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Model City Charter

A Publication of the
National Civic League

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SUMMARY OF MODEL CITY CHARTER, EIGHTH EDITION

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

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

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

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

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

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

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

A MODEL FOR THE 21ST CENTURY

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

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

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

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

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

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

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

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

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

A Model with Alternatives

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

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

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

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

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

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

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

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

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

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

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

Looking Ahead

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

MODEL BUILDING: A CONTINUING PROCESS

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

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

The Beginning

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

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

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

The First *Model City Charter*

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

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

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

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

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

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

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

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

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

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

Evolution of the Reform Agenda

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Progress and Continuity

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

> "The American people have worked long and hard to achieve good city government. When the first edition of this *Model City Charter* was presented by the National Municipal League in 1900, the chairman of the drafting committee observed, "It has been confidently claimed by many that the most conspicuous failure of democracy ... is demonstrated by the American city...."
>
> No one could make that statement today because it is no longer true. We now have many conspicuously successful local governments.... [A] new or modernized city charter...not only presents a concise and workable legal framework for the government but also sets before citizens a clear picture of their own responsibilities and powers and before the officials and employees a statement of their duties and mutual interrelations. Thus the adoption of a good city charter is both an affirmation by the citizens that they mean to have good government and is the legal framework within which such government can be won and the more easily maintained.
>
> The objective of the *Model City Charter* is to present in the form of a legal document a general plan of municipal government which is (a) democratic -- that is to say responsive to the electorate and the community -- and at the same time
>
> (b) capable of doing the work of the city effectively and translating the voters' intentions into efficient administrative action as promptly and economically as possible.

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

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

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

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

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

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

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

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

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

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

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MODEL CITY CHARTER, EIGHTH EDITION, SECOND PRINTING
PREAMBLE TO THE CHARTER

Introduction.

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

PREAMBLE

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

Commentary.

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

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

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

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

Action Taken

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

. . . do hereby adopt this charter."

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

Intent

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

"By this action, we:

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

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

> "each individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the city and to have an equal opportunity to participate in all aspects of life..."
>
> "discrimination is prohibited based on race, color, religion, national origin, gender, age, sexual orientation, gender expression, marital status, military status or physical or mental disability..."

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

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

Article I
POWERS OF THE CITY

Introduction.

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

Section 1.01. Powers of the City.

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

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

Commentary.

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

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

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

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

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

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

Section 1.02. Construction.

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

Commentary.

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

Section 1.03. Intergovernmental Relations.

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

Commentary.

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

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

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

> N.H.R.S. Title 3, Chapter 53-A:1 Agreements between government units.
>
> Purpose. – It is the purpose of this chapter to permit municipalities and counties to make the most efficient use of their powers by enabling them to cooperate with other municipalities and counties on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

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

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

Article II
CITY COUNCIL

Introduction.

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

Section 2.01. General Powers and Duties.

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

Commentary.

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

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

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

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

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

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

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

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

Section 2.02. Eligibility, Terms, and Composition.

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

Commentary.

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

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

Commentary.

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

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

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

Commentary.

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

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

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

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

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

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

Commentary.

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

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

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

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

Alternative I.

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

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

Commentary.

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

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

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

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

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

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

Commentary.

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

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

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

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

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

Alternative IV – Single-Member District System

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

Commentary.

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

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

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

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

Section 2.03. Mayor.

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

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

(b) Election -Alternative I – Mayor Elected by the Council. The city council shall elect from among its members officers of the city who shall have the titles of mayor and deputy mayor, each of whom shall serve at the pleasure of the council. The deputy mayor shall act as mayor during the absence or disability of the mayor.
Alternative II – Mayor Elected At Large. At each regular election the voters of the city shall elect a mayor at large for a term of [the same term as other council members] years. The council shall elect from among its members a deputy mayor who shall act as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become mayor for the remainder of the unexpired term.

Commentary.

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

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

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

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

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

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

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

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

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

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

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

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

Dedicated to the memory of

Betty Jane Narver

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

Thank you!

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***Guide For Charter Commissions,* 2011,** *Now Available*

The new ***Guide for Charter Commissions, 2011,*** is available. Written in clear, lively language, the guide helps local leaders and civic activists through the complex but essential process of convening a charter review or charter revision commission, explaining the role of commissioners and the elements of charter making. To order your copy, go to the publications section of NCL's website www.ncl.org or call NCL at 303-571-4343.

Section 2.04. Compensation; Expenses.

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

Commentary.

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

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

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

Section 2.05. Prohibitions.

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

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

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

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

Commentary.

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

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

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

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

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

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

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

appoint additional members to raise the membership to _____.

Commentary.

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

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

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

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

Section 2.07. Judge of Qualifications.

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

Commentary.

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

Section 2.08. City Clerk.

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

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

Commentary.

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

Section 2.09. Investigations.

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

Commentary.

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

Section 2.10. Independent Audit.

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

Commentary.

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

Section 2.11. Procedure.

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

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

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

Commentary.

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

Section 2.12. Action Requiring an Ordinance.

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

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

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

Commentary.

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

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

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

Section 2.13. Ordinances in General.

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

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

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

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

Commentary.

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

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

Section 2.14. Emergency Ordinances.

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

Commentary.

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

Section 2.15. Codes of Technical Regulations.

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

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

regulations as well as of the adopting ordinance, and

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

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

Commentary.

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

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

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

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

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

Commentary.

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

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

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

Article III
CITY MANAGER

Introduction.

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

Section 3.01. Appointment; Qualifications; Compensation.

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

Commentary.

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

> Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
>
> Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
>
> Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement municipal policies adopted by elected officials.
>
> Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with members [of ICMA, i.e., city managers]. Refrain from all political activities, which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body [including the mayor].

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

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

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

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

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

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

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

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

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

Section 3.02. Removal.

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

Commentary.

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

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

Section 3.03. Acting City Manager.

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

Commentary.

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

Section 3.04. Powers and Duties of the City Manager.

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

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

to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;

(2) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;

(3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;

(4) See that all laws, provisions of this charter and acts of the city council, subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;

(5) Prepare and submit the annual budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;

(6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;

(7) Make such other reports as the city council may require concerning operations;

(8) Keep the city council fully advised as to the financial condition and future needs of the city;

(9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;

(10) Provide staff support services for the mayor and council members;

(11) Assist the council to develop long term goals for the city and strategies to implement these goals;

(12) Encourage and provide staff support for regional and intergovernmental cooperation;

(13) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community; and

(14) Perform such other duties as are specified in this charter or may be required by the city council.

Commentary.

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

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

Article IV
DEPARTMENTS, OFFICES, AND AGENCIES

Introduction.

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

Section 4.01. General Provisions.

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

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

Commentary.

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

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

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

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

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

Section 4.02. Personnel System.

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

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

Commentary.

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

Section 4.03. Legal Officer.

(a) Appointment.

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

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

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

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

Commentary.

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

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

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

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

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

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

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

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

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

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

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

land use control ordinances must be consistent with the plan;

(3) Determine to what extent the comprehensive plan and zoning and other land Use ordinances must be consistent with regional plan(s); and

(4) Adopt development regulations, to be specified by ordinance, to implement the plan.

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

Commentary.

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

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

Article V
FINANCIAL MANAGEMENT

Introduction.

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

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

Section 5.01. Fiscal Year.

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

Commentary.

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

Section 5.02. Submission of Budget and Budget Message.

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

Commentary.

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

Section 5.03. Budget Message.

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

Commentary.

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

Section 5.04. Budget.

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

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

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

Commentary.

The budget is the translation of disparate and often conflicting community aspirations into a comprehensive financial document that reflects the governing body's goals. It is a complete financial plan for all funds and activities that includes both revenues and expenditures. Expenditures for current operations and capital outlays should be shown separately with the source of financing indicated.

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

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

Section 5.05. City Council Action on Budget.

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

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

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

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

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

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

Commentary.

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

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

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

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

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

Section 5.06. Appropriation and Revenue Ordinances.

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

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

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

(b) a tax levy ordinance authorizing the property tax levy or levies and setting the tax rate or rates; and

(c) any other ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

Commentary.

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

Section 5.07. Amendments after Adoption.

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

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

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

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

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

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

Commentary.

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

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

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

Section 5.08. Administration and Fiduciary Oversight of the Budget.

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

Commentary.

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

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

Section 5.09. Capital Program.

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

(b) Contents. The capital program shall include:

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

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

Commentary.

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

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

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

Section 5.10. City Council Action on Capital Program.

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

program and a notice stating:

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

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

Commentary.

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

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

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

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

Section 5.11 Independent Audit.

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

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

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

annual audit and any matters of concern with respect to internal controls; and

(3) Receive the report of the internal auditor and present that report to the council with any recommendations from the Committee.

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

Commentary.

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

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

Section 5.12. Public Records.

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

Commentary.

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

Article VI
ELECTIONS

Introduction.

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

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

Section 6.01. City Elections.

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

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

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

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

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

Commentary.

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

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

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

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

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

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

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

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

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

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

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

(1) There shall be a districting commission consisting of five members. No more than two commission members may belong to the same political party. The city council shall appoint four members. These four members shall, with the affirmative vote of at least three, choose the fifth member who shall be chairman.

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

(3) The city council shall appoint the commission no later than one year and five months before the first general election of the city council after each federal decennial census. The commission's term shall end upon adoption of a districting plan, as set forth in § 6.02(c).

(3) In the event of a vacancy on the commission by death, resignation or otherwise, the city council shall appoint a new member enrolled in the same political party from which his or her predecessor was selected to serve the balance of the term remaining.

(5) No member of the districting commission shall be removed from office by the city council except for cause and upon notice and hearing.

(6) The members of the commission shall serve without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges.

(7) The commission may hire or contract for necessary staff assistance and may require agencies of city government to provide technical assistance. The commission shall have a budget as provided by the city council.

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

(1) Following each decennial census, the commission shall consult the city council and shall prepare a plan for dividing the city into districts for the election of council members. In preparing the plan, the commission shall be guided by the criteria set forth in § 6.02(d). The report on the plan shall include a map and description of districts recommended.

(2) The commission shall hold one or more public hearings not less than one month before it submits the plan to the city council. The commission shall

make its plan available to the public for inspection and comment not less than one month before its public hearing.

(3) The commission shall submit its plan to the city council not less than one year before the first general election of the city council after each decennial census.

(4) The plan shall be deemed adopted by the city council unless disapproved within three weeks by the vote of the majority of all members of the city council. If the city council fails to adopt the plan, it shall return the plan to the commission with its objections and with the objections of individual members of the council.

(5) Upon rejection of its plan, the commission shall prepare a revised plan and shall submit such revised plan to the city council no later than nine months before the first general election of the city council after the decennial census. Such revised plan shall be deemed adopted by the city council unless disapproved within two weeks by the vote of two-thirds of all of the members of the city council and unless, by a vote of two-thirds of all of its members, the city council votes to file a petition in the _____ Court, _____ County, for a determination that the plan fails to meet the requirements of this charter. The city council shall file its petition no later than ten days after its disapproval of the plan. Upon a final determination upon appeal, if any, that the plan meets the requirements of this charter, the plan shall be deemed adopted by the city council and the commission shall deliver the plan to the city clerk. The plan delivered to the city clerk shall include a map and description of the districts.

(6) If in any year population figures are not available at least one year and five months before the first general election following the decennial census, the city council may, by local law, shorten the time periods provided for districting commission action in paragraphs (2), (3), (4), and (5) of this subsection.

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

(1) Districts shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent of the average population for all city council districts according to the figures available from the most recent census.

(2) Districts shall consist of contiguous territory; but land areas separated by waterways shall not be included in the same district unless said waterways are traversed by highway bridges, tunnels or regularly scheduled ferry services both termini of which are within the district, except that, population permitting, islands not connected to the mainland or to other islands by bridge, tunnel or regular ferry services shall be included in the same district as the nearest land area within the city and, where such subdivisions exist, within the same ward or equivalent subdivision as described in paragraph (5) below.

(3) In cities whose territory encompasses more than one county or portions of more than one county, the number of districts, which include territory in more than one county, shall be as small as possible.

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

(5) Consistent with the foregoing provisions, the aggregate length of all district boundaries shall be as short as possible.

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

Commentary.

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

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

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

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

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

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

> **(b) Council to Redistrict.** Following each decennial census, the city council shall, by ordinance, adjust the boundaries of the city council districts using the criteria set forth in § 6.02(e).
>
> **(c) Procedures.**
>
> (1) The city council shall hold one or more public hearings prior to bringing any proposed plan to a vote. Proposed plans must be available to the public for inspection and comment not less than one month before the first public hearing on said plan. The plan shall include a map and description of the districts recommended.
> (2) The city council shall approve a districting plan no later than 10 months (300 days) prior to the first regular city election following the decennial census.
>
> **(d) Failure to Enact Ordinance.** If the city council fails to enact a redistricting plan within the required time, the city attorney shall, the following business day, inform the _____ Court, _____ County, and ask that a special master be appointed to do the redistricting. The special master shall, within sixty days, provide the Court with a plan drawn in accordance with the criteria set forth in § 6.02(e). That plan shall have the force of law unless the court finds it does not comply with said criteria. The court shall cause an approved plan to go into effect no later than 210 days prior to the first regular city election after the decennial census. The city shall be liable for all reasonable costs incurred by the special master in preparing the plan for the court.

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

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

Section 6.03. Methods of Electing Council Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

Alternative IV – Single-Member District System

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

Commentary.

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

Section 6.04. Initiative, Citizen Referendum, and Recall.

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

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

> **(1) Initiative.** The registered voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.
>
> **(2) Citizen Referendum.** The registered voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.
>
> **(3) Recall.** The registered voters of the city shall have power to recall elected officials of the city, but no recall petition shall be filed against any official within six months after the official takes office, nor, in case of a member subjected to a recall election and not removed, until at least six months after the election.

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

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

(c) Petitions.

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

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

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

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

(d) Procedure after Filing.

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

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

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

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

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

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

(f) Action on Petitions.

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

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

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

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

(g) Results of Election.

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

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

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

Commentary.

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

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

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

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

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

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

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

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

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

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

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

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

Article VII
GENERAL PROVISIONS

Introduction.

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

Section 7.01. Conflicts of Interest; Board of Ethics.

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

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

Commentary.

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

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

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

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

Section 7.02. Prohibitions.

(a) Activities Prohibited.

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, gender, age, sexual orientation, disability, religion, country of origin, or political affiliation.

(2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this charter or the rules and regulations made there under, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

(3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.

(4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any city election from any city officer or city employee.

(5) No city officer or city employee shall knowingly or willfully make, solicit or receive any contribution to the campaign funds of any political party or committee to be used in a city election or to campaign funds to be used in support of or opposition to any candidate for election to city office or city ballot issue. Further, no city employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for city office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.

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

Commentary.

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

Section 7.03. Campaign Finance.

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

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

Commentary.

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

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

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

Article VIII
CHARTER AMENDMENT

Introduction.

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

Section 8.01. Proposal of Amendment.

Amendments to this charter may be framed and proposed:

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

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

Commentary.

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

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

Section 8.02. Election.

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

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

Section 8.03. Adoption of Amendment.

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

Article IX
TRANSITION AND SEVERABILITY

Introduction.

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

Section 9.01. Officers and Employees.

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

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

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

Section 9.02. Departments, Offices, and Agencies.

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

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

Section 9.03. Pending Matters.

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

Section 9.04. State and Municipal Laws.

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

(b) Specific Provisions. Without limitation of the general operation of subsection (a) or of the number 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 9.05. Schedule.

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

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

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

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

(1) For the purpose of electing the [mayor and] deputy mayor, appointing or considering the appointment of a city manager or acting city manager, and choosing, if it so desires, one of its members to act as temporary clerk pending appointment of a city clerk pursuant to § 2.08; and **Note: Omit bracketed words if § 2.03, Alternative II is used.**

(2) For the purpose of adopting ordinances and resolutions necessary to effect the transition of government under this charter and to maintain effective city government during that transition.

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

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

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

Section 9.06. Severability.

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

Commentary.

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

Appendix

OPTIONS FOR MAYOR-COUNCIL CITIES

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

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

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

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

<u>Analytical Questions about Mayor-Council Governments</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommended Structures in Mayor-Council Cities

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

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

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

Option 1: Mayor-Council-CAO government

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

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

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

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

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

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

Assessment of the two mayor-council options

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

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

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

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

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

General Provisions

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

Election of the mayor and chair of the council

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

Veto

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

CHANGE WITH CONTINUITY IN THE VALUES OF LOCAL GOVERNMENT REFORM

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

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

> **Representative democracy**. Democratically accountable representatives who make policy on behalf of the citizenry constitute the core component of representative democracy. At the local government level, the council should be relatively small so it can act in a deliberative way. Council members are connected to citizens through election and regular interaction during their terms in office. They act as a body of trustees who govern the city and select the executive. The early model charters stressed collective leadership and assumed that citizens would participate in the governmental process through the election of their representatives and the contact they had with council members between elections. The goal was to have a cohesive council that concentrated on the good of the city as a whole. To strengthen these qualities, the current edition recommends four-year, staggered terms—features that reinforce continuity and somewhat greater detachment from the electoral process since only half of the council stands for election in any election and all have longer terms. A small cohesive council would also be better able to provide regular and comprehensive supervision of the appointed executive.
>
> **Responsible professionalism.** The early editions of the *Model Charter* envisioned the city manager as a professional chosen on the basis of appropriate training and experience. Responsibility would come from balancing the need to be accountable to the city council with the need to serve the public and advance the best interests of the community as a whole. To strengthen these qualities, the current edition specifies in more detail than previous editions the qualifications the city manager should have. The city manager is expected to offer policy advice and recommendations to the council in its enactment of legislation and to achieve a high level of effectiveness and efficiency in city government. Furthermore, this edition provides specific recommendations that the city manager should focus on goals, performance, and outcomes in policy recommendations, budget formulation, and organizational leadership.

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

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

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

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

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

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

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

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

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

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

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

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

James H. Svara

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

Goal of the Research

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

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

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

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

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

Methodology and Findings

The research was conducted through a combination of telephone inquiries and searches of individual Colorado municipality websites, on which their city/town charters were posted. Only in a few cases was inclusive language found within their charters, typically in sections pertaining to the hiring of employees and/or the appointment of residents to boards and commissions.

These specific articles/policies are included later in this report. In some cases, inclusive language could be found in the city/town or municipal/town code and not in the charter, itself.

Some municipalities had **"standard language"** of protected populations, while others took it a step further to include **"sexual orientation, gender (variance/expression)."**A large number of municipalities had **no non-discriminatory language** at all in their municipal code or city charter.

The overall findings are summarized below:

Standard Language of Protected Populations: Municipalities with Standard Non-Discriminatory Language in Municipal Code and/or City Charter

The standard language for protected populations included the following: race, creed, color, sex, national origin, marital status, religion, ancestry or age. Disability, affiliations, military status and national origin were other categories listed.

Municipalities that had this "standard" type of language, included Aurora, Colorado Springs, Fort Collins and Pueblo.

Sexual Orientation, Gender (Variance/Expression): Municipalities with Standard Language and Other Protections

Other municipalities included language that covered the federally mandated protections AND the areas of sexual orientation and gender variance/expression.

Municipalities in this category included: Arvada, Boulder, Broomfield, Denver, Lakewood, Longmont and Thornton. Breckenridge was the one municipality in which we found a code that specifically prohibited discrimination in employment on the basis of sexual orientation. Grand Junction had a municipal code barring discrimination in a cable contract that listed sexual orientation.

No Non-Discrimatory Language: Municipalities with No Anti-Discrimination Language in Municipal Code and/or City Charter

Most of the charters and municipal codes we surveyed did not contain language protecting specific population groups. Our initial research was followed up with calls to municipalities as to why there was no such language in the municipal code and city charters. Many clerks did not know if there was any language; and, when informed that there was not, provided some insight as to why they thought it wasn't included. Among the reasons:

- City charters are old. Many were adopted decades ago. Much like the by-laws of non-profits, they were written; and then, they were rarely reviewed for updates.
- Some noted they are aware updates are needed, but they suspect change has not been initiated because of the fear of conflict that may occur if changes are proposed. If the change of language is within the charter, it must be brought to the public for a vote.
- As we found, some language may not be in the charter, but it can be found in the municipal code or employee handbooks. Some councils approach the change with ordinance or policy, so the inclusive language does not have to be brought up for a public vote.
- Some felt the vagueness or lack of language at all also served a purpose in that it provided the flexibility to practice inclusivity without bringing up the issue for public

debate. (The assistance in explaining reasons for unchanged language was very useful to this research; and, the list of cities in this category is found later.)

Standard Language of Protected Populations: Municipalities with Standard Non-Discriminatory Language in Municipal Code and/or City Charter

Aurora **City Charter Sec. 102-3. Selection System.**

Appointments and promotions to all career service positions shall be made according to merit and fitness, without regard to race, creed, color, religion, national origin, ancestry, or age, and without regard to sex or disability, except as provided by law.

Article III – Discrimination, Section 82-57 Definitions – Municipal Code

Discriminate, discrimination, discriminatory practice means any difference in treatment based on one or more of the following: race, creed, color, sex, national origin, marital status, religion, ancestry or age.

Colorado Springs **City Charter 3-60. Prohibitions.**

(a) Activities Prohibited.

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, sex, political or religious opinions or affiliations. (1979)

Fort Collins No prohibitions or inclusive language found in City Charter

Municipal Code, Chapter 13 Human Relations, Article II. Discrimination, Sec. 13-16. Definitions (utilized in employment, housing, public accommodations, etc.)

Discriminate and *discriminate against, discriminatory reason* or *reason of discrimination* shall mean under the given circumstances, a person makes a limitation or specification as to another because of the latter person's race, color, religion, national origin, sex or marital status or because of the race, color, religion, national origin, sex or marital status of the other person's friends or associates. The term *discriminatory reason* or *reason of discrimination* may be used to have the following sense or meaning and at the same time save repeated use of the term based upon or because of the race, color, religion, national origin, sex or marital status of the other person, or because of the race, color, religion, national origin, sex or marital status of such other person's friends or associates.

Pueblo **City Charter Section 8-9. Prohibitions.**

". . .prohibited from discrimination because of his race, his political or religious opinions or other affiliations or non-affiliations; . . ."

Sexual Orientation, Gender (Variance/Expression): Municipalities with Standard Language and Other Protections

Arvada **Municipal Code**

Sec. 30-13. - Voluntary code of fair campaign practices.

(a) Persons who are candidates for public office in the city or persons representing organizations who campaign in support or opposition of a ballot issue may voluntarily commit to conduct themselves in accordance with a code of fair campaign practices. The Arvada Voluntary Code of Fair Campaign Practices shall include the following statements:

"As I seek public office in Arvada, (as I seek to support/oppose _____ ballot issue) I honor and will abide by the following principles as a guide to my conduct.

(7) I will neither use nor permit the use of appeals to bigotry in any form, and specifically to prejudice based on race, sex, sexual orientation, religion, or national origin.

Sec. 70-143. - Employee conduct.

(a) The city expects all employees to be accountable for their work related conduct and for performing their job duties to the highest professional standards at all times. The city reserves the right, in all instances, to impose discipline, up to and including dismissal. Discipline is imposed solely at the discretion of the city, based on its evaluation and in consideration of relevant factors and circumstances.

(b) The disciplinary procedures set forth in the next section apply only to regular employees; probationary, temporary, and non-benefited employees will be given performance expectations and feedback as deemed appropriate by the city, but at all times will be deemed as at-will employees. However, standards of conduct set forth in this section apply to all city employees. Under no circumstances should this rule/regulation be construed to create "for cause" employment for probationary, temporary, or non-benefited employees.

(c) A supervisor may reprimand a regular employee for cause. An appointing authority or his/her designee may discipline a regular employee for cause. Such discipline may include reprimand, suspension without pay, disciplinary fine, step reduction in pay, demotion, or dismissal. Examples of performance or conduct that may warrant disciplinary action are presented in the list below. This list is not considered all-inclusive as the city cannot anticipate all behaviors of an employee. Other actions that have a negative impact on an employee's performance or the effective functioning of the city may result in

disciplinary action. Individual departments may also have specific rules, regulations, and/or policies that describe performance or conduct. The violation of these departmental rules, regulations, and/or policies may also warrant disciplinary action.

(6) Abusive treatment and/or disrespect of any person including, but not limited to, physical or verbal confrontations, insults, or derogatory comments based on race, religion, gender, sexual orientation, ethnicity, and/or disability.

Sec. 70-31. - Equal employment opportunity.

(a) Equal employment opportunity has been, and will continue to be, a fundamental principle at the city of Arvada, where employment is based upon personal capabilities and qualifications without discrimination because of race, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, citizenship status, marital status, pregnancy, age, medical condition, handicap, or disability or any other protected characteristic as established by law.

Sec. 24.0 - Rate discrimination.

All grantee rates and charges shall be published (in the form of a publicly-available rate card), made available to the public and nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law and, subject to the provisions of section 23.0, with similar rates and charges for all subscribers receiving similar cable services, without regard to race, color, ethnic, or national origin, religion, age, sex, sexual orientation, marital, military, or economic status, or physical or mental disability or geographic location in grantee's franchise area. Grantee shall provide equipment cable services to all residential subscribers at similar rates and to commercial subscribers as authorized by FCC rules. Grantee shall permit Subscribers to make any in-residence connections the subscriber chooses without additional charge nor penalizing the subscriber therefore. However, if any in-home connection requires service from grantee due to signal quality, signal leakage, or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the subscriber may be charged appropriate service charges by grantee.

Boulder

City Charter Title 12-1-3 Discrimination in Employment Practices Prohibited.

(a) It is a discriminatory or unfair employment practice, and no person:

(1) Shall fail or refuse to hire, shall discharge, shall promote or demote, or shall discriminate in matters of compensation, terms, conditions, or privileges of employment against any individual otherwise qualified or to limit, segregate, or classify employees or applicants for employment in

any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for a person to act as provided in this paragraph if there is no reasonable accommodation that such person can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;

(2) Shall refuse to list and properly classify for employment or refer an individual for employment in a known available job for which such individual is otherwise qualified because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates or to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for an employment agency to refuse to list and properly classify for employment or refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;

Note for Boulder: Language referring to "race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age, or mental or physical disability of such individual or such individual's friends or associates" is also prominent in Municipal Code, Chapter 12, housing and domestic partnerships sections.

Breckenridge

No prohibitions or inclusive language found in City Charter.

Town Code

Town Code 1-20-2: TOWN SHALL NOT DISCRIMINATE:
It shall be unlawful for the town to fail or refuse to hire or to discharge any person from town employment, or otherwise to discriminate against any individual with

respect to his or her compensation, terms, conditions or privileges of employment, because of such person's sexual orientation. (Ord. 41, Series 2004)

Broomfield **Municipal Code 2-14-440 Equal opportunity employment; policy & procedure**

(A) ***Equal opportunity.***

(1) The city is an equal opportunity employer and shall not fail or refuse to hire or to discharge any employee or otherwise discriminate against any employee with respect to his or her compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, gender, marital status, national origin, age, or disability, as provided in federal and state laws and regulations.

(2) Prohibited harassment. *Prohibited harassment* means unwelcome conduct, including physical, verbal, or written conduct, that constitutes race/color harassment, national origin harassment, gender harassment, sexual harassment, sexual orientation harassment, religious harassment, disability harassment, age harassment, or marital status harassment, or that constitutes harassment based on other status under the equal employment opportunity laws, including but not limited to protection against retaliation for activities such as opposing a practice made unlawful by an equal employment opportunity law or participation in an investigation or other proceeding under the equal employment opportunity laws, or association with a protected individual.

(3) Reporting. Any employee experiencing or witnessing a violation of the equal opportunity policy shall report such conduct to the employee's immediate supervisor, any other supervisor, or the human resources department if the supervisor is the subject of the complaint. All reports will be thoroughly investigated, and the investigation and any results shall, to the extent practicable, be kept confidential.

(4) Corrective or disciplinary action. Any employee or supervisor who violates this policy shall be subject to corrective or disciplinary action as provided in section 2-14-300, B.M.C. Any manager or supervisor who participates in or who fails to take appropriate action on any reported incidents, or retaliates against an employee who reports an incident or who files a complaint, shall be subject to corrective or disciplinary action.

Denver **City Charter**

Article II. Agency for Human Rights and Community Relations

Sec. 28-17. - Powers and duties.

The powers and duties of the agency are:

(1) At the request of the mayor, or of the council acting by resolution, to investigate incidents or patterns of discrimination by city agencies based on age, race, ethnicity, religion, disability, sexual orientation, gender or gender

variance, and to report such findings within a reasonable time to the mayor and council.

Article IV. – Prohibition of Discrimination in Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and Health and Welfare Services

Sec. 28-91. – Intent of Council

It is the intent of the council that every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the city and to have an equal opportunity to participate in all aspects of life, including but not limited to employment, housing and commercial space, public accommodations, education and health and welfare services.

(b) It is the intent of the council in enacting this article to eliminate within the city discrimination by reason of race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability. Discriminatory practices as defined in this article may be subject to investigation, conciliation, administrative hearings and orders or other enforcement procedures.

Sec. 28-93. - Discriminatory practices in employment.

Generally, it shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual who is otherwise qualified:

(1) By an employer: To fail or refuse to hire an applicant or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion; or to limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect status as an employee; but with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job and the disability has a significant impact on the job;

(2) By an employment agency: To fail or refuse to refer for employment or to classify or refer for employment any individual or otherwise to discriminate against any individual; but with regard to a disability, it is not a discriminatory or an unfair employment practice for an employment agency to refuse to list and properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make

with regard to the disability, the disability actually disqualifies the applicant from the job and the disability has a significant impact on the job;

(3) By a labor organization: To exclude or to expel from its membership or otherwise to discriminate against any individual or to limit, segregate or classify its membership or fail or refuse to refer any individual to employment or to classify any individual in any way which would deprive such individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment; or

(4) By an employer, employment agency, apprenticeship program, labor organization or joint labor/management council:

a. To discriminate against any individual in admission to or employment in any program established to provide apprenticeship or other training or retraining, including an on-the-job training program; but with regard to a disability, it is not a discriminatory or an unfair employment practice to deny or withhold the right to be admitted to or participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the applicant from the program and the disability has a significant impact on participation in the program; and

b. To communicate, print or publish or cause to be communicated, printed or published any notice or advertisement or use any publication form relating to employment by such employer or to membership in or any classification or referral for employment by such a labor organization or to any classification or referral for employment by such an employment agency indicating any preference, limitation, specification or distinction based on the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual who is otherwise qualified.

Article IX. Employment Part 1, Career Service

B. All appointments and promotions of employees in the Career Service shall be made solely on the basis of merit and ability. Dismissals, suspensions or disciplinary demotions of non-probationary employees in the Career Service shall be made only for cause, including the good of the service. The Career Service personnel system shall provide for equal employment opportunity without regard to race, color, creed, national origin, gender, sexual orientation, age, disability, or political affiliation or any other status protected by federal, state or local laws.

Other language in ordinances regarding Denver Pre-School Program, Public Art Program, Office of Independent Monitor, Acceso-Spanish Language Voter Advisory Board.

Grand Junction Charter

ARTICLE XIII OFFICERS AND EMPLOYEES

102. Opinions Not Affect Appointments.

No appointment to any position under the city government shall be made or withheld by reason of any religious or political opinions, or affiliations, or political service; and no appointment or election to, or removal from, any office or employment, and no transfer, promotion, reduction, reward or punishment shall be in any manner affected or made by reason of such opinions, affiliations, or service.

Sec. 4.3 Rate discrimination from a contract with Bresnan Communications – Municipal Code

All of grantee's rates and charges shall be published (in the form of a publicly available rate card) and be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law, with identical rates and charges for all subscribers receiving identical cable services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same cable services to all residential subscribers at identical rates and to multiple dwelling unit subscribers as authorized by FCC rules. Grantee shall permit subscribers to make any lawful in-residence connections the subscriber chooses without additional charge nor penalty to the subscriber there for. However, if any in-home connection requires service from grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the subscriber may be charged reasonable service charges by grantee.

Lakewood Municipal Code

4.14.010 Policy.

The City of Lakewood provides equal employment opportunities to all persons without regard to race, color, creed, national origin, religion, ancestry, sex, sexual orientation or gender expression, age, military service, veteran status, marital status, disability, or any other applicable status protected by state or federal law. The City does not tolerate unlawful discrimination or harassment of any kind.

The City promotes an atmosphere of respect and acceptance in all interactions both internally and externally. The City recognizes that its citizens and employees have varied backgrounds, experiences, and differences and works hard to create a culture of inclusion. The City strives to reflect its community while fostering the development and advancement of qualified individuals.

Any employee who believes s/he has been the subject of discrimination should immediately file a formal written complaint to report the alleged act to his/her supervisor or department director, or the Department of Employee Relations. Supervisors who receive these complaints shall immediately contact the Department of Employee Relations. The City of Lakewood, nor any of its employees, will not in any way retaliate against any individual who files such a complaint. Any individual found to have retaliated against an individual for filing such a complaint may be subject to whatever action the City deems appropriate, up to and including termination. The City will act promptly to investigate reported discrimination. Based on its investigation, the City may take whatever action it deems appropriate, up to and including termination, to achieve an immediate remedy when an allegation is determined to be valid. Refer to Administrative Regulation "Equal Employment Opportunity." (Ord. O-2009-43 § 1, 2009; Ord. O-2007-7 § 2007; Ord. O-2004-39 § 1, 2004; Ord. O-2001-49 § 1, 2001; Ord. O-99-34 § 1, 1999; Ord. O-99-18 § (part), 1999).

Longmont City Charter

3.04.075. - Equal employment opportunity.

The city is an equal opportunity employer. The city affirms its commitment to diversity and to complying with all applicable federal and state laws regarding nondiscrimination in employment. The city will not discriminate against any person in recruiting, examining, appointing, hiring, training, promoting, compensating, retaining, disciplining, or any other personnel action on the basis of race, color, creed, religion, sex, age, sexual orientation, national origin, ancestry, veteran status, or disability, except when any of these categories constitutes a bona fide occupational qualification (i.e., an actual qualification for performing a job).

Thornton No prohibitions or inclusive language in City Charter

Municipal Code

Article IX. Equal Employment Opportunity and Affirmative Action Programs

Sec. 54-271. - Policy.

(a) *Equal employment opportunity.* The City is an equal opportunity employer. The City reaffirms its commitment to comply with all appropriate federal and State laws and regulations regarding nondiscrimination in employment, including such laws and regulations prohibiting discrimination against any person in recruitment, examination, hiring, classification, training, promotion, retention, assignment of duties, granting of rights and benefits, or any other personnel action because of race, color, religion, sex, creed, age, national origin, disability, sexual orientation or veteran status, except for bona fide occupational reasons. The City further reaffirms its intent to provide reasonable accommodations for disabled employees or employee applicants as required by law in an effort to enhance accessibility to the work place. It shall be the duty of every official, supervisor and employee of the City to foster to the best of such person's ability

equal treatment in hiring, training, promotion, disciplinary action, separation, transfer, duties assignment, performance evaluation and all other relationships between and among employees, supervisors and officials.

Sec. 54-182. - Grounds for disciplinary actions.

(a) Definition. A disciplinary action is an action administered by the Appointing Authority as a disciplinary measure which may affect an employee's status, pay or tenure and may include but is not limited to suspension, demotion or discharge.

(b) *Grounds for disciplinary actions.* Grounds for disciplinary actions include acts involving unsatisfactory work performance by an employee, or employee conduct which would prejudice the public interest, including but not limited to:

(21)Depriving or intending to deprive any other employee or a member of the public with whom an employee comes in contact during the performance of such employee's duties of an employment opportunity or otherwise adversely affecting that person's status as an employee because of race, color, religion, sex, national origin, ancestry, alienage, handicap, marital status, political affiliation, sexual orientation, or age except where such disparate treatment is required by a bona fide occupational qualification permitted by law.

Sec. 54-8. - Employee development.

(a)Policy. It shall be the policy of the City to encourage and provide educational and training opportunities to all employees without regard to race, color, sex, national origin, age, religion, sexual orientation or handicap. To effectuate this policy, the City will provide intra-city training programs and outside educational opportunities with the intent to increase the proficiency, knowledge, skills and abilities of employees.

No Non-Discrimatory Language: Municipalities with No Anti-Discrimination Language in Municipal Code and/or City Charter

Many of the following cities offered assistance in explaining reasons why their code and charter language is not updated. Their reasons reflect the challenges many municipalities face in making any modifications and updates to these complex and historic documents.

Aspen, Brighton, Castle Rock, Centennial, Durango, Glenwood Springs, Greeley, Highlands Ranch, Lamar, Limon, Littleton, Loveland, Montrose, Parker, Steamboat Springs, Telluride and Trinidad.

Conclusion

This survey provides important examples of how many municipalities in Colorado are playing a leadership role in inclusivity and diversity by ensuring that critical language is in their charter or

in their municipal code. National Civic League provides this survey and the examples to encourage other municipalities to build inclusive communities.

THE 8TH EDITION MODEL CITY CHARTER REVISION COMMITTEE (2000-2002)

(Special Note: Committee members' affiliations and identifiers were current as of 2002.)

Chair: Betty Jane Narver
Chair: Bob O'Neill, Executive Director, International City/County Management Association

Senior Advisors:

Terrell Blodgett, professor emeritus at the Lyndon B. Johnson School of Public Affairs, University of Texas, Austin, served as one of the senior advisors for the revision project. Blodgett also chaired the revision committee that produced the *Seventh Edition of the Model*, and he was the chairman of the National Civic League in 1986 and 1987.

William Cassella, Jr., former executive director of the National Civic League (1969-1985) and coordinator for both the *Sixth and Seventh Editions of the Model*, also served as a senior advisor.

Robert Kipp, group vice president at Hallmark Cards, Inc.

James Svara, department head of political science and public administration at North Carolina State University.

Committee Members:

Eric Anderson, City Manager, City of Des Moines, Iowa;
Linda Barton, City Manager, City of Livermore, California;
Donald Borut (ex officio), Executive Director, National League of Cities;
Peter Buchsbaum, Greenbaum, Rowe, Smith et al., American Bar Association;
John Buechner, President Emeritus, University of Colorado;
Jacqueline Byers, Director of Research, National Association of Counties;
Jim Dailey, Mayor, City of Little Rock, Arkansas;
Mony Flores-Bauer, League of Women Voters;
R. Scott Fosler, former Chair, National Civic League Board;
George Frederickson, Professor, Department of Public Administration, University of Kansas;
Guy Goodson, Councilperson, City of Beaumont, Texas;
Charles Gossett, Director, Masters of Public Administration Program, Department of Political Science, Georgia Southern University;
Neil Giuliano, Mayor, City of Tempe, Arizona;
John Hall, Professor, Arizona State University;
Bill Hansell, immediate past Executive Director, International City/County Management Association;
James Keene, City Manager, City of Tucson, Arizona;
Ron Loveridge, Mayor, City of Riverside, California;
David Miller, Associate Dean, GSPIA, University of Pittsburgh Sylvester Murray, Professor, Urban Studies, Cleveland State University;
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Neil Reichenberg, Executive Director, International Personnel Management Association;
Dorothy Ridings (ex officio), President and Chief Executive Officer, Council on Foundations, and Chair of Board, National Civic League;
Tanis Salant, Director, Institute For Local Government, University of Arizona;
Phil Schenck, City Manager, Town of Avon, Connecticut;

David Schultz, Asst. Professor, Public Administration and Management Graduate School, Hamline University;
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Derek Okubo, Director, National Headquarters;
Bill Schechter, Director, Community Services, Washington D.C.; and,
Christopher T. Gates, President.

Endnotes:

[1] Two examples illustrate how state statutes can affect the choice of form of government. Indiana law prescribes that all cities use the mayor-council form; small towns have an option in the choice of form. In Wisconsin, state statue specifies that the "council-manager" optional charter have a council president rather than mayor and gives the manager unusual powers such as the authority to appoint council committees. Only ten of 190 cities in Wisconsin operate under the council-manager form. In Dale Krane, Platon Rigos, and Melvin Hill, Jr., Eds., Home Rule in America: A Fifty-State Handbook (Washington: CQ Press, 2001), see chapters on Indiana by William Blomquist and on Wisconsin by Stephen E. C. Hintz.

[2] According to the 2001 Form of Government (FOG) Survey of the International City Management Association, thirty-eight percent of cities over 2,500 in population use the mayor-council form. Of these, the mayor has separate authority for appointing department heads and preparing the budget in fifteen percent of the cities and controls one function and shares the other in another eight percent. Thus, twenty-three percent of the cities have more or less strong mayors. Using somewhat different criteria, Steve Leach and Donald F. Norris, "Elected Mayors in England: A Contribution to the Debate," Public Policy and Administration, 17 (Spring, 2002), pp. 30-31, report similar findings based on 1996 data—twenty-seven percent have budget and staff appointment authority alone or shared with a CAO as well as veto authority. Only 1.8% of mayor-council cities have "very strong mayors."

[3] In the 2001 FOG Survey, the mayor shares the exercise of authority for appointing department heads and preparing the budget with the city council in forty-three percent of the mayor-council cities. Finally, in thirty-three percent of the cities, the council or other officials are responsible and the mayor has no separate authority.

[4] In cities that have a CAO in 2001, the mayor and council appointed the CAO in forty-four percent of the cities and by the council in thirty-nine percent. The mayor alone appoints the CAO in only sixteen percent of the cities. Although appointment by the mayor is much more common in cities over 100,000 in population, even in these cities the mayor has sole appointment authority in less than half the cases.

[5] In 2001, fourteen percent of mayor-council cities elected some or all department heads. A finance committee for formulating the budget appears to be used by approximately three percent of cities.

[6] In 2001, fifty-six percent of the mayor-council cities over 2,500 in population have a CAO or equivalent position. City administrator is another common title.

[7] Some cities, particularly smaller ones, prefer to have even greater shared authority with the mayor and the council acting together on most decisions. Under this approach, the mayor and council jointly appoint the CAO. The council approves the removal of the CAO. The CAO formulates the budget for the mayor and council as a whole, and recommends major personnel appointments to the mayor and council for approval. Governments operating in this way share many characteristics with the council-manager form.

[8] A survey of CAOs indicates that with nomination by the mayor and approval by the council, the CAO is likely to simultaneously see himself or herself as the agent of the mayor and also as being accountable to both the mayor and the council. Seven in ten CAOs agree with these positions. If the mayor does not nominate the CAO, only thirty-seven percent of the CAOs see themselves as the mayor's agent. If the council does not approve the appointment, only twenty-eight percent of the CAOs see themselves as accountable to the council. See James H. Svara, "Do We Still Need Model Charters? The Meaning and Relevance of Reform in the Twenty-First Century," National Civic Review. 90 (Spring, 2001), pp. 19-33.

[9] It should be noted that giving the mayor the same powers as the city manager (plus the veto power as well) does not make the offices comparable as to the centralized executives. The strong mayor is not accountable to the council in the exercise of his or her powers. The mayor is not selected by the council and subject to removal by the council as the city manager is.

[10] This would not be the case in cities where the mayor and council jointly exercise authority. In these cities,

the mayor presides in the council.

[11] In mayor-council cities, the dominant value continued to be "executive democracy," i.e., a reliance on the elected chief executive to be the primary force in policy-making.