



**ROSEBURG CITY CHARTER REVIEW COMMITTEE AGENDA  
WEDNESDAY, JUNE 22, 2022**

*Handwritten initials*

**4:00 P.M. Regular Meeting  
Roseburg City Hall, Council Chambers  
900 SE Douglas Avenue, Roseburg, OR**

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**NOTE: IT IS UP TO EACH OF YOU AS COMMITTEE MEMBERS TO CALL 541-492-6866 AND LET STAFF KNOW BEFORE THE DAY OF THE MEETING IF YOU WILL NOT BE ATTENDING. THANK YOU.**

**I. CALL TO ORDER**

**II. ROLL CALL:**

Committee members:

Andrea Zielinski

Sheri Moothart

Bob Cotterell

Jeffrey Weller

Mike Baker

Sheila Cox

Amy Sowa, Assistant City Manager/Recorder

Jim Forrester, City Attorney

**III. DISCUSSION ITEMS**

A. Charter Review Process

B. Charter Format – Current City Charter or LOC Model Charter

**IV. NEXT MEETING DATE: Wednesday, July 27, 2022, Council Chambers**

**V. ADJOURNMENT**

# ROSEBURG CITY CHARTER REVIEW COMMITTEE AGENDA ITEM SUMMARY



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## CHARTER REVIEW PROCESS

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**Meeting Date:** June 22, 2022  
**Department:** Administration  
[www.cityofroseburg.org](http://www.cityofroseburg.org)

**Agenda Section:** Discussion Items  
**Staff Contact:** Amy Sowa, ACM/Recorder  
**Contact Telephone Number:** 541-492-6866

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### ISSUE STATEMENT AND SUMMARY

It is expected the Roseburg City Charter Review Committee will meet approximately 6 times over a 6-7 month period. The committee is being provided with the outline of the process.

### BACKGROUND

To help move review of the Charter along smoothly and efficiently, the following outline of the review process is being proposed:

- 1<sup>st</sup> Meeting
  - ✓ Discuss and decide whether to use the existing City Charter or the LOC Model Charter as a starting point for review.
  - ✓ Discuss topics brought forward in the past and more recently for consideration.
  - ✓ Time allowing, review ### sections and discuss proposed amendments
  - ✓ Assign ### sections for review before next meeting
- 2<sup>nd</sup> Meeting
  - ✓ Review previous sections assigned and discuss proposed amendments
  - ✓ Assign ### additional sections for review before next meeting
- 3<sup>rd</sup> Meeting
  - ✓ Review previous sections assigned and discuss proposed amendments
  - ✓ Assign ### additional sections for review before next meeting
- 4<sup>th</sup> Meeting
  - ✓ Review previous sections assigned and discuss proposed amendments
  - ✓ Assign ### additional sections for review before next meeting
- 5<sup>th</sup> Meeting
  - ✓ Review previous sections assigned and discuss proposed amendments
  - ✓ Assign committee to review full charter for additional changes before next meeting

- 6<sup>th</sup> Meeting
  - ✓ Review any final changes
  - ✓ Prepare draft to present to the Council

Staff will keep a record of 'follow-up' items and proposed amendments that will be updated following each meeting. Throughout the process, staff will provide updates to the City Council and/or ask for direction on amendments being considered.

To meet the March 16, 2023 deadline to submit a measure for the May 16, 2023 election, the committee will need to complete their review and present their proposed amendments to the Council by the end of January 2023. Council would then need to take action during a regular Council meeting no later than February 20, 2023.

# ROSEBURG CITY CHARTER REVIEW COMMITTEE AGENDA ITEM SUMMARY



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## CHARTER FORMAT

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**Meeting Date:** June 22, 2022  
**Department:** Administration  
[www.cityofroseburg.org](http://www.cityofroseburg.org)

**Agenda Section:** Discussion Items  
**Staff Contact:** Amy Sowa, ACM/Recorder  
**Contact Telephone Number:** 541-492-6866

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### ISSUE STATEMENT AND SUMMARY

The Roseburg City Charter Review Committee has the option to use the existing City Charter or the League of Oregon Cities (LOC) Model Charter as a starting point to review and consider amendments to propose to the Council for review.

### BACKGROUND

The current Roseburg City Charter was drafted and adopted by the electors of the City of Roseburg in 1982. Since that time, only one amendment has been made to reference the State of Oregon ethics laws under Section 98.6.8.

The first Oregon Model Charter was published in 1947 by the Bureau of Governmental Research and Service at the University of Oregon, with revisions published in 1951, 1959, 1967, 1988 and 2004. The LOC published the 6<sup>th</sup> edition of the model charter in 2004, and the most recent edition in 2018.

The purpose of the Model Charter is to serve as a guide for drafting or revising a city charter by providing a foundation for meeting different needs and policy choices about city government structure. Each city that undertakes charter revision must consider provisions and procedures that best serve its unique community. The current edition makes numerous clarifications, simplifications and style changes from previous versions. In addition, the LOC Model Charter provides footnotes regarding sources such as the state or federal constitution, other city practices, Council rules, public meetings law, etc.

Before work on reviewing the Charter for possible amendments, the Committee should determine whether to use the existing Charter or the LOC Model Charter. Staff recommends using the LOC Model Charter as it is more up-to-date and provides more clarity in the language used.

### ATTACHMENTS:

Attachment #1 – Roseburg City Charter

Attachment #2 – League of Oregon Cities Model Charter

## ROSEBURG CITY CHARTER

### INTRODUCTORY PROVISIONS

#### 98.1.1 - Title.

This revision shall be referred to as the Roseburg City Charter of 1982.

#### 98.1.2 - Corporate Name and Capacity.

The inhabitants of the City of Roseburg have been and are hereby constituted a municipal corporation by the name of the City of Roseburg and by that name have perpetual succession and may sue and be sued in all courts of justice.

#### 98.1.3 - Boundaries.

The City includes all territory encompassed by its boundaries as they exist when this revision of the Charter is adopted or as they are subsequently modified in accordance with state law. The repository of City records shall include at least two copies of this Charter each containing an accurate, up-to-date description of the boundaries. The copies and description shall be available for public inspection during regular office hours.

### 98.2 - POWERS

#### 98.2.1 - Vesting, Grant and Construction of Powers.

- (1) Except as this Charter provides to the contrary, all power of the City is vested in the Council, the representative legislative body of the City.
- (2) The City has all powers that the constitution or laws of the United States or of this state expressly or impliedly grant or allow cities, as fully as if this Charter specifically stated each of those powers.
- (3) In this Charter no mention of a particular power may be construed to be exclusive or to restrict the scope of the powers that the City would have if the particular power were not mentioned. The Charter shall be liberally construed to the end that the City has all powers necessary or convenient for the conduct of its affairs, including all powers that cities may assume under state laws or the provisions of the state constitution regarding municipal home rule.

### 98.3 - CITY COUNCIL AND MAYOR

#### 98.3.1 - Council: Membership.

Eight councilors constitute the Council of the City.

#### 98.3.2 - Council: Election.

The councilors shall be elected two from each ward classified into positions: one position designated as Position 1 and the other as Position 2 for each ward. Each councilor shall be elected for four years and shall hold office until a qualified successor is elected or appointed. Councilors in Position 1 shall be elected in 1982 and every fourth year thereafter and councilors in Position 2 shall be elected in 1984 and every fourth year thereafter, to take office as provided in this Charter.

**98.3.3 - Mayor: Election.**

A mayor shall be elected each even-numbered year for two years and hold office until a qualified successor is elected or appointed.

**98.3.4 - Council: Meetings.**

The Council shall prescribe times and places for its meetings. It shall meet regularly at least once each month. At a meeting it may adjourn to the next succeeding regular meeting or to some specified time prior thereto. The mayor or a majority of the councilors may call special meetings of the Council in a manner prescribed by ordinance.

**98.3.5 - Council: Quorum.**

A majority of the councilors constitute a quorum for the transaction of Council business, except that a lesser number may meet and compel the attendance of absent members. A quorum may also compel the attendance of absent members.

**98.3.6 - Council: Journal.**

The Council shall keep a journal of its proceedings. Except where exempted by state law, the Council's deliberations and proceedings shall be public and its records available for inspection during business hours.

**98.3.7 - Mayor: Functions.**

The mayor shall preside at Council meetings but may not vote on matters before the Council, except in case of a tie, when he or shall cast the deciding vote. The mayor shall, at least once each year, state to the Council the condition of the City and recommend such measures as he or she may deem expedient and proper.

**98.3.8. - Council: President.**

At the first meeting of the Council each year or as soon thereafter as practical, the Council shall choose one of its members to preside over the Council and perform the duties of mayor in the absence of the mayor from the City or in case of the mayor's inability to act as such. In functioning as mayor while the mayor is absent from the City for thirty days or physically unable to function as mayor for thirty days, the president of the Council has the legal powers, and is subject to the legal limitations of the mayor.

**98.3.10 - Council and Mayor: Immunity.**

No councilor or mayor may be held liable or questioned in any other place, for words uttered in any meeting of the Council, its subcommittees, commissions and boards.

**98.4 - CITY MANAGER**

**98.4.1 - City Manager: Appointment and Qualifications.**

The Council shall appoint a city manager for an indefinite term who shall hold office during the pleasure of the Council and may be removed at any time with or without cause by two-thirds vote of the entire Council. The city manager shall be chosen without regard to political considerations and solely on the basis of executive and administrative qualifications. The city manager need not be a resident of the city or state at the time of appointment, but promptly

thereafter shall become and remain a resident of the city while in office. No councilor nor mayor may be appointed as city manager until one year after the expiration of his or her service in the office of councilor or mayor.

**98.4.2 - City Manager: Vacancy.**

If the office of city manager becomes vacant or if the city manager is absent from the City or disabled, the Council may designate a city manager pro tem. The city manager pro tem shall perform the duties of city manager but may appoint or dismiss a department head only with the approval of the Council. The term of office of the city manager pro tem ends when the city manager returns to the City or takes office.

**98.4.3 - City Manager: Powers and Duties.**

The city manager shall be the chief executive officer and head of the administrative branch of the City government and shall be responsible to the Council for the proper performance of his or her duties. The city manager shall:

- (a) Supervise and control all administrative and business affairs of the City;
- (b) Enforce all ordinances;
- (c) See that the provisions of all franchises, contracts, leases, permits and privileges granted by the City are fully observed and enforced;
- (d) Except for municipal court judges, generally supervise and control all employees of the City including, but not limited to, employing, disciplining and discharging employees at pleasure, assigning duties and accounting for performances;
- (e) Organize, disband or organize departments;
- (f) Prepare the annual budget;
- (g) Make all purchases;
- (h) Execute all contracts;
- (i) At his or her discretion, appoint advisory boards to assist the city manager;
- (j) Prepare and furnish reports requested by the Council;
- (k) Devote full time to the office of city manager; and
- (j) Perform other duties as the Council directs.

**98.4.4 - City Manager: Council Meetings.**

The city manager and such other officers of the City as the Council designates may sit with the Council but may not vote on questions before the Council. The city manager may take part in all Council discussions.

**98.4.5 - City Manager: Interference in Administration.**

No councilor or mayor may influence or attempt to influence the city manager in personnel decisions or in the purchase of supplies, nor may any councilor or mayor exact any promise relative to any personnel decision by the city manager. Violation of this section forfeits the office of the violator. The mayor and any councilor may, however, in open Council meeting discuss with or suggest to the city manager anything pertaining to City affairs.

**98.4.6 - City Manager: Exclusive Powers.**

The powers herein granted to the city manager are exclusive.

**98.5 - MUNICIPAL COURT AND JUDGE**

**98.5.1 - Municipal Court: Creation and Jurisdiction.**

The Council may continue the court known as the municipal court and prescribe the time and place the court shall transact judicial business. The jurisdiction and proceedings of the municipal court are governed by the general laws of the state for justices of the peace and justice courts except as City ordinance prescribes to the contrary. The municipal court has original and jurisdiction over all offenses defined and made punishable, and over all actions to recover or enforce forfeitures or penalties defined or authorized, by the ordinances of the City.

**98.5.2 - Municipal Court: Powers.**

- (1) The municipal court has the jurisdiction and authority of a justice of the peace in and for Douglas County, in both civil and criminal matters, and when exercising that jurisdiction and authority is subject to the general laws of the state prescribing the duties of a justice of the peace and the mode of performing them.
- (2) The municipal judge may:
  - (a) Render judgements and may impose sanctions for the enforcement thereof on persons and property within its jurisdiction;
  - (b) Cause the arrest of any person accused of an offense against the City;
  - (c) Commit to jail pending trial any person accused of an offense against the City;
  - (d) Issue and compel obedience to subpoenas;
  - (e) Compel witnesses to appear and testify or jurors to serve in the trial of any cause before the municipal court;
  - (f) Punish witnesses and others for contempt of court;
  - (g) Issue any process necessary to carry into effect the judgment of the municipal court; and
  - (h) Perform other judicial or quasi-judicial functions as the Council prescribes by general ordinance.

**98.5.3 - Municipal Judge: Appointment.**

The Council may appoint a municipal judge and such pro tem judges as it deems necessary to serve for indefinite terms to hold office at the pleasure of the Council and may remove any of them any time, with or without cause, by two-thirds vote of the entire Council.

**98.5.4 - Municipal Judge: Vacancy.**

If the office of municipal judge becomes vacant or if the municipal judge is absent from the City or disabled, the City Council may appoint an acting municipal judge. The acting municipal judge shall perform the duties of municipal judge. The term of acting municipal judge shall end when the municipal judge returns to the City or takes office.

**98.6 - MUNICIPAL OFFICERS AND EMPLOYEES.**

**98.6.1 - Qualifications.**

No person may hold an elective City office unless a legal elector under the laws and constitution of the state, a resident of the City for one year immediately before being elected or appointed to the office, a resident of the City or ward he or she seeks to represent when nominated, elected or appointed and assuming the office and receiving the highest number of the votes cast for candidates for the office at the election at which the office is to be filed.

**98.6.2 - Certificate of Election.**

Immediately after the votes at a municipal election for filling an elective office have been canvassed, the City officer in charge of administering elections shall issue a certificate of election to each person declared by the canvassers to have been elected at the election. The certificate shall be prima facie evidence of the facts therein stated, but the Council shall be the judge of the election and qualifications of the mayor and councilors, and in case of a contest between two or more persons claiming an elective city office shall determine the contest.

**98.6.3 - Terms.**

The term of city elective offices shall commence on the first day in January following the officer's election.

**98.6.4 - Oath of Office.**

Each elective officer, the city manager and municipal judge before entering upon the duties of office shall take an oath or affirmation to support the constitution and laws of the United States and of the State of Oregon and to faithfully perform the duties of his or her office.

**98.6.5 - Offices: Vacancies.**

- (1) An office becomes vacant upon its incumbent's death, adjudication of incompetence, conviction of a felony, removal from the City, resignation or ceasing to be a qualified elector of the City. An elective City office becomes vacant whenever its incumbent is absent from the City for thirty consecutive days without the consent of the Council or whenever the elected City officer has been absent from meetings of the Council for sixty days without the Council's consent or whenever a councilor removes his or her residence from the ward from which he or she is elected or appointed.
- (2) The Council shall judge when an office becomes vacant.

**98.6.6 - Compensation.**

Councilors and the mayor shall receive no pay for their services but may be reimbursed for actual expenses they incur when performing their duties. The compensation of other officers shall be prescribed by the Council.

**98.6.7 - Liability for Unauthorized Expenditures.**

- (1) A city officer who participates in, advises, consents to, or allows City money to be diverted to any purpose other than the one for which it is raised is guilty of malfeasance and removable from office as provided by law.
- (2) If any City money is diverted from the purpose for which it is raised, if any money is unlawfully used or if any void evidence of debt is paid, any qualified elector or taxpayer of the City may bring a civil action in the name of the City against any officer voting for, approving of, or in

any way directing the diversion, unlawful use, or void payment, to recover that amount, with interest, for the benefit of the City.

**98.6.8 - State Ethics Laws.**

State of Oregon ethics laws shall govern the conduct of all city officers, employees, appointees and agents. (Res. 94-6, approved 4/11/94)

**98.7 - ELECTIONS.**

**98.7.1 - Elections.**

City elections, insofar as not governed by this Charter or City ordinance shall be conducted as prescribed by state law governing popular elections.

**98.7.2 - Wards.**

The Council shall divide the City into wards and redefine the boundaries thereof as necessary to accord persons in the City the equal protection of the laws.

**98.7.3 - Voter's Qualifications.**

No person may vote at a city election who is not a qualified voter of the state. No person may vote in a ward other than that in which he or she resides.

**98.7.4 - Notice.**

The officer in charge of city elections shall give ten days' public notice of each city election. The notice shall state the officers to be elected and the measures to be submitted at the election. The notice shall also state the places for the election.

**98.7.5 - Nomination.**

The Council shall provide by ordinance the mode for nominating elective officers.

**98.8 - ORDINANCES.**

**98.8.1 - Ordaining Clause.**

The ordaining clause of an ordinance shall read: "The City of Roseburg ordains as follows:".

**98.8.2 - Adoption.**

- (1) Except as subsection (2) and (3) of this section provide to the contrary, before being put upon its final passage, every ordinance of the Council shall be read fully and distinctly in open Council meeting on two different days.
- (2) Except as subsection (3) provides to the contrary, an ordinance may be enacted at a single meeting of the Council by three-fourths vote of the entire Council upon being read first in full and then by title.
- (3) Any of the readings may be by title only if no Council member present at the meeting requests to have the ordinance read in full or if a copy of the ordinance is provided for public inspection in the office of the mayor or city manager no later than one week before the first reading of the ordinance and if notice of their availability is posted at City Hall or published once in a newspaper of general circulation in the city.

- (4) An ordinance adopted after being read by title only has no legal effect if it differs substantially from its terms as they stand when so read, unless each section incorporating such a difference, as finally amended prior to being adopted by the Council, is fully and distinctly read in open Council meeting.

**98.8.3 - Attestation and Approval.**

Upon the adoption of an ordinance a true duplicate original thereof shall be submitted to the mayor. If the mayor approves the ordinance, the mayor shall date and sign the ordinance.

**98.8.4 - Veto.**

If not approving an ordinance so submitted, the mayor shall, within ten days after receiving it, return it to the city manager, with the reasons for not approving it. If not so returned, the ordinance shall have legal effect as if so approved.

**98.8.5 - Overriding of Veto.**

At the first meeting of the Council after the mayor returns an ordinance not so approved, the city manager shall present the ordinance to the Council with the objections of the mayor, the ordinance shall then be put upon adoption again, and if three-fourths of the entire Council vote in favor of the ordinance, it takes effect in accordance with Section 8.6 of this Charter.

**98.8.6 - Times of Effect.**

An ordinance takes effect thirty days after its adoption by the Council and approval by the mayor or passage over the mayor's veto, unless it is necessary to have immediate effect for the preservation of the peace, health and safety of the city, states in a separate section the reasons why it is so necessary, and is approved by the affirmative vote of three-fourths of the entire Council. In that event it takes effect immediately upon its adoption by the Council and approval by the mayor or passage over his or her veto or at whatever subsequent time the ordinance specifies.

**98.9 - PUBLIC IMPROVEMENTS**

**98.9.1 - Procedure.**

- (1) Except as provided in this section, the procedure for making, altering, vacating or abandoning a public improvement shall be governed by the applicable general laws of the state.
- (2) If a remonstrance against a street or alley improvement or repair is filed by the owners of two-thirds or more of the front footage of the property abutting the street or alley, the proposed improvement or repair may not be made and may not be initiated again for six months, except on the petition of the owners of one-half or more of the front footage of the real property abutting the proposed street or alley.

**98.9.2 - Assessments.**

The procedure for levying, collecting and enforcing the payment of special assessments for public improvements or other services to be charged against real property shall be governed by general ordinance.

**98.9.3 - Liens.**

The docket of city liens is a public writing, and the original or a certified copy of any matter authorized to be entered in the docket shall have the force and effect of a judgment. From the time of the Council's authorization of an improvement on account of which an assessment is entered in the docket, the sum so entered is a lien against the property. The lien has priority over all other items and encumbrances upon the property and may be enforced in the manner authorized by the Council.

**98.10 - MISCELLANEOUS PROVISIONS.**

**98.10.1 - Revenue Bonds.**

The Council may issue revenue bonds without voter approval only for commercial or industrial development or a municipal utility.

**98.10.2 - City Manager Tax Levy.**

The Council shall in each year levy a tax not to exceed two and one-half mills upon the assessed valuation of all taxable property in the City. The tax shall be in addition to and in excess of constitutional limitations on taxation by the City and shall be used to assist in defraying the cost of the office of city manager.

**98.10.3 - Indebtedness: Limits.**

- (1) Indebtedness of the City may not exceed the limits on city indebtedness under state law.
- (2) Approval by the voters of City indebtedness need not be in the form of a Charter amendment.

**98.10.4 - Terms, Proceeds and Retirement of Bonds.**

Bonds issued by the City as evidence of indebtedness shall include such terms, the manner in which the proceeds from sale of the bonds shall be kept, invested, disbursed and accounted for and the manner in which the indebtedness shall be retired as the Council prescribes. The prescription may not be changed for a particular bond after it is issued.

**98.10.5 - Presumption of Validity of City Action.**

In every proceeding in any court concerning the exercise or enforcement by the City or any of its officers or agencies of any power by this act given to the City or any of its officers or agencies, all acts by the City or any of its officers or agencies shall be presumed to be valid and no error or omission in any such act invalidates it, unless the person attacking it alleges and proves that he or she has been misled by the error or omission to his or her damage. The court shall disregard every error or omission which does not affect a substantial right of the person. Any action by this Charter committed to the discretion of the Council, when taken, shall be final and shall not be reviewed or called into question elsewhere.

**98.10.6 - Existing Ordinances Continued.**

All ordinances of the City consistent with this Charter and in force when it takes effect shall remain in effect until amended or repealed.

**98.10.7 - Repeal**

- (1) All Charter provisions of the City enacted prior to the time that this Charter is approved by the voters are hereby repealed except the sanitary sewer rates and charges established in

subsection 67 of Section 33 of the 1907 Charter as amended, and except bond issuing power that have not been exhausted.

- (2) No repeal of a feature of the 1907 Charter or any amendment or addition thereto that has repealed an earlier such feature revives the earlier.
- (3) No repeal of a feature of the 1907 Charter or an amendment or addition thereto affects the validity of an outstanding bond issued by the City or impairs the obligation of the City under the bond or the rights of the holders of the bond.

**98.10.8 - Effective Date of Revision.**

This revised Charter takes effect on January 1, 1983.



**MODEL**

LEAGUE OF OREGON CITIES

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# Model Charter for Oregon Cities

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**SEVENTH EDITION**

**JANUARY 2018**

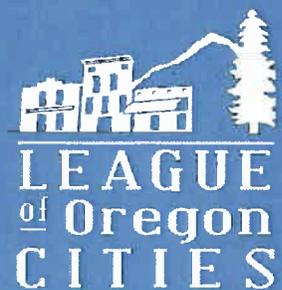


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## FOREWORD

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

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

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

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

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

## PREAMBLE

We, the voters of \_\_\_\_\_, Oregon exercise our power to the fullest extent possible under the Oregon Constitution and laws of the state, and enact this Home Rule Charter.<sup>2</sup>

## Section I NAMES AND BOUNDARIES

Section 1.1. Titles. This charter may be referred to as the 20 \_\_\_\_\_ Charter.<sup>3</sup>

Section 1.2. Names. The City of \_\_\_\_\_, Oregon, continues<sup>4</sup> as a municipal corporation with the name City of \_\_\_\_\_.<sup>5</sup>

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

## Section II POWERS

Section 2.1. Powers. The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant<sup>6</sup> or allow<sup>7</sup> the city, as fully as though this charter specifically enumerated each of those powers.<sup>8</sup>

Section 2.2. Construction. The charter will be liberally construed<sup>9</sup> so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.

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

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

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

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

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

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

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

<sup>8</sup> Appendix A discusses the legal basis for general grants of authority.

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

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

### Section III COUNCIL

Section 3.1. Council. The council consists of a mayor<sup>12</sup> and six councilors<sup>13</sup> nominated and elected from the city at large.<sup>14</sup>

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

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

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<sup>10</sup> Article IV, section 1, subsection (5) of the Oregon Constitution.

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

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

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

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

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

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

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

Section 3.3. Council President. At its first meeting each year, the council must elect a president from its membership. The president presides in the absence of the mayor and acts as mayor when the mayor is unable to perform duties.

Section 3.4. Rules. The council must by resolution adopt rules to govern its meetings.<sup>18, 19</sup>

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

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

Section 3.7. Vote Required. The express<sup>23</sup> approval of a majority of a quorum of the council is necessary for any council decision,<sup>24</sup> except when this charter requires approval by a majority of the council.<sup>25</sup>

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

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

<sup>19</sup> The League has published a set of Model Rules of Procedure for Council Meetings available at: <http://www.orcities.org/Portals/17/Library/Model%20Procedures%20for%20Council%20Meetings%203-31-17.pdf>.

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

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

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

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

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

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

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

**Section IV**  
**LEGISLATIVE AUTHORITY<sup>27</sup>**

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

Section 4.2. Ordinance Adoption.

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

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

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

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

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

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

**Section V**  
**ADMINISTRATIVE AUTHORITY<sup>31</sup>**

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

Section 5.2. Resolution Approval.

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

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

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

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

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

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

**Section V**  
**QUASI-JUDICIAL AUTHORITY<sup>35</sup>**

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

Section 6.2. Order Approval.

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

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

**Section VII**  
**ELECTIONS**

Section 7.1. Councilors. The term of a councilor in office when this charter is adopted is the term for which the councilor was elected.<sup>37</sup> At each general election after the adoption, three councilors

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

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

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

will be elected<sup>38</sup> for four-year terms.<sup>39</sup>

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

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

Section 7.4. Qualifications.

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

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

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

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

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

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

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

<sup>42</sup> Courts have consistently invalidated residency qualifications of more than 12 months.

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

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

assumes the office.<sup>45</sup>

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

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

a) Upon the incumbent's:

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

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

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

Section 7.9. Filling Vacancies. A mayor or councilor vacancy will be filled by appointment by a majority of the remaining council members.<sup>49</sup> The appointee's term of office runs from appointment until expiration of the term of office of the last person elected to that office. If a

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

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

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

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

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

disability prevents a council member from attending council meetings or a member is absent from the city, a majority of the council may appoint a councilor pro tem.<sup>50</sup>

## Section VIII APPOINTIVE OFFICERS

### Section 8.1. City Manager.

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

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

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

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

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

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

- 4) Appoint, supervise and remove city employees;<sup>55</sup>
  - 5) Organize city departments and administrative structure;
  - 6) Prepare and administer the annual city budget;
  - 7) Administer city utilities and property;
  - 8) Encourage and support regional and intergovernmental cooperation;
  - 9) Promote cooperation among the council, staff and citizens in developing city policies and building a sense of community;<sup>56</sup>
  - 10) Perform other duties as directed by the council; and
  - 11) Delegate duties, but remain responsible for actions of all subordinates.
- f) The manager has no authority over the council or over the judicial functions of the municipal judge.<sup>57</sup>
  - g) The manager and other employees designated by the council may sit at council meetings but have no vote. The manager may take part in all council discussions.
  - h) When the manager is temporarily disabled from acting as manager or when the office of the manager becomes vacant, the council must appoint a manager pro tem. The manager pro tem has the authority and duties of manager, except that a pro tem manager may appoint or remove employees only with council approval.
  - i) No council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in the appointment or removal of any city employee, or in administrative decisions regarding city property or contracts.<sup>58</sup> Violation of this prohibition is grounds for removal from office by a majority of the council after a public hearing. In council meetings, councilors may discuss or suggest anything with the manager relating to city business.<sup>59</sup>

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

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

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

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

<sup>59</sup> This does not affect the ability of a council member to obtain information from the manager or other city employees. Council members also have at least as much right to public records as other members of the public under the Oregon Public Records Law, ORS 192.311 to 192.431.

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

Section 8.3. Municipal Court and Judge.

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

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<sup>60</sup> If a city attorney office is established by the charter, it is independent of the wishes of the council or manager. This language places office employees under the supervision of the attorney rather than the manager. The charter could establish the office and provide for appointment by the manager. If not created by charter, the city attorney office may be created by ordinance. The ordinance may provide for city attorney appointment by the council or manager. Attorney duties may be assigned by ordinance and contract.

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

- f) The council may appoint and may remove municipal judges pro tem.
- g) The council may transfer some or all of the functions of the municipal court to an appropriate state court.<sup>62</sup>

### **Section IX PERSONNEL**

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

Section 9.2. Merit Systems. The council<sup>64</sup> by resolution will determine the rules governing recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees based on merit and fitness.<sup>65</sup>

### **Section X PUBLIC IMPROVEMENTS**

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

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

### **Section XI MISCELLANEOUS PROVISIONS**

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

Section 11.2. Ordinance Continuation. All ordinances consistent with this charter in force when it

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<sup>62</sup> ORS 51.035.

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

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

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

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

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

takes effect remain in effect until amended or repealed.

Section 11.3. Repeal. All charter provisions adopted before this charter takes effect are repealed.<sup>68</sup>

Section 11.4. Severability. The terms of this charter are severable. If any provision is held invalid by a court, the invalidity does not affect any other part of the charter.

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

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

## APPENDIX A

### GENERAL GRANTS OF POWER

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

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

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

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

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

#### Constitutional Grants in General Terms

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

#### Specific Power Derived from General Grants

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

- 1) To regulate amusement devices.<sup>c</sup>

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<sup>a</sup> Or. Const. art. XI, sec. 2.

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

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

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

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<sup>d</sup> *Paget v. City of Pendleton*, 219 Or 253 346 P2d 1111 (1959).

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

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

<sup>g</sup> *Davidson Baking Co. v. Jenkins*, 216 Or 51, 337 P2d 352 (1959).

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

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

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

<sup>k</sup> Cf. *Leathers v. City of Burns*, 251 Or 206, 444 P2d 1010 (1968).

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

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

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

<sup>o</sup> *Paget v. City of Pendleton*, 219 Or 253, 346 P2d 1111 (1959).

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

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

## APPENDIX B

### PROVISIONS NOT INCLUDED IN THE MODEL CHARTER

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

#### Annexation Procedure

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

#### Elections

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

#### Subjects Covered by State Law

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

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

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

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

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

Debt limitations.....	ORS 223.295
Ethics.....	ORS Chapter 244
Public meetings and records.....	ORS 192.311 to 192.710
Land use planning and regulation.....	ORS Chapters 92, 197, 197A and 227
Street vacation.....	ORS 271.080 to 271.230
Condemnation.....	ORS Chapter 35; 223.005 to 223.105, 226.310 to 226.380 and 227.300.
Collective bargaining.....	ORS 243.650 to 243.782
Public Employee's Retirement System.....	ORS Chapter 238 and 238A

### **Other Subjects**

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

### **Municipal Judge as Ex Officio Justice of the Peace**

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

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

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<sup>89</sup> 123 Or 1, 260 P 1004 (1927).