraged to get involved and offer their ideas and opinions; and once the commission has completed its work, citizens will decide in an election whether or not to adopt the proposed charter or charter amendments. In sum, the message to the broader community should be that the commission is working in good faith to make the best decisions possible about what is best for the community and its local government.

While communicating with the public is important, individual commission members should be wary of making any statements that are inconsistent with the overall public message endorsed by the whole commission. This includes taking a public stand prematurely on controversial matters which can undermine the progress of the group. When in the public eye, it is important for commission members to guard against untimely public comment on issues on which the commission might change its mind in light of further study. Oftentimes, the best answer to some questions is, "We are still studying the question."

Every local political situation is unique to a certain extent. Without a doubt, local leaders best understand local dynamics and can come up with the most effective public education strategies aimed at gaining the support of a majority of citizens. These efforts should become more intense during the final campaign. A good public outreach and voter education campaign allows the commission to keep in touch with what the public is thinking and saying about the commission's work. This is important throughout the process, but is of particular importance as the election draws near.

## The “Charge”

The task of a charter commission is to prepare and present to the voters the most straightforward, clear, and forward-looking charter it can. Many times the specific “charge” for the commission's work comes from the city council. In particular, a commission may be authorized and empowered to do the following:

1. Examine the existing local government charter.
2. Conduct a comprehensive or limited study of various aspects of the local government.
3. Examine the procedures and interrelations of the different parts of the government to determine the role the charter plays in the current state of affairs.
4. Research the experiences of other cities or counties under their respective charters and forms of government to discover better governmental arrangements and practices.
5. Determine from independent study and investigation the principles of local government that should be built into the proposed charter or proposed charter changes.
6. Draft the proposed charter or charter amendments in a clear, logical, and consistent way.
7. Conduct its affairs in such a manner as to win the respect of local residents.
8. Educate citizens about the process and the progress of the commission and encourage adoption of the charter or its amendments.

Sometimes a particular area of the charter is singled out for review. For example, a charter commission may be instructed to examine whether the mayor's term should stay the same or be lengthened, if a city administrator should be added to the mayor-council structure, or if the number of council members should be changed. Charter commissions are convened for a host of different reasons from the mundane (such as a legal requirement to do so every ten years) to the politically charged (such as in reaction to municipal scandal and corruption). Identifying the factors that serve as the impetus for charter review is extremely helpful to organizing the early work of the commission and in setting the right tone for productive meetings.

In this vein, many questions may cross the minds of commission members:

- What are the expectations for the commission?
- To whom is the commission accountable?
- Is there a crisis in local government that gives clear purpose to the commission's work? If so, how might that situation influence the commission's work? Is the crisis related to conditions that can be affected by the charter?
- Were any members of the commission “instructed” by someone (such as the mayor or council) to promote a certain position or advocate specific changes to the charter?
- Will the commission's recommendations go directly to the voters or to the city council first for review and possible revision?

Once these kinds of issues are addressed, the real work can begin. One suggestion is to hold a kick-off meeting early in the process to bring everyone together and work through any concerns such as those listed above.

## Getting Started

Holding an initial kick-off meeting with the commission and local elected officials has a dual purpose. First, it officially conveys the reasons behind creation of the commission and offers a sense of purpose. Second, it provides an opportunity to address lingering concerns or questions and to dispel any uncertainty or doubt in the minds of commission members, local residents, and the media.

A useful exercise for the commission members themselves soon after the kick-off session is to create a “shared vision of government” - a statement aimed at drawing members together towards a shared purpose, motivating them when times get tough, and giving their work meaning. This vision should not specify particular charter provisions (such as an election method or form of government), but instead should describe the qualities of the government the community would like to have in the future. This is not a simple assignment. Creating such a statement requires an examination of the values held by the community and the unique characteristics of the population. It is an exercise in finding unity in the midst of diversity.

While the individuals serving on the commission have different backgrounds, priorities, and beliefs, their shared aspirations for good government will be a uniting force. Discussing the diverse perspectives represented on the commission will be time-consuming. Supportively listening to the ideas of others requires patience. However, the tangible achievement of common ground evidenced by a written shared vision statement can be a significant early milestone.

Another idea for the early meetings of the commission is to invite one or more members of previous charter review commissions to speak to the group. These individuals may be local residents who have participated in past charter efforts or individuals from other communities that have recently gone through the process. Those with charter-writing experience will likely have some “words of wisdom” to share with the group that can prepare and inspire them to face what lies ahead.

The commission works together for only a limited period of time (generally no longer than 12 to 18 months) since there is typically a time constraint placed on the group to complete its work. Working with a strict time constraint places a premium on the efficient use of time. For this reason, many charter commissions find it helpful to establish a calendar at an early meeting. This calendar should set forth the work of the commission, meeting times, and important dates such as elections and other deadlines that are fixed and cannot be changed. It is not unusual for city councils to specify - or at least have in mind - when they want to hold the charter election. Other times there are legal restrictions on when an election may be held. For example, in Texas, cities have only two dates in a calendar year in which an election can be held. Knowing these kinds of deadlines up front is a key step to the success of any charter commission.

## The Commission at Work

The work of charter writing is not easy. The issues are complex. While writing or amending a charter is challenging, it is not impossible. Frankly, the charter process often stirs passion and controversy. It can be messy, noisy, and complicated.

Throughout the process, some members may feel that progress is not coming fast enough. Some will want to slow the process to allow for further study or public input. Others may want to move ahead without additional public comment. Some may become frustrated. Some may become angry. The challenge for the commission is to remain focused on the work at hand in spite of these obstacles.

As uncomfortable and contentious as commission discussions may become, the best commission members stay focused on what they are asked to do. They are not afraid of what is hard, even when success is uncertain. The greater the success of the commission in writing a charter that advances the public welfare of the community, the more honor and satisfaction will come to its members.

Typically, a commission holds many meetings and public hearings. Meetings should be held in a convenient and well-known location that encourages public involvement. Meeting attendance is critical and should be required of members. Because the ongoing involvement of the membership is so important to the process, members who are not able to attend meetings consistently should be replaced. For example, it is not uncommon for members who miss three consecutive meetings to be removed and replaced.

Many charter commissions reach out to the community by holding certain meetings outside the confines of city hall or the commission chambers. One strategy to encourage participation is to hold some meetings in various public venues throughout the community - essentially moving select meetings to the “backyards” of local residents.

During meetings, the commission hears testimony from public officials, staff, representatives of community organizations, and members of the public. It receives reports on special topics, listens to experts make presentations on various issues, and debates important policy matters and discusses draft reports on special topics. Often, a city staff member or administrator serves as a non-voting liaison and provides some level of staff or clerical assistance.

It is possible and desirable for meetings to be both businesslike and informal at the same time. Meetings should be planned and organized, but not rushed. The chair should see that members stick to the business at hand while retaining an atmosphere of friendly informality. Meeting agendas are beneficial because they help focus the group’s discussion. Everyone should be heard with time allowed for focused deliberation.

Upon completion of its draft, the group should come back together to review all of the proposed changes. A few meetings should be set aside for this. Additional clarification or resolution may be needed to address any charter revision recommendations that are unclear or overlapping. Arriving at the proper charter language is a key final step because no matter how good the recommendations may be, they cannot simply be compiled. Legal edits and other modifications aimed at providing continuity and harmony will be required at this point. Therefore, if a substantive resource person was involved in the charter process, soliciting his or her comments and suggestions on the draft is a worthwhile step. If the local government did not engage such a person, the commission should attempt to get “pro bono” feedback and suggestions from a university or governmental institute resource person. The city attorney should also be called upon to provide comments.

A good practice is to publish and circulate an official yet tentative charter draft and invite public scrutiny. Inviting reactions to the draft serves a number of purposes. First, it affords another opportunity for genuine feedback from citizens. Second, it informs the voters that the commission is, for the most part, done with its drafting work. Third, it allows the commission to make adjustments prior to the election which may

strengthen the charter and improve its chances of success. Fourth, it helps to clear away doubts and rumors about what is and is not contained in the recommendations. Finally, it reminds residents that the final decision lies in their hands in the upcoming election.

At the end of its work, the commission should prepare and issue a “Report to the Voters” that serves as an executive summary telling the community what principles the commission followed and explaining the main features and merits of the proposed charter or charter amendments. Circulating such a document allows the commission to share candidly with the voters what benefits are expected from the proposed charter and the rationale behind various elements. If appropriate, an organizational chart illustrating the proposed governmental structure can often be helpful. If used, this Report should be released with the draft charter serving as a guide for reporters and editors as to what the commission considers the most important features of the recommendations. It is important that the first impression of the commission’s work be an accurate impression.

### **Should We Draft a Completely New Charter or Amend the Old Charter?**

One question that commonly arises during the work of charter revision is whether to set aside the existing charter and draft a completely new charter - or simply amend the current version. The appropriate approach depends on a number of factors including the quality of the existing charter and the extent and characteristics of the contemplated changes. If the charter requires a number of fundamental changes (such as changing the form of government), it is often better to submit the changes as a clean, new draft of a complete charter.

Charters have so many interlocking provisions that it is often difficult to produce a consistent, coherent result by submitting a series of separate amendments. Many local governments have been frustrated when attempts to produce a basic change with patchwork amendments have resulted in a disjointed, confusing document. If the entire charter is re-written, it has the additional benefit of allowing the commission to “clean-up” minor defects in the original document which, while needed, did not on their own warrant the convening of a charter commission.

One of the common arguments in support of charter amendments is that changing only certain parts of the charter is likely to encounter less opposition than presenting a completely new document to the voters. When voters are considering an entirely new document, opposition to one part of the charter might jeopardize public support of an otherwise acceptable charter. Such opposition is typically focused on just one or two sections. If this is a possibility, some states allow the commission to submit the charter to the voters with alternatives on the matter(s) in question. The burden, then, is on those who advocate the alternative option. They must then convince the voting public that their alternative position is better than the one recommended by the commission. In many cases where this approach has been taken, citizens supported the charter as a whole *and* approved the choice preferred by the commission. It should be noted that when submitting a proposition with alternatives, care should be taken to make sure that the alternatives do not result in conflicting provisions.

### **Dealing with Opposition**

Opposition is often encountered with a good charter, so the commission should not be surprised or disheartened when it occurs. Strong opposition does not occur in all cases, however. Many charter reforms are strongly supported by local officials and members of civic-minded community organizations who know

from personal experience the need for improvements to the workings of the local government.

When they surface, opponents can and will come from very different places. Certain groups and individuals will be opposed to any departure from the status quo. Others will be opposed to changes because they do not go far enough. Elected officials often do not support changes to their offices, powers, duties, or salaries. It is not uncommon for leaders of political parties, influential community groups, or other factions with interests at stake to make their disapproval known.

It is important to understand the viewpoints and fears of such groups in order to win their support, or, if necessary, counteract their influence. Often the support of these individuals is lost because it is assumed they are unalterably opposed to charter change. However, sometimes a group may be won over by a meeting to discuss their concerns. Other times, a non-objectionable provision in the proposed charter could be added to allay their concerns and win their support.

While the commission should be sympathetic and open to listening to the demands and views of all local residents, it must take the high ground by appealing directly to those in opposition to support sound principles of government first and foremost. It cannot do this by appeasing each pressure group and yielding to its demands. Making weak compromises often results in an inferior document. The dignity, independence, and effectiveness of the commission will be destroyed if it gives in to the demands of special interest groups in ways harmful to the public welfare.

The important thing to remember when compromises are suggested is that the essential features of a charter must be in harmony. More than one charter has failed at the polls or (worse yet) in implementation due to compromise provisions that are incompatible with its basic pattern. If enough broad support exists for the effort and the draft document as a whole, this support will override objections to small matters that are raised.

Evidence is overwhelming that the vast majority of citizens in any community want “good government.” That is, people desire a government that can be described as ethical, effective, and efficient. A useful byproduct of discussions about good government is that often the opposition comes to the realization that, while they won’t agree with the majority on many things, common ground can be found when it comes to the underlying principles of good government.

The commission’s constant message of working for a better government coupled with a sincere interest in involving all citizens in a transparent and open process will do much to counteract the negative pressures of special interest groups that may surface in opposition to the work of the commission.

## The Election

The process for how and when the charter or charter amendments are considered by voters varies greatly by community. Upon completion of its work, the commission forwards its final recommendations to either the elected officials for their consideration or directly to the voters. Ultimately, the decision is in the hands of the local residents.

In many cases, recommendations of the charter commission are added to a scheduled upcoming election. In states that are covered by the Voting Rights Act, the Justice Department typically has to approve a charter election. In other cases, charter recommendations are a stand-alone issue and the timing of the election can

be determined by the local government. If the charter commission is able to weigh in on the timing of the election, it should carefully consider the matter in light of the political calendar, weather, holidays, and other local community dynamics in an attempt to time the election to encourage high voter turnout.

Regardless of the timing of the election, appropriate and sufficient time should be allowed between the completion of the commission's work and the election to allow for ample public comment and feedback. Voter approval of the charter recommendations will be the test of the vision, courage, statesmanship, and public outreach exercised by the commission's members.

### **Conclusion**

All charter reviews are different. Most commissions enjoy substantial discretion in what they can recommend to address the areas within their purview - from sweeping changes to no changes at all. For example, following an evaluation of the government and its charter, a commission may recommend leaving the current charter basically intact. On the other hand, a group may recommend a far-reaching change such as changing the city's form of government. In the end, the best commission recommendations are those based on transparency, diversity, and widespread public involvement.



## Dos and Don'ts for Commission Members

**DO be a team player.** You should be intent on making significant improvements. So, share your thoughts and ideas and respectfully listen to the comments of others. Be wholeheartedly engaged and committed to the process while respecting the time constraints imposed on the commission.

**DO be open to finding the form of government that best fits the preferences of local residents.** If the commission is considering form of government in its deliberations, each member should put any preconceived ideas aside in order to evaluate the options objectively based on the fundamental features of each and the experiences of other cities.

**DO be willing to compromise and change your mind in light of evidence.** Let go of the belief that if you lose, I win. That said, compromising does not mean giving up your good ideas and accepting inferior ones advocated by others. Taking the easy way is not the best way. Halfway measures have little usefulness or appeal. Statesmanlike compromise is a group process of give and take in which the most practical ideas rise to the top, are blended together, and made into a workable system. The end result may not please you in all respects, but it will represent legitimate consensus and, likely, substantial improvement.

**DO keep in mind that the voters are the final decisionmakers on whether to accept or reject the proposed changes.** Be willing to play a part in educating the electorate and publicizing the work of the commission. An informed citizenry will make the best decision on election day. So, welcome the involvement of many people in the discussion. Be sensitive and responsive to what you hear from them. Know that ongoing community support for the work of the commission keeps naysayers in check and ultimately leads to good results when the votes are counted.

**DO be cautious of making premature public statements on charter-related matters.**

**DON'T refuse to support a good idea for improvement to the charter because you feel it is not good enough.** The "perfectionist" - the person who insists on perfection or nothing - will likely be at best a distraction and at worst a serious roadblock impeding the important work at hand.

**DON'T use commission membership as a springboard for your future political career.** You were chosen to be involved to serve the citizens, not your ambitions. Any attempt to use your involvement as a stepping stone toward a career in politics will not be lost on other members of the commission who will likely discount your opinions as political posturing. Commit to putting the public welfare ahead of your own career aspirations. Focus your attention on the work of the commission. If your work on the commission triggers in you a genuine desire to seek political office or if a citizen movement drafts you for office, so be it. In either case, you will get more respect as a political candidate when you make that decision made after your involvement on the commission rather than before.

**DON'T try to solve all the ills that might plague the local government by pushing for overly restrictive prohibitions in the charter.** Power is always subject to possible abuse in the hands of the wrong people. The challenge is to establish a system that will enable local residents to hold their public officials responsible for the way they use power. There is no gain in setting up a new government and then hamstringing it by denying it the flexibility and power essential to any effective government.

**DON'T allow the commission to surrender sound principles of good government to the stubborn opposition.**



# Chapter Three

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The most practical way of keeping a charter to moderate bulk is to restrain the tendency common among charter commissions of trying to solve all municipal problems right in the charter. This is not the proper function of a charter, which is rather to establish a framework within which the city government, representing the people, can solve its problems as they arise.

— Thomas H. Reed, *Revising a City Charter*

## The Charter Document

### What Qualities Make a Good Charter?

A charter is not only used by attorneys. It is used by a cross-section of the community - elected officials, government employees, and everyday citizens. Therefore, the language used and writing style employed should be user-friendly and easily understood by an average citizen.

The better a charter is, the easier it will be for public leaders and officials to operate a proactive and successful local government. A good charter functions as a harmonizing, integrating, and controlling document. Therefore, the qualities of a good charter are worthy of consideration. Good local government charters are (1) straightforward; (2) consistent; (3) thorough, but not exhaustive; (4) flexible; and (5) focused on the fundamentals.

**1. Straightforward.** Simple and straightforward language facilitates comprehension. A good charter is easily understood by laymen as well as lawyers. The reality is that elected officials, government professionals, community leaders, and average citizens - none of which are legal experts - will be the main users because *they* are the ones that will implement the charter and refer to it when a question arises. Good charters are understood without a law dictionary. That said, including certain clauses or phrases that have been accepted by the courts as having a precise meaning may be necessary to ensure the charter will hold up in

the courts. Furthermore, much care should be taken in choosing the “right” words. The choice between words such as “shall” and “may” is an example of how exact wording is very important.

**2. Consistent.** Consistency throughout a charter is important on many levels. The writing style, verbiage, and content should be considered when looking at consistency. Comparable provisions should be handled similarly. Charter provisions of substance that do not harmonize with each other may lead to disunity, unhealthy bickering, and government paralysis. Inconsistencies not only breed confusion for the local government, but also can trigger future litigation.

In addition, a charter should be free of any internal structural contradictions or inconsistencies. For this reason, once a basic form of government is chosen, the charter commission should be wary of adding elements of other forms or eliminating features inherent to the chosen form. For example, the structure of the council-manager form can be completely undermined by provisions that permit the mayor to wield administrative powers exercised in the strong mayor form. While adopting widely accepted variations within a form can be workable, caution must be taken to avoid creating a system that is essentially at war with itself.

**3. Thorough, but not Exhaustive.** A good charter is comprehensive in terms of addressing all the necessities to facilitate an effective government. However, it should not attempt to be exhaustive by addressing every possible future scenario. There is a fine line in which the goal should be to include all necessary and essential components in a thorough, yet concise manner. Details should be avoided as much as possible. However, brevity at the expense of clarity can lead to confusion and litigation. A good rule of thumb is to express the intended meaning with the fewest and best words, whether it takes ten or one hundred. Generally, better charters are shorter charters. That said, the length is somewhat an outgrowth of state law and what broad areas need to be included. Detailed procedures should be established in administrative codes which are more easily updated and changed.

**4. Flexible.** Desires of citizens change over time. State and federal mandates on local governments are on the upswing. Residents demand new and expanded services. “Doing more with less” is a mantra often heard in local government. Those who make management and administration decisions are challenged every day to do just that. Officials must often use creativity and innovation to come up with new ways of doing things in order to free up time and resources to take on new programs or services. Providing local government leaders the flexibility to make changes is critical.

Good charters leave far more discretion to local government officials than charters of the distant past. Simply put, a charter should confer upon the elected officials and administrative staff broad powers to implement it and to promote the community’s welfare. In the interest of local self-government, the charter must free the hands of decision-makers rather than tying them.

**5. Focused on the Fundamentals.** Good charters set forth general principles rather than legislative details. A charter’s focus can be limited to the fundamentals when it is supplemented by an administrative (or municipal) code that addresses the details of the local government’s administration and procedures. An administrative code is simply a collection of ordinances that sets forth the particulars of how the broad statements in the charter will be implemented on a daily basis. When procedural details are handled in the code or elsewhere (such as a policy and procedures handbook, for example), the charter can focus exclusively on the most fundamental provisions aimed at protecting the citizens, the form of government, and the relationships between the elected officials and the administration.

## Essential Components of a Charter

Local governments were not created by U.S. Constitution. Local governments are, in fact, creatures of the states. Therefore, they are regulated by the states and have only the powers and functions given to them by their respective state constitutions and legislatures. So, to discuss local governments in general terms is virtually impossible due to the different legal and political contexts represented by different states across the country.

However, an important court decision that is widely accepted as governing relationships between cities and states is known as “Dillon’s Rule.” Iowa Supreme Court Chief Justice John Forrest Dillon’s view was that because cities are creations of the state, they have only the powers *specifically given to them* by the state constitution or legislature or included in a state-approved charter. If there is ever a question or “gray area” regarding the power of a local government to do something, the answer is always “no.” In other words, if it is unclear whether or not a local government has the authority to take some action, the authority has not been granted. Chief Justice Dillon’s viewpoint had significant impact on cities in the late 1800s because other courts and legislatures embraced the same perspective.

Because a growing number of local governments wanted more flexibility and discretion in decisions about issues that impacted them, a movement to counteract Dillon’s Rule emerged. The concept of “home rule” supports the rights of cities to govern themselves. Supporters of home rule defend the right of municipalities to manage their own affairs without state interference or involvement.

Today, most states have provisions in their state constitutions or other legal instruments that allow some form of municipal home rule, allowing citizens to exercise expansive decision making powers through their municipalities. Local governments that operate under home rule have broad powers that include control over things *that the state legislatures have not specifically granted and those things not specifically prohibited*. Essentially, home rule frees a local government in many ways to take actions that those without home rule are not able to take. For this reason, many cities adopt home rule charters. It is important to note that the degree of home rule afforded local governments varies greatly by state and is often limited to specific classes of cities and counties, for example.

Unfortunately, not all states have home rule. Local governments in these states still operate with restricted powers. To a large degree, the power of cities located in states without home rule is limited to the specific powers granted to them by their state legislatures. For example, a city located in a non-home rule state that encounters a situation in which a certain authority has not been specifically granted by the state is required to get special legislation passed at the state level before it can take that action. On the other hand, cities with home rule are freed from the necessity of running to the state legislature every time the public welfare requires something new to be done or an old function to be performed in a new way.

A city in a home rule state should boldly include in its charter broad discretion over the scope of services it provides in order to take full advantage of the power available under the home rule provisions of its respective state. Doing so will provide the opportunity to undertake new policies or new methods to address issues that are not currently anticipated. Is there any real danger in this approach? The answer is no. In spite of broad powers that a far-reaching home rule charter might afford a municipality, there are several safeguards that will keep a city from venturing too far into uncharted territory:

1. Most city councils are highly conservative about undertaking new services or enacting novel or inappropriate regulations that may put the reputation of the city at risk.
2. Typically, city budget dollars are tight. Risky ventures that may impact the city coffers too severely are generally derailed before they get too far.
3. Periodic elections, vocal residents, citizen surveys, governmental audits, and watchdog groups keep municipal decision makers mindful of the consequences of their actions.
4. Regardless of charter provisions, legal restrictions still exist to limit some municipal activities and powers. Limits have set by the state constitution, state legislature, and the courts. The U.S. Constitution prevents any city, as an agent of the state, from depriving any person of life, liberty, or property without due process. The court system exists to test any possible abuse.

Because particular laws and circumstances vary from place to place, the essential components of a charter will be discussed in general terms. Detailed and sometimes complex arrangements exist among a local government and its public sector components, quasi-governmental entities, and associations. Setting local peculiarities aside, the essential provisions found in most charters can be organized into a few specific categories: powers of the city; city council; city manager (if applicable); departments, offices, and agencies; financial management; elections; general provisions; charter amendment; transition and severability.

**1. Powers of the City.** A starting point for many local government charters is to address and define the scope of powers of the local government. Within the context of specific state law, a local government should claim all powers it may legally exercise through its charter. Again, a city in a home rule state should include a statement that allows for broad discretion in order to take full advantage of the power available under home rule provisions set forth at the state level.

When writing a new charter or making revisions to an existing one, commission members need to remember that the rules established by charters do not exist in a vacuum in organizing, empowering, and regulating local governments. There is a “hierarchy of laws,” so to speak. And while a charter which establishes various legal regulations is a part of that hierarchy, so are other laws. The federal constitution, federal laws, federal administrative regulations, state constitutions, state laws are also a part of this legal context. For example, general state legislation and special legislation take precedence over charter provisions in regulating the activities of a local government. Even a city that operates under constitutional home rule may have no power to change some of the statutory provisions of law that bind it.

**2. City Council.** A challenge for every local government is to attract able, talented, and willing elected leaders that represent the community well. The charter plays a role in this. Because there is not a special formula to make sure this will happen, local communities are left to come up with their own solutions. Many argue that concentrating council authority in a small, representative governing body is desirable because smaller legislative bodies are more effective than large councils. In addition, every member is essential in a smaller council and can be closely monitored by citizens and the media.

This charter section discusses various details regarding elected officials, including the mayor and city clerk. The goal is to prescribe a way for elected officials to be chosen that allows for fair representation and fits with local values. Specifically, the charter should address issues of residency requirements and whether or

not public officials are to be elected by district or at-large. Other issues such as powers and duties, eligibility, terms of office (number of years, staggered vs. concurrent), term limits, compensation (salary), prohibitions, vacancies, and ordinances are also included here.

*City council members.* Regardless of form of government, the council is the decision making body that sets the direction of the local government through local policies. The expansive power of council members includes control over the local government's finances (budgets, revenues, expenditures, and borrowing), property, priorities, goals, and legislation. These individuals are elected by the citizens to represent them and be accountable to them. Much is expected of a city council member. Serving one's community in this way is a high calling.

Every charter establishes the process for selecting council members. Specifically stating how public officials are elected is essential. Alternate approaches are discussed later in this chapter. The unique characteristics of each local government's population come into play here. Representation is key. The charter should allow for the election of a council that is truly representative of the entire community. While no specific design can guarantee effective, impartial, and equitable elected representation, the charter sets the stage for this to happen.

*Mayor.* A community's history, traditions, preferences, and experiences factor into the decision of how to handle the selection of the mayor. The way the mayor is elected impacts the dynamics among all local elected officials and the overall effectiveness of the mayor's office, among other things. Therefore, careful consideration should be given to this procedure set forth in the charter. Two commonly used methods in council-manager cities are when (1) the council chooses a mayor from among its membership; and (2) the mayor is elected at-large. (All voters directly elect the mayor.) Both are workable alternatives, although the second is now the predominant practice. A mayor elected at-large increases the likelihood of effective mayoral leadership. Candidates for at-large mayoral positions have the opportunity to discuss citywide issues, and the broad base of community support needed to win the office provides the winner with a mandate for action.

**3. City Manager.** For those cities operating under the council-manager form of government, the Model City Charter recommends a section addressing the appointment, qualifications, compensation, removal, and powers and duties of the city manager. It is important to note that deviation from the tried and true ways of successfully operating a council-manager city should be avoided. If basic standards and protections of council-manager government are laid aside, the form can be seriously undermined setting up the city for failure.

If a CAO is a part of a mayor-council city, a section in the charter should be designated to address this person's appointment, qualifications, compensation, removal, and powers and duties. As a source of professional advice, the CAO may function as a unifying force between the mayor and council. As stated earlier, the National Civic League in its latest *Model City Charter* recommends the CAO be either jointly selected by the mayor and the council or nominated by the mayor and approved by the council. This method encourages the CAO to be responsive to both the mayor and the council since both were involved in the hiring decision.

**4. Departments, Offices, and Agencies.** Every local government requires administrative departments to provide basic public services to its residents. Departments of a typical city include finance, human resources, parks and recreation, public works, library, water, sanitation, and public safety. These departments are responsible for conducting the business of the city and providing public services day after day.

How these departments are organized and how they function in the administrative hierarchy differs across the country - and even over time within a single community. Administrative shifts and reorganizations occur for a host of different reasons including taking advantage of organizational efficiencies, department head strengths, and personnel changes. Departmental reorganizations can vastly improve the inner workings of a local government saving the government and taxpayers money and improving customer service.

While most local government charters address governmental administration and departments to some extent, a charter should not identify a list of specific departments. Instead, it should simply state that the governing body may establish any office, department, or agency it deems necessary to carry out the functions of the local government. Consequently, the city council could approve changes such as combining or eliminating departments without changing the charter. While simple and general language is suggested, the latest edition of the Model City Charter recommends special attention be paid in the charter to the critical areas of personnel, law, planning, and financial management.

A charter commission should resist temptations to specify lines of accountability, add layers of complexity, or build in any extraneous features of supposed "safeguards." An example would be an independently elected department head. These additions are pitfalls for both efficiency and popular control. Instead, administrative departments should report to either the city manager (in the council-manager form) or the mayor (in the mayor-council form). In this way, the charter does not insulate any governmental function from popular control. The mayor is responsible to the voters for the administration's actions and is held accountable at the next election. The manager is responsible at all times to city residents through their council members who have the ability to dismiss the manager at will. These are essential features of each form of government. If the charter builds in any deviation from them, such as council confirmation of appointments made by the city manager or specified tenure for the manager, it will certainly reduce the chances of satisfactory operation of the government administration and weaken accountability. This means there is no room in either form of government for independently elected administrative personnel. Independent election of such officers undermines administrative responsibility and adds to the burden on and confusion of voters.

Furthermore, departments should not be headed by or responsible to boards or commissions. Boards and commissions, more or less autonomous and more or less independent of city government, are found in municipalities across the country. While citizen boards and commissions play valuable advisory roles for local governments, they should not play a role in actual administration, supervision, or policy execution. Departmental functions should be under the responsibility of a single individual (department head) who is held responsible and is accountable to the manager or mayor. Possible exceptions include the city clerk and judge who are typically appointed by the council.

So, where is the appropriate place for details of the organizational departments and functions to be enumerated? The answer is in the administrative (or municipal) code. And, the charter should mandate the city council to adopt one. An administrative code, adopted and amended by the council, governs the activities of the administration and sets forth the organization of the departments. Placing the administrative details in the code rather than in the charter allows for modifications without the burdensome and time consuming process of amending the charter.

The administrative code is, of course, subordinate to the charter. Specifically, subjects that should be detailed in the code rather than in the charter include the following: administrative/departmental organiza-



tion; accounting, expenditures, payroll; auditing; purchasing; bonding and borrowing procedures; franchises; eminent domain; special assessments; licensing and license revocation; nuisance abatement and planning and zoning.

It should be noted that flexibility is crucial to build into the administrative code as well so that it is easily maintained. The code, and the charter for that matter, should be silent on internal departmental workings allowing the manager or mayor latitude to make changes administratively without being hindered by council-mandated requirements or restrictions.

In sum, local government leaders *should* have the ability to make necessary or desirable changes to the administrative side of the organization. A good deal of leeway allows for quick responses to changing requirements and environmental factors. A charter that addresses administration in a simple and straightforward way and incorporates an appropriate level of flexibility sets the stage for an effective, efficient, and responsive government administration.

**5. Financial Management.** A well-run financial system is a critical component of a well-run local government. Because strong financial guidelines help to ensure the fiscal health of a local government, this section of the charter focuses exclusively on the finance function of the local government, particularly the budget. Flexibility and sound budgetary practices should be emphasized. Topics addressed in this section include fiscal year, budget submission, budget message, budgetary council action, appropriation and revenue ordinances, budget amendments, budgetary administration and oversight, the capital program, independent auditing, and public availability of budget-related records. In an era of public sector financial scandals and problems, charter writers should pay particular attention to this section. Clearly articulating sound fiscal practices in the charter is a key step along the path of financial health. The requirements set forth in this section of the charter, such as the independent audit, serve as a robust layer of protection for the finances of any local government.

**6. Elections.** A goal of every charter should be to establish democratic control so the local government is responsive to the will of the people. State election laws typically apply to municipalities, leaving local governments little if any control in these matters. However, there are a few important areas still under the control of local governments.

This section of the charter outlines various facets of the election process including election methods; when elections are held; partisan vs. nonpartisan elections; council districts and adjusting those districts; and initiative, referendum, and recall.

*Election methods.* The two common ways to elect council members are by **district** or **at-large**. A **mixed system** is one in which district and at-large elections are combined in some way.

**District:** District elections require a city to be divided in a number of geographical areas or districts. Each council member is chosen by the residents of a different district of the city. Candidate residency in the district is typically required. District elections have noteworthy benefits:

- They allow a minority group, particularly one living in a specific geographic area, to have a fair chance of being represented on the council.

- A council member elected by residents of a particular geographic area likely feels beholden to those living in the district. This often translates into a heightened sensitivity by the elected official to the concerns of those living in his or her district.
- Running a district campaign is less expensive than running a city-wide campaign. Therefore, district elections reduce the financial barrier for those seeking office as compared to running city-wide. As a result, the diversity and number of candidates could be strengthened with district elections.

On the other hand, governing bodies made up of individuals elected by district can have a difficult time agreeing on community-wide goals since council members are predisposed to focus on the problems of their district rather than the priorities of the city as a whole.

**At-Large:** In at-large elections, all candidates are placed on a ballot to be considered by all voters. Candidates in at-large elections occasionally run for specified seats on the council. Those candidates with the highest number of votes are elected to office. Public officials elected at-large represent the entire community. The at-large election system has noteworthy benefits as well.

- Unlike those elected by district, council members elected at-large theoretically are able to objectively view the priorities of the community as a whole and make impartial decisions based on the needs of all residents rather than on the priorities and desires of just one limited geographic area.
- If all council members are elected at-large, they all ideally embrace a holistic view of the community leading to a more unified and objective viewpoint as compared to a council composed of individuals elected from different districts with very different priorities.
- Residents can voice their concerns to any of a number of council members rather than just one. This is because residents are represented by all council members.

One possible negative effect of at-large elections is that it can dilute the ethnic or racial minority vote making it difficult for these groups to elect a representative to the council. Furthermore, at-large elections could result in the election of a number of council members who live in the same area of the city. This can raise questions regarding the fair distribution of public resources and the governing body's sensitivity to geographic areas where no elected officials reside. To address this particular concern, an outgrowth of the at-large system is the inclusion of a district residency requirement. In this scenario, council members are elected at-large, but not more than one council member can live in each district.

**Mixed System:** Some cities have chosen to use a mixed system in which some council members are elected by district and some are elected at-large. Since the Justice Department approved this hybrid as a system that complies with the Voting Rights Act, it has gained popularity. Supporters of this system argue that it combines the best attributes of both district and at-large systems. For example, it facilitates a city-wide perspective offered by at-large elections while incorporating the "personal connection" between local government and voters promoted by



geographically-based district elections. Problems can arise here as well when council members elected at-large believe their seats are superior to district council seats. To help combat this, all council seats should have the same duties and terms of office.

It is important to note that courts have had a lot to say in this matter. The one man-one vote court decisions and the passage of the federal Voting Rights Act have heightened both awareness of and concern about how local elections are structured. Across the country, many municipalities have been forced by the Justice Department to abandon at-large elections and replace them with district elections to increase the chance that representatives from minority groups serve on city councils.

*Timing of Elections.* If allowed by state election laws, the timing of local elections should be established in the charter. When a local election is held has certain implications. For example, if a local election occurs at the same time as a state and national election, voter turnout is generally high leading to more widespread participation by the electorate in local races. When elections are held at a time separate from state and national elections, local issues and candidates are the main focus and can be considered separately and apart from the broader political context. Both alternatives have positive and negative impacts. The National Civic League does not take a stand on either option. Legal advice, local preferences, and community dynamics should dictate the proper approach prescribed in the charter.

*Nonpartisan vs. Partisan Elections.* Political parties so prevalent and significant at the federal and state levels have little significance at the local level. It is unfortunate when local elections are decided solely on the basis of political party affiliation because of the limited importance of parties in municipal governance and because of the seed of division it plants before a single vote is cast on the council. Party primaries that nominate candidates from each party typically favor candidates who appeal to the most loyal “base” of voters within each party grouping. Primary voters are less likely to select moderates in each party and very unlikely to choose independents who are not affiliated with either party.

While nonpartisan elections do not eliminate the involvement or influence of political parties in local races, it can minimize the emphasis on politics by shifting the focus from Democrat vs. Republican to that of local issues. When deciding among candidates on a ballot without party labels, voters typically elect a mix of Democrats, Republicans, and Independents who must all work together on the council. For very practical reasons, national party strife should be put aside at the local level to focus on the concerns of the community.

The National Civic League supports nonpartisan elections as evidenced in the latest edition of the *Model City Charter*, and it is not alone. A number of states have formally recognized the benefits of this approach and have passed legislation requiring nonpartisan elections at the municipal level. Elections that use ballots without party designation help place local politics on its own and free local governments from domination by national, state, or county party organizations. Local governments that willingly choose this approach recognize that it is an important part of genuine home rule.

*Council Districts.* If the election of local officials is based on the existence of districts, the establishment of districts and process for re-districting is included in the charter. This section holds particular significance for political representation since re-drawing district boundaries is generally required after each U.S. Census based on population changes. The process, timing, and method (by districting commission or city council) are included in this section - not the actual district boundaries.

*Initiative, Referendum, and Recall.* If permitted by the state, these three procedures of direct democratic control over government give citizens a degree of confidence in their ultimate control of the city. Therefore, a charter should not dictate a severely high threshold for signatures required to initiate these measures. The commission should be sensitive to setting the required number of signatures at a reasonable level. If the charter sets an impossible standard, it will render these measures worthless. While they can be considered a “last ditch effort” to push an action through the legislative system, initiative and referendum are viable alternatives that should be available to residents and included in a charter if legally possible. If the local government is well-managed, responsive, ethical, efficient, and effective, use of these measures is kept to a minimum. Recall gives voters a chance to remove an elected official from office who is not meeting his or her responsibilities. The permissible grounds for recall, however, should be limited to misconduct or failure to perform the duties of the office, not disagreement with a decision the council member has made.

**7. General Provisions.** Good government is rooted in public trust. To a large degree, this requires government, as far as possible, to be responsive, open, and transparent. In today’s information age, transparency takes on a much different meaning than it did decades ago. Citizens have a high expectation for timely and accurate information to be available 24-7. Local governments should be proactive in making information available through all avenues possible. This moves beyond passing out copies of budget numbers at public meetings and issuing press releases on project updates. Citizens want and expect easy electronic access to considerable amounts of substantive public information.

The National Civic League’s *Model City Charter* includes a section titled “general provisions” which covers conflicts of interest, ethics, basic prohibitions, and campaign finance. A charter that emphasizes transparency and openness in these areas encourages public trust in local government and those working in it. Again in these matters, the charter should present the process for dealing with these issues in light of specific state laws or, alternatively, mandate that a process be adopted by the governing body via ordinance.

**8. Charter Amendment.** A charter should stand the test of time. However, from time to time charter revisions are necessary. While amending a charter should be possible, it should not be too easy. This helps ensure that successful charter amendments are both appropriate and necessary. For states that allow cities to adopt their own procedures for charter amendment, this section sets forth that procedure. Included here are regulations for the proposal of the amendment(s) and the subsequent election when voters approve or disapprove the proposed changes. Some charters include a provision here that requires a review of the charter every five or ten years, for example. Many cities have found the practice of mandated charter reviews to be a useful exercise. Any charter changes should, of course, require popular approval at a referendum.

**9. Transition and Severability.** Many charters do not address the possibility of a governmental transition from one form of government to another. However, charters that speak to this issue can be extremely helpful to those leading such a change by protecting a city from litigation, avoiding general uncertainty and confusion, and clarifying general city-related questions. While care should be taken to tailor this section to state law, the *Model City Charter* offers recommendations on how to handle existing employees, departments, and agencies; how to address pending legal and administrative matters; and the schedule for various upcoming meetings, deadlines, and elections.

### Conclusion

One of the most interesting things about local government charters is that each one is a distinct reflection of its community. Because a charter is the document that allows citizens to determine their own structure of government within state-prescribed legal limits, a charter is, in many ways, a manifestation of a particular community's values. Each charter is built on a specific set of political and administrative choices that are determined by the values held by local residents.

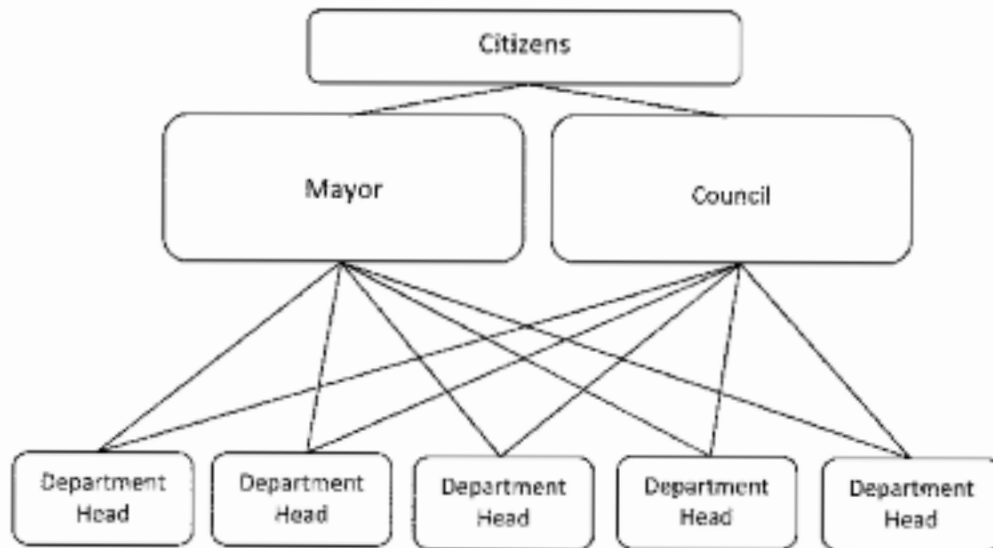
The final product of this process should be a charter built on widespread community involvement and, ultimately, widespread agreement on how the local government should function to best serve its residents. However, the charter process can result in even more. The call to action that the charter process requires can awaken a community's sensitivity to the importance and responsibility of civic involvement. If conducted successfully, the charter review process can result in a rebirth of widespread civic-mindedness - a quality that unfortunately is rarely seen in communities in a tangible way.

In the end, it is the community's values that build, alter, or reaffirm the foundation of its local government. In vibrant communities, citizens continually seek out new ways to improve how they govern themselves guided by the constitutional principles incorporated in their city charter. Ongoing refinement of the charter as a tool for effective governance is what the charter review process is all about.

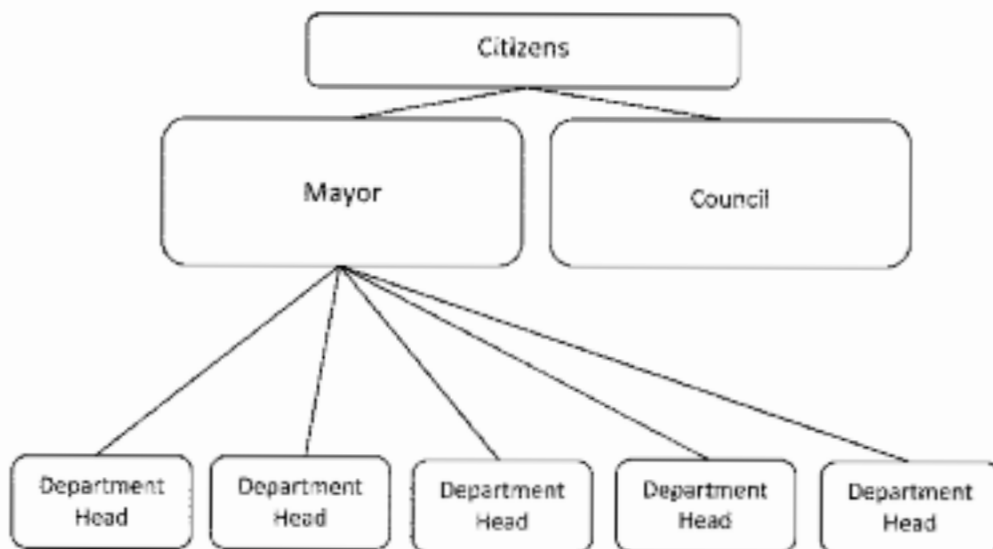
**A more thorough discussion of all of these charter components is presented in the latest edition of the Model City Charter published by the National Civic League. Commission members are urged to refer to the Model City Charter for background information, further detail, and insightful commentary on all aspects of charter revision discussed here.**

**Figure 1**  
**Forms of Government**

**Mayor-Council**



**Strong Mayor-Council**



## Council-Manager



# Appendix

## Which Form of Local Government is Right for Us?

A charter specifies a form of government. Because of its significance, a local government's form of government arguably influences every facet of its operation. Therefore, it is one of the most fundamental issues to address in the early work of a charter commission. Oftentimes, form of government is not on the table for discussion. However, for many cities, the underlying form of government is fair game. It is certainly a matter of discussion for a newly-formed city writing its first charter.

It is hard to exaggerate the significance of a city's underlying form of government. A city's form of government is the constitutional and legal basis for assigning authority and functions to government officials and creates its overall framework. Form shapes the nature of official roles and channels interactions into likely patterns of relationships, i.e., who talks to whom, who gives instructions to whom, and how are those instructions interpreted and acted on by the recipient. The United States is unique in having widespread use of two forms of government based on different constitutional principles. The essential differentiating characteristic is whether power is divided between the mayor and the council as in mayor-council governments, or resides in the council as in council-manager governments.

A city's decision about governmental form should be made only after a thorough and thoughtful examination of the different forms, the governmental characteristics represented by each, and the qualities local citizens would like to see in their government. This single decision will arguably influence more facets of government than any other. If the community is discussing form of government as a part of the charter review process, it might be helpful to step back and ask why form of government is on the table. As mentioned earlier, governmental form is a critical and necessary question for a city establishing its first charter. In other cases, a city in the midst of charter reform may consider moving away from its current form of government. To begin the discussion of the latter case, the following questions may be useful:

- What is the specific catalyst or impetus for desiring a change in the form of government?
- How will the proposed change in structure, function, and powers impact governmental leadership, management, operations, processes, and services - both positively and negatively?

Interestingly, while form of government is one of the most profound decisions a community can make about its local government, it is also one of the most commonly misunderstood. How a particular form of government plays out in everyday governmental operations is often not understood by many citizens. This lack of understanding poses a challenge when attempting to engage citizens in a meaningful discussion on the topic. At times, misunderstandings and misperceptions regarding the different forms of local government undermine constructive dialogue. Informal opposing groups advocating one form over the other can spark potentially uncomfortable and passionate debates. For this reason, conversations surrounding form of government should be handled delicately. For those commissions discussing form, a useful starting point is the presentation of an unbiased, fact-based, educational overview of the different forms.

## Different Forms of Municipal Government

Today, most cities operate under either the "mayor-council" form or "council-manager" form of government. The mayor-council form is modeled after the structure of the national government with checks and balances similar to those found in the U.S. Constitution. Like the constitution, little attention is given to the administrative responsibilities of the government. The council-manager form emerged as a proposal for reform in the early twentieth century. It was designed to focus on sound democratic governance determined by a unified mayor and council with professional advice provided by a professional

city manager accountable to the council. The manager is responsible for advising the council, implementing council decisions, and acting as steward of municipal resources. The National Civic League, established in 1894 to facilitate more honest and efficient local governments, has been a strong advocate of the council-manager form since its second Model City Charter adopted in 1915. Although this form departs from the divided powers principle in the national and state governments in the United States, the governing board-appointed executive model is the predominant structure in school districts and other special districts, hospitals, and nonprofit organizations.

Since it emerged, the council-manager plan has grown in popularity and is now the most widely used local government form in the United States in cities over 10,000. The council-manager form is also seen internationally in Canada, Australia, and other countries. Part of its appeal is its simplicity and its strong emphasis on democratic governance and professionalism. The International City/County Management Association (ICMA) reports that in 2010, there are more than 3,500 city governments in the U.S. operating under the council-manager form.

### **Mayor–Council**

Within the mayor-council form, there are variations in the division of power and authority. (See Figure 1) In both categories discussed here, the primary executive role is assigned to the mayor and the primary legislative (policymaking) role is assigned to the council but other officials may be involved as well depending on the exact features of the form.

The traditional mayor-council pattern is based on both separate and shared responsibility between the mayor, council, and other officials. It is often called the “weak mayor-council” form. Details differ but the top charts in Figure 1 illustrate two common examples. In addition to the division of policymaking and administrative roles between the mayor and council, a department head may report to a separate commission or a department head may be directly elected. Because of the fragmentation of authority under this form, arriving at consensus on a particular policy and achieving coordination can be difficult.

Many mayor-council cities have eliminated the features that produce fragmentation of authority, but assign overlapping and offsetting authority to the mayor and council. As in the U.S. Constitution, the mayor may have authority to appoint top administrators, but job candidates are subject to confirmation by the city council. The mayor typically has executive power for the local government's day-to-day management and operations, prepares and administers the budget, and carries out policies. The mayor typically has the authority to veto legislation passed by the council but subject to override by a supermajority in the council.

The strong mayor-council pattern emerged as a reform to weak mayor-council structures with highly fragmented authority and centralized more powers in the mayor's office. It is illustrated in the lower organizational chart in Figure 1.

Not only is the mayor the chief executive officer but also enjoys a high degree of independence. For example, the strong mayor has executive power to hire and fire department heads and city staff and to appoint members to city advisory boards. The mayor typically has greater latitude to act without council approval, for example, the authority to sign larger contracts. Information and analysis conducted by the city staff goes to the mayor who decides what

information will be shared with the council and the public.

Under this pattern, the city council is responsible for policymaking by way of resolutions and ordinances. Council members have no administrative power. The council has a broad oversight role but may have more difficulty getting information from administrative departments whose heads are the mayor's appointees. The mayor possesses the authority to veto actions of the city council. Although the council has authority to override the mayor's veto, the majority may not be able to assemble the super-majority that is required, for example, two thirds of the members rather than half plus one of the members. Stalemate between the mayor and council results when the mayor can block a council majority but the council does not have the extra votes to override the veto.

Those who champion the strong mayor-council pattern desire a strong independent political leader who also serves as the chief executive with centralized authority and limited checks on that authority. It is hoped that, from electoral support, the mayor can successfully enact programs and policies that are supported by and in the best interest of the citizens. Supporters argue that political responsiveness and political control will result in governmental actions that are supported by a majority of the community. On the other hand, the concentration of political and administrative power in one office may contribute to the misuse of authority, a diminished role of the council, the dismissal of professional information and advice or a lack of transparency.

The addition of a "chief administrative officer" (CAO) to the mayor-council form has become increasingly popular with mayor-council cities. The National Civic League recommends the addition of a CAO to all types of mayor-council governments. While the responsibilities of a CAO can vary widely, this individual is hired to handle some degree of the administration of the local government. How the CAO is appointed matters. The latest model city charter recommends a professional CAO who is either jointly selected by the mayor and the council or nominated by the mayor and approved by the council. This method encourages the CAO to be responsive to both the mayor and the council since both were involved in the hiring decision.

### **Council-Manager**

The council-manager form of government emerged as a result of local government scandals and corruption in the late 19th century and early 20th century. In an effort to find an alternative to the mayor-council form, government reformers advocated the council-manager form in hopes that it would be a more business-like approach to local government. Consequently, the structure of this form mirrors that of a corporation. The citizen-voters serve as shareholders who elect a city council to fill the role of a board of directors. The mayor serves as the chair of the board. They, in turn, hire a professional manager (similar to a corporate CEO) to implement the policies established by the council. This trained, professional, nonpartisan manager serves as the chief executive, has authority to manage all aspects of local government operations, and is continually accountable to the elected officials. (See Figure 1) If the manager is not performing to the satisfaction of the elected officials, the manager can be removed at any time. In sum, the city council fills the policymaking role and an appointed city manager is responsible to the council for policy advice and the executive functions.



Under this form, all local government powers rest with the governing body of elected officials, which includes the mayor. Since the mayor is a part of the city council, he or she usually does not have veto power. The mayor's contributions are based on the dual role as leader of the community and leader of the council. Effective mayors develop a shared vision for the city supported by the council and facilitate cooperation within the council and between the council and the manager. The mayor does not play a direct role in the administration of any aspect of city administration. The city manager provides information and recommendations to the entire council in public sessions that assure complete transparency. In addition, the manager is accountable to the council as a whole to provide information on city government performance to the council's oversight function.

While the governing body can issue instructions to the manager, elected officials are not allowed to go around the manager and issue a directive to any staff member under the authority of the manager. In this way, lines of accountability are clear. The city manager is singlehandedly responsible for all aspects of municipal operations including hiring and firing department heads (with the exception of the city clerk and often the municipal judge) and preparing and administering the municipal budget. The governing body holds the manager responsible for making sure their goals are being pursued and that the business of the local government is carried out efficiently and professionally. In addition, the city manager typically advises the council on various matters impacting the city. The city manager is a "controlled executive" chosen by the council to meet the distinct needs of the city, evaluated by the council on a regular basis, and can be removed at any time.

The city council in a council-manager city, serving as the city's governing board, provides a much different kind of political leadership than that found in mayor-council governments. In council-manager governments, the city council and mayor focus all energy and attention on the "big picture" by setting goals, monitoring progress toward those goals, and overseeing governmental operations. Supporters of this form value its tendencies toward politically-neutral policy recommendations that emphasize a long-term and communitywide perspective, effectiveness of policy implementation and service delivery, efficiency, clear lines of accountability, and a professional approach to city management.

Those who wish to alter either form's basic features should be cautioned. While a local government should adopt a form of government that fits its unique community, it is a mistake to think that one community is so "different" that it should tinker with the form and move away from the well-tested principles that have proven effective over years of experience in local communities of all shapes and sizes. Under both plans, variations are seen in at-large vs. district elections and partisan vs. nonpartisan elections, for example. However, ignoring fundamental aspects of either form of government can easily undermine the central principles of organization and official responsibilities essential for success.

Without question, the consequences of choosing one form of government over another should be carefully considered by charter commission members. Because there are so many excellent resources available that provide details about the plans as well as their advantages and disadvantages, the discussion offered here should be considered only a starting point or a "refresher" regarding the different forms of government.

## Suggested Readings

Note: This abbreviated list of suggested readings represents just a sample of the resources available that address the topics covered in this *Guide*.

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National Civic League

# Model City Charter

9th  
edition  
2021



**Modernizing the Model City Charter:**  
Enhancing Equity, Engagement and Effectiveness

**Model City Charter  
Ninth Edition  
National Civic League  
Final Draft, November 1, 2021**

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November 2021

### Letter from our Co-Chairs:

The Model City Charter was first introduced to the public in 1900, a time of sweeping social and political reforms. The early versions of the model focused on addressing some of the most pressing challenges facing those growing cities—structural inefficiency, political corruption and the need for a merit system for public employees.

Given the challenges facing our communities in 2021, it is only fitting that this revised and updated edition of the Model City Charter addresses the need for heightened attention to the role of public engagement in local governance and the need to improve equity.

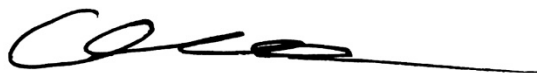
One of the results of the model-makers' early focus on professionalism and integrity is the relatively high trust levels among the public for local government in comparison to federal and state governments, as well as many other institutions. Part of this trust at the local level is due to the great work by city and county officials to engage the public and improve equity.

The Model City Charter has been used by cities and towns for over 120 years to structure their municipal governments and draft or revise their charters. With the last major revision occurring in 2000, we were honored to lead a year-long process involving dozens of thought-leaders and organization representatives to update the document and emphasize key principles, such as equity and civic engagement.

The new Model continues to advocate professional, nonpartisan city governance, with mayors and legislative bodies that work together with a manager to run city departments and solve public problems. While not all activities need to become part of the charter, we make a strong case that cities and towns need to structure all of their activities to reflect social equity and civic engagement, involving all the members of their community in civic affairs.

Please join us in the coming years in revisiting your charters to ensure that they reflect the values that we hold dear, that inclusive local governance involving everyone in our communities working together in a civil, pragmatic manner, can help our cities and towns thrive and contribute to addressing not only local matters but also the challenges that face our nation.

Signed,



Clarence Anthony, CEO &  
Executive Director, National League of Cities



Marc A. Ott, CEO/Executive Director  
International City/County Management  
Association



Ronald Loveridge,  
National Civic League  
Former Mayor, City of Riverside, California



Kendra Stewart, Past President, Board Member,  
American Society for Public Administration

## INTRODUCTION

The Model City Charter is the product of more than 100 years of interaction of thought leaders on urban governance, practitioners in city government, and scholars who conduct research on local government. In the early editions, the thought leaders guided the others on how government should be organized. In later editions and now, they work together to refine recommendations about the ideal features city governments should have in order to achieve the highest level of governmental performance. Increasingly, community activists have been involved in the charter review process as well. In the new edition, the perspectives of all contributors are combined to develop the best current recommendations for promoting ideal city governments.

In preparing to review and revise the Model City Charter, the National Civic League recognized the need to better integrate a newer mission of promoting civic engagement and social equity with the older mission of emphasizing efficiency, expertise, and ethics. At the time of this revision, cities are operating in a context of increased consciousness around issues of inequities based on race, ethnicity, sexuality, gender, and socio-economic standing.

While national attention to police misconduct and the COVID-19 pandemic provide important background to the emphasis on equity in this edition of the Model City Charter, more persistent challenges such as disparities in access to and quality of education, housing, employment, economic opportunity, and technology motivate the emphasis on equity. Accordingly, this edition of the Model City Charter highlights the importance of using a social equity lens—paying careful attention to race, ethnicity, and other social characteristics when analyzing problems, looking for solutions, and defining success—throughout local government and stresses the urgency with which local government must govern for equity.

Current conditions also elevate the importance of active efforts to engage the public in governmental processes and community problem-solving efforts. Opportunities for community engagement have been present from the beginning of democratic governance as voters have selected officials in elections and approved certain programs in referenda. Select community members could take part in advisory bodies. These opportunities for participation have expanded but have tended to be exchanges between government and residents—providing information and receiving and soliciting resident input—rather than active engagement of residents through incorporation and collaboration.

Incorporating a full range of residents in the community regardless of their citizenship status means working directly with them throughout the governmental process to ensure that public concerns and aspirations are consistently understood and considered by staff. Collaboration involves partnering with residents in each aspect of the decision-making process, from identifying issues, developing alternatives, choosing the preferred solution, and implementation. Residents have received programs and services, but they can also be involved in addressing many community problems that can only be solved with active resident participation. Local governments have unique institutional mediating structures that can be established and leveraged toward this purpose.

As has been the case since the second edition in 1915, the ninth edition promotes the council-manager form of government as the core organizational feature. This form introduced a new governance model to American government that is based on a unitary system rather than the separation of powers, a framework that frequently results in conflicts between branches of government. All powers of the city are vested in a popularly elected council, which appoints a professional manager who is continuously responsible to the public and removable by the council. It has improved the quality of the governmental process and city government performance.



Over the next six editions of the model charter, many revisions were made to strengthen the political leadership of the mayor, increase the representativeness of the council, promote civic participation, and encourage the development of regional approaches to issues that overlapped the boundaries of urban areas. These refinements to the model and innovations by local officials have strengthened the form. This new edition of the model charter continues the interaction of theory and practice. It reviews the structure now used by a majority of cities with more than 10,000 residents and examines changes that have been introduced by some governments to respond to new challenges.

The new edition offers further enhancements for local governments to consider. It is an important guide for all cities and towns whether they need to change their form of government or revise their existing charters. It proposes refinements and identifies the importance of incorporating new features and commitments. For those council-manager cities that face a movement to change the form of government to the mayor-council form based on separation of powers, the model charter will guide them in asserting the advantages of the council-manager form and countering misleading arguments in favor of abandonment. As always, it provides the arguments to support adopting the council-manager form for cities that use a different form.

The council-manager plan combines democratic governance with the capability to operate city government with the values of effectiveness, efficiency, and economy. The council-manager form promoted these “three e’s,” a capable governing body, and a city manager accountable to the council. The manager would promote these values by proposing sound policy options to the council and by using professional expertise and experience to ensure that the city administration accomplished council-approved policies effectively while achieving the highest level of efficiency and economy in use of resources. Now it is widely recognized that the development of policy proposals should also promote equity and the process of adopting, implementing, and assessing policies should engage a full range of residents.

### **Commitment to Social Equity**

It is important to recognize that a long history of discrimination and the challenge of fully incorporating new and recently recognized groups into American society requires more than treating all equally, although equality would address many shortcomings. Access to services, quality of services, and expanded engagement can be promoted by equal treatment. Promoting equity also requires a recognition of disparities in conditions that affect the level of need, the effectiveness of programs, and the impact of policies on different population groups. Many governments have increased the diversity of their staffs, but still do not include persons with diverse characteristics at all levels of the organization or in making a full range of decisions or recommendations. A commitment to inclusion is needed to address these shortcomings. Fundamentally, equity cannot be assured unless government officials are aware of and seek to alleviate disparities across groups with different characteristics. A comprehensive and continuous assessment of access, quality, and impact of services is needed. Some pioneering governments are incorporating a commitment to social equity, but most governments need to do more.

Attention to social equity is found in additions throughout the Model City Charter. Adopting an equity lens will reshape decisions and activities across all departments and programs. Advancing equity throughout local governments requires a fundamental reorientation of day-to-day operations.

To support such efforts, municipalities may consider creating a department, office, or agency whose sole task is to provide support to other divisions in local government with respect to the adoption of an equity lens. Given the breadth of implementation required for an equity lens to be applied—and the importance and urgency of the issue—an equity office is best organized as a direct report to the city manager’s office.

That said, equity will be best advanced through the organization if each unit has designated an individual or a small team to serve as a lead resource within their department and a liaison to the city manager's equity office. This office should be tasked with supporting the implementation of an equity lens, through the development of trainings, tools, communications, and other activities related to equity. (A companion publication is attached as an appendix that can be used as a resource for cities to implement equity recommendations.)

### **Expanding Public Engagement**

There has been a long-standing commitment to increasing public engagement and participation. The need to expand provision of information to residents and opportunities for input was recognized in the Eighth Edition of the Model City Charter. There is increasing awareness, however, that new approaches are needed to engage residents in ongoing interactions with officials that go beyond one-way communication out of and into government.

Provisions should be made for resident input, and governments should provide information to the public, but more interaction is needed. Officials need to better understand the concerns residents have and how they would suggest addressing them at early stages in developing a proposal. They need to understand how programs and service delivery are affecting residents of all kinds in all parts of the jurisdiction. They need to be included as partners in assessing and helping to improve service delivery and in solving problems in their communities.

Community advisory boards are one tool to promote engagement, but the presence of these boards cannot be used to exclude other residents from being involved. Engagement means that residents and officials will know and understand each other better. Engagement also entails having an approach to involving residents that welcomes their participation in the implementation or "coproduction" of services and solutions to problems. Combining the two new e's, some local governments are developing principles of equitable engagement to ensure that all persons and groups have meaningful opportunities to be involved. The emphasis on engagement also indicates that existing provisions in the Model Charter regarding transparency need to be observed.

The Model City Charter includes a new Article VII on the Role of Public Engagement in Governance. It identifies the forms of engagement that should be promoted in local government and the principles that should guide the city's public participation processes. Finally, the article outlines the components that should be examined and the inclusive process that should be used to evaluate the public participation strategy and process. Public participation processes should expand the capacity for meaningful resident engagement by developing collaborative working relationships and expanded knowledge of government.

### **The Case for the Council-Manager form and Features that Enhance its Performance**

Although the council-manager form was once thought of as being fit only for small cities, it is now used by 61 percent of cities over 100,000 in population and five of the 11 cities with over a million residents.<sup>1</sup> Since 1990, local governments in 32 of America's 317 cities over 100,000 in population have grappled with the question of whether they should change from council-manager to mayor-council form or vice versa and held a referendum to change the form of government. The council-manager form has been replaced with the mayor-council form in 12 cities. On the other hand, the council-manager form replaced the mayor-council form in four cities. Abandonment of the council-manager form was rejected

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<sup>1</sup> James H. Svara and Douglas J. Watson, *More than Mayor or Manager*. Washington, D.C.: Georgetown University Press, 2010, pp. 12-16.2

during this period in 15 large cities. The campaigns in support of the council-manager form often fail to include some important advantages of the form—in particular the leadership potential of the mayor and the full range of contributions by the city manager who is commonly described as simply responsible for day-to-day management of the city.<sup>2</sup>

To inform residents of cities that may consider adopting the council-manager form, it is important to review the advantages of the council-manager form and highlight features that enhance its performance.

The council in the council-manager form is a true governing body, not just a legislative body that checks the mayor. The council sets policy, of course, but it also sets goals and priorities, reviews and revises policy proposals, and oversees the performance of the manager and staff. The council chooses the city manager—the appointed chief executive officer—who is the best qualified applicant from across the country to achieve the vision the council has established for the city, and monitors the manager’s performance. The council conducts real oversight through review of extensive information provided by the city manager.

Reference is made in the Model City Charter for the first time to the council’s responsibility to regularly evaluate the performance of the city manager. Council decisions are built on the comprehensive and objective information and advice from the city manager that is provided to all of the council members and to the public. This kind of communication contributes to the inherent transparency of the council-manager form. The features of the council-manager form make it less likely than the mayor-council form to have instances of corruption.<sup>3</sup>

In the mayor-council form the council’s role may be limited to reacting to the mayor’s proposals based on information provided by the mayor. The oversight role can be constrained by limits on the performance data that the mayor will permit departments to provide to the council. A council member could be the beneficiary of a reward from the mayor for supporting his/her proposals, but council members could be punished for taking an independent stand. As is true of separation-of-powers structures at the state and national level, conflict between the mayor and council is likely and can produce divisions within the council based on differing levels of allegiance to the mayor. Disagreement between a majority of the council but fewer than the number needed to override a mayoral veto and the mayor can produce an impasse. In the council-manager form, the council is designed to be the governing body.

In contrast to past editions, the Ninth Edition states a preference for the use of district elections or combinations of district and at-large seats to ensure that the council accurately represents the population as a whole and to promote a closer relationship between council members and residents. Attention should also be given to promoting a large turnout of voters in council elections.

It is advantageous to have off-year, November elections to focus attention on local issues. Although some argue that it would be useful to take advantage of generally higher rates of voting by holding city elections along with state and national elections, it is difficult to prevent local issues from getting

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<sup>2</sup> Svava and Watson, pp. 312-320.

<sup>3</sup> Kimberly Nelson and Whitney B. Alfonso, “Ethics by Design: The Impact of Form of Government on Municipal Corruption,” *Public Administration Review*, April, 2019.

obscured when the local election is combined with higher level offices. Also, partisan divisions in the state and national campaigns may carry over to officially nonpartisan local elections.

Action should be taken to address the impediment to turnout caused by using a two-stage process. The turnout for the primaries that narrow the field of candidates, or for run-off elections, to choose the winner if no candidate receives a majority of votes, is generally lower than the general election. A remedy is available by using ranked-choice voting—the current form of an “instant runoff”—to determine winners in a single election. In addition to increasing turnout in the single election that determines the candidates chosen for office, ranking candidates means that voters’ preferences beyond their first choice can influence the outcome if their first-choice candidate is not selected. In ranked-choice election campaigns, candidates have an incentive to be more civil toward other candidates and reach out to the supporters of other candidates rather than simply attacking the other candidates.

The council-manager mayor is not a “weak” mayor. That term refers to cities that use the weak mayor-council form in which the mayor has certain executive powers but not others. Nor is the mayor an insignificant figurehead. As the authors of the introduction to the Eighth Model City Charter explained,

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 mayor is a comprehensive leader who draws on the features of the council-manager form of government to make it even more effective. The mayor is a community leader who interacts extensively with the public. The mayor strives to create a shared vision for the city with the support of the entire council. The facilitative mayor helps to assure that there is extensive and positive communication between the council and the manager. The mayor also focuses on communicating with the public and ensuring that their views are being incorporated in the decision made by the council and the priorities being pursued by staff. The leadership role of the mayor is supported by direct election. Candidates speak to the full population about citywide issues and the proposals they are advancing, and residents are able to indicate which candidate and proposals they support.

City managers do not just handle the day-to-day operations of city government, as the typical description of the manager’s role emphasizes, although this is a crucial contribution. They also manage achieving the long-term goals of the city and provide the council with a professional perspective on the opportunities and challenges that the city faces. Managers are a driving force for innovation and improved performance, and council-manager cities have a stronger record of innovation than mayor-council cities.

Governments are increasingly involved in partnerships to advance their goals, and top administrators must develop strategies to promote their success. John Nalbandian argues that local government managers increasingly act as facilitators, “promoting and nurturing partnerships...both within city government as well as between it and other organizations.”<sup>4</sup> Compared to elected officials, managers are uniquely

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<sup>4</sup> John Nalbandian, “Politics and Administration in Local Government,” *International Journal of Public Administration*, 29, 1052.

positioned to carry out this function, without the risk that the activity will turn into coalition-building for political purposes.

Governments work with nonprofits, resident groups, and other governments in a complex array of activities. Local government managers are called upon to be knowledgeable about these partnerships and the interactions among them, understand their goals, and take steps to support them even though many of the participants are not members of the local government staff. In recognition of these new responsibilities, the Society of Local Authority Chief Executives in Great Britain calls its members the “chief strategic officers” in their governments (SOLACE 2005).<sup>5</sup> It is the city manager who is best situated to oversee strategy by being knowledgeable about and facilitating the success of these joint endeavors.

The council-manager form with an elected mayor provides for vision, shared governance, informed advice and complete information about performance, a professional executive with the requisite experience and expertise, and continuous transparency. Local governments do not have to keep using or revert to the separation-of-powers structure used at higher levels of government nor do they have to take the chance that a mayor as chief executive is not well prepared for the office or not able to handle its broad scope of responsibilities. The council is not constrained by its subordinate position, and the performance of administrative staff is not impacted by the political interests of the mayor. The council-manager form is designed for local governments and intended to promote the best performance of all the officials. It is also more likely to be receptive to innovation and emerging values.

At the present time, addressing bitter partisanship, polarization, and a declining level of public confidence in powerful institutions requires a high level of adaptiveness and innovation. These challenging conditions call for a new framework for a twenty-first century reform movement that fosters resident-centered democratic governance that addresses institutional racism, political conflict, and declining confidence in democracy by expanding the civic agency of everyday people, and building resilient, local, multiracial democratic institutions. We hope this model charter can contribute to an environment in which local governments can rebuild confidence in democratic institutions, bridge the polarization gap and bitter partisan divides, increase our capacity for public problem-solving and move the country toward a genuine, participatory, multi-racial democracy while retaining the enhanced capacity for effective governance that has been developed over the past century.

- *James Svara, Steering Committee Member; Senior Fellow, School of Government, University of North Carolina-Chapel Hill*

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<sup>5</sup> Society of Local Authority Chief Executives in Great Britain, *Leadership United: Executive Summary*. London: Society of Local Authority Chief Executives and Senior Managers, 2005.

## **PREAMBLE**

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, public engagement, diversity and inclusiveness and regional cooperation.

### **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 people 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, equity, efficiency, responsiveness, participation of community members, 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 resident participation reflecting rights or equal opportunity of the broad diversity of the city, promote social equity, 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, equity, 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 public 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 ensures 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 laws 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 residents 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 that is truly representative of the community. Therefore, the Model presents several alternatives with recognition of the advantages of certain alternatives over others. Each city's population pattern— economic level, racial, ethnicity, geographical, etc.—has implications 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 provides that the mayor 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 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 voters' 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 1 - Option A** - District elections of an even number of council members.

**Alternative 1 – Option B** - Combination of district and at-large elections of an even number of council members.

**Alternative 1 – Option C** - In small homogeneous communities, at-large elections of an even number of council members may be suitable.

With each option, the mayor is elected separately as provided in § 2.03(b).

#### **Commentary.**

The Model for the first time recommends district or a combination of districts and at-large seats on city councils be used to address diversity and representation issues. The 8th edition listed district and mixed election systems as one of several alternatives, listing them after the alternatives of at-large election with district residency requirements. At-large elections should only be considered as an alternative for small communities that are homogeneous or have no geographic concentration of underrepresented voters. Adding district residency requirements disperses the members of the council geographically, but all the members of the council can still be elected by the same majority. Under-representation of specific interests is always a potential outcome with at-large elections.

Community members 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 should consider which of the first two alternative systems will achieve more equitable representation of the city's population, promote sound governance, and avoid legal challenges under the Voting Rights Act.

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 under-represented groups concentrated in particular sections of the city, it is easier to elect council members that represent those groups. Also, because district campaigns cost substantially less than citywide campaigns, single-member districts can open the way for greater diversity among candidates. Also, residents 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.

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 underrepresented residents 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 a majority of the council to be elected by and from districts.

### **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 community 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.** 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.

More than half of the cities operating with the council-manager form use the direct election at-large alternative. 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 ensure 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 ensure 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 § 10.05(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. Relationship to City Manager.**

As explained in Article III, the city council hires the city manager to serve as the chief executive of the city government and may terminate the appointment of the city manager at any time. It is an ongoing responsibility of the city council to assure that the city manager and staff are accountable for their actions. The council shall formally evaluate the city manager's performance on an annual basis. The council shall also monitor the policy proposals submitted by the city manager and the administrative actions taken by the city manager and staff to ensure that the council's expectations are being met and that acceptable standards are being maintained.

#### **Commentary.**

Advocates of the strong mayor-council form of government claim that direct election of the chief executive makes city government more accountable but using the electoral process for accountability is a slow process and not necessarily available. The council-manager form has a chief executive who is continuously accountable to the city council. It is necessary to wait up to four years until the next election to hold the strong mayor accountable for poor performance, and accountability disappears in the mayor's final term. If a recall of the mayor is possible, this requires a large-scale collection of signatures on a recall petition and is very disruptive to city. Typically, chief administrative officers in mayor-council cities are neither independent nor accountable to the council. In contrast, the city manager in the council-manager form is independent but continuously accountable. The manager's performance should be evaluated regularly by the council, and the manager can be removed by the council at any time if his/her performance is not acceptable.

### **Section 2.06. 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 § 2.10, 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) 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 2.07. 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 § 2.12(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 ensure 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 § 2.12(c).

**Section 2.08. 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 2.09. 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 §§ 2.16 and 2.17 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 2.10. 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 2.11. 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. 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 2.12. 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 § 2.07(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 § 2.07(c).

### **Section 2.13. 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 (§ 2.16), 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 (§ 9.01). 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 2.14. 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 §§ 2.15 and 2.16, 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 2.15 provides sufficient leeway for emergency situations.

#### **Section 2.15. 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 2.16. 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 § 2.14 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 § 2.17(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 § 2.16. This approach minimizes burden and expense while at the same time preserving the essential safeguards of the general ordinance procedure of § 2.13.

#### **Section 2.17. 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. Attention should be given to how the city manager expresses support for and enacts social equity. 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 and to the community: <sup>6</sup>

We believe professional management is essential to efficient and democratic local government by elected officials.

Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

Submit policy proposals to elected officials; provide them with facts, and technical and professional advice about policy options; and collaborate with them in setting goals for the community and organization.

Recognize that elected representatives are accountable to their community for the decisions they make; members [of ICMA, i.e., city managers] are responsible for implementing those decisions.

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 residents 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 <https://icma.org/icma-code-ethics-guidelines>. The other items in the code refer to the manager's personal and professional beliefs and conduct.)

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<sup>6</sup> The review of the ICMA Code now in progress would add language related to equity, diversity, inclusion, and engagement. It will be early to mid-2022 before the revision is completed. This language reflects the 2020 version.

The ethical commitments of members of ICMA advance the values promoted in the Model City Charter.

As a professional administrator, the manager must be trained and experienced in the effective and equitable 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](http://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 <https://icma.org/documents/icma-model-employment-agreement-editable>)

### **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 (or biennial) 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 and accessible to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year and provide information needed by the council for its annual evaluation of performance;
- (7) Make available and accessible 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 partnerships with community organizations and for regional and intergovernmental cooperation and equitable programming;
- (13) Promote partnerships among council, staff, and community members 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. Managers must inform and receive input from members of the community but also encourage their active engagement in city affairs.

## 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, and social equity, paying careful attention to race, ethnicity, and other social characteristics when analyzing problems, looking for solutions, and defining success throughout the organization.

### 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 transportation, 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.

Adopting an equity lens will reshape decisions and activities across all departments and programs, and advancing equity through local governments requires a fundamental reorientation of day-to-day operations. To support such efforts, municipalities may consider creating a department, office, or agency whose sole task is to provide support to other divisions in local government with respect to the adoption of an equity lens. Given the breadth of implementation required for an equity lens – and the stated urgency of the issue – an equity office is best organized as a direct report to the City Manager’s office.

Social equity will be best advanced through the organization if each unit has designated an individual or a small team to serve as a lead resource within their department and a liaison to the City Manager’s equity office. This office should be tasked with supporting the implementation of an equity lens, through the development of trainings, tools, communications, and other activities related to equity. The city manager is the chief equity officer, and that role could be delegated to another office of the organization as appropriate. Still, the city manager should be the person responsible for equitable administration.

#### **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. Cities should consider conducting an equity analysis in its personnel system, for example in terms of recruitment, retention, hiring, and promotion policies and practices. This type of audit can highlight the gaps in human resources that limit or undermine diversity and inclusion.

#### **Section 4.03. City Attorney.**

##### **Alternative I – Full time City Attorney – sole counsel to city.**

The city manager shall appoint a city attorney, subject to confirmation by the council. The city attorney shall be the chief legal officer of the city, conduct all the law business of the city, be the legal advisor to the council, the city manager, all departments, and other instrumentalities of the city government. The city attorney shall represent the city in all actions in which the city is a party and shall have the authority to settle claims and compromise debts in amounts not to exceed {\*\*\*} and to settle claims and compromise debts in greater amounts with the consent of the city manager. The city attorney and the staff of the office

shall engage in no other law practice. The city attorney may, with the approval of the council, temporarily employ special legal counsel to work on problems of an extraordinary nature when the work to be done is of such character or magnitude as to require services in addition to those regularly provided by the city attorney. The city attorney shall serve until removed from office by the joint action of the city manager and the Council.

**Alternative II – Full time City Attorney – sole counsel to city – removal by Council only.**

The city manager shall appoint a city attorney, subject to confirmation by the council. The city attorney shall be the chief legal officer of the city, conduct all the law business of the city, be the legal advisor to the council, the city manager, all departments, and other instrumentalities of the city government. The city attorney shall represent the city in all actions in which the city is a party and shall have the authority to settle claims and compromise debts in amounts not to exceed {\*\*\*} and to settle claims and compromise debts in greater amounts with the consent of the city manager. The city attorney and the staff of the office shall engage in no other law practice. The city attorney may, with the approval of the council, temporarily employ special legal counsel to work on problems of an extraordinary nature when the work to be done is of such character or magnitude as to require services in addition to those regularly provided by the city attorney. The city attorney shall serve until removed from office by the council.

**Alternative III – Part time City Attorney**

The City Manager shall appoint an attorney or law firm as independent contractors to act as city attorney, subject to confirmation by the council. When a law firm is hired as city attorney, the firm must designate an attorney to act as the city attorney for purposes of any requirement in law or otherwise that the city have a person filling that office; the person so designated must be approved by both the city manager and council. The city attorney shall be the chief legal officer of the city, conduct all the law business of the city, be the legal advisor to the council, the city manager, all departments, and other instrumentalities of the city government. The city attorney shall represent the city in all actions in which the city is a party and shall have the authority to settle claims and compromise debts in amounts not to exceed {\*\*\*} and to settle claims and compromise debts in greater amounts with the consent of the city manager. The city attorney may, with the approval of the council, temporarily employ special legal counsel at other law firms to work on problems of an extraordinary nature when the work to be done is of such character or magnitude as to require services in addition to those regularly provided by the city attorney. The city attorney shall serve until removed from office by the joint action of the city manager and the council.

**Alternative IV – Part time City Attorney- removal by Council action only**

The city manager shall appoint an attorney or law firm as independent contractors to act as city attorney, subject to confirmation by the council. When a law firm is hired as city attorney, the firm must designate an attorney to act as the city attorney for purposes of any requirement in law or otherwise that the city have a person filling that office; the person so designated must be approved by both the city manager and council. The city attorney shall be the chief legal officer of the city, conduct all the law business of the city, be the legal advisor to the council, the city manager, all departments, and other instrumentalities of the city government. The city attorney shall represent the city in all actions in which the city is a party and shall have the authority to settle claims and compromise debts in amounts not to exceed {\*\*\*} and to settle claims and compromise debts in greater amounts with the consent of the city manager. The city attorney may, with the approval of the council, temporarily employ special legal counsel at other law firms to work on problems of an extraordinary nature when the work to be done is of such character or magnitude as to require services in addition to those regularly provided by the city attorney. The city attorney shall serve until removed from office by the council.

### **Commentary.**

The role of the city attorney fulfills both the legal requirement and the practical requirement that the legal entity have counsel. As counsel to the organization, the attorney must offer legal counsel to the organization as a legal entity and not to the council, manager, or agencies of the government as separate clients. The Rules of Professional Conduct for Lawyers, as adopted throughout the United States in various forms and versions, considers in Rule 1.13 these duties and obligations and offers the ethical rubric under which attorneys must act. Obligating the attorney to act on behalf of the organization rather than individual constituent members of the organization requires the attorney to provide counsel in the best interest of the entity, not the interest of one inquiring source.

- a. Models 1 & 3 require that the attorney be nominated by the manager and confirmed by the council and serve until removed by the joint action of both council and manager. Requiring action by both council and manager is designed to limit concern that the attorney's advice is tilted to either the legislative or executive branch. Oftentimes, a council or manager will ask for the attorney's legal opinion and this requirement provides an element of protection for the attorney when that advice conflicts with the goals of either the council or the manager. In any of these options mayor can be substituted for manager.
- b. Models 2 & 4 require that the attorney be nominated by the manager and confirmed by the council and serve until removed by the council. These models are the more common practice but create conflicts between the attorney's duty to the organization as the legislative and executive branches may disagree on whether the attorney's advice favors one branch or the other. In any of these options Mayor can be substituted for manager.
- c. Where the position is full-time, the attorney should not be allowed to have a private practice but may be able to engage in other activities such as teaching or charitable work subject to the city's ethics laws.
- d. In option 1, the city attorney holds sole responsibility for the legal work of the city. This option offers the city a single resource for legal analysis and advice. Should agencies, including the council or manager, feel they need a second opinion from another source, they must get both the approval of the city attorney and the council. By creating this process, shopping for legal opinions will be constricted but will also be available when appropriate and necessary.
- e. Options 3 & 4 address part time city attorneys who represent the city as part of a private practice.
- f. Each option includes an authority to settle or compromise claims and debts. Those matters should be handled by the attorney with some specific authority and by both the attorney and manager beyond that authority. There may be a need to address the issue in the Finance section as well. Moving settlements of cases outside the council process can help to resolve more claims and eliminate the political posturing in cases of sensitivity.

### **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 equitable planning function and such decision-making responsibilities as may be specified by ordinance;

- (2) Adopt an inclusive and 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 an inclusive and 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, land use and development decisions have not always been made through a social equity lens, which has resulted in differential benefits and burdens for community members. Furthermore, in many instances land use regulations have been employed to, explicitly, exclude marginalized groups. Therefore, we recommend that the designated agency, the city manager, and the mayor and council incorporate social equity concerns into land use, development, and environmental planning activities. For example, comprehensive plans, land use ordinances, zoning codes, and development decisions, should be assessed in terms of the impact they have on disenfranchised groups, particularly neighborhoods and people of color. Moreover, federal and state laws on land use, development, and environmental protection impose not only regulation, but also, in some cases, specific procedures on local governments. The Model provision provides the needed flexibility for the city to establish workable structures and procedures.

## **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 (or biennial) 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 (or biennial) budget, and 2) the multi-year capital program which is coordinated with the 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 residents 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.

#### **In 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.

Traditional performance measures used in the budget may include input, output, efficiency, and outcome measures with comparisons over time to encourage the government to benchmark its performance for continuous improvement. However, cities should consider adding new performance measures around

social equity, particularly in terms of the measurement, allocation, and impacts of resources. The city should determine whether there is equal access to programs and services, the same quality of services for all groups and all parts of the city, and fair and consistent law enforcement. A city should strive toward development of outcome measures which reflect actual impact of a program, service, or project on its residents, as well as the equitable distribution of impacts. Community members, 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 § 2.15. 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 years 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 residents 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 residents 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) Ranked-Choice Voting or Proportional Representation.** The council may be elected in a single election by the method of ranked-choice voting or the single transferable vote form of proportional representation.

**(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. Evidence suggests that turnout is higher during state and national elections, and some now advocate moving local elections to coincide with state and national elections to increase participation in local races. Although the Eighth Edition did not make a choice regarding holding local elections at the same time as state and national elections or in separate years, the preference for off-year elections has been reasserted by the Committee. There is an increasing risk that partisan polarization will carry over from the higher-level races to the local races even if they are supposedly nonpartisan when all elections are held at the same time. The focus on local issues is difficult to achieve with the attention being given



to higher level races. Introducing methods to increase turnout in a single local election such as ranked-choice voting (RCV) is preferable to holding elections for offices at all levels of government at one time.

(d) Since the sixth edition, proportional representation (PR) via the single transferable vote method has been advocated 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.

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 initially prevented it from becoming a widespread reform measure. Now referred to as ranked-choice voting, it is used in 21 local government elections in 2021. It is a local option for adoption by local governments in Colorado, New Mexico, Utah, and Virginia.

Ranked-choice voting addresses a common issue when elections are a two-stage process with either a primary before or a runoff after the general election—uneven turnout. The turnout for the primaries that narrow the field of candidates or for run-off elections if no candidate receives a majority of votes is generally lower than the general election. The use of ranked-choice voting provides an “instant runoff” that determines winners in a single election, and the Charter Committee recommends that local governments consider adopting this type of election. 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.

There is an interest in RCV 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 RCV. Voters rank candidates 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. 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.

There is evidence that RCV contributes to the civility of campaigning. Instead of candidates focusing on attacking their opponents, candidates perform better when they reach out positively to as many voters as possible, including those supporting their opponents. Even though they may not get the first vote from

these voters, they may get a high-ranked vote. Campaigns may be friendlier as a result. Reports on the impact of ranked-choice voting on civility in elections are [available from FairVote](#).<sup>[7]</sup>

More information about the mechanics of RCV can be obtained from the Ranked Choice Voting Resource Center, [www.rcvresources.org](http://www.rcvresources.org).

**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 chairperson.
- (2) No member of the commission shall be employed by the city or hold any other elected or appointed position in the city.
- (3) 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.

**(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.

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<sup>7</sup> [https://www.fairvote.org/research\\_rcvcampaigncivility](https://www.fairvote.org/research_rcvcampaigncivility)

- (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 39 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.**

- (1) 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.
- (2) 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.
- (3) 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.

- (4) 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.
- (5) 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.
- (6) 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 two of the three 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 and eighth editions 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 –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 II – Single-Member District System; Mayor Elected Separately.**

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.

**Limited Alternative III –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.

**Commentary.**

In all the alternatives, the mayor is elected at large as provided in Alternative II of § 2.03. The preferred alternatives include district representation to ensure that all parts of the community are represented and have a voice on the council. In most cities, racial minorities and lower-income groups are concentrated in selected neighborhoods, so districts elections are crucial to representativeness. There are advantages in having a minority of members who represent the city as a whole. Some cities nominate the candidates for district representation in a primary open only to voters within each district but use a general election in which all voters in the city choose which nominee will be elected to the council from each district. This method obviously strengthens the at-large orientation of the city council while assuring that council members live in all the council districts. Cities that use or consider using this method should be aware of the possibility that the candidate preferred in the district or representing the majority racial or ethnic group in the district may not be chosen by the voters citywide. The same majority can elect all the members of the council. This method also requires a two-election process and precludes a single election with an instant runoff. The totally at-large council is called a limited alternative III because it should only be used in small and homogeneous cities or one in which all segments of the population are intermixed in all parts of the city. Even in a city that is fully integrated, using ranked-choice voting can help to ensure that diverse perspectives are represented on the council.

**Section 6.04. Initiative, Referendum, and Recall.**

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

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

- (1) **Initiative.** The registered voters of the city shall have power to propose legislation and charter amendments to the council and, if the council fails to adopt legislation or charter amendment 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, salaries of city officers or employees or effect any existing contract the city is party to, including Collective Bargaining Agreements or other contracts between the city and its officers and

employees. Proposed legislation must not violate the Constitution, the laws of this State or this Charter and a proposed Charter Amendment must be limited to Charter material and not be legislative in character.

- (2) **Referendum.** The registered voters of the city shall have power to require reconsideration by the council of any adopted legislation and, if the council fails to repeal a legislative 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 or to salaries or benefits of public officers or employees.
- (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 of city's registered voters entitled to vote in city elections may commence initiative, 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 legislation 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 submit the proposed initiative, proposed referendum petition and recall petition to the city attorney for review.

The city attorney must issue an opinion on the legality of the initiative, referendum, and recall and if the city attorney determines them to be legal shall provide the clerk with a title of the measure to be included on the petition and which will also be the title to be included on any ballot should the petition be sufficient. The clerk shall then issue the appropriate petition blanks to the petitioners' committee for those measures the city attorney determines are legally sufficient.

**(c) Petitions.**

- (1) **Number of Signatures.** Initiative and 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. Referendum

and Initiative petitions throughout their circulation shall clearly state the title of the legislation, include the city attorney's description of the legislation or Initiative and make available to anyone who asks for it or make available through a link to the city's website (if there is one) the full text of the legislation sought to be reconsidered or the Initiative being proposed.

- (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 is a registered voter of the city entitled to vote in a city election, 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 legislation proposed or sought to be reconsidered if requested.
- (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 or deemed illegal by the city attorney and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient or deemed illegal by the city attorney, or if the committee disagrees with the title or description provided by the city attorney, the committee may, within two days after receiving the copy of such certificate or notice of the city attorney's determination, file a request that it be reviewed by the council. The council shall review the certificate or determination at its next meeting following the filing of such request and approve or disapprove it or modify the title or description, and the council's determination shall then be a final determination as to the sufficiency 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 after the passage of one year from the date of the final determination of insufficiency.

**(e) Referendum Petitions; Suspension of Effect of Ordinance.**

When a referendum petition is filed with the city clerk, the legislation 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 legislation, or
- (iv) Thirty days have elapsed after a vote of the city on the legislation.

**(f) Action on Petitions.**

- (1) **Action by Council.** When a referendum or initiative petition has been finally determined sufficient, the council shall promptly reconsider the referred legislation by voting its repeal or adopting the initiative proposed. If the council fails to repeal the referred legislation or adopt the initiative as proposed within thirty days after the date the petition was finally determined sufficient, it shall submit the referred or initiated legislation to the voters of the city.
- (2) **Submission to Voters of Referred or Initiated Legislation.** The vote of the city on referred or initiated legislation 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 referred or initiated legislation shall be made available at the polls.
- (3) **Withdrawal of Petitions.** A referendum or initiated petition may be withdrawn at any time prior to a determination that the petition is sufficient. Once determined sufficient, the petition may only be withdrawn if the council enacts the initiated legislation or repeals the referred legislation.

**(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, 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 THE ROLE OF PUBLIC ENGAGEMENT IN LOCAL GOVERNANCE

### Introduction.

The active, informed, inclusive, and equitable engagement of community members, both individually and collectively, is an essential element of healthy civic life and a thriving local democracy. This article describes the role of public engagement in local governance and establishes the principles for successful engagement.<sup>8</sup>

Effective public engagement activities, whether or not they are designed and convened by government officials, can inform public decisions and further community goals. Consistent with the principles of engagement enumerated in this article, anchor institutions,<sup>9</sup> community-based organizations, civic associations, community foundations, faith groups, and grassroots activist groups may convene effective public engagement and problem-solving efforts that can inform elected and appointed officials in the pursuit of their duties. Individual residents can be better informed and invited to take part in public affairs.

Local governments can encourage and support these efforts by modeling good engagement practices, by evaluating engagement, by sharing engagement learning among department staff and with appointed and elected officials, and by offering resources on outreach, facilitation, and other skills to members of the community.<sup>10</sup> Local governments also have unique institutional structures, such as council committees, community advisory bodies (CABs), task forces, neighborhood advisory committees, and annual planning and budgeting processes, that can be established and leveraged toward this purpose. In other words, cities can create the foundations for a healthy civic infrastructure throughout the community.

### Section 7.01. Public engagement as an essential part of civic infrastructure.

The city shall treat public engagement as an integral part of effective and trusted governance, not just as an occasional process or activity.

The city shall treat engagement as a “multi-channel” endeavor that includes face-to-face meetings, virtual interactions, and other online communications.

The departments of city government shall encourage collaboration in public engagement efforts with other government jurisdictions and authorities, anchor institutions, community-based organizations, civic groups, and individual residents.

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<sup>8</sup> The term “public engagement” is understood to include “public involvement,” “public participation,” “citizen engagement,” “community engagement,” and “stakeholder engagement,” and includes robust forms of in-person, technology-aided, or online communication that provide opportunities for public input, dialogue, or deliberation among participants, so people’s concerns, needs, interests, and values are incorporated into decisions and actions on public matters and issues.

<sup>9</sup> Anchor institutions are major organizations that can shape the development of the city including universities, hospitals, museums, sports franchises, military installations, and large corporations.  
[https://www.huduser.gov/portal/pdredge/pdr\\_edge\\_hudpartprt\\_062211.html](https://www.huduser.gov/portal/pdredge/pdr_edge_hudpartprt_062211.html).

<sup>10</sup> This term is used instead of citizen. The word “citizen” has a rich history in democracy, but it can also be a confusing term. Sometimes it is defined in a narrow, legal way, meaning only those people who hold U.S. passports or are eligible to vote. In this Charter, reference is made to “community members,” “residents,” or “persons.”

### **Commentary.**

Cities fail to realize the full benefits of engagement when they conduct participation activities on a piecemeal, occasional, or differing department-by-department basis. Public engagement will be more effective, equitable, and efficient if the city treats it as part of the normal governance process and civic infrastructure of the community as a whole.

Public engagement is particularly important in long range planning and annual budgeting processes. For example, participatory budgeting (PB) is a type of engagement in which community members develop projects to improve the community, often in concert with city officials, and then vote on how to allocate public funds among those projects and ideas. Cities throughout the world have instituted annual PB processes.

To ensure that public engagement is accessible and convenient, cities should “meet people where they are,” both geographically (holding meetings in many different locations) and digitally (using different information technology tools and platforms, including neighborhood and community networks).

Furthermore, if cities don’t collaborate with leaders and organizations outside government, leaders may misunderstand community preferences and perspectives. City officials should develop relationships with a wide range of community members and community organizations in order to participate in, respond to, and support engage resident-led initiatives. Government officials should leverage the connections and networks that already exist in the community, rather than treating each engagement initiative as a separate, stand-alone effort.

At the same time, the success of any local government’s engagement efforts is dependent on the recognition by residents of their responsibilities as community members. These responsibilities include voting, volunteering, deliberating respectively with other members of the community, seeking and sharing information honestly, and engaging with local institutions to co-produce public goods and services and address community challenges.

### **Section 7.02. Institutional structures to support and coordinate engagement.**

The city shall establish new institutional structures or adapt existing structures to oversee, support, coordinate, track, and measure engagement on an ongoing basis. These structures can include:

- (1) Council committees that include residents and other stakeholders
- (2) Departments or administrative positions
- (3) Public engagement commissions
- (4) Community advisory boards, including boards designated to address the concerns of specific populations.
- (5) Youth commissions
- (6) Participatory budgeting processes and commissions

### **Commentary.**

By establishing structures to support public engagement, the city can help ensure that engagement is sustained and improved over time through organizational arrangements. These types of institutional

structures provide platforms to hear testimony from experts and support productive deliberation while meeting the requirements of open meeting laws.

Because effective public engagement requires specific types of expertise such as outreach and facilitation, designated departments, and administrative roles, such as an engagement coordinator, can ensure that engagement is well executed. The city manager should be in regular contact with these operational units to ensure that they are investing in robust public engagement consistent with the spirit and principles of this Article. Additionally, descriptions of city manager and department administrator positions may usefully contain language that calls for attention to public engagement-related learning, exemplary practices, and capacity building by, as appropriate, the municipality or department.

A public engagement commission or office can collaborate with city staff to: develop multi-year plans to guide public engagement activities, programs, and policies; develop engagement guidelines and recommendations for city agencies; provide advice and recommendations regarding the implementation of engagement guidelines and practices to staff and stakeholders alike. A public engagement commission could also review process evaluation results to provide advice and recommendations regarding continuous improvement of engagement policies and practices and provide an annual report regarding the status of public engagement in the city and community at large.

Other CABs that address specific policy arenas should actively engage residents in a variety of ways; this responsibility should be reflected in the charter of the CAB and its members. These advisory bodies can be particularly valuable as platforms for broad, early public engagement on important issues and decisions. CABs should be encouraged to adopt public engagement processes in advance of formal deliberation and decision-making efforts. Public engagement staff can provide training and how-to resources to support the engagement work of CABs.

Youth commissions can elevate the voices of young people in city decisions. Like other CABs, youth commissions are most successful if the members engage their peers in dialogue and deliberation, rather than only representing their individual interests. These types of structures can hear testimony from experts and support productive deliberation while meeting the requirements of open meeting laws.

### **Section 7.03. Principles of public engagement.**

To ensure public engagement centers on the needs and goals of community members, the city shall uphold the following principles, using them as the basis of public engagement protocols and in the remits of public engagement structures (as listed in Section 7.02):

**(a) Equity in engagement.** Principles of justice, equity, diversity, and inclusion should guide the design and execution of public engagement activities, in several ways:

- (1) Government-sanctioned bodies such as CABs may become “gatekeeping” entities that reflect the ideas of self-designated community leaders if they aren’t inclusive, open, and accessible to all members of the public. City officials, therefore, should conduct continual public outreach to bring in new voices.
- (2) When engaging community members, city officials should identify and proactively reach out to the community in its full diversity. To ensure that public engagement activities are not attended only by people already active in local government and politics, city officials should regularly recruit residents through face-to-face or personal written invitations, social media requests, and randomized selection methods. Materials should be written in

plain, comprehensible English, and should also be translated into the other predominant languages that residents speak and read.

- (3) Traditionally excluded and marginalized individuals and communities should be included in ways they themselves identify as authentic and meaningful. City officials should co-design engagement processes with community members to meet the needs of the communities served. Processes should respect a range of values, interests, perspectives, experiences, cultures, and knowledge of those involved.
- (4) The city should expect local the organizations and networks it works with to engage their members in equitable and deliberative ways, so that the input received is representative of their constituents.
- (5) The city should use an equity lens to evaluate data on impacts of engagement, including costs, benefits, and responsibilities.

**(b) Accountability in engagement.** There should be meaningful opportunities for community members to bring issues, concerns, and priorities to city officials to influence city policy, ordinances, and actions. Public engagement activities should be designed to appropriately fit the legal authority, scope, character, and potential impact of a policy, program, or project. There should be clarity about process sponsorship, purpose, design, and how the results will be used. The purpose and potential influence of each public engagement process should be known by all participants in advance but should be flexible enough to adapt to changing conditions during implementation.

**(c) Transparency in engagement.** Communications about public issues and public engagement opportunities should ensure community members can engage effectively. Communications should be made in the predominant languages that residents understand. Participants should have the opportunity to bring and share their own experiences as well as information they have gathered about the issues at hand. Full and complete results should be shared and explanations of how the results will be used or how they will influence decisions should be provided to process participants and the broader public.

**(d) Accessibility in engagement.** Public engagement activities should be broadly accessible in terms of schedule, location, facilities, and information and communication technologies. Schedules should accommodate a variety of participants. Locations should be nearby and reachable via affordable transit, and some engagement activities should be conducted in places where community members already gather regularly. Facilities should be welcoming public spaces and not present physical or cultural barriers to participation. Online engagement opportunities should use technologies that are freely available to residents and attend to barriers people may face, such as: no access to broadband, limited proficiency with technology, and challenges related to deaf-blind accessibility.

**(e) Collaboration in engagement.** Public engagement efforts should build on and help develop long-term, collaborative working relationships and mutual learning opportunities with residents of all ages, civic groups, organizational partners, and other governments. This may include project-specific or ongoing community engagement initiatives.

**(f) Evaluation of engagement activities.** Each public engagement activity and the state of engagement overall should be evaluated through participant feedback, analysis, and learning that is shared publicly and broadly. The ideas, preferences, and/or recommendations contributed by participants should be fully documented and be made available to participants and the broader public. Lessons learned should be applied to future public engagement activities and contribute to the city's overall engagement plan.

## Commentary.

Elected representatives and city administrators have important roles to play in public engagement. Elected leaders should inspire, encourage, oversee, and (when appropriate) participate in engagement efforts. Perhaps most importantly, they should respond to the input and ideas that emerge from engagement efforts, reacting to policy recommendations and supporting other ways for community members to help solve public problems.

City administrators have many of the same responsibilities as elected officials, plus the duty to help staff, support, and coordinate public engagement efforts. Administrators should ensure that relevant city employees have the right skills, training, and job incentives to work effectively in engagement activities.

To actualize the principles laid out in this article, the city council may need to amend local ordinances to allow for effective public participation processes and structures that differ from the conventional public testimony model. In addition to public participation related to decisions made by city council, in the mayor's office, or in the city administrator's office, each city department or bureau should adopt its own public participation practices that are consistent with the principles established in Article VII.

There are a number of resources that can be helpful to local government officials and staff:

- *Making Public Participation Legal* (National Civic League, 2013), which includes a model ordinance to support more effective engagement.
- *Strengthening and Sustaining Public Engagement: A Planning Guide for Communities* (Public Agenda, 2018).
- *Public Participation for 21<sup>st</sup> Century Democracy* (Nabatchi and Leighninger, 2015).
- "Repurposing Citizen Advisory Bodies," (Stout, *National Civic Review*, 2014).
- Participedia, the world's largest online database of engagement examples, processes, tools, and organizations.
- The Civic Tech Field Guide, a crowdsourced, global collection of technology for tools and projects.

## General Commentary.

Upgrading the engagement capacity of local government is one of the most significant changes to be found in the Ninth Edition of the Model City Charter. Previous editions emphasized the importance of administrative professionalism, efficiency, and ethics in local government. The Ninth Edition continues that tradition but also elevates the importance of just, inclusive, and equitable public engagement; the values of democratic professionalism and ethics; and community-centered governance and problem solving.

There are many reasons for this new emphasis on public engagement, including:

- (1) Local governments face complex challenges. For some of these issues, governments must negotiate tensions and tradeoffs among competing, underlying public values. This work is best done in collaboration with community members, through deliberative problem-solving, planning, and decision-making, rather than solely through technical expertise or adversarial politics.



- (2) Public engagement can bridge divides. While most conventional engagement processes seem to encourage tensions and divisions among community members, and between community members and government, more participatory and equitable practices have achieved success in building mutual understanding and establishing common ground and consensus across different groups of people.
- (3) Community members have tremendous problem-solving capacities. In fact, many public problems simply cannot be addressed without the support of large numbers of people, through changes in their behavior, increased volunteerism, and/or collaboration between community members and government officials.
- (4) Equity and engagement require one another. It is difficult to address issues of race and equity (past and present) without engaging large, diverse numbers of people, and it is difficult to engage large, diverse numbers of people without addressing issues of race and equity. Making public engagement more inclusive and participatory will help produce more equitable outcomes for a wider range of people, as will engaging people in evaluating whether policy outcomes are in fact equitable.
- (5) Civic health matters. Strong, ongoing connections among community members, robust relationships between community members and public institutions, and positive attachments between people and the places they live are highly correlated with a range of positive outcomes, from better physical health to higher employment rates to better resilience in the face of natural disasters.

For all these reasons, public engagement should be pursued in the interest of the health, prosperity, justice, safety, and the general well-being of the community.

## **Article VIII 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 8.01. 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 resident, 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 8.02. 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. The city may adopt policies to increase diversity in employment and contracting and/or to remedy the effects of past discrimination.
- (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. 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 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.
- (6) City officers or employees may spend public funds and advocate for the city's position on a city ballot issue when the city is authorized to adopt a position to support or oppose a specific city ballot issue and has formally: adopted a position to support or oppose a specific ballot issue, authorized the expenditure of public funds, or authorized city officers or employees to speak and campaign on its behalf on the measure.

### **(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.

In *FOP v. Montgomery County*, <https://mdcourts.gov/data/opinions/coa/2016/45a15.pdf> Maryland's highest court recognized the right of "government speech" in the context of a ballot issue associated with remedying a charter provision that provided for "effects" bargaining in the police department and which inhibited police reform. The Court concluded that who better than the government to speak on issues of its operations and allowed public funds and employees to be used to support the county's position in a referendum that the FOP sought to overturn the charter change. Wording in section 8.02. 5 has been changed in this edition to preserve—in those jurisdictions like Maryland that would allow support of certain ballot initiatives—the authority of employees to act on behalf of the city to support a ballot measure. The Court's opinion was very limited and does not offer support for the view that the government can use public funds or employees to support measures that do not affect the operation of the government. Thus, the language in the proposed amendment provides that this support can only be offered "where authorized."

#### **Section 8.03. 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 community members 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 8.03(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 the public 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 8.03(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 IX 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 9.01. 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 must be submitted to the Clerk in advance of a petition and reviewed by the City Attorney for conformity with this Charter, legality and for the City Attorney to provide a title to be used on the petition and ballot and a description of the effect of the proposed charter amendment. Upon approval of sufficiency of the proposed amendment, the amendment will be submitted to the voters of the city.

A proposed amendment initiated by the voters shall be by petition containing the description of the amendment and title approved by the City Attorney and on forms issued by the Clerk. The subject matter of a charter amendment must not be legislative and must be directed at the form of government and governance of the city authorizing or limiting its powers and directing the manner of exercise of those powers. 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 Clerk certifies the petition for sufficiency.

### **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. Charter Amendments should only include charter material and should not include legislative material. A Charter is intended to be a constitution, not a code of laws.

### **Section 9.02. 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 § 9.01, 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 9.03. 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 X**

### **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 10.01. 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 10.02. 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 10.03. 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 10.04. 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 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]

#### **Section 10.05. 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 ensure 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 § 10.05(c), the city council shall follow the procedures prescribed in § 2.13, 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 § 2.13 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 10.06. 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 1

### 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. Cities that use the mayor-council form can make choices to “reform” their city governments 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 the 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 to city governments that were neither effective nor efficient in their delivery of services to citizens. Some cities still retain these features in their charters.

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 the Eighth Edition was different. Officials and citizens who are reviewing a mayor-council charter were 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 were proposed. In this edition, the responses to revised analytical questions lead to a different conclusion. One alternative that is consistent with reform ideals is recommended.

#### 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.

- First, should a chief administrative officer be appointed? The model charter recommends the addition of a CAO to all types of mayor-council governments. How the CAO is appointed and the responsibilities of the position determine whether reform values are being advanced.
- Second, how is the CAO chosen?

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. 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.<sup>11</sup> Experience has demonstrated that it is beneficial for cities to have an administrative officer. This officer can assist in filling the executive responsibilities of the mayor, 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 administrative leadership to city government. Furthermore, it is important for the mayor to devote a substantial amount of time to interacting with the public, making it difficult to devote sufficient attention to policy development, administration, and management. So-called “strong” mayors may actually be overextended mayors. 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.

### **B. How is the CAO chosen?**

Among the mayor-council cities with a population of 10,000 or higher, 52 percent have a CAO. There are three methods of appointing the CAO. In 20 percent, the mayor and council jointly fill the position and can be called mayor and council-CAO governments. In 22 percent, the CAO is nominated by the mayor and approved by the council. They can be called mayor-council-CAO governments to signify the council’s role in approving the nomination. Finally, in 11 percent of these cities the mayor appoints the CAO, and these cities can be called the mayor-CAO-council form to signify that the CAO is closely tied

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<sup>11</sup> Kimberly Nelson and James H. Svara, “Form of Government Still Matters: Fostering Innovation in U.S. Municipal Governments.” *American Review of Public Administration*. 42 (2012), 257-281. The breakdown of types of mayor-council cities without a CAO and with a CAO appointed in different ways come from this source updated with data from 2019 in a dataset maintained by Kimberly Nelson.

to the mayor, and the form is a In a study of differences in adoption of innovative practices based on detailed features of form of government in cities over 10,000 in population, half of the mayor-council cities had a chief administrative officer-- “pure” strong mayor approach that clearly divides powers between the mayor and the council with the CAO being an extension of the mayor’s office.

The participation of the council in the selection of the CAO reflects a form with both separated and shared authority between the mayor and the council. 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. Potentially, the CAO chosen jointly serves as a bridge between the mayor and the council. 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, and the presence of the CAO offers professional leadership to both the mayor and the council.

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.

#### Recommended Structure in Mayor-Council Cities

To clarify responsibility and strengthen 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 recommended 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. It is recommended that provisions be made for the appointment of a CAO consistent the shared 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 or appointed jointly by the mayor and council—similar to the way that the city manager is chosen. This official serves as a bridge between the two sets of officials and is assigned administrative responsibilities. In the strong mayor-council cities where the CAO is appointed by the mayor, the CAO provides professional assistance to the mayor but is not accountable to the council.

#### **Preferred Option: Mayor and Council-CAO and Mayor-Council-CAO government**

Among mayor-council cities with a CAO, approximately three quarters have involvement of the council in the appointment. This option is based on the combination of separated and shared powers between the mayor and the council found in most mayor-council cities. 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.<sup>12</sup> 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.

#### Assessment of the mayor-council-CAO and mayor and council-CAO options

The 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.

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<sup>12</sup> 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.

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. The council is not likely to receive a full and fair assessment of policy options from the CAO, but rather to hear the arguments for the mayor's preferred approach. 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.

In a study of the adoption of innovations in cities with different variations of the mayor-council forms, it was found that the mayor and council-CAO had the highest score followed by the mayor-council-CAO form. The mayor-CAO-council had less innovation than these two, but all variations of the incorporation of a CAO had higher innovation than mayor-council cities with no CAO.<sup>13</sup>

Election of the mayor and veto are found in both variations of the mayor-council-CAO 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.

#### 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.

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<sup>13</sup>In the Nelson and Svara study, a composite adoption rate was calculated for innovations related to e-government, strategic practices, and reinventing government. As noted in the introduction, the highest adoption rates were in council-manager cities with elected mayors followed by council-manager cities with mayors chosen by the council.

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## Appendix 2

### THE CONTEXT FOR SOCIAL EQUITY AND LOCAL GOVERNANCE

Since 1900, the National Civic League has sought to project the highest standards in local governance by publishing the Model City Charter. A charter is the foundation of a local government and functions as the municipal equivalent of a state or federal constitution, setting forth guiding principles for governance. A charter specifies the most fundamental relationships between a government and its community. It establishes the framework for how a local government operates in terms of its structure, responsibilities, functions, and processes. The way public officials are elected, the form of government, and the role community members play in local government are just a few examples of the important choices articulated in a charter.

Many of the revisions to Ninth Edition of the Model City Charter focus on social equity and inclusive public engagement. The revisions offer guidance on how municipalities can (re)shape their organizations, processes, and programs to address inequities in their communities. In making these changes, it became clear the topic of equity is complex and that public managers, administrators, elected officials, and community members may need additional material to understand both the issue of equity and the rationale for these revisions. This addendum serves that purpose by:

1. Situating equity within the context of this edition of the Model City Charter (i.e. why social equity and why now?),
2. Providing some foundational knowledge about the concept of equity, and,
3. Offering a set of key resources to which managers and elected officials can refer as they implement equity-oriented changes.

#### Why Equity and Why Now?

Early editions of the Model City Charter were focused on guiding local governments in their efforts to become more efficient, ethical, professional, and accountable. To this end, the League's charters served dual purposes. On the one hand, they reflected core values and principles regarding the best (and better) practices for organizing and operating a municipal government. On the other hand, they were living documents that reflected "current" and/or "timely" ideas that may not have been represented in past editions. Social equity is simultaneously a core value, which early editions overlooked, as well as an issue at the forefront of the current public agenda. These two characteristics of equity—a core value and a timely issue—serve as the primary basis for its emphasis in the ninth edition.

#### *Equity as a Core Value of Public Administration*

Historically, the three pillars of public administration have been efficiency, economy, and effectiveness. These three core values have served as guiding principles for the Model City Charter at least since the second edition was developed in 1915, when the council-manager form of local government was first introduced by the League. These three core values stood generally unexamined by scholars of public administration until 1969 when H. George Fredrickson penned his essay *Toward a New Public Administration*. In this essay, Fredrickson argued that social equity had become a fundamental objective for public programs. Public administrators, he stated, ought to move beyond the questions of how effectively and efficiently a public program worked. They also should consider for whom the program worked. Stated differently, public administration, particularly within local governments, had to acknowledge "that many public programs were implemented much more efficiently and effectively for

some citizens than for others.”<sup>15</sup> Over the half century since Fredrickson’s essay, social equity has become recognized as the fourth pillar of public administration alongside efficiency, economy, and effectiveness.

As the intellectual underpinnings of the Model City Charter evolved to include equity, many local governments also embraced equity as a core value. More precisely, the ideas and tools of social equity have become integrated across the departmental units and the decision-making processes of many American local governments. This reality is reflected in the increasing network of equity oriented local governments participating in organizations such as the Government Alliance for Racial Equity. The implementation of equity in local governments has resulted in the creation of new equity-oriented positions, revisions to guiding documents, and the development of new performance metrics. Indeed, many local governments are fundamentally reshaping several parts of their day-to-day operations in their embrace of social equity as a core value.

#### *Equity and Local Governments: the current context*

While typically viewed as a national issue, the problems of inequity, whether social, economic, or otherwise, often manifest most clearly at the local level. The challenge of social (in)equity at the local level is reflected in many unfortunate events’ outcomes that emerged before and during the revisions to this edition of the Model City Charter. For example, as this edition was being revised, America, and rest of the world, was beset by the COVID-19 pandemic. The pandemic revealed stark vulnerabilities for disenfranchised communities: the inequities regarding morbidity and mortality from the virus, access to vaccinations, and access to treatment. In addition, several highly publicized killings of African American men and women led to an increased awareness of violence against communities of color. Subsequently, local leaders have called for and were called upon to more critically examine policies, programs, and processes that may ignore or reinforce existing inequities in their communities.

While all levels of government are culpable in having shaped (and continuing to shape) the distribution of (dis)advantage across the United States, most people’s interactions with government occur at the local level, which increases the importance of municipalities in addressing social equity challenges. For example, one need only look to the history of American land use regulations to understand how regulatory tools have been used to segregate communities in ways that limit access to and opportunities for employment, education, and other public services and amenities. Many local government leaders, however, have come to realize that while past decisions and processes helped create inequities, this also means that they have the tools at their disposal to ameliorate and rectify these inequities. The recent and well publicized work of Raj Chetty supports this idea.

In a series of scholarly papers, Raj Chetty and his colleagues demonstrate significant differences in intergenerational mobility between American counties.<sup>16</sup> That is to say, the ability of an individual to “advance” beyond the socio-economic standing of their parents varies significantly based on the county in which they are born. Such mobility (and the lack thereof) is a critical factor in the creation of the long-standing inequity that characterizes the country, and Chetty’s work supports what many local governments already know: inequity is not just reflected in the local community, it is created and

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<sup>15</sup> H. George Fredrickson, “The State of Social Equity in Public Administration,” *National Civic Review*, Winter 2005, p. 32.

<sup>16</sup> Chetty, R., Hendren, N., Kline, P., & Saez, E. (2014). Where is the land of opportunity? The geography of intergenerational mobility in the United States. *The Quarterly Journal of Economics*, 129(4), 1553-1623.

perpetuated by the institutional features that shape that community. Simply stated, Chetty’s work supports the timely efforts to address inequity through municipal government.

## **What is Equity**

Providing some “clarity” around the concept of equity is a key objective of this addendum. Equity can be difficult to define, and consequently, difficult to adopt. One key challenge is that policymakers, administrators, and community members often have differing ideas about what equity means and what its implications are. Thus, having agreement on the definition of equity is an important starting point for local government leaders and public managers. This addendum to the Model City Charter offers some insights into the concept of equity by: (1) contrasting equity with equality, (2) describing some ways in which the term can be operationalized in practice, and (3) moving beyond the “what” of equity to the “where.”

### *Equity vs. Equality*

A useful first step in defining equity is to distinguish it from equality. The terms equity and equality are often used interchangeably; however, they differ in important ways. Equality is typically defined as treating everyone the same and giving everyone access to the same opportunities. In contrast, equity is about fairness. It recognizes that some groups face barriers to opportunities that others may not face. Thus, to achieve equity, policies and procedures may result in an “unequal” distribution of resources. Individuals are given more, or less, or different resources depending on their needs so that each can have fair access and a fair opportunity to watch the game. Drawing on this idea of fairness, the National Academy of Public Administration defined “equity” as:

The fair, just and equitable management of all institutions serving the public directly or by contract; the fair, just and equitable distribution of public services and implementation of public policy; and the commitment to promote fairness, justice, and equity in the formation of public policy.

### *Operationalizing Equity*

While this general definition—with its focus on fairness—may be helpful in shaping initial messaging about equity and conversations about advancing the pursuit of equity, it can be difficult to operationalize, especially in a governmental context and may be limiting for administrators implementing equity at the programmatic level. Thus, a more precise and concrete operation definition—one that provides instructions or descriptions of sets of actions, processes, or activities that are designed to link concepts to magnitudes of the world—is needed.

As Brandi Blessett, Marc Fudge, and Tia Sheree Gaynor have noted, the fairness-oriented approach to defining equity can (and should) be refined to advance operational efforts. In particular, they define equity in public administration as:

...policy formulation and implementation, public management practices, the provision of public goods and services, and administrator/resident interactions that reduce (and

ultimately eliminate) disparity, marginalization, and discrimination while increasing social and political inclusion.<sup>17</sup>

This definition intentionally avoids terms that are difficult to measure like “fairness” and does not support an ideology grounded within equality. It does, however, incorporate measurable concepts like disparity, discrimination, marginalization, and inclusion.

#### *What vs. Where of Equity*

To understand how these concepts are operationalized and transformed into activities and programs, it is useful to review the “what” and “where” of social equity by mapping equity to four programmatic objectives: access, quality, procedural fairness, and outcomes.

*Access:* Evaluate the extent to which public services and benefits are available to all. Example: Are public meetings held at a time when the public can attend? Is location easy to get to via car, bicycle, or public transit? Are childcare or child-friendly facilities provided? Are there multiple ways for residents to engage?

*Quality:* Assess the level of consistency in public service delivery to different groups and individuals. Example: Are first responder response times equivalent in all neighborhoods within the jurisdiction?

*Procedural fairness:* Examine problems in due process, equal protection, public engagement in decision-making, and eligibility criteria for services, public policies, and programs. Example: Is the city issuing warnings for code compliance before issuing citations, thus giving standard times for corrections and responses? Is this process written down for the public to see?

*Outcomes:* Assess the degree to which policies and programs have the same or disparate impacts on groups and individuals. Example: Do all areas of the community have food access (defined as living over a mile from a large grocery store if in an urban area or over ten miles from a large grocery store if in a rural area)?

As public managers, elected officials, and community members move from the broader definition of equity to its more operational form, the picture of inequity may become clearer. Equity-minded public officials should be able communicate what equity looks like within their communities. The definition—and subsequent operationalization—of equity described above is an important step in that regard.

In efforts to operationalize the values of equity in city operations, it helps to have common understanding of the words that are often used in relation to equity. The City of Mesa, Arizona developed the following glossary.

#### **Glossary**

*Accessible:* A person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and integrated manner.

*Bias:* Prejudice toward one group and its members relative to another group.

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<sup>17</sup> Blessett, B., Fudge, M., & Gaynor, T.S. (2017). Moving from Theory to Practice: An Evaluative Assessment of Social Equity Approaches. Submitted to Center for Accountability and Performance and National Academy for Public Administration’s Standing Panel on Social Equity in Governance.

*Public Engagement:* Active, intentional dialogue between community members and public decision makers.

*Discrimination:* Unfavorable or unfair treatment toward an individual or group based on the groups, classes, or other categories to which they are perceived to belong.

*Diversity:* Psychological, physical, and social differences that occur among all individuals. A diverse group, community or organization is one in which a variety of physical, social, and cultural characteristics exist.

*Ethics:* Moral principles that govern behavior or the conducting of an activity, practice, or policy.

*Ethnicity:* A social group that shares a common and distinctive culture, religion, language, ancestry, nation, history, and/or traditions.

*Equality:* The right of different groups of people to receive the same treatment.

*Equity:* Fairness and justice, especially pertaining to rights and protection under the law. The guarantee of fair treatment, access, opportunity, and advancement while striving to identify and eliminate barriers that prevent the full participation of some groups.

*Equity Officer:* An executive position that is responsible for providing strategic direction to ensure that equity, equality, and equal access and opportunity is established, maintained, and fostered throughout the organization.

*Harassment:* Unwelcome, intimidating, or hostile behavior.

*Inclusion:* The practice or policy of providing equal access to opportunities and resources for people who might otherwise be excluded.

*Implicit Bias:* Inclinations in judgment or behavior that operate below the conscious level and without intentional control.

*Institutional Racism:* Policies, practices, and procedures as part of the way an organization or society operates that result in and support a continued unfair advantage or harmful treatment to others based on race.

*Justice:* Fair, impartial, and moral treatment of people.

*Marginalization:* A person, group, or concept treated as insignificant or placed in a position of little or no importance, influence, or power.

*Race:* A grouping of human beings based on a shared geographic dispersion, common history, nationality, ethnicity, or genealogical lineage. Race is also defined as a grouping of human beings determined by distinct physical characteristics that are genetically transmitted.

*Racism:* Individual and/or institutional practices, behaviors, rules, policies, and so forth that result in a continued unfair advantage for some and unfair or harmful treatment of others based on race.

*Socioeconomic Class:* Social group based on a combination of factors including income, education level, occupation, and social status in the community.

*Tolerance:* Recognition and respect of values, beliefs, and behaviors that differ from one's own.

*Underserved:* People and places that historically and/or currently have not had equitable resources or access to services.

### **Using the Ninth Edition of the Model City Charter**

The Ninth Edition of the Model City Charter was the result of a year-long review and revision process with sharpened focus on equity and inclusive public engagement. The Social Equity Working Group of the Charter Revision Project examined the entire document through an equity lens and developed new language to be interspersed throughout the ninth edition. For instance,

- Article III (City Managers) was revised to underscore the manager’s role in promoting social equity throughout the organization.
- Article IV (Departments, Offices, and Agencies) now includes language on “adopting an equity lens to reshape decisions and activities, including the sections on personnel, land use, development and environmental planning.”
- Article V (Budgets) emphasizes the importance of reflecting social equity in performance assessments and access to services.
- A new section, Article VII (The Role of Public Engagement in Local Governance), states that “principles of justice, equity, diversity, and inclusion” should guide the execution of public engagement activities, in a variety of ways, including outreach, evaluation, and process design.
- The Mayors and Councilmembers Working Group recommended changes to Article VI (Elections) to ensure elected offices are fully representative of the community.

Of course, many cities have already made progress in implementing social equity practices in their agencies and community affairs, though they may not have reflected social equity as a value in their charter. We certainly support the creation of ordinances, policies, rules, guidelines and offices to advance equity, much of which may not be described in the charter. At the same time, for equity to become a long-term value reflected in all city processes, we encourage consideration of the measures outlined above as part of the city’s charter.

Finally, it is important to note that equity may be defined and implemented in a variety of ways, based on the particular characteristics and interests of a community. It is important, therefore, that work to create equity be driven by an inclusive community engagement process to gather insights and direction from the community itself. Many of the resources below start with this process in mind and remind us that the definition of equity should reflect the perceptions of those affected.

### **Additional Resources**

“[The Basics of Equity in Budgeting](#),” Government Finance Officers Association.

“[Racial Equity: Getting to Results](#),” Government Alliance on Racial Equity.

“[Governing for Equity: Implementing an Equity Lens in Local Government](#),” International City/County Management Association.

“[Advancing Racial Equity in Your City: Municipal Action Guide](#),” National League of Cities

## **Model City Charter Revision Steering Committee**

### **Co-Chairs**

- Clarence Anthony, CEO, National League of Cities
- Ronald Loveridge, Director, Center for Sustainable Suburban Development; former Mayor, City of Riverside, California
- Marc Ott, Executive Director, International City/County Management Association
- Kendra Stewart, former President American Society for Public Administration

### **Members**

- Chris Balch, City Attorney, Brookhaven, Georgia
- Patti Garrett, Mayor, City of Decatur, Georgia
- Teresa Gerton, President, National Academy of Public Administration
- David Luna, Councilmember, Mesa, Arizona
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- Chris Morrill, Government Finance Officers Association
- Sylvester Murray, Visiting Professor, Jackson State University
- Tina Nabatchi, Professor of Public Administration and International Affairs, Syracuse University
- John Nalbandian, Professor Emeritus, University of Kansas
- Kimberly Nelson, Professor of Public Administration and Government, University of North Carolina at Chapel Hill
- Jerry Newfarmer, CEO, Management Partners
- Robert O'Neill, former Executive Director, International City/County Management Association
- Martha Perego, Director, Membership Services and Ethics, International City/County Management Association
- James Svava, Senior Fellow, School of Government, University of North Carolina at Chapel Hill
- Mark Washington, City Manager, Grand Rapids, Michigan
- Chuck Thompson, Executive Director, International Municipal Lawyers Association

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### **City Managers/Operations/Finance**

- James Fisher, City of Brenham, Texas
- Jason Grant, International City/County Management Association
- Kimberly Nelson, University of North Carolina
- Lee R. Feldman, City of Gainesville, Florida
- Peggy Merriss, City of Sandy Springs, Georgia
- Ron Holifield, SGR
- Randall Reid, International City/County Management Association
- Shayne Kavanagh, Government Finance Officers Association
- Zach Walker, City of Independence, Missouri

### **Community Members/Public Engagement**

- Terry Amsler, Indiana University Bloomington
- Albert Dzur, Bowling Green State University

- Teresa Gerton, National Academy of Public Administration
- Mike Huggins, Public Work Academy
- Matt Leighninger, National Conference on Citizenship
- Margaret Stout, West Virginia University
- Wendy Willis, Oregon's Kitchen Table

#### Legal Issues/City Attorneys/Home Rule

- Chris Balch, City of Brookhaven, Georgia
- Nestor Davidson, Fordham Law School
- William Scheiderich, City of Beaverton, Oregon
- Philip Strom, City of Grand Rapids, Michigan
- Chuck Thompson, International Municipal Lawyers Association
- Kevin Toskey, League of Minnesota Cities
- Will Trevino, Messer, Fort & McDonald

#### Mayors/City Councils

- Anthony Santiago, Institute for Youth, Education and Families, National League of Cities
- Christine Sederquist, City of Leander, Texas
- Doug Linkhart, National Civic League
- Hon Ronald Loveridge, Center for Sustainable Suburban Development, University of California, Riverside.
- James Svara, University of North Carolina
- John Nalbandian, University of Kansas
- Hon. Patti Garrett, City of Decatur, Georgia
- Tony Peyton, CE&S Foundation

#### Social Equity Working Group

- Brandi Blessett, University of Cincinnati
- Tom Carroll, Village of Silverton, Ohio
- Teresa Gerton, National Academy of Public Administration
- Benoy Jacob, University of Wisconsin
- Derek Okubo, City and County of Denver
- Tina Nabatchi, Syracuse University



# The Ninth Edition

The Model City Charter is used by hundreds of cities to guide their charter language and governance structure. First published in 1900, this is the first full revision of the document since 2000, and includes new language and recommendations in the following areas:

- **Equity:** The Model discusses the need for social equity and contains a separate section on infusing equity into charters as well as other city operational structures.
- **Public Engagement:** The new edition stresses the importance of community engagement and how these principles can be reflected both in a city's charter and in other structures.
- **Mayors:** The document emphasizes the important facilitative roles of the mayor in helping the city council and manager to work together to set goals and work with the community on implementation.
- **City Councils:** The importance of the city council's relationship to the city manager is emphasized, to include hiring and regular evaluation.
- **Elections:** This new edition encourages the direct election of mayors and discusses options for council representation and election timing.

Many thanks to the Murray and Agnes Seasongood Good Government Foundation for their support and to the many individuals and organizations that made this possible, which are listed at the back of the document.

We encourage you to view and use the Model City Charter online at [www.ncl.org](http://www.ncl.org), where the full text and links to related documents can be found.



	§	WOODBURN CHARTER		LOC MODEL CHARTER		NLC MODEL CHARTER
<b>PREAMBLE</b>		None.		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.		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, public engagement, diversity and inclusiveness and regional cooperation.
<b>TITLE OF ENACTMENT</b>	§1	This enactment may be referred to as the City of Woodburn Charter of 1982.	1.1	This charter may be referred to as the 20__ _____ Charter		
<b>NAME</b>	§2	The municipality of the City of Woodburn, Marion County, Oregon, shall continue to be a municipal corporation with the name "City of Woodburn."	1.2	The City of _____, Oregon, continues as a municipal corporation with the name City of _____.		
<b>BOUNDARIES</b>	§3	The city shall include all territory encompassed by its boundaries as they now exist or hereafter are modified by voters, by the council or any other agency with legal power to modify them. The recorder shall keep in his or her office at the city hall at least two copies of this charter, in each of which he or she shall maintain an accurate, up-to-date description of the boundaries. The copies and descriptions shall be available for	1.3	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.		

		public inspection at any time during regular office hours of the recorder.				
<b>POWERS OF THE CITY</b>	§4	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.	2.1	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.	1.01	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.
<b>CONSTRUCTION OF CHARTER</b>	§5	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.	2.2	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. This Charter's interpretation shall be examined in its entirety.	1.02	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.
<b>WHERE POWER VESTED</b>	§6	Except as this charter provides otherwise, all powers of the city shall be vested in the council.	2.3	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.	2.01	<b>General Powers and Duties.</b> 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.
			3.1	<u>General Powers and Duties.</u> 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	2.05	<b>Relationship to City Manager.</b> As explained in Article III, the city council hires the city manager to serve as the chief executive of the city government and may terminate the appointment of the city manager at any time. It is an ongoing responsibility of the city council to assure that the city manager and staff are accountable for their

				for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.		actions. The council shall formally evaluate the city manager's performance on an annual basis. The council shall also monitor the policy proposals submitted by the city manager and the administrative actions taken by the city manager and staff to ensure that the council's expectations are being met and that acceptable standards are being maintained.
<b>THE COUNCIL</b>	§7	The council shall be composed of six councilors. The city shall be apportioned into six wards for nomination and election of councilors. The Council of Woodburn shall alter the ward boundaries to maintain an equal population distribution not less than once every ten years.	3.2	<u>Council</u> . The council consists of a mayor and six councilors nominated and elected from the city at large.	2.02 (c)	There shall be a city council composed of [ ] members. <b>Alternative 1 - Option A</b> - District elections of an even number of council members. <b>Alternative 1 – Option B</b> - Combination of district and at-large elections of an even number of council members. <b>Alternative 1 – Option C</b> - In small homogeneous communities, at-large elections of an even number of council members may be suitable.
<b>COUNCILORS</b>	§8	The councilors in office at the time this charter is adopted shall continue in office, each until the end of his or her 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 councilors shall be elected, each for a term of four years.	7.1	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 elected for four-year terms.	2.02 (b)  6.03	The term of office of elected officials shall be four years elected in accordance with Article VI.  <b>Methods of Electing Council Members.</b> <b>Single-Member District System; Mayor Elected Separately.</b> 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.

<b>MAYOR</b>	§9	At each biennial general election, a mayor shall be elected from the city at large for a term of two years.	7.2	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.	2.03 (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.
<b>OTHER OFFICERS</b>	§10	Additional officers of the city shall be a city administrator, a municipal judge, and a city attorney, each of whom the council shall appoint, and such other officers as the council deems necessary. The council may combine any two or more appointive offices, except the offices of city administrator and judge, or the offices of city attorney and judge. The municipal judge shall not be subject in judicial functions to supervision by any other officer.				
<b>SALARIES</b>	§11	The compensation for the services and legitimate expenses of the mayor and councilors and each city officer and employee shall be the amount fixed by the council.	9.1	The council must authorize the compensation of city officers and employees as part of its approval of the annual city budget.	2.04	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.
<b>QUALIFICATIONS</b>	§12	No person shall be eligible for an elective office of the city unless at the time of his or her election, he or she is a qualified elector within the meaning of the state constitution and has resided in the city	7.4	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	2.02 (a)	<b>Eligibility.</b> Only registered voters of the city shall be eligible to hold the office of council member or mayor.

		during the twelve months immediately preceding the election. Persons shall not be eligible for election as councilor unless at the time of his or her election the person is a resident of the ward from which he or she is elected. The council shall be the final judge of the qualifications and the election of the mayor and its own members. No person shall hold elective office of the city while an employee of the city. No former mayor or councilor may be employed by the city in any capacity for at least one (1) year after leaving office.	f17	<p>b) No person may be a candidate at a single election for more than one city office.</p> <p>c) Neither the mayor nor a councilor may be employed by the city.</p> <p>d) The council is the final judge of the election and qualifications of its members.</p> <p>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.</p>	2.6 (a)	<b>Holding Other Office.</b> 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.
					2.08	<b>Judge of Qualifications.</b> 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.
<b>MEETINGS</b>	§13	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	3.6	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	2.12 (a)	The council shall meet regularly at least once in every month at such times and places as the council may prescribe by

		adopt rules for the government of its members and proceedings. The mayor upon his own motion may, or at the request of three 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.	3.5	accordance with the rules and laws of the state of Oregon.  The council must by resolution adopt rules to govern its meetings.	(b)	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.</b> 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.
<b>QUORUM</b>	§14	A majority of the incumbent members of the council 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.	3.7	Except as specifically addressed here and in Section 7.9, a majority of the council members is a quorum to conduct business. In the event of an absence, a smaller number may meet and compel attendance of absent members as prescribed by council rules. In the event of a vacancy due to resignation or other events, the quorum is reduced accordingly solely for the purpose to make necessary appointment(s) to reach the required quorum as outlined in Section 7.9.	2.12 (c)	<b>Voting.</b> . . . _____ 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. . .
<b>RECORD OF PROCEEDINGS</b>	§15	The council shall cause a record of its proceedings to be kept. Upon request of any of its members, ayes and nays upon	3.9	A record of council meetings must be kept in a manner prescribed by the council rules and the laws of the state of Oregon.	2.12 (b)	<b>Rules and Journal.</b> The city council shall determine its own rules and order of business and shall provide for



		any question before it shall be taken and entered into the record.				keeping a journal of its proceedings. This journal shall be a public record.
<b>PROCEEDINGS TO THE PUBLIC</b>	§16	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.				
<b>MAYOR'S FUNCTIONS AT MEETINGS</b>	§17	The mayor shall be chairman of the council and preside over its deliberations. The mayor shall vote only in case of a tie. The mayor shall have the authority to preserve order, enforce rules of the council, and determine the order of business under the rules of the council.	3.3	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.	2.03 (a)	The mayor shall be a voting member of the city council and shall attend and preside at meetings of the council, . . .
<b>PRESIDENT OF COUNCIL</b>	§18	At its first meeting after this charter takes effect and thereafter at its first regular meeting in the month following a biennial general election, 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 office, the president shall act as mayor. In any event, the president of the council shall retain the right to vote as a councilor.	3.4	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.	2.03 (b)	. . . 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.
<b>VOTING</b>	§19	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.	3.8	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. The voting requirement to fill council member vacancies, if there is less than a majority of council member remaining, is separate from the quorum requirement required to conduct all remaining city business unless otherwise stated.		

<b>MAYOR</b>	§20	<p>The mayor shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of writs and other legal actions, however, this shall not be construed as conferring upon the office of mayor any powers or functions in conflict with other provisions of this charter. The mayor shall appoint the committees of the council as provided by the rules of the council. The mayor shall appoint the members of the boards, committees, and commissions as provided by ordinance. The mayor shall sign all records of proceedings approved by the council. After the council approves a bond of a city officer or a bond for license, contract, or proposal, the mayor shall endorse the bond. In time of public danger or emergency, if so authorized by council, the mayor shall take command of the police and other departments of the city to maintain law and enforce order. The mayor shall, from time to time, communicate to the council such information and recommend such measures as, in his or her opinion, may tend to the improvement of the finances, the protection, the health, the security, the ornament, the comfort, the administrative management and the general welfare and prosperity of the city. The mayor shall establish a cooperative arrangement to interact between the council and the administrator, to assist in the interpretation of the council's objectives so that the implementation of the council's actions will derive the greatest benefit to the city. This does not preclude the administrator discussing problems with council members. All ordinances and resolutions shall, before they take effect, be presented to the mayor. If the mayor approves thereof, he or she shall sign the same, and such as he</p>	3.3	<p>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.</p> <p>a) With the consent of the council, the mayor appoints members of commissions and committees established by ordinance or resolution.</p> <p>b) The mayor must sign all records of council decisions.</p> <p>c) The mayor serves as the political head of the city government but shall have no administrative duties.</p>	2.03 (a)	<p>The mayor shall . . . represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of community 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.</p>
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		or she shall not sign shall be returned to the council with written objections thereto, by depositing the same with the city recorder to be presented to the council at their next regular meeting thereafter. Upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be deemed to have been reconsidered and the questions shall again be put upon the passage of same notwithstanding the objections of the mayor; and if, upon such vote, the council shall pass the same by a majority vote of the incumbent members of the council, it shall have the same effect as if approved by the mayor. If any ordinance or resolution shall not be returned to the city recorder by the mayor within five working days after it shall have been presented to him or her, the same shall have the same force and effect as if approved by the mayor. It shall be the duty of the city recorder to endorse upon each ordinance or resolution upon the records of the proceedings of the council the time when such ordinance or resolution was delivered to the mayor, and the time when the same shall be returned to the recorder's office by the mayor.				
<b>CITY ADMIN / MANAGER</b>	§21	<b>(A) Qualifications.</b> The city administrator shall be the administrative head of the government of the city. The administrator shall be chosen by the mayor and the council, collectively, and as a group, without regard to political considerations and solely with reference to his or her executive and administrative qualifications. The administrator need not be a resident of the city or of the state at the time of appointment but promptly thereafter shall become and during his or her tenure remain a resident of the city.	8.1	<p>a) The office of city manager is established as the administrative head of the city government. 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.</p> <p>b) A majority of the council must appoint and may remove the manager. The</p>	3.01	<b>Appointment; Qualifications; Compensation.</b> 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. Attention should be given to how the city manager expresses support for and enacts social equity. The manager need

	<p>Before taking office, he or she shall give a bond in such amount and with such surety as may be approved by the council. The premiums on such bond shall be paid by the city.</p> <p><b>(B) Term.</b> The administrator shall be appointed for an indefinite term and may be removed at the pleasure of the mayor and council, collectively and as a group. Upon any vacancy occurring in the office of administrator after the first appointment pursuant to this charter, the council, at its next meeting, shall adopt a resolution of its intention to appoint another administrator.</p> <p><b>(C) Powers and Duties:</b> The powers and duties of the administrator shall be as follows:  (1) He or she shall devote his or her entire time to the discharge of official duties, attend all meetings of the council unless excused therefrom by the council or mayor, keep the council advised at all times of the affairs and needs of the city and make reports annually or more frequently if requested by the council, of all the affairs and departments of the city.  (2) He or she shall see that all ordinances are enforced and that the provisions of all franchises, leases, contracts, permits and privileges granted by the city are observed.  (3) He or she shall appoint and may remove a City Recorder, Police Chief, Fire Chief, Director of Finance, Director of Public Works, Library Director and Director of Recreation and Parks. Such appointment or removal shall be with the consent of the council. The administrator shall appoint and may remove all other city officers and employees except as this charter otherwise provides, and shall have general</p>	<p>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.</p> <p>c) The manager need not reside in the city.</p> <p>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.</p> <p>e) The manager must:</p> <ol style="list-style-type: none"> <li>1) Attend all council meetings unless excused by the mayor or council;</li> <li>2) Make reports and recommendations to the mayor and council about the needs of the city;</li> <li>3) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits and other city decisions;</li> <li>4) Appoint, supervise, and remove city employees;</li> <li>5) Organize city departments and administrative structure;</li> <li>6) Prepare and administer the annual city budget;</li> <li>7) Administer city utilities and property;</li> <li>8) Encourage and support regional and intergovernmental cooperation;</li> <li>9) Promote cooperation among the council, staff and citizens in developing city policies and building a sense of community;</li> </ol>	<p>3.02</p> <p>3.03</p> <p>3.04</p>	<p>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.</p> <p><b>Removal.</b> 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.</p> <p><b>Acting City Manager.</b> 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.</p> <p><b>Powers and Duties of the City Manager.</b> The city manager shall be the chief executive officer of the city, responsible to the council for the</p>
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	<p>supervision and control over them and their work with power to transfer an employee from one department to another. He or she shall supervise the departments to the end of obtaining the utmost efficiency in each of them. He or she shall have no control, however, over the mayor, the council, or the judicial activities of the municipal judge.</p> <p>(4) He or she shall act as purchasing agent for all departments of the city. All purchases shall be made by requisition signed by him or her or a designee.</p> <p>(5) He or she shall be responsible for preparing and submitting to the budget committee the annual budget estimates and such reports as that body requests.</p> <p>(6) He or she shall supervise the operation of all public utilities owned and operated by the city and shall have general supervision over all city property.</p> <p>(7) He or she may delegate certain management powers to any department head; however, the final responsibility for all management actions shall rest with the administrator.</p> <p><b>(D) Seats at Council Meetings.</b> The administrator and such other officers as the council designates shall be entitled to sit with the council but shall have no vote on questions before it. The administrator may take part in all council discussions.</p> <p><b>(E) Administrator Pro Tem.</b> Whenever the administrator is absent from the city, is temporarily disabled from acting as administrator, or whenever his or her office becomes vacant, the council shall appoint an administrator pro tem, who shall possess the powers and duties of the administrator. No administrator pro tem, however, may appoint or remove a city</p>	<p>10) Perform other duties as directed by the council; and</p> <p>11) Delegate duties but remain responsible for actions of all subordinates.</p> <p>f) The manager has no authority over the council or over the judicial functions of the municipal judge.</p> <p>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.</p> <p>h) When the manager 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 manager, except that a pro tem manager may appoint or remove employees only with council approval.</p> <p>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. 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.</p>	<p>management of all city affairs placed in the manager's charge by or under this charter. The city manager shall:</p> <p>(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;</p> <p>(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;</p> <p>(3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;</p> <p>(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;</p> <p>(5) Prepare and submit the annual (or biennial) budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;</p> <p>(6) Submit to the city council and make available and accessible to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year and provide information needed by the council for its annual evaluation of performance;</p>
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		<p>officer or employee except with the approval of the majority of the incumbent members of the council. No administrator pro tem shall hold his position as such for more than four months, and no appointment of an administrator pro tem shall be renewed more than one time.</p> <p><b>(F) Interference in Administration and Elections.</b> No member of the council shall directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the administrator in the making of any appointment or removal of any officer or employee or in the purchase of supplies; or attempt to exact any promise relative to any appointment from any candidate for administrator; or discuss directly or indirectly with him the matter of specific appointments to any city office or employment. A violation of the foregoing provisions of this section shall be grounds for forfeiture of the office of the offending member of the council. Nothing in this section shall be construed, however, as prohibiting the council, while in session, from fully and freely discussing with or suggesting to the administrator anything pertaining to city affairs or interest of the city. No employee of the city shall take part in securing, or contributing any money toward, the nomination or election of any candidate for a municipal office.</p> <p><b>(G) Ineligible Persons.</b> Neither the administrator's spouse nor any person related to the administrator or his or her spouse by consanguinity with affinity within the third degree may hold any appointive office or employment within the city.</p>			<p>(7) Make available and accessible such other reports as the city council may require concerning operations;</p> <p>(8) Keep the city council fully advised as to the financial condition and future needs of the city;</p> <p>(9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;</p> <p>(10) Provide staff support services for the mayor and council members;</p> <p>(11) Assist the council to develop long term goals for the city and strategies to implement these goals;</p> <p>(12) Encourage and provide staff support for partnerships with community organizations and for regional and intergovernmental cooperation and equitable programming;</p> <p>(13) Promote partnerships among council, staff, and community members in developing public policy and building a sense of community; and</p> <p>(14) Perform such other duties as are specified in this charter or may be required by the city council.</p> <p>2.06 (b) <b>Appointments and Removals.</b> 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.</p>
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					2.06 (c)	<b>Interference with Administration.</b> Except for the purpose of inquiries, and investigations under § 2.10, 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
<b>MUNI-COURT JUDGE</b>	§22	The municipal judge shall be the judicial officer of the city. He or she must be a member of the Oregon State Bar. He or she must be a resident of the State of Oregon, but need not be a resident of the city. He or she shall hold within the city a court known as the municipal court for the city of Woodburn, Marion County, Oregon. The court shall be open for the transaction of judicial business at times specified by the council. 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 or she 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 or her to bail pending trial, to issue subpoenas, to compel witnesses to appear and testify in court on the trial of any cause before the court, 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	8.3	<p>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.</p> <p>b) All proceedings of this court will conform to state laws governing justices of the peace and justice courts.</p> <p>c) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court.</p> <p>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.</p> <p>e) The municipal judge may:</p> <ol style="list-style-type: none"> <li>1) Render judgments and impose sanctions on persons and property;</li> <li>2) Order the arrest of anyone accused of an offense against the city;</li> </ol>		





		suits, prosecutions, and proceedings, civil or criminal, in which the City of Woodburn is directly or indirectly interested; and shall, when required, furnish opinions upon any subject pertaining to the affairs of the said city submitted by the council or its committees; he or she shall also advise with and counsel all city officers in respect to their official duties and attend the regular meetings of the council and of such committees and boards as shall request his or assistance.		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.		the chief legal officer of the city, conduct all the law business of the city, be the legal advisor to the council, the city manager, all departments, and other instrumentalities of the city government. The city attorney shall represent the city in all actions in which the city is a party and shall have the authority to settle claims and compromise debts in amounts not to exceed {***} and to settle claims and compromise debts in greater amounts with the consent of the city manager. The city attorney and the staff of the office shall engage in no other law practice. The city attorney may, with the approval of the council, temporarily employ special legal counsel to work on problems of an extraordinary nature when the work to be done is of such character or magnitude as to require services in addition to those regularly provided by the city attorney. The city attorney shall serve until removed from office by the council.
<b>REGULAR CITY ELECTIONS</b>	§25	City elections shall be held in accordance with applicable state election laws. The recorder, pursuant to directions from the council, shall give at least ten days' notice of each city election by posting notice thereof at a conspicuous place in the city hall and in two other public places within the city. 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.	7.3	City elections must conform to state law except as this charter or ordinance provide otherwise. All elections for city offices must be nonpartisan.	6.01	<p><b>(a) Regular Elections.</b> 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.</p> <p><b>(b) Registered Voter Defined.</b> All residents 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.</p> <p><b>(c) Conduct of Elections.</b> The provisions of the general election laws of the state of _____ shall apply to</p>

						<p>elections held under this charter. All elections provided for by the charter shall be conducted by the election authorities established by law.</p> <p>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.</p> <p><b>(d) Ranked-Choice Voting or Proportional Representation.</b> The council may be elected in a single election by the method of ranked-choice voting or the single transferable vote form of proportional representation.</p> <p><b>(e) Beginning of term.</b> The terms of council members shall begin the __ day of __ after their election.</p>
<b>TIE VOTES</b>	§26	In the event of a tie vote for candidates for elective office, the successful candidate shall be determined by a public drawing of lots in a manner prescribed by the council.				
<b>TERMS OF OFFICE</b>	§27	The term of office of a person elected at a regular city election shall commence with the first regular council meeting in the month following the election.	7.6	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.		

<b>OATH OF OFFICE</b>	§28	All elective officers, the municipal judge, the city administrator, and the city attorney, before entering upon the duties of their offices, shall subscribe and file with the head of the department in charge of city records, an oath or affirmation of office. The oath shall read: "I _____, do solemnly swear that I will support the constitution of the United States and of the State of Oregon, uphold the charter and ordinances of the City, and that I will, to the best of my ability, faithfully perform the duties of _____ during my continuance therein, so help me God." If the person affirms, instead of the last clause of the oath, there shall be stated: "And this I do affirm under the pains and penalties of perjury."	7.7	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.		
<b>NOMINATIONS &amp; METHOD OF ELECTIONS</b>	§29	Nomination of a candidate for an elective office shall be in a manner prescribed by ordinance.	7.5	The council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city councilor position.		
<b>VACANCIES IN OFFICE</b>	§30	An office shall be deemed vacant upon the incumbent's death; adjudicated incompetence; conviction of a felony; other offense pertaining to his or her office, or unlawful destruction of public records; resignation; recall from office; in the case of elected officers or the city administrator, discontinuance of residency within the city limits or the ward in which he or she was elected; 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 or her term of office to commence; or in the case of a mayor or councilor, upon his or her absence from the city for 30 calendar days without the consent of the council or upon	7.8	The mayor or a council office becomes vacant:  a) Upon the incumbent's: 1) Death; 2) Adjudicated incompetence; or 3) Recall from the office.  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;	2.07	<b>(a)Vacancies.</b> 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>(b)Forfeiture of Office.</b> 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.

		his or her absence from meetings of the council for 60 calendar days without consent, and upon a declaration by the council of the vacancy.		<p>4) Ceasing to be a qualified elector under state law;</p> <p>5) Conviction of a misdemeanor or felony crime;</p> <p>6) Resignation from the office; or</p> <p>7) Removal under Section 8.1(i).</p>		
<b>FILLING VACANCIES</b>	§31	Vacant elective offices in the city shall be filled by appointment by the mayor. A majority vote of the council shall be required to approve the appointment. The appointee's term of office shall begin immediately upon his or her appointment and shall continue throughout the unexpired term of his or her predecessor.	7.9	A mayor or councilor vacancy shall be filled by appointment by a majority of the remaining council members. Notwithstanding the quorum requirement set forth in Section 3.7, if at any time council membership is reduced to less than ____ [insert number based on total council membership required for majority], the remaining members may, by majority action, appoint additional members to raise the membership to ____ [insert majority council number]. As little as a single council member may constitute a majority for purposes of filling vacant council seat(s), if all other council seats are vacant. 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.	2.07	<b>(c) Filling of Vacancies.</b> 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 § 2.12(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 _____.
<b>ORDAINING / ENACTING CLAUSE</b>	§32	The enacting clause of all ordinances hereafter enacted shall be, "The City of Woodburn ordains as follows:".	4.1	The council will exercise its legislative authority by adopting ordinances. The enacting clause for all ordinances must state "The City of _____ ordains as follows:"	2.14 (a)	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>MODE OF ORDINANCE ADOPTION</b>	§33	<p>(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 fully and distinctly read in open council meeting on two different days.</p> <p>(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 first read in full and then by title.</p> <p>(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</p>	4.2	<p>a) Except as authorized by subsection (b), adoption of an ordinance requires approval by a majority of the council at two meetings.</p> <p>b) The council may adopt an ordinance at a single meeting by the unanimous approval of at least a quorum of the council, provided the proposed ordinance is available in writing to the public at least one week before the meeting.</p> <p>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.</p> <p>d) After the adoption of an ordinance, the vote of each member must be entered into the council minutes.</p> <p>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.</p>	2.14 (b)	<p>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.</p> <p>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</p>

		meeting as finally amended prior to being approved by the council. (4) Upon the final vote on an ordinance, the ayes and nays 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 or her name and title of office.			(d)	published and available at a reasonable price  <b>"Publish" Defined.</b> 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.
<b>ORDINANCE VETO</b>	" 20	All ordinances and resolutions shall, before they take effect, be presented to the mayor. If the mayor approves thereof, he or she shall sign the same, and such as he or she shall not sign shall be returned to the council with written objections thereto, by depositing the same with the city recorder to be presented to the council at their next regular meeting thereafter.	" 3.3	The mayor is a voting member of the council and has no veto authority		
<b>VETO OVERRIDE</b>	" 20	Upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be deemed to have been reconsidered and the questions shall again be put upon the passage of same notwithstanding the objections of the mayor; and if, upon such vote, the council shall pass the same by a majority vote of the incumbent members of the council, it shall have the same effect as if approved by the mayor.				



						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.
<b>CONDEMNATION</b>	§35	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.				
<b>PUBLIC IMPROVEMENTS</b>	§36	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. Action on any proposed 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 a majority of the land to be specially assessed therefor. 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."	10.1	The council may by ordinance provide for procedures governing the making, altering, vacating, or abandoning of a public improvement. 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.		
<b>SPECIAL ASSESSMENTS</b>	§37	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 ordinance.	10.2	The procedure for levying, collecting and enforcing special assessments for public improvements or other services charged against real property will be governed by ordinance.		



<b>LIMITS ON INDEBTEDNESS</b>	§38	Except by the consent of the voters, the city's voluntary floating indebtedness shall not exceed \$5,000.00 at any one time except as permitted by State Law. 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. The council shall have the authority to issue bonds in an amount that has been approved by a majority of the voters at an election held for that purpose. 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.	11.1	City indebtedness may not exceed debt limits imposed by state law. A charter amendment is not required to authorize city indebtedness.		
<b>ORDINANCE CONTINUATION</b>	§39	All ordinances of the city consistent with this charter and in force when it takes effect shall remain in effect until amended or repealed.	11.2	All ordinances consistent with this charter in force when it takes effect remain in effect until amended or repealed.		
<b>REPEAL OF PRIOR CHARTER PROVISIONS</b>	§40	All charter provisions of the city enacted prior to the time that this charter takes effect are hereby repealed except the provision of Chapter IV, Section 25 of the previous charter as added by amendment adopted at an election held on May 17, 1946, and an amendment adopted at an election held on May 18, 1962, as follows:  "Section 25. POWER TO LEVY TAX. The common council shall have power to assess, levy, and collect taxes for general municipal purposes upon all property both real and personal which is taxable by law for state and county purposes; provided, in addition thereto, the council may annually assess, levy, and collect a tax not to exceed three mills on the dollar of such taxable property to provide for and maintain a	11.3	All charter provisions adopted before this charter takes effect are repealed.		

		<p>public library, provided further, in addition to the taxes above provided for, the council may at any time the city shall have outstanding bonds, assess, levy, and collect annually, a tax not to exceed one-tenth of such outstanding bonds, and annual interest thereon, for the purpose of redeeming such bonds and the payment of the interest thereon."</p> <p>And the provision of Chapter X, Section 11, of the previous charter as added by amendment adopted at an election held on March 26, 1948, as follows:</p> <p>Section 11. In addition to all other taxes authorized by the charter of the City of Woodburn and provided for in the budget of said city, the common council shall levy a tax of 5 mills upon each dollar of taxable property within the corporate limits of the City of Woodburn in the fiscal year 1948-49 for the purpose of providing necessary or expedient maintenance for and supervision of the parks, playgrounds, and other public recreational facilities of said city, and authorizing the common council to include in its budget for fiscal years succeeding the fiscal year 1948-49 a special levy not exceeding 5 mills for such purpose. The funds derived from such tax shall be turned over by the common council to a board known as the Woodburn Recreation and Park Board, which board shall be appointed by the mayor under the provisions of an ordinance covering such appointment, which shall have been or shall be passed by the council."</p>				
<b>TIME OF EFFECT OF CHARTER</b>			11.4	This charter takes effect , 20 ...		

INVESTIGATIONS					2.10	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.
INTERGOVERN- MENTAL RELATIONS					1.03	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.
MERIT SYSTEM			9.2	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.	4.02	<b>Personnel System</b> <b>(a) Merit Principle.</b> 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>(b) Merit System.</b> 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.
<b>ACTION REQUIRING AN ORDINANCE</b>					2.13	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.
<b>RESOLUTIONS</b>		Covered under the Council Bylaws	5.1	<u>Resolutions.</u> The council will normally exercise its administrative authority by approving resolutions. The approving clause for resolutions may state "The City of _____ resolves as follows."		
			5.2	<u>Resolution Approval.</u>		

			<p>a) Approval of a resolution or any other council administrative decision requires approval by the council at one meeting.</p> <p>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.</p> <p>c) After approval of a resolution or other administrative decision, the vote of each member must be entered into the council minutes.</p> <p>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.</p> <p>5.3 <u>Effective Date of Resolutions.</u> Resolutions and other administrative decisions take effect on the date of approval or on a later day provided in the resolution.</p>		
<b>QUASI-JUDICIAL AUTHORITY</b>			<p>6.1 <u>Orders.</u> 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."</p> <p>6.2 <u>Order Approval.</u></p> <p>a) Approval of an order or any other council quasi-judicial decision requires approval by the council at one meeting.</p> <p>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.</p>		

			6.3	c) After approval of an order or other council quasi-judicial decision, the vote of each member must be entered in the council minutes.  <u>Effective Date of Orders.</u> Orders and other quasi-judicial decisions take effect on the date of final approval, or on a later day provided in the order.		
<b>SEVERABILITY</b>			11.4	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.	10.06	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.

## ORDINANCE NO. 2182

### AN ORDINANCE ADOPTING BYLAWS GOVERNING PROCEEDINGS OF THE CITY COUNCIL, REPEALING ORDINANCE NO. 1971, AND DECLARING AN EMERGENCY.

#### THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

**Section 1. Purpose.** The purpose of this ordinance is to prescribe rules to govern all meetings and proceedings of the Council, consistent with all provisions contained in the Woodburn City Charter and Oregon state law. The intent of this ordinance is to supplement the Woodburn City Charter to allow implementation of any substantive charter requirements. In this respect, provisions of the Woodburn City Charter and Oregon state law override and supersede any conflicting provisions of this ordinance. If any section or subsection of this ordinance is determined by a court to be invalid or unenforceable, then such section or subsection shall be severed from this ordinance and the remainder of this ordinance shall remain in full force and effect.

#### **Section 2. Ordinances and Resolutions.**

A. Proposed Ordinances and Resolutions (Council Bills) may be introduced by any member of the Council.

B. An Ordinance shall receive two readings prior to final passage.

C. Readings of an Ordinance may be by title only unless a Councilor requests that the Ordinance be read in full.

D. A Resolution shall receive one reading prior to final passage and this reading shall be by title only unless a Councilor requests a full reading.

E. Procedure.

(1) A Councilor presents a proposed Ordinance or Resolution (Council Bill). (No motion is necessary since no vote is required for introduction of a bill, e.g. "Mr./Madam Mayor, I introduce Council Bill \_\_\_\_\_.")

(2) The Mayor asks that the Council Bill be read in full/or by title only if there is no objection from the Council.

(3) The Council Bill is read as requested.

(4) If the Council Bill is a proposed Resolution, the Mayor asks if there is any discussion. After discussion and motions, if any, the Mayor shall call for a vote on the Resolution. Upon the request of any Councilor, the ayes and nays shall be taken and entered in the record.

(5) If the Council Bill is a proposed Ordinance, the Mayor asks that the Council Bill be read a second time by title only if there are no objections from a Councilor.

(6) The Council Bill (proposed Ordinance) is read as requested.

(7) The Mayor then asks if there is any discussion on the Council Bill (proposed Ordinance). After discussion and motions, if any, the Mayor shall call for a vote and the ayes and nays shall be taken and entered in the record.

F. A Resolution shall be declared passed by affirmative vote of a majority of the Councilors present at the meeting.

G. An Ordinance may be enacted in a single meeting by unanimous consent of the Councilors present. If not approved by unanimous consent of the Councilors present, the Ordinance shall be read and voted upon on a different day at another meeting, and enacted if a majority of the Councilors present at that meeting vote affirmatively.

H. All Resolutions and Ordinances passed or enacted by the Council are subject to veto of the Mayor as provided in Chapter V, Section 20, of the Woodburn City Charter.

I. Except in extreme emergencies, copies of Council Bills shall be provided the Mayor and members of the Council at least 48 hours prior to any session at which they could be introduced.

### **Section 3. Meetings.**

A. A majority of the incumbent members of the Council constitutes a quorum.

B. The Council shall hold a regular meeting at least once each month in the city at a time and place it designates.

C. The Council may hold a special meeting at the call of the Mayor or at the request of three Councilors in accordance with Chapter IV, Section 13 of the Woodburn City Charter.

### **Section 4. City Officers.**

A. Mayor

(1) The Mayor shall preside over all Council meetings at which he/she is present in accordance with the Woodburn City Charter.

(2) Consistent with the Woodburn City Charter all appointments by the mayor are subject to Council confirmation.

(3) The Mayor shall make a good faith effort to confer with the Council about who he/she will appoint to a committee so that any comments, objections, etc. Of individual councilors may be considered by the Mayor prior to the appointment. Both



the Mayor and Council shall make every possible effort to avoid embarrassment to appointees.

(4) In the event that the Council does not confirm any appointment made by the Mayor and submitted to the Council for consideration, the Mayor shall within 10 days make a new appointment and submit it to the Council.

B. The Council President shall be elected by the Council and shall serve in accordance with the Woodburn City Charter.

#### **Section 5. Agenda.**

A. Matters to be considered by the Council shall be placed on an agenda to be prepared by the Mayor and the City Administrator. Any Councilor desiring to have a matter considered by the Council shall advise the Mayor or City Administrator to place it on the agenda.

B. In addition to the written agenda, any Councilor may bring items to the attention of the Council during a meeting, in accordance with the provisions of this ordinance, the Woodburn City Charter and state law.

C. At the discretion of the presiding officer and in accordance with state law, any visitor may speak on any matter of city business. The presiding officer may establish time limits on such comments by visitors to insure that all persons desiring to be heard shall have the opportunity to speak.

#### **Section 6. Public Hearings.**

A. Consistent with the provisions of state law, the following procedure shall be used at all public hearings:

(1) Public hearing opened

(2) Declarations:

(a) The presiding officer will ask if any member of the Council has a conflict of interest in the matter.

(b) The presiding officer will ask if any member of the Council has had any EX-PARTE contact he wishes to disclose.

(c) The presiding officer will ask if anyone from the audience wishes to challenge any member of the council from acting on the matter.

(3) Staff report

(4) Testimony by applicant

(5) Testimony by proponents

(6) Testimony by opponents

(7) Rebuttal by applicant

(8) Hearing is closed

(9) COUNCIL Discussion

(10) Final decision (or motion to direct staff to draft ordinance for CONSIDERATION at next Council meeting if land use decision is involved)

B. Any questions by the Mayor and Council addressed to individuals giving public testimony must be asked to these individuals prior to the close of the public hearing.

#### **Section 7. Roberts Rules of Order.**

A. Roberts Rules of Order, Newly Revised, shall be used as the guideline for conduct of Council meetings, except in those cases where specific provisions contrary to Robert Rules are provided herein.

B. The Chair will not condone any inappropriate conduct in a meeting. Meetings will be conducted in an orderly and dignified manner.

C. If in the chair's judgment any person is not in accordance with these rules, that person will be asked to leave.

#### **Section 8. Miscellaneous Rules of Procedure.**

A. In all matters to be heard by the Council, the City Administrator or member of his staff shall be given the first opportunity to speak thereon. Proponents of the matter before the Council shall be afforded the next opportunity to speak thereon. Opponents of the matter before the Council shall be afforded the opportunity to speak thereon after proponents have completed their presentations. Councilors have the privilege of asking questions at any time. After all presentations are complete, the Council may discuss the matter and take action as desired.

B. Official "public hearings" shall be conducted as prescribed by law and/or current regulations governing said hearings. All persons attending official "public hearings" will be given reasonable time to present their arguments, but such persons are requested to avoid repetitious and irrelevant statements.

C. Visitors desiring to speak will formally address the chair, and visitors will identify themselves by their name, address, and whether they represent a person, group or organization.

D. If at all possible, all regular and special Council meetings shall be tape recorded. Council members, staff and visitors shall use the microphones provided for that purpose. The visitors microphone shall not be removed from its stand without permission of the presiding officer.

**Section 9. Suspension of the Rules.** In accordance with the Woodburn City Charter, the rules contained in this Ordinance may be suspended by the concurrence of a majority of the Council present at a Council meeting.

**Section 10. Repeal of Ordinance 1971.** Ordinance 1971 is hereby repealed

***Passed by the Council October 28, 1996, approved by the Mayor  
October 29, 1996.***





## Agenda Item

December 9, 2019

TO: Honorable Mayor and City Council  
FROM: Scott Derickson, City Administrator  
SUBJECT: **Report on Stipends for Elected Officials**

### **RECOMMENDATION:**

Accept the report and direct staff on whether further action is desired.

### **BACKGROUND:**

The City of Woodburn previously provided a modest financial stipend to the Mayor and City Councilors during their terms in office. Issuance of the stipend was halted during the last economic recession and has not since been reinstated. The previous stipend provided fifty dollars (\$50) per month for the Mayor and twenty-five dollars (\$25) per month for each Councilor.

In March of 2018, the City Administrator requested a legal opinion from the City Attorney's office setting out the technical requirements and procedure for restoring a stipend for the City's elected officials. A copy of that memorandum is available to the Mayor and Councilors to review at their request. A general synopsis of the implementation procedures is provided below.

While not all cities in Oregon provide a financial stipend to their elected officials, many comparable cities to Woodburn in size and location do provide stipends to their Mayor and City Councilors. These stipends vary in amount and issuance format (i.e. monthly, yearly, etc.), but generally are nominal-type stipends that are meant to reasonably benefit or cover some of the ancillary costs incurred from serving as an elected official. These stipends are not meant or intended to provide a primary source of income to elected officials who are generally categorized as volunteers.

### **DISCUSSION:**

Currently, the Mayor and City Councilors are eligible for expense reimbursement for City-related activities (e.g. conferences or travel), however, they do not receive a financial stipend that may otherwise assist the individual in offsetting

out-of-pocket costs associated with serving as an elected official (e.g. time away from work, costs of childcare during meetings, costs associated with attending community events, etc.).

In determining whether the restoring of a stipend program is suitable for Woodburn, it is most important for the Council to first consider how it would set or establish the stipend amounts and then how it would properly implement or enact the program.

#### 1) Determining a Stipend Amount

In looking at adopting a reasonable and sensible stipend program for the mayor and city councilors, the Council will have broad discretion to implement an amount that it believes best fits the community and budgetary constraints of Woodburn.

In implementing or modifying the amount of a stipend, some jurisdictions utilize a compensation committee or their budget committees to assist in evaluating and setting the stipend amount. Usually these committees are formed as independent advisory-type committees that make an official recommendation to the Council on whether to implement a stipend program and at what amounts. The committee may base its decision on any number of factors, but generally considerations include, scope and expectations of elected positions, comparable regional stipend practices, and possibly a public survey or outreach campaign.

Utilization of an advisory committee as part of implementing a stipend program is completely discretionary and the Council can always elect to undertake its own review and deliberation on the matter.

In addition to the consideration of a suitable stipend amount, the Council may also want to consider whether the initial stipend amount should remain stagnant for an indefinite period of time or whether the stipend should automatically adjust based on various regional market factors (e.g. CPI). The Council may also want to consider whether any other compensation benefits such as health insurance should be provided.

In any event, a review of current jurisdictional practices may be informative and prudent for the Council during this preliminary consideration period:

CITY	POPULATION	MAYOR STIPEND (per month)	COUNCILOR STIPEND (per month)	OTHER
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BEND	95,000	\$1066	\$533	
CANBY	18,000	\$200	\$100	
CORVALLIS	58,000	\$100	None	
EUGENE	169,000	\$125	\$83	City health insurance (if desired)
FOREST GROVE	24,000	\$150	\$100	City health insurance (if desired)
HILLSBORO	107,000	\$2,000	\$700 (Pres.) \$500 (Councilor)	Rec. center annual pass; technology stipend
KEIZER	39,000	None	None	
KLAMATH FALLS	21,000	\$200	\$50	
LAKE OSWEGO	39,000	\$390	\$172	COLA increases to stipends
MCMINNVILLE	34,000	None	None	
MEDFORD	79,000	None	None	
MILWAUKIE	21,000	\$300	\$250	
NEWBERG	24,000	\$300	\$10/meeting	
OREGON CITY	36,000	None	None	
SALEM	170,000	None	None	
SPRINGFIELD	60,000	None	None	
TUALATIN	27,000	\$90	Technology stipend	
WEST LINN	27,000	\$533	\$333	
WILSONVILLE	24,000	\$750	\$350	City health insurance (if desired)
AVERAGE (of cities where a stipend provided):		\$477	\$227	

## 2) Implementing the Stipend Program

If the Council decides that it would like to move forward with implementing a stipend program for the mayor and councilors, then understanding the procedure and timeline for implementation is essential.

Under Section 11 of the City's Charter, the mayor and councilors are permitted to receive compensation for their services and expenses and such amounts are to be fixed by the Council. The Council could decide to adopt a Resolution that would provide the stipend and set the stipend amount. The primary aspect of concern, however, in implementing any compensation stipend for elected officials is ensuring that the Oregon government ethics law is not violated.

Oregon government ethics law prohibits public officials from using or attempting to use their official position or office to obtain financial gain for the public official.<sup>1</sup> And, while ORS 244.040(2) does allow an elected official to receive a compensation package as determined by that public body, councilors and the

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<sup>1</sup> ORS 244.040(1).

mayor (if applicable) will be prevented from voting on giving themselves such a financial benefit. In application, this means that any proposal implementing a stipend program should apply only to future terms of the councilor, not to their current term of office.

By implementing the stipend program to become effective only when future councilors and mayors will be eligible to take office, councilors avoid having an actual conflict of interest under ORS 244.040(1) and would only have a potential conflict.<sup>2</sup> Councilors could then publicly announce the nature of that potential conflict of interest and then proceed to participate in any discussion, debate, or vote on the stipend.<sup>3</sup>

With the current terms of the Council, a stipend could be implemented in a staggered manner as follows:

- Effective January 2021
  - Mayor
  - Ward I Councilor
  - Ward II Councilor
  - Ward VI Councilor
- Effective January 2023
  - Ward III Councilor
  - Ward IV Councilor
  - Ward V Councilor

If a staggered implementation is not desired, the Council could also decide to enact stipends for the mayor and all councilors effective January 2023 or later. In making either implementation decision, setting the amount of the stipend and budgeting for the stipend would need to occur in the spring of the year prior to it going into effect.

### **FINANCIAL IMPACT:**

If the Council decides it would like to move Staff time would be required for preparing any implementation instruments for a stipend program.

The implementation of a stipend program itself would be an expense that would need to be included as part of the Council's annual budgeting process.

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<sup>2</sup> Councilors are advised that a potential conflict of interest should be declared for current council members who would be eligible to run for another term, or who may run for mayor.

<sup>3</sup> ORS 244.120(2)(a). In 2018, the City of Bend implemented a stipend program for the mayor and councilors, with their proposal including provisions for a staggered implementation of the stipend based on when future councilors would be eligible to take office. Because of the staggered implementation, their program won't be fully in effect for all councilors until 2021.





April 12, 2025

TO: Woodburn Charter Review Committee

FROM: McKenzie Granum, City Attorney

SUBJECT: **Updated Stipend Survey - 2025**

CITY	POPULATION ↓	MAYOR STIPEND (per month)	COUNCILOR STIPEND (per month)	OTHER
ST. HELENS	14,400	\$ 1,388	\$925 \$ 1,110 (Pres.)	
CANBY	18,000	\$200	\$100	
SHERWOOD	20,000	None	None	
ASHLAND	21,000	\$900	\$900	
KLAMATH FALLS	21,000	\$200	\$50	
MILWAUKIE	21,000	\$300	\$250	
ROSEBURG	24,000	None	None	
NEWBERG	26,000	\$300	\$200	
WILSONVILLE	26,000	\$ 2,535	\$ 937 \$ 1,267 (Pres.)	City health insurance offered
FOREST GROVE	27,000	\$312	\$208	City health insurance offered
TUALATIN	27,000	None	None	<ul style="list-style-type: none"> <li>• \$750 Technology stipend/year</li> <li>• \$20 credit on water bill/month</li> </ul>
WEST LINN	27,000	\$533	\$333	
HAPPY VALLEY	28,000	None	None	
MCMINNVILLE	34,000	None	None	

OREGON CITY	37,000	None	None	
REDMOND	37,000	\$900	\$500	
KEIZER	39,000	None	None	
LAKE OSWEGO	40,000	\$390	\$172	
TIGARD	56,000	\$ 4,795	\$ 629	City health insurance offered
ALBANY	57,000	\$185	\$130	\$50/month technology stipend
CORVALLIS	61,000	\$560	\$360 \$410 (vp) \$460 (Pres.)	
SPRINGFIELD	61,000	None	None	
MEDFORD	85,000	None	None	
BEAVERTON	97,000	\$ 11,204 (classified as full-time employee)	\$2,089	
BEND	105,000	\$4,166	\$2,500	<ul style="list-style-type: none"> <li>• Stipend w/COLA</li> <li>• City Health Insurance offered @ 90% premium coverage</li> <li>• Additional \$3,000/year health and wellness stipend</li> </ul>
HILLSBORO	107,000	\$ 4,000	\$1,050 \$1,300 (Pres.)	<ul style="list-style-type: none"> <li>• Rec. center annual pass;</li> <li>• Technology stipend</li> <li>• City health insurance offered</li> </ul>
GRESHAM	110,000	\$ 5,780	\$ 2,361 \$ 2,588 (Pres.)	City health insurance offered @ 50% premium coverage
EUGENE	177,000	\$2,374	\$1,584	City health insurance offered
SALEM	177,000	None	None	
AVERAGE (of surveyed cities where a stipend is provided; population < 50,000)		\$723	\$416	
AVERAGE (of all surveyed cities where a stipend is provided; excluding City of Beaverton):		\$1,657	\$804 (\$1,345 Pres.)	



## CHARTER

# Woodburn Charter

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9/25/78

## CHARTER

Be it enacted by the people of the city of Woodburn, Oregon, that the charter of the city of Woodburn shall be and the same is hereby amended so as to read as follows:

### CHAPTER I

Section 1. All the district of country in the county of Marion contained within the boundaries hereinafter described shall be a city by the name of Woodburn, and the people now inhabiting and those who shall hereafter inhabit within the district of country hereinafter described shall be a municipal corporation by the name of the city of Woodburn, and by that name shall sue and be sued; complain and defend in any court; make and use a common seal and alter it at pleasure; and take, hold, and purchase, lease, and convey such real, personal, or mixed estate as the purposes of the corporation may require within or without the limits aforesaid; and shall be capable of contracting and being contracted with, and shall have the general powers possessed by municipal corporations, and in addition thereto shall possess the powers hereinafter specially granted.

Section 2. The district of country aforesaid constituting the city of Woodburn and its limits and boundaries thereof shall be as follows: Commencing at a concrete monument which marks the intersection of the center line of the Boone's Ferry road with the north boundary line of the Donation Land Claim of George Leasure and wife in Marion County, Oregon; thence south 25 degrees 30 minutes west 64.655 chains to a concrete monument on the north boundary line of Ben Brown's Lane, said monument being westerly and three chains distant from the southwest corner of a tract of land formerly known as Mrs. L. C. Walker's lot; thence in a straight line to the intersection of the center line of the Oregon and California Railroad right-of-way with the north boundary line of the Donation Land Claim of Peter Raymond and wife; thence in a straight line to the point of intersection of the center line of the old stage road with the center line of the right-of-way of the Oregonian Railway leading from Woodburn to Springfield, formerly a narrow gauge railroad; thence following the center line of the old stage road to the point of intersection of said center line with the north boundary

## Woodburn Charter

line of the Donation Land Claim of Eli C. Cooley and wife; thence in a straight line to the point of intersection of the east boundary line of the Donation Land Claim of George Leasure and wife with the center line of the Oregon and California Railroad right-of-way; thence in a straight line to the place of beginning, all angles of the boundary line of said city being marked or witnessed by concrete monuments. [Section 2, Chapter I, as amended by election held April 17, 1911.]

Section 3. [Section 3, Chapter I, repealed by election held September 19, 1966.]

Section 4. Succeed the Town of Woodburn. The city of Woodburn as hereby organized and incorporated shall succeed to and become vested with and owner of all the property, real, personal or mixed, rights, franchises, contracts, privileges and immunities which belong to or are owned by the town of Woodburn as heretofore incorporated; and the said city of Woodburn shall become and be liable and responsible for all debts, obligations and liabilities existing against said town of Woodburn for any cause whatever, in the same manner and to the same extent as if such debts, obligations or liabilities had been originally contracted or incurred by said city of Woodburn.

### Section 5. City Wards.

(1) The city of Woodburn shall be divided into five wards, commencing with the regular statewide biennial general election held in 1974, and shall be divided into six wards commencing with the regular statewide biennial general election held in 1976. The common council shall by ordinance designate such wards and the boundaries thereof not less than 90 days prior to each regular statewide biennial general election following the adoption of this section on the basis of equal apportionment.

(2) Wards existing at the time of the adoption of this provision and designated Ward No. 1, Ward No. 2, Ward No. 3 and Ward No. 4 are hereby continued and redesignated Ward I, Ward II, Ward III and Ward IV. The designations for the additional wards provided for by Subsection (1) hereof shall be Ward V and Ward VI. [Section 5, Chapter I, as amended by election held September 19, 1966; and election held November 7, 1972.]

Section 6. Each of said wards established as aforesaid shall constitute an election district, and shall

## Woodburn Charter

form a separate election precinct of said city for the holding of all municipal elections and for the election of all corporate officers provided for in this act.

### CHAPTER II

#### Section 1. Officers and Councilmen.

(1) Elective officer. The elective officer of the city shall be a mayor, who shall be a resident and qualified voter of the city. He shall hold office for the term of two years and until his successor is duly elected and qualified.

(2) Appointive officers.

(a) The appointive officers of the city shall be a city recorder, treasurer, judge, attorney, marshal, police officers, street commissioner, health officer, fire chief, and engineer and the incumbents of such other appointive offices as the common council may deem necessary to establish.

(b) The city marshal shall be appointed by the mayor and may be removed at his pleasure.

(c) All other appointive officers shall be appointed by the common council at the first regular council meeting in January of each year, and at such other times as may be necessary.

(d) Each appointive officer other than the city marshal shall hold office for a term of one year from and after appointment and until his successor is appointed and qualified.

(e) The common council may at any time remove any or all appointive officers from office by a majority vote of the whole common council.

(3) Councilmen.

(a) The common council shall consist of six councilmen who shall constitute the governing body of the city. One councilman shall be elected from each ward by the legal voters thereof. Candidates may be nominated from each ward for the council seat to be voted upon in that ward.

(b) No person shall be elected to or hold the office of councilman unless he is a qualified elector within the meaning of the State Constitution, has resided in the city during the 12 months immediately preceding the election, and is a resident of the ward from which he was elected to such office.

(c) The two at-large council positions existing at the time of the adoption of this provision shall

## Woodburn Charter

be abolished upon the completion of the terms of those offices which commenced with the regular statewide biennial general elections of 1970 and 1972.

(d) On the date of the regular statewide biennial general election held in November of 1974, one councilman shall be elected from Ward III, and one councilman shall be elected from Ward IV, and one councilman shall be elected from Ward V.

On the date of the regular statewide biennial general election held in November of 1976, one councilman shall be elected from Ward I, one Councilman shall be elected from Ward II, and one councilman shall be elected from Ward VI.

(e) Each councilman shall hold office for the term of four years commencing with the first regular council meeting in the month following his election.

(f) The councilmen shall each year elect one of their number president of the council, upon whom, in the absence of the mayor, shall devolve all the duties and powers of the mayor.

[Subsection 3 of Section 1, Chapter II, as amended by election held September 19, 1966; election held August 19, 1969, and election held November 7, 1972.]

(4) Incumbents. The incumbent recorder and treasurer shall continue to hold office until their terms of office have expired and their successors have been appointed and qualified. [Subsection (4) of Section 1, Chapter II, as amended by election held May 18, 1962.]

Section 2. Time of Election. The election of the mayor and councilmen of said city shall be held on the same day as the statewide general election. [Section 2, Chapter II, as amended by election held September 19, 1966.]

Section 3. Elections, Laws Governing. The common council shall by ordinance regulate and govern the procedure to be followed in the calling and holding of all elections within the city. [Section 3, Chapter II, as amended by election held September 19, 1966.]

Section 4. Vacancies. Whenever a vacancy shall occur in the office of any elective office of said city, such vacancy shall be filled by appointment of the common council of said city, and the person so appointed to fill such vacancy shall hold office until [the next general election or until\*] his successor is elected and qualified.

\* Words in brackets added in city recorder's copy of charter.



## Woodburn Charter

Section 5. Election by Ballot. All the elections by the people shall be by ballot, and each ballot shall contain the names of the persons voted for, with the proper designation of the office written or printed thereon. The person receiving the highest number of votes for any office shall be declared elected to such office. When two or more candidates for an elective city office shall receive an equal number of votes, the election shall be determined by the casting of lots in the presence of the common council, at such time and in such manner as the common council shall direct.

Section 6. Qualification of Voters. All persons who are qualified voters at state elections, and who in addition thereto reside within the city and within the ward in which they offer to vote, shall be entitled to vote at all city elections. [Section 6, Chapter II, as amended by election held September 19, 1966.]

Section 7. Place of Holding Election. The common council shall designate the place of holding all city elections. [Section 7, Chapter II, as amended by election held September 19, 1966.]

Section 8. [Sections 8-15, Chapter II, repealed by election held September 19, 1966.]

Section 16. Nominations. A qualified elector who shall have resided in the city during the 12 months immediately preceding the election may be nominated for an elective city position. Nomination shall be by petition specifying the position sought in a form prescribed by the council. Such petition shall be signed by not fewer than 20 electors. No elector shall sign more than one such petition for the same office. If he does so, his signature shall be valid only on the first petition filed. 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. With each signature shall be stated the signer's place of residence, identified by its street and number or other sufficient description. All nomination papers comprising a petition shall be assembled and filed with the recorder as one instrument not earlier than 250 nor later than 70 days before the

## Woodburn Charter

election. The recorder shall 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. Each petition shall be accompanied by the acceptance of the nominee which shall be endorsed upon the petition and signed by the nominee. If the petition is not signed by the required number of qualified electors, or does not contain the endorsed acceptance of the nominee, the recorder shall notify the nominee 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. Such deficient petition may be amended and filed again as a new petition, or a different petition for the same candidate may be filed, within the regular time for filing nomination petitions. Upon determination that the petition is in all respects sufficient, the recorder shall cause the nominee's name to 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. [Section 16, Chapter II, added by election held September 19, 1966; and amended by election held May 25, 1976.]

### CHAPTER III

Section 1. Powers and Duties of Officers; Mayor. The mayor shall preside at all meetings of the council, and when he is absent, the council shall select one of their own number to preside pro tem. He shall be the chief executive of the city and conservator of the peace; shall be a citizen of the United States, a freeholder within said city, and a qualified voter at the time of his election, and an inhabitant of the city for at least one year next before the day of his election; he shall take care that the laws of the state and ordinances of the city are duly observed and enforced within the city. It shall be his duty to keep his office within some convenient place in said city to be provided by the common council; to see that all officers of the city faithfully comply with and discharge their official duties, and to that end maintain an action of mandamus or other appropriate action against any delinquent officer; he shall from time to time give the common council such information and recommend such measures as he may deem advantageous

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to the city. In the business meetings of the council, the mayor shall not vote on any question except when the vote of the council ties, when the mayor shall cast the deciding vote. All ordinances and resolutions shall, before they take effect, be presented to the mayor, and if he approves thereof he shall sign the same, and such as he shall not sign he shall return to the common council with his objections thereto, by depositing the same with the city recorder to be presented to the common council at their next regular

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meeting thereafter. Upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be deemed to have been reconsidered and the questions shall again be put upon the passage of the same notwithstanding the objections of the mayor; and if, upon such vote, the common council shall pass the same by a majority vote of the members of the council, it shall have the same effect as if approved by the mayor. If any ordinance or resolution shall not be returned to the city recorder by the mayor within five days, Sundays excepted, after it shall have been presented to him, the same shall have the same force and effect as if approved by the mayor. It shall be the duty of the city recorder to endorse upon each ordinance or resolution upon his records of the proceedings of the council the time when such ordinance or resolution was delivered to the mayor, and the time when the same shall be returned to his office by the mayor. The mayor shall have the power, when he deems it necessary, to appoint police officers who shall act in conjunction with and under the direction of the city marshal; and in the absence of the marshal from the city, the mayor shall have power to appoint a deputy marshal who shall act and have the same powers as the marshal until discharged by the mayor. The compensation paid the deputy shall be the same as that paid the marshal, and the amount so paid to said deputy shall be deducted from the salary of the marshal.

### Section 2. Recorder.

(1) The recorder shall be custodian of the city records and have such other and further duties as the common council shall prescribe. [ Subsection (1) of Section 2, Chapter III, as amended by election held September 19, 1966. ]

(2) In case of the absence, sickness, or inability of the recorder to act as recorder or clerk of the council, the common council may appoint a recorder and clerk pro tempore who shall have all the authority and perform all the duties of the recorder during his absence, sickness, or inability, to certify and affix the corporate seal to copies of files; and transcripts of records and certificates made by him shall have the same validity and effect as if made by the recorder. [ Subsection (2) of Section 2, Chapter III, as amended by election held September 19, 1966. ]

(3) The recorder shall also be ex-officio city judge and ex-officio treasurer in case of vacancy in those offices and in case of absence, sickness, or inability of either of those officers to perform their duties. [ Subsection (3) of Section 2, Chapter III, as amended by election held September 19, 1966. ]

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Section 3. City Attorney. The city attorney shall perform all professional services incidental to the office, and shall appear and conduct all suits, prosecutions, and proceedings, civil or criminal, in which the city of Woodburn is directly or indirectly interested; he shall, when required, furnish opinions upon any subject pertaining to the affairs of the said city submitted to him by the common council or its committees; he shall also advise with and counsel all city officers in respect to their official duties, and attend the regular meetings of the common council and of such committees and boards as shall request his assistance. The city attorney may employ assistants and associate other attorneys. Subject to the direction of the city attorney, an assistant or associate has the same functions as the city attorney. [Section 3, Chapter III, as amended by election held September 19, 1966.]

Section 4. Health Officer. The common council shall elect a health officer, who shall be a practicing physician. Such officer shall be the executive officer of the board of health of the city of Woodburn, and as such executive officer, it shall be his duty within the city of Woodburn to enforce all the laws of the state of Oregon and the ordinances and health regulations of the city of Woodburn relating to the health of the state or said city, and he may appoint such assistants in such manner as is prescribed by the health ordinances of the city of Woodburn; except that the city marshal shall be an ex-officio member of said board.

Section 5. City Engineer. The city engineer shall be appointed by the common council and shall be a practical surveyor. He shall have supervision and general charge of all works such as shall be prescribed by the common council, and he shall take care that the terms of all contracts, or of any work or construction in behalf of the city of which he shall have supervision, are fully complied with.

Section 6. Engineer's Plans and Estimates. All surveys or drawings, plans, and estimates made by the city engineer or any of his assistants for the city shall be the property of said city and shall be carefully preserved in the office of the city recorder, open to the inspection of all parties interested; and the same, together with all the books and appurtenances of the said office, shall be delivered over by said engineer at the expiration of his term of office to his successor, or to the common council.

Section 7. Treasurer. The treasurer shall be the custodian of city funds and have such other and further duties as the common council shall prescribe. [Section 7, Chapter III, as amended by election held September 19, 1966.]

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### Section 8. City Judge.

(1) The city judge is authorized to administer oaths and shall have jurisdiction over all violations of city ordinances, and may hold to bail, fine, or commit persons found guilty thereof. He shall have the same jurisdiction and powers as a Justice of the Peace throughout the county of Marion, and the law governing justices' courts and justices of the peace, so far as applicable, shall apply to all his proceedings. He shall try all persons accused of violating city ordinances without a jury unless the defendant demands a jury. The witnesses in his court in such trial shall be entitled to no compensation for their attendance unless the common council by ordinance shall otherwise direct. He shall have power as city judge to punish witnesses and others for contempt by fine, not to exceed \$25.00 or, in default of payment of such fine, by imprisonment in the city jail one day for every \$5.00 of such fine. [Section 8, Chapter III, as amended by election held May 18, 1962.]

Section 9. Penalty for Nondelivery of Books. If any person having been an officer of said city shall not, within 10 days after notification and request, deliver to his successor in office all property, books, papers, and effects of every description belonging to said city or pertaining to the office he may have held, he shall forfeit and pay to the use of the city \$500.00, besides all damages caused by his neglect or refusal to deliver; and such successor may recover the possession of such books, papers, and effects in the manner prescribed by the laws of the state.

Section 10. Interest in Contracts. No councilman or other officers shall be a party to or interested in any jobs or contracts with the city, and any contract in which a councilman or other officer shall be so interested shall be null and void; and in case any money shall have been paid on any such contract, the amount so paid may be recovered by joint or several action from the parties to such contract and the councilman or other officers interested in the same.

### Section 11. Council May Require Other Duties.

(1) To the extent not otherwise provided by this charter, the common council shall have power at any time to require other or further duties to be performed by any officer whose duties are herein prescribed, to prescribe the powers and duties of all other city officers, and to abolish any appointive office established by the common council. [Section 11, Chapter III, as amended by election held May 18, 1962.]

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Section 12. Chief of Police. The chief of police shall be conservator of the peace. He shall have jurisdiction of a constable and shall discharge the same according to the statutes of this state pertaining to constables. He shall arrest all persons guilty of breach of the peace or any violation of any city ordinance and take them before the city judge for trial and shall do and perform such other and further duties as the city judge or common council shall direct. He shall be ex-officio collector of delinquent city taxes. Any reference in this charter to the marshal shall be considered a reference to the chief of police. [Section 12, Chapter III, as amended by election held September 19, 1966.]

Section 13. Compensation of Mayor and Councilmen. The mayor and councilmen of the city of Woodburn shall receive not to exceed \$1.50 for each regular meeting of the common council.

Section 14. Salary of Other Officers. The common council shall have power to fix the compensation of all appointed officers. [Section 14, Chapter III, as amended by election held September 19, 1966.]

Section 15. Official Newspaper. The common council may at any time they deem it necessary cause to be printed in one newspaper in said city any or all ordinances and official proceedings of the common council. Immediately after the last publication of any notice, ordinance, or other official proceedings, the party publishing the same shall file with the city recorder a copy of such publication with his affidavit of the length of time the same has been published, and such affidavit shall be conclusive evidence of the publication of such notice, ordinance, or other official proceedings, and no warrant shall issue for the payment of such notice, ordinance, or other official proceedings until such proof of publication has been made and filed.

## CHAPTER IV

Section 1. Powers and Duties of Council; Quorum. A majority of the common council shall constitute a quorum.

Section 2. Meetings of the Council. The common council shall hold a regular meeting at least once each month at a time and at a place which it designates within the city. The mayor, upon his own motion may, or at the request of two members of the council shall, by giving notice thereof to all councilmen then in the city, call a special meeting of the council for

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a time no earlier than three nor later than 48 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 councilmen. [Section 2, Chapter IV, as amended by election held September 19, 1966.]

Section 3. The Common Council Judge of Election of its Members; Rules of Procedure. The common council shall be the judge of the election of its own members, and in such case shall have power to send for papers and persons. It shall determine the rules of its own proceedings and have power to compel the attendance of absent members and may provide for the punishment of such absent members.

Section 4. Power to Remove Officers; How Exercised. The common council shall have power to remove from office any officer of said city appointed by the common council, upon a majority vote of the councilmen; but no officer elected by the people shall be removed except for cause, nor unless first furnished with a copy of the charges, nor until such person shall have had reasonable opportunity to be heard in person or by council in his defense. Continued absence from the meetings of the common council in case of councilmen, and neglect of duty in case of other officers, unless for good reason, shall be deemed a good cause for removal. The common council shall fix a time and place for the trial of such officers, of which not less than 10 days' notice shall be given, and shall have power to compel the attendance of witnesses and the production of papers and to hear and determine the case; and if such officers shall refuse or neglect to appear and answer such charge, the common council may declare the office vacant.

Section 5. Powers of the City. The city shall have all the powers which the constitution, 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. Except as this charter provides otherwise, all powers of the city shall be vested in the common council. [Section 5, Chapter IV, as amended by election held September 19, 1966.]

Section 6. Punishment for Breach of Ordinance. The council may, by ordinance, impose a punishment for the violation of any ordinance of the city, to the extent of a fine not exceeding \$500.00 and the costs of the action, or imprisonment in the city jail not exceeding 90 days, or both such fine and imprisonment; and in default of the payment of such fine and costs, the offender may be imprisoned in the city jail not to exceed one day for each \$5.00 of such fine and costs. [Section 6, Chapter IV, as amended by election held September 19, 1966.]



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Section 7. [Section 7, Chapter IV, repealed by election held September 19, 1966.]

Section 8. Style of Ordinance; Subject to be Stated in Title. The enacting clause of all ordinances of said city shall read as follows: "The people of the city of Woodburn do ordain." The enacting clause of all resolutions shall read as follows: "The common council of the city of Woodburn do resolve." The subject of every ordinance or resolution shall be expressed in its title, and no ordinance or resolution shall embrace more than one subject and matters properly connected therewith. The name of the councilman introducing any ordinance, resolution, or motion shall be expressed in the minutes of the meeting at which such ordinance, resolution, or motion was presented. [Section 8, Chapter IV, as amended by election held November 7, 1911.]

Section 9. Ordinances and Resolutions; How Passed and Published. All ordinances and resolutions of the common council shall be passed by an affirmative vote of a majority of all the members of the common council by "ayes" and "nays" which shall be entered in the records of the council meetings. No ordinance or resolution shall be passed at the same meeting at which it is presented, except by the unanimous consent of all the members present, which shall be noted in the records. But this shall not preclude the passage of ordinances or resolutions reported by any committee of the council to whom the subject of such ordinance or resolution shall have been referred at any previous meeting. The first reading of all ordinances and resolutions shall be at full length, but for the second and third reading it shall be sufficient if read by title only; provided, if any member of the council shall request it, the second and third reading shall be at full length also. Within five days after the passage of any ordinance or resolution, copies thereof shall be posted by the recorder in three public places within the city limits; and the recorder shall make his certificate of posting and enter same in the ordinance book of the city immediately following the said ordinance or resolution in the manner following:

I \_\_\_\_\_, recorder of the city of Woodburn, do hereby certify that I posted three copies of Ordinance No. \_\_\_\_\_ Resolution No. \_\_\_\_\_ (as the case may be) one of which said copies I posted at \_\_\_\_\_ on \_\_\_\_\_ in full view of the traveling public; the second one of said copies I posted at \_\_\_\_\_ on \_\_\_\_\_ in full view of the traveling public; and the third of said copies I posted at \_\_\_\_\_ on \_\_\_\_\_ in full view of the traveling public; that all of said places are public

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places and within the city of Woodburn, and that all of said copies were posted by me on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_\_, recorder and ex-officio clerk of the common council.

No ordinance or resolution shall take effect until 30 days after its passage, except such as shall be adopted by the legal electors of the city, which shall take effect upon the publication of the proclamation of the mayor, and except as otherwise provided in this charter. [Section 9, Chapter IV, as amended by election held November 7, 1911.]

Section 10. Initiative and Referendum Petitions. Referendum petitions against any ordinance, franchise, or resolution passed by the city council shall be signed by not less than 10 per cent of the voters of the city of Woodburn, and said signatures shall be verified in the manner herein provided. The petition shall be filed with the city recorder within 30 days after the passage of such ordinance, resolution, or franchise. No city ordinance, resolution, or franchise shall take effect or become operative until 30 days after its passage by the council and approval by the mayor, unless the same shall be passed over his veto, and in that case it shall not take effect and become operative until 30 days after its final passage, except measures necessary for the immediate preservation of the peace, health, or safety of the city; and no such emergency measure shall become immediately operative unless it shall state, in a separate section, the reason why it is necessary that it should become immediately operative, and shall be approved by a majority of all the members elected to the city council, taken by ayes and nays, and also be approved by the mayor.

Section 11. If any ordinance, charter, or amendment to the charter of the city shall be proposed by initiative petition, said petition shall be filed with the city recorder, and he shall transmit the same to the next session of the city council. The council shall either ordain or reject the same, as proposed, within 30 days thereafter; and if the council shall reject said proposed ordinance or amendment, or shall take no action thereon, then the city recorder shall submit the same to the voters of the city at the next ensuing election held therein not less than 90 days after the same was first presented to the city council. The council may ordain such ordinance or amendment and refer it to the people, or may ordain such ordinance without referring it to the people; and in that case it shall be subject to referendum petition in like manner as other ordinances. If the council shall reject such ordinance or amendment, or take no action thereon, it may ordain a competing ordinance or amendment, which shall be submitted by the recorder to the people of the city at the

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same election at which said initiative proposal is submitted. Such competing ordinance or amendment, if any, shall be prepared by the council and ordained within 30 days allowed for its action on the measure proposed by initiative petition. The mayor shall not have power to veto either of such measures. If conflicting ordinances and charter amendments shall be submitted to the people at the same election, and two or more of such conflicting measures or amendments shall be approved by the people; then the measure which shall have received the greatest number of affirmative votes shall be paramount in all particulars as to which there is conflict, even though such measure may not have received the greatest majority. Amendments to the city charter may be proposed and submitted to the people by the city council, filed with the recorder for submission not less than 70 days before the election at which they are to be voted upon, and no amendment of the city charter shall be effective until it is approved by a majority of the votes cast thereon by the legal voters of the city of Woodburn. The city council may by ordinance order special elections to vote on municipal measures. [Section 11, Chapter IV, as amended by election held May 25, 1976.]

Section 12. Every person who is a qualified elector of the state of Oregon and a bona fide resident and inhabitant of the city of Woodburn may sign a petition for the referendum or for the initiative for any measure which he is legally entitled to vote upon.

Section 13. The following shall be substantially the form of petition for the referendum to the people on any resolution or ordinance passed by the city council:

### Form of Referendum

To the honorable recorder of the city of Woodburn:

We, the undersigned citizens of the state of Oregon and of the city of Woodburn, respectfully order that Ordinance (or Resolution as the case may be) No. \_\_\_\_\_, entitled (here set out the title, and if the petition is against less than the whole act set forth the part or parts on which the referendum is sought) passed by the common council of the city of Woodburn at the regular (special) meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, of the common council

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of said city; shall be referred to the people of the city of Woodburn for their approval or rejection at the regular (special) election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and each for himself says: I have personally signed this petition; I am a legal voter of the state of Oregon and of the city of Woodburn; my residence and post-office address are correctly written after my name:

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Name \_\_\_\_\_ Street \_\_\_\_\_ Post \_\_\_\_\_  
Residence \_\_\_\_\_ Office \_\_\_\_\_

Here follow 20 numbered lines for signatures.

Section 14. The following shall be substantially the form for the initiative petition for any ordinance, amendment to any ordinance, or amendment to the charter of the city of Woodburn:

Form for Initiative Petition

To the honorable recorder of the city of Woodburn:

We, the undersigned citizens and legal voters of the state of Oregon and of the city of Woodburn, respectfully demand that the following proposed ordinance (or amendment to the charter, or amendment to ordinance as the case may be) shall be submitted to the legal voters of the city of Woodburn, for their approval or rejection at the regular general election (or special election, as the case may be) to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and each for himself says: I have personally signed this petition; I am a legal voter of the state of Oregon and of the city of Woodburn; my residence and post office are correctly written after my name.

Name \_\_\_\_\_ Street \_\_\_\_\_ Post \_\_\_\_\_  
Residence \_\_\_\_\_ Office \_\_\_\_\_

Here follow 20 numbered lines for signatures.

Every such sheet for petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed by the initiative petition; but such petition may be filed with the recorder in numbered sections for convenience in handling; and referendum petitions shall be attached to a full and correct measure on which the referendum is demanded, and may be filed in numbered sections in like manner. Not more than 20 signatures on one sheet shall be counted. When any such initiative or referendum petition shall be offered for filing, the recorder, in the presence of the mayor and the person offering the same for filing, shall detach the sheets, counting the signatures and affidavits, and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petitions; provided, all petitions for the initiative and for the referendum and sheets for signatures shall be printed on pages seven inches in width by 10 inches in length, with a margin of one and three-fourths inches at the top of binding; and shall be bound in one volume and attached to a single printed copy of such measure; the detached copies of such measure shall be delivered to the person

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offering the same for filing. If any such measure shall, at the ensuing election, be approved by the people, then the copies thereof so preserved, with the sheets and signatures and affidavits, and a certified copy of the mayor's proclamation declaring the same to have been approved by the people, shall be bound together in such form that they may be conveniently identified and preserved. The recorder shall cause every such measure so approved by the people to be entered in the ordinance book, with the date of the mayor's proclamation declaring the same to have been approved by the people. Any ordinance passed and approved by the people shall not be repealed by the council.

Section 15. Each and every sheet of every petition containing signatures shall be verified on the back thereof, in substantially the following form, by the person who circulated said sheet of said petition, by his or her affidavit thereon and as a part thereof:

State of Oregon       )  
County of Marion    ) ss.  
City of Woodburn    )

I, \_\_\_\_\_, being first duly sworn, say (here shall be legibly written the names of the signers of the sheet) signed this sheet of the foregoing petition, and each of them signed his name thereto in my presence, I believe that each has stated his name, post office address, and residence correctly, and that each signer is a legal voter of the city of Woodburn.

\_\_\_\_\_  
(Signature and post-office address of affiant)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_.

\_\_\_\_\_  
(Signature, title, and post-office address of  
officer before whom the oath was made)

The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors.

Section 16. The votes on measures and questions shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned.

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And it shall be the duty of the council, in the presence of the mayor, to proceed within five days after the election to canvass the votes given for each measure; and the mayor shall forthwith issue his proclamation, giving the number of votes cast in the city for or against each measure and question, and declaring such measures as are approved by majority of those voting thereon to be in full force and effect within the city of Woodburn from the date of said proclamation; provided, that if two or more measures shall be approved at said election which are known to conflict with each other, or to contain conflicting provisions, he shall also proclaim which is paramount, in accordance with Section 11 of this chapter.

Section 17. Majority of Whole Council Required to Make Appropriations. No appropriation shall be made without a majority of all the members of the common council in its favor, which shall be taken by ayes and nays and entered among the proceedings of the council.

Section 18. Common Council to Adjust Accounts of City Officers. The common council shall examine, audit, and adjust the accounts of the recorder, treasurer, and all other officers, boards, and agents of the city at such times as they may deem proper, and also at the end of each year before the term for which the officers of said city are elected shall have expired; and the common council shall require each and every one of such officers, boards, and agents to exhibit his books, accounts, and vouchers for such examination and settlement; and if any such officers, boards, or agents shall refuse to comply with the orders of said council in the discharge of his said duties in pursuance of this section, or shall neglect or refuse to render his accounts or present his books or vouchers to said council or a committee thereof, it shall be the duty of the common council to declare the office of such persons vacant, and the common council shall order suit and the proceedings at law against any officer or agent of said city who may be found delinquent or defaulting in his accounts or the discharge of his official duties, and shall make a full record of all such settlements and adjustments.

Section 19. Council Shall Have Charge of Finances and Property of the City. The common council shall have the management and control of the finances and all property of the city, except as otherwise provided, and may provide for the sale of any such property in such manner as it shall consider for the interest of the city.

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Section 20. Power to Condemn Private Property and Award Damages. The common council shall have the power to acquire by purchase or condemnation such private property as may be necessary for the public buildings for the use of the city and all departments thereof, for all structures connected with any department of the city, and for all streets, alleys, and public squares in the city, and to ascertain and determine the value of all such private property taken for such uses, and the amount of all damages occasioned to any private property by reason of any public work or structure; and for that purpose may appoint commissioners to appraise such value and damages or acquire information thereof in the manner hereinafter prescribed.

Section 21. [Sections 21 - 24, Chapter IV, repealed by election held September 19, 1966.]

Section 25. Power to Levy Tax. The common council shall have power to assess, levy, and collect taxes for general municipal purposes upon all property both real and personal which is taxable by law for state and county purposes; provided, in addition thereto, the council may annually assess, levy, and collect a tax not to exceed three mills on the dollar of such taxable property to provide for and maintain a public library; provided further, in addition to the taxes above provided for, the council may at any time the city shall have outstanding bonds, assess, levy, and collect annually, a tax not to exceed one-tenth of such outstanding bonds, and annual interest thereon, for the purpose of redeeming such bonds and the payment of the interest thereon. [Section 25, Chapter IV, as amended by election held May 18, 1962.]

## CHAPTER V

Section 1. Public Works; Council to Approve Plats Before the Same Can be Recorded. No plat of any portion of said city shall hereafter be recorded or be of any validity unless before such record the approval of the common council shall be duly endorsed thereon, and in case of any addition to said city as provided for in this act, the said council shall examine the premises to see that its streets, avenues, and alleys conform to the requirements of the act allowing such incorporation and addition to the city, and shall approve and endorse their approval on the plat of the same.



Section 2. Grades to be Established by Ordinance. The common council shall by ordinance establish a system of grades for all streets, avenues, and alleys within said corporate limits for which grades have not been heretofore established; and, once established, no grades shall be changed except by ordinance. The common council may establish a system of sewers for the entire city, and cause to be designated on said plats the streets, avenues, and alleys through which the same are to be constructed.

Section 3. Supervision of Public Improvements. The street commissioner, under the supervision of the common council, shall have charge of all grading, filling, leveling, graveling, curbing, walling, bridging, planking, opening, extending, widening, contracting, altering, and straightening of all streets, avenues, and public grounds; the clearing, working, and repairing, and improving of all streets, avenues, alleys, and public places, bridges, culverts, receiving basins, sewers, and water courses within said city; the improvement and ornamentation of all parks and public grounds within the city, and the laying of water pipes through any streets, avenues, or alleys; the construction of all sewers and drains; and no person shall make any connection therewith without the consent of the common council and under such general rules and regulations as the council shall adopt; and the laying down of all sidewalks and crosswalks, the construction of all vaults under any portion of the streets, the erection of all public buildings and works of the corporation; and the common council may stop the work thereon when the same is not being done according to the contract thereof.

Section 4. Superintendents. When the construction of any building or work by the corporation shall require peculiar skill, the common council may by resolution employ a competent person to superintend the same at a compensation not to exceed a sum to be stated in said resolution.

Section 5. Repairs and Public Improvements. The street commissioner, under the supervision of the council, shall have charge of the street cleaning, repair of sewers and gutters, and building of crosswalks in the city of Woodburn; and the common council may if deemed expedient advertise from time to time for proposals for doing the work upon the same for any and all other public improvements of the city; and for this purpose they may receive proposals; and they shall let the work to the lowest responsible bidder who shall give adequate security for the performance of his contract; provided, that they may reject any or all proposals made.

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## CHAPTER VI

### Streets and Sewers

- Article 1. Establishing and Changing of Streets
- Article 2. Vacation of Streets
- Article 3. Establishment and Change of Grades
- Article 4. Improvement of Streets
- Article 5. Sidewalks
- Article 6. Sewers and Drains
- Article 7. Special Assessments
- Article 8. Miscellaneous Street Provisions

#### Article I

### Establishing and Changing of Streets

Section 1. Power of Council over Streets. The council of the city of Woodburn is hereby granted power and authority within the limits of the said city of Woodburn, whenever it may deem it expedient to open, lay out, establish, widen, alter, extend, vacate, or close streets, and to appropriate and condemn private property therefor.

Section 2. City Engineer to Make Survey of Street to be Laid Out or Established. Whenever the council shall deem it expedient to open, lay out, and establish a new street, or to change an existing street by widening, altering, or extending the same, it shall by resolution direct the city engineer to make a survey of such street or change, and to make a plat of the same, and a written report containing a full and complete description of such street or change, and of the boundaries thereof, and of the portions of each lot and tract of land to be appropriated therefor. The city engineer shall make such survey, report, and plat, and file the same with the recorder of the city of Woodburn within 20 days from the date the same was ordered by the council, unless said council grant him further time. Should the council deem said survey, plat, and report satisfactory, it shall adopt the same by ordinance embodying such report.

Section 3. Viewers to be Appointed; Notice Thereof. Thereafter, within 60 days from the adoption of such report, the council shall appoint three disinterested freeholders of the city of Woodburn possessing the

qualifications of jurors of the circuit court of Marion County, to view such proposed street or change and make an assessment of damages and benefits as provided in the next following section of this charter, and shall assign a day and place for them to meet, and shall cause a notice to be given by publication once a week for two consecutive weeks in the city official newspaper of the appointment of such viewers, with their names and the time and place appointed for them to meet, and specifying with convenient certainty the boundaries and termini of the proposed street or change, and the boundaries and descriptions of the private property to be appropriated for such purpose; and the recorder shall send by mail, postpaid, a copy of such notice to each of the property owners whose property is proposed to be appropriated, or to the agent of such owner, when the post-office address of such owner or agent is known to him; and if such post-office address be unknown, then such notice shall be directed to such owner or agent at Woodburn, Oregon. The published notice herein provided for shall be deemed conclusive notice to all owners of property whose property shall be appropriated for such purpose.

Section 4. Proceedings of Viewers; Their Oath; Compensation.  
The recorder shall at least five days before the day set for such meeting, cause said viewers to be notified of their appointment and of the time and place of such meeting, and said viewers shall meet at the time and place designated, and shall then be sworn faithfully to discharge the duties assigned them. They shall then, or on any subsequent day to which they may adjourn (which adjournment shall not exceed one week at a time), proceed to view the proposed street or change, and to determine and assess how much, if any, less valuable the lands or other property, or any part thereof through or over which the proposed street is to be opened, laid out, established, or changed, will be rendered thereby, and shall also ascertain the respective interests of all persons claiming to be the owners of the lands, or other property aforesaid, or of the improvements thereon or to have any interest in such lands or improvements and the damage which each of the said owners respectively will sustain; but the right and title of the owners of such improvements shall not be affected by such proceedings and the appropriation of such lands, if such owners shall within 60 days after the appropriation of such lands shall be completed, or within such further time as the council shall allow therefor, remove such improvements from said lands; otherwise such improvements shall become and be the property of the city of Woodburn. Said viewers shall also make a just and equitable estimate and assessment of the value of the benefits and advantages of said proposed

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street or change to the respective owners, and other persons interested in all lands or other property, which said viewers shall deem specially benefited by such opening, laying out, establishing, or change.

Said viewers shall thereafter, at their earliest convenience, report the assessment for damages and benefits as in this section required to the council, but any failure to state the name of any owner, or a mistake in the name of any owner, or a statement of a name other than that of the true owner, in such report, assessment, or in the ordinance adopting such report, or in the docket of city liens where the name is entered, or in any notice required by this charter shall not render void nor in any way affect the lien of such assessment upon the property assessed. The viewers shall receive as compensation for their services the sum of \$2.00 each for each day actually engaged in said service, to be paid by the city and charged as costs, and assessed as part of the benefits by said viewers.

Section 5. Notice of Viewers' Report; Council May Adopt or Reject Report. Upon the filing of said report of the viewers with the recorder, he shall immediately cause a notice to be published for a period of two successive weeks in the city official newspaper of the filing of said report, giving the date when the same will be considered by the council, describing with convenient certainty the boundaries of the district assessed by the viewers in said report and notifying all persons interested to present in writing their objections to said report, if any they have, and said objections, if any there be, together with said report, shall be heard and determined by the council.

It shall also be the duty of the recorder, forthwith, to send by mail, postpaid, a notice of each assessment, stating the date when the same will be considered by the council, and directing all persons interested to present in writing their objections to said report, if any they have, to the owner (if known) of each lot or part thereof, or tract of land assessed, any part of which is appropriated for the proposed street, or to the agent of such owner, when the post-office address of such owner or agent is known to him; and if such post-office address be unknown to him, then such notice shall be directed to such owner or agent at Woodburn, Oregon. If such report shall appear to the council to be in all respects reasonable and just, it may be adopted by ordinance embodying such report; or if it shall appear to the council that the damages or benefits assessed are unreasonable, unjust, or insufficient in any respect, the council may send the same back to the same viewers for further consideration, and the viewers may alter and revise the same as they shall deem just, and again report the same to the council, who may thereupon adopt or reject the same; or said council may appoint new viewers with like powers, duties,

and obligations as the first viewers, to make such assessment and awards, and to report the same to the council, which shall have the same power over such report as over that of the original.

Section 6: Appeal from Viewers' Report. The owner or owners of of any lot or part thereof so to be appropriated as aforesaid, or of the improvements thereon, or any person having an interest therein, or any person against whom an assessment of benefits has been made, may appeal to the circuit court of the state of Oregon for the county of Marion, from such report and assessments of damages and benefits. Any number of persons may join in such appeal, and the only question to be determined by such appeal shall be the question of the excess of damages over benefits and the excess of benefits over damages suffered and received by each person joining in such appeal.

Section 7. Appeal; How Taken. An appeal shall be taken by serving notice of appeal within 20 days from the adoption of the report of the viewers by the council, upon the mayor, recorder, or attorney of the city, and filing an undertaking, with one or more sureties, who shall possess the qualifications of bail upon arrest in a civil action, and shall justify in like manner, conditioned that the appellant will pay all costs and disbursements that may be awarded against him on appeal, not exceeding \$300.00, together with the proof of service of such notice in the office of the clerk of the circuit court.

Section 8. Proceedings Prima Facie Regular. In all actions, suits, and proceedings concerning the opening, laying out, establishing, or changing of any street, under the provisions of this charter, all proceedings had for that purpose shall be presumed to have been regularly and legally taken until the contrary is shown.

Section 9. Docket of City Liens; Collection of Assessments. The council at the expiration of the time limited for appeal, if no appeal be taken, or immediately after judgment is rendered on appeal, if an appeal be taken, and if it shall deem it advisable to open, lay out, establish, or change said street in pursuance of said judgment, shall by resolution direct the recorder to enter in the docket of city liens the respective sums of benefits over damages so assessed, upon each particular lot or parcel of land; and the names of the owners or other parties in interest in the lands or other property benefited and assessed in like manner as assessments for street improvements are entered in said lien docket; and when so docketed said sums shall be a lien or charge upon the

estate and interest of the respective owners and parties interested in such lands or other property; and also the said owners and other persons interested, as aforesaid, shall be respectively and severally liable to pay said assessments; and in case no appeal or other proceedings in court be taken as to any such assessment of benefits or damages, the said excess so assessed shall be paid to the treasurer of the city of Woodburn within 10 days from the time of entering the same on the docket of city liens, or the same shall be deemed delinquent; and thereupon shall be collected in like manner as provided for the collection of other delinquent assessments by this charter, excepting that if all the property upon which assessments are due and delinquent is not sold at any sale, proceedings may be begun for a subsequent sale immediately after the returns of a sale are made. All moneys arising from such assessment of benefits shall be kept in a separate fund and be applicable to the satisfaction of the excess of damages over benefits assessed to owners and other persons interested in the property taken or damaged for the purpose of laying out, establishing, or changing the street in the matter in which such benefits are assessed and for the payment of expenses incurred by the city for surveying, advertising, and viewings, in said proceedings.

Section 10. Warrants for Damages; Assessments Void Unless Collected Within Nine Months. Whenever the full amount of the assessment of benefits as entered in the docket of city liens is paid into the city treasury, warrants shall be drawn on the treasurer payable out of the fund to be provided for that purpose, for the amount of excess of damages, or excess of damages and costs assessed, and in favor of the owner or owners or other persons in interest, and when said warrants therefor are drawn and ready for delivery to the parties entitled to the same, such property shall be deemed appropriated for the purpose of such street, and not otherwise; provided, that no process of any court shall issue to compel any appropriation for damages or the issuing of warrants for the same. And unless such assessments are collected, and said warrants so drawn and ready for delivery within nine months after the termination of the time limited for appeal, if no appeal be taken, or within nine months from the date of the rendition of final judgment on appeal, if an appeal be taken, all acts and proceedings under such survey and view shall be null and void.

Section 11. Council to Declare Street Opened When Warrants are Drawn; Plat to be Filed. And when such warrants are drawn and ready for delivery to the parties entitled to the same, the property required for public use as shown in the report of the city engineer shall be deemed

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appropriated for the purpose of the street, and the council shall by resolution declare such street to be opened, laid out, established, or changed; and within 30 days after the adoption of said resolution the recorder shall file for record with the county recorder of Marion County a copy of said resolution, and an accurate plat of said street, and of the property so appropriated for public use.

Section 12. Power Granted to Council; How Exercised; Survey of Street Adopted by Ordinance. The power and authority granted to the council by this charter is granted to the municipal corporation of the city of Woodburn, to be exercised according to the provisions of the charter creating such corporation, unless otherwise specially provided therein. The power to approve and adopt the survey of any street must be exercised by ordinance and not otherwise.

Section 13. Council May Provide Regulations. The council may provide by ordinance any regulations as to the manner of opening, laying out, establishing, or changing streets not in conflict with this charter, and may provide by ordinance anything convenient and necessary for the effectual carrying out of the spirit and intention of this charter.

## Article II

### Vacation of Streets

Section 14. Notice and Petition for Vacating Street. All proceedings for the vacation of any street, plat, or addition within the city of Woodburn shall be as prescribed by the general laws of the state of Oregon.

Section 15. Title to Street Vacated. If, upon the hearing of the petition for the vacation of any street, or part thereof, as in the preceding section provided for, the council shall determine that such street should be vacated, and shall by ordinance vacate the same, such street shall be attached to the lots or ground bordering on such street, and all right and title thereto shall vest in the owners of the property on each side thereof in equal proportions. In every case where a street shall have been originally dedicated wholly by the owner or owners of the property abutting upon one side only of such street, then in the event of the vacation of such street, all right and title thereto shall vest in the then owner or owners of the property abutting upon the side of the said street last aforesaid.

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Section 16. Vacation of Street to be by Ordinance; Record of Same. The vacation of any street by the council shall only be made by ordinance, and a certified copy of such ordinance shall be filed for record, and duly recorded in the office of the county recorder of Marion County, and said county recorder shall record the same in the records of deeds for said county and place an appropriate reference upon the margin of the original plat or plats of said streets, or part thereof vacated, to indicate the book and page where such vacation is recorded.

### Article III

#### Establishment and Change of Grades

Section 17. Council Empowered to Establish and Change Grades. All streets, avenues, boulevards, lanes, alleys, and bicycle paths within the corporate limits of the city of Woodburn, now open or dedicated to public use, or which may hereafter be opened or dedicated to public use, or which have or may become such by prescription or use, shall be deemed and held to be open public streets, avenues, boulevards, lanes, alleys, and bicycle paths for the purposes of this charter, and the council is hereby empowered to establish and change the grades of the same, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in this charter, in accordance with the directions and proceedings provided in this charter.

Section 18. Same. The council is hereby authorized and empowered to establish by ordinance the grade of any street within the city when such grade has not been established, and may require from the city engineer all maps and data it may deem necessary in relation thereto.

The council is hereby authorized and empowered to change by ordinance the grade of any street within the city of Woodburn pursuant to the following provisions.

Section 19. Notice of Resolution to Change Grade. Whenever it shall be deemed expedient to change the grade of any street within the city, the council shall pass a resolution declaring its intention to make such change of grade and describing the same. Said resolution shall be kept of record in the office of the recorder and shall be published for two consecutive publications in the city official newspaper. The city street commissioner within three days from the first publication of said resolution shall cause to be posted in at least two places on the street or



streets at points affected by such change of grade notices headed "Notice of Change of Grade" in letters not less than one inch in length, and shall in legible characters state that such a resolution has been passed by the council, the date thereof, and briefly, the change of grade proposed, and the time within which written objection or remonstrance against the same may be made. The street commissioner shall file with the recorder an affidavit of the posting of said notices, stating therein the date when and the places where the same have been posted.

Section 20. Remonstrance by Property Owners. At any time before 20 days after the first publication of the resolution provided for in the preceding section, more than one-half of the owners of the property affected by such change of grade may make and file with the recorder a written objection or remonstrance against the same, and said objection or remonstrance shall be a bar to any further proceedings thereto for a period of six months, after which if the council proposes to change such grade, the same proceedings shall be had as in the first instance.

Section 21. Jurisdiction; When Obtained. If no such written objection or remonstrance be filed within the time designated, or if the council finds that the written objection or remonstrance is not legally signed by more than one-half of the owners of the property affected by the proposed change of grade, the council shall be deemed to have acquired jurisdiction to change by ordinance the grade as described in the resolution previously adopted.

Section 22. Damages for Change of Grade; How Assessed. When the grade of any street has once been established and any permanent building has been constructed on any lot abutting said street or affected by such change of grade, the owner or owners of any such permanent buildings, during the time designated for filing objections or remonstrances, may file with the recorder a claim of damages by reason of such change of grade, and such claims shall describe the land upon which such buildings stand and an estimate of the value of said buildings and of the damages which such change of grade will cause to said building; and said claims and all statements contained therein shall be sworn to by the party or parties owning said buildings and land or by their agents or legal representatives. Thereafter, the council shall appoint three disinterested freeholders of the city, having the same qualifications as viewers for the opening, laying out, and establishing of streets, to estimate and determine the damages that will be sustained by the owners of buildings affected by said change of grade and to assess the benefits accruing to

property benefited by such change of grade. The said viewers shall be appointed, and they shall qualify, and notices of their meeting and of the filing of their report shall all be done in the same manner as similar acts and proceedings are done in the opening, laying out, and establishing of streets. The said viewers shall include as part of the benefits assessed the amount of their compensation for services, which shall be the sum of \$2.00 each for each day actually engaged in said service, but in no case shall the amount of said assessment of benefits exceed the actual benefit to the lot or parcel of land or other real property so assessed, deducting therefrom any damages or injuries to the same parcels which are less than said benefits, nor shall any damages be awarded for any building erected prior to the establishment of the grade which is proposed to be changed; and no award of damages to any person shall be greater than the amount claimed and sworn to by said person as hereinbefore provided; and if in the judgment of said viewers the whole amount of said damages and compensation of viewers shall exceed the actual benefit to the specific property subject to assessment, they shall so indicate in their report. The said viewers shall make a report of their findings of benefits and damages to the council, and the same shall be heard, considered, and adopted or set aside, and the assessment of benefits shall be levied, docketed, and collected, and kept in a separate fund, and appeal from said report may be taken; and the findings of the jury in such cases shall be final and conclusive, all in the same manner and with the same effect as is provided in the matter of the opening, laying out, establishing, and changing of streets. When such assessment is fully collected, the council by ordinance may change the grade of said street, and warrants shall be drawn upon the special fund so provided in favor of the persons entitled to damages.

Section 23. Power of Council Extended to Boulevards, Lanes, Alleys, Etc. The same power and authority granted by this act to the council to open, lay out, establish, widen, alter, extend, vacate, and close streets, and to establish and change the grade of streets within the limits of the city of Woodburn, and to appropriate and condemn private property therefor, are hereby granted to said council to open, lay out, establish, widen, alter, extend, vacate, and close within the same limits, boulevards, avenues, lanes, alleys, bridges, bicycle paths, squares, parks, plats, and public places, and to appropriate and condemn private property therefor and to establish and change the grade of each. And like acts and proceedings as those authorized by this charter to be done and had by said council, the officers of the city, their agents and employes and others, in the matter of opening, laying out,

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establishing, widening, altering, extending, vacating, and closing streets, and in establishing and changing the grades thereof, are hereby authorized to be done and had by said council and officers and their agents and employes and others in the same manner and with the same effect and limitations in the matter of opening, laying out, establishing, widening, altering, extending, vacating, or closing of boulevards, avenues, lanes, alleys, bridges, bicycle paths, squares, plats, parks, and public places within said limits, and in establishing and changing the grades thereof, as by this charter provided for in the case of streets.

Section 24. The Term "Street" Defined. The term "street" as used in this chapter, shall be construed to mean any street, avenue, boulevard, alley, or lane which is now, or may hereafter be, opened or dedicated to public use.

### Article IV

#### Improvement of Streets

Section 25. Definition of Terms "Improve" and "Improvement." The terms "improve" and "improvement" as used in this chapter in reference to streets shall be construed to include grading, regrading, paving, repaving, planking, replanking, macadamizing, remacadamizing, graveling, regravelling, and all manner of bridge and roadway improvement or repair and all manner of constructing sidewalks, crosswalks, gutters, and curbs within any street in the city of Woodburn, or any part of such street, and all proceedings for any such improvements shall be as provided in this charter. [Section 25, Article IV, Chapter VI, as amended by election held November 7, 1911.]

Section 26. Method of Defraying Cost of Improvement. Subject to remonstrances of affected property owners as provided in this chapter, the council, whenever it may deem it expedient, is hereby authorized and empowered to order the whole or any part of the streets of the city to be improved, to determine the character, kind, and extent of such improvement, to defray the whole or any portion of the cost and expense thereof, to determine what lands are specially benefited by such improvement and the amount to which each parcel or tract of land is benefited and to levy an assessment upon all lots and parcels of land specially benefited by such improvement. [Section 26, Article IV, Chapter VI, as amended by election held September 19, 1966.]

Section 27. City Engineer to Make Plans and Specifications; Districts; Assessments. Whenever the council shall deem it expedient or necessary to improve any street or any part thereof, it shall require from the city engineer plans and specifications for an appropriate improvement and estimates of the work to be done and the probable cost thereof, and the city engineer shall file such plans, specifications, and estimates in the office of the recorder. The improvement of each street or part thereof shall be made under a separate proceeding. If the council shall find such plans, specifications, and estimates to be satisfactory, it shall approve the same, and shall determine the boundaries of the district benefited and to be assessed for such improvement; and the action of the council in the creation of such assessment district shall be final and conclusive. The council shall by resolution declare its purpose of making said improvement, describing the same, and including such engineer's estimate of the probable total cost thereof and also defining the boundaries of the assessment district to be benefited and assessed therefor. The action of the council in declaring its intention to improve a street, directing publication of notices thereof, approving, and adopting the plans, specifications, and estimates of such engineer and determining the district benefited and to be assessed thereby may all be done in one and the same act.

Section 28. Publication of Resolution; Notices. The resolution of the council declaring its purpose to improve the street shall be kept of record in the office of the recorder and shall be published for two consecutive weekly publications in the city official newspaper. The street commissioner within five days from the first publication of said resolution shall cause to be conspicuously posted at each end of the line of the contemplated improvement a notice headed "Notice of Street Work" in letters of not less than one inch in length, and said notice shall contain in legible characters a copy of the resolution of the council and the date of its adoption; and the street commissioner shall file with the recorder an affidavit of the posting of said notices, stating therein the date when and places where the same have been posted.

Section 29. Remonstrances. Within 20 days from the date of the first publication of the notice required to be published in the preceding section, a majority of the owners of the property within such assessment district may make and file with the recorder a written objection or remonstrance against said proposed improvement; and said objection or remonstrance shall be a bar to any further proceedings in the making of said improvement for a period of six months, unless one-half or more of the owners of the property affected as aforesaid shall subsequently petition therefor.

Section 30. Jurisdiction of Council; When Acquired. If no such objection or remonstrance be made and filed with the recorder within the time designated, or if any remonstrance filed is not legally signed by a majority of the owners of the property affected, the council shall be deemed to have acquired jurisdiction to order the improvement to be made; and the council may thereafter and within three months from the date of the final publication of its previous resolution by ordinance provide for making said improvement, which shall conform in all particulars to the plans and specifications previously adopted. [Section 30, Article IV, Chapter VI, as amended by election held November 1, 1909.]

Section 31. Executive Board to Make Contract. Upon the approval of said ordinance by the mayor, or if the same shall become valid without his approval, the recorder, without delay, shall give notice by publication in two successive weekly issues of the city official newspaper, inviting proposals for making said improvement. The council shall have the power to award the contract or contracts for said improvement and to impose such conditions upon bidders with regard to bonds and securities and guarantees of the good faith and responsibility of bidders, for insuring the faithful completion of the work in strict accordance with the specifications therefor, and to make all rules and regulations in the letting of contracts that may be considered by said council as advantageous to the city. Such contract or contracts shall be let to the lowest responsible bidder for either the whole of said improvement or such part thereof as will not materially conflict with the completion of the remainder thereof, but said council shall have the right to reject any or all proposals received. It shall be the duty of the council to fix the time in which every such improvement shall be completed and it may extend such time, should the circumstances warrant. The said council shall have power and authority to make all written contracts; to receive and approve all bonds authorized by this section; to provide for the proper inspection and supervision of all work done under the provisions of this article; and to do any other act to secure the faithful carrying out of all contracts, and the making of improvements in strict compliance with the ordinances and specifications therefor.

Section 31A. Whenever the council shall propose the improvement of any street or any portion thereof, it may in its discretion include in such proposal the grading and filling, may let a contract for the same or any part thereof, may reject any and all bids therefor, and may at any time by resolution authorize the street commissioner to do such grading and

filling or any other street improvement or street repair the expense of which is to be borne by the city. [ Section 31A, Article IV, Chapter VI, added by election held November 1, 1909. ]

Section 32. Notice of Completion; Acceptance. Whenever any street improvement is completed in whole or in part to the satisfaction of the street commissioner, he shall file a certificate of the completion and his approval of such work so completed with the recorder, who shall thereafter publish a notice of such completion for one week in the city official newspaper, stating therein when the acceptance of the same will be considered by the council, and at that time or any time prior thereto, any owner of any interest in or the agent of any property within the assessment district of said improvement may appear and file objections to the acceptance of said improvement; and such objections shall be considered and the merits thereof determined by said council; and if it appear that said work or improvement has not been completed in accordance with the specifications and contract, the council shall require the same to be so completed before accepting it. Whenever any work or improvement is accepted, the council shall endorse its approval on the certificate of the street commissioner; and after the assessment therefor is made and docketed, the recorder shall draw warrants on the fund created for said improvement and in favor of the parties entitled thereto.

Section 33. Improvement by Permit. Whenever the grade of any street has been established, the council may authorize the owner or owners of any property thereon to cut down or fill up such street in front of such property according to such grade under the direction of the street commissioner at the expense of such owner or owners, but the authority mentioned in this section cannot be granted after notice has been given by the council of intention to improve the street in front of such property. In giving such authority, the council may impose such terms and conditions thereon as may be necessary to secure the deposit of earth or other matter excavated from the street upon any part thereof which may need to be filled and to charge fees for said permits to cover any expense incurred by the city in the survey and inspection of the work to be done.

Section 34. Kinds of Improvements Classified; Street Repairs. The council shall have power and authority to classify the various kinds of street improvements or pavements between the curb lines of streets, and to determine the number of years for which each class of improvement shall be maintained by the city after the same has been made. The

council shall also have power and authority to determine the class of improvement which shall be made in each and every street within the city. The class of every street improvement ordered by the council and the number of years for which it shall be maintained by the city shall be stated in each resolution and ordinance providing for a street improvement. When such improvement is made, the city, by and through its council, shall maintain and keep in repair all the roadway between the curb lines, except the portions which railroad or street railway companies are liable to maintain or keep in repair for the full number of years stated in the ordinance providing for their improvement; and the costs thereof shall be paid for out of the street repair fund. The council shall also have power and authority to contract for the maintenance and repair of all that part of any street which the city is liable to maintain or keep in repair for the full number of years for which the city is bound at the same time that the contract for the street improvement is made; but every contract for street maintenance and repair shall be awarded in the same manner and subject to the same conditions so far as applicable as may be provided for the letting of contracts for street improvements; provided, that no contracts shall be made or entered for such maintenance and repair of streets which shall bind the city during any one year for any sum of money in excess of the revenues of the street repair fund for said year.

Section 35. Council's Power; Street Surfaces. The council shall have power and authority in providing for any street improvement requiring a concrete foundation, also to provide for placing in the street where said improvement is to be made all necessary service pipes for water, gas, heat, power, sewerage, or any other purpose, and all conduits for electric wires or other purposes, that are or may thereafter be necessary.

The council may also provide a certain time after any street improvement is made during which it shall not be torn up or disturbed. The council shall also have power and authority to provide that no opening of any street surface shall be made without first obtaining a permit therefor. Subject to the ordinances of the council, the council shall have power to prescribe and enforce all rules regulating the opening of street surfaces in all streets of the city, which it may deem necessary, to secure the replacing of the street in good condition.

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### Article V

#### Sidewalks

Section 36. Owners to Repair Sidewalks; Notice Thereof. It is hereby made the duty of all owners of land adjoining any street in the city of Woodburn, to construct, reconstruct, and maintain in good repair the sidewalks adjoining their lands. The council shall have power and authority by ordinance to provide for the construction, reconstruction, and repair of all sidewalks; the time, manner, and material to be used; and the specifications for the construction, reconstruction, and repair thereof upon any street or part thereof within the said city. If any owner of any lot or part thereof or parcel of land shall neglect or refuse to construct, reconstruct, or keep in good repair any sidewalk as shall be provided by ordinance, it shall be the duty of the street commissioner to post a notice on the adjoining property, headed "Notice to Construct," "Notice to Reconstruct," "Notice to Repair," (as the case may be) "Sidewalks" in letters not less than one inch in length, and said notice shall in legible characters direct the owner, agent, or occupant of said property immediately to construct, reconstruct, or repair, as the case may be, such sidewalk in a good and substantial manner; and the street commissioner shall file with the recorder an affidavit of the posting of such notice, stating the date when and the place where the same was posted. Upon receiving the affidavit of the street commissioner, the recorder shall send by mail a notice to construct, reconstruct, or repair, as the case may be, said sidewalks, to the owner, if known, of such property or to the agent, if known, of the owner, and directed to the post-office address of the owner or agent, when such post-office address is known to the recorder; and if such post-office address be unknown to the recorder, then such notice shall be directed to such owner or agent at Woodburn, Oregon. A mistake in the name of the owner or agent of such property shall not render void such notice, but in such case the posted notice shall be sufficient. [Section 36, Article V, Chapter VI, as amended by election held November 7, 1911.]

Section 37. Permit for Sidewalk Repairs. The owner, agent, or occupant, before making said construction, reconstruction, or repair of sidewalks, shall obtain from the recorder a permit so to do, which shall prescribe the kind of construction, reconstruction, or repair to be made, the material to be used and specifications therefor; and the owner, agent, or occupant shall make such construction, reconstruction, or repairs within such time as shall be provided by ordinance, which



shall be designated in said notice. If the owner, agent, or occupant of any such lot or part thereof, or parcel of land, shall fail, neglect, or refuse to make such construction, reconstruction, or repair within the time prescribed, the street commissioner shall make the same and keep an accurate account of the cost of the labor and materials in making such construction, reconstruction, or repair in front of each lot or part thereof, or parcel of land, and shall report monthly to the council the cost of the same, and a description of the lot or part thereof, or parcel of land adjoining the sidewalk by him constructed, reconstructed, or repaired. [Section 37, Article V, Chapter VI, as amended by election held November 7, 1911.]

Section 38. Council Authority Over Sidewalks; Assessment for Sidewalk Repairs. The council shall exercise the same general authority and supervision over the construction, reconstruction, and repair of sidewalks that it has in the matter of other street improvements; it shall inspect the reports of construction, reconstruction, or repair of sidewalks made by the street commissioners; and if it deems the same to be reasonable, it shall approve the same. The council shall at least once each year by ordinance assess upon each lot, or part thereof, or parcel of land adjoining upon sidewalks which have been constructed, reconstructed, or repaired by the street commissioner, the cost of making the same as approved by it, and 10 per cent additional to defray the cost of notice, engineering, and advertising. In each case, all such assessments may be combined in one assessment roll and the same shall be entered in the docket of city liens and collected in the same manner as provided for special assessments for other street improvements. [Section 38, Article V, Chapter VI, as amended by election held November 7, 1911.]

Section 39. Advances From Street Repair Fund. Moneys to construct, reconstruct, or repair sidewalks when such construction, reconstruction, or repair shall be made by the street commissioner pursuant to this charter, may, at the discretion of the council be advanced from the street repair fund to be reimbursed from the special assessment when collected. [Section 39, Article V, Chapter VI, as amended by election held November 7, 1911.]

Section 40. Damages for Negligence. It is not only the duty of all owners of land within the city to keep in repair all sidewalks, constructed or existing in front of, along, or abutting upon their respective lots or

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parts thereof and parcels of land; but such owners are hereby declared to be liable for all damages to whomsoever resulting, arising from their fault or negligence in failing to put any such sidewalk in repair, after the owner or agent thereof has been notified as provided in this charter so to do; and no action shall be maintained against the city of Woodburn by any person injured through or by means of any defect in any sidewalk.

### Article VI

#### Sewers and Drains

Section 41. Council May Order Construction of Sewers. The council is hereby authorized and empowered whenever it may deem that the public health, interest, or convenience may require, to order to be constructed and laid all sewers and drains, with all necessary manholes, lampholes, catch basins, and branches, and to repair or relay the same, and to levy and collect an assessment upon all lots and parcels of land specifically benefited by such sewers and drains to defray the whole or any portion of the cost and expense thereof, and to determine what lands are specially benefited by such sewer and the amount to which each lot or parcel of land is benefited. The terms "sewers" and "drains" shall be construed to include all septic tanks and sewage disposal plants which may be necessary, advisable, or convenient to the proper disposal of the sewage of the city of Woodburn, Oregon. [Section 41, Article VI, Chapter VI, as amended by election held May 28, 1926.]

Section 42. City Engineer to Make Plans and Specifications; Districts; Assessment. Whenever the council shall deem it expedient or necessary to construct or relay any sewer or drain, it shall require from the city engineer plans and specifications for an appropriate sewer or drain, with all necessary catch basins, manholes, lampholes, and branches, and estimates of the work to be done and the probable cost thereof; and the city engineer shall file such plans, specifications, and estimates in the office of the recorder. If the council shall find said specifications, plans, and estimates to be satisfactory, it shall approve the same and shall determine the boundaries of the district benefited and to be assessed for such sewer or drain; and the action of the council in the creation of such assessment district shall be final and conclusive. The council shall by resolution declare its purpose to construct said sewer or drain, describing the same and the location thereof, and including the city engineer's estimate of the probable total cost thereof, and also defining the boundaries

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of the assessment district to be benefited and assessed therefor. The action of the council in declaring its intention to construct or relay a sewer or drain, directing publication of notice thereof, approving and adopting the plans, specifications, and estimates of the city engineer and determining the district benefited thereby to be assessed therefor, may all be done in one and the same resolution.

Section 43. Publication of Resolution; Notices. The resolution of the council declaring its purpose to construct or relay such sewer or drain shall be kept of record in the office of the recorder and shall be published for two consecutive weekly publications in the city official newspaper. The street commissioner within five days from the first publication of said resolution shall cause to be posted conspicuously on the street or streets along the line of the contemplated sewer or drain, at least two notices headed "Notice of Sewer Work" in letters not less than one inch in length, and said notices shall contain in legible characters a copy of the resolution of the council and the date of its passage, and the street commissioner shall file with the recorder an affidavit of the posting of such notices, stating therein the date when and the places where the same have been posted.

Section 44. Remonstrances. Within 20 days from the date of the first publication of the notice required to be published in the preceding section, the owner or owners of any property within the assessment district may file with the recorder a written remonstrance against said proposed sewer; and the council upon hearing said remonstrance, may, at its discretion, discontinue proceedings in said matter, but the council may overrule any and all remonstrances, and shall have power and authority to order the construction of said sewer or drain, or the repair or relaying of the same, and within three months from the date of the final publication of its previous resolution may by ordinance provide for the same, which shall substantially conform to the plans and specifications previously adopted.

Section 45. Council to Make Contracts. Upon the approval of said ordinance by the mayor, or if the same shall become valid without his approval, thereafter the council shall exercise the same power, authority, and supervision in the advertisement for bids, awarding contracts, the requiring of bonds, supervising, and accepting the work as in the matter of street improvements.

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### Article VII

#### Special Assessments

##### Section 46. Estimate of Cost and Apportionment.

Whenever any street or water system improvement or the construction, reconstruction or repair of any sewer or drain, or any local improvement, any part of the cost of which is to be assessed upon the property benefited thereby, is completed in whole or in such part that the cost of the whole can be determined, the city engineer shall certify to the city recorder the cost of the project; or if in the progress of the work it has been found necessary to make any alterations in the estimated work for the cause whatsoever, the city engineer shall file a corrected estimate in detail of such work and said cost shall be certified to the city recorder. The city recorder shall apportion the costs thereof (except the share thereof, if any, to be paid from other funds) upon the lots, parts of lots and parcels of land benefited thereby and within the assessment district. The cost of every sewer, water, drain, street or other local improvement shall be deemed to include the contract price, as certified by the city engineer, the costs of rights-of-way, expenses of condemning land, advertising, engineering, legal services, project management, interest and necessary administrative expenses. When the city recorder has ascertained what he may deem a just apportionment of said cost, in accordance with the special and peculiar benefits derived by each lot or part thereof and parcel of land, the same shall be a proposed assessment and the city recorder shall give notice of the same by publication for two consecutive weekly publications in the official city newspaper, therein specifying the whole cost of such improvement and the share so apportioned to each lot, or part of a lot, or parcel of land, and the name of the owner thereof, if known to the city recorder, and stating that any objections to such apportionment, that are made in writing to the council and filed with the city recorder within 15 days from the first publication of such notice, will be heard and determined by the council before the passage of any ordinance assessing the cost of said improvement.

It shall also be the duty of the city recorder forthwith to send by mail, postpaid, a notice of the share so apportioned to each lot or part thereof or parcel of land, stating the time within which objections to such

## Woodburn Charter

apportionment may be made in writing to the council and filed with the city recorder, to the owner (if known) of each lot or part thereof or parcel of land, or to the agent of such owner, directed to the post office address of such owner or agent, when such post office address is known to him; and, if such post office address be unknown to him, then such notice shall be directed to such owner or agent at Woodburn, Oregon. [Section 46, Chapter VI, as amended by election held November 3, 1970.]

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to him, and, if such post office address be unknown to him, then such notice shall be directed to such owner or agent at Woodburn, Oregon. [Section 46, Article VII, Chapter VI as amended by election held November 3, 1970.]

Section 47. Assessment of Benefits and Damages. After the time specified in said notice has elapsed, the council shall consider said proposed assessment and all objections made thereto, and shall have power, at its discretion and without any further notice, to consider, ascertain, and determine the amount of the special and peculiar benefits accruing to each lot or part thereof or parcel of land so assessed, by reason of the construction, reconstruction, or repair of said sewer or the improvement of said street or part thereof, and if the amount apportioned by the recorder to any lot or part thereof or parcel of land shall not be in just proportion to such benefits, the assessment against such lot or part thereof or parcel of land shall be so reduced or increased by the council that it shall be in just proportion to such benefits; but in no case shall any such assessment exceed such benefits. The council shall then declare said assessment by ordinance.

Section 48. Assessments Confirmed. Each lot or part thereof or parcel of land shall be deemed to be benefited by the sewer construction, reconstruction, or repair, or street improvement, as the case may be, to the full amount of the assessment levied thereon; and all acts and proceedings of the council heretofore had or done relating to the improvement of any street or the construction of any sewer or underground drain within the city limits are hereby ratified and in all respects confirmed. [Section 48, Article VII, Chapter VI, as amended by election held May 28, 1926.]

Section 49. Mistakes in Proceedings. No such assessment shall be held invalid by reason of failure to enter the name of the owner of any lot or part of a lot or parcel of land so assessed or by a mistake in the name of the owner, or the entry of a name other than the name of owner, in said assessment, or in any acts or proceedings connected therewith; and no delays, mistakes, errors, or irregularities in any act or proceeding in the improvement of a street or the construction of a sewer or drain shall prejudice or invalidate any final assessment; but the same may be remedied by subsequent and amended acts or proceedings.

Section 50. Assessment for Deficit. If, upon the completion of any improvement of a street or construction of a sewer, it is found that the sum assessed therefor is insufficient to defray the cost thereof and the amount charged to any lot or part thereof or tract of land is less than

the benefits accruing thereto, the council must ascertain the deficit and by ordinance reassess the land so benefited in excess of the original assessment. When the assessment for said deficit is so levied, the recorder must enter the same in the docket of city liens in a column reserved for that purpose in the original entry, with the date thereof, and such deficit shall thereafter be a lien upon such lot or part thereof, or parcel of land, in like manner and with like effect as in case of the sum originally assessed, and shall also be payable and may be collected in like manner and with like effect as the original assessment.

Section 51. Surplus. If, upon the completion of any improvement of a street or construction of a sewer, it is found that the sum assessed upon any lot or part thereof, or parcel of land, is more than the amount properly chargeable thereto, the council must ascertain and declare the surplus in like manner as in the case of a deficit; when so declared, it must be entered as in a case of a deficit in the docket of city liens. Thereafter, the person who paid such surplus or his legal representative, heirs, or assigns, is entitled to repayment of the same by warrant on the city treasury, payable out of the fund raised for such improvement.

Section 52. Reassessments. Whenever an assessment for the opening, altering, or grading of any street, or construction, reconstruction, or repair of any sewer or for any local improvement which has been or may hereafter be made by the city, has been or shall hereafter be set aside, annulled, declared or rendered void, or its enforcement refused by any court of this state, or any federal court having jurisdiction therein, whether directly or by virtue of any decision of such court, or when the council shall be in doubt as to the validity of such assessment or any part thereof, the council may by ordinance make a new assessment or reassessment upon the lots, blocks, or parcels of land which have been benefited by such improvement to the extent of their respective and proportionate shares of the full value thereof. Such reassessment shall be based upon the special and peculiar benefit of such improvement to the respective parcels of land assessed at the time of its original making, but shall not exceed the amount of such original assessment. Interest thereon from the date of delinquency of the original assessment may be added at the discretion of the council. Such reassessment shall be made in an equitable manner, as nearly as may be in accordance with the law in force at the time it is made; but the council may adopt a different plan of apportionment of benefits when in its judgment it is essential to secure equitable assessment. The proceedings required by this charter to be had prior to the making of the original assessment shall not be required to be taken or had within the intent of this section. Such reassessment

shall be made and shall become a charge upon the property upon which the same is laid, notwithstanding the omission, failure, or neglect of any officer, body, or person to comply with the provisions of this charter connected with or relating to such improvement and assessment, and notwithstanding the proceedings of the council, or any officer, contractor, or other person connected with such work may have been irregular or defective, whether such irregularity be jurisdictional or otherwise. Such reassessment shall not be made in case of a street improvement wherein a remonstrance sufficient in law to defeat the same shall have been filed. The council shall by resolution declare the district that will be benefited by the improvement for which the reassessment is made and shall direct the recorder to prepare a preliminary assessment upon the property included therein within a time to be fixed by said resolution. Upon the passage of such resolution, the recorder shall, as soon thereafter as such reassessment is prepared, give notice by two successive weekly publications in the city official newspaper, that such assessment is on file in his office, giving the date of the passage of the resolution directing the making of the same and the time at which the council will hear and consider objections to said assessment by parties aggrieved thereby, and warning such persons not to depart until such reassessment has been completed. The recorder shall forthwith mail to the owner of each lot or part thereof or tract of land affected by such assessment, or to his agent, if the post office address of either be known to the recorder, a notice of such assessment; and if such post office address be unknown, then such notice shall be directed to such owners or agent at Woodburn, Oregon. The owner or owners of any property which is assessed on such assessment, or any person having an interest therein, may within 10 days from the last publication herein provided, file with the recorder their objections in writing to such assessment. At the time appointed in such notice, the council shall hear and determine all objections which have been filed by any party interested. The council shall have power to adjourn such hearing from time to time and shall have the power, in its discretion, to revise and correct, or to set aside and order the remaking of such assessment, and shall pass an ordinance approving and confirming such reassessment as corrected and remade by it, and such decision shall be a final determination of the regularity, validity, and correctness of the reassessment, except as herein otherwise provided. When said reassessment is completed and confirmed, it shall be entered in the docket of city liens and shall be enforced and collected in the same manner that other assessments for local improvements are enforced and collected under this charter and the laws governing the city. All sums paid upon the former assessment shall be credited to the property on account of which the same were paid as of the date of such



payment. And when it has been attempted to sell property for any assessment, and such sale is found or declared void, upon the making of the reassessment, the property shall be resold and the proceeds of such sale shall be paid to the purchaser at the former void sale or his assigns. But no proceedings shall be instituted for such reassessment unless instituted within 10 years of the passage of the resolution of intention for the making of the original work, improvement, or repair.

Section 53. Appeal Therefrom. Any person who has filed objections to show said new assessment or reassessment which have not been satisfied by the amendments made by the council may appeal to the circuit court of the state of Oregon for the county of Marion from the assessment against any property owned by him, or in which he has an interest. An appeal shall be taken by serving notice of appeal within 20 days from the passage of the ordinance adopting the assessment as amended, upon the mayor, recorder, or city attorney, and filing the same with the proof of service, together with an undertaking with one or more sureties, who shall have the qualifications of sureties on appeal from the circuit court to the supreme court and, if expected to shall justify in like manner, conditioned that such appellant will pay all costs and disbursements that may be awarded against him on appeal, not exceeding \$300.00. Such bond and notice of appeal shall be filed within 20 days from the service of such notice in the office of the clerk of said circuit court, together with a copy of the reassessment, so far as the same affects the property of the appellant. Any number of persons may join in such appeal, and the only question to be determined therein shall be the amount of special benefits equitably to be assessed against the property of each person joining in said appeal. The jury shall view the property assessed, and its verdict shall be a final and conclusive determination of the question. On such appeal, the fact that one called as a juror is a taxpayer of the city of Woodburn shall not disqualify him from acting as such juror. The city shall be considered the plaintiff and such appeal shall be conducted and be heard and determined as far as practicable in the same manner as an action at law.

Section 54. Judgment; Cost and Fees. If the amount assessed by the jury against any appellant be not less than that fixed in the assessment appealed from, the judgment, in addition to declaring the assessment found, shall be entered against such applicant and his sureties for his proportion of the costs of such appeal. The same fees and cost shall be taxed and paid upon such appeal as are allowed in other actions.

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Section 55. Proceedings Presumed Regular. In any action, suit, or proceeding in any court concerning any assessment of property or levy of taxes authorized by this charter, or the collection of such tax or proceedings consequent thereon, such assessment levy, consequent proceeding, and all proceedings connected therewith shall be presumed to be regular and to have been duly done or taken until the contrary is shown.

Section 56. Docketing and Publication of Assessment. When an assessment has been declared by ordinance, it shall be the duty of the recorder to enter a statement of said assessment in the docket of city liens; to furnish a copy of said assessment to the city treasurer; and to publish said assessment for two consecutive weekly insertions in the city official newspaper; and to send by mail to each person whose property is assessed or to his agent a notice of said assessment, when the post-office address of such person or his agent is known to the recorder; and if such post-office address be unknown to the recorder, such notice shall be directed to such person or agent at Woodburn, Oregon.

Section 57. Docket of City Liens. The docket of city liens is a book in which must be entered the following matter in relation to special assessments for local improvements: the date of the entry, the number or letter of each lot assessed, and the number or the letter of the block of which it is a part, and a description of each unplatted tract or parcel of land, the sum assessed upon each lot, or part thereof, or tract of land, and the name of the owner, or that the owner is unknown; provided, that failure to enter the name of the owner or mistake in the name of the owner, or the entry of a name other than that of the true owner in such lien docket, shall not render void any assessment, nor in any way affect the lien of the city of Woodburn on the property described in such lien docket.

Section 58. Lien of Assessment; Payment. The docket of city liens is a public writing, and from the date of the entry therein of an assessment the sum as entered is hereby declared to be a tax levied and a lien upon such lot, part thereof, or tract of land, which lien shall have priority over all other liens and incumbrances whatsoever thereon, and the sum or sums of money assessed for any local improvement entered upon such lien docket shall be due and payable from the date of such entry, and if not paid, or bonded as provided by law, within 10 days from the date of such entry, thereafter the same shall be deemed to be delinquent and shall bear interest at the legal rate.

Section 59. Payment by Lien Creditor. When an assessment upon any lot or part thereof becomes delinquent, any person having lien thereon by judgment, decree, or mortgage, or having purchased the same for any delinquent tax or assessment, may at any time before the sale of such lot or part thereof pay the same, and such payment discharges the property from the effect of the assessment; and the amount of such delinquent taxes and all accruing costs and charges, if any, when so paid is thereafter to be deemed a part of such lien creditor's judgment, decree, mortgage, or tax lien, as the case may be, and shall bear interest and may be enforced and collected as a part thereof.

If the holder of any tax lien or claim pays off such assessment, he may thereafter present the receipt to the officer who shall have charge of the tax roll or docket containing the record of the tax sale at which he purchased such property; and thereupon such officer shall make a note of the amount of such assessment so paid by such purchaser, and shall exact repayment thereof, together with interest as above prescribed, from any person making redemption from such sale; and no redemption shall discharge the property from the effect of such sale which shall not include the amount of such assessment paid by the purchaser after the purchaser shall have presented the receipt as above prescribed.

Section 60. Owner; What Is. Whenever any lot or part thereof or tract of land is sold for a delinquent assessment for a street improvement, and afterwards sold for a deficit in such assessment, as in this charter provided, to any person other than the purchaser at the first sale, or his successor in interest, said purchaser at such first sale is to be deemed an owner within the meaning of this charter.

Section 61. Assessment; Where Paid. All such assessments shall be paid to the treasurer, who shall file duplicate receipts therefor with the recorder, and the treasurer shall keep all money collected upon each assessment in a separate fund; and the same shall not be used for any purpose other than that for which it is levied and collected.

Section 62. Delinquents. If within 30 days from the date of the entry of an assessment in the docket of city liens, the sum assessed upon any lot or part thereof or tract of land is not wholly paid to the treasurer, and a duplicate receipt filed therefor with the recorder or bonded as provided by law, the recorder shall thereafter prepare and transmit to the treasurer a list in tabular form, made up from the docket of city liens, describing each assessment which is delinquent, the name of the person to whom

## Woodburn Charter

assessed, and a particular description of the property, the amount of the assessment due, and other facts necessary to be given.

Section 63. Sale for Unpaid Assessments. The treasurer shall thereupon proceed to collect the unpaid assessments named in such list by advertising and selling to the highest bidder such lots or tracts, in the manner now provided by law for the sale of real property on execution, except as herein otherwise provided. Each piece or tract of land shall be sold separately at the treasurer's office in the city hall of the city of Woodburn, Oregon, and for a sum not less than the unpaid assessment thereon and the interest and cost of advertising and sale; and where there shall be more than one bid, the land shall be sold to the bidder offering to take the same for the least amount of penalty and interest. Competition shall be first upon the penalty for the first period, second on penalty for succeeding periods, third upon the rate of interest. A sale of real property under the provisions of this charter conveys to the purchaser, subject to redemption as herein provided, all estates, liens, or claims therein or thereto of any person or persons whomsoever, together with all rights and appurtenances thereunto belonging. No levy upon such lots or parcels of land shall be required; except that a notice shall be posted four weeks before such sale, upon every lot or parcel assessed to an unknown owner. [Section 63, Article VII, Chapter VI, as amended by election held May 28, 1926.]

Section 63a. The city of Woodburn may become purchaser at any sale for any municipal tax or assessment, may issue warrants on the general fund of the city in payment for the same, and may resell the same for such price and on such terms as the common council may deem advisable; provided, however, that the city shall not bid for any property more than the amount of the tax or assessment against said property together with interest thereon and the costs and expenses of such sale. [Section 63a, Article VII, Chapter VI, added by election held May 3, 1922.]

Section 64. Receipts of Treasurer. The treasurer shall enter in columns provided for that purpose in the list transmitted to him by the recorder, the date of the sale, the name of the purchaser, the amount paid for each parcel of property sold. The treasurer shall give a receipt to each person paying an assessment on said delinquent list prior to the sale thereof; and such receipt must state separately the assessment, interest, and costs collected; and a duplicate of said receipt shall be filed with the recorder.

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Section 65. Payments in Lawful Money. Real property, when sold for, or to satisfy a delinquent assessment or tax, must be sold for lawful money of the United States, and not otherwise; and anyone applying or seeking to redeem property so sold as in this charter provided, must pay or offer to pay the sum necessary in such lawful money, and not otherwise.

Section 66. Certificate of Sale. The treasurer shall immediately after having sold any real property upon such list, make and deliver to the purchaser a certificate of sale of the property so sold, setting forth therein the object for which the sale was made, a description of the property sold, a statement of the amount it sold for, the improvement for which the assessment was made, the year in which the tax was levied, the amount of such tax or assessment, the name of the purchaser, and that the sale is made subject to redemption within three years from the date of the certificate and then deliver such certificate to the purchaser.

Section 67. Treasurer's Return; Unsold Property. The treasurer shall, within three days after sale, return to the recorder the said delinquent list with all collections and sales noted thereon; and the recorder shall thereupon make proper entries thereof in the docket of city liens. Thereafter, no transfer or assignment of any certificate of purchase of real property sold under the provisions of this charter shall be deemed valid unless an entry of such transfer or assignment shall have been noted by the recorder in said lien docket. In case any property shall remain unsold upon such sale, the same may be again, at the discretion of the recorder, offered for sale in like manner, but not sooner than three months after the expiration of any sale; except that in the matter of an assessment for the opening, widening, laying out, or establishing of a street, proceedings for such sale may be taken immediately.

Section 68. Redemption. The owner, or his legal representative or his successor in interest, or any person having a lien by judgment, decree, or mortgage, or owner of any tax lien on any property so sold, may redeem the same upon the conditions provided as follows: Redemptions of any real property sold for delinquent assessment under the provision of this charter may be made by paying to the recorder of the city of Woodburn, at any time within one year from the date of the certificate of sale, the purchase price and 10 per cent thereof as penalty and interest on the purchase price at the rate of 10 per cent per annum, from the date of such certificate. Where redemption shall be made by the holder of a

tax lien, he shall have the right to have such redemption noted upon the record of his lien in like manner and with like effect as hereinafter prescribed; provided, however, that if redemption be made within three months from the date of sale, the penalty to be paid shall be 5 per cent. Such redemption shall discharge the property so sold from the effect of such sale and, if made by a lien creditor, the amount paid for the redemption shall thereafter be deemed a part of his judgment, decree, mortgage, or tax lien, as the case may be, and shall bear like interest and may be enforced and collected as a part thereof. [Section 68, Article VII, Chapter VI, as amended by election held May 3, 1922.]

Section 69. Deed; Effect Thereof. After the expiration of one year from the date of such certificate, if no redemption shall have been made, the treasurer shall execute to the purchaser, his heirs or assigns, a deed of conveyance, containing a description of the property sold, the date of the sale, a statement of the amount bid, of the improvement for which the assessment was made, of the year in which the assessment was levied, that the assessment or tax was unpaid at the time of sale and that no redemption has been made, and need contain no further recital of the proceedings prior to the sale. And the effect of such deed shall be to convey to the grantee therein named the legal and equitable title in fee simple to the real property in such deed described. And such deed shall be prima facie evidence of title in such grantee, and that all proceedings and acts necessary to make such deed in all respects good and valid have been had and done; and such prima facie evidence shall not be disputed, overcome, or rebutted, or the effect thereof avoided, except by satisfactory proof of either:

(1) Fraud in making the assessment or in the assessment or collection of the tax.

(2) Payment of the assessment or tax before sale or redemption after sale.

(3) That payment or redemption was prevented by fraud of the purchaser.

(4) That the property was sold for an assessment or tax for which neither said property nor the owner thereof, at the time of sale, was liable, and that no part of the assessment or tax was assessed or levied against the property sold.

[Section 69, Article VII, Chapter VI, as amended by election held May 3, 1922.]

Section 70. Limitation of Actions Thereon; Tender of Tax. Every action, suit, or proceeding which may be commenced for the recovery of land which shall have been sold by the chief of police or by the city

## Woodburn Charter

treasurer of said city, for any assessment or tax, or to quiet the title of the former owner, or his successors in interest against such sale, or to set aside such sale, or to remove the cloud thereof, except in cases where the assessment or tax for which the land has been sold was paid before the sale, or the land redeemed as provided by law, shall be commenced within three years from the time of recording the deed executed by the chief of police, city treasurer, or marshal, and not thereafter. And in any such action, suit, or proceeding, whether before or after the issuance of the deed, the party claiming to be the owner as against the party claiming under such sale, must tender with his first pleading in such case and pay into court at the time of filing such pleading the amount of the purchase price for which the lands were sold by the city treasurer or marshal, together with the penalties prescribed by law at the time of such sale, and of all taxes and assessments levied or made upon or against the land, or any part thereof, which shall have been paid after such sale by the purchaser at such sale, or his heirs or assigns, together with interest thereon at the rate of 10 per cent per annum from the respective times of the payment of such purchase price, taxes, and assessments by said purchaser, or his heirs or assigns, as the case may be, up to the time of the filing of such pleading to be paid to such purchaser, his heirs or assigns, in case the right or title of such purchaser at such sale shall fail in such action, suit, or proceeding.

Section 71. Notices; Failure is Not Fatal. No record need be kept of the mailing of any notice in this chapter prescribed; and the failure to mail or a mistake in the mailing of, or a mistake in any such notice shall not be fatal when notice is posted or published as herein required.

Section 72. Liability of the City and Its Officers for Expense of Street Work. Neither the city of Woodburn nor any officer thereof shall be liable for any portion of the cost or expense of any street work or improvement, or the construction or repair of any sewer or drain, which is assessed upon the property benefited thereby, by reason of the inability of the city of Woodburn to collect assessments levied for the payment of such work, improvement, sewer, or drain; but the contractors doing such work shall be required to rely solely upon the fund accruing from the property benefited, assessed, and liable therefor; and the said contractor shall not require nor compel the city of Woodburn by any legal process or otherwise to pay the same out of any other fund, except in cases where for any reason such assessment shall be invalid.

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### Article VIII

#### Miscellaneous Street Provisions

Section 73. County Roads in City Limits; Relinquishment for Improvement to County. All county roads lying within the limits of the city of Woodburn, which have not been paid out or accepted as streets by the authority of said city, shall remain and be county roads until they shall be laid out or accepted by said authorities as streets, and be under the jurisdiction of the county court of Marion County, Oregon, and shall be worked, maintained, and improved as county roads outside the limits of said city are worked, maintained, and improved.

The council may by resolution, upon order of the county court signifying its willingness to accept the same, relinquish, for the purpose of working or improving the same, to the county, control of all that part between curb lines of any street connecting with the county road. Thereupon such street shall, to that extent, be under the control of the county court and shall be worked and improved in like manner as county roads until such time as the county court relinquishes jurisdiction of the street.

Section 74. Pending Proceedings;How Proceeded With. Nothing in this charter shall affect in any way the validity of any proceedings pending at the time that it shall take effect for the opening, widening, laying out, or establishing of any street, or for the change or establishing of any grade thereon, or making any kind of street improvement, or for the construction of any drain or sewer, and the levy and collection of assessments therefor; but such proceedings that shall have been taken shall be deemed to be regularly and legally taken and all such proceedings thereafter, of whatever nature, shall be proceeded with and enforced in accordance with and by virtue of the provisions of this charter.

Section 75. Abutting Property and Property Benefited. In all places in this charter where it is provided that the cost of street improvements may be assessed to the property benefited, it shall be taken to mean the abutting property and property benefited.

### CHAPTER VII

#### General Provisions

Section 76. Bonding Act to Apply. The act of the legislative assembly of the state of Oregon entitled "An Act to provide for the issuance of bonds



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for the improvement of streets and laying of sewers in incorporated cities and for the payment of the costs of such improvements, and the laying of sewers by installments, " filed in the office of the secretary of state February 22, 1893, and its amendments, is not in any way or degree affected hereby; and said act and its amendments shall apply and be in force in the city of Woodburn.

### CHAPTER VIII

Section 1. [Section 1, Chapter VIII, repealed by election held May 18, 1962.]

Section 2. Duties of Street Commissioner. It shall be the duty of the street commissioner, within 10 days after his appointment and qualification, to inspect all the streets in the city, all sidewalks, crosswalks, ditches, gutters, culverts, and bridges and approaches thereto, and all matters and things pertaining to the streets, and report to the common council, recommending what in his opinion is necessary and ought to be done thereto. On the receipt of the report thereupon, the council shall consider the same, and may adopt the whole or any part thereof, add to, strike out, amend, or change any part thereof; and as soon as they have passed on said report and recommendations, the street commissioner shall be informed of the action had thereon; whereupon, said street commissioner shall cause such work to be done in accordance with the common council's amendments to his reports, and according to the orders and direction of said common council. Any party or parties may petition the common council for any work or improvement they may desire to be done, and said common council may act thereupon as they may deem fitting and proper, and said street commissioner may at any other time make such other reports as the necessities of the case may require. It shall be the further duty of street commissioner to see that all ordinances of the city relating to the construction and cleaning of sidewalks, streets, alleys, public grounds, gutters, and sewers within said city are duly kept and observed, and to direct and control the persons employed thereon.

Section 3. Street Work. It shall be the further duty of the street commissioner to employ men and procure utensils, teams, and materials, and whatever may be necessary in performing the street work in said city; and all this he shall do under the direction and advice of the common council; and he shall superintend all work when directed by the common council so to do, and shall keep an accurate account of all such materials procured,

and all teams, utensils, and men employed, and be able to certify to the account therefor, and shall do or perform or cause to be performed any and all other duties pertaining to his office that may be prescribed from time to time by the common council; provided, however, that the street commissioner shall not contract nor create any greater expense to the city in any one year than the amount raised by road tax or appropriated by the common council for streets or highway purposes.

Section 4. Payment of Accounts. All accounts against said city for either work, hire, or material for street purposes, including street commissioner's services, shall be paid out of the general fund of said city. All such accounts for street purposes shall be duly verified; and when they shall have arisen or shall have been created under the direction of the street commissioner, shall be verified by him to be true and correct in all particulars. The street commissioner shall be paid for his services, and for every day's service actually and necessarily rendered, such compensation as the common council and street commissioner shall agree upon at the commencement of his official year, and such account for services shall be rendered under oath as other accounts are.

Section 5. Report of Commissioners. It shall be the further duty of the street commissioner to report to the common council in writing when required, the amount of labor, material, or money expended in each ward separately, and also expended on the street running between and dividing the wards; and he shall at the close of his official year make an annual report in writing to the common council which shall set forth the amount of road tax paid in money and the amount paid in labor, also the amount of poll tax collected, the manner in which said moneys have been disbursed and the particular items of such disbursements.

## CHAPTER IX

Section 1. Collection of Taxes. The common council shall make and file with the recorder an estimate of the expenses for the ensuing year, and shall by ordinance estimate and declare the necessary amount of money to be raised by general tax therefor, which shall be certified by the recorder to the appropriate county official of Marion County, who shall extend the said tax in an appropriate column headed "City of Woodburn Tax" upon the county tax rolls, and such tax shall be collected as state, county, and other general taxes are collected, and when so collected shall be paid to the city treasurer. [Section 1, Chapter IX, as amended by election held May 18, 1962.]

## Woodburn Charter

Section 2. All general or special taxes levied as provided and authorized in this act, and all assessments for the opening, extension, improvements, or repairs of streets or alleys or for laying sewers or drains, and every part thereof, shall bear interest at the legal rate from the time it is due and payable until paid or collected.

### CHAPTER X

#### Miscellaneous

Section 1. The city of Woodburn shall not, in any manner, be liable to any person for injuries sustained by reason of any defect in any street or highway within the corporate limits of the city, unless the city shall have had actual notice of such defect and a reasonable time in which to repair the same, and shall not be liable to any person in any amount to exceed the sum of \$1,000.00. Nor shall the city be liable for any such injuries unless the person claiming to have been injured shall immediately, upon receiving such injuries, notify the recorder thereof. And before bringing an action to recover damages for such injuries, such person so claiming to have been injured shall make a written demand on the city for such damages and file the same with the city recorder.

#### Section 2.

(a) [Section 2a, Chapter X, repealed by election held May 18, 1962.]

(b) [Section 2b, Chapter X, repealed by election held May 18, 1962.]

(c) The city of Woodburn, through its common council, is hereby authorized to own, acquire by purchase or otherwise, and/or to construct both within and without the corporate limits of said city a municipal electric plant and power system for the purpose of supplying electrical energy within and without the corporate limits of said city, and to do all acts necessary and incidental thereto.

(d) The funds derived from the issuance of bonds and/or other evidences of indebtedness shall be used for the acquisition and/or construction of such distribution system hereinbefore mentioned, including preliminary surveys and/or other matters and charges necessary to such acquisition and/or purchase.

(e) The common council is hereby authorized to redeem and pay off such bonds and/or other evidences of indebtedness in accordance with the terms thereof and to provide funds for such payment from the revenues derived from the operation of said municipal plant or system and/or otherwise.

## Woodburn Charter

(f) The common council of the city of Woodburn is hereby empowered to provide by ordinance such rules and regulations as it may deem proper and necessary covering the rates of charges and all matters connected or incidental thereto and the collection thereof, and is further authorized to contract and to pay for electrical energy for the purpose of supplying the said city and/or its customers with the United States government and/or any other source. [Section 2, Chapter X, as amended by election held September 6, 1940.]

Section 3. [Section 3, Chapter X, repealed by election held May 18, 1962.]

Section 4. Punishment for Violations of the Provisions of This Act and the Conditions Hereunder. Any person who shall violate any of the provisions of this act, or the ordinances hereunder, for the violation of which no punishment has been provided herein, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine not to exceed \$100.00, or he may in default of the payment of such fine be imprisoned in the city jail one day for every \$2.00 of such fine.

Section 5. Excess of Indebtedness Over and Above Bonded Indebtedness. The common council shall not in any manner create any debt of municipal liability over and above the limited bonded indebtedness which shall, singly or in the aggregate, exceed \$3,000.00; provided, that nothing herein contained shall be construed so as to prevent the common council from contracting for any amount for which it has the cash to pay down at the time the contract is made.

Section 6. Bridges and Bridge Fund. All bridges within the corporate limits of the city of Woodburn shall be built, repaired, and materialled by general tax levied upon the real and personal property therein contained; and the common council shall create a special fund for that purpose, and may by its discretion levy a two-mill tax for the purpose of creating or replenishing the said fund.

Section 7. All contracts to which the city of Woodburn shall be party shall be executed on behalf of said city by the mayor and attested by the recorder.

Section 8. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

## Woodburn Charter

Section 9. Inasmuch as the city of Woodburn is in urgent need of the foregoing legislation, an emergency is hereby declared to exist and, accordingly, this charter shall be in force and effect forthwith upon its adoption by the people.

The foregoing charter was proposed by the common council and referred to the legal voters of the city of Woodburn on April 27, 1909, and was approved by a majority of the votes cast thereon at the special election held on June 30, 1909. There were 126 votes cast for said charter and 89 votes cast against same, and under the provisions of the law, by a proclamation of the mayor, dated July 6, 1909, took effect on said date.

Section 10. That in addition to the other obligations hereinbefore provided to be issued by the common council of the city of Woodburn, such common council shall have the power and is hereby authorized in its discretion to purchase a site for and to construct a municipal swimming pool together with such appurtenances and appliances as the common council may deem necessary or advisable, and to obtain funds for such purchase and construction by the issue of general obligation bonds of said city in such principal sum as may be necessary, not exceeding, however, the principal sum of \$25,000.00, such bonds to be issued in such denominations, payable or redeemable at such time, bearing such rate of interest and in such form as the common council may hereafter by ordinance determine. For the purpose of providing for the payment of the interest upon said bonds and the retirement thereof, the common council is hereby authorized to include in its budget and to levy against the taxable property within said city an amount sufficient to pay the said interest and/or the principal at maturity.

Section 11. In addition to all other taxes authorized by the charter of the city of Woodburn and provided for in the budget of said city, the common council shall levy a tax of 5 mills upon each dollar of taxable property within the corporate limits of the city of Woodburn in the fiscal year 1948-49 for the purpose of providing necessary or expedient maintenance for and supervision of the parks, playgrounds, and other public recreational facilities of said city, and authorizing the common council to include in its budget for fiscal years succeeding the fiscal year 1948-49 a special levy not exceeding 5 mills for such purpose. The funds derived from such tax shall be turned over by the common council to a board known as the Woodburn Recreation and Park Board, which board shall be appointed by the mayor under the provisions of an ordinance covering such appointment, which shall have been or shall be passed by the council.

## Woodburn Charter

Section 12. That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, said common council shall have the power and is hereby authorized in its discretion to construct a sewage disposal plant with the necessary mains thereto; to acquire therefor and thereto a proper site and rights-of-way, and to do all things necessary, expedient, or incidental to such construction and purchases; the said common council, in order to obtain funds for the acquisition of said site, the construction of said disposal plant, and the construction of said mains and the performance of matters necessary, expedient, or incidental thereto, to issue general obligation bonds of said city in such principal sum as said common council shall deem to be necessary, not exceeding, however, the principal sum of \$150,000.00; said bonds to be issued in such denominations payable or redeemable at such time, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be for the best interests of said city. For the purpose of providing for the payment of interest upon said bonds and the retirement thereof, the said common council is hereby authorized to include in its budget and to levy against the taxable property within the said city an amount necessary to pay the said interest and/or retire the said bonds or any parts thereof at their maturity.

Section 13. That in addition to other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, Oregon, the said council shall have power, and is hereby authorized in its discretion, to issue bonds or other evidences of indebtedness in the principal sum of \$10,000.00 in such form and maturing upon such dates as the common council may determine to be desirable for the purpose of providing a lighted athletic field at the present baseball field located in Walilale Home Tracts Addition and known as the "American Legion Baseball Field." The said evidences of said indebtedness shall be a general obligation of the Recreation and Park Board of Woodburn adopted on March 26, 1948; and the common council of said city shall include in the budget provided by said Section 11, an item in such an amount as may be necessary for the payment of such obligations and the interest thereon.

Section 14. That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, said common council shall have the power and is hereby authorized in its discretion to construct additional sewer mains in locations to be determined by the common council; to acquire therefor and thereto proper rights-of-way, and to do all things necessary, expedient, or incidental to such construction and purchases; the said common council, in

## Woodburn Charter

order to obtain funds for the acquisition of said rights-of-way, the construction of said mains, and the performance of matters necessary, expedient, or incidental thereto, may issue general obligation bonds of said city in such principal sum as said common council shall deem to be necessary, not exceeding, however, the principal sum of \$55,000.00; said bonds to be issued in such denominations payable or redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be for the best interests of said city. For the purpose of providing for the payment of interest upon said bonds and the retirement thereof, the said common council is hereby authorized to include in its budget and to levy against the taxable property within the said city an amount necessary to pay the said interest and/or retire the said bonds or any parts thereof at their maturity.

Section 15. In addition to all other taxes authorized by the charter of the city of Woodburn and provided for in the budget of said city, the common council shall levy a tax of four mills upon each dollar of taxable property within the corporate limits of the city of Woodburn in the fiscal year 1962-63 for the purpose of leasing, acquiring, installing, operating, and maintaining necessary equipment to illuminate the streets of the city of Woodburn and authorizing the common council to include in its budget for fiscal years succeeding the fiscal year 1962-63 a special levy not exceeding four mills for such purposes. [Section 15, Chapter X, as amended by election held May 18, 1962.]

Section 16. That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized in its discretion to construct such additions to the city sewage disposal plant and make such improvements to the city sewage collection and disposal system as are determined by the common council to be necessary, advisable, or convenient to the proper disposal of sewage of the city of Woodburn; to acquire therefor and thereto necessary real property and rights-of-way, and to do all things necessary, expedient, or incidental to such construction and acquisitions; and in order to obtain funds for the acquisition of the necessary real property and rights-of-way, the construction of the aforesaid additions and improvements, and the performance of matters necessary, expedient, or incidental thereto, the common council shall have the power and is hereby authorized to issue general obligation bonds of said city in such principal sum as the common council deems necessary, not exceeding, however, the principal sum of \$75,000.00; such bonds to be issued in such denominations, payable or

redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be for the best interests of said city. For the purpose of providing for the payment of interest upon said bonds and the retirement thereof, the common council is hereby authorized to include in its budget and to levy against the taxable property within the said city an amount necessary to pay the interest and retire the bonds, or any parts thereof, at their maturity. [Section 16, Chapter X, as amended by election held July 27, 1962.]

Section 17. That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized in its discretion to construct such additions and improvements to the city water production, storage, and distribution system as are determined by the common council to be necessary, advisable, or convenient to the proper water supply of the city of Woodburn; to acquire therefor and thereto necessary real property and rights-of-way within and without the city limits of the city of Woodburn, and to do all things necessary, expedient, or incidental to such construction and acquisitions; and in order to obtain funds for the acquisition of the necessary real property and rights-of-way, the construction of the aforesaid additions and improvements and the performance of all matters necessary, expedient, or incidental thereto, the common council shall have the power and is hereby authorized to issue general obligation bonds of said city in such principal sum as the common council may hereafter by ordinance determine to be for the best interests of said city, not exceeding, however, the principal sum of \$400,000.00; such bonds to be issued in such denominations, payable or redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be for the best interests of said city. For the purpose of providing for the payment of interest upon said bonds and the retirement thereof, the common council is hereby authorized to include in its budget and to levy against the taxable property within the said city an amount sufficient to pay the interest and retire the bonds, or any parts thereof, at their maturity. The common council is further authorized to pledge and use all or any part of the net revenue of the water system for the payment of all or part of the bond principal and interest. [Section 17, Chapter X, added by election held June 9, 1964.]

Section 18. In addition to all other taxes authorized by the charter of the city of Woodburn and provided for in the budget of said city, the common council is authorized to include in its budget a special tax levy



## Woodburn Charter

upon the taxable property within the corporate limits of the city of Woodburn not exceeding \$24,000.00 for the fiscal year of 1965-66, not exceeding \$17,000.00 for the fiscal year 1966-67, not exceeding \$18,000.00 for the fiscal year 1967-68, not exceeding \$19,000.00 for the fiscal year 1968-69, and not exceeding \$20,000.00 for the fiscal year 1969-70 for the purpose of leasing, acquiring, installing, operating, and maintaining necessary equipment to illuminate the streets of the city of Woodburn. [Section 18, Chapter X, added by election held December 11, 1964.]

Section 19. In addition to all other taxes authorized by the charter of the city of Woodburn and provided for in the budget of said city, the common council is authorized to include in its budget a special tax levy, upon the taxable property within the corporate limits of the city of Woodburn, not exceeding \$13,000.00 for each of the fiscal years 1965-66, 1966-67, and 1967-68 for the purpose of purchasing and equipping a fire truck and for constructing, erecting, and equipping a building to be used for a fire station and the housing of fire department equipment. [Section 19, Chapter X, added by election held July 12, 1965.]

Section 20. In addition to all other taxes authorized by the charter of the city of Woodburn and provided for in the budget of said city, the common council is authorized to include in its budget a special tax levy, upon the taxable property within the corporate limits of the city of Woodburn, not exceeding \$27,160.00 for each of the fiscal years 1965-66, 1966-67, 1967-68, 1968-69, and 1969-70 for the purpose of providing additional personnel, equipment, and supplies and paying additional expenses of operation of the police department of the city of Woodburn. [Section 20, Chapter X, added by election held July 12, 1965.]

Section 21. [Number not used.]

Section 22. In addition to all other taxes authorized by the charter of the city of Woodburn and provided for in the budget of said city, the common council is authorized to include in its budget a special tax levy, upon the taxable property within the corporate limits of the city of Woodburn, in the amount of \$29,000.00 for the fiscal year 1969-70 and not exceeding \$17,000.00 for each of the next four fiscal years for the purpose of making it possible, in the council's discretion, to purchase a vehicle and necessary equipment, pay operating costs, hire personnel to operate the equipment or take such other, different, or additional action as deemed necessary by the council to assure the inhabitants of the city of adequate ambulance service. [Section 22, Chapter X, added by election held August 19, 1969.]

## Woodburn Charter

Section 23. That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized in its discretion to construct such additions and improvements to the city sewage disposal system as are determined by the common council to be necessary, advisable or convenient to the proper sewage disposal system of the city of Woodburn; to acquire therefor and thereto, by purchase, lease, condemnation, exchange or other lawful manner, necessary real property and rights-of-way within and without the city limits of the city of Woodburn, and to do all things necessary, expedient or incidental to such construction and acquisition; and in order to obtain funds for the acquisition of the necessary real property and rights-of-way, the construction of the aforesaid additions and improvements and the performance of all matters necessary, expedient or incidental thereto, the common council shall have the power and is hereby authorized to issue general obligation bonds of said city in such principal sum as the common council may hereafter by ordinance determine to be for the best interests of said city, not exceeding, however, the principal sum of \$240,000.00; such bonds to be issued in such denominations, payable or redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be for the best interests of said city. For the purpose of providing for the payment of interest upon said bonds and the retirement thereof, the common council is hereby authorized to include in its budget and to levy against the taxable property within the said city an amount sufficient to pay the interest and retire the bonds, or any parts thereof, at their maturity. The common council is further authorized to pledge and use all or any part of the net revenue of the sewer system for the payment of all or part of the bond principal and interest. [Section 23, Chapter X, as amended by election held June 8, 1971.]

Section 24. [Section 24 added by election held August 12, 1971; and repealed by election held April 4, 1972.]

Section 25.

(a) That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized to issue general obligation bonds of the city of Woodburn in such principal

## Woodburn Charter

sum as the common council may hereafter by ordinance determine to be for the best interests of said city, not exceeding, however, the principal sum of \$60,000.00 for the purpose of paying the city's share of the cost of the construction and installation of railroad crossing protection devices and all things necessary, expedient or incidental thereto, at the railroad crossings of Hardcastle Avenue, Mill Street, Lincoln Street and Cleveland Street in the city of Woodburn; such bonds to be issued in such denominations, payable or redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be for the best interests of the city. For the purpose of providing for the retirement of said bonds and payment of the interest thereon, the common council is hereby authorized to include in its budget, and to levy against the taxable property within said city, an amount sufficient to pay the interest and to retire the bonds at their maturity.

(b) Section 24, Chapter X, of the Charter of Woodburn, adopted at a special election August 12, 1971, is hereby repealed.

[Section 25, Chapter X, added by election April 4, 1972.]

Section 26. That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized in its discretion to construct such additions and improvements to the city water production, storage and distribution system as are determined by the common council to be necessary, advisable or convenient to the proper water supply of the city of Woodburn; to acquire therefor and thereto necessary real property and rights-of-way within and without the city limits of the city of Woodburn, and to do all things necessary, expedient or incidental to such construction and acquisitions; and in order to obtain funds for the acquisition of the necessary real property and rights-of-way, the construction of the aforesaid additions and improvements and the performance of all matters necessary, expedient or incidental thereto, the common council shall have the power and is hereby authorized to issue general obligation bonds of said city in such principal sum as the common council may hereafter by ordinance determine to be for the best interests of said city, not exceeding, however, the principal sum of \$90,000.00; such bonds to be issued in such denominations, payable or redeemable at such times, bearing such rate of interest and in such

## Woodburn Charter

form as the common council may hereafter by ordinance determine to be for the best interests of said city. For the purpose of providing for the payment of interest upon said bonds and the retirement thereof, the common council is hereby authorized to include in its budget and to levy against the taxable property within the said city an amount sufficient to pay the interest and retire the bonds, or any parts thereof, at their maturity. The common council is further authorized to pledge and use all or any part of the net revenue of the water system for the payment of all or part of the bond principal and interest. [Section 26, Chapter X, added by election held May 28, 1974.]

Section 27. That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized in its discretion to construct two fire station buildings and to acquire necessary and suitable real property and rights-of-way therefor within and without the city limits of the city of Woodburn and to acquire two pieces of mobile fire equipment as determined by the common council to be necessary, advisable or convenient to providing proper fire protection in the city of Woodburn; and to do all things necessary, expedient or incidental to such construction and acquisitions; and in order to obtain funds for the acquisition of the necessary real property, rights-of-way and equipment, the construction of the aforesaid fire stations and the performance of all matters necessary, expedient or incidental thereto, the common council shall have the power and is hereby authorized to issue general obligation bonds of said city in such principal sum as the common council may hereafter by ordinance determine to be for the best interests of said city, not exceeding, however, the principal sum of \$750,000.00; such bonds to be issued in such denominations, payable or redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be for the best interests of said city. For the purpose of providing for the payment of interest upon said bonds and the retirement thereof, the common council is hereby authorized to include in its budget and to levy against the taxable property within the said city an amount sufficient to pay the interest and retire the bonds, or any parts thereof, at their maturity. [Section 27, Chapter X, added by election held December 5, 1974.]

## Woodburn Charter

Section 28. That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized in its discretion to construct such additions and improvements to the city water drainage system at the junction of Mill Creek and Cleveland Street as are determined by the common council to be necessary, advisable or convenient to the proper water drainage of the city of Woodburn; to acquire therefor and thereto necessary real property and rights-of-way within the city limits of the city of Woodburn; and to do all things necessary, expedient or incidental to such construction and acquisitions; and in order to obtain funds for the acquisition of the necessary real property and rights-of-way, the construction of the aforesaid additions and improvements and the performance of all matters necessary, expedient or incidental thereto, the common council shall have the power and is hereby authorized to issue general obligation bonds of said city in such principal sum as the common council may hereafter by ordinance determine to be for the best interests of said city, not exceeding, however, the principal sum of \$60,000.00; such bonds to be issued in such denominations, payable or redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be for the best interests of said city. For the purpose of providing for the payment of interest upon said bonds and the retirement thereof, the common council is hereby authorized to include in its budget and to levy against the taxable property within the said city an amount sufficient to pay the interest and retire the bonds, or any parts thereof, at their maturity. [Section 28, Chapter X, added by election held May 28, 1974.]

Section 29. That in addition to the other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized in its discretion to construct a municipal building to house the administration offices, municipal court, police department, and other city offices, as determined by the common council to be necessary, advisable or convenient to provide for the proper administration of the city of Woodburn; and to do all things necessary, expedient or incidental to such construction and acquisitions; and in order to obtain funds to construct and equip such a municipal building and to perform all matters necessary, expedient or incidental thereto, the common council shall have the power

## Woodburn Charter

and is hereby authorized to issue general obligation bonds of said city in such principal sum as the common council may hereafter by ordinance determine to be for the best interest of said city, not exceeding, however, the principal sum of \$740,000.00; such bonds to be issued in such denomination, payable or redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be for the best interest of the said city. For the purpose of providing for the payment of interest upon said bonds and the retirement thereof, the common council is hereby authorized to include in its budget and to levy against the taxable property within the said city an amount sufficient to pay the interest and retire the bond, or any parts thereof, at their maturity. [Section 29, Chapter X, added by election held October 30, 1975.]

Section 30. In addition to all other taxes authorized by the charter of the city of Woodburn and provided for in the budget of said city, the common council is authorized to include in its budget a special tax levy upon the taxable property within the corporate limits of the city of Woodburn, not exceeding \$328,953.00, for the fiscal year 1976-77, and not exceeding \$378,066.00, for the fiscal year 1977-78, for the purpose of providing funds to meet the personnel, equipment, supplies and operating expenses of the police and fire departments of the city of Woodburn. [Section 30, Chapter X, added by election held August 5, 1976.]

Section 31. That in addition to all other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized to construct a new sewer disposal plant and system, together with acquisition and preparation of site, rights-of-way for sewer mains and an access road needed by such sewer disposal plant, modification of the present sewer disposal system to serve the new sewer disposal plant, and to do all things necessary, expedient and incidental thereto; and in order to obtain funds to finance such improvements and to perform all matters necessary, expedient and incidental thereto, the common council shall have the power and is hereby authorized to issue general obligation bonds of said city in such principal sum as the common council may hereafter by ordinance determine to be to the best interest of said city, not exceeding,

## Woodburn Charter

however, the principal sum of \$2,000,000.00; such bonds to be issued in such denominations, payable or redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be to the best interest of the said city. For the purpose of providing for the payment of the interest upon said bonds and the retirement thereof, the common council, after applying all unobligated ~~net~~ revenues from the sewer system to the payment of the bonds herein described, is hereby authorized to include in its budget and to levy against the taxable property within said city an amount sufficient to pay the interest and retire the bonds, or any part thereof, at their maturity. [Section 31, Chapter X, added by election held May 10, 1977.]

Section 32. That in addition to all other obligations heretofore provided and authorized to be issued by the common council of the city of Woodburn, the common council shall have the power and is hereby authorized to construct and utilize two new water wells, together with acquisition and preparation of real property for the sites, rights-of-way for water mains and wells, modification of the present water system to utilize the water flow from the new wells, to provide for the necessary engineering, administrative and legal costs of the improvement and this bond issue, and to do all things necessary, expedient and incidental thereto; and in order to obtain funds to finance such improvement and to perform all matters necessary, expedient and incidental thereto, the common council shall have the power and is hereby authorized to issue general obligation bonds of said city in such principal sum as the common council may hereafter by ordinance determine to be in the best interest of the city, not exceeding, however, the principal sum of \$375,000.00; such bonds to be issued in such denominations, payable or redeemable at such times, bearing such rate of interest, and in such form as the common council may hereafter by ordinance determine to be to the best interest of said city. For the purpose of providing for the payment of the interest upon said bonds and the retirement of the bonds, the common council is hereby authorized to include in its budget and to levy against the taxable property within the city an amount sufficient to pay the interest and retire the bonds, or any part thereof, at their maturity. [Section 32, Chapter 10, added by election held June 27, 1978.]





PUBLISHED BY AUTHORITY.

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THE  
LAWS OF OREGON,  
AND THE  
RESOLUTIONS AND MEMORIALS  
OF THE  
FIFTEENTH REGULAR SESSION  
OF THE  
LEGISLATIVE ASSEMBLY THEREOF.

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1889.

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SALEM, OREGON:  
FRANK C. BAKER, STATE PRINTER.  
1889.



## AN ACT

To Incorporate the Town of Woodburn, in Marion County, Oregon.

*Be it enacted by the Legislative Assembly of the State of Oregon:*

## ARTICLE I.

Section 1. That the inhabitants of the town of Woodburn, Marion county, State of Oregon, and their successors, within the limits hereinafter prescribed or ordered by the legislative assembly, are hereby created and established a body politic and corporate by the name and style of the town of Woodburn, and by that style shall have perpetual succession, the right to sue and be sued, defend and be defended in all courts in this State; to purchase, lease, receive and hold property, both real and personal, and dispose of the same for the common benefit; to have and to use a seal, and to alter the same at pleasure.

Section 2. The corporate limits of said town of Woodburn shall be as follows: Commencing in Ben. Brown's lane three chains west of Mrs. L. C. Walker's lot; thence in a straight line, nearly south, to the intersection of the Oregon & California railroad with the north boundary of the donation land claim of Peter Raymond and wife; thence in a straight line to the intersection of the narrow gauge railroad with the old stage road from Ashland to Portland; thence N. 33° 20' E. in the middle of the said stage road to its intersection with the north boundary of the donation land claim of Eli Cooley and wife; thence in a straight line to the intersection of the O. & C. railroad with the east boundary of the donation land claim of George Leasure and wife; thence in a straight line to the intersection of the Boone's ferry road with the north boundary of the last said Leasure land claim; thence in a straight line to the beginning.

Section 3. There shall be elected as hereinafter provided, a board of five councilmen, a recorder, a marshal and a treasurer, who shall each hold their respective offices of the term of one year, or until their successors are elected and qualified.

Section 4. The qualification of an elector shall be that of an elector for the precinct officers, and that he shall also be a *bona fide* resident within the corporate limits of the town at least thirty days preceding the election at which he offers to vote.

Section 5. All officers authorized by this charter shall be elected



annually, on the first Monday in April in each year, and all vacancies shall be filled by appointment by the board of councilmen, except as hereinafter provided.

Section 6. The power and authority given to the municipal authority of the town of Woodburn by this Act is vested in the common council and their successors in office, to be exercised in the manner hereinafter prescribed, and no person shall be eligible to the office of councilman unless he be an owner of real estate within said town, and a qualified elector therein; all other elective officers shall be qualified electors.

Section 7. The council shall designate the place for holding the election, and shall appoint three judges and two clerks of election; and the recorder, under the directions of the council, shall give ten days' notice by posting written or printed notices in three public places in said town, of each general election, particularly describing the time thereof, the officers to be elected, the place of holding the election and the names of the judges and clerks appointed to conduct the same; *provided*, that no election shall be held in any bar room, tippling house or saloon, and all such houses shall be closed during any annual or special election.

Section 8. All elections shall be held from nine o'clock in the morning until twelve o'clock at noon, and from one o'clock in the afternoon to five o'clock in the evening of the same day. If any judge of election fails to attend and serve at the proper time the voters present may elect another in his place, and if any clerk fails to attend and serve at the proper time the judges of election may appoint another in his place.

Section 9. On the fourth day after the election the recorder shall call to his aid a notary public and justice of the peace of said county, and they three shall canvass the returns of the election with all convenient dispatch; and when the same is completed a written statement of the canvass shall be made and signed by the canvassers, or a majority of them, and filed with the recorder; such statement must contain the whole number of votes given at such election, the number given for any person for any office, and the names of the persons elected, and to what office.

Section 10. Immediately after the completion of the canvass the recorder must make and sign a certificate of election for each person declared thereby to be elected, and deliver the same to him on demand; and such certificate of election is primary evidence of the facts therein stated; but the council must determine in case of a contest between two or more persons, and in case of a tie must decide it by lot; all cases of contest, however, being subject to revision on appeal to the circuit court.

Section 11. All laws of this State regulating and governing general elections and proceed[ings], and matters incidental thereto, shall apply to and govern elections under this, except as herein otherwise provided.

Section 12. The council is hereby authorized to fill all vacancies in any office that may occur, and a majority vote of the council shall be necessary to fill said vacancy; and all officers of the said corporation shall be liable to be removed at any time by the council for misteasance or incompetency in office; and any officer neglecting or refusing to perform his duties, or absenting himself without leave for thirty days, the city council shall declare his office vacant, and appoint some other person, properly qualified, to fill his place, in the same manner as if elected.

Section 13. The council must provide for the time and place of its regular meetings, at any of which it may adjourn to the next regular meeting, or to some specified time prior thereto; and it may be convened by the president of the council at any time upon not less than one day's notice to each member of the council at that time present in the town. A majority of the members of the council shall constitute a quorum to do business. The council may adopt rules for the government of its members and its proceedings, and it may punish any member for disorderly and improper conduct at any meeting, or for refusing or neglecting to attend any regular meeting without sufficient excuse therefor, and it may by a four-fifths vote, expel a member.

Section 14. On the third Monday of April next following any general election of said town, there must be a regular meeting of the council, and such meeting is appointed by this Act; and the council shall at said meeting proceed to organize by electing one of their number president for the year at any meeting of the council. The concurrence of a majority of a quorum is a sufficient majority to determine any question or matter other than the final passage of an ordinance and the appointment or removal of an officer.

Section 15. The council has power and authority within the limits of the corporation:

1. To make by-laws and ordinances not repugnant to the laws of the State or of the United States.

2. To assess, levy and collect taxes not to exceed two mills on the dollar per annum upon all property which is taxable for county or State purposes; and to levy and collect a poll tax of not less than one dollar nor more than two dollars upon each legal voter within said town each year, who is not exempt from paying a poll tax under the laws of this State.

3. To establish hospitals; prevent and remove nuisances; to



provide water for the use of the town; to license, tax and regulate auctioneers, taverns, ordinaries, hawkers, peddlers, brokers, hackneys, carriages, wagons, carts, drays, omnibuses, and fix their rates of travel.

4. To license, tax, regulate and prohibit bar rooms, billiard tables, pool tables, pigeon-hole tables, bowling alleys and drinking shops, theaters and other shows, exhibitions and other amusements; also to prohibit bawdy houses, gaming and gambling houses; *provided*, that a license for a saloon or place where spirituous or malt liquors are sold in less quantities than one quart shall not be less than three hundred dollars, or for a billiard or pool table not less than fifty dollars; *provided*, that no license for the sale [of] spirituous, vinous or malt liquors shall be issued for a sum less than is prescribed by the general laws of the State for the license of the sale of spirituous, vinous or malt liquors in force at the time of the issuance of such license.

5. To establish fire companies and provide for the prevention and extinguishment of fires, to appoint fire wardens and property guards and prescribe their duties; to compel by ordinances any person present to aid in the extinguishment of fires or for the preservation of property exposed to danger in times of fire, and to make such other regulations as may be necessary on such occasions.

6. To provide for and maintain both a day or night police, and to provide for the restraint, support and employment of vagrants and paupers.

7. To provide by ordinance for the summary closing of all places, houses or rooms where opium is smoked.

8. To remove all obstructions from the public highways, streets, side and crosswalks, alleys, gutters and sewers, and to provide for the construction, repair and cleaning of the same.

9. To oblige all persons in the city jail who may be imprisoned for vagrancy or for violating any city ordinance, to work on the public streets under the control and direction of the street commissioner or marshal, and, if need be, secure said prisoner with ball and chain while working or on the streets for that purpose.

10. To provide for the collection and disbursing of all moneys to which the town may become entitled, or which may be assessed or authorized to be collected for town purposes within the limits of the same; and the council is hereby authorized and empowered to enforce the collection of any general or special tax, levied in pursuance of this Act, and may authorize the issue of warrants, and may levy upon both the real and personal property, whether the same be exempt from execution or not, of delinquent tax payers within the town, and cause the same to be sold under such rules and

regulations as the council shall establish, to satisfy such warrant and fees of officers and all other expenses and costs attending such levy and sale.

11. The council is hereby authorized and empowered to lay out, establish, vacate, widen, extend and open streets and alleys, and parts of streets and alleys, in said town, and to take, sell and appropriate private property for that purpose; and to establish or alter the grade of any street or part thereof, and to improve the sidewalks, pavements, streets and parts of streets within the corporate limits, and to take, sell and appropriate private property for that purpose, making full or partial improvements thereof, and to establish a system of sewerage and construct and repair drains and sewers; and the council is hereby expressly empowered to determine and provide by ordinance for everything necessary and convenient in order to exercise the authority herein granted, and it is hereby made the duty of the council to pass ordinances regulating the sale and redemption of said real property.

12. To tax, regulate or prohibit animals, including dogs, from running at large within the corporate limits.

13. To appoint a street commissioner and attorney, and prescribe their duties and fix their compensation.

14. To impose, collect and appropriate fines, forfeitures and penalties for the violation of any ordinance, but no fine so imposed shall exceed one hundred dollars, and imprisonment shall in no case be imposed for a longer term than thirty days.

15. To provide for the survey of the blocks and streets of the town, and for making and establishing the boundary lines of such blocks and streets, and for the naming of the streets and blocks.

16. To open, lay out, establish, widen or extend a street or alley, and to provide by ordinance for the time and manner of closing the same.

17. To establish and regulate the fees and compensation of all officers of said town, except when otherwise provided by law.

18. To exercise such other and further powers and authority as may be given to the council elsewhere in this Act.

Section 15. The recorder is the judicial officer of the corporation, and shall hold a court therein whenever necessary. He is also made the auditor and clerk of the council, and to him must be presented all claims and accounts against the town. He shall keep accurate minutes of all the proceedings of the council, and a correct record of all judicial business by him transacted. It is his duty also to file every paper presented to him officially, and to take charge of and safely keep all the papers and records of the corporation and



the poll books and ballots, whether received or rejected, of any and every election held in pursuance of this Act.

Section 16. The recorder shall have jurisdiction of all crimes and offences defined and made punishable by any ordinance of the town, and of all actions brought to recover or enforce any forfeiture or penalty declared or given by any such ordinance. He has the authority and jurisdiction of a justice of the peace for the county of Marion within the corporate limits of Woodburn, in both civil and criminal matters, and in all proceedings in his court, whether sitting as justice of the peace or as recorder, he shall be governed and regulated by the general law of this State applicable to justices of the peace and to justices' courts in like or similar cases.

Section 17. The recorder must keep books of account, showing therein all sums appropriated, the date thereof, and out of what fund payable, the date and amount of all orders or warrants drawn thereon and to whom payable, and all such other matters and things as may be prescribed by ordinance, or be proper or necessary to a correct understanding of the finances of the town. He must issue all licenses authorized by ordinance, upon delivery to him of the receipt of the treasurer for the amount of money required for such license; *provided*, that in such cases as the council, by the provisions of this Act or any ordinance, are or shall be required to make special order, license shall be issued only on such order.

Section 18. The recorder's name, whether acting as recorder, auditor, or clerk of the council, is "Recorder of the town of Woodburn," and he is authorized to administer any oath authorized or required to be taken by any law of this State or by any ordinance of this town.

Section 19. The marshal shall be conservator of the peace, and in addition to the authority vested in him by any ordinance of the town of Woodburn, shall have authority and jurisdiction of a constable within the corporate limits, and shall discharge the same according to the statutes of this State pertaining to constables; he shall arrest all persons guilty of a breach of the peace or any violation of any town ordinance, and take them before the recorder for trial; he shall collect all fines and delinquent licenses and taxes in the same manner as collection of county taxes in this State are collected and enforced, and shall pay all money collected by him over to the city treasurer, taking duplicate receipts for the same, one of which he shall file with the recorder.

Section 20. It shall be the duty of the marshal to supervise all property of the town, and to prevent the loss and destruction thereof. He shall attend all meetings of the council, and perform the duties of sergeant-at-arms to said body, and shall perform such other

duties as may be imposed upon him by ordinance. He shall make a quarterly report to the council of all business by him transacted, and a statement of all public moneys received by him during said time, and the disposition made thereof.

Section 21. The treasurer shall receive and safely keep all money that shall come into his hands belonging to the town of Woodburn, and pay the same out upon the warrant or order signed by the president of the council and recorder, and shall keep a correct account of the receipts and disbursements, and at all times keep his book open to the inspection of the council, and at the expiration of his term of office shall turn over to his successor all moneys, books and papers belonging to his said office. He shall, upon the receipt of any and all money, credit the amount received to the proper fund and shall not under any circumstances whatever apply any special fund to the payment of any warrant or order not drawn on the same; and he generally shall perform any and all duties that may be required of him by any ordinance of the town.

Section 22. The council is hereby authorized and empowered to pass ordinances regulating and defining the further duties of the recorder, marshal and treasurer, and to define the duties of the street commissioner, attorney or any of their appointed officers or agents, and to fix and determine the compensation of any and all officers.

Section 23. No claim against the town shall be paid until it is audited and allowed by the council, and then the treasurer shall pay it only upon a warrant drawn upon him and signed by the recorder and president of the council.

Section 24. No member of the council shall, during the period for which he is elected, be interested in any contract, the expenses of which are to be paid out of the town treasury.

Section 25. Within five days from the enactment of any ordinance, a copy thereof shall be posted in three of the most public places in said town or published in a newspaper published in said town, and no ordinance shall take effect in less than ten days after its passage. The council shall be the final judges as to whether proper notice has been given in any and all cases where notices are required to be given by this Act or any ordinance of the town. All meetings of the council shall be public, and at least once a year a statement of the financial affairs of the town shall be made out in full by the council and filed in the office of the recorder for public inspection.

Section 26. The council shall not in any manner create any debt or municipal liability which shall, singly or in the aggregate, exceed two hundred dollars; *provided*, that nothing herein contained



shall be construed so as to prevent the council from contracting for any amount for which it has the cash to pay down at the time contract is made.

Section 27. The enacting clause of every ordinance shall be: "The people of the town of Woodburn do ordain as follows:" And every ordinance to be valid must receive the affirmative vote of at least three councilmen, whose names must be entered in the journal.

Section 28. All officers elected or appointed under this Act, before entering upon the duties of their office, must take and file with the recorder an oath of office to the following effect, viz.: "I, A B, do solemnly swear (or affirm) that I will support the constitution of the United States and of the State of Oregon, and that I will, to the best of my ability, faithfully perform the duties of the office of the town of Woodburn, during my continuance thereto, so help me God." If the person affirms, instead of the last clause, there must be added: "And this I promise under the pains and penalties of perjury."

Section 29. No person paying a license to the town of Woodburn in order to carry on any business or avocation within the corporate limits, for which license is required by this Act or by any ordinance, shall be required to pay a license tax to the county authorities of Marion county for the same purpose.

Section 30. No license to set up, open or establish a grog shop, tippling house, bar room, saloon or other place where spirituous, vinous or malt liquors are sold by the drink or given away or sold to be drank on the premises, shall be issued except upon petition to the council, signed by a majority of the resident citizens of the town over twenty-one years of age, and the fact of majority shall be determined by an examination of a list obtained by the recorder for the purpose. All petitions of this character shall be kept posted up in the recorder's office and also in the council room for public inspection and reference, but no license shall issue for a longer time than six months.

Section 31. All warrants issued by the recorder by virtue of the provision of this Act or of any ordinances shall run in the name of the town of Woodburn.

Section 32. The council shall by ordinance fix the amount of the official undertaking of each and every officer of the town who may be required by ordinance to execute and file an official undertaking; *provided*, that there be not less than two sureties upon each and every such undertaking.

Section 33. The council is hereby empowered to adopt its own rules and regulations in reference to raising revenue by taxation, as hereinbefore provided and limited. It shall provide for the selling

of property to pay delinquent taxes, and for the redemption thereof, and for everything necessary and convenient to levy, assess and collect taxes.

Section 34. The first election under this Act shall be held at the said town of Woodburn, commencing at 9 o'clock A. M. and ending at 4 o'clock P. M., on the first Monday in April, 1889. The inspectors or judges of said first election shall be F. M. Cormack, J. M. Poorman and W. B. Fout, who shall cause five days' previous notice to be given by posting three notices in conspicuous places in said town, and they shall select clerks of election, give certificates to the successful candidates, and deliver the poll books and tickets to the recorder elect.

Section 35. Inasmuch as the town of Woodburn is situated at the junction of the Oregon & California railroad with the narrow gauge of the Oregonian Railway Company (Limited), and is a thriving town much in need of local government, this Act shall take effect from and after its approval by the Governor.

Filed in the office of the Secretary of State February 20, 1889.

### AN ACT

To Incorporate the City of Athena, in Umatilla County, Oregon, and to Define the Powers thereof.

*Be it enacted by the Legislative Assembly of the State of Oregon:*

### INCORPORATION AND BOUNDARIES.

Section 1. The inhabitants of the city of Athena, in Umatilla county, Oregon, within the limits hereinafter set forth, shall be and they are hereby constituted a body politic and corporate in fact and in law and declared to be a municipal corporation by the name and style of the "City of Athena," and by such name shall contract and be contracted with, sue and be sued, implead and be impleaded, defend and be defended in all courts of justice and in all actions, suits and proceedings whatsoever; may purchase, lease, hold and receive property, real and personal, within said city, for public buildings, public works, school purposes, streets and city improvements; to sell, lease or otherwise dispose of the same for the common benefit of the city; to borrow and loan money; to have and use a seal and alter the same at pleasure.





# Public Meetings:

## What Elected Officials Need to Know

### INTRODUCTION

Oregon law sets the policy for open decision-making at various levels of government. These laws ensure that the public is aware of the deliberations and decisions of governing bodies, as well as the information that forms the basis of the governing bodies' decisions.<sup>1</sup>

The key requirements of the Oregon Public Meetings Law (OPML) include:

- Conducting meetings that are open to the public—unless an executive session is authorized;
- Giving proper notice of meetings being held within their jurisdiction; and
- Taking minutes or another record of meetings.

Further, the OPML imposes other requirements regarding location, voting, and accessibility to persons with disabilities.

Please note that this article is not a substitute for legal advice, nor is it comprehensive. The OPML is complicated, and public officials are encouraged to speak with their legal counsel for legal advice.

### ENTITIES SUBJECT TO THE PUBLIC MEETINGS LAW

Understanding which entities are subject to the OPML is critical for ensuring compliance with the provisions of the law. In short, the OPML applies to any (1) governing body of a public body, (2) when that governing body holds a meeting for which a quorum is required to make a decision or deliberate toward a decision on any matter.<sup>2</sup>

The OPML applies to meetings of a “governing body of a public body.”<sup>3</sup> A public body is the state, any regional council, a county, a city, a district, or any other municipal or public corporation. A “public body” also includes a board, department, commission, council, bureau, committee, subcommittee, or advisory group of any of the entities in the previous sentence. If two or more members of any public body have “the authority to make decisions for or recommendations to a public body on public body policy or administration,” they are a “governing body” for purposes of the OPML.<sup>4</sup>

1 ORS 192.260 establishes Oregon’s policy of open decision-making through public meetings.

2 ORS 192.610(5); ORS 192.630(1).

3 ORS 192.610(4).

4 ORS 192.610(3).

### MEETINGS SUBJECT TO THE PUBLIC MEETINGS LAW

Not every action that a governing body takes is subject to the OPML. The law defines a “meeting” as the convening of any of the “governing bodies” subject to the law “for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.”<sup>5</sup> Thus, the definition of a meeting has three elements: (1) the convening of a governing body; (2) for which a quorum is required; (3) to make a decision or deliberate toward a decision on any matter. The first of those elements was addressed in the previous section.

The term is defined as “the minimum number of members of a governing body required to legally transact business. In the absence of a statute, ordinance, rule, charter, or other enactment specifically establishing the number of members constituting a quorum, a quorum is a majority of the voting members of the governing body.”<sup>6</sup> For cities, quorum requirements are often set by charter, bylaws, council rules, or ordinance. A gathering of less than a quorum of a governing body of a public body is not a “meeting” under the OPML.

It may be possible for a governing body to convene through serial communications on a topic. As of October 1, 2024, the Oregon Government Ethics Commission prohibited serial communications in its rulemaking process—a quorum of the members of a governing body shall not, outside of a meeting conducted in compliance with the Public Meetings Law, use a series of communications of any kind, directly or through intermediaries, for the purpose of deliberating or deciding on any matter that is within the jurisdiction of the governing body.<sup>7</sup> The Oregon Attorney General also states that members of a governing body should not meet in private to discuss business, or exchange private communications about business, even if those involved constitute less than a quorum.<sup>8</sup>

Finally, there are specific exemptions to the OPML requirements.<sup>9</sup> Further, a staff meeting called by a single official is not subject to the law because the staff do not make decisions for or recommendations to a “governing body” as well as no quorum requirement being met.

5 ORS 192.610(5).

6 OAR 199-050-0005(9) (Effective October 1, 2024).

7 OAR 199-050-0020 (Effective October 1, 2024); see specific prohibitions listed therein.

8 ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 145 (2019).

9 ORS 192.690(1)(n).



## REQUIREMENTS OF THE LAW

The last two sections covered which entities are subject to and what meetings of those entities trigger the OPML. The next section addresses the substantive requirements of the OPML, including notice, space and location, accessibility, public attendance, control of meetings, voting, and minutes and record keeping.

### Notice

The OPML requires that notice be provided of the time and place of public meetings, including regular, special and emergency meetings.<sup>10</sup> For regular meetings, notice must be reasonably calculated to provide actual notice to the persons and the media that have stated in writing that they wish to be notified of every meeting. Special notice requirements apply to executive sessions.

### Space, Location, and Accessibility

For any meeting, the public body should consider the probable public attendance and should meet where there is sufficient room to accommodate that attendance. In the event of an unexpectedly high turnout, the public body should do its best to accommodate the greater number of people. Additionally, effective January 1, 2022, state law requires governing bodies to provide members of the public, “to the extent reasonably possible” an opportunity for virtual access to meetings held.<sup>11</sup>

#### ► Geographic Location

The OPML states that meetings of a governing body of a public body must be held within the geographic boundaries of the area over which the public body has jurisdiction, at its administrative headquarters, or at “the other nearest practical location.”<sup>12</sup> In the case of an actual emergency necessitating immediate action, however, a governing body may hold an emergency meeting at a different location than one described in ORS 192.630(4).

#### ► Nondiscriminatory Site

Governing bodies are prohibited from holding meetings at any place where discrimination based on race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. A governing body may hold a meeting at a location that is also used by a restricted-membership organization if the use of the location by such an organization is not its primary use.

#### ► Accessibility to Persons with Disabilities

The OPML imposes two requirements relating to accessibility to persons with disabilities. First, meetings subject to the OPML must be held in places accessible to individuals with

<sup>10</sup> ORS 192.640 provides for both regular and executive session notice requirements.

<sup>11</sup> ORS 192.670.

<sup>12</sup> ORS 192.630(4) provides for both geographic location as well as accessibility of these locations.

## ONLINE RESOURCES

### LOC'S GUIDE TO EXECUTIVE SESSIONS



A comprehensive review of where, when and how cities may conduct executive sessions, complete with model forms and policies. Available at: [tinyurl.com/exec-sessions](https://tinyurl.com/exec-sessions).

### HANDLING DISRUPTIVE PEOPLE IN PUBLIC MEETINGS

A legal guide to help cities know their options for dealing with disruptive behavior. The guide covers when the public has a right to speak at public meetings, constitutional speech protections, and issues involved in removing someone from a council meeting. Available at: [tinyurl.com/disruptive-people](https://tinyurl.com/disruptive-people).

### LOC MODEL RULES OF PROCEDURE FOR COUNCIL MEETINGS

A guide providing cities with a starting point in creating their rules of procedure, where required by the city charter, or where a council so desires. Available at: [tinyurl.com/model-rules-proc](https://tinyurl.com/model-rules-proc).

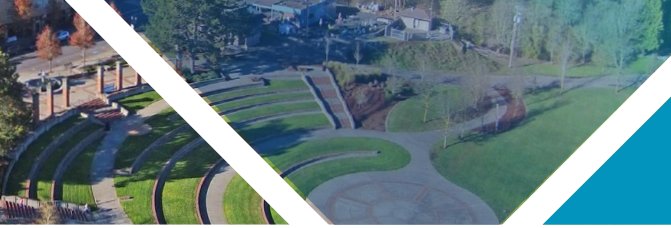
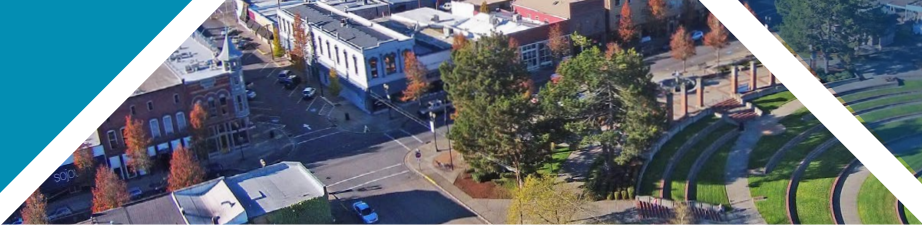
### FAQ ON NOTICE REQUIREMENTS FOR PUBLIC MEETINGS

Answers to common questions about the notice requirements associated with public meetings. Available at: [tinyurl.com/notice-reqs](https://tinyurl.com/notice-reqs).

### OREGON MUNICIPAL HANDBOOK – Chapter 9: Public Meetings Law

This Handbook chapter touches on the basic requirements of the Oregon Public Meetings Law. Find it online at: [tinyurl.com/handbook-9](https://tinyurl.com/handbook-9).





mobility and other impairments. Second, the public body must make a good-faith effort to provide an interpreter at the request of deaf or hard-of-hearing persons.

## VOTING

All official actions by a governing body of a public body must be taken by public vote. The vote of each member must be recorded unless the governing body has 26 or more members.<sup>13</sup> Even then, any member of the governing body may request that the votes of each member be recorded. The governing body may take its vote through a voice vote or through written ballots, but ballots must identify each member voting and the vote must be announced. **Secret ballots are prohibited.**<sup>14</sup> State law preempts any local charter or ordinance that permits voting through secret ballots.

## RECORDED OR WRITTEN MINUTES

The OPML requires that the governing body of a public body provide for sound, video or digital recording, or written minutes, of its public meetings. The record of the meeting—in whatever format—must include at least the following information:

- The members present;
- All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;
- The results of all votes and, except for governing bodies consisting of more than 25 members unless requested by a member of the governing body, the vote of each member by name;
- The substance of any discussion on any matter; and
- Subject to the Oregon Public Records Law, a reference to any document discussed at the meeting.<sup>15</sup>

Written minutes need not be a verbatim transcript and sound or video recordings need not contain a full recording of the meeting. Rather, the record must provide “a true reflection of the matters discussed at the meeting and the views of the participants.” The record must be made available to the public “within a reasonable time after the meeting.”<sup>16</sup>

## EXECUTIVE SESSIONS

Governing bodies are permitted to meet in executive (closed) sessions in certain circumstances.<sup>17</sup> An “executive session” is defined as “any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.”<sup>18</sup> Executive sessions are not exempt from the OPML. An executive session is a type of public meeting and must conform to all applicable provisions of the OPML. Importantly, the authority

to go into executive session does not relieve a governing body of its duty to comply with other requirements of the OPML.

## Permissible Purposes

A governing body is permitted to hold an open meeting even when the law permits it to hold an executive session. However, a governing body may only hold an executive session in certain circumstances set forth in ORS 192.660. These permissible purposes include:

- Employment of public officers, employees and agents;
- Discipline of public officers and employees;
- Performance evaluations of public officers and employees;
- Labor negotiation consultations;
- Real property transactions;
- Discussion of public records exempt from disclosure; and
- Discussions with legal counsel.

## Final Decision Prohibition

The OPML provides: “No executive session may be held for the purpose of taking any final action or making any final decision.”<sup>19</sup> Although a governing body may reach a final consensus in an executive session, the purpose of the final-decision prohibition is to allow the public to know of the result of any such consensus.<sup>20</sup> A formal vote in a public session satisfies the requirement, even if the vote merely confirms the consensus reached in executive session.

## Method of Convening an Executive Session

A governing body is permitted to hold a public meeting consisting of only an executive session. The notice requirements for such a meeting are the same as those for any other meeting.<sup>21</sup> In addition, the notice must cite the statutory authority for the executive session.

Alternatively, an executive session may be called during a regular, special, or emergency meeting for which notice has already been given in accordance with ORS 192.640. The person presiding over the meeting must announce the statutory authority for the executive session before going into the executive session.

## CONCLUSION

The OPML is important and nuanced. A single article cannot fully describe all of its provisions or how it applies in various factual circumstances. For more detail on the OPML, please see the Oregon Attorney General’s Public Records and Meetings Manual (2017), available at [tinyurl.com/opml-manual](https://tinyurl.com/opml-manual).<sup>22</sup> ■

13 ORS 192.650(1)(c).

14 39 Op Atty Gen 525, 526-528, 1979 WL 35618 (1979).

15 ORS 192.410 to 192.505. Note that reference to a document in meeting minutes does not change the status of the document under public records law; see also ORS 192.650(3).

16 ORS 192.650(1).

17 ORS 192.660.

18 ORS 192.610(2).

19 ORS 192.660(6).

20 OAR 199-040-0060 (Effective October 1, 2024).

21 ORS 192.640.

22 (last accessed October 29, 2024).



# — Oregon Municipal Handbook —

## **CHAPTER 9: PUBLIC MEETINGS LAW**





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## Chapter 9: Public Meetings Law

The purpose of the Oregon Public Meetings Law (OPML) is to make decision-making of state and local governing bodies available to the public. This policy is stated expressly in the law: “The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of [this law] that decisions of governing bodies be arrived at openly.”<sup>1</sup>

That policy is given effect through various substantive provisions contained under ORS 192.610 to ORS 192.690, discussed below.<sup>2</sup> Additionally, the Oregon Legislature, in 2023, passed HB 2805, authorizing the Oregon Government Ethics Commission (OGE) the authority to enforce Oregon’s Public Meetings Law and conduct rulemaking to clarify specific OMPL rules. After rulemaking that occurred in 2024, the OGE proposed 16 rules in total, two of which were amendments to existing rules, found in Oregon Administrative Rule (OAR) Chapter 199—Division 40 (Executive Session) and Division 50 (Public Meetings).<sup>3</sup> The OGE voted to approve the final rules on September 20, 2024, and the rules became effective October 1, 2024.

Although compliance with these provisions might reduce the speed and efficiency of local decision-making, local residents benefit from a better understanding of the facts and policies underlying local actions. The required process and formality also can make it easier for cities to justify a decision if one is later challenged in an administrative or judicial proceeding.<sup>4</sup>

This chapter will touch on the basic requirements of the law, beginning with the criteria for what gatherings constitute “meetings” and what organizations constitute “governing bodies” under the OPML.<sup>5</sup> Where applicable, the OPML generally requires that meetings be open to the public unless an executive session is permitted, that proper notice be given, and that meeting minutes and votes be recorded.<sup>6</sup> The OPML also governs the location of meetings.<sup>7</sup> Finally, the OPML includes enforcement provisions for when these provisions are violated.<sup>8</sup>

Please note that this chapter is meant to provide the LOC members with an overview of the OMPL. The LOC members with specific questions are encouraged to contact their city’s attorney. Further, note that this chapter of the Handbook is based extensively on material in the

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<sup>1</sup> ORS 192.620.

<sup>2</sup> *Id.*

<sup>3</sup> See Secretary of State - Oregon Government Ethics Commission website, <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=317423> (last accessed October 4, 2024).

<sup>4</sup> See, e.g., ORS 192.650. By recording the minutes of any meeting, including the “substance of any discussion on any matter,” cities build a record that shows the basis for their actions. This record can dispel claims that a city’s action is arbitrary, discriminatory, retaliatory, etc.

<sup>5</sup> ORS 192.610.

<sup>6</sup> ORS 192.630 to ORS 192.660. See also OAR 199-050-0055 (Effective October 1, 2024).

<sup>7</sup> *Id.*

<sup>8</sup> ORS 192.680.

Oregon Attorney General’s Public Records and Meetings Manual (2019).<sup>9</sup> The LOC strongly recommends that cities purchase the print version of this manual, which is updated every two years.<sup>10</sup> A free online version is available at <https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/>. Finally, note that the Oregon Department of Justice (ODOJ) reserves its legal advice for the state of Oregon and its agencies; as such, cities with specific questions on the OPML again should consult their legal counsel.

## I. COVERED ENTITIES

Understanding the scope of the OPML is critical for ensuring compliance with the law. In short, the OPML applies to **(A)** governing bodies of a public body that **(B)** hold meetings for which a quorum is required to make a decision or deliberate toward a decision on any matter.<sup>11</sup> The first of those elements addresses the *who* of the OPML—that is, which entities are subject to the law. The second of those elements addresses the *what* of the OPML—that is, what types of meetings are subject to the law. This section addresses the first of those elements.

### A. Governing Bodies of Public Bodies

The OPML applies only to the “governing bodies” of a “public body.”<sup>12</sup> A public body includes state bodies, any regional council, a county, a city, a district, or any other municipal or public corporation.<sup>13</sup> A “public body” also includes a board, department, commission, council, bureau, committee, subcommittee, or advisory group of any of the aforementioned entities.<sup>14</sup> A “governing body,” meanwhile, does not just mean city council; it means two or more members of any public body with “the authority to make decisions for or recommendations to a public body on policy or administration.”<sup>15</sup> The following

#### Examples:

A city is a public body under ORS 192.610(4), and a five-member city council is a governing body of the city. Further, a planning commission of a city is also a public body, and a three-member board of commissioners is a governing body of the planning commission. ORS 192.610(3).

<sup>9</sup> The Oregon Department of Justice Attorney General’s Office typically publishes an updated version every five years, however, due to the HB 2805 (2023) OGEAC anticipated rulemaking process, the next version will be delayed.

<sup>10</sup> Note: as of October 2024, the most recent publication date of the Oregon AG Public Records and Meetings Manual was published in 2019.

<sup>11</sup> ORS 192.610(5); ORS 192.630(1).

<sup>12</sup> ORS 192.630(1).

<sup>13</sup> ORS 192.610(4).

<sup>14</sup> *Id.*

<sup>15</sup> ORS 192.610(3).

subsections examine in more detail the authority to make decisions and recommendations, and what entities might in turn qualify as a “governing body.”

**i. A body that makes decisions for a public body**

A body with the authority to make decisions for a public body on “policy or administration” is a governing body.<sup>16</sup> For instance, cities are public bodies and their governing bodies are city councils. Sometimes, cities delegate decision-making authority to lower bodies, such as planning commissions; these too are governing bodies for the purposes of the OPML.

**ii. A body that makes recommendations to a public body**

A body that has the authority to make recommendations to a public body on policy or administration is itself “a governing body” under the OPML.<sup>17</sup> These recommending bodies are sometimes called “advisory bodies.”<sup>18</sup> From time to time, a local government agency or official may appoint a group or committee to gather information about a subject. If this “advisory body” makes a recommendation to a governing body, then it shares the title of governing body and becomes subject to the OPML.<sup>19</sup>

For cities, common examples of bodies that make recommendations to a governing body include subcommittees of the city council and city boards and commissions. The OPML applies to local advisory bodies and all of their members, including private citizens. The language of the OPML is not limited to public officials; rather, it applies to all “members” of a body making decisions or recommendations to a public body, even if all of the members are private citizens.<sup>20</sup>

**iii. Exemptions: OPML does not apply to the following types of bodies**

Pursuant to OAR 199-050-0010, there are three types of groups that the OMPL does not apply to.

(a) **Fact Gathering Bodies.** Bodies with only the authority to gather and provide purely factual information to a public body, and that do not have the authority to make decisions or recommendations.

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<sup>16</sup> ORS 192.610(3).

<sup>17</sup> ORS 192.610(3).

<sup>18</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 138 (2019).

<sup>19</sup> ORS 192.610(3).

<sup>20</sup> ORS 192.610(3).



**(b) Bodies Advising Individual Public Officials.** Bodies appointed by an individual public official with authority to make recommendations only to that individual public official who has the authority to act on the body’s recommendations and is not required to pass the recommendations on unchanged to a public body.

**(c) Certain Multi-Jurisdiction Bodies.** Multi-jurisdictional bodies whose Oregon members do not constitute a majority of the governing body’s voting members.

## **B. Governing Bodies of Certain Private Bodies**

Technically, only “public bodies” are covered by the OPML.<sup>21</sup> However, it is at least possible that some private bodies might fall under the gamut of the law if they assume clear public functions.

There is no test for determining whether or when a private entity should be considered a “public body” for purposes of the OPML. Therefore, cities should consult their attorney when in doubt about whether a private body is covered by the law. Note that the Oregon Supreme Court follows a six-part test for determining when a private entity is the “functional equivalent” of a “public body” under Oregon’s Public Records Law.<sup>22</sup> Those factors include (1) the entity’s origin, (2) the nature of the functions, i.e., whether the function performed is traditionally private or public, (3) the scope of authority exercised by the entity, (4) whether the entity receives financial support from the government, (5) the degree of government control over the entity, and (6) the status of the entity’s offices and employees.<sup>23</sup> That said, the OPML has its own definition of “public body,” and so it is not clear whether these factors apply in the meetings context.<sup>24</sup>

## **II. COVERED MEETINGS**

The previous section explained that the OPML applies to the “governing bodies” of a public body.”<sup>25</sup> Not every action that a governing body takes, of course, is subject to the OPML. Only a “meeting” of a governing body of a public body is subject to the law.

The OPML defines a meeting as **(1)** the “convening of a governing body” in order to **(2)** “make a decision or deliberate toward a decision” and for which **(3)** “a quorum is required.”<sup>26</sup>

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<sup>21</sup> ORS 192.610.

<sup>22</sup> See *Marks v. McKenzie High School Fact-Finding Team*, 319 Or 451, 463-65 (1998) (interpreting ORS 192.311).

<sup>23</sup> *Id.*

<sup>24</sup> ORS 192.610(4).

<sup>25</sup> ORS 192.630(1).

<sup>26</sup> ORS 192.610(5).

Taken together, a meeting only occurs where a governing body convenes, reaches a quorum, and discusses or deliberates on city matters.<sup>27</sup> This section examines each of these elements under the OPML and how courts have interpreted them.

Before reviewing the meeting elements, please note that at least two categories of gatherings that might otherwise qualify as “meetings” under the OPML have been exempted by statute.<sup>28</sup> As such, these gatherings are not “meetings” for the purposes of the OPML.

- The on-site inspection of any project or program; and
- A gathering of any national, regional, or state association to which the public body or its members belong. This includes any monthly, quarterly, or annual gatherings of the League of Oregon Cities or National League of Cities.

## A. ‘Convening’ a Meeting

For governing bodies, the most natural method of convening is in person. Of course, modern technology provides many other ways for members of a governing body to convene with one another. Because convening might occur by accident, members of governing bodies need to be mindful about how they communicate<sup>29</sup> with each other and staff to avoid holding a “meeting” under the OPML. In the 2023 Legislative session, House Bill 2805<sup>30</sup> amended ORS 192.610 and defined “convening”<sup>31</sup> as well the “deliberation.”<sup>32</sup>

Outside in-person meetings, the OPML applies to teleconferences, web conferences, and more generally to “telephone or electronic communications.”<sup>33</sup> Moreover, the OPML applies in exactly the same way to these meetings as it does to in-person meetings.<sup>34</sup> Inherent in this are logistical issues, such as guaranteeing public attendance to the meeting and ensuring that the

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<sup>27</sup> *Id.* Under the OPML, a decision is any action that requires a “vote of the governing body.” ORS 192.610(1).

<sup>28</sup> ORS 192.610(5).

<sup>29</sup> OAR 199-005-0005(1)(2) (Effective October 1, 2024) defines “**communicate**” as the act of a person expressing or transmitting information to another person through verbal, non-verbal, written, or electronic means. Non-verbal means includes gestures, such as thumbs-up and thumbs-down, as well as sign language, and “**communication**” as “the expression or transmission of information from one person to another through verbal, non-verbal, written or electronic means. Non-verbal means include gestures, such as thumbs-up and thumbs-down, as well as sign language.”

<sup>30</sup> See <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/HB2805> (last accessed October 9, 2024).

<sup>31</sup> ORS 192.610(1) defines “**convening**” as (a) Gathering in a physical location; (b) Using electronic, video or telephonic technology to be able to communicate contemporaneously among participants; (c) Using serial electronic written communication among participants; or (d) Using an intermediary to communicate among participants.”

<sup>32</sup> ORS 192.610(3) defines “**deliberation**” as “discussion or communication that is part of a decision-making process.”

<sup>33</sup> ORS 192.670.

<sup>34</sup> *Id.*

medium of communication can accommodate everyone who wishes to attend. Local governing bodies must solve these issues and comply with all other OPML requirements if they hold a meeting that it is not in-person.<sup>35</sup>

It may be possible for a governing body to convene through serial communications on a topic.<sup>36</sup> In 2015, the Oregon Court of Appeals found that three county commissioners—a quorum of the governing body—had violated the OPML by using a series of phone calls and emails to reach a county decision.<sup>37</sup> While the Oregon Supreme Court reversed the ruling, the court did not express an opinion one way or the other on serial communications.<sup>38</sup> Therefore, that portion of the Court of Appeals ruling still holds at least some weight.

The Court of Appeals noted “not all private, serial communications among members” are OPML violations.<sup>39</sup> Just as it is with meeting in person, members of a governing body may correspond through email or voicemail on topics unrelated to city business. These serial communications may become an issue only when they are “conducted for the purpose of deliberation or decision.”<sup>40</sup>

In the 2023 Legislative session, House Bill 2805 incorporated parts of the judicial holdings in the *Handy* cases and added “exceptions” to ORS 192.690(1)(m)<sup>41</sup> to exempt trainings, non-city business, and administrative activities.

As of October 1, 2024, the Oregon Government Ethics Commission completed its rulemaking process and prohibited serial communications.<sup>42</sup>

(1) A quorum of the members of a governing body shall not, outside of a meeting conducted in compliance with the Public Meetings Law, use a series of communications

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<sup>35</sup> *Id.*

<sup>36</sup> See *Handy v. Lane County*, 274 Or App 644, 664-65 (2015), *reversed on other grounds*, 360 Or 605 (2016). See also OAR 199-050-0020 (Effective October 1, 2024).

<sup>37</sup> *Handy*, 274 Or App 644, 664-65 (2015).

<sup>38</sup> See generally *Handy v. Lane County*, 360 Or 605 (2016).

<sup>39</sup> See *Handy*, 274 Or App at 664-66 (2015).

<sup>40</sup> *Id.* The Court of Appeals noted that a plaintiff likely needs “some evidence of coordination, orchestration, or other indicia of a purpose...to deliberate or decide out of the public eye.” *Id.*

<sup>41</sup> See HB 2805 (2023), <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/HB2805> (last accessed October 8, 2024).

<sup>42</sup> OAR 199-050-0020 (Effective October 1, 2024).

of any kind, directly or through intermediaries<sup>43</sup>, for the purpose of deliberating or deciding on any matter that is within the jurisdiction of the governing body.<sup>44</sup>

(2) The prohibitions in section (1) apply to using any one or a combination of the following methods of communication:

- (a) In-person;
- (b) Telephone calls;
- (c) Videos, videoconferencing, or electronic video applications;
- (d) Written communications, including electronic written communications, such as email, texts, and other electronic applications;
- (e) Use of one or more intermediaries to convey information among members; and
- (f) Any other means of conveying information.<sup>45</sup>

This type of communication covers things such as social media posts, emails, and text messages, or any other means of conveying information. Serial Electronic Written Communications is defined as “a series of successive or sequential communications among members of a governing body using written electronic means, including emails, texts, social media, and other electronic applications that communicate the written word.”<sup>46</sup>

## B. Meeting ‘Quorum’

By law, a meeting cannot take place without a “quorum” of the governing body.<sup>47</sup> The term “quorum” is defined as “the minimum number of members of a governing body required to legally transact business. In the absence of a statute, ordinance, rule, charter, or other enactment specifically establishing the number of members constituting a quorum, a quorum is a majority of the voting members of the governing body.”<sup>48</sup> For cities, quorum requirements often are set by charter, bylaws, council rules, or ordinance. In the absence of a specific definition, the general definition of “quorum” under state law is a majority of the governing body.<sup>49</sup>

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<sup>43</sup> “**Intermediaries**” is defined in OAR 199-050-0005(7) (Effective October 1, 2024) as “a person who is used to facilitate communications among members of a governing body about a matter subject to deliberation or decision by the governing body, by sharing information received from a member or members of the governing body with other members of the governing body. The term “intermediary” can include a member of the governing body.”

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> OAR 199-050-0005(10) (Effective October 1, 2024).

<sup>47</sup> ORS 192.630.

<sup>48</sup> OAR 199-050-0005(9) (Effective October 1, 2024).

<sup>49</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 142 (2019).

If a quorum of members convenes, then the OPML will apply unless the subject matter discussed is completely unrelated to a city decision or recommendation. Conversely, if less than a quorum convenes, then a “meeting” has not taken place, as that term is defined in the law.

Quorum is a technical requirement. As a practice, cities should take care not to deliberate toward decisions or recommendations in small groups. Gatherings that are below quorum and clearly deliberations violate (if nothing more) the policy of OPML, which is to include the public in the decision-making process.<sup>5051</sup>

Significantly, meetings that do not require a quorum are not “public meetings” under the OPML. As such, meetings with staff generally do not constitute public meetings. A single city council member may meet with staff to discuss city business because staff are not members of the city council.

### C. Meeting for a ‘Decision’

By law, members of a governing body only meet for purposes of the OPML if they are making or deliberating toward a “decision.”<sup>52</sup> The OPML defines a “decision” as the following:

Any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.<sup>53</sup>

In other words, only topics that relate to the business of the governing body trigger the OPML. This subject matter requirement means that members of a governing body are free to gather to discuss a number of topics—sports, television, literature—as long as these do not concern the work of the governing body. Similarly, if a quorum of a governing body meets to discuss matters on which it has no authority to make a decision, it is not a “meeting” under the OPML either.<sup>54</sup>

**Social Gatherings?** A quorum of a governing body is permitted to meet in a social setting without triggering the OPML. Care must be taken, however, to avoid any discussion of public policy or administration, lest the social gathering evolve into an illegal public meeting.

<sup>50</sup> ORS 192.620.

<sup>51</sup> OAR 199-050-0005(4) (Effective October 1, 2024) defines decision-making process as “the process a governing body engages in to make a decision, such as (a) identifying or selecting the nature of the decision to be made; (b) gathering information related to the decision to be made; (c) identifying and assessing alternatives; (d) weighing information; and (e) making a decision.”

<sup>52</sup> ORS 192.610(5); OAR 199-050-0005(3) (Effective October 1, 2024)

<sup>53</sup> ORS 192.610(1).

<sup>54</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 144 (2019) (citing 38 Op Atty Gen 1471, 1474, 1977 WL 31327 (1977)).

Pursuant to recent rulemaking, Applicable meetings subject to PML to include the following: (1) regular meetings, (2) special meetings, (3) emergency meetings, (4) executive sessions (separate to or convened with another type of meeting), and (5) work sessions/workshops.<sup>55</sup> Noteworthy, there are enumerated exemptions, including the following:

- (a) On-site inspections of projects or programs, provided the members of the governing body do not engage in deliberations or decisions on matters that could reasonably be foreseen to come before the governing body.
- (b) The attendance of members of a governing body at any national, regional or state association to which the public body or the members belong, provided the members of the governing body do not engage in deliberations or decisions on matters that could reasonably be foreseen to come before the governing body.
- (c) Communications between or among members of a governing body, including communications of a quorum of members, that are:
  - (A) Purely factual or educational in nature and that convey no deliberation or decision on any matter that might reasonably come before the governing body;
  - (B) Not related to any matter that, at any time, could reasonably be foreseen to come before the governing body for deliberation and decision; or
  - (C) Non-substantive in nature, such as communication relating to scheduling, leaves of absence and other similar matters.
- (d) Any matters listed in ORS 192.690.

Lastly, this new rule specifically states that private meeting where a quorum of a governing body engages in discussions or communications that are part of the governing body's decision-making process on matters within the authority of the governing body violates the Public Meetings Law.

Yet where the topics do relate to matters concerning the governing body, any discussion by a quorum of the body will trigger the OPML. As noted by the ODOJ, even meetings “for the sole purpose of gathering information” fall under the OPML.<sup>56</sup> Accordingly, the LOC recommends that members of governing bodies avoid discussing with each other any of the facts or context of local matters unless they are participating in a proper public meeting.

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<sup>55</sup> OAR 199-050-0015.

<sup>56</sup> *Id.*

### III. REQUIREMENTS

The last two sections answered the *who* and the *what* of the OPML, namely what entities and what meetings of those entities are subject to the law. Now comes the meeting requirements, including rules on notice, meeting location, and the recording of minutes and votes. The OPML also requires public attendance, and many laws further require public participation. This section addresses these requirements and the challenges that accompany it.

#### A. Meeting Types and Notice

As a reminder, each city in Oregon is subject to its own individual charter, municipal code and rules of procedures. Public notice is a common topic of local procedure. As such, the LOC recommends that cities conduct a thorough review of applicable charter provisions, municipal code sections, and their respective city’s rules and procedures to ensure that those provisions do not provide additional requirements to be followed when creating and posting a public notice. This section will address the minimum notice requirements under state law.

##### i. When Notice is Required

The OPML requires public notice to be given any time a governing body of a public body holds a “meeting” as defined under the law.<sup>57</sup> Therefore, all regular, special, and emergency meetings require notice, though the amount of notice depends on the meeting type. Generally, notice is required for any interested persons and any media outlet that has requested notice.<sup>58</sup>

##### ii. Contents of the Notice

ORS 192.640(1) requires a notice for meetings which are open to all members of the public to contain, at a minimum, the following information:

- Time of the meeting;
- Place of the meeting; and
- A list of the principal subjects anticipated to be considered at the meeting.

While the first two items are self-explanatory, the list of principal subjects is less clear. While publishing the agenda along with the notice is generally sufficient for this requirement, the ODOJ recommends that the list of principal subjects “be specific enough to permit members of

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<sup>57</sup> ORS 192.640.

<sup>58</sup> *Id.*, see also OAR 199-050-0040 (Effective October 1, 2024).



the public to recognize the matters in which they are interested.”<sup>59</sup> This means that notices should avoid repeating generic descriptions, such as “consideration of a public contract,” and should instead state qualities specific to the subject, such as “consideration of contract with X company to provide Y services.”<sup>60</sup>

Occasionally, a governing body may wish to discuss a subject that was not on the list, perhaps because the issue arose too late to be included in the notice. As a matter of state law at least, the absence of a subject from a notice does not preclude the governing body from discussing it; under the OPML, the list of *anticipated* subjects does “not limit the ability of a governing body to consider additional subjects.”<sup>61</sup>

Beyond these requirements, a common practice is to include information in the notice for persons with disabilities. The OPML mandates that public bodies make all meeting locations accessible to persons with disabilities.<sup>62</sup> The ODOJ suggests that notices include the name and telephone number of a city employee who can help a person in need of a reasonable accommodation.<sup>63</sup>

### **iii. Methods of Notice**

There are a variety of ways a public meeting notice may be posted. A governing body satisfies the public notice requirement by providing notice of its meetings when displayed conspicuously in the following places: (1) public body’s website; (2) Oregon Transparency website (non-state agencies may post here); (3) newspaper; (4) community / bulletin boards; (5) social media accounts; (6) email; or (7) mail.<sup>64</sup> Additionally, media notice may be required if a media representative has requested notice.<sup>65</sup>

### **iv. Amount of Notice**

The number of days in advance a city must give notice of a public meeting depends on the type of meeting to be conducted. For regularly scheduled meetings, notice must be “reasonably calculated” to provide actual notice of the time and place of the meeting “to

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<sup>59</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 151 (2019).

<sup>60</sup> *Id.*

<sup>61</sup> ORS 192.640.

<sup>62</sup> ORS 192.630(5).

<sup>63</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 151 (2019).

<sup>64</sup> OAR 199-050-0040(2) (Effective October 1, 2024).

<sup>65</sup> OAR 199-050-0040(2)(c) (Effective October 1, 2024).



interested persons including news media which have requested notice.”<sup>66</sup> As much notice as reasonably possible, but no less than 48 hours advance notice is required.<sup>67</sup>

For special meetings, i.e. non-regular meetings, notice must be provided at least 24 hours in advance to “the general public” and again to “news media which have requested notice.”<sup>68</sup> The only exception to the 24-hour notice rule for special meetings is an emergency meeting.<sup>69</sup>

For an emergency meeting, the governing body must show that “an actual emergency” exists and must describe the circumstances of the emergency in the meeting minutes.<sup>70</sup> Even these meetings require notice; the OPML requires that emergency meetings be noticed in a manner that is “appropriate to the circumstances.”<sup>71</sup> Furthermore, an emergency meeting may only be used to discuss matters pertaining to the emergency.<sup>72</sup> In *Oregon Association of Classified Employees v. Salem-Keizer School District*, the Oregon Court of Appeals found that a school district had violated the OPML by using an emergency meeting held for budget reasons to discuss a “contract approval,” a non-emergency matter.<sup>73</sup> The LOC recommends that cities use emergency meetings only in clear emergencies and only as a way to respond to the emergency.

#### **v. Noticing Executive Sessions**

If the type of meeting to be held is an executive session, the governing body holding the executive session is required to give notice in the manner described above.<sup>74</sup> In addition, the notice must be sent to each member of the governing body.<sup>75</sup> No member of the governing body can be excluded from receiving notice of the executive session, even if it is known that the member is unable to attend the meeting. In addition, when providing notice of an executive session, the notice is required to state the specific provision of the OPML that authorizes the executive session.<sup>76</sup> Finally, unless the executive session is necessary to respond to an emergency, the notice of the session must be provided with a minimum of 24 hours’ notice.<sup>77</sup>

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<sup>66</sup> ORS 192.640(1).

<sup>67</sup> OAR 199-050-0040(4)(a) (Effective October 1, 2024).

<sup>68</sup> ORS 192.640(3); *see also* OAR 199-050-0040 (4)(b) (Effective October 1, 2024).

<sup>69</sup> OAR 199-050-0040 (4)(c) (Effective October 1, 2024).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *See Or. Ass’n of Classified Employees v. Salem-Keizer Sch. Dist.* 24J, 95 Or App 28, 32 (1989).

<sup>73</sup> *Id.*

<sup>74</sup> ORS 192.640(2); *see also* OAR 199-050-0040(3)(d) (Effective October 1, 2024).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> ORS 192.640(3).

The LOC Guide to Executive Sessions explores these issues and offers sample notices.<sup>78</sup>

## **B. Proper Meeting Space**

The OPML requirements for a public meeting space fall roughly into four categories. First, the meeting space must have appropriate **capacity**.<sup>79</sup> Second, the meeting space must be within the right **geography**.<sup>80</sup> Third, the meeting space must satisfy criteria for **accessibility**.<sup>81</sup> Fourth, the space must be a place of **equality**.<sup>82</sup>

### **i. Capacity**

The OPML provides that any and all public meetings must “be open to the public” and that anyone interested in attending “shall be permitted to attend.”<sup>83</sup> Based on this language, it should be inferred that governing bodies need to anticipate roughly how many citizens will be interested in a meeting and plan accordingly. A meeting space that is woefully inadequate for the expected turnout likely is a violation of the OPML.

### **ii. Geography**

The OPML lays out certain criteria for the location of a governing body’s meeting. The provisions are presented in an “either/or” list, and so not all of the criteria need to be satisfied. The OPML requires that a meeting space *either* be **(1)** “within the geographic boundaries” of the public body, **(2)** at the public body’s “administrative headquarters,” *or* **(3)** the nearest practical location.<sup>84</sup> Generally speaking, the LOC recommends public meetings be held within the city unless exigent circumstances arise. In the event of “an actual emergency necessitating immediate action,” these criteria do not apply and the governing body may hold an emergency meeting at a different location than the ones described here.<sup>85</sup>

### **iii. Accessibility**

In three main ways, the OPML requires accessibility for persons with disabilities.<sup>86</sup> First, meetings subject to the OPML must be held in places accessible to individuals with mobility and

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<sup>78</sup> LEAGUE OF OREGON CITIES, GUIDE TO EXECUTIVE SESSIONS (2019), [https://www.oregoncities.org/download\\_file/505/1852](https://www.oregoncities.org/download_file/505/1852) (last accessed October 9, 2024).

<sup>79</sup> ORS 192.630(1).

<sup>80</sup> ORS 192.630(4).

<sup>81</sup> ORS 192.630(5).

<sup>82</sup> ORS 192.630(3).

<sup>83</sup> ORS 192.630(1).

<sup>84</sup> ORS 192.630(4). A fourth option for most public bodies is to hold a public meeting within “Indian country.” *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> See ORS 192.630(5)(a).

other impairments.<sup>87</sup> Second, the public body must make a “good-faith effort” to provide an interpreter at the request of deaf or hard-of-hearing persons.<sup>88</sup>

Third, due to the coronavirus pandemic, the government—state and local—were forced to adapt to virtual public meetings to meet the strict standards of allowing public access to the elected official and public policy decision-making process. Oregon Legislature passed House Bill 2560<sup>89</sup> in the 2021 session, requiring those remote options to continue.<sup>90</sup> This amendment became effective January 1, 2022, requiring government agencies, whenever possible, to allow the public to remotely attend public meetings—through telephone, video or other electronic means—as well as give the public the ability to testify remotely.<sup>91</sup>

The amendment emphasizes the requirement of governing bodies to make most public meetings (excludes executive sessions) remotely accessible when it’s “reasonably possible.”<sup>92</sup> Members of the media already have access to most executive sessions, but ORS 192.670 does not specify if governing bodies must also provide remote access to the media for these meetings.<sup>93</sup>

Cities can find guidance on the first requirement, and the potential penalties for failure to comply, under laws and regulations of the Americans with Disabilities Act (ADA). As for the “good faith” requirement, this can be enforced only through the OPML.<sup>94</sup> The law defines a “good-faith effort” as “including ... contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.”<sup>95</sup>

#### **iv. Equality**

Public bodies are prohibited from holding meetings where discrimination is practiced on the basis of race, color, creed, sex, sexual orientation, national origin, age, or disability.<sup>96</sup>

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See HB 2560 (2021), <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB2560> (last accessed October 8, 2024).

<sup>90</sup> ORS 192.670 (HB 2560) - Meetings by Means of Telephone or Electronic Communication.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *But see* OAR 199-050-0050(4) (Effective October 1, 2024) (requiring media access to be allowed to virtually attend executive sessions if any other individual is virtually attending).

<sup>94</sup> See ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 154-55 (2019).

<sup>95</sup> ORS 192.630(5)(e).

<sup>96</sup> ORS 192.630(3).

Generally, a public body may not hold a meeting at a location that is used by a restricted-membership organization, but may if the location is not primarily used by such an organization.<sup>97</sup>

### C. Recording and Retaining Minutes

The OPML requires that the governing body of a public body provide for sound, video, or digital recording, or written minutes, of its public meetings.<sup>98</sup> Whatever the format, the record of the meeting must include the following categories of information:

- (a) All members of the governing body present;
- (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- (c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;<sup>99</sup>
- (d) The substance of any discussion on any matter; and
- (e) Subject to ORS 192.311 to 192.478 relating to public records, a reference to any document discussed at the meeting.<sup>100</sup>

When recording minutes, the objective is not to include every word said at the meeting, but rather to provide “a true reflection of the matters discussed at the meeting and the views of the participants.”<sup>101</sup> Upon conclusion of the meeting, the minutes must also be available to the public “within a reasonable time.”<sup>102</sup> The ODOJ notes that, with some exceptions, the minutes should also be “available to persons with disabilities in a form usable by them, such as large print, Braille, or audiotape.”<sup>103</sup> The minutes or recordings required, which include executive sessions, shall provide for either written minutes or audio, video, or digital recordings.<sup>104</sup>

Finally, the OPML requires that minutes or another record of a public meeting must be preserved for a reasonable time.<sup>105</sup> However, the Secretary of State’s Retention Schedule for

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<sup>97</sup> *Id.*

<sup>98</sup> ORS 192.650(1)

<sup>99</sup> Note that the recording of minutes requires the “vote of each member by name” to either be recorded or made available on request. This means that members of a governing body cannot vote anonymously. The Court of Appeals has held, however, that the “absence of a recorded vote alone is not reversible error.” See ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 158-59 (2019) (citing *Gilmore v. Bd. of Psychologist Examiners*, 81 Or App 321, 324 (1986)). See also OAR 199-050-0055 (Effective October 1, 2024).

<sup>100</sup> ORS 192.650(1).

<sup>101</sup> *Id.*, see also OAR 199-050-0060 (Effective October 1, 2024).

<sup>102</sup> *Id.*

<sup>103</sup> ODOJ, ATTORNEY GENERAL’S PUBLIC RECORDS AND MEETINGS MANUAL 161 (2019).

<sup>104</sup> OAR 199-050-0060 (Effective October 1, 2024).

<sup>105</sup> *Id.* at 162 (citing *Harris v. Nordquist*, 96 Or App 19 (1989)).

cities requires minutes of non-executive session meetings to be retained permanently.<sup>106</sup> Executive session minutes must be retained for 10 years.<sup>107</sup> The LOC recommends that cities consult with their attorney before setting a retention schedule for meeting minutes.

## **D. Public Attendance and Participation**

The OPML is a public attendance law, not a public participation law. Generally, meetings of a governing body of a public body are open to the public unless otherwise provided by law.<sup>108</sup> Yet while the law guarantees the right of public attendance, the law does *not* guarantee the right of public participation. In fact, the OPML only expressly mentions public participation in two specific contexts: the opportunity for “public comment” on the employment of a public officer and the opportunity for “public comment” on the standards to be used to hire a chief executive officer.<sup>109</sup>

Importantly, public participation laws *do* exist elsewhere under state and local laws. In many cases, public participation might be required by another statute, a state regulation, or by a local charter or ordinance. For example, a city ordinance may require the city council to hear public comment when the council considers whether to condemn private property for public use. Similarly, state law requires cities to provide an opportunity for public testimony during the annual budgeting process.<sup>110</sup> State regulations, meanwhile, require that “[c]itizens and other interested persons [have] the opportunity to present comments orally at one or more hearings” during the periodic review of a local comprehensive plan.<sup>111</sup> For this reason, the LOC cautions cities to consult their attorney before choosing to withhold opportunities for public comment. Note that there is no rule *against* public participation if cities wish to allow it at meetings.

### **i. Maintaining Order**

For cities, the charter ordinarily designates a specific person with authority to keep order in council meetings, often the mayor or the council president. For other governing bodies serving the city, the one with this authority likely is the leader of the body, such as the head, chair, or president of a particular committee, group, or commission. Generally speaking, a city may adopt meeting rules and a violation of these rules can be grounds for expulsion. For more information

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<sup>106</sup> OAR 166-200-0235.

<sup>107</sup> *Id.*

<sup>108</sup> ORS 192.630(1).

<sup>109</sup> ORS 192.660(7)(d)(C); ORS 192.660(7)(d)(D).

<sup>110</sup> ORS 294.453

<sup>111</sup> OAR 660-025-0080(2).

on maintaining order in council meetings, consult the LOC’s Model Rules of Procedure for Council Meetings.<sup>112</sup>

Reasonable restrictions also may be placed on public participation. However, care must be taken to protect the freedom of speech under the First Amendment and Article 1, Section, of the Oregon Constitution. For example, the First Amendment protects the interest of citizens who are “directing speech about public issues to those who govern their city.”<sup>113</sup> Speech is a protected right that can be enjoyed not only through **actual speech** but also through **expressive conduct**, such as making a gesture, wearing certain clothing, or performing a symbolic act.<sup>114</sup> While the right to speech is “enormous,” it is subject to content-neutral limitations.<sup>115</sup> Further, no city is required to “grant access to all who wish to exercise their right to free speech on every type of government property, at any time, without regard to the disruption caused by the speaker’s activities.”<sup>116</sup>

#### a. The Time, Place, and Manner of Speech

Under federal law, a city’s council meeting or similar meeting is considered a limited public forum.<sup>117</sup> At a minimum, any expression of speech at a limited public forum in Oregon can be limited through time, place and manner restrictions.<sup>118</sup> Time, place and manner restrictions are simply that — rules regulating the **time** in which a person may speak, the **place** in which a person can speak, and the **manner** in which the speech can be made. An important caveat is that all of these restrictions must be viewpoint neutral.<sup>119</sup> The restrictions also must serve a “legitimate interest” and provide “ample alternatives for the intended message.”<sup>120</sup>

Because these restrictions are constitutional, local governing bodies generally can establish a specific format for speech at a council meeting or other public meeting. For example,

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<sup>112</sup> LEAGUE OF OREGON CITIES, MODEL RULES OF PROCEDURE FOR COUNCIL MEETINGS (2017), [https://www.oregocities.org/download\\_file/604/1852](https://www.oregocities.org/download_file/604/1852) (last accessed October 9, 2024).

<sup>113</sup> See *White v. City of Norwalk*, 900 F2d 1421, 1425 (9th Cir 1990).

<sup>114</sup> See *Virginia v. Black*, 538 US 343, 358 (2003).

<sup>115</sup> See *White*, 900 F2d at 1425 (1990).

<sup>116</sup> See *Walsh v. Enge*, 154 FSupp3d 1113, 1119 (D Or 2015) (quoting *Cornelius v. NAACP*, 473 US 788, 799 (1985)).

<sup>117</sup> See *White*, 900 F2d at 1425 (1990).

<sup>118</sup> See *State v. Babson*, 355 Or 383, 408 (2014). Under federal law, expressions of speech in a limited public forum can also be subject to “content-based” rules, provided those rules are both “viewpoint neutral” and “reasonable.” *Enge*, 154 FSupp 3d at 1128. Thus, under federal law, a city council could limit the *content* of a public comment to the subject-matter at hand as long as it did not apply this rule unevenly. *White*, 900 F2d at 1425 (1990). In Oregon, however, the free speech clause Oregon Constitution appears to prohibit any “content-based” regulation of speech. See *Outdoor Media Dimensions, Inc. v. Dept. of Transp.*, 340 Or 275, 288 (2006). Cities should err on the side of caution by permitting speech on any “subject” at meetings and limiting only its time, place, and manner.

<sup>119</sup> See *White*, 900 F2d at 1425 (1990).

<sup>120</sup> See *Babson*, 355 Or at 408 (2014).

a city's budget committee may choose to limit public comment to the start of a hearing and limit the amount of time a person may speak. Limiting public comment to the start of a public hearing is not legally contentious.

The challenge of time, place, and manner restrictions is ensuring that the restrictions are enforced consistently and equally to all speakers and that the restrictions cannot be construed as discriminating against a given viewpoint.<sup>121</sup> That said, cities generally will avoid triggering the First Amendment if their restrictions serve “purposes unrelated to the content of expression.”<sup>122</sup> This is true even if an otherwise valid restriction, under particular circumstances, “*incidentally* burdens some speakers, messages or viewpoints.”<sup>123</sup>

## **b. Disruptive Conduct**

A good example of an “incidental” restriction on speech is rules on disruptive conduct. As noted above, cities and other governments are not required to tolerate “actual disruptions” when carrying out government business. So, even if the disruptive activity is a voice or some form of expressive conduct, i.e., speech, it can be regulated.<sup>124</sup> The rule against actual disruptions means that governing bodies may override one’s freedom of speech in certain circumstances, such as when an audience member is shouting loudly at others or when an individual refuses to sit down long after their allotted speaking time has ended. The general rule of thumb is that the disruption has to be preventing the governing body from completing its work.

Conversely, cities must allow any actions that are not “**actual**” disruptions to the governing body’s ability to conduct business.<sup>125</sup> In *Norse v. City of Santa Cruz*, for example, the Ninth Circuit Court of Appeals found that an audience member giving the Nazi salute did not actually interfere with or interrupt the public meeting and that the city therefore had not been justified in removing the individual from the meeting.<sup>126</sup> In reaching its decision, the *Norse* Court found that “[a]ctual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption.”<sup>127</sup>

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<sup>121</sup> See *Norse v City of Santa Cruz*, 629 F3d 966, 976 (9th Cir 2010) (noting that viewpoint neutrality is a key element under the First Amendment),

<sup>122</sup> *Alpha Delta Chi-Delta Chapter v Reed*, 648 F3d 790, 800 (9th Cir 2011) (quoting, in part, *Ward v Rock Against Racism*, 491 US 781, 791(1989)).

<sup>123</sup> *Id.*

<sup>124</sup> *Norse*, 629 F3d at 976.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*



### c. Barring Disruptive Individuals

It is not uncommon for a person desiring to make their point to cause several disruptions at the same meeting or over a series of meetings. The constant disruption of public meetings by the same person, despite repeated warnings and removals, often leads public officials to consider suspending the person from future public meetings. Unfortunately, any efforts to suspend or ban individuals from future hearings are highly suspect and likely unconstitutional.

On two separate occasions, federal courts have held that prohibiting a disruptive person from attending future meetings, and from entering the entirety of a government facility, is not permitted under the First Amendment. In *Reza v. Pearce*, the Ninth Circuit Court of Appeals ruled that “imposing a complete ban” on a person’s entry into a government building “clearly exceeds the bounds of reasonableness ... as a response to a single act of disruption.”<sup>128</sup> Similarly, in *Walsh v. Enge*, a federal district court found that the city of Portland could not “prospectively exclude individuals from future public meetings merely because they have been disruptive in the past.”<sup>129</sup> Note, however, that a district court decision is not binding precedent. While neither of these cases conclusively answers the question of whether a frequently disruptive individual can be barred from future hearings, they cast serious doubt that a court would uphold such an action.

For a description of these cases and a more detailed overview of the options available to cities for handling disruptive members of the public at public meetings, see the LOC’s Legal Guide to Handling Disruptive People in Public Meetings (2017).<sup>130</sup>

## IV. EXECUTIVE SESSIONS

An executive session is a public meeting that is closed to members of the general public. Executive sessions may only be held for certain reasons and the other meeting requirements discussed above still apply, such as notice, location, and minute-keeping requirements.<sup>131</sup>

For a thorough assessment of how executive sessions apply to cities, including sample notices and a model media policy, consult the LOC Guide to Executive Sessions.<sup>132</sup>

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<sup>128</sup> *Reza v Pearce*, 806 F3d 497, 505 (9th Cir 2015).

<sup>129</sup> *See Walsh v Enge*, 154 FSupp. 3d 1113, 1119 (D Or 2015).

<sup>130</sup> LEAGUE OF OREGON CITIES, LEGAL GUIDE TO HANDLING DISRUPTIVE PEOPLE IN PUBLIC MEETINGS (2017), [https://www.oregoncities.org/download\\_file/384/1852](https://www.oregoncities.org/download_file/384/1852) (last accessed July 11, 2024).

<sup>131</sup> *See* ORS 192.660; *see also* ORS 192.610(2) (defining an executive session as a “meeting.”).

<sup>132</sup> LEAGUE OF OREGON CITIES, GUIDE TO EXECUTIVE SESSIONS (2017), [https://www.oregoncities.org/download\\_file/505/1852](https://www.oregoncities.org/download_file/505/1852) last accessed July 11, 2024).



## **A. Executive Sessions for Municipalities**

The Oregon Legislative Assembly has identified 16 circumstances in which an executive session is authorized.<sup>133</sup> Of these, 12 circumstances are likely to be used by municipalities:

### **1. Employment of a public officer, employee, staff member or individual agent.**

Members of governing bodies may generally deliberate whether to employ individuals that meet this description. However, only consideration of an initial employment is permissible under this section.<sup>134</sup> That said, this exception does not apply to any public officer, employee, staff member, or chief executive officer unless **(1)** the position has been advertised **(2)** and there already exists an adopted regular hiring procedure. In addition, with respect to public officers, the public must have had an opportunity to comment on the officer's employment. With regard to chief executive officers, there must be adopted hiring criteria and policy directives. This type of executive session **cannot** be used for either of the following purposes:

- To fill a vacancy in any elected office, public committee or commission, or advisory group;<sup>135</sup> or
- To discuss an officer's salary.<sup>136</sup>

### **2. Dismissal, disciplining, or hearing complaints or charges relating to a public officer, employee, staff member or individual agent who does not request an open hearing.**

A governing body may hold an executive session on disciplinary matters; however, the subject of the deliberations must be provided with an opportunity to request an open hearing.<sup>137</sup> Clearly, this means that the governing body must notify the individual well in advance and determine whether they wish to have an open hearing.

Generally, cities should be aware that public employees have a property interest in their employment. When in doubt, cities that are members of CIS are encouraged to consult the CIS Pre-Loss Legal Department before taking disciplinary action. Failing to do so can negatively impact a city's deductible if a lawsuit or wrongful termination complaint is subsequently filed.

### **3. Persons designated by the governing body to carry on labor negotiations.**

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<sup>133</sup> ORS 192.660.

<sup>134</sup> OAR 199-040-0027 (Effective October 1, 2024).

<sup>135</sup> See ORS 192.660; see also ORS 192.660(7)(a)-(d).

<sup>136</sup> See generally 42 Op Atty Gen 362, 1982 WL 183044 (1982).

<sup>137</sup> ORS 192.660(2)(b).

This provision allows city officials to hold an executive session to conduct deliberations with the person they have designated to act on the city's behalf during labor negotiations.<sup>138</sup> Note that this is one of the few meetings where news organizations and the media can be excluded from an executive session.<sup>139</sup>

#### **4. Persons designated by the governing body to negotiate real property transactions.**

This provision allows city officials to hold an executive session to conduct deliberations with the person they have designated to act on the city's behalf regarding real property transactions.<sup>140</sup> A real property transaction likely may include the purchase of real property, the sale of real property, and/or negotiations of lease agreements.<sup>141</sup> The deliberations conducted during an executive session held under this provision must concern a specific piece of property or properties—the session may not be used to discuss a city's long-term property needs.<sup>142</sup>

#### **5. Information or records that are exempt by law from public inspection.**

In order to hold an executive session under this provision, the information and records to be reviewed must otherwise be exempt from public inspection under state or federal law.<sup>143</sup> The most common source for public records exemptions is Oregon's Public Records Law and the attorney-client privilege under ORS 40.225.

#### **6. Preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.**

A governing body may use this provision to meet in executive session when it has good reason to believe it is in competition with other governments on a "trade or commerce" issue.<sup>144</sup>

#### **7. Rights and duties of a public body as to current litigation or litigation likely to be filed.**

A governing body may use executive sessions as a way to consult with legal counsel about current or pending litigation.<sup>145</sup> In the event the litigation is against a news organization, the governing body must exclude any journalist who is affiliated with the news organization.<sup>146</sup>

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<sup>138</sup> ORS 192.660(2)(c).

<sup>139</sup> ORS 192.660(4).

<sup>140</sup> ORS 192.660(2)(e).

<sup>141</sup> ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 165 (2019).

<sup>142</sup> *Id.* (citing Letter of Advice to Rep. Carl Hosticka, 1990 WL 519211 (OP-6376) (May 18, 1990)).

<sup>143</sup> ORS 192.660(2)(f).

<sup>144</sup> ORS 192.660(2)(g).

<sup>145</sup> ORS 192.660(2)(h).

<sup>146</sup> ORS 192.660(5).

**8. Employment-related performance of the chief executive officer of any public body, a public officer, employee, or staff member who does not request an open hearing.**

A governing body may hold an executive session to evaluate an employee's performance; however, the subject of the deliberations must be provided with an opportunity to request an open hearing.<sup>147</sup> Clearly, this means that the governing body must notify the individual well in advance and determine whether they wish to have an open hearing.

Generally, cities should be aware that public employees have a property interest in their employment. When in doubt, cities that are members of CIS are encouraged to consult the CIS Pre-Loss Legal Department before taking disciplinary action. Failing to do so can negatively impact a city's deductible if a lawsuit or wrongful termination complaint is subsequently filed.

**9. Negotiations under ORS Chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.**

This provision allows cities to conduct negotiations about certain public investments.<sup>148</sup> The final decision on these investments must occur in an open public meeting (see below).<sup>149</sup>

**10. Information on the review or approval of certain security programs.**

In order to hold an executive session under this provision, the security program must be related to one of the areas identified under ORS 192.660(2)(n). These include telecommunication systems and the "generation, storage or conveyance of" certain resources or waste.<sup>150</sup>

**11. To consider matters relating to the safety of the governing body and of public body staff and volunteers and the security of public body facilities and meeting spaces.<sup>151</sup>**

**12. To consider matters relating to cyber security infrastructure and responses to cyber security threats.<sup>152</sup>**

**B. Final Decision Prohibition**

Under the OPML, executive sessions must not be used "for the purpose of taking any final action or making any final action."<sup>153</sup> While final decisions cannot be made, city councils

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<sup>147</sup> ORS 192.660(2)(i).

<sup>148</sup> ORS 192.660(2)(j).

<sup>149</sup> ORS 192.660(6).

<sup>150</sup> ORS 192.660(2)(n).

<sup>151</sup> ORS 192.660(2)(o). HB 2806 in 2023 Oregon Legislature added this topic to qualify for executive session.

<sup>152</sup> ORS 192.660(2)(p). HB 2806 in 2023 Oregon Legislature added this topic to qualify for executive session.

<sup>153</sup> ORS 192.660(6).

and other public bodies may still reach an informal consensus during an executive session.<sup>154</sup> This provision simply guarantees that the public is made aware of the deliberations. Thus, a formal vote in a public session satisfies the requirement, even if the vote merely confirms the consensus reached in executive session.<sup>155</sup>

### **C. Media Representation at an Executive Session**

Representatives of the news media must be allowed to attend all but two types of executive sessions.<sup>156</sup> The news media may be excluded from an executive session held to conduct deliberations with a person designated by the governing body to carry on labor negotiations or an executive session held by a school board to discuss certain student records.<sup>157</sup> Also, remember that a city council or other public body must exclude any member of the press if the news organization the reporter represents is a party to the litigation being discussed during the executive session.<sup>158</sup>

Even though news organizations are permitted to attend virtually every executive session, governing bodies may prohibit news organizations from disclosing certain specified information.<sup>159</sup> Media access must be allowed virtual attendance if any individual is attending virtually.<sup>160</sup> Unless a governing body specifies what information is prohibited from disclosure, news organizations are free to report on the entire executive session. It also is worth noting that there is no penalty or punishment under the OPML against a news organization that shares information from an executive session without the city's permission. The OGEC advises that if media does report something in an executive session that they were advised not to disclose, the legal recourse options must be staffed with legal counsel.

The OGEC does provide a sample script to read at the start of any executive session that covers: (1) lists the statutory authorization of the executive session; (2) allows news media/designated staff to attend executive session; (4) representatives of news media are specifically directed not to report on any of the deliberations during the executive session except to state the general subject to the session as previously announced; (4) no decision may be made in the session; and (5) at the completion of the session, the open session will resume.

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<sup>154</sup> OAR 199-040-0060 (Effective October 1, 2024).

<sup>155</sup> See ODOJ, ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 173-75 (2019); see also OAR 199-050-0055 (Effective October 1, 2024).

<sup>156</sup> ORS 192.660(5).

<sup>157</sup> *Id.*

<sup>158</sup> ORS 192.660(5).

<sup>159</sup> ORS 192.660(4).

<sup>160</sup> ORS 192.670; see also OAR 199-050-0050(4) (Effective October 1, 2024).

The term “representatives of the media” is not defined by the OPML or in case law.<sup>161</sup> However, the Oregon Attorney General recently issued an advisory opinion wherein it concluded that under Oregon law “news-gathering representatives of institutional media” are permitted to attend executive sessions and the term is “broad and flexible enough to encompass changing technologies for delivering the news.”<sup>162</sup> The conclusion reached by the attorney general seems to imply that bloggers and other social media news entities are authorized to attend executive sessions. In reaching this conclusion, the attorney general relied heavily on what it believes are the stated reasons the Legislative Assembly allowed the media to attend executive sessions when the law was originally adopted.<sup>163</sup>

Due to the ambiguity around who is or isn’t a “representative of the media,” the LOC recommends that cities generally permit any person providing the public with news, including internet bloggers, to attend executive sessions.<sup>164</sup> Some cities may seek to establish a stricter media attendance policy and, if so, those cities need to undertake a meaningful and in-depth discussion with their city attorney before drafting such a policy.<sup>165</sup> Denying “representatives of the media” access to meetings can lead to costly litigation.

## V. TRAINING REQUIREMENT

### A. Governing Body Member Training Requirement

The OGEC, during the 2024 rulemaking process, created a new training requirement for all members of governing bodies.<sup>166</sup> This training requirement applies to (1) all governing body members; (2) with expenditures more than \$1 million dollars in a fiscal year<sup>167</sup>; (3) attend an OGEC approved OPML training; (4) once per term.

The OGEC has indicated that a person who holds multiple positions, can attend a certified course and that will count for the positions held at that time. The member must maintain a record of the training, and truthfully report completion upon request of the OGEC.<sup>168</sup> The OGEC is authorized to provide advice on whether an individual must comply.

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<sup>161</sup> Additionally, OGEC has stated they cannot define media.

<sup>162</sup> See generally Op Atty Gen 8291 (2016).

<sup>163</sup> *Id.*

<sup>164</sup> The OGEC states that public bodies may determine if individual meets requirement in opinion and can adopt procedures to do so.

<sup>165</sup> See OAR 199-050-0050(4) (Effective October 1, 2024).

<sup>166</sup> OAR 199-050-0080 (Effective October 1, 2024).

<sup>167</sup> OGEC indicated the \$1 million dollar expenditure requirement was limited to governing body members that authorized the expenditures of the \$1 million dollars (or exceeding thereof).

<sup>168</sup> *Id.*

The LOC will be submitting all relevant trainings for OGEC approval, to satisfy this training requirement, but as of October 8, 2024, there are no approved trainings, other than the OGEC trainings found on their website:

<https://www.oregon.gov/ogec/training/Pages/default.aspx>.

## VI. GRIEVANCE AND COMPLAINT PROCESS

### A. General Enforcement

The OGEC is authorized to investigate and adjudicate OPML violations. The new administrative rule, OAR 199-050-0070, clarifies requirements of ORS 192.705 for filing a written grievance with a public body alleging violations of OPML. As of October 1, 2024, there are new requirements for public bodies. For assistance in creating your local grievance process policy/procedure, please contact OGEC<sup>169</sup> and your legal counsel for advice.

### B. Filing Public Meetings Complaints

- i. There are three prerequisites for when an individual who thinks an OPML violation has occurred:
  - a. Submit written grievance to the public body;
  - b. Within 30 days of the alleged violation; and
  - c. The public body<sup>170</sup> has 21 days to respond to complainant.<sup>171</sup> The public body must respond in writing to both the complainant and a copy to the OGEC (by email: [pbgr@ogec.oregon.gov](mailto:pbgr@ogec.oregon.gov) or via mail), at the same time. The response may contain the following options: (1) deny facts/deny violation; (2) admit facts/deny violation; or (3) admit facts / admit violation.<sup>172</sup>
- ii. After 21-day period is over, complainant may submit a compliant to the OGEC, which must include a copy of the grievance submitted to the public

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<sup>169</sup> OGEC contact information: [www.oregon.gov/ogec/503-378-5105/](http://www.oregon.gov/ogec/503-378-5105/) mail@ogec.oregon.gov.

<sup>170</sup> The public body must respond, not individual members of the governing body.

<sup>171</sup> ORS 192.705(1); OAR 199-050-0070 (Effective October 1, 2024).

<sup>172</sup> ORS 192.705(2).

body and must provide public body's response.<sup>173</sup> If the complainant fails to provide the above, the OGEC will dismiss the complaint.

- iii. The public body must provide information on the grievance notice process, specifically, who to submit grievances to and how to submit grievances.<sup>174</sup>

## C. OGEC Complaint Process

The OGEC will review received complaints for satisfaction of prerequisites; conduct a preliminary review; and possibly initiate an investigation.<sup>175</sup>

The OGEC may issue sanctions for OPML violations to include: (1) civil penalty (up to \$1,000 fine); (2) letters of education; and/or (3) training requirement.<sup>176</sup>

# VII. ENFORCEMENT

## A. General Enforcement

Any person affected by a decision of a governing body of a public body may file a lawsuit to require compliance with, or prevent violations of, the OPML by members of the governing body.<sup>177</sup> Lawsuits may be filed by “any person who might be affected by a decision that might be made.”<sup>178</sup>

A plaintiff may also file suit to determine whether the OPML applies to meetings or decisions of the governing body.<sup>179</sup> Under ORS 192.680(5), any suit brought under the OPML must be commenced within 60 days following the date the decision becomes public record.<sup>180</sup>

A successful plaintiff may be awarded reasonable attorney fees at trial or on appeal.<sup>181</sup> Whether to award these or not is in the court's discretion.<sup>182</sup> If a court finds that a violation of the

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<sup>173</sup> ORS 192.705(2); OAR 199-050-0070 (Effective October 1, 2024).

<sup>174</sup> OAR 199-050-0070(3) (Effective October 1, 2024).

<sup>175</sup> ORS 192.685; ORS 244.260. *See also* OAR 199-050-0075 (Effective October 1, 2024).

<sup>176</sup> ORS 244.350.

<sup>177</sup> ORS 192.680(2).

<sup>178</sup> *See Harris v. Nordquist*, 96 Or App 19, 23 (1989).

<sup>179</sup> ORS 192.680(2).

<sup>180</sup> ORS 192.680(5).

<sup>181</sup> ORS 192.680(3).

<sup>182</sup> *Id.*

OPML was the result of willful misconduct by a member or members of the governing body, each is liable for the amount of attorney fees paid to the successful applicant.<sup>183</sup>

If a governing body violates the OPML in a decision, the decision is not necessarily void. In the case of an unintentional or non-willful violation of the OPML, the court has discretion to void a decision, but such an action is not mandatory.<sup>184</sup> The law permits a governing body that violates the OPML to reinstate the decision while in compliance with the law.<sup>185</sup> If a governing body reinstates an earlier decision while in compliance with the law, the decision will not be voided and the decision is effective from the date of its initial adoption.<sup>186</sup>

Importantly, reinstatement of an earlier decision while in compliance with the law will not prevent a court from voiding the earlier decision “if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body.”<sup>187</sup> In that case, the court will void the decision “unless other equitable relief is available.”<sup>188</sup>

## **B. Civil Penalties for Violations of ORS 192.660**

Apart from the enforcement provisions described above, the Oregon Government Ethics Commission (OGEC) may review complaints that a public official has violated the executive session provisions of the OPML as provided in ORS 244.260.<sup>189</sup> The commission has the authority to interview witnesses, review minutes and other records, and obtain other information pertaining to executive sessions of the governing body for purposes of determining whether a violation occurred.<sup>190</sup> If the commission finds a violation of the executive sessions provisions, the commission may impose a civil penalty not to exceed \$1,000.<sup>191</sup> If, however, the violation occurred as a result of the governing body acting on the advice of its legal counsel, the civil penalty may not be imposed.<sup>192</sup>

Further, the OGEC was granted additional authority in the 2024 Legislative Session in House Bill 4117.<sup>193</sup> This legislation expanded the scope of authority of the OGEC to give advice

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<sup>183</sup> ORS 192.680(4).

<sup>184</sup> ORS 192.680(1).

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> ORS 192.680(3).

<sup>188</sup> *Id.*

<sup>189</sup> ORS 192.685(1).

<sup>190</sup> ORS 192.685(2).

<sup>191</sup> ORS 244.350(2)(a).

<sup>192</sup> ORS 244.350(2)(b).

<sup>193</sup> See HB 4117 (2024), <https://olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/HB4117> (last accessed October 9, 2024).



on public meetings laws, issue advisory opinions on the application of the public meetings law to actual or hypothetical circumstances, authorized the executive director of the commission to issue staff advisory opinions or written or oral staff advice on the application of the public meetings law to actual or hypothetical circumstances, and permits other commission staff to issue written or oral staff advice on the public meetings law. The OGEC now hears complaints and renders decisions about allegations of impermissible ethics, executive sessions, and all provisions of the public meeting laws, effective March 20, 2024.





# Five Things to Know About Public Records

## 1. WHAT ARE PUBLIC RECORDS?

State law defines a public record as: “[A]ny writing that contains information relating to the conduct of the public’s business \* \* \* prepared, owned, used or retained by a public body regardless of physical form or characteristics.”<sup>1</sup> The term “writing” is defined broadly and includes any “handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.”<sup>2</sup> When determining whether a record is public, the question is whether the record relates to the business of the public, not the format of the record. This often means that emails, text messages and social media posts—even those created, delivered and stored on a personal device—could be considered a public record. If a record has a relationship to a city’s business, then it is a public record.

## 2. DUTIES OF A CITY AND PUBLIC RECORDS

Cities have the duty to make available a written procedure for making public records requests.<sup>3</sup> The procedure must include the name of at least one city contact to whom requests may be sent, and the amounts of and manner of calculating fees that the city charges for responding to public records requests.

Once received, a city must acknowledge receipt of the public records request or provide a copy of the requested record within five business days.<sup>4</sup> Within 10 business days of the date it was required to acknowledge the request, the city must either complete its response to the request, or provide a written statement that it is still processing the request, along with an estimated completion date. These timeframes do not apply if compliance would be impracticable.<sup>5</sup> However, a city must still complete the request as soon as practicable and without unreasonable delay.

## 3. PUBLIC RECORDS DISCLOSURE

The public has the right to inspect any public record in a city’s possession.<sup>6</sup> A city may withhold certain public records from disclosure if they are exempt by law.<sup>7</sup> Cities must segregate exempt records from nonexempt records and disclose all nonexempt material. The primary list of public records exemptions may be found under ORS 192.345 and 192.355, though exemptions are scattered throughout both state and federal law. There are two primary types of exemptions: (1) conditional and (2) unconditional. Conditional exemptions require a city to consider the public’s interest in disclosure.<sup>8</sup> Unconditional exemptions either require their own separate consideration or none at all.<sup>9</sup> Remember, when in doubt, Oregon law favors disclosure.

## 4. PUBLIC RECORD REQUEST FEES

A city may assess reasonable fees to get reimbursed for the actual costs incurred while responding to a public records request.<sup>10</sup> The city may assess a fee for the time spent by city officials and staff researching the records, providing redactions, and the city attorney’s time spent reviewing the records and redacting exempt materials. If the city wishes to charge a fee greater than \$25, the city must notify the requester in writing of the estimated amount of the fee and the requester must confirm in writing that it wishes to proceed. The city may request prepayment. If the actual cost incurred by the city is less than the amount paid, the city must promptly refund any overpayment.<sup>11</sup>

## 5. APPEALS AND CONSEQUENCES TO THE CITY

A person who is denied access to a public record may appeal the city’s denial.<sup>12</sup> The appeal may be made to the district attorney in the county in which the city is located, if the denial was by the city/a city official. If the district attorney denies any part of a petition, the requester may seek review in the circuit court for the county in which the city is located or the Marion County Circuit Court.

If the denial was made by an elected official, the appeal may be made by petitioning the circuit court for the county in which the elected official is located or the Marion County Circuit Court. If the requester prevails in full, the city is required to compensate the requester for the cost of litigation and trial. If the requester prevails only in part, an award of costs and attorney’s fees is discretionary.

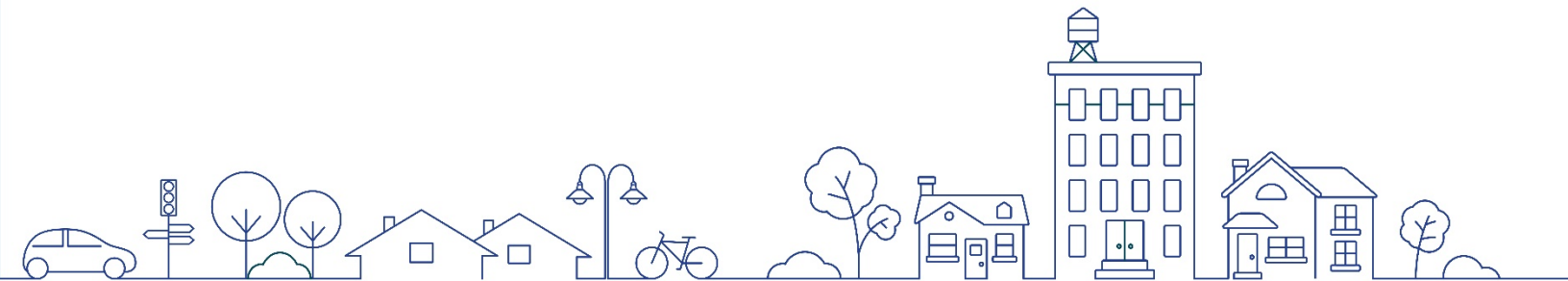
Additional guidance regarding public records is available on the LOC’s website and in the Oregon Attorney General’s Public Records and Meetings Manual available online at: [tinyurl.com/opml-manual](https://tinyurl.com/opml-manual).<sup>13</sup> ■

- 1 Generally public records law is covered by ORS Chapter 192. ORS 192.311(5)(a)
- 2 ORS 192.311(7).
- 3 ORS 192.324(7).
- 4 Generally, public records request timeline covered by ORS 192.324 and ORS 192.329.
- 5 Reasons where compliance would be impracticable include staffing, performance of other necessary services, or the volume of other simultaneous public records requests.
- 6 ORS 192.318(2).
- 7 See Oregon Attorney General’s Public Records and Meetings Manual (2019), Public Records Section (I)(E); see also Oregon Department of Justice Attorney General Public Records Exemptions at <https://justice.oregon.gov/PublicRecordsExemptions> (last accessed October 29, 2024).
- 8 ORS 192.345.
- 9 ORS 192.355.
- 10 See ORS 192.324.
- 11 Oregon Attorney General’s Public Records and Meetings Manual (2019), Public Records Section (I)(D)(7).
- 12 ORS 192.415.
- 13 (last accessed October 29, 2024).



# — Oregon Municipal Handbook —

## **CHAPTER 8: ETHICS**





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## Chapter 8: Ethics

This chapter of the handbook will provide an overview of Oregon government ethics law. This chapter is not intended to be a substitute for legal advice. LOC members with additional questions about ethics are encouraged to contact their city attorney or the Oregon Government Ethics Commission.

### Introduction

“Ethics refers to standards of behavior that tells us how human beings ought to act in the many situations in which they find themselves as friends, parents, children, citizens, businesspeople, teachers, professionals, and so on.”<sup>1</sup>

In the public context, sometimes it is easy to discern when an action is unethical:

- A city employee accepts a bribe;
- A city councilor votes to award a contract to a company in which she has a large financial investment; or
- An elected official accepts an all-expenses paid golfing trip to Hawaii from a city contractor.

Other times, whether an action is ethical is more difficult to determine:

- A city councilor votes to appoint a campaign supporter to a city commission over another candidate when both individuals are equally qualified; or
- A city recorder solicits charitable contributions from city contractors for a city-run summer camp for underprivileged youth.

Public officials are subject to ethical standards set by law. A public official is defined under Oregon law to include, “any person \* \* \* serving the State of Oregon or any of its political subdivisions or any other public body, as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the service.”<sup>2</sup> The law regarding public officials’ ethics and conflicts of interest is provided by various federal and state constitutional and common law provisions, state statutes and, occasionally, local charters or ordinances.

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<sup>1</sup> Markkula Center for Applied Ethics: *A Framework for Ethical Decision Making*.

<sup>2</sup> ORS 244.020(15).



## The Oregon Government Ethics Commission

The Oregon Government Ethics Commission is a nine-member citizen commission charged with the jurisdiction over Oregon government ethics laws,<sup>3</sup> lobby regulation laws,<sup>4</sup> and the executive session provisions of the Oregon Public Meetings Law.<sup>5,6</sup>

### *Review and Investigations*

The commission may investigate complaints of unethical behavior under its jurisdiction from any person or initiate an investigation on its own. The public official against whom the action may be taken is notified of the complaint, the identity of the complainant, and information received by the commission. The commission has 30 days to review the complaint, deliberate and vote on a finding of cause or to dismiss. If the commission votes to dismiss the complaint, the matter is concluded.

If a finding of cause is made, the commission has 180 days to investigate the complaint. At the end of the investigation, the commission will either dismiss the complaint or make a preliminary finding that an ethical violation had occurred. Upon a preliminary finding that an ethical violation had occurred, the public official may request a contested case hearing.

### *Resolution*

Preliminary findings are either resolved by a settlement, in which a Stipulated Final Order is issued, or by the contested case process under the Oregon Administrative Procedures Act. The Commission may issue sanctions ranging from a letter of reprimand to civil penalties and forfeitures. Any monetary sanctions paid are deposited into the state's general fund.

### *Advice*

In addition to enforcement of ethics laws, the commission provides training in the form of presentations, handouts and online resources, and advice in the form of informal and formal opinions. The commission staff are available to answer inquiries via telephone, email or letter. Formal advice may be issued as a Staff Advisory Opinion or a Commission Advisory Opinion. A public official's reliance upon a Staff Advisory Opinion may be considered by the commission when determining whether the public official committed an ethical violation.<sup>7</sup> A public official's good faith reliance upon a Commission Advisory Opinion prohibits the commission from

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<sup>3</sup> ORS chapter 244.

<sup>4</sup> ORS 171.725 - 171.785.

<sup>5</sup> ORS 192.660, 192.685.

<sup>6</sup> For additional information on executive sessions, please see the League's *Guide to Executive Sessions* (April 2019), available at <https://www.oregoncities.org/application/files/7415/6772/9151/GuidetoExecutiveSessions-03-27-19.pdf>.

<sup>7</sup> ORS 244.282.

imposing a penalty on that official unless it is determined that the person who requested the advice omitted or misstated material facts in the opinion request.<sup>8</sup> However, reliance upon a Commission Advisory Opinion does not prohibit the commission from finding a violation. Copies of recent advisory opinions are available at:

<https://apps.oregon.gov/ogec/cms/advice>.

By law, the commission is required to prepare and publish a manual on government ethics that explains the provisions of the Oregon government ethics laws. The commission is prohibited from imposing a penalty for any good faith action a public official or candidate takes in reliance on the manual, or any update of the manual that is approved by the commission.

**Oregon Government  
Ethics Law: A Guide  
for Public Officials**

Available at  
<https://www.oregon.gov/ogec/Pages/Guide-for-Public-Officials.aspx>

## **Oregon Government Ethics Law - ORS Chapter 244**

ORS Chapter 244 applies only to public officials, their relatives or members of their households. The rules contained in ORS Chapter 244 are focused on preventing an Oregon public official from receiving a financial benefit based on their public position. A public official is any person who serves the state of Oregon or any of its political subdivisions, including cities, or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent.

A volunteer may also be considered a “public official” if the any of the following apply:

- The person is elected or appointed to a governing body of a public body;
- The person is appointed or selected for a position with a governing body, or a government agency with responsibilities that include deciding or voting on matters that could have a pecuniary impact on the governing body, agency or other persons; or
- The volunteer position includes all of the following:
  - Responsibility for specific duties;
  - The duties are performed at a scheduled time and designated place;
  - The volunteer is provided with the use of the public agency’s resources and equipment; and
  - The duties performed would have a pecuniary impact on any person, business or organization served by the public body.

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<sup>8</sup> ORS 244.280.

## *Use of Office Prohibition – ORS 244.040*

**Financial Gain or Avoidance:** Public officials are prohibited from using or attempting to use their “official position or office to obtain financial gain or avoidance of financial detriment for [themselves] or a relative or member of [their] household \* \* \*, if financial gain or avoidance of financial detriment would not otherwise be available but for the public official’s holding of the official position or office.”<sup>9</sup> This means that a public official may not use their official position to reap a financial benefit for themselves, their family, or household members. Examples of prohibited use include:

- The mayor of a city signs a contract obligating the city to pay for janitorial services provided by a business owned by a relative of the mayor.
- A city billing clerk alters water use records so that the amount billed to the clerk’s parents will be less than the actual amount due.
- A volunteer firefighter borrows the fire department’s power washer to prepare the exterior of the volunteer’s personal residence for painting.
- Receiving an item for personal use at a discount not otherwise available when adding on to a bulk purchase made through the public official’s public office.<sup>10</sup>

There are exceptions to the prohibition of using one’s official position or office for financial gain. These include:

- Any part of a public official’s official compensation package;
- Honoraria when related to the public official’s office or position with a maximum value of \$50;<sup>11,12</sup>

<sup>9</sup> ORS 244.040(1).

<sup>10</sup> *Davidson v. Oregon Government Ethics Com’n*, 300 Or 415 (1985) (Vice president and actuary of the State Accident Insurance Fund, improperly used his public office when he purchased a car for his personal use as an “add-on” to SAIF’s purchase of fleet cars, saving himself almost \$1,300).

<sup>11</sup> ORS 244.042.

<sup>12</sup> “‘Honorarium’ means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.” ORS 244.020(8).

## **Who is a Relative?**

ORS 244.020(16) defines a “relative” as:

- A public official’s:
  - Spouse
  - Child, son or daughter-in-law
  - Parent, including stepparent
  - Sibling, including stepsibling
- Same members of the public official’s spouse’s family
- Anyone for whom the public official has a legal support obligation
- Anyone receiving benefits of the public official’s public employment

Anyone from whom the public official receives a benefit of employment

- Reimbursement of approved expenses;<sup>13</sup>
- Unsolicited awards for professional achievement;
- Gifts with an aggregate value of less than \$50 in a calendar year from a source with a legislative or administrative interest;
- Gifts from a source that could not reasonably be known to have a legislative or administrative interest;
- Any item excluded from the definition of gift under ORS 244.020; or
- Contributions to a legal expense trust fund.<sup>14</sup>

Promise of Future Employment: “A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgement of the public official would be influenced by the pledge or promise.”<sup>15</sup>

Use of Confidential Information Gained Through Public Office: A public official may not attempt to further his or her personal gain using confidential information gained through the course of, or by reason of holding, his or her public position.<sup>16</sup> This remains in effect even after the person ceases to be a public official.<sup>17</sup>

Representation Before a Governing Body for Fee: A person may not attempt to represent or represent a client for a fee before the governing body of the public body of which the person is a member.<sup>18</sup>

A prohibited use of office violation may also be a conflict of interest violation and vice versa.

### *Conflicts of Interest – ORS 244.120*

A public official is met with a conflict of interest when participating in official actions – such as a discussion, deliberation or decision – which would or could result in a financial benefit or avoidance of a financial detriment – such as receiving a “break” on the cost of an item – to the public official, a relative of the public official or a business with which either are associated. An actual conflict of interest exists when the action taken by a public official *would* affect the financial interest of the official, the official’s relative or a business with which the official or a

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<sup>13</sup> OAR 199-005-0035(4).

<sup>14</sup> ORS 244.040(2).

<sup>15</sup> ORS 244.040(3).

<sup>16</sup> ORS 244.040(4).

<sup>17</sup> ORS 244.040(5).

<sup>18</sup> ORS 244.040(6).

relative is associated.<sup>19, 20</sup> A potential conflict exists when the action taken by the public official *could* have a financial impact on that official, a relative of that official or a business with which the official or the relative is associated.<sup>21</sup>

If a potential conflict of interests exists, a public official must announce or disclose the nature of the conflict. A public official does not need to announce the exact amount of the financial benefit they stand to gain. Instead, the public official must explain the specific nature of the conflict. The way disclosure is made depends upon the position held by the public official:

- Public Employees: Public officials who are appointed, employed or volunteer must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met and request that the appointing authority or employer dispose of the matter.<sup>22</sup> The supervisor or appointing authority must respond by:
  - Assigning someone else to the task, or
  - Instruct the employee on how to proceed with the matter.<sup>23</sup>
- Elected Officials or Appointed Members of Boards and Commissions: An elected public official, other than a member of the Oregon Legislative Assembly, or an appointed public official serving on a board or commission must publicly announce the nature of the conflict of interest before participating in any official action on the issue giving rise to the conflict of interest.<sup>24</sup> The notice must be recorded in the official records of the public body.<sup>25</sup>

An announcement regarding a conflict of interest needs to be made at each meeting or on each occasion the issue causing the conflict of interest is discussed or debated. For example, an

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<sup>19</sup> ORS 244.020(1).

<sup>20</sup> A “business with which the person is associated” is defined under ORS 244.020(3) as:

- A private business or closely held corporation if a person or the person’s relative:
  - Is a director, officer, owner, employee, or agent; or
  - Owned \$1,000+ in stock, equity interest, stock options, or debt interest during the preceding calendar year;
- A publicly held corporation if a person or the person’s relative:
  - Is an officer or director; or
  - Owned \$100,000+ in stock, equity interest, stock options, or debt interest during the preceding calendar year; and
- Any business listed by the public official as required as a source of income on a statement of economic interest.

<sup>21</sup> ORS 244.020(13).

<sup>22</sup> ORS 244.120(1)(c).

<sup>23</sup> *Id.*

<sup>24</sup> ORS 244.120(2)(a) and ORS 244.120(2)(b).

<sup>25</sup> ORS 244.130.

elected member of the city council would have to publicly announce a conflict one time during a meeting of the city council. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again. An employee must provide a separate written notice on each occasion they participate in an official action on a matter that gives rise to a conflict of interest. For example, a city planner would have to provide separate written notice on each occasion they receive an application or otherwise participates in official action on a matter that gives rise to a conflict of interest.

A public official may be exempt from making a public announcement or giving a written notice describing the nature of a conflict of interest if any of the following circumstances apply:

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation, or other class that was a prerequisite for holding the public position.<sup>26</sup>
- If the official action would financially impact the public official, relative, or business of the public official to the same degree as other members of an identifiable group or “class.”<sup>27</sup> Only the Oregon Government Ethics Commission may designate a class. A public official should discuss a class exemption with legal counsel prior to acting upon it. A public official may subject themselves to personal financial liability if they are incorrect about a class designation.
- If the conflict of interest arises from a position or membership in a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.<sup>28</sup>

Following the announcement of a potential conflict of interest, the public official may participate in official action on the issue that gave rise to the conflict of interest.

If an actual conflict of interest exists, the public official must announce or disclose the conflict in the same manner discussed above. In addition to announcement, the public official must refrain from any further participation in, discussion, or voting on the issue that gave rise to the conflict of interest.<sup>29</sup> The LOC also recommends that the public official step down or away from their seat during the discussion to avoid any appearance of impropriety.

Though rare, if a public official is met with an actual conflict of interest and the public official’s vote is necessary to meet the minimum number of votes required for official action, the public official may vote. This is known as the “Rule of Necessity.” The public official must still announce the conflict and refrain from any discussion, but may participate in the vote required for official action by the governing body.<sup>30</sup> This provision does not apply in situations where there are insufficient votes because of a member’s absence. Rather, it applies where a quorum is

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<sup>26</sup> ORS 244.020(13)(a).

<sup>27</sup> ORS 244.020(13)(b).

<sup>28</sup> ORS 244.020(13)(c).

<sup>29</sup> ORS 244.120(2)(b)(A).

<sup>30</sup> ORS 244.120(2)(b)(B).

lacking solely because members must refrain from voting due to actual conflicts of interest. Members with actual conflicts may vote only when it is impossible for the governing body to take official action, even if all members are present. Public officials who wish to vote under the Rule of Necessity should discuss this issue with their legal counsel prior to taking any action.

### *Gifts – ORS 244.025*

A gift is something of economic value given to a public official, a relative, or member of the public official's household for which the recipient either makes no payment or makes payment at a discounted price. Unlike the prohibited use of office provisions, the gift provisions focus on benefits derived from outside sources. The opportunity for the gift is one that is not available to members of the general public under the same terms and conditions as those offered to the public official.<sup>31</sup> Gifts include discounts. If the public official receives an item and pays for it at a discounted price, the item may qualify as a gift.

Generally, a public official, relative or household member of the public official may not solicit or receive any gift with a value exceeding \$50 from any *single source* reasonably known to have a *legislative or administrative interest*.<sup>32</sup> The “source” of the gift is the person or entity making ultimate payment of the expense.<sup>33</sup> The recipient public official has the burden of knowing the source's identity. A “legislative or administrative interest” is an economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official.<sup>34</sup> The rationale for this limitation is that the giver may be giving the item to the public official to curry favor.

The law provides several exemptions from the definition of gift and from the \$50 gift limitation. These exemptions operate to allow public officials to accept these types of gifts, even if they exceed the \$50 gift limit:

- Gifts from relatives or household members;<sup>35</sup>
- Reasonable expenses paid by certain entities if:
  - The entity is a government entity, a Native American tribe, a membership organization to which the governing body pays dues, or a 501(c)(3) non-profit organization; and
  - The public official is participating in a convention, fact-finding mission/trip, or meeting where he or she is scheduled to speak, participate in a panel discussion or

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<sup>31</sup> ORS 244.020(7)(a).

<sup>32</sup> ORS 244.025 (emphasis added).

<sup>33</sup> OAR 199-005-0030(2).

<sup>34</sup> ORS 244.020(10).

<sup>35</sup> ORS 244.020(7)(b)(B).



represent his or her governmental unit;<sup>36</sup>

- Reasonable food, travel or lodging expenses for the public official, a relative, household member or staff while the public official is representing his or her governmental unit on:
  - An officially sanctioned fact-finding mission or trade-promotion; or
  - In officially designated negotiations, or economic development activities, approved in advanced;<sup>37</sup>
- Admission, food and beverages for the public official, a relative, household member, or staff while accompanying the public official at a reception, meal or meeting held by an organization where the public official represents his or her governmental body;<sup>38</sup>

#### **When is something considered officially sanctioned or designated?**

When there is written approval by a local public body or by a person authorized by the public body to provide that approval. As related to cities, written notice from a supervisor or the city council is sufficient to constitute an officially sanctioned or designated activity. The chief administrator of a city may officially sanction or designate events for themselves. OAR 199-005-0020(3)(b).

- Food, beverage and entertainment that is incidental to the main purpose of the event;<sup>39</sup>
- Food or beverage consumed by a public official acting in an official capacity in association with a financial transaction or business agreement with another government agency, another public body or a private entity, including review, approval or execution of documents or closing a borrowing or investment transaction;<sup>40</sup>
- An unsolicited token or award of appreciation in the form of a plaque, trophy, desk or wall item or similar with a resale value of under \$25;<sup>41</sup>
- Anything of economic value offered, solicited or received as part of the usual and customary practice of the recipient's private business or the recipient's employment or position as a volunteer with a private business, corporation, or other legal entity operated for economic value. The item must bear no relation to official business and must be historical or established long-standing traditions or practices resulting in economic

<sup>36</sup> ORS 244.020(7)(b)(F).

<sup>37</sup> ORS 244.020(7)(B)(H).

<sup>38</sup> ORS 244.020(7)(b)(E).

<sup>39</sup> ORS 244.020(7)(b)(L) & (M); OAR 199-005-0001(3).

<sup>40</sup> ORS 244.020(7)(b)(I)(i).

<sup>41</sup> ORS 244.020(7)(b)(C).



benefits for those that are not in public office;<sup>42</sup>

- Informational material related to the performance of official duties;<sup>43</sup>
- Waiver or discount of registration expenses or materials provided at a continuing education event that a public official or candidate may attend to satisfy a professional licensing requirement;<sup>44</sup>
- Legal defense trust fund contributions;<sup>45</sup> and
- Campaign contributions.<sup>46</sup>

When a public official is offered a gift, he or she should ask themselves the following questions when deciding whether to accept or decline:

- Is it a “gift” within the definition under ORS 244.020(7)?
- Do any exceptions apply?
- Is it subject to the gift limitation (i.e. is the giver reasonably known to have a distinct economic interest in my decision-making)?
- Is it within the \$50 limit?

#### *Nepotism – ORS 244.177 and 244.179*

Nepotism is the term used to describe the practice of favoring relatives without regard to merit. A public official may not appoint, employ or promote a relative or household member to, or discharge, fire or demote a household member from a position with the public body that the public official serves or over which the public official exercises control, unless the public official follows the rules regarding conflicts of interest.

After the public official applies the rules regarding conflicts of interest disclosure, the public official remains prohibited from participating in any personnel action taken by their public agency that would impact the employment of a relative or member of the public official’s household. The public official may not participate in any interview, discussion or debate

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<sup>42</sup> ORS 244.020(7)(b)(O); OAR 199-005-0027.

<sup>43</sup> ORS 244.020(7)(b)(D).

<sup>44</sup> ORS 244.020(7)(b)(J).

<sup>45</sup> ORS 244.020(7)(b)(G).

<sup>46</sup> ORS 244.020(7)(b)(A).

regarding the employment of a relative or household member or directly supervise a relative of household member.

Public officials may, however, provide a reference, recommendation or conduct a ministerial act that is otherwise part of their regular job function. Additionally, public officials may participate in personnel actions involving a relative or household member who is an unpaid volunteer and may supervise a relative or household member if the public body adopts policies permitting a public official acting in an official capacity to directly supervise a person who is a relative or household member.

#### *Outside Employment - ORS 244.040*

The Oregon ethics laws do not prohibit a public official from holding private employment while also serving in his or her public capacity. Public officials are, however, prohibited from using their public position to create the opportunity for additional personal income. The public official must maintain clear boundaries between their public and private matters. Boundaries may be maintained by refraining from:

- Using governmental time or resources for private employment;
- Taking official action that could have a financial impact on the official's private enterprise;
- Using confidential information obtained through the official's public position for private use;
- Representing a client for a fee before the public official's public body; and
- Using the official position to create the opportunity for private income.

#### *Subsequent Employment – ORS 244.040 and 244.045*

The Oregon ethics law provides restrictions on the subsequent employment of certain public officials. The majority of these restrictions relate to former state officials. As related to local government positions, the following restrictions apply:

- **Public Contracts:** A public official who authorized or had a significant role in a contract or was a member of a governing body while acting in an official capacity may not have a direct, beneficial financial interest in the public contract for two years after leaving the official position.<sup>47</sup> Authorization means that the public official performed a significant role in the selection of a contractor or the execution of the contract.<sup>48</sup> This can include

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<sup>47</sup> ORS 244.047.

<sup>48</sup> OAR 199-005-0035(6).

recommending approval of a contract, serving on a selection committee, or having the final authorizing authority or signing a contract.

- Investments: For two years after serving in public capacity, a former public official is restricted from:
  - Being a lobbyist or appearing before the agency, board or commission for which public funds were invested;
  - Influencing or trying to influence the agency, board or commission for which public funds were invested; and
  - Disclosing confidential information gained through employment.

#### *Annual Verified Statement of Economic Interest - ORS 244.050*

In cities, all elected officials, the city manager or principal administrator, municipal judges and planning commission members must file a Statement of Economic Interest (SEI) with the Oregon Government Ethics Commission by April 15 of each year. Candidates for any of the above positions must also file an SEI form.

In January of each year the commission prepares a list by jurisdiction of each public official required to file an SEI form. The list is sent to the contact person for each jurisdiction. The city recorder usually serves as the city's contact person, but every city is different. The contact person is required to review the list for accuracy and return the list with any corrections to the commission by February 15.<sup>49</sup> The commission notifies each public official required to file a SEI form directly by email. Public officials are required to complete the online SEI form by April 15 of every year. Late filing fees are \$10 for each of the first 14 days after April 15 and \$50 for each day after until the maximum penalty of \$5,000 is reached.<sup>50</sup>

The SEI requires public officials and candidates to disclose information about:

- Businesses in which the public official or a member of the public official's household was an officer or director;
- Businesses in which the public official or member of the public official's household did business;
- Sources of income for the public official and members of the public official's household that represent 10% or more of the annual household income;

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<sup>49</sup> OAR 199-020-0005(2).

<sup>50</sup> ORS 244.350(4)(c).

- Ownership interests held by the public official or members of the public official's household in real property except for the principal residence, located within the boundaries of the governmental agency in which the filer holds the position;
- Honoraria that exceeded \$15 in value given to the elected official or members of the public official's household;
- The name of each lobbyist associated with any businesses the public official or a member of the public official's household is associated;
- Names of any entities from which the public official received more than \$50 to participate in a convention, fact-finding mission, trip, negotiations, economic development activities or other meeting; and
- The following information if the information requested related to an entity that had been or could reasonably be expected to do business with the public official's governmental agency or had a legislative or administrative interest in the public official's governmental agency:
  - Name, address and description of each source of income that exceeded \$1,000 for the public official or a member of the public official's household;
  - Name of each person the public official or a member of the public official had owed \$1,000 or more excluding debts on retail contracts or debts with regulated financial institutions;
  - Business name, address and nature of beneficial interest greater than \$1,000, or investment held by the public official or a member of the public official's household in stocks or securities greater than \$1,000. Mutual funds, blind trusts, deposits in financial institutions, credit union share and the cash value of life insurance policies are excluded; and
  - The name of each person from whom the elected official received a fee of more than \$1,000 for services, unless disclosure is prohibited by a professional code of ethics.

### *Executive Sessions – ORS 192.660*

An executive session is a meeting of public officials that is held in private. Executive sessions are only permitted for the specific circumstances provided under ORS 192.660. As related to cities, executive sessions may only be held to:

- Consider the employment of a public officer, employee, staff member or individual agent.<sup>51</sup>
- Consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.
- Conduct deliberations with persons designated by the governing body to carry on labor negotiations.
- Conduct deliberations with persons designated by the governing body to negotiate real property transactions.
- Consider information or records that are exempt by law from public inspection.
- Consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.
- Consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.
- Review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.
- Carry on negotiations for the administration of public funds with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.
- Consider matters relating to school safety or a plan that responds to safety threats made toward a school.
- Discuss information about review or approval of programs relating to the security of any of the following:

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<sup>51</sup> The ability to hold an executive session to consider the employment of a public officer, employee, staff member or agent does not apply to: the filling of a vacancy in an elective office, position on any public committee, commission or advisory group; or the consideration of general employment policies. In addition, an executive session to consider the employment of the head administrator, or other public officers, employees or staff of a city is allowed only if the city has advertised the vacancy and adopted regular hiring procedures. In the case of an officer, the city must allow the public the opportunity to comment on the employment of the officer. In the case of the head administrator, the city must have adopted hiring standards, criteria and policy directives in open meeting and the public must have had the opportunity to comment on the standards, criteria and policy directives. ORS 192.660(7).

- A nuclear-powered thermal power plant or nuclear installation.
- Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.
- Generation, storage or conveyance of electricity; gas in liquified or gaseous form; hazardous substances as defined in ORS 453.005(7)(a), (b) and (d); petroleum products; sewage; or water.
- Telecommunication systems, including cellular, wireless or radio systems.
- Data transmissions by whatever means provided.
- Labor negotiations where negotiators for both sides request that negotiations be conducted in executive session.

The executive session statutes are each narrowly tailored to address limited circumstances. If the subject of a proposed meeting does not fit within one of these circumstances, the executive session is prohibited and the meeting must be held in open session. Complaints alleging a violation of the executive session laws by a public official may be made to the Oregon Government Ethics Commission for review, investigation and possible imposition of civil penalties up to \$1,000.<sup>52</sup> We advise that members consult with their attorney if they have questions regarding executive sessions.

## **Other Sources of Government Ethics**

In addition to the laws under the jurisdiction of the Oregon Government Ethics Commission, public officials are subject to additional constitutional, criminal and statutory provisions that prohibit or redress unethical behavior. Violation of these provisions may lead to financial and criminal penalties.

### *Constitutional Provisions*

The Due Process Clause of the 14<sup>th</sup> Amendment to the United States Constitution provides:

- The right to an unbiased and impartial decision maker; and
- The right to a fair process.

Article II of the Oregon Constitution prohibits:

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<sup>52</sup> ORS 192.685, 244.350(2).



- Holding concurrent incompatible offices;<sup>53</sup> and
- Accepting bribes while in office.<sup>54</sup>

### *Criminal Provisions*

The criminal law prohibitions below provide criminal penalties for acts which may also constitute ethical violations under Oregon law. Public officials who engage in these activities may not only be subject to penalties for ethics law violations, but may also be subject to criminal liability.

#### Bribe Receiving (Class B Felony) – ORS 162.025

A public servant<sup>55</sup> commits the crime of bribe receiving if the public servant:

- Solicits any pecuniary benefit with the intent that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or
- Accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

#### Tampering with Public Records (Class A Misdemeanor) – ORS 162.305

A person commits the crime of tampering with public records if, without lawful authority, the person knowingly destroys, mutilates, conceals, removes, makes a false entry in or falsely alters any public record, including records relating to the Oregon State Lottery.<sup>56</sup>

#### Official Misconduct in the Second Degree (Class C Misdemeanor) – ORS 162.405

A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.

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<sup>53</sup> Or Const, Art II, § 10.

<sup>54</sup> Or Const, Art II, § 7.

<sup>55</sup> “Public servant” means:

- (a) A public official as defined in ORS 244.020;
- (b) A person serving as an advisor, consultant or assistant at the request or direction of the state, any political subdivision thereof or of any governmental instrumentality within the state;
- (c) A person nominated, elected or appointed to become a public servant, although not yet occupying the position; and
- (d) Jurors[.]

ORS 162.005(2).

<sup>56</sup> Tampering with records relating to the Oregon State Lottery is a Class C felony. ORS 162.305(1)(b).

### Official Misconduct in the First Degree (Class A Misdemeanor) – ORS 162.415

A public servant commits the crime of official misconduct in the first degree if:

- With intent to obtain a benefit or to harm another:
  - The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or
  - The public servant knowingly performs an act constituting an unauthorized exercise in official duties; or
- The public servant, while acting as a supervisory employee, violates ORS 162.405 and is aware of and consciously disregards the fact that the violation creates a risk of:
  - Physical injury to a vulnerable person;
  - The commission of a sex crime as defined in ORS 163A.005 against a vulnerable person; or
  - The withholding from a vulnerable person of necessary and adequate food, physical care or medical attention.

### Misuse of Confidential Information (Class B Misdemeanor) – ORS 162.425

A public servant commits the crime of misuse of confidential information if in contemplation of official action by the public servant or by a governmental unit with which the public servant is associated, or in reliance on information to which the public servant has access in an official capacity and which has not been made public, the public servant acquires or aids another in acquiring a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action.

### Unlawful Legislative Lobbying (Class B Misdemeanor) – ORS 162.465

A person commits the crime of unlawful legislative lobbying if, having an interest in the passage or defeat of a measure being considered by either house of the Legislature of this state, as either an agent or principal, the person knowingly attempts to influence a member of the assembly in relation to the measure without first disclosing completely to the member the true interest of the person therein, or that of the principal of the person and the person's own agency therein.

### Coercion (Class C Felony) – ORS 163.275(h)

A person commits the crime of coercion when the person compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by means of instilling in the other person a fear that, if the other person refrains from the conduct compelled or induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

- Unlawfully use or abuse the person's position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

#### Theft by Extortion (Class B Felony) – ORS 164.075(h)

A person commits the crime of extortion when the person compels or induces another person to either deliver property or services to the person or to a third person, or refrain from reporting unlawful conduct to a law enforcement agency, by instilling in the other person a fear that, if the property or services are not so delivered or if the unlawful conduct is reported, the actor or a third person will in the future:

- Unlawfully use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

#### *Other Oregon Statutory Provisions*

While they do not specifically implicate criminal liability, other Oregon statutes provide for penalties for unethical acts. These non-criminal statutes may impose personal liability upon a public official meaning that he or she will be personally responsible for paying any civil penalties out of their own pocket.

#### Solicitation of Public Employees and Activities During Working Hours – ORS 260.432

While on the job during working hours, public employees are prohibited from: soliciting any money, influence, service or other thing of value or otherwise promoting or opposing (1) any political committee; (2) the nomination or election of a candidate; (3) the gathering of signatures on an initiative, referendum or recall petition; (4) the adoption of a measure; or (5) the recall of a public office holder. For the purposes of this law, an elected official is not considered a “public employee;” however under no circumstances should a public employee or elected official use public funds or resources to promote or oppose any of the above activities.

#### Misuse of Public Funds – ORS 294.001

It is unlawful for “any public official” to spend public funds for any purpose not authorized by law. Public officials are personally liable for any money improperly spent, if the expenditure

constitutes “malfeasance in office or willful or wanton neglect of duty” by the public official. This means that a public official can be personally responsible for the unauthorized expenditure of public funds if he or she knew or should have known that the expenditure was not within the approved budget, or otherwise illegal or unauthorized, but acted to expend the funds anyways.