



# CITY OF ALBION CITY COUNCIL MEETING AGENDA

Meetings: First and Third Mondays – 7:00 p.m.

City Council Chambers ♦ Second Floor ♦ 112 West Cass Street ♦ Albion, MI 49224

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COUNCIL-MANAGER  
GOVERNMENT

Council members and  
other officials normally in  
attendance.

**Garrett Brown**  
Mayor

**Maurice Barnes, Jr.**  
Council Member  
1<sup>st</sup> Precinct

**Lenn Reid**  
Council Member  
2<sup>nd</sup> Precinct

**Sonya Brown**  
Mayor Pro Tem  
Council Member  
3<sup>rd</sup> Precinct

**Marcola Lawler**  
Council Member  
4<sup>th</sup> Precinct

**Jeanette Spicer**  
Council Member  
5<sup>th</sup> Precinct

**Andrew French**  
Council Member  
6<sup>th</sup> Precinct

**Sheryl L. Mitchell**  
City Manager

**The Harkness Law Firm**  
Atty Cullen Harkness

**Jill Domingo**  
City Clerk

NOTICE FOR PERSONS WITH  
HEARING IMPAIRMENTS  
WHO REQUIRE THE USE OF A  
PORTABLE LISTENING DEVICE

Please contact the City  
Clerk's office at  
517.629.5535 and a listening  
device will be provided  
upon notification. If you  
require a signer, please  
notify City Hall at least five  
(5) days prior to the posted  
meeting time.

## AGENDA

### STUDY SESSION

**Albion City Hall  
Council Chambers  
112 West Cass Street  
Albion, MI 49224**

**Monday, September 25, 2017  
7:00 p.m.**

### PLEASE TURN OFF CELL PHONES DURING MEETING

- I. CALL TO ORDER
- II. ROLL CALL
- III. PUBLIC COMMENTS (Persons addressing the City Council shall limit their comments to **agenda items only** and to no more than three(3) minutes. Proper decorum is required.)
- IV. ITEMS FOR INDIVIDUAL DISCUSSION
  - A. Charter Revision-Attorney Peter Letzmann
  - B. Charter Amendment
- V. PUBLIC COMMENTS (Persons addressing the City Council shall limit their comments to no more than three (3) minutes. Proper decorum is required.)
- VI. ADJOURN

September 3, 2015

Charter Revision Commission  
C/O Garrett Brown, Councilmember  
City of Albion  
112 West Cass Street  
Albion, MI 49224

Regarding: **Proposal: CONSULTANT AND LEGAL ADVISOR TO THE  
ALBION CITY CHARTER COMMISSION**

Dear Councilmember Brown:

It is my understanding that you are seeking an individual to be consultant and legal advisor to the Albion city charter commission.

INTRODUCTION

During these tough economic times and generally with the current political environment citizens are expecting more efficient and responsive government on all levels. This is a proposal of how I can assist the City of Albion and its Charter Commission to achieve these expectations in the process of reviewing and analyzing the current charter, providing suggestions to improve and make the charter current, and when a consensus of the Commission, regarding the charter, has been achieved, in preparing a draft. Then submit the document to the State of Michigan and ultimately to the voters of the City of Albion. The process will include research (both by me, others [including law students] and the Commissioners), presentations (by me and by other experts) and group discussions. To maximize the familiarization and learning process, the participants will be asked to prepare by doing some readings, doing the exercises / homework, and to participate, meaningfully and cooperatively, in the discussions. I have just completed the Charter for the City of Pontiac that was submitted to the voter on May 5, 2015.

RECOMMENDED PROCESS REGARDING THE “SCOPE OF WORK”

I would use my best efforts and be diligent to provide the following:

Develop a time line for various approvals and submission to the voters at the appropriate election. Then request a schedule of meetings to meet such a time line.

Review the laws (including the Constitutions, State and Federal statutes, court opinions, Charter,

ordinances, policies and procedures / rules) that govern and limit the jurisdiction and authority of the City of Albion; the City Council; the Mayor; boards and committees, and employees. Including the laws that govern the decision-making processes in the City.

Make an analysis of the strengths, weaknesses, opportunities and threats of the City of Albion and its officials, utilizing past such evaluations and demographic data and other information that is available. Setting the goals for the City of Albion and assigning an order of priority to be included in the Charter.

Review and analyze the current Albion City Charter by article, chapter and section. This would be a section by section review, determining those sections that are satisfactory, those sections that need to be changed due to changes in the law and how to incorporate those changes, and those provisions that may be modified for policy reasons and such proposed modifications.

Second review of the completed proposed charter.

Once the first analysis is completed. Inconsistencies and additional needed changes will be found and will need to be addressed.

Request a review by staff and other interested parties.

Request a public hearing(s) be set for citizen input, and I will be available for such public hearings.

Participate in a review by the Commission based on input received.

Final proof reading for spelling, grammar, citations and consistencies will need to be made.

Assist in the submission City and City Commissioners and other government officials for final review and approval.

Assist in the submission of Charter to the State for approval.

Review the Charter with the Attorney General's office.

Assist in the transmission of completed and approved proposed City Charter to the City Clerk for placement on the ballot at next appropriate city election.

And, provide other assistance, advise and counsel on these and other items as desired and directed by the Charter Commission.

#### WHAT MORE I WILL PROVIDE

I come to the City with no preconceived notions or association. I will work objectively and diligently on your matter, utilizing my experience and educations, and if necessary to consult with others. I will keep you informed regarding the progress of your matter. I will send you copies of summaries

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and /or reports in a timely manner

Because success will be determined by the industry, sincerity and discipline of the Commissioners and the vagaries of the law, I cannot guarantee the outcome of your matter.

WHAT THE CHARTER COMMISSION AND COMMISSIONERS WILL PROVIDE

That the Charter Commission will always work as a body not as individuals, by majority rule, in compliance with all laws and ordinances, and in a truthful, ethical manner, and in the best interest of the City of Albion.

In order to work effectively, the Charter Commission must be objective, industrious and honest in all discussions, even if, and especially when you think the information may be hurtful. In order to produce a good proposed charter to present to the voters, all the information available must be considered. If we are missing part of the picture, the Commission cannot effectively produce such a new City Charter.

It is expect that everyone in this process will be treated with respect and courtesy.

COST

The estimated fee for the services to be rendered is a follows:	
Attendance at Commission meetings	\$225.00 per hour
Research, analysis data and preparation of reports	\$125.00 per hour
Travel and lodging	No cost
Duplicating	Actual cost
Estimated total	\$30,000.00

Respectfully submitted,

*Peter A. Letzmann*

PETER A. LETZMANN

/pal

CC: Dr Sheryl L Mitchell, City Manager

# Memorandum

To: Albion City Council  
From: Cullen C. Harkness, Albion City Attorney  
cc: Sheryl Mitchell, Albion City Manager; Joe Domingo, Mayor  
Date: August 11, 2015  
Re: Charter Review and/or Amendment

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Albion City Council-

At the request of Councilman Brown, I am providing the following memorandum outlining Charter Review and/or Amendment pursuant to the Home Rule City Act:

The Home Rule City Act allows Michigan municipalities to made either large scale changes or nominal changes to their charters. Charter revision is a re-examination of the entire charter. It allows for re-creation without any obligation to maintain the form or structure of the former charter. In contrast, charter amendment allows for the general plan and scope of the charter to remain intact with corrections being made.

## **CHARTER AMENDMENT:**

- An amendment may be proposed by a 3/5 vote of the city council or by an initiatory petition of the voters.
  - If proposed by the city council, the proposed amendment is submitted to the voters at the next municipal, general state, or special election held in the city not less than 60 days after it is proposed.
  - If proposed by the voters the election must be not less than 9- days after the filing of the petition.
- The governor is presented with the proposed city charter amendment for approval.
  - If he approves it, he will sign and return it.
  - If he does not approve it, it is returned to the legislative body with the stated objections. If 2/3 of the city council agree to pass it, it is submitted to the electors.

- If the amendment was initiated by petition, it is submitted to the voters regardless of objections.
- Proposed Amendments are to be published in full with existing charter provisions to be altered by them.
  - The describing purpose should be not more than 100 words on the ballot.
  - The statement of purpose must be impartial so as not to prejudice the amendment.
  - The attorney general must examine it for compliance before printing.
  - The amendment must be posted in full at each polling location.
  - The form of the proposed amendment is determined by a resolution of the city council unless provided for in an initiatory petition.
- Proposed amendments are confined to one subject.
- A majority vote of the voters on each question is required to pass the amendment.
- A failed proposed amendment may not be represented for two years.

**CHARTER REVISION:**

- A revision of the City Charter may be initiated by a 3/5 vote of the city council or by a petition signed by at least 5% of the registered voters, unless the charter provides otherwise.
  - The voters must approve the decision to revise the charter.
- The voters must select a nine member charter commission to revise the charter.
  - None of the charter commission members may be an elected or appointed city officer or employee.
- The city council determines the meeting place of the charter commission, the compensation of its members, and provides funds for expenses and ballots.
- The City charter commission convenes on the second Tuesday after the election. The city clerk presides at the first meeting and administers oaths of office and acts as the clerk of the commission.
- The city charter commission assesses the qualifications of their members, choose their officers, determine rules of proceeding, keep a journal, and fill vacancies.
  - City charter commission members are compensated for attending a maximum of 90 meetings.
  - A majority of the commission members constitutes a quorum.
  - All commission sessions are public.
- The city charter commission should engage a legal consultant to advise the commission.

- Once completed, a proposed revised charter is submitted to the governor for approval. The Attorney General must review it. The governor will sign it if approved. Alternatively, if not approved it will be returned with corrections.
- An approved city charter must be published in full in a newspaper in general circulation within the community.
- The adoption of the revised charter is decided by a simple majority vote of the voters.
  - Separate ballot questions may also be decided as separate ballot propositions.
  - The ballot questions must be approved by the attorney general.
- If the proposed city charter is rejected, the commission reconvenes and determines whether to take no further action or to proceed with further revision.
  - If no action is taken, the commission ceases to exist.
  - Proposed revised city charters may submitted to the voters three times within a three year period.
  - A new proposal to revise a charter may be voted upon at any time after termination of the charter commission.

Respectfully Submitted,

*/s/*

Cullen C. Harkness

Albion City Attorney

# City Charter Revision: Step by Step

## Governing body Resolution or initiatory petition

Revision of a city charter may be initiated by a resolution adopted by 3/5 of the legislative body or by petition signed by at least five percent of the qualified and registered electors in the city.

## Election

The question of whether or not to amend the charter shall be submitted to the electors at the next general or municipal election, or at a special election. If the electors declare in favor of a revision by a majority vote, a charter commission shall be elected within 60 days consisting of nine electors of such city; or, charter commissioners can be selected at the same election at which the proposition to revise the charter is submitted. This is the favored practice since it is more expensive to have two elections (accomplished in the legislative body's resolution or stated in the initiatory petition).

## Duties of the legislative body

The legislative body shall fix, in advance of the election, the following criteria for the charter commission:

- (1) Place of meeting
- (2) Compensation for commissioners
- (3) Amount of money to be allowed for expenses of the charter commission
- (4) Provide the ballots for the election of commissioners

## Meetings of the charter revision commission

The charter commission convenes on the second Tuesday after the election. Meetings are open to the public. The clerk presides at the first meeting, administers oaths of office, and acts as the clerk of the commission. Charter commissions choose their officers, determine their rules of proceeding, keep a journal, fill their vacancies, and receive compensation for attending a maximum of 90 meetings (one per day).

## Charter approval

A proposed revised charter is submitted to the governor for approval. The attorney general reviews it and advises the governor regarding its legality. The governor signs the charter if approved; if not, the charter is returned to the charter commission with a commentary of recommended corrections.

## Charter publication

An approved proposed city charter is to be published in full as prescribed by the charter commission. (The attorney general's position is that publication is to be in a newspaper of general circulation in the community.)

## The vote

A revised charter is adopted by a simple majority vote of the electorate. If a proposed revised charter is rejected, the charter commission reconvenes and decides to either 1) take no further action or 2) to proceed with a further revision. If no action is taken, the charter commission ceases to exist. Proposed revised charters may be submitted to electors by a charter commission three times within a three-year period.

Charter Revision Commissions

1. Take oath of office, administered by clerk
2. May fill vacancies
3. Five members for quorum
4. Convene second Tuesday after election
- 5.a Frame charter in 90 days  
(Directory only-OAG 1914, p.70)
- 5.b No compensation after 90 days  
(Doesn't require completion in 90 Days—*Harvey v Port Huron*,  
225 Mich. 368)
6. Chooses its officers
7. Fixes rules of procedure
8. Keeps journal
9. Record roll call vote on demand of two  
members unless adopt rule for such action  
on demand of one
10. Publish charter as commission prescribes
- 11.a Publish election notice
- 11.b By implication from MCL 117.26 the city's  
legislative body does this
12. File charter with clerk 60 days before election
13. Submit charter to governor for approval
14. All sessions shall be public

## Model Resolution Declaring for Charter Revision

RESOLVED, That the city council of the City of \_\_\_\_\_ hereby declares for a revision of the charter of the City, as provided and permitted by Public Act No. 279 of the Public Acts of 1909, State of Michigan, as amended.

FURTHER RESOLVED, That the question of having a general charter revision shall be submitted to the electors of the City of adoption or rejection at a special election, to be held concurrently with the general (or municipal) election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

FURTHER RESOLVED, That at such election there shall be elected from the City at large a charter commission consisting of nine electors of the City who are not officers or employees of the City, the selection of such charter commission to be void if the proposition to revise is not adopted. The candidates for such charter commission shall be nominated and elected in the manner prescribed by the City Charter for the nomination and election of members of the City Council. (In case the City Charter provides for ward elections, the following may be added—except that the nomination and election of said charter commissioners shall be from the city at large.)

FURTHER RESOLVED, That the City Clerk shall give notice of the last day for registration and the election in the manner provided by law and said question on the revision of the charter of the city shall be submitted to the electors in the following form:

"Shall there be a general revision of the charter of the City of \_\_\_\_\_?"

For the charter revision      yes

For the charter revision      no

FURTHER RESOLVED, That the last day and hour for receiving nomination petitions for candidates for the office of charter commissioner shall be 4:00 on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. (This date should be 49 days prior to election day by analogy unless the charter provides a different date as the last day for filing nominating petitions for council in which case the charter provision shall be used.) And the city clerk shall make available appropriate non-partisan petition forms and give due notice to the last day and hour for filing petitions by two publications of notice thereof in a paper of general circulation within the city, the first publication to be not less than ten days prior to the last day of filing.

## Petition-Initiated Charter Revision

A city charter revision may also be initiated by petition. Much of the procedure will be the same as for a revision initiated by the governing body.

### Initiation

Section 25 of the Home Rule City Act provides for two types of petitions, the so-called five percent petition and the 20 percent petition. An initiative petition must be signed by at least five percent of the registered electors of the city. When such petition is signed by 20 percent or more, the Act provides for certain differences with respect to election proceedings as explained under the Election Date heading.

### Petition Form

The Act establishes certain standards for the completion of the petition, as follows:

1. The petition must be addressed to and filed with the city clerk.
2. Each signer must inscribe after his signature the date of signing, his street and address, and if known, his ward and precinct.
3. No signatures obtained more than one year before the filing of the petition shall be counted.
4. The petition must state what organization, if any, or, if none, what person or persons are primarily interested in and responsible for circulating the petition.
5. Each sheet of the petition must be verified by affidavit of the person who obtained the signatures, and the Act specifies what shall appear in the verification.

The city clerk has the function of insuring compliance with the statutory standards. Within 45 days from the date of receipt, he/she must check the petition and determine whether the petitioners are registered electors. If the petition conforms to the requirements, the city clerk shall certify the same, report that fact to the governing body, and establish the date of election. If the petition is found not to meet the statutory requirements, the city clerk will report this to the governing body and take no further action.

### Election Date

Establishment of the election date by the city clerk will vary depending on whether the petition has been initiated by a five percent petition, or 20 percent petition.

In case of a five percent petition, the proposal can be submitted only at the next regular city or general state election occurring not less than 90 days after the filing of the petition (MCL 117.21). If a charter amendment initiated by a five percent petition is submitted at a special or primary election, it has been held that the vote is void (*Attorney General v. Bay City*, 334 Mich. 514 (1952)).

Section 25 is written in terms of submitting of a charter amendment. It applies to charter revision only because of the reference to section 25 found in section 18 of the Home Rule City Act. Nevertheless, it seems likely that the rule in *Attorney General v Bay City* would also apply to the submission of charter revision proposals.

A 20 percent petition may request that the proposed amendment be submitted at a special election. If such petition contains a request for a special election, the city clerk, within 90 days after the filing of the petition, must call a special election no less than 120 days nor more than 130 days after the filing of the petition, but if a primary or regular election occurs, or a special election has been or is called for a time within 150 days of the filing, the proposal shall be submitted at such election.

## City Charter Revision

Updated January 2016

Revising a city charter may be accomplished under the Home Rule City Act (PA 279 of 1909). Originally, charter revision was important because it enabled existing cities, operating under legislative charters, to come under the new Home Rule Act and acquire the benefits of home rule status. The form of government written into the new charter was usually of secondary importance in early days. Now, however, nearly all cities are under the Home Rule Act. Nevertheless, charter revision is still important. Many charter changes can be accomplished by charter amendment (see MML publication, *One Pager Plus* Fact Sheets on charter amendment), but those which effect a change in the form of government cannot be implemented by amendment. Such changes require charter revision.

The procedure for revising a city charter is covered in sections 15, 18, 19, 20, 22, 23, 24, and 25 of the Home Rule City Act (MCL 117.15 et seq.). (See Appendix C.)

Charter revision procedure can be started either by resolution of the city legislative body (adopted by a three-fifths vote of the total membership of the body) or by the petition method as outlined in section 25 of the Home Rule City Act. Once the procedure is begun, however, subsequent steps are identical.

The election on the question of having a charter revision may be held separately or simultaneously with the election of charter commissioners. It is more expensive to have two elections, so simultaneous election of charter commissioners is the generally favored practice. The Act provides that the election of the charter commissioners is (quite necessarily) void if the proposition to revise is not adopted.

Where the election on the proposition to revise is held separately, then the statute directs that the election of the charter commission is to follow within 60 days. Please note that the Home Rule City Act has not been amended to reflect the changes to Michigan's Election Law. Under the Election Consolidation Act, cities are only permitted to hold an election in May, August, and November; and additionally March, in presidential election years.

The qualifications for office for charter commissioner are stated in the Act to be those of an elector having three years' residence in the city. However, the three-year residence requirement was held unconstitutional in *Mogk v City of Detroit*, 335 F. Supp 698, by a three judge Federal District Court, (1971).

The Act further declares that all city officers and employees are ineligible to sit on the charter commission. (No such proscription applies to a charter commission elected to prepare the first charter of a new city under section 15 of the Act and township or village officers and employees in the territory which will comprise the new city may be elected to the charter commission.)

The Attorney General has opined that acceptance of office as a councilmember while serving as a charter commissioner vacates the office of commissioner (OAG 1913, p. 191). The Attorney General has also held that a sitting councilmember may run for election to the charter commission and if elected to charter commissioner must resign the council seat before taking office (OAG 7085, 2001).

The method of electing charter commissioners is unusual. First, in all cases the election must be non-partisan. Secondly, if the city charter already provides for non-partisan elections, as most Michigan charters do, then the method prescribed in the charter for electing city officers is used to elect the charter commissioners. This results in some variation in the election methods followed.

Michigan Municipal League  
Ann Arbor, MI 48105

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## Home Rule City Act Comparison of Procedure

New City Charter Commissions (Section 15)	Charter Revision Commissions (Section 20)
1. Take oath of office	1. Same - administered by clerk
2. May fill vacancies	2. Same
3. Five members for quorum	3. Majority of members (5)
4. To convene within 10 days after election	4. To convene second Tuesday after election
5. To frame charter in 90 days (Directory only-OAG 1914, p.70)	5. No compensation after 90 days (Doesn't require completion in 90 days - <i>Harvey v Port Huron</i> , 225 Mich. 368)
6. Chooses its officers	6. Same
7. Fixes rules of procedure	7. Same
8. Keeps journal	8. Same
9. Record roll call vote on demand of any one member	9. Record roll call vote on demand of two members unless adopt rule for such action on demand of one
10. Publish charter in newspaper at least one time not less than 2 nor more than 4 weeks before election	10. Published as commission prescribes (section 23)
11. Publish election notice	11. By implication from section 26 the city legislative body does this
12. File charter with clerk 60 days before election (section 5)	12. Same (section 5)
13. Submit charter to governor for approval (section 22)	13. Same (section 22)
14. Meetings must be public and held in compliance with Open Meetings Act (section 15)	14. All sessions shall be public (section 20)

Only in those cases where no provision is made in the charter for non-partisan election of city officers, do the election provisions contained in section 18 of the Home Rule City Act come into operation.

Where no provision is found covering a particular aspect of the election of charter commissioners, either in the Act or in the city charter, then the election is to be conducted as nearly as may be possible as is provided in the General Election Law for the election of city officers.

Note: These materials and forms are designed to provide general assistance in a rather technical area. In all cases, your municipal attorney should be consulted before action is taken.

Basically, section 15 of the Home Rule City Act is intended to deal with charter commissions for new incorporations and sections 18, 19, and 20 are intended to deal primarily with charter revision for existing cities. In a few instances, there are some minor inconsistencies between the procedural rules for the new city charter commission (section 15) and for the charter revision commission of an existing city (section 20).

### **Charter Revision Commissions**

As indicated previously, there are minor differences between a charter commission elected for an original charter of a new city and a charter revision commission. The sections of the statute applicable to the charter revision commission will be briefly reviewed.

### **Duties of the Local Legislative Body**

Section 19 of the Home Rule City Act (MCL 117.19) provides that in the case of charter revision commissions, the city council shall fix, in advance of the election of a charter commission, the following:

- (1) Place of meeting
- (2) Compensation for commissioners
- (3) Amount of money to be allowed for expenses of the charter commission
- (4) Provide the ballots for the election of commissioners

No special procedure for carrying out these directions is prescribed. Normally, one or more resolutions would be adopted attending to these matters (See Appendix A).

### **Duties of the Charter Commission**

Section 20 of the Home Rule City Act (MCL 117.20) prescribes rules for operation of the charter revision commission in a manner somewhat similar to that prescribed in section 15 for the charter commissions for new cities (See page 2).

### **Advisory Votes and Special Options**

These procedural sections contain certain provisions which go to the substance of charter drafting. While the principal rules for drafting are delineated in the early sections of the Home Rule City Act which contain both mandatory and optional provisions as well as limitations on powers which can be granted cities, certain options contained in the procedural sections cannot be overlooked.

Among these are the provisions for certain advisory votes on questions which can be submitted to the electors in conjunction with the vote on the initial proposal to revise the charter (section 18). Advisory votes may be taken on the form of government (e.g. council-manager to strong mayor form or vice versa) or on retaining special powers, limitations or provisions

in an existing legislative charter. The statute uses the term "advisory" in referring to this vote and no authoritative interpretation has been had as to the effect of such a vote. Also, in section 18, the power is specifically given to the charter commission to continue any power, limitation, or provision in an existing legislative charter whether or not there has been any "advisory" vote on the subject. Independent propositions or alternate provisions may be submitted along with the charter (MCL 117.23).

### **Election Procedures**

Suggested forms for the resolution to be adopted by the city legislative body calling for an election on the question of charter revision and a petition form for initiating this procedure as an alternate to city legislative body action, are set forth as Appendices "A" and "B". The exact form of such resolutions is not specified by the statute. Some resolutions spell out the provisions for notice of last day for filing of nominating petitions, notice of last day for registration, notice of election and other provisions in some detail, while other such resolutions simply direct the city clerk to make necessary arrangements to publish necessary notices in accordance with the local charter and laws of the State of Michigan.

There are, of course, a number of requirements in the Michigan Election Law which must be given consideration in arranging for an election of this type. Prior to making such arrangements, the latest amendments to the general election law should be consulted, as changes are frequently made in such laws. The following provisions are especially pertinent:

(1) A time must be set for the deadline for filing nominating petitions. Normally this will be established by the city charter and the charter will govern if it contains a provision on this point. If the charter does not contain any provision establishing a deadline for filing nominating petitions, then apparently the deadline is set by analogy to sections 322, 551, and 646(a) of the general election law (MCL 168.322, 168.551, and 168.646(a)). If the charter calls for publishing notice of the last day for filing nominating petitions, then such notice must be given. If the charter does not so prescribe, then the giving of special notice is optional. But good practice suggests that it be given on the same basis as other notices (twice in a newspaper of general circulation; first publication not less than ten days prior to last day for filing).

(2) Scheduling. A special election for the submission of a proposition may be held on a regular election date. (MCL 168.635).

(3) Notice of last day for registration must be published as provided in the general election law (MCL 168.498).

(4) Notice of election. To be published in a newspaper of general circulation. A caption or brief description of the proposal or proposals along with the location where an elector can obtain the full text of the proposal or proposals shall be included in the notice. The publication shall be made not less than 7 days before the election. The statute shows form of notice (MCL 168.653(a)).

(5) If a ballot question of a political subdivision of this state including, but not limited to, a county, city, village, township, school district, special use district, or other district is to be voted on at a regular election date or special election, the ballot wording of the ballot question shall be certified to the proper local or county clerk not later than 4 p.m. on the twelfth Tuesday before the election. If the wording is certified to a clerk other than the county clerk, the clerk shall certify the ballot wording to the county clerk at least 82 days before the election. Petitions to place a county or local ballot question on the ballot at the election shall be filed with the clerk at least 14 days before the date the ballot wording must be certified to the local clerk. (MCL 168.646(a)).

Where no provision is made in the city charter for nonpartisan election procedures, then section 18 of the Home Rule City Act governs in nominating charter commissioners. Nonpartisan petitions are to be signed by a number of qualified electors equal to not less than two percent and not more than four percent of the total vote cast for the chief executive officer (mayor). The form for the nominating petition in both cases is prescribed by the General Election Law (MCL 168.544(a), 168.544(c)).

### **Submission to Governor**

Once the charter has been prepared by the charter revision commission, it must be submitted to the governor for approval. The section provides that if the governor approves the charter, he shall sign it and if not, he shall return it to the commission with his objections. This section also covers approval by the governor of proposed charter amendments and states that an amendment may be submitted to the electors if two-thirds of the members elect of the legislative body agree to pass it. No such provision is made for submitting a revised charter to the electors over the governor's objection, but in practice it appears that

the charter commission is authorized to take such action.

Section 5 of the Home Rule City Act (MCL 117.5) prohibits submitting to the electors a revised charter more often than once in every two years. This section also requires that the charter be on file with the city clerk at least 60 days before the election. However, section 18 of the Home Rule City Act (MCL 117.18) as last amended in 1966, provides a somewhat more definite procedure for resubmission of a charter which supersedes section 5 to the extent that resubmission of a revised charter is involved. (Prior to 1966, it was required that a petition signed by registered electors be submitted to the city council in order to obtain a resubmission of a rejected charter.) However, with the 1966 amendment such resubmission is wholly within the control of the charter revision commission. The commission may immediately reconvene and either determine to terminate its existence or to provide for a further revision and amendments to the revised charter previously prepared. It may be resubmitted up to three times but if rejected three times or if no revised charter is adopted for three years following the adoption of the proposition to revise, then the charter revision commission terminates and ceases to exist. If the resubmitted charter contains no material changes, it is unnecessary to obtain a second approval of the governor and to file the charter with the city clerk for 60 days prior to the election, according to the opinion of the Attorney General published in a 1914 report on page 503. The election on resubmission is, however, conducted in the same manner and with like notice and proceedings as required in the first instance.

## **Appendix A**

### Resolutions Calling for Charter Revision

- 1) Model (with optional clauses)
- 2) Detroit Form (adapted to local election procedures; with resolution to compensate charter commissioners)
- 3) Grand Ledge (proposal to revise and set election)
- 4) Ann Arbor Form (separate elections on proposal to revise and to elect commission)

## **Appendix B**

### Petition-Initiated Charter Revision

#### Initiatory Petition for Charter Revision

## **Appendix C**

### Sections of Home Rule City Act Governing Procedure for Charter Revision

**Appendix A**  
**Model Resolution Declaring For Charter Revision**

RESOLVED, That the city council of the City of \_\_\_\_\_ hereby declares for a revision of the charter of the City, as provided and permitted by Public Act No. 279 of the Public Acts of 1909, State of Michigan, as amended.

FURTHER RESOLVED, That the question of having a general charter revision shall be submitted to the electors of the City of adoption or rejection at a special election, to be held concurrently with the general (or municipal) election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

FURTHER RESOLVED, That at such election there shall be elected from the City at large a charter commission consisting of nine electors of the City who are not officers or employees of the City, the selection of such charter commission to be void if the proposition to revise is not adopted. The candidates for such charter commission shall be nominated and elected in the manner prescribed by the City Charter for the nomination and election of members of the City Council. (In case the City Charter provides for ward elections, the following may be added—except that the nomination and election of said charter commissioners shall be from the city at large.)

FURTHER RESOLVED, That the City Clerk shall give notice of the last day for registration and the election in the manner provided by law and said question on the revision of the charter of the city shall be submitted to the electors in the following form:

"Shall there be a general revision of the charter of the City of \_\_\_\_\_?

For the charter revision      yes  
For the charter revision      no"

FURTHER RESOLVED, That the last day and hour for receiving nomination petitions for candidates for the office of charter commissioner shall be 4:00 on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. And the city clerk shall make available appropriate non-partisan petition forms and give due notice to the last day and hour for filing petitions by two publications of notice thereof in a paper of general circulation within the city, the first publication to be not less than ten days prior to the last day of filing.

**Optional Clauses**

If the charter does not provide for non-partisan elections, the following should be substituted for the clause relative to nomination and election of charter commissioners.

The candidates for such charter commission shall be nominated by petition without reference to, or designation of, party affiliation, signed by a number of qualified electors of the city equal to not less than two percent and not more than four percent of the total vote cast for mayor at the last preceding election.

**Compensation**

Sometimes a provision for compensation is included in the terms of this resolution. In other cases the city council will adopt a separate resolution establishing compensation. A typical clause dealing with compensation is:

FURTHER RESOLVED, That the charter commissioners elected at this election shall be compensated at the rate of \_\_\_\_\_ (or: serve without compensation). No member shall receive compensation for more than 90 meetings and only for actual attendance. Charter commissioners shall be entitled to incur necessary expenses in connection with the work of the charter commission. The place of meeting for said charter commission shall be \_\_\_\_\_.

**Advisory Vote on Change in Form of Government**

FURTHER RESOLVED, That there shall also be submitted to the electors of the city at such election, for an advisory vote, the question of change in the form of government of the city in accordance with Section 18 of Act 279 of the Public Acts of 1909, as amended. The question of a change in the form of government shall be submitted to the electors in the following form:

"In the event there is a general revision of the charter of the City of \_\_\_\_\_, shall there be a change in the form of government to the \_\_\_\_\_ form of government?"

Yes  
No

**Continuing Special Charter Provision**

FURTHER RESOLVED, That there shall also be submitted to the electors of the city at such election, for an advisory vote, the question of continuing the following provision of the charter of the City of \_\_\_\_\_ in the event said charter is revised. The question of continuing such provision of such charter shall be submitted to the electors at such election in the following form:

"Shall the following provision of Act No. \_\_\_\_\_ of the Public (or local) acts of \_\_\_\_\_, State of Michigan, as amended, be continued as a part of the revision charter of the City of \_\_\_\_\_ in the event the charter of said city is revised:"

(Here set forth the provision to be retained)

**Detroit**  
**Resolution to Revise Charter and Elect Charter Commissioners**

By Councilman Browne:

Resolved, That this Body being the Legislative Body of the City of Detroit, by a three-fifths vote of the members elect, hereby proposes an election on the general revision of the Charter of the City of Detroit, adopted by the people of the City of Detroit on the 25th day of June, A.D. 1918, and filed on the 27th day of June, A.D., 1918, as provided and permitted by Section 18 of Act 279 of the Public Acts of 1909 as amended; and be it further

Resolved, That the question of having a general Charter revision shall be submitted to the electors of the City of Detroit for adoption or rejection at a special election to be held concurrently with the regular primary election scheduled for the 4th day of August, 1970, and be it further

Resolved, That the City Clerk is hereby authorized and directed to give such notice as is required by law of such special election, and of the registration of electors entitled to participate therein; and be it further

Resolved, That the said question shall be submitted to the qualified electors of the City of Detroit, and printed upon the ballot in the following form:

SHALL THERE BE A GENERAL REVISION OF THE CHARTER OF THE CITY OF DETROIT?

Yes

No

and be it further

Resolved, That a special primary election to nominate candidates for the office of charter revision commission be held in the City of Detroit on the 4th day of August, 1970 concurrently with the regular primary election scheduled for that date, and that 4 o'clock in the afternoon of Monday, June 15, 1970, be designated as the last day and hour for filing of nominating petitions of persons desiring to become candidates for said office; and be it further

Resolved, That if the question of having a general revision of the City Charter is adopted, a special election be held on Tuesday, the 3rd day of November, 1970 concurrently with the general election scheduled for that date for the purpose of selecting nine charter revision commissioners; and be it further

Resolved, That the polls for both such special primary election and special election shall be opened from 7 o'clock in the forenoon until 8 o'clock in the evening on each occasion; that the City Clerk be and he is hereby authorized and directed to give regular notice of the dates and place of holding such special primary and special election; and be it further

Resolved, That the polling places throughout the City generally used for the purpose of holding primaries and elections be and are hereby designated as the places for holding the special primary and the special election aforesaid, and the special primary and special election shall be conducted, the votes canvassed, and the returns made in the same manner as at regular primaries and elections.

Approved:

Robert D. McClear  
Acting Corporation Counsel

Adopted as follows:

Yeas - Councilmen Browne, Eberhard, Hood, Levin, Rogell, Tindal, Van Antwerp, Wierzbicki and President Ravitz - 9  
Nays - None

Whereas, the question of whether the City of Detroit should have a general charter revision will be placed before the electors of the City at the general primary election to be held August 4, 1970, and

Whereas, concurrently with that primary election a special primary election will be conducted to nominate Charter Revision Commissioners, and

Whereas, this primary election is to be conducted as nearly as possible like the election of city officers, and

Whereas, under the charter of the City of Detroit filing fees are returned to candidates receiving not less than 50 percent of the vote cast for the last candidate nominated, now therefore be it

Resolved, That if the electors determine not to have the charter revised, filing fees will be returned to all candidates seeking nomination as Charter Revision Commissioners-if such procedure is legally permissible, and further

Resolved, that if the electors determine to have the charter revised, filing fees will be returned in the same manner as they are returned in Common Council primaries.

Adopted as follows:

Yeas - Councilmen Eberhard, Levin, Rogell, Tindal, Antwerp, Wierzbicki and President Ravitz – 7; Nays - none

Whereas, the question of whether the City of Detroit will have a charter revision will be placed before the electors of the City at the general primary election to be held August 4th, 1970, and

Whereas, the Charter Revision Commissioners are entitled to compensation for their services, now therefore be it

Resolved that the Charter Revision Commissioners shall be compensated at the rate of \$75.00 per diem for attendance at meetings of the Charter Revision Commission, but not to exceed the number of days permitted by law, and be it further

Resolved, that the City Controller be and he is hereby authorized to honor vouchers pursuant to this resolution from the appropriate account.

Adopted as follows:

Yeas - Councilmen Eberhard, Levin, Rogell, Tindal, Van Antwerp, Wierzbicki and President Ravitz – 7; Nays - none

**Grand Ledge**  
**A Resolution to Propose a General Revision of the City Charter**

A resolution adopted by the Grand Ledge City Council, at a regular meeting held on Monday, 11 January 2016, in the Council chambers, City Hall, 310 Greenwood St. Grand Ledge, Michigan.

**Whereas**, the City of Grand Ledge, Michigan ("City") is a municipal corporation organized under the provisions of the Home Rule City Act, Public Act 279 of 1909, as amended, and is governed by the provisions of the Grand Ledge City Charter adopted 03 January 1963, as amended ("Charter"); and

**Whereas**, the current Charter was originally approved by the Governor on 26 March 1963 and adopted by the City on 01 April 1963, and has been amended on several occasions; and

**Whereas**, the City Council believes that as our community changes in various ways over time, the Charter needs to change with it, because an outdated Charter hinders the ability of the local government to serve the needs of our City and its residents properly; and

**Whereas**, the Home Rule City Act establishes the procedures to be followed for amending or revising a city charter; and

**Whereas**, the Home Rule City Act, Section 18 (MCL 117 .18), provides that when the legislative body of a city declares by a 3/5 vote of its members elect that there shall be a general revision of a city charter, the question of having a general revision of a city charter shall be submitted to the electors of the city for adoption or rejection at the next general or municipal election; and

**Whereas**, the next general election is the 02 August 2016 election; and

**Whereas**, the Michigan Election Law, 19 54 P A 116, codified at MCL 168.1, et seq., as amended, governs the elections within the State of Michigan, and provides the time-frame for when ballot wording for local ballot proposals must be submitted to the City Clerk and the County Clerk [Section 646a of the Michigan Election Law (MCL 168.646a)]; and

**Whereas**, the Michigan Secretary of State has advised the ballot wording for local ballot proposals to be voted on at the 02 August 2016 election must be certified and filed by not later than 4:00p.m. on Tuesday, 10 May 2016, with the local clerk providing the ballot wording to the County Clerk within two days; and

**Whereas**, the City Council has determined is in the best interests of the citizens of the City to submit to the electors of the City a proposal for a general revision of the Charter, and desires to have the issue placed on the ballot for the 02 August 2016 election;

**Now, Therefore, It Is Resolved:**

1. An election of the electors of the City shall be called and held at the next general election on Tuesday, 02 August 2016. The proposition to be voted on at that election shall be stated on the ballots in substantially the form as set forth below:

GENERAL REVISION OF CITY CHARTER PROPOSAL  
Shall there be a general revision of the Grand Ledge City Charter?  
Yes  
No

2. The City Clerk is authorized and directed to file this resolution with the respective County Clerks for the County of Eaton and the County of Clinton, not later than 4:00p.m. on Tuesday, 10 May 2016.

3. All resolutions and parts of this resolution that conflict with the provisions of this resolution are rescinded.

**Motion by** Willems; **Second by** Lantz;

**Ayes:** Lantz, Malecki, Mulder, Roberts, Smith, Sowle, Willems; **Nays:** None; **Absent:** None

**Resolution #02 of 2016**

I, Gregory L. Newman, Grand Ledge City Clerk, certify this is Resolution #02 of 2016, adopted by the Grand Ledge City Council at a regular meeting held on Monday, 11 January 2016; a meeting held in accordance with the Open Meetings Act, Public Act No. 267 of 1976, as amended.

**Ann Arbor  
Resolution to Revise Charter**

Ald. Moore presented the following resolution:

WHEREAS, Upon due consideration and deliberation, the Common Council of the City of Ann Arbor, declares for a general revision of the Charter of the City of Ann Arbor, in accordance with the provisions of the statutes of the State of Michigan, NOW THEREFORE,

BE IT RESOLVED, That a special election be held in the City of Ann Arbor, Washtenaw County, Michigan, on Tuesday, the 6th day of April, 1953, pursuant to the State Law and the Charter of the City of Ann Arbor, to vote upon the proposition of a general charter revision of the Charter of the City of Ann Arbor.

RESOLVED FURTHER, That the polls at said election shall open at 7:00 o'clock a.m. and remain open until 8 o'clock p.m. Eastern Standard Time, on said day.

RESOLVED FURTHER, That said special election shall be held in the precincts of the City of Ann Arbor, as follows:

First Ward: Perry School on Packard Street.

Second Ward, First Precinct: Ward Building on South Ashley St.

Second Ward, Second Precinct: Bach School on W. Jefferson St.

Second Ward, Third Precinct: Eberwhite School.

Third Ward, First Precinct: Ward Building on Miller Ave.

Third Ward, Second Precinct: Mack School.

Fourth Ward, First Precinct: Voting room in the basement of the Armory on N. Fifth Ave.

Fourth Ward, Second Precinct: Jones School on N. Division St.

Fifth Ward: Ward Building on Pontiac St.

Sixth Ward, First Precinct: Ward building on South Forest Ave.

Sixth Ward, Second Precinct: Angell School on S. University Ave.

Seventh Ward, First Precinct: Ward building on Mary St.

Seventh Ward, Second Precinct: Burns Park School on Wells St.

Seventh Ward, Third Precinct: Burns Park School on Wells St.

Seventh Ward, Fourth Precinct: Tappan Jr. High School on Stadium Blvd.

REVOLVED FURTHER, That the City Clerk be and he hereby is authorized to give notice of said special election according to the laws of the State of Michigan and the Charter of the City of Ann Arbor, and that he cause to be prepared blank ballots of equal width and length for the use of the electors at said special elections which shall be in the following form:

"FOR A GENERAL REVISION OF THE CHARTER OF THE CITY OF ANN ARBOR

Yes

No

RESOLVED FURTHER, That the City Clerk be and he hereby is directed to issue and to publish the notice of registration of electors for said special election in compliance with the Charter of the City of Ann Arbor and the Statutes of the State of Michigan, and that said Clerk shall make all necessary arrangements for the registration of electors for said special election, and for the holding thereof, according to the Charter of the City of Ann Arbor and the laws of the State of Michigan.

RESOLVED FURTHER, That the canvass and determination of said votes be made according to the laws of the State of Michigan and the Charter of the City of Ann Arbor.

Moved by Ald. Moore that resolution be adopted.

On roll call the vote was as follows: Yeas, Ald. Mellott, Tremmel, Fenn, Ouimet, Burns, Forsythe, Saunders, Colvin, Bromage, Moore, Dobson, Gallup, Pres. Creal, 13; Nays, 0

Chair declared the motion carried.

**Ann Arbor Form  
Resolution to Elect Charter Commission**

RESOLVED, that a special election be held in the City of Ann Arbor, Washtenaw County, Michigan, on Tuesday, the 2nd day of June, 1953, at which there shall be elected a charter Commission consisting of nine electors at large who shall constitute a body for the revision of the charter of the City of Ann Arbor.

RESOLVED FURTHER, that the members of the commission shall be elected who have had a residence of the City for at least three years (\*) prior to said election. No city officer, or employee, whether elected or appointed, shall be eligible to a place on said charter commission.

RESOLVED FURTHER, that the candidates for the charter commission be nominated by a petition, without reference to, or designation of party affiliation. Such petition shall be signed by not less than two percent and not more than four percent of the total vote cast for mayor in the City of Ann Arbor at the last preceding City election.

RESOLVED FURTHER, that nominating petitions for members of the charter commission shall be filed with the City Clerk up to 4 o'clock Eastern Standard Time, in the afternoon of Monday, the 20th day of April, 1953.

The names of all candidates so nominated shall be placed on a separate ballot at the special municipal election held on June 2nd, 1953, without their party affiliations being designated. The nine candidates having the largest number of votes cast in the City shall be declared elected. The nomination and the election of the members of the charter commission shall be conducted, except as herein otherwise provided in accordance with the provision of Act 279 of the Public Acts of 1909 as amended and as near as may be, as now provided by law and the charter of the City of Ann Arbor for the nomination and election of the City and Ward Officers of Ann Arbor.

RESOLVED FURTHER, that the charge when elected shall convene on the 2nd Tuesday after said election in the Council Chamber in the City Hall. The City Clerk shall preside at the 1st meeting and shall administer the oath of office to the members elected and shall act as the Clerk of the commission. The commission shall be the sole judge of the qualifications, elections, and return of its own members. It shall choose its own officers, except the clerk, and shall determine the rules of its proceedings and shall keep a journal thereof. A roll call of its members on any question shall be entered on the journal at the request of one-fifth of its members, or less, if it shall so determine. The commission may fill any vacancy in its membership and it shall fix the time of the submission of the Charter, prepared by it, to the electors of the City. A majority of the members shall constitute a quorum and its sessions shall be public.

The members of the commission shall not be paid any salary or remuneration whatever, for the services rendered by them as members of said commission.

RESOLVED FURTHER, that said election shall be held in the various precincts of the City of Ann Arbor and that all polls shall be open from 7 o'clock a.m. and remain open until 8 o'clock p.m. Eastern Standard Time on said day.

RESOLVED FURTHER, that the City Clerk be and hereby is directed to give notice of said special election according to the laws of the State of Michigan and Charter of the City of Ann Arbor and for the notice of registration of electors for said special election and that he make all necessary arrangements for the holding of said special election in accordance with the Charter of the City of Ann Arbor and the laws of the State of Michigan.

RESOLVED FURTHER, that the canvass and determination of said votes be made according to the Laws of the State of Michigan and the Charter of the City of Ann Arbor.

Moved by Ald. Dobson that report be adopted.

On roll call the vote was as follows: Yeas, Ald. Tremmel, Maybee, Ouimet, Burns, Ulberg, Forsythe, Saunders, Colvin, Bromage, Dobson, Gallup, Pres. Creal. 12; Nays, 0

Chair declared the motion carried.

\*Three year residency requirement declared unconstitutional. See page 1.

## **Appendix B**

### **Petition-Initiated Charter Revision**

A city charter revision may also be initiated by petition. Much of the procedure will be the same as for a revision initiated by the governing body.

Initiation. Section 25 of the City Home Rule Act provides for two types of petitions, the so-called five percent petition and the 20 percent petition. An initiative petition must be signed by at least five percent of the registered electors of the city. When such petition is signed by 20 percent or more, the Act provides for certain differences with respect to election proceedings as explained under the Election Date heading in this Appendix.

Petition Form. The Act establishes certain standards for the completion of the petition, as follows:

1. The petition must be addressed to and filed with the City Clerk.
2. Each signer must inscribe after his or her signature the date of signing, and his or her street and address.
3. No signatures obtained more than one year before the filing of the petition shall be counted.
4. The petition must state what organization, if any, or, if none, what person or persons are primarily interested in and responsible for circulating the petition.
5. Each sheet of the petition must be verified by affidavit of the person who obtained the signatures.

The city clerk has the function of insuring compliance with the statutory standards. Within 45 days from the date of receipt, he/she must check the petition and determine whether the petitioners are registered electors. If the petition conforms to the requirements, the city clerk shall certify the same, report that fact to the governing body, and establish the date of election. If the petition is found not to meet the statutory requirements, the city clerk will report this to the governing body and take no further action.

Election Date. Establishment of the election date by the city clerk will vary depending on whether the petition has been initiated by a five percent petition, or 20 percent petition.

In case of a five percent petition, the proposal can be submitted *only at the next regular city or general state election* occurring not less than 90 days after the filing of the petition (MC.L. 117.25). If a charter amendment initiated by a five percent petition is submitted at a special or primary election, it has been held that the vote is void (*Attorney General v. Bay City*, 334 Mich. 514 (1952)).

Section 25 is written in terms of submitting of a charter amendment. It applies to charter revision only because of the reference to section 25 found in section 18 of the City Home Rule Act. Nevertheless, it seems likely that the rule in *Attorney General v. Bay City* would also apply to the submission of charter revision proposals. See the suggested petition (page 13) for an initiatory petition.

A 20 percent petition may request that the proposed amendment be submitted at a special election. If such petition contains a request for a special election, the City Clerk, within 90 days after the filing of the petition, must call a special election no less than 120 days after the filing of the petition.

**Initiatory Petition for Charter Revision**

To the City Clerk,  
City of \_\_\_\_\_, Michigan

We, the duly undersigned registered voters of the City of \_\_\_\_\_ do hereby respectfully request and petition the city council to take the necessary steps to provide that the question of having a general revision of the charter of said city be submitted to the electors of said city for adoption or rejection at the next general (municipal) election or general state election held in said city, as provided by Section 18 and 25 of the Home Rule Act of the State of Michigan, the same being Act No. 279 of the Public Acts of 1909.

We further request and petition that the charter commission be selected at the same election at which the proposition to revise the charter is submitted; such selection to be void if the proposition to revise is not adopted, as provided in Section 18 of the above-mentioned Act.

The (person) (persons) (body) (organization) primarily interested in and responsible for the circulation of this petition (is) (are):

	Name	Address	Ward & Precinct (if known)	Date of Signing		
				Month	Day	Year
1.						
2.						
3.						
4.						
5.						

Verification (Note: This affidavit to appear on each sheet of the petition)

State of Michigan)  
County of \_\_\_\_\_) ss.

\_\_\_\_\_ of the City of \_\_\_\_\_, to me personally known, first being duly sworn, says that he circulated the foregoing petition at the request of and pursuant to the directions of (same names as above), who desires a general revision of the charter of the City of \_\_\_\_\_, that all of the above signatures were obtained by the undersigned; that the signatures on the foregoing petition are the signatures of the persons purporting to sign the same; that each of them signed in his presence; and that he has good reason to believe, and verily does believe, that the signers thereof are duly registered electors of the City of \_\_\_\_\_, and are the identical persons their signatures purport them to be.

Signed \_\_\_\_\_  
Circulator of Petition

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public, County of \_\_\_\_\_  
My commission expires \_\_\_\_\_, 20\_\_\_\_\_.

**Optional Clause Providing for Advisory Vote on Change in Form of Government:**

We further request and petition that at the same election at which the question of having a general revision of the charter is submitted to the electors, there shall also be submitted to the electors for an advisory vote the question of a change in the form of government of such city (to the \_\_\_\_\_ [council-manager] [weak mayor-council] [strong mayor-council] form of government) as provided in Section 18 of the above-mentioned Act.

**Optional Clause Providing for Advisory Vote on Retaining Provisions of Existing Charter:**

We further request and petition that at the same election at which the question of having a general revision of the charter is submitted to the electors there shall also be submitted to the electors for an advisory vote the question of continuing the following power(s), limitation(s), or provision(s) granted to such city in its charter by the Legislature, to wit:  
(Here enumerate the powers, limitations, or provisions desired to be retained), as provided in Section 18 of the above-mentioned Act.

**Appendix C**  
**Sections of the Home Rule City Act Governing Procedure for Charter Revision**

117.15 Election of Charter Commission

Section 15. (1) At an election on the question of the intent to incorporate a new city, or to make a consolidation permitted by this act, each elector residing within its proposed territorial limits shall be entitled to vote for 9 electors, residing in the territory which it is proposed to incorporate or consolidate, as members of a charter commission, and the notices required by Section 10 shall include notice of the election of those electors. The ballot shall be prepared by the clerk of the county in which the territory is located or if located in more than 1 county, then by the clerk of the county in which the greater portion of the territory is located. The expense of the ballot preparation is to be borne by that county. If the proposed city is incorporated as provided in this act, the county shall be reimbursed by the city at the time the charter is filed. The county clerk shall prepare the ballot to be used at the election pursuant to the general election laws of the state as follows:

For city incorporation. Yes ( )  
For city incorporation. No ( )

Of, if the proposition be to consolidate, the ballot shall be as follows:

For consolidating (naming entities) into 1 city. Yes ( )  
For consolidating (naming entities) into 1 city. No ( )

(2) The county clerk shall also prepare a separate ballot and place on the ballot, without party designation, under the heading, candidates for members of the charter commission, the names of the electors having the qualifications required by this act for a member of the charter commission, who file a petition signed by 20 qualified electors residing in the territory proposed to be incorporated, asking that their names be placed on the ballot. For a consolidation, the electors of each city, township, village, or part of a township, proposed to be consolidated shall vote for and elect the number of the 9 members of the charter commission as shall be substantially in proportion to the number of registered electors of the city, village, township, or part of a township, according to the registration rolls of the last regular state, city, or village election held in the city, village, township, or part of a township, but the member to be elected in a city, village, or township shall not be less than 1. The county board of commissioners or the secretary of state shall determine and prescribe the number of members of the charter commission to be elected from each city, village, township, or part of a township in the case of a consolidation, pursuant to this subsection. The position of the names of the candidates upon the ballots shall be interchanged as provided in the general primary election law of this state. The ballot shall also bear instruction directing that not more than 9 candidates shall be voted for or, if the proposition is to consolidate, the ballot for members of the charter commission in each city, village, township or part of a township, proposed to be consolidated shall bear instructions directing that not more than the number of candidates determined by the county board of commissioners or the secretary of state to be elected in the city, village, township, or part of a township shall be voted for. On the vote being canvassed on the question of the intent to incorporate or consolidate, if the result is determined to be in favor of the intent to incorporate or consolidate, the board of canvassers shall canvass the votes cast for members of the commission, and certify the election of the 9 persons receiving the highest number of votes cast. The elected members of the commission shall take the constitutional oath of office, and may fill vacancies in their membership. Five members shall constitute a quorum.

(3) The charter commission shall convene within 10 days after election, and frame a charter for the proposed city within 90 days after the meeting. The business which the charter commission may perform shall be conducted at a public meeting of the commission held in compliance with Act No. 267 of the Public Acts of 1976. Notice of the time, place, and date of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The charter commission shall choose its own officers, determine the rules of its proceedings, and keep a journal. A roll call of its members on a question shall be entered on the journal at the request of any member. The commission shall provide the manner of nominating the candidates for the first elective officers provided in the proposed charter. The commission shall fix the date of the first city election and do and provide other things necessary for making the nominations and holding the election.

The election may be held at a special election or on the same date as a general election. The commission shall publish the proposed charter in 1 or more newspapers published in the proposed city, at least once, not less than 2 weeks and not more than 4 weeks preceding the election, together with a notice of the election and that on the date fixed for the election the question of adopting the proposed charter will be voted on, and that the elective officers provided for in the charter will be elected on the same date.

Notice of the election shall also be posted in at least 10 public places within the proposed city not less than 10 days before the election. The commission shall provide for 11 or more polling places for the election, and give similar notice of their location as is given of the election, and shall appoint the inspectors of the election. The results of the election shall be canvassed by the county board of canvassers.

### 117.18 Charter Revision Procedure

Section 18. Any city desiring to revise its charter shall do so in the following manner, unless otherwise provided by charter; when its legislative body shall by a 3/5 vote of the members elect declare for a general revision of the charter, or when an initiatory petition shall be presented therefor as provided in section 25, the question of having a general charter revision shall be submitted to the electors for adoption or rejection at the next general or municipal election, or at a special election. In case the electors shall, by a majority vote, declare in favor of such revision, a charter commission shall be elected within 60 days consisting of 9 electors of such city having a residence of at least 3 years in the municipality, or the legislative body by a 3/5 vote of the members elect or the initiatory petition may provide that the charter commission be selected at the same election at which the proposition to revise is submitted; the selection shall be void if the proposition to revise is not adopted.\* No city officer or employee, whether elected or appointed, shall be eligible to a place on the commission.

In the cities where provision is made by the city charter for the non-partisan elections of city officers, the method prescribed for such elections shall apply in the election of charter commissioners. Where no such provision is made by the charter of such city, candidates shall be nominated by petition without reference to or designation of party affiliation, signed by a number of qualified electors of such city equal to not less than 2 percent and nor more than 4 percent of the total vote cast for the chief executive office, or the highest vote for any commissioner in cities having the commission form of government, of such city at the last preceding election, asking that the name of the candidate designated be placed upon the ballot. The names of all candidates so nominated shall be placed upon a separate ballot at the election designated to be held for the election of a charter commission and without their party affiliations designated; the 9 candidates having the greatest number of votes shall be declared elected; the election of the members of such commission, except as herein specified, shall be conducted as near as may be as now provided by law for the election of city officers in the respective cities of this state unless special methods shall be otherwise provided in the charter of such city.

If the proposed revised charter is rejected by the electors of the city, the charter revision commission shall immediately reconvene and determine whether to take no further action, in which case it shall terminate and cease to exist, or whether to provide a revision of, or amendments to, the revised charter previously prepared by the commission. The proposed revised charter with amendments shall be resubmitted to the qualified electors of the city in the same manner and with like notice and proceedings as required in the first instance. A proposed revised charter, as originally submitted or resubmitted with amendments, shall be submitted not to exceed 3 times to the qualified electors of the city. If the charter is rejected 3 times, or if no revised charter is adopted during 3 years following the adoption of the proposition to revise, then the charter revision commission shall terminate and cease to exist. A new proposal to revise may be adopted at any time after termination of a charter revision commission.

When the question of having a general revision of the charter shall be submitted to the electors of any city, the legislative body of such city or the initiative petitions may provide for the submission with such question for an advisory vote of the question of a change in the form of government of such city, or the question of continuing any power, limitation or provision granted to such city in a charter granted or passed by the legislature for the government thereof. When such advisory vote is requested in an initiatory petition, such question shall be submitted as herein before provided. In the revision of the charter of any city, any power, limitation or provision granted to such city in any charter granted or passed by the legislature for the government of such city and contained in the charter to be revised may be included in such revised charter, and when so included, such power, limitation, or the effect of any such provision shall continue with the same force and effect as when granted or passed by the legislature in the first instance.

\*Three year residency requirement declared unconstitutional. See page 1.

### 117.19 Duties of City Council

Section 19. The legislative body of the municipality unless it is otherwise provided, shall fix in advance of the election of a charter commission the place of its meeting, the compensation of its members, the money for the expense thereof, and if need be provide the ballots for election.

### 117.20 Powers and Duties of Charter Commission

Section 20. The charter commission shall convene on the second Tuesday after the election at the place designated pursuant to section 19. The city clerk shall preside at the first meeting, shall administer the oath of office to the members-elect, and shall act as clerk of the commission. The charter commission shall be the sole judge of the qualifications, elections, and returns of its members, shall choose its officers except clerk, shall determine the rules of its proceedings, and shall keep a journal. A roll call of the members on a question shall be entered on the journal at the request of 1/5 of the members or less if the commission shall so determine. The commission may fill a vacancy in its membership, and shall fix the time for the submission of the charter to the electors. A member shall not receive compensation for more than 90 meetings of the commission and only for actual attendance. A member of the commission shall not be paid for more than 1 meeting per day. A majority of the members shall constitute a quorum, and the sessions of the commission shall be public.

### 117.22 Role of Governor

Section 22. Every amendment to a city charter whether passed pursuant to the provisions of this act or heretofore granted or passed by the state legislature for the government of such city, before its submission to the electors, and every charter before

the final adjournment of the commission, shall be transmitted to the governor of the state. If he shall approve it, he shall sign it; if not, he shall return the charter to the commission and the amendment to the legislative body of the city, with his objections thereto, which shall be spread at large on the journal of the body receiving them, and if it be an amendment proposed by the legislative body, such body shall reconsider it, and if 2/3 of the members-elect agree to pass it, it shall be submitted to the electors. If it be an amendment proposed by initiatory petition, it shall be submitted to the electors notwithstanding such objections.

#### 117.23 Publication of Proposed Charter; Vote on Separate Proposition or Alternative Provision

Section 23. (1) A proposed city charter and each amendment to an existing city charter before submission to the electors, shall be published as the charter commission or the legislative body may prescribe. A proposed charter may be submitted to the qualified electors as an entirety in a single proposition substantially as follows:

"Shall the city charter proposed by the city charter commission be adopted?" Adoption of a proposed charter shall require a simple majority of those voting on the question.

(2) When submitting a proposed charter, separate propositions, on specific charter provisions may also be submitted to the qualified electors. In such case, all propositions shall be in such form as are approved by the attorney general as to clarity and impartiality. If the proposed charter and any of the separate propositions are adopted, the new charter shall take effect with the alternatives or additions contemplated by such separate propositions as are adopted. Adoption of a separate proposition which is an alternative to a provision contained in the proposed charter shall require approval by a majority of those voting on the separate proposition and also a majority of those voting on the proposed charter; otherwise the adoption of a separate proposition shall require a simple majority. The ballot shall contain voting instructions and a brief explanation of the effect of each of the propositions.

#### 117.24 Effective Date of Newly Adopted Charter

Section 24. If the charter, or any amendment thereto, whether of cities incorporated under the provisions of this act, or under an existing charter of the city heretofore granted or passed by the legislature for the government of the city, be approved, then 2 printed copies thereof, with the vote for and against duly certified by the city clerk shall, within 30 days after the vote is taken, be filed with the secretary of state, and a like number with the county clerk of the county in which such city is located and shall thereupon become law, unless a different date for the taking effect of such charter or charter amendment, or any part thereof, is specifically set forth therein.

#### 117.25 Charter Revision by Citizen Initiative

Section 25. (1) An initiatory petition authorized by this act shall be addressed to and filed with the city clerk. The petition shall state what body or organization, if any, or if no body or organization, then what persons are primarily interested in and responsible for the circulation of the petition and the securing of the amendment. Each sheet of the petition shall be verified by the affidavit of the person who obtained the signatures to the petition. The petition shall be signed by at least 5 percent of the qualified and registered electors of the municipality. Each signer of the petition shall also write, immediately after his or her signature, the date of signing and his or her street address. A signature obtained more than 1 year before the filing of the petition with the city clerk shall not be counted. The petition is subject to the requirements of section 25a.

(2) Any person who shall willfully affix another's signature, or subscribe and swear to a verification false in any material particular is guilty of perjury; and any person who shall take the oath of another to the petition not knowing him or her to be the identical person he or she represents himself or herself to be or knowing that the petition or any part thereof is false or fraudulent in any material particular, or who shall falsely represent that the proposed amendment is proposed by parties other than the true sponsors, is guilty of a felony and shall be liable to the same punishment as provided for perjury.

(3) Upon receipt of the petition, the city clerk shall canvass it to ascertain if it has been signed by the requisite number of registered electors. For the purpose of determining the validity of the petition, the city clerk may cause any doubtful signatures to be checked against the registration records of the city. Within 45 days from the date of the filing of the petition, the city clerk shall certify the sufficiency or insufficiency thereof. If the petition contains the requisite number of signatures of registered electors, the clerk shall cause the proposed amendment to be submitted to the electors of the city at the next regular municipal or general state election held in the city which shall occur not less than 90 days following the filing of the petition.

(4) If the petition contains the signatures of 20 percent or more of the persons residing in and registered to vote in the city as of the date when they signed it, and the petition requests submission of the proposal at a special election, the city clerk, within 90 days after the date of the filing of the petition, shall call a special election to be held on the next regular election date that is not less than 120 days after the petition was filed. Other proposals, whether initiated by a 5 percent petition or proposed by the legislative body within the times within this act provided, may be submitted at that election. A proposal submitted to the electors by the initiative and receiving an affirmative majority of the votes cast on the proposal shall not be held unconstitutional, invalid, or void on account of the insufficiency of the petition by which the proposal was submitted.

(5) Except as provided by subsection (6), any proposal adopted by the electors that contemplates increased expenditure of funds by the municipality shall become effective only at the beginning of that fiscal year of the municipality commencing not earlier than 60 days following the election at which the proposal was approved by the electors.

(6) If a proposal that increases the city's ad valorem property tax limitation applies, by its terms, for a specific year or period commencing before the date the proposal would otherwise take effect under subsection (5), the proposal shall be effective both from the date it is approved by the electors and retroactively for the year or period specified in the proposal. Notwithstanding a charter provision to the contrary, if a proposal is approved by the electors and given effect under this subsection after the city has levied its ad valorem property tax levy for the fiscal year and if the adopted proposal authorizes the levy of a millage rate for the fiscal year during which the proposal was approved in excess of the rate the city was authorized to levy before adoption of the proposal, the city may levy an additional tax. The additional tax shall be collected either by a supplementary billing by the city or at the same time and in the same manner the county's ad valorem property tax levy is collected.

(7) Any person aggrieved by any action, or failure of action, of the city clerk may bring an action against the clerk in the circuit court for writ of mandamus or for other appropriate relief.

# **Charter Revision and Amendment for Home Rule Cities and Villages**

by Daniel C. Matson

## **Background for Change**

Michigan cities and villages exist within a framework that is part of a greater system of state and federal law. The system is described in governing documents which fit into a hierarchy of importance and must be kept current. Constitutions, statutes and charters are primary examples of these documents.

Most Michigan cities are incorporated under the Home Rule City Act, 1909 PA 279 (HRCA) (MCL 117.1 et seq.). Home rule villages are created through the Home Rule Village Act, 1909 PA 278 (HRVA) (MCL 78.1 et seq.) The HRCA and HRVA are statutes that were authorized by the Michigan Constitution of 1908, and currently by Article VII, Section 22, of the Michigan Constitution of 1963.

Locally, the city or village charter is the principal governing document. This article addresses existing charters of home rule cities and villages. As each community changes in various ways over time, its charter has to change with it. The same is true at the state and federal levels. The U.S. Constitution has been amended 27 times to date. Michigan has had four constitutions and numerous amendments. Statutes are being enacted and amended constantly.

When a charter becomes outdated it hinders the ability of local government to serve properly. A charter that is no longer current is one with provisions that are illegal, obsolete or missing. Changes are needed to correct misleading, unreliable or unresponsive charters.

## **Illegal Charter Provisions**

Charter provisions may be preempted by other law. No provision of any city or village charter shall conflict with or contravene the provisions of any general law of the state (MCL 117.36; 78.27). Other instances of illegality result when a court declares them so.

### **Obsolete Charter Provisions**

The mere passage of time contributes to charter obsolescence.

Provisions that once made sense in the history of a community may later be irrelevant or too restrictive. Certain dollar limitations for expenditures, titles of municipal officers and departments, and descriptions of functions are some of them. Archaic charter language, or charters dominated by male pronouns, also contribute to examples of obsolescence. One charter provision may be in conflict with another, leading to confusion of interpretation.

### **Omitted Charter Provisions**

Does the charter claim all powers allowed by law or does it unduly limit their exercise?

The HRCA and HRV provide in similar language that each city or village charter may provide “for the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers are expressly enumerated or not; for any act to advance the interests of the city or village, the good government and prosperity of the municipality and its inhabitants and to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state” (MCL 117.4j(3); 78.24(m)).

The HRVA permits a village to adopt as part of its charter any chapter, act or section of state statutes not inconsistent with the act, which relates to the powers or government of villages generally (MCL 78.25).

The HRCA and HRVA prescribe certain charter content. Essential provisions are mandated. Others are permissive. Still other provisions are prohibited, or are further restricted.

### **Room for Improvement**

With decades of experience under municipal home rule, generations of citizens have come to view home rule as deserving of the public trust, as reflected increasingly in modern charter language.

Does the community want or need more innovative charter provisions than presently exist? It is possible to guide local officials, officers and employees in their various functions by specific creative charter authorizations declared to be in the public interest. Examples are continual planning for change, providing continuing education at all levels of civic participation, improving intergovernmental relationships, employing alternative dispute resolution methods, conserving resources, both human and environmental, keeping the public informed of vital concerns, enhancing cultural qualities, and promoting ethical standards and behavior.

Examination of the local charter for practical use should also raise the following questions:

- I. Is it organized in logical sequence?
- II. Does it define key terms?
- III. Is the language clear and understandable?
- IV. Are provisions easy to locate when needed?
- V. Does it have an index?
- VI. Is it preceded by a meaningful preamble and historic statement?

### **To Revise or to Amend**

The two forms of legally authorized changes are by revision or amendment of the charter.

The home rule acts allow communities to make substantial or nominal changes in their charters by different routes. Charter revision implies re-examination of the entire document and that it may be recreated without obligation to maintain the form, scheme, or structure of the former charter. Amendment implies that the general plan and scope of the former will be maintained, with corrections to better accomplish its purpose. Revision suggests fundamental change, while amendment is a correction of detail, according to the Michigan Supreme Court.

A change in the form of government will require charter revision and not merely amendment. What constitutes such a change may require in-depth study. Legal advice should be sought if that question arises.

### **Charter Revision**

Revision of city charters may be initiated by a resolution adopted by 3/5 of the legislative body or by petition signed by at least five percent of the registered voters, unless the present charter provides otherwise. In any case, the decision to revise is for the electors to approve or reject. They must also select a nine member charter commission to revise the charter, none of whom may be an elected or appointed city officer or employee. Both matters may be voted upon at the same or separate elections. An advisory vote may also be taken on the question of a change in the form of government.

The initiation of a home rule village charter revision requires a 2/3 approval vote by the legislative body, or by electors' petition of at least 20 percent of the total vote cast for president (village) at the last preceding election, unless otherwise provided by charter. The village charter commission consists of five elected members.

The municipal legislative body determines the place of meeting, the compensation of charter commission members, and provides funds for expenses and ballots.

The city charter commission convenes on the second Tuesday after the election. The city clerk presides at the first meeting. The clerk administers oaths of office and acts as the clerk of the commission.

The village charter commission convenes within ten days after its election, and frames a charter within 60 days thereafter.

The city and village charter commissions assess the qualifications of their members, choose their officers, determine their rules of proceeding, keep a journal, and fill their vacancies. City charter commission members are compensated for attending a maximum of 90 meetings (one per day). A majority of city charter commission members constitute a quorum. Three or more village charter commission members are a quorum. Commission sessions are public.

It is generally advisable for a city charter commission to engage a legal consultant experienced in these matters as there are numerous legal issues at stake. The county prosecutor is required by statute to advise village charter commissions.

A proposed revised charter is submitted to the governor for approval. The attorney general reviews it and advises the governor regarding its legality. The governor signs the charter if approved; otherwise the charter is returned to the charter commission with a commentary of recommended corrections.

An approved proposed city charter is to be published in full as prescribed by the charter commission. The attorney general's position is that publication is to be in a newspaper in general circulation within the community, which is the statutorily required method of publication of village charters.

The adoption of the revised charter is for the electorate to decide by a simple majority of those voting on the question. Specific provisions for a city charter may also be decided as separate ballot propositions. The ballot questions are to be approved for clarity and impartiality by the attorney general. The ballot contains voting instructions and explains the effect of each proposal.

If a proposed city charter revision is rejected, the charter commission reconvenes and determines whether to take no further action or to proceed with a further revision. If no action is taken, the city charter commission ceases to exist. Proposed revised city charters may be submitted to electors by a charter commission three times within a three-year period. A new proposal to revise a charter may be voted upon at any time after termination of the charter commission.

A proposed revised village charter must be filed with the village clerk not less than 90 days before the election. A revision may be submitted to the electors only once in two years.

### **Charter Amendment**

Amendment of a city charter may be proposed by 3/5 of the members of the legislative body, or by an initiatory petition of electors. If proposed by the legislative body, the proposal is submitted to the electors at the next municipal or general state election, or

special election held in the city not less than 60 days after it is proposed. In the case of petitions, the election is to occur not less than 90 days following their filing.

A village charter amendment may be submitted to the electors by a 2/3 vote of the legislative body or petitioned for by not less than 20 percent of the number of electors voting for president at the last election.

The governor is presented with the proposed amendment of a city or village charter for approval, and signs it if approved. If not approved, it is returned to the legislative body with stated objections for reconsideration. If 2/3 of the members agree to pass it, it is submitted to the electors. If the amendment was initiated by petition, it is submitted to electors notwithstanding the objections.

An amendment to a village charter is submitted to electors at the next general or special election. An amendment originated by the legislative body is published and remains on the table for 30 days before action on it is taken. The form of a proposed amendment to appear on the ballot is determined by resolution of the legislative body, unless provided for in the initiatory petition. Publication is made in a newspaper published or circulating in the village at least once, not less than two weeks, nor more than four weeks before the election.

Proposed amendments are to be published in full with existing charter provisions to be altered or abrogated by them. The purpose of a city charter amendment is designated on the ballot in not more than 100 words, exclusive of caption. The statement of purpose must be true and impartial so as to create no prejudice for or against the amendment. The attorney general examines it for compliance before its printing. The amendment is conspicuously posted in full in each polling place. The form of the proposed amendment is determined by resolution of the legislative body unless provided for in the initiatory petition. In the latter case the legislative body may add an explanatory caption.

A proposed amendment is confined to one subject. If a subject embraces more than one related proposition, each of them must be separately stated to allow an elector to vote for or against each proposition.

A majority vote of electors voting on the question is required to pass an amendment.

A failed proposed amendment to a city charter may not be resubmitted for two years.

## **Legal References**

The sections of the Home Rule City Act that directly relate to charter revision are 18, 19, 20, 22, 23, 24, 26, and 28. Those that govern amendment are 21, 22, 23, 24, 25, 26, and 28. The corresponding sections of the Home Rule Village Act are 14, 15, 18, 19, 20, 21, and 26 for revision and 17, 18, 19, 20, and 21 for amendment.

The remaining provisions of each of the acts, respectively, must be referred to in considering changes to a city or village charter. Certain features of each municipal charter are mandatory and are not subject to exclusion. Others as noted above are permissive or restrictive and deliberate consideration is to be given to them. Constitutional provisions and a host of statutory laws also bear upon what may appear in charters, and to what extent and content.

Courts have interpreted the validity of various charter provisions and the statutes that dictate their use. The Michigan attorney general has also rendered opinions, when requested, for guidance in areas of specific legal concern.

All sources of law that bear upon charter issues need to be consulted in any effort to reform charters, to achieve the desired benefit to the communities served by them.

## **Charter Revision Strategies**

To do justice to the charter revision process, it is well to project an 18-month time frame after the election of the charter commission in order to complete the task. Each commission will set its own pace. It should meet regularly and assign a chapter of the charter at a time to be considered at a subsequent meeting or meetings. The review of each provision should be by all members so that each participant has a grasp of the issues involved. The entire charter document is subject to revision and improvement. Officeholders are to be consulted for views regarding the effect of current charter provisions upon their duties and performances.

It is well for the commission members to wrestle with and to dispose of the most volatile issues first and to resolve them expeditiously and to then close ranks. The charter commission must present to the public a unified approach and avoid divisions caused by single or limited issue positions, which tend to discourage voters and lead to defeat of the product of countless hours of study, debate and drafting. It is also well to have one

person draft all segments of the document, to preserve continuity of style and form. Until the commission approves a final version, each draft should be regarded as tentative to allow the entire work product to evolve into a cohesive whole.

The election cycle is a foremost consideration in the timing of charter submission to the electorate. To achieve timely completion of the charter is to also allow sufficient opportunity for review by the attorney general on behalf of the governor. It is prudent and a courtesy to those offices to request their optimum timing in advance. The review of total charter language is given expert, in-depth analysis by the highly experienced assistant attorney general in charge of that service. The reviewer may need to refer various articles of the charter to other state agencies for inspection. Further consideration must be given to the prospect that added time will be needed for adjustment if objections are raised.

Revised charters and amended charter provisions approved by the electorate with the vote for and against are filed in duplicate with the county clerk and the secretary of state, within 30 days after the vote is taken. They become effective upon filing, unless a different effective date is specified in the document, in the case of a city charter.

### **Conclusion**

The service performed for the community by the members of a charter commission is immeasurable and has its own reward. It is a significant honor to participate in the creation of the document that most directly affects the quality of local government and the well-being of its citizens.

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**Albion, Michigan, Code of Ordinances >> PART I - CHARTER >>**

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**PART I - CHARTER** [1]PREAMBLECHAPTER 1. - NAME AND BOUNDARIESCHAPTER 2. - DEFINITIONS AND GENERAL PROVISIONSCHAPTER 3. - MUNICIPAL POWERS AND LIABILITIESCHAPTER 4. - OFFICERSCHAPTER 5. - THE CITY COUNCILCHAPTER 6. - CITY LEGISLATIONCHAPTER 7. - CITY ADMINISTRATIONCHAPTER 8. - THE ADMINISTRATIVE OFFICERS AND SERVICECHAPTER 9. - GENERAL FINANCECHAPTER 10. - TAXATIONCHAPTER 11. - SPECIAL ASSESSMENTS AND PUBLIC IMPROVEMENTSCHAPTER 12. - MUNICIPAL BORROWING POWERCHAPTER 13. - MUNICIPAL COURTCHAPTER 14. - ELECTIONSCHAPTER 15. - CONTRACTSCHAPTER 16. - PUBLIC UTILITY FRANCHISESCHAPTER 17. - MUNICIPALLY OWNED UTILITIESCHAPTER 18. - SUPERVISORS[CHAPTER 19.] - SCHEDULE

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**FOOTNOTE(S):**

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<sup>(1)</sup> **Editor's note**— Printed herein is the city charter, adopted on Aug. 2, 1960, and effective on Sept. 5, 1960. In catchlines the term "Section" has been abbreviated "Sec." and the catchline placed after the number rather than before the number. Obvious misspellings have been corrected without notation. Citations to state statutes have been made uniform. Additions for clarity are indicated by brackets. ([Back](#))

<sup>(1)</sup> **State Law reference**— Power to adopt and amend charter, Mich. Const. 1963, Art. VII, § 22; Home rule act, MCL 117.1 et seq. ([Back](#))

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**Albion, Michigan, Code of Ordinances >> PART I - CHARTER >> PREAMBLE >>**

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**PREAMBLE**

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We, the people of the City of Albion, mindful of the ideals and labors of our fathers in founding and developing this community, grateful to Almighty God for the blessings of freedom, peace, and justice, and desirous of furthering these blessings to ourselves and our posterity and provide for the public peace, health, and welfare and for the safety of persons and property, do hereby ordain and adopt this charter for the City of Albion.

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**Albion, Michigan, Code of Ordinances >> PART I - CHARTER >> CHAPTER 1. - NAME AND BOUNDARIES >>**

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**CHAPTER 1. - NAME AND BOUNDARIES**

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[Sec. 1.1. - Name.](#)

[Sec. 1.2. - Boundaries.](#)

[Sec. 1.3. - Wards.](#)

### **Sec. 1.1. - Name.**

The city shall be a body corporate under the name, "The City of Albion."

**State law reference**— *Organized cities to be body corporate, MCL 117.1.*

### **Sec. 1.2. - Boundaries.**

The city shall embrace the territory constituting the City of Albion on the effective date of this charter, together with such annexations thereto and less any detachments therefrom that may be made from time to time. Upon annexation or detachment of territory, the boundaries shall be deemed thereby to be changed without amendment of this section. The clerk shall maintain and keep available in his office for public inspection an official description of the current boundaries of the city.

### **Sec. 1.3. - Wards.**

The city shall comprise one ward which shall be divided into six (6) council districts for the election of members of the council, as set forth in [Section 14.6](#) of this charter.

**State law reference**— *Mandatory that charter provide for establishment of one or more wards, MCL 117.3(e).*

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 2. - DEFINITIONS AND GENERAL PROVISIONS** >>

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## **CHAPTER 2. - DEFINITIONS AND GENERAL PROVISIONS**

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[Sec. 2.1. - Records to be public.](#)

[Sec. 2.2. - Public records as evidence.](#)

[Sec. 2.3. - Definitions and interpretations.](#)

[Sec. 2.4. - Official performance.](#)

[Sec. 2.5. - Penalties for violations of charter.](#)

[Sec. 2.6. - Chapter and section headings.](#)

[Sec. 2.7. - Amendments.](#)

[Sec. 2.8. - Severability of charter provisions.](#)

### **Sec. 2.1. - Records to be public.**

All records of the city shall be public, unless otherwise provided by law; shall be kept in city offices, except when required for official reasons or for purposes of safekeeping to be elsewhere; and shall be available for inspection at all reasonable times.

**State law reference**— *Mandatory that records be public, MCL 117.3(l); public inspection, etc., of minutes of meetings, MCL 15.269.*

### **Sec. 2.2. - Public records as evidence.**

All papers, books, or other records, of any matter required by law, or by the provisions of any

ordinance or regulation, to be kept in any of the city departments shall be deemed public records, and they, or copies duly certified by the custodian thereof, shall be prima facie evidence of their contents in all suits at law or in equity or in other proceedings.

### **Sec. 2.3. - Definitions and interpretations.**

Except as otherwise specifically provided or indicated by the context of this charter:

- (1) The word "city" shall mean the City of Albion;
- (2) The word "council" shall mean the City Council of the City of Albion;
- (3) The word "law" shall denote applicable federal law, the constitution and statutes of Michigan, the applicable common law, and this charter;
- (4) The word "officer" shall include, but shall not be limited to, the mayor, the members of the council, the municipal judge, or judges, and as hereinafter provided, the administrative officers, deputy administrative officers, and members of city boards created by or pursuant to this charter;
- (5) The word "person" may extend and be applied to bodies politic and corporate and to partnerships and associations, as well as to individuals;
- (6) The words "printed" or "printing" shall include typewriting, printing, engraving, stencil duplicating, lithographing, photostating, or any similar method of reproducing written language;
- (7) The word "publish" or "published" shall include publication in the manner provided by law, or, where there is no applicable law, in one or more newspapers of the city qualified by law for the publication of legal notices, or, where such methods are not available, by posting in at least five (5) public places in the city;
- (8) Except in reference to signatures, the words "written" and "in writing" shall include hand written script, printing, typewriting, and teletype and telegraphic communications;
- (9) All words indicating the present tense shall not be limited to the time of the adoption of this charter, but shall extend to and include the time of the happening of any event or requirement to which the charter provision is applied;
- (10) The singular shall include the plural, the plural shall include the singular, and the masculine gender shall extend to and include the feminine gender and the neuter.

### **Sec. 2.4. - Official performance.**

Whenever this charter requires the performance of an act by an officer, the act may be performed by a deputy or by a subordinate, under the officer's direction, unless otherwise provided by law.

### **Sec. 2.5. - Penalties for violations of charter.**

Any person found guilty of an act constituting a violation of this charter may be punished by a fine which, in addition to court costs charged to him, shall not exceed five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days, or by both such fine and imprisonment, in the discretion of the court. This section shall not operate to limit or prejudice the power to remove officers or discharge employees as provided in this charter.

**State law reference**— *Limitations on penalties, MCL 117.4i(10).*

### **Sec. 2.6. - Chapter and section headings.**

The chapter and section headings used in this charter are for convenience only, and shall not be considered as part of the charter.

## Sec. 2.7. - Amendments.

This charter may be amended at any time in the manner provided by law. Should two (2) or more amendments adopted at the same election have conflicting provisions, the amendment receiving the largest affirmative vote shall prevail as to those provisions.

*State law reference— Charter amendment procedures, MCL 117.21—117.26.*

## Sec. 2.8. - Severability of charter provisions.

If any provision, section, or clause of this charter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any remaining portion or application of the charter, which can be given effect without the invalid portion or application, and, to this end, this charter is declared to be severable.

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 3. - MUNICIPAL POWERS AND LIABILITIES >>**

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## CHAPTER 3. - MUNICIPAL POWERS AND LIABILITIES

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### Sec. 3.1. - General powers.

#### Sec. 3.1. - General powers.

- (a) Unless otherwise provided or limited in this charter, the city shall possess and be vested with all the powers, privileges, and immunities, expressed or implied, which cities are permitted by law to exercise or to include in their charters. The enumeration of particular powers, privileges, or immunities in this section or elsewhere in this charter shall not be held to be exclusive.
- (b) The city shall have power to manage and control its finances, rights, interests, buildings, and property, to enter into contracts, to do any act to advance the interests, good government, and prosperity of the city and its inhabitants, and to protect the public peace, morals, health, safety, and general welfare. In the exercise of such powers, the city may enact ordinances, rules, and regulations, and take such other action as may be required, not inconsistent with law. The power of the city shall include, but shall not be limited to, the following:
  - (1) To declare as a hazard or nuisance any act or condition, upon public or private property or both, which is or may be dangerous to the health, safety, morals, or welfare of the inhabitants of the city, including, but not limited to, the accumulation of rubbish and the growing of noxious weeds; to provide for the abatement thereof; and to provide that the costs of such abatement shall be charged as a special assessment against the real property on which the hazard or nuisance is located.
  - (2) To provide for the public welfare by:
    - (a) Regulating trades, occupations, and amusements within the city, and prohibiting trades, occupations and amusements which are detrimental to the safety, health, morals, or welfare of its inhabitants;
    - (b) Regulating the preparation, storage, transportation, and sale of foods, drugs, and beverages for human consumption;
    - (c) Collecting and disposing of garbage and rubbish;
    - (d) Licensing and regulating the number of vehicles, which carry persons or property for hire, fixing the rates of fare and charges, and determining the location of stands for

- such vehicles;
  - (e) Licensing and regulating billboards and advertising signs and the locations thereof;
  - (f) Regulating the construction, erection, alteration, equipment, repair, moving, removal, and demolition of buildings and structures and their appurtenances and service equipment;
  - (g) Establishing zones within the city and regulating therein the use and occupancy of lands or structures; the height, area, size, and location of buildings; the required open spaces for light and ventilation of buildings; and the density of population;
  - (h) Regulating, limiting, and prohibiting the construction and use of buildings and lands in order to promote the public safety and to prevent fires;
  - (i) Regulating and controlling the use of streams, waters, and watercourses within the city.
- (3) To establish and reasonably control streets, alleys, bridges, and public places, and the space above and beneath them, and the use thereof by:
- (a) Creating and vacating the same and acquiring and disposing of land, or any interest in land, required therefor;
  - (b) Providing a plan of streets and alleys within the city and for a distance of not more than three (3) miles beyond its limits;
  - (c) Requiring the owners of real property to build and maintain public sidewalks in the area of streets immediately adjacent to such property, and, upon the failure of any owner to do so, constructing and maintaining such sidewalks and assessing the cost thereof against such property as a special assessment;
  - (d) Compelling all persons to care for the untraveled portions of streets lying between the curbs and sidewalks, which abut upon premises owned, controlled, or occupied by them, and to keep the same free from weeds and from objects which are offensive or hazardous to public health and safety, and, upon the failure to do so, to cut and remove such weeds and remove such objects and assess the cost thereof against such property as a special assessment;
  - (e) Compelling all persons to keep sidewalks which are in the area of streets immediately adjacent to the premises owned, controlled, or occupied by them, free from snow, ice, dirt, wood, weeds, shrubbery, or any other object which obstructs such sidewalks, or which makes the same offensive or hazardous to the public health or safety, and upon failure to do so, to cut and remove such weeds and removal [remove] such objects and to assess the cost thereof against such property as a special assessment;
  - (f) Providing for the grade of streets and requiring public utility users of the streets to conform thereto with respect to their tracks or facilities located on, above, or under the streets; requiring railroads to keep their tracks and the street surface between, and for a distance of one and one-half (1½) feet on each side of them, in reasonable repair at all times;
  - (g) Regulating the speed of vehicles, trains, and locomotives upon or across the streets within the provisions and limitations of law, and the stopping and parking of the same upon the streets and at street crossings;
  - (h) Providing for and regulating the lighting of streets, alleys, and public places;
  - (i) Preventing and abating the encumbering of streets and alleys or any part thereof;
  - (j) Regulating the location of buildings and structures and of trees and shrubbery at or near street corners and street intersections with alleys so as to provide for the public safety and welfare in the use of streets and alleys;
  - (k) Providing for and regulating the numbering of buildings upon property abutting the streets and alleys and compelling the owners and occupants thereof to affix numbers thereto;
  - (l)

Providing for the use, by others than the owners, of property located on, above, or under the streets, alleys, and public places in the operation of a utility upon the payment of a reasonable compensation therefor to the owner thereof;

- (m) Providing for the planting, removal, and general care and protection of trees and shrubbery within the streets and public places of the city and preventing the cutting of limbs and branches for the placing and maintenance of utility wires without the consent of the council.
- (4) To undertake any public work or make any public improvement or any repair or replacement thereof, either directly or by contract with private persons; and to participate in any public work or public improvement under any lawful plan by which the whole or part of the financial support of such work or public improvement is provided by one or more other governmental units or agencies;

**State law reference**— *Mandatory that charter contain provisions for the public peace and health and for the safety of persons and property, MCL 117.3(j); permissible that charter contain provisions for regulation and/or prohibition of trades, occupations and businesses, MCL 117.4i(4); permissible that charter contain provisions for use, control and regulation of streams, waters and watercourses, MCL 117.4h(4); permissible that charter provide for use, regulation, etc., of streets, alleys, etc., MCL 117.4h(1), (3); permissible that charter provide for assessment of costs of public improvements, MCL 117.4d.*

- (5) To construct, provide, maintain, extend, operate, and improve:
  - (a) Within the city: a city hall; city office buildings; community buildings; police stations; fire stations; civic auditoriums; public libraries; and polling places; and,
  - (b) Either within or without the corporate limits of the city or of Calhoun County: public parks: recreation grounds and stadiums; municipal camps; public grounds; zoological gardens; museums; airports and landing fields; facilities for the landing of helicopters: cemeteries; public wharves and landings upon navigable waters; levees and embankments for flood control and other purposes related to the public health, safety, and welfare; electric light and power plants and systems; water works and systems; sewage disposal plants and systems; storm sewers; garbage disposal facilities; refuse and rubbish disposal facilities; market houses and market places; facilities for the storage and parking of vehicles; hospitals; facilities for the docking of pleasure crafts and hydroplanes; and any other structure or facility which is devoted to or intended for public purposes within the scope of the powers of the city.

**State law reference**— *Power to acquire parks, etc., Mich. Const. 1963. art. VII, § 23; permissible that charter provide for acquisition of property by gift, purchase, etc., MCL 117.4e; permissible that charter provide for purchase (or condemnation), operation, etc., of transportation facilities, water systems, sewer systems, etc., MCL 117.4f; permissible that charter provide for acquisition, operation, etc., of watercraft, etc., docking facilities, MCL 117.4h(7).*

- (6) To acquire by purchase, gift, condemnation, construction, lease, or otherwise, real and personal property and interests in property, either within or without the corporate limits of the city or of Calhoun County, for any public use or purpose within the scope of its powers, including, but not by way of limitation, the uses and purposes set forth in this section;

**State law reference**— *Permissible that charter provide for acquisition of property by gift, condemnation, etc., MCL 117.4e(2).*

- (7) To join with any other municipal corporation or with any other unit or agency of government, or with any number or combination thereof, by contract, or otherwise, as may be permitted by law, in the ownership, operation, or performance, jointly, or by one or more on behalf of all, of any property, facility, or service which each would have the power to own, operate, or perform separately;

**State law reference**— *Joint acquisition and maintenance of public buildings, MCL 123.921—123.925.*

- (8) To receive and hold any property, whether real, personal, or intangible, in trust for city hospital, library, park, recreation, cemetery, or any other municipal purpose and apply the same to the execution of such trust. All such trusts, whether established before or after the effective date of this charter, shall be used and continued in accordance with the terms

thereof, subject only to the cy pres doctrine.

**State law reference**— Authority to accept gifts of property by trust or otherwise, MCL 123.871.

**State law reference**— Mandatory that charter contain provisions for public peace and health and for the safety of persons and property, MCL 117.3(j); permissible that charter provide for exercise of police power, MCL 117.4j(3).

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 4. - OFFICERS** >>

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## CHAPTER 4. - OFFICERS

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[Sec. 4.1. - City officers.](#)

[Sec. 4.2. - Eligibility for elective city office.](#)

[Sec. 4.3. - Persons ineligible for city office or employment.](#)

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[Sec. 4.9. - Vacancies.](#)

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[Sec. 4.11. - Recall.](#)

[Sec. 4.12. - Filling vacancies.](#)

[Sec. 4.13. - Delivery of office to successor.](#)

### Sec. 4.1. - City officers.

- (a) The elective officers of the city are the mayor, the six (6) councilmen, and the municipal judge or judges.
- (b) The appointive officers of the city are the city manager, the assessor, the finance director, the treasurer, the clerk, the city attorney, the police chief, the fire chief, the health officer and members of city boards.

(Res. No. 98-25, 5-18-98; Res. No. 98-49, 8-17-98)

**State law reference**— Mandatory that charter provide for certain elective offices, MCL 117.3(a).

### Sec. 4.2. - Eligibility for elective city office.

- (a) To be eligible for election to a city office, a person shall be an elector of the city and shall have been a resident of the city or of territory annexed to the city, or shall have had a combination of residence in the city and in the annexed territory for a period of not less than two (2) years preceding the date of his election.
- (b) A person appointed to fill a vacancy in an elective office must have such qualifications at the time of his appointment.
- (c) The council shall be the judge of the election and of the qualifications of its members.
- (d) A paid city employee must terminate employment with the city before beginning service as an elected official.

(As amended 11-2-76)

#### **Editor's note**—

A two-year residency requirement similar to that in subsection (a) above was declared unconstitutional in *Green v. McKeon*, 468 F.2d 883. See also *Stapleton v. City of Inkster* (1970), 311 F. Supp. 1187 (1970); *Schweitzer v. City of Plymouth*, 381 Mich. 485 (1971); *Bolanowski v. Raich*, F. Supp. (1971);

*Green v. City of Plymouth*, 367 F. Supp. 90 (1971).

**State law reference**— *Mandatory that charter provide for qualifications of officers, MCL 117.3(d).*

### **Sec. 4.3. - Persons ineligible for city office or employment.**

- (a) A person who is in default to the city shall not be eligible to hold any city office.
- (b) A person who holds or has held an elective city office shall not be eligible for appointment to an office or for employment for which compensation is paid by the city until one year has elapsed following the term for which he was elected or appointed.

**State law reference**— *Mandatory that charter provide for qualifications of officers, MCL 117.3(d).*

### **Sec. 4.4. - Notice of election or appointment.**

The city clerk shall mail to each person who is elected or appointed to a city office, a certificate of election or appointment within five (5) days from the time of election or appointment.

**State law reference**— *Mandatory that charter provide for election procedures, MCL 117.3(c).*

### **Sec. 4.5. - Compensation of officers.**

The compensation of all officers, shall be established by the council, except as otherwise provided by law.

**Editor's note**—

The above provision is superceded insofar as it applies to elected officials by the local officers compensation commission provided for in the city code pursuant to MCL 117.5c.

**State law reference**— *Mandatory that charter provide for compensation of officers, MCL 117.3(d).*

### **Sec. 4.6. - Oath of office.**

Every officer of the city before entering upon his duties shall take the oath or affirmation required by the Constitution of the State of Michigan. The council may require designated employees to take such oath before entering upon their employment. Oaths of office shall be filed with the clerk.

**State law reference**— *Required oath, Mich. Const. 1963, Art. XI, § 1.*

### **Sec. 4.7. - Surety bonds.**

In order to protect the city and the public, the council may require appropriate surety bonds of officers and employees. No bond shall be renewed upon its expiration. The premium of such bond shall be paid by the city. No bond shall be for a term of more than three (3) years, except bonds provided for or covering the municipal judge or judges.

### **Sec. 4.8. - Giving of surety by officers and employees forbidden.**

No officer shall give or furnish any bail, bond, or recognizance, nor shall he be the agent of any bondsman or insuror in connection with any bond or insurance which may be required by law or by the council in connection with any business or requirement of the city.

### **Sec. 4.9. - Vacancies.**

- (a) A city office shall become vacant upon the occurrence of any of the following:
  - (1) the expiration of the term of office;

- (2) the death of the incumbent;
  - (3) a resignation when approved by the council or appointing officer;
  - (4) a removal from office in any manner provided by law;
  - (5) ceasing to possess at any time the qualifications or eligibility for office required by this charter for election or appointment to office by any person elected or appointed thereto;
  - (6) being in default to the city more than thirty (30) days after receiving written notice of default from the city clerk, unless the officer is, in good faith, actually testing the existence or legality of such default by an appropriate action at law or in equity;
  - (7) final conviction of a felony involving moral turpitude, or an offense involving a violation of an oath of office;
  - (8) a judicial determination that the incumbent is of unsound mind;
  - (9) a decision of a competent tribunal declaring the election or appointment of the incumbent void;
  - (10) failure to take the oath or make the affirmation, or file the bond required for the office within ten (10) days from the date of election or appointment or the date set for the commencement of the term of office, whichever date is the later, or within such other time, not exceeding thirty (30) days thereafter, as the council may fix;
  - (11) in the case of council and the mayor, absence from four (4) consecutive regular meetings of the council, as the case may be, unless such absences, with reasons therefor stated at the time and appearing in the journal of the meeting from which the member was absent, be excused, or twenty-five (25) percent of such meetings in any calendar year, unless such absences are so excused;
  - (12) absence from the city or failure to perform the duties of such office for sixty (60) consecutive days, unless such absence from the city or failure to perform the duties of office shall be excused by the council prior to the expiration of such sixty-day period;
  - (13) any other event which, by law, creates a vacancy.
- (b) The council may provide by ordinance for creating vacancies in elective offices because of failure to perform the duties of office. Such provisions shall be self-executing.

#### **Sec. 4.10. - Resignations.**

Resignations of officers shall be made in writing and filed with the city clerk, who shall immediately notify the proper officials concerned.

#### **Sec. 4.11. - Recall.**

An elective officer may be recalled and the vacancy thereby created filled in the manner prescribed by law.

**State law reference**— *Recall, Mich. Const. 1963, Art. II, § 8; charter may provide for recall, MCL 117.4i(6); recall generally, MCL 168.951 et seq.*

#### **Sec. 4.12. - Filling vacancies.**

- (a) If a vacancy occurs in an elective office, except in the case of recall, the council shall fill the vacancy by appointment within sixty (60) days thereafter. Each appointment to fill a vacancy in the office of councilman shall be for a term ending on the first Monday in December following the next regular city election. Each appointment to fill a vacancy in the office of municipal judge shall be for a term ending on the first day of January following the next regular city election.
- (b) If a vacancy occurs in an appointive office, such vacancy shall be filled within sixty (60) days thereafter in the manner provided for making the original appointment. Such time may be extended

for not more than an additional sixty (60) days by council resolution setting forth the reasons therefor. If such vacancy be in an office for a definite term, it shall be filled for the balance of the term.

### **Sec. 4.13. - Delivery of office to successor.**

Whenever an officer or employee leaves an office or employment for any reason, he shall deliver forthwith to his successor in the office or to the mayor, all property of the city, such as books, working papers, moneys, and effects, which are in his custody, possession, or control.

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 5. - THE CITY COUNCIL** >>

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## **CHAPTER 5. - THE CITY COUNCIL**

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[Sec. 5.1. - The city council.](#)

[Sec. 5.2. - Terms of office.](#)

[Sec. 5.3. - Organization of the council.](#)

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[Sec. 5.5. - The mayor pro tempore.](#)

[Sec. 5.6. - Meetings of the council.](#)

[Sec. 5.7. - Powers of the council to appoint citizen advisory boards.](#)

[Sec. 5.8. - Restrictions on powers of the council.](#)

### **Sec. 5.1. - The city council.**

The council shall consist of the mayor and the six (6) councilmen. The mayor shall be elected from the city at-large. One councilman shall be elected from each of the six (6) council districts of the city. The council shall exercise all of the legislative and policy-making powers of the city and shall provide for the performance of all duties and obligations imposed upon the city by law. The compensation of each councilman shall be three hundred dollars (\$300.00) per year.

*State law reference— Mandatory that charter provide for election of mayor and legislative body, MCL 117.3(a).*

### **Sec. 5.2. - Terms of office.**

The terms of three (3) councilmen and of the mayor shall expire on the first Monday in December following each regular city election. When appointments are made to fill vacancies in the manner provided by [Section 4.12\(a\)](#) of this charter, appointees shall qualify for and assume the duties of office within fifteen (15) days after appointment, unless such time be extended for not more than sixty (60) days by the council.

### **Sec. 5.3. - Organization of the council.**

The council shall meet and organize on the first Monday in December following each regular city election. At such meeting, or within one week thereafter, the council shall elect from its membership a mayor pro tempore and do such other acts as may be required for its organization and the conduct of its business. The council shall provide by ordinance for the interim order of the succession of its members to the office of mayor pro tempore and for the prompt and temporary reconstitution of the council in the event that its membership is reduced to less than a quorum.

### **Sec. 5.4. - The mayor.**

(a) The mayor shall be recognized as the ceremonial head and chief executive officer of the city and

shall perform all duties provided or required of him by law or by the council.

- (b) He shall be the presiding officer of the council.
- (c) He shall be a member of the council with all the powers and duties of that office, including the right and duty to vote on questions before the council.
- (d) He shall advise the council concerning the public affairs of the city and make recommendations thereon.
- (e) In emergencies, he shall have the powers conferred by law upon peace officers and shall exercise such powers to prevent disorder, to preserve the public peace and health, and to provide for the safety of persons and property.
- (f) The mayor shall make all appointments, subject to prior approval of the council, unless any such appointment is required by law or by ordinance to be made by another officer or agency of the city.
- (g) He shall not possess the veto power.
- (h) The compensation of the mayor shall be six hundred dollars (\$600.00) per year.

**State law reference**— *Mayor to be chief executive officer, MCL 117.3(a).*

### **Sec. 5.5. - The mayor pro tempore.**

The mayor pro tempore shall succeed to the office of mayor when a vacancy occurs in that office. He shall have and exercise the powers and duties of the mayor when the mayor is absent or unable to perform the duties of his office. When it shall appear to the council that the mayor is unable to perform the duties of his office, the council shall, by resolution, determine whether the mayor pro tempore shall act in the place of the mayor. If the mayor pro tempore shall decline to assume the office of the mayor in the event of a vacancy in the office, the council shall appoint another member of the council to fill such vacancy. If no councilman shall accept such appointment, the council shall appoint an elector of the city who has the qualifications required of elective officers by this charter to fill such vacancy.

### **Sec. 5.6. - Meetings of the council.**

- (a) The council shall meet in the established council chambers, or in such other place as may be established by resolution, and shall hold at least two (2) regular meetings in each month.
- (b) Special meetings of the council shall be held at the regular meeting place of the council or at an alternate meeting place when notice of such alternate meeting place is posted at the main entrance to the city hall during such meeting. Special meetings shall be called by the clerk on the written request of the mayor, or of any two (2) members of the council.
- (c) At least six (6) hours written notice shall be given designating the time and purpose of a special meeting. Such notice shall be given personally by the clerk to each member of the council or written notice may be left at his usual place of residence or business by the clerk or by someone designated by him. A copy of such notice shall also be delivered at the place of business of each newspaper printed and published in the city, but this requirement shall not be jurisdictional to the holding of any such meeting.
- (d) In an emergency, any special meeting shall be a legal meeting if all members are present or, if there be a quorum present and all absent members have waived in writing the required notice thereof. Waivers may be made either before or after the time of the meeting.
- (e) An affidavit of the giving or service of any notice required by this section shall be made a part of the journal of a special meeting. All waivers of notice shall be attached to and made part of the journal of the meeting.
- (f) No business shall be transacted at any special meeting of the council except that stated or given in the notice of the meeting.
- (g) All regular and special meetings of the council shall be public meetings and the public shall have a reasonable opportunity to be heard.
- (h)

Four (4) members of the council shall be a quorum for the transaction of business. In the absence of a quorum, any number less than a quorum may adjourn a meeting to a later date.

- (i) The council shall determine its own rules and order of business and shall keep a journal in the English language of all its proceedings. The journal of each meeting of the council shall be signed by the clerk. The vote upon all matters considered by the council shall be taken by "Yes" or "No" votes which, upon the request of any member of the council, shall be entered upon the record.
- (j) The council may compel attendance at its meetings of its members and any officers or employees of the city. It may punish for nonattendance in such manner as it may prescribe by its rules.
- (k) No member of the council may vote on any question upon which he has a substantial direct or indirect financial interest, otherwise, each member of the council shall vote on each question before the council for determination, unless excused therefrom by the affirmative vote of all remaining members able to vote on the question. If a question is raised under this section at any council meeting, such question shall be voted on before the question to which it applies is voted upon, but the council members affected may not vote on such determination.
- (l) The vote of at least four (4) members shall be required for official action by the council, unless a larger majority is required by law.
- (m) The clerk shall prepare an agenda of the business to be considered at each regular council meeting. No business shall be considered by the council, unless placed upon the agenda for the meeting not later than 12:00 noon, on the day of the meeting, except upon the approval of five (5) or more members of the council.

**State law reference**— *Mandatory that charter provide for public meetings, MCL 117.3(l); open meetings act, MCL 15.261 et seq.; mandatory that charter provide for keeping of journal of council sessions, MCL 117.3(m); minutes of meetings required, MCL 15.269.*

### **Sec. 5.7. - Powers of the council to appoint citizen advisory boards.**

- (a) The council may in its discretion by ordinance create or abolish citizen advisory boards and may grant to them the power to conduct hearings and to make recommendations for the guidance of the council. All such recommendations shall be filed in the office of the clerk as public records.
- (b) Unless the council shall otherwise determine by a majority vote, all questions presented to the council concerning any subject which has been delegated to a citizen advisory board shall be submitted first to the board for consideration.
- (c) Advisory boards established by the council shall not be authorized to employ or direct the employment or removal of any administrative officer or employee of the city.

### **Sec. 5.8. - Restrictions on powers of the council.**

- (a) The council members shall not individually direct the appointment or removal of any administrative officer or employee of the city and shall deal with the administrative service of the city only through the city manager, as to officers and employees made responsible to him.
- (b) There shall be no standing committees of the council.

*(Res. No. 98-49, 8-17-98)*

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 6. - CITY LEGISLATION** >>

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## **CHAPTER 6. - CITY LEGISLATION**

[Sec. 6.1. - Legislative power.](#)

[Sec. 6.2. - Prior legislation preserved.](#)

[Sec. 6.3. - Introduction, consideration and style of ordinances.](#)

[Sec. 6.4. - Publication of ordinances.](#)

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[Sec. 6.10. - Same—Council procedure.](#)

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[Sec. 6.12. - Same—Status of ordinances adopted.](#)

[Sec. 6.13. - Same—Ordinance suspended.](#)

## **Sec. 6.1. - Legislative power.**

The legislative power of the city is vested exclusively in the council, except as otherwise provided by law.

**State law reference**— *Mandatory that charter provide for elected legislative body, MCL 117.3(a).*

## **Sec. 6.2. - Prior legislation preserved.**

All ordinances, resolutions, rules, and regulations of the council and of each administrative agency of the city, to the extent that they are consistent with the provisions of this charter, which are in force on the effective date of this charter, shall continue in full force, until repealed or amended. In the event that this charter shall require the adoption of an ordinance for any purpose and an ordinance exists on the effective date of this charter which accomplishes that purpose, no new ordinance need be adopted and the existing ordinance shall continue subject to this charter.

**State law reference**— *Mandatory that charter provide for continuation of city ordinances, MCL 117.3(k).*

## **Sec. 6.3. - Introduction, consideration and style of ordinances.**

- (a) Each proposed ordinance shall be introduced in written form. The style of all ordinances passed by the council shall be, "The City of Albion Ordains:"
- (b) No ordinance shall be passed at the same meeting at which it is introduced, unless it is declared to be an emergency ordinance by a vote of not less than five (5) members of the council.
- (c) An ordinance may be repealed or amended only by an ordinance passed in the manner provided in this section.
- (d) An ordinance may be repealed by reference to its number or title only.
- (e) If a section of an ordinance is amended, such section shall be re-enacted and published at length. This requirement shall not apply to zoning ordinance amendments or to the schedules of one-way streets and of parking limitations contained in any traffic ordinance.
- (f) Each ordinance, after adoption, shall be identified by a number.
- (g) Each ordinance shall be recorded by the clerk forthwith in the ordinance book, and the enactment of such ordinance shall be certified by him therein by his signature.

**State law reference**— *Mandatory that charter provide for ordinance adoption procedures, MCL 117.3(k).*

## **Sec. 6.4. - Publication of ordinances.**

- (a) Before an ordinance may become effective, it shall be published in one or more newspapers of general circulation in the city. Such publication may be as a part of the proceedings of the meeting at which it was adopted. The effective date of an ordinance shall be stated therein, but shall not be less than twenty (20) days from the date of its adoption, unless it is declared to be an emergency

ordinance as provided in subsection (b) of [Section 6.3](#) hereof.

- (b) In the event of the codification or compilation of the ordinances, the deposit of two hundred (200) printed copies in the office of the clerk, available for public inspection and sale at cost, shall constitute publication thereof.

**State law reference**— *Mandatory that charter provide for publication of ordinances, MCL 117.3(k); ordinance codification, MCL 117.5b.*

### **Sec. 6.5. - Penalties.**

The council shall provide in ordinances adopted by it for the punishment of violations thereof. Such punishment may be by a fine of not to exceed five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days, or both, in the discretion of the court. Imprisonment for violations of ordinances may be in the city or county jail, or in any workhouse of the state which is authorized by law to receive prisoners of the city.

**State law reference**— *Permissible that charter provide for penalty, and limitations on penalty, MCL 117.4i(10).*

### **Sec. 6.6. - Time limit for prosecution of ordinance violations.**

No prosecution for the violation of an ordinance shall be commenced after the expiration of two (2) years after the commission of the offense.

### **Sec. 6.7. - Proceedings for prosecution of ordinance violations.**

Except as may be inconsistent with or otherwise provided in [Chapter 13](#) of this charter, all proceedings relative to the arrest, custody, and trial of persons accused of the violation of ordinances shall be governed by and conform as nearly as may be with the provisions of law relating to proceedings in criminal cases cognizable by justices of the peace.

### **Sec. 6.8. - Initiative and referendum.**

An ordinance may be initiated by petition, or a referendum on an ordinance enacted by the council may be had by a petition, as hereinafter provided.

**State law reference**— *Permissible charter provisions, MCL 117.4i(6).*

### **Sec. 6.9. - Initiatory or referendary petitions[—Generally].**

An initiatory or a referendary petition shall be signed by not less than fifteen (15) percent of the registered electors of the city on the date of the filing of such petition. The clerk shall provide and make available to any registered elector of the city general petition forms upon which any initiatory or referendary petition may be set forth by such elector or others interested therein. Such petition may be the aggregate of two (2) or more petition papers. Each signer of a petition shall sign his name, and shall, himself, place thereon after his name the date of signing and his place of residence by street and number. To each petition paper there shall be attached a sworn affidavit by the circulator thereof, stating that each signature thereon is the genuine signature of the person whose name it purports to be, and that it was signed in the presence of the affiant. Such petition shall be filed with the clerk who shall, within ten (10) days, canvass the signatures thereon to determine the genuineness and the sufficiency thereof. Any signature obtained more than sixty (60) days before the filing of such petition with the clerk shall not be counted. If found to contain an insufficient number of genuine signatures of registered electors of the city, or to be improper as to form or compliance with the provisions of this section, the clerk shall notify, forthwith, the person filing such petition, and ten (10) days from such notification shall be allowed for the filing of supplemental petition papers. When found sufficient and proper, the clerk shall present the petition to the council at its next regular meeting.

**State law reference**— *Permissible charter provisions, MCL 117.4i(6).*

### **Sec. 6.10. - Same—Council procedure.**

Upon receiving an initiatory or referendary petition from the clerk, the council shall, within sixty (60) days, either:

- (a) If it be an initiatory petition, adopt the ordinance as submitted in the petition or determine to submit the proposal to the electors; or
- (b) If it be a referendary petition, repeal the ordinance to which the petition refers or determine to submit the proposal to the electors.

**State law reference**— *Permissible charter provisions, MCL 117.4i(6).*

### **Sec. 6.11. - Same—Submission to electors.**

Should the council decide to submit the proposal to the electors, it shall be submitted at the next election held in the city for any purpose, or, in the discretion of the council, at a special election. The result shall be determined by a majority vote of the electors voting thereon, except in cases where otherwise required by law.

**State law reference**— *Permissible charter provisions, MCL 117.4i(6).*

### **Sec. 6.12. - Same—Status of ordinances adopted.**

An ordinance adopted by the electorate through initiatory proceedings may not be amended or repealed by the council for a period of two (2) years after the date of the election at which it was adopted. Should two (2) or more ordinances, adopted at the same election, have conflicting provisions, the one receiving the largest affirmative vote shall prevail as to those provisions.

**State law reference**— *Permissible charter provisions, MCL 117.4i(6).*

### **Sec. 6.13. - Same—Ordinance suspended.**

The certification by the clerk of the sufficiency of a referendary petition within thirty (30) days after the passage of the ordinance to which such petition refers shall automatically suspend the operation of the ordinance in question pending repeal by the council or final determination by the electors.

**State law reference**— *Permissible charter provisions, MCL 117.4i(6).*

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 7. - CITY ADMINISTRATION** >>

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## **CHAPTER 7. - CITY ADMINISTRATION**

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[Sec. 7.1. - Administrative departments of the city.](#)

[Sec. 7.2. - City manager.](#)

### **Sec. 7.1. - Administrative departments of the city.**

- (a) The executive and administrative powers, authority, and duties, not otherwise herein provided for, shall be divided into the following departments and such other departments as the council may by ordinance establish:
  - (1)

- department of public affairs,
  - (2) department of accounts and finance,
  - (3) department of public properties,
  - (4) department of public safety,
  - (5) department of public works and sanitation,
  - (6) department of public highways,
  - (7) department of public health.
- (b) The department of public affairs, shall be under the superintendence and responsibility of the mayor, and shall include all matters pertaining to the mayor's executive office, and such other duties as the council may, by ordinance or resolution, determine.
- (c) The department of accounts and finance shall have responsibility for the clerk's office and work, the treasurer's office and work, the director of finance's work and office, the assessor's office and work; the collection of license fees, special assessments, water rates, and any other rates or charges for public utilities, services, and facilities of the city, and shall be responsible for financial settlements with the clerk, municipal court, constables, and any other person receiving or holding city money.
- (d) The department of public properties shall have responsibility for the supervision, care, and use of all public buildings, parks, cemeteries, and other public grounds owned or leased by the city, city controlled waters, watercourses, and flood control facilities, other than highways and appurtenances thereof.
- (e) The department of public safety shall have the responsibility for the police and fire functions of the city and the inspection of electrical wiring, plumbing, elevators, fire escapes, signs, and buildings.
- (f) The department of public works and sanitation, shall have responsibility for all construction work and maintenance of sewers, drains, water works, and sewage disposal facilities.
- (g) The department of public highways shall have responsibility for all construction work relative to and the care of streets and alleys, sidewalks and crosswalks, curbs and gutters, trees, bridges, street lighting, paving, grading, opening of streets, and street closings.
- (h) The department of public health shall have responsibility for the supervision of the general health conditions of the city and for the inspection services of the city relating to matters of public health.
- (i) The council may prescribe additional powers and change or consolidate departments whenever it deems it necessary for the efficient and economical conduct of the business of the city.

(Res. No. 98-49, 8-17-98)

**State law reference**— *Charter may provide for establishment of departments, MCL 117.4j(3).*

## **Sec. 7.2. - City manager.**

- (a) **Qualifications.** To be eligible for appointment, the city manager must have previous experience in city, public, business or industrial administration and also have a bachelors degree and at least a masters degree in public administration or equivalent.
- (b) The office of the city manager shall be the chief administrative office of the city. The city manager shall be responsible for the supervision of the administrative departments of the city. Additional responsibilities shall include the duty of appointing administrative officers, other than the city attorney and members of the city boards.
- (c) Except as otherwise provided by the Charter, the city manager shall have the supervision of and the responsibility for all administrative departments of the city. The city manager shall also have the responsibility to implement all matters in the city personnel policy as it relates to city personnel.
- (d) In general, the city manager shall have the additional functions and duties prescribed in this subsection. The city manager shall:
- (1) Be responsible to the city council for the efficient administration of all administrative departments of the city government.
  - (2)

- Recommend to the city council for adoption such measures as the manager may deem necessary or expedient and attend city council meetings with the right to take part in discussion, but shall not have the right to vote.
- (3) Exercise and perform all administrative functions of the city that are not imposed by law, the Charter or ordinance upon some other official.
  - (4) Enforce all ordinances except as otherwise provided.
  - (5) Appoint the emergency preparedness coordinator.
  - (6) Compile the annual budget proposal of the city and administer the annual budget.
  - (7) Perform such other duties as may be prescribed by ordinance or by direction of the city council.
- (e) The powers and duties delegated to the city manager in this section shall not be performed by any other officer of the city.
- (f) In the event of a vacancy in the office of city manager, the council shall appoint some person other than an elective city officer to perform the duties of city manager until a successor to the city manager has been appointed, has qualified, and has assumed the duties of the office.

(Res. No. 98-49, 8-17-98)

**Albion, Michigan, Code of Ordinances >> PART I - CHARTER >> CHAPTER 8. - THE ADMINISTRATIVE OFFICERS AND SERVICE >>**

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**CHAPTER 8. - THE ADMINISTRATIVE OFFICERS AND SERVICE**

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**Sec. 8.1. - The administrative officers.**

- (a) The administrative officers of the city shall be the city manager, the assessor, the finance director, the treasurer, the clerk, the city attorney, the chief of police, the fire chief and members of the city boards. All administrative officers of the city, except the city manager, the city attorney and members of city boards, shall be appointed and directed by the city manager. The council may, by ordinance or

resolution, upon the recommendation of the city manager, create such additional administrative offices, or combine any administrative officers, in any manner not inconsistent with law, and prescribe the duties thereof as it may deem necessary for the proper operation of the city government.

- (b) In making appointments of administrative officers, the appointing authority shall consider only the good of the public service and the fitness of the appointee for, and his ability to discharge the duties of the office to which he is appointed.

(Res. No. 98-25, 5-18-98; Res. No. 98-49, 8-17-98)

**State law reference**—Mandatory that charter provide for clerk, assessor, etc., MCL 117.3(a).

## **Sec. 8.2. - Administrative officers—Appointments, terms, and compensation.**

- (a) The city manager and the city attorney shall be appointed by and shall hold office at the pleasure of the city council, which body shall also set their compensation.
- (b) Except for the city attorney and members of city boards, all administrative officers of the city shall be appointed by the city manager. Members of city boards shall be appointed by the mayor, subject to the confirmation of the council.
- (c) The city manager may dismiss any officer of the city appointed by him.
- (d) The Council may remove any elective officer or the member of any city board for the reasons and in the manner provided for the removal of city officers by the Governor of Michigan by sections 6, 7, 8, 9, and 10 of [Chapter 15](#) of the Revised Statutes of Michigan of 1846, as set forth in Sections 201.6 to 201.10 of the Compiled Laws of 1948, [MCL 201.6—201.10. For such purpose, Section 6 shall be deemed to be in full force and effect notwithstanding the repeal thereof by the Legislature. Further, for such purpose, the Council shall do and perform the acts required by such provisions of law of the Governor, the City Attorney the acts required of the Attorney General and Prosecuting Attorney, the Municipal Court the acts required of the Circuit Court Commissioner or Judge of Probate.
- (e) All persons employed by the city who are not elective or administrative officers, or members of a board created by this charter, or declared to be administrative officers by or under authority of this section, shall be deemed to be employees of the city.
- (f) The compensation of all administrative officers shall be in accordance with budget appropriation therefor. Within budget appropriations, reasonable expenses may be allowed to administrative officers when actually incurred and after they have been audited by the director of finance and approved by the council.

(Res. No. 98-25, 5-18-98; Res. No. 98-49, 8-17-98)

**State law reference**—Mandatory that charter provide for compensation of officers, MCL 117.3(a).

## **Sec. 8.3. - City clerk.**

- (a) The clerk shall be clerk of the council. He or his deputy shall attend all meetings of the council and shall keep a permanent journal of its proceedings, in the English language.
- (b) He shall be custodian of the city seal, and shall affix it to all documents and instruments requiring the seal, and shall attest the same. He shall also be custodian of all papers, documents, and records pertaining to the city, the custody of which is not otherwise provided for by law. He shall give to the proper officials ample notice of the expiration or termination of their terms of office or of any official bonds, franchises, contracts, or agreements to which the city is a party.
- (c) He shall keep a record of all ordinances, resolutions, and actions of the council and shall keep the mayor informed with respect thereto. In the event that the office of city manager be created by the council, the clerk shall keep such officer so informed concerning such matters as are within the scope of his powers and authority as fixed by the council.
- (d) He shall have power to administer all oaths required by law and the ordinances of the city.
- (e) He shall certify all ordinances and resolutions enacted or passed by the council and such

certification shall be prima facie evidence of the due and proper action of the council thereon.

- (f) He shall perform such other duties as the council shall direct or which may be required of him by law.

(Res. No. 98-49, 8-17-98)

**State law reference**— *Mandatory that charter provide for duties of officers, MCL 117.3(d); mandatory that charter provide for keeping of council journal, MCL 117.3(m).*

#### **Sec. 8.4. - City treasurer.**

- (a) The treasurer shall have the custody to all money of the city and all evidences of value belonging to or held in trust by the city.
- (b) He shall keep and deposit all money or funds in such manner and only in such places as the council may determine or as may be required by law.
- (c) He shall have such powers, duties, and prerogatives in regard to the collection and custody of state, county, school district, and city taxes and moneys as are conferred by law.
- (d) He shall perform such other duties as may be prescribed by law or by the council.

**State law reference**— *Mandatory that charter provide for duties of officers, MCL 117.3(d).*

#### **Sec. 8.5. - Deputies of the clerk and treasurer.**

The clerk and the treasurer, may appoint and remove their deputies, subject to the budget allowances therefor and the approval of the mayor relative to appointments, and may remove such deputies at will. Each deputy shall possess all the powers and authorities of his superior officer.

#### **Sec. 8.6. - Director of finance.**

- (a) The director of finance shall be the general accountant of the city, shall keep the books of account of the receipts and expenditures of the city, and shall keep the council and mayor and city manager informed as to the city's financial affairs. The director of finance shall provide the accounting system of the city and each of its departments. The accounting system shall conform to any uniform system that may be required by law.
- (b) He shall maintain an inventory of city-owned property.
- (c) He shall balance all the books of account of the city at the end of each calendar month, and shall make a report thereon to the council and the city manager, if there be one.
- (d) The director of finance shall, at any time upon direction of the city manager, examine and audit all books of account kept by any official or department of the city. The director of finance shall examine and test-check all books of account of the treasurer at least once each month.

(Res. No. 98-49, 8-17-98)

**State law reference**— *Mandatory that charter provide for duties of officers, MCL 117.3(d); mandatory that charter provide for a system of accounts, MCL 117.3(n).*

#### **Sec. 8.7. - City attorney.**

- (a) The attorney shall act as the legal advisor of and be responsible to the council in all respects concerning the performance of the functions of its official duties. The city attorney shall advise the clerk, treasurer, assessor and the city manager concerning their statutory and charter duties, when so requested, and shall file with the clerk a copy of all written opinions.
- (b) He shall prosecute ordinance violations and shall represent the city in cases before courts and other tribunals.
- (c) He shall prepare or review all ordinances, regulations, contracts, bonds, and such other instruments as may be required by this charter or by the council, and shall promptly give his opinion as to the legality thereof.
- (d) He shall attend the meetings of the council.

- (e) He shall be the attorney for the several boards of the city.
- (f) He shall perform such other duties as may be prescribed for him by this charter or the council.
- (g) Upon the attorney's recommendation, or upon its own initiative, the council may provide for an assistant to the city attorney and may retain special legal counsel to handle any matter in which the city has an interest, or to assist the city attorney in connection therewith.
- (h) The normal compensation of the city attorney shall be set by the council. Such compensation shall be in consideration of the performance of the duties set forth in subsections (a) to (e) of this section and such as are set under subsection (f) as shall be agreed upon between him and the council, except for appearances on behalf of the city in courts other than the municipal court, and before state and other tribunals. The council shall provide additional or special compensation for extraordinary or special undertakings, provided such additional or special compensation is fixed or agreed upon before the service for which it is paid has been rendered.

(Res. No. 98-49, 8-17-98)

**State law reference**— *Mandatory that charter provide for duties of officers, MCL 117.3(d).*

### **Sec. 8.8. - Assessor.**

- (a) The assessor shall possess all the powers vested in and shall be charged with all the duties imposed upon assessing officers by law.
- (b) He shall make and prepare all regular and special assessment rolls in the manner prescribed by law.
- (c) The assessor shall perform such other duties as may be prescribed by law or the city manager.

(Res. No. 98-49, 8-17-98)

**State law reference**— *Mandatory that charter provide for duties of officers, MCL 117.3(d).*

### **Sec. 8.9. - Other administrative officers.**

The duties of all administrative officers, not otherwise provided herein, shall be those established by law and by ordinance and resolution of the council.

### **Sec. 8.10. - Police department.**

- (a) The police department shall be under the direction of the chief of police, who shall be appointed by the councilman assigned to the department of public safety, subject to the confirmation of the council, and shall be responsible to such councilman for the performance of his duties.
- (b) Police officers of the city shall have all the powers, immunities, and privileges granted to peace officers by law for the making of arrests, the preservation of order, and the safety of persons and property in the city. Any person arrested shall be taken before the proper magistrate or court for examination or trial, without unnecessary delay. Police officers shall make and sign complaints to or before the proper officers and magistrates against any person known to be or, upon complaint or information, believed to be guilty of any violation of this charter or ordinances of the city, or of the penal laws of the state. For purposes of making arrests, violations of this charter and of city ordinances shall be deemed to be misdemeanors.

**State law reference**— *Charter may provide for establishment of departments, MCL 117.4j(3); arrest powers of police, MCL 117.34, 764.2a, 764.15.*

### **Sec. 8.11. - Fire department.**

- (a) The fire department shall be under the direction of the fire chief, who shall be appointed by and responsible to the councilman assigned to the department of public safety, subject to the confirmation of the council, and shall be responsible to such councilman for the performance of his duties.
- (b) The fire department shall be responsible for the prevention and extinguishment of fires and the

protection of persons and property against damage and accident resulting therefrom. The fire chief shall be responsible for the use, care, and management of the city's fires and the protection of persons and property against damage and accident resulting therefrom. The fire chief shall be responsible for the use, care, and management of the city's fire fighting apparatus and property. He shall conduct supervisory and educational programs to diminish the risk of fires within the city. He, or any of his authorized subordinates, may command any person present at a fire to aid in the extinguishment thereof and to assist in the protection of life or property. If any person wilfully disobeys any such lawful requirement, he shall be deemed guilty of a violation of this Charter.

- (c) The fire chief or any of his authorized subordinates may cause any building to be pulled down or destroyed, when deemed necessary in order to arrest the progress of a fire. In such case no action shall be maintained against the city or any person therefor. If any person having an interest in such building shall apply to the council within three (3) months after the fire for damages or compensation for such building, the council may pay him such compensation as it may deem just. The council may ascertain the amount of such damage or compensation by agreement with the owner of the property, or at the council's discretion, by the appraisal of a jury selected in the same manner as in the case of juries selected to appraise damages for the taking of property for public use. No compensation shall be paid on account of any loss which would probably have occurred to a building, if it had not been pulled down or destroyed under authority of this section or to the extent that it is covered by fire or other applicable insurance.

### **Sec. 8.12. - City hospital.**

- (a) The city's hospital and hospital facilities shall constitute a department of the city government. The hospital shall be under the control and direction of an appointed board, to be known as the Albion Hospital Board of Trustees. The board shall be composed of nine (9) members. Three (3) members shall be councilmen who are appointed annually in the month of January and six (6) members shall be citizens of the community, having the qualifications required by this charter for holding elective city office, except that one of such citizen members may be a nonresident of the city. The citizen members shall serve for terms of three (3) years each, with the terms of two (2) members expiring on the first day of January in each year. Vacancies on the board shall be filled in the same manner as appointments for the full term are made and shall be for the balance of the term in which the vacancy exists. The board shall organize at its first meeting in January of each year, and shall elect one of its members president and such other officers as are provided in its bylaws. The board shall hold at least one regular meeting in each month at a meeting place designated by the board. Special meetings may be called at the request of the president or of any two (2) members in the manner provided in this charter for calling special meetings of the council, except that the board shall designate the person who shall serve notice of such meetings. All business meetings of the board shall be open to the public. If business action is taken by the board at any meeting, other than a public meeting, such action shall be void. The board shall keep a journal of its business meetings and its proceedings shall be filed with the clerk as a public record. Members of the board shall receive no compensation for their services, but shall be allowed reasonable expenses when actually incurred by them upon authority of the board.
- (b) The hospital board of trustees shall make such rules and regulations and adopt such bylaws as are necessary for the conduct of the city's hospital in a manner consistent with the best practices for an accredited hospital. The board shall provide for liaison between it and the hospital staff. Such rules, regulations, and bylaws, and amendments thereof and additions thereto, shall become effective when filed with the clerk as a public record.
- (c) The hospital board of trustees shall appoint the hospital administrator. The hospital administrator shall serve at the pleasure of the board. As the administrative agent of the board, the administrator shall have general superintendence of the city's hospital facilities, and shall be responsible to the board for the economical operation and maintenance thereof. He shall have control and direction of the employees of the hospital department of the city, subject to the provisions of this charter.

- (d) On or before the first day of December in each year, the hospital board of trustees shall submit to the director of finance or person who makes the annual budget proposal, an estimate of the anticipated expenditures and income of the board for the ensuing fiscal year of the city, for inclusion in the budget proposal to be presented to the council.
- (e) The council shall make an appropriation for such purpose of such amounts as will assure the operation and maintenance of the hospital and its facilities in a manner consistent with the needs of the community.
- (f) In the conduct of the city's hospital and its facilities, the hospital board of trustees shall be subject to approved hospital accounting procedures and controls.

**State law reference**— *Charter may provide for establishment of departments, MCL 117.4j(3).*

### **Sec. 8.13. - Albion City Library.**

- (a) There shall be a library board consisting of five (5) persons having the qualifications required of elective city officers, except that one of such citizen members may be a nonresident of the city. The members of the library board shall be appointed by the mayor subject to confirmation by the council. One member of the board may be a member of the council. The terms of office of members of the library board shall be for five (5) years, with the term of one member expiring annually on the first day of January. If one member be a councilman, the requirement that the term of one member shall expire annually shall be adjusted by the council so as to omit one such expiration in every five (5) year period. Members of the library board shall not receive any compensation for their services, on or in connection with the affairs of the board but shall be allowed reasonable expenses when actually incurred by them upon authority of the board.
- (b) The library board shall make such rules and regulations and adopt such bylaws as are necessary for the proper operation of the Albion City Library and shall appoint the city librarian. All such rules and bylaws shall be filed in the office of the clerk as a public record.
- (c) On or before the first day of December in each year, the library board shall submit to the director of finance or person who makes the annual budget proposal an estimate in detail of the anticipated expenditures of the board for the ensuing fiscal year of the city for inclusion in the budget proposal to be presented to the council.
- (d) The council shall provide in each annual budget of the city for the operation and conduct of the Albion City Library, and shall appropriate for such purpose such amounts which, in addition to revenues received from the State of Michigan and other sources, will assure the conduct of the library in a manner consistent with the needs of the community.
- (e) In the conduct of the Albion City Library, the library board shall be subject to the same accounting procedures and controls in the administration of the affairs of the library and the annual budget therefor as are other departments of the city.

*(As amended 11-7-78)*

### **Sec. 8.14. - Planning department.**

There shall be a planning commission. The voting members of the planning commission shall be nine (9) in number and shall be comprised of the mayor, a member of the council who shall be appointed by the council annually in the month of December, and an administrative officer of the city to be appointed by the city manager and six (6) persons who possess the qualifications required by this charter for elective officers, and by Act No. 285 of the Public Acts of Michigan of 1931 [MCL 125.31 et seq.], as amended, to be appointed by the mayor subject to the approval by the council; Provided, that with the consent of the council, one of such persons may be a nonresident of the city who has an interest in the planning of the general area of which the City of Albion is a part. Each such person shall be appointed for a three (3) year term and shall be subject to removal by the mayor after a public hearing for inefficiency, neglect of duty, or malfeasance in office. The planning commission shall possess and shall exercise all of the powers and functions granted to and required of planning commissions under the provisions of Act No. 285 of the Public

Acts of Michigan of 1931, and such amendments and superseding acts as may be enacted.

(Res. No. 98-49, 8-17-98)

**State law reference**— *Membership on planning commission, MCL 125.33; powers of planning commission, MCL 125.34 et seq.*

### **Sec. 8.15. - Citizen committees.**

The council may create citizen advisory committees for the purpose of studying and investigating specific problems or needs of any department, function, or interest of the city where there is no board created to make such studies or investigations. Each such committee shall conduct its study in cooperation with appropriate city officials having access to information needed by the committee and submit its findings and recommendations to the council. Each such committee shall render its report to the council within two (2) years after its creation, and shall then cease to exist unless the work of the committee is extended thereafter by the council for a period not exceeding one year.

### **Sec. 8.16. - Composition of city boards and committees.**

The membership of committees authorized by this charter shall at no time be comprised of a number of members of the council exceeding one-third of the membership of the entire board or committee.

### **Sec. 8.17. - Additional administrative powers and duties.**

From time to time, upon the recommendation of the city manager, the council may, by ordinance, prescribe additional powers and duties, not inconsistent with this charter, to be exercised and administered by appropriate officers and departments of the city.

(Res. No. 98-49, 8-17-98)

### **Sec. 8.18. - Civil service.**

The council may provide, by ordinance, for a merit system or personnel management for employees in the service of the city. Whether or not a merit system plan of personnel management be adopted, the standards for employment and the salary and wage scales for comparable city positions of employment and work in all city departments shall be as uniform as possible.

**State law reference**— *Charter may provide for civil service, MCL 117.4i(7).*

### **Sec. 8.19. - Employee welfare benefits.**

The council shall have power to make available to the administrative officers and employees of the city, other than members of the several boards, any recognized standard plan of group life, hospital, health, or accident insurance, either independently of, or as a supplement to, any pension plan provided by the city for its employees.

**State law reference**— *Permissible that charter provide for system of compensation of employees and their dependents in case of death, etc., MCL 117.4i(8).*

### **Sec. 8.20. - Pension plan.**

The pension plan of the city which was in effect on the effective date of this charter shall remain in full force and effect as it existed on such effective date, except as it may be hereafter altered or changed as permitted by law.

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**CHAPTER 9. - GENERAL FINANCE**

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[Sec. 9.1. - Fiscal year.](#)

[Sec. 9.2. - Budget preparation and procedure.](#)

[Sec. 9.3. - Budget adoption procedure.](#)

[Sec. 9.4. - Budget control.](#)

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**Sec. 9.1. - Fiscal year.**

The fiscal and budget year of the city shall begin on the first day of January of each year.

*(As amended 11-2-76)*

**Sec. 9.2. - Budget preparation and procedure.**

During or before the sixth week preceding the first day of the fiscal year, the city manager shall present to the council a budget proposal for the next fiscal year of the city. Such budget proposal shall set forth the city manager's recommendation for and an analysis of the anticipated income and expenditures of the city during the next fiscal year, together with comparative figures showing the estimated corresponding amounts for the current year and comparisons with the previous year. The proposed expenditures set forth in the budget proposal shall not exceed the expected revenues of the city. The proposed expenditures set forth in the budget proposal of the city's hospital shall be separate and distinct from the general city budget proposal. Unencumbered funds remaining at the end of the current fiscal year may be reallocated for purposes set forth in the budget proposal.

*(Res. No. 98-49, 8-17-98)*

**Sec. 9.3. - Budget adoption procedure.**

- (a) The budget proposal of the city manager shall be reviewed by the council and shall be available for public inspection in the office of the clerk.
- (b) The council shall direct that a public hearing on the budget proposal be held not less than one week before its final adoption. A notice of the public hearing shall be published in a newspaper by the clerk at least one week prior to the date of hearing.
- (c) At a regular meeting held prior to the end of the fiscal year, the council shall, by resolution, adopt a budget for the following fiscal year and make an appropriation of the money needed for the conduct of the city government during the fiscal year covered by the budget.
- (d) If the council does not adopt a budget prior to the commencement of the next fiscal year, the budget proposal shall become an appropriation and the budget for the fiscal year without further council action.
- (e) A copy of the appropriations for each fiscal year certified by the clerk, shall be furnished to the director of finance, and the city manager within 10 days after the date of the adoption of the budget resolution.

*(Res. No. 98-49, 8-17-98)*

**State law reference**— *Mandatory that charter provide for annual appropriations, MCL 117.3(h).*

### **Sec. 9.4. - Budget control.**

- (a) The city manager may authorize unencumbered appropriation balances to be transferred within a department at any time. At the request of the city manager or on its own initiative, the council may transfer unencumbered balances from one office, department, or agency of the city to another.
- (b) The director of finance shall submit periodically to the council, information comparing estimated and actual revenues and expenditures to the end of the preceding month.

*(Ord. No. 98-49, 8-17-98)*

### **Sec. 9.5. - Withdrawal of funds.**

- (a) All funds drawn from the treasury shall be drawn pursuant to the authority of the council and in accordance with appropriations made. The hospital board and the library board shall provide rules for the disbursement of hospital and library funds, which rules shall be effective upon the approval thereof by the council.
- (b) The council shall prescribe the method for the disbursement of city funds. Unless otherwise provided by ordinance, all checks of the city shall be signed by the mayor and the clerk.
- (c) Expenditures shall not be charged directly to any contingent or general account. Instead, expenditures shall be charged to accounts provided therefor and if there is a deficiency in any account the necessary amount of the appropriation from such account shall be transferred to the appropriate budget item or account, before the expenditure may be made.
- (d) Within thirty (30) days following the end of each fiscal year, the finance director shall file with the council a schedule of all encumbrances upon the budget appropriations existing at the end of the fiscal year, with his recommendations thereon, and the council shall provide for the payment of such thereof as constitute valid claims against the city from corresponding budget items from the then current fiscal year.

### **Sec. 9.6. - Special accounts.**

- (a) The council may, by ordinance, establish and maintain accounts for accumulating moneys to be used for acquiring, extending, constructing, or repairing public improvements and for the purchase of equipment of any type, in each case either for a specific item or items or for future unspecified public improvements or equipment, or both.
- (b) Appropriations to such accounts may be made by the council either in the annual appropriation resolution or, from time to time during the fiscal year, from available funds, from whatever source derived, which are not required for other appropriations or obligations of the city. Such accounts shall be continuing accounts and the balances therein at the end of each fiscal year shall remain a part thereof.
- (c) Moneys which are accumulated for the purpose of public improvements, as set forth in subsection (a) hereof, shall be used only at the direction of the council and only for the purpose provided in the original ordinance establishing such accounts, unless their use for some other municipal purpose be authorized by a majority vote of the electors of the city who vote on the proposition to amend such ordinance. After the purpose of any such account has been fulfilled, any balance remaining therein may be transferred by the council to any other special account or to the general fund of the city.
- (d) Moneys which are accumulated for the purpose of purchasing equipment, as set forth in subsection (a) hereof, shall be expended only for the purpose provided in the ordinance establishing any such account, or as such ordinance may be amended from time to time, and, when no longer required for such purpose, such moneys or any part thereof may be transferred to the general fund by a resolution adopted by the affirmative vote of not less than five (5) members of the council.

## Sec. 9.7. - Notice to city for claim for injuries.

The city shall not be liable in damages for injury to person or property by reason of negligence of the city, its officer or employees, except such as may arise out of or in the course of the performance of a proprietary function of the city, or by reason of any defective highway, public work, public service improvement, or facility of the city, or by reason of any obstruction, ice, snow, or other encumbrance thereon, unless, within sixty (60) days after such injury occurred, the person damaged or his representative causes a written notice to be served upon an officer of the city upon whom process may be served by law. Such notice shall state that such person intends to hold the city liable for such damages, and shall set forth substantially the time and place of the injury, the manner in which it occurred, the nature of the act or defect complained of, the extent of the injury so far as known and the names and addresses of witnesses known to the claimant. Except in cases arising out of or in the performance of a proprietary function of the city, no person shall bring action against the city for damages to person or property arising out of any of the reasons or circumstances aforesaid, unless brought within the period prescribed by law, nor unless he has first presented to the clerk a claim in writing and under oath, setting forth specifically the nature and extent of the injury and the amount of damages claimed. The clerk shall present any such claim to the council for action. Except in cases arising out of or in the performance of a proprietary function of the city, it shall be a sufficient bar to any action upon any such claim that the notice of injury and the claim in writing under oath, required by this section, were not filed within the time and in the manner herein provided.

### *Editor's note—*

The above section is superceded by MCL 691.1401 et seq.

## Sec. 9.8. - Depositories.

The council shall designate depositories for city funds in accordance with law, and shall provide for the regular deposit of all city moneys.

*State law reference— Depositories, MCL 129.11 et seq.*

## Sec. 9.9. - Independent audit.

An independent audit shall be made of all accounts of the city government by certified public accountants at the close of each fiscal year, and shall be completed on or before the fifteenth of June following the close of the fiscal year. Special independent audits may be made to the council by a certified public accountant designated by it. An analysis or summary of the audit shall be made public by the council. A copy of each audit shall be placed in the Albion Public Library.

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 10. - TAXATION** >>

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## CHAPTER 10. - TAXATION <sup>[2]</sup>

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### **Sec. 10.1. - Power to tax—Tax limit.**

- (a) The city shall have the power to assess taxes and to lay and collect rents, tolls, and excises.
- (b) The subjects of ad valorem taxation by the city for municipal purposes shall be the same as for state, county, and school purposes under the general law.
- (c) The levy of taxes for municipal purposes in any year shall not exceed one and one-quarter ( $\frac{1}{4}$ ) percent ( $12\frac{1}{2}$  mills) of the assessed value of all real and personal property in the city, unless the proposition to approve an increase above the tax rate so limited is first approved by a three-fifths vote of the electors of the city voting on the proposition. No such increase shall be for a period of more than three (3) years. Nor shall it or any combination of such increases cause the total tax rate in any one year for municipal purposes to exceed two (2) percent (20 mills) of the assessed value of all real and personal property in the city.
- (d) Except as otherwise provided by this chapter, city taxes shall be assessed, levied, and collected in the manner provided by law.

**State law reference**— *Mandatory that charter provide for annually levying and collecting tax, MCL 117.3(g); general property tax act, MCL 211.1 et seq.; limits on taxation, Mich. Const. 1963, Art. VII, § 21; MCL 117.5(a), 211.107a.*

### **Sec. 10.2. - [Same—]Exemptions.**

The power of taxation shall never be surrendered or suspended by any grant or contract to which the city shall be a party. No exemptions from taxation shall be allowed, except such as are expressly required or permitted by law.

**State law reference**— *Exempt property, MCL 211.7 et seq.*

### **Sec. 10.3. - Tax day.**

Subject to the exceptions provided or permitted by law, the taxable status of persons and property shall be determined as of the thirty-first day of December, or such other date as may subsequently be required by law, which shall be deemed the tax day. Values on the assessment roll shall be determined according to the facts existing on the tax day for the year for which such roll is made, and no change in the status or location of any such property after that day shall be considered by the assessor or the board of review.

**State law reference**— *Taxable status to be as of December 31, notwithstanding charter provisions, MCL 211.2.*

### **Sec. 10.4. - Personal property—Jeopardy assessment.**

If the treasurer finds or reasonably believes that any person who is, or may be, liable for taxes upon personal property, the taxable situs of which was in the city on tax day, intends to depart or has departed

from the city; or to remove or has removed therefrom personal property which is, or may be, liable for taxation; or to conceal or conceals himself or his property; or does any other act tending to prejudice, or to render wholly or partly ineffectual the proceedings to collect such tax, he shall proceed to collect the same as a jeopardy assessment in the manner provided by law.

**State law reference**— *Jeopardy assessment of personal property taxes, MCL 211.691 et seq.*

### **Sec. 10.5. - Preparation of the assessment roll.**

- (a) Prior to the date of the meeting of the board of review in each year, the assessor shall prepare and certify an assessment roll of all property in the city. Such roll shall be prepared in accordance with the requirements of law, and may be divided into volumes, which the assessor shall identify by number, for purposes of convenience in handling the assessment roll and for locating properties assessed therein. The attachment of any certificate or warrant required by this chapter to any volume of the roll, either as an assessment roll or as a tax roll, shall constitute the attachment thereof to the entire roll, provided the several volumes are identified in such certificate or warrant. Values of property set forth on the assessment roll shall be determined according to recognized methods of systematic assessment.
- (b) Not later than one week prior to his certification of the assessment roll, the assessor shall (1) complete to the best of his ability a tentative assessment roll and make it available for public inspection in his office for a period of at least one week, and (2) give a notice of any change, as compared with the previous year, in the assessed value of any property which exceeds one hundred dollars (\$100.00), or of the addition of any property to the roll. Such notice shall be sent by first class mail with postage thereon fully prepaid and addressed to the owner of such property according to the records of the assessor not less than one week prior to his completion of the tentative assessment roll. Such notice shall advise the person to whom it is addressed that the change in valuation or addition of property to the assessment roll may be discussed with the assessor at his office prior to the meeting of the board of review. The failure of any owner of property to receive any such notice shall not invalidate any assessment roll or assessment thereon.
- (c) The assessor shall, during such period of public inspection, hear and review inquiries with regard to the assessment of property on the assessment roll and may consider information received so by him in determining values on the assessment roll certified by him to the board of review.

**State law reference**— *Assessment roll, MCL 211.24 et seq.*

### **Sec. 10.6. - Board of review.**

- (a) A board of review is hereby created, composed of four (4) taxpayers to the city, who have the qualifications for holding elective city office as set forth in [Section 4.2](#) of this charter, and the mayor. If the mayor is unable to serve, a member of the council who shall be designated by the council, shall serve in his stead.
- (b) The first taxpayer members shall be appointed during the month of January, 1961, for terms expiring on January 1, 1962, 1963, 1964 and 1965. Thereafter, one member shall be appointed in the month of January of each year, for a term of four (4) years, commencing on appointment. Any taxpayer member of the board of review may be removed for reasons of nonfeasance or misfeasance by the vote of five (5) members of the council.
- (c) The board shall, annually, on the first day of its meeting, select one of its members chairman for the ensuing year. The assessor shall be clerk of the board, and shall be entitled to be heard at its sessions, but shall have no vote on any proposition or question.

**State law reference**— *Board of review, MCL 211.28—211.33, 211.107.*

### **Sec. 10.7. - Duties and functions of board of review.**

For the purpose of revising and correcting assessments, the board of review shall have the same powers and perform like duties, in all respects, as are, by law, conferred upon and required of boards of review in townships, except as otherwise provided in this charter.

**State law reference**— *Functions of board of review, MCL 211.29—211.30a.*

### **Sec. 10.8. - Meetings of board of review.**

- (a) Notice of the time and place of the annual meeting of the board of review shall be published by the assessor not less than one week nor more than three (3) weeks prior thereto.
- (b) The board of review shall convene at 9:00 a.m. on the third Monday in March in each year at a place designated by the council, or on such other date as may subsequently be required by law for the meeting of boards of review in cities, and shall continue in session from day to day for not less than four (4) days for the purpose of considering the assessment roll of the city. The board shall be in session for a total of not less than a total of twenty (20) hours during the first four (4) days of its meeting.
- (c) The board shall hear the complaints of all persons considering themselves aggrieved by assessments. If it shall appear that any person or property has been wrongfully assessed or omitted from the roll, the board shall correct the roll in such manner as it deems just.
- (d) The board of review may examine on oath any person appearing before it respecting the assessment of property on the assessment roll. Any member of the board may administer the oath.
- (e) The assessor shall make a permanent record of all proceedings of the board and enter therein all resolutions and decisions of the board. Such record shall be filed with the clerk on or before the first day of September following the meeting of the board of review.

**State law reference**— *Meetings of board of review, MCL 211.29, 211.30.*

### **Sec. 10.9. - Certification of roll.**

- (a) Except as otherwise provided by law, no person other than the board of review shall at any time make any change upon, or addition or correction to the assessment roll.
- (b) After the board of review has completed its review of the assessment roll, and not later than the first Monday in April, or such other date as may subsequently be required by law, the majority of its members shall sign a certificate to the effect that the same is the assessment roll of the city for the year in which it has been prepared, as approved by the board of review, which certificate, when attached to any volume of the roll shall constitute a conclusive presumption of the validity of the entire roll, as provided in [section 10.5](#) of this chapter. In the event that the board of review shall fail or refuse to so review the assessment roll of the city, such roll as prepared and presented to the board of review by the assessor shall be the assessment roll for the year for which it was prepared, and shall stand as though it had been certified by the board of review, except as provided by law.

**State law reference**— *Completion of roll, MCL 211.30a.*

### **Sec. 10.10. - Validity of assessment roll.**

Upon the completion of the assessment roll, and from and after midnight ending the last day of the meeting of the board of review, or the first Monday in April, whichever date first occurs, it shall be the assessment roll of the city for county, school, and city taxes, and for other taxes on real and personal property that may be authorized by law. It shall be presumed by all courts and tribunals to be valid, and shall not be set aside, except for cause set forth by law.

**State law reference**— *Validity of assessment roll, MCL 211.31.*

### **Sec. 10.11. - Clerk to certify levy.**

On or before the first day of May of each year, the clerk shall certify to the assessor the total amount which the council determines shall be raised by general ad valorem taxation, together with such other assessments and lawful charges and amount which the council requires to be assessed, reassessed, or charged upon the city tax roll against property or persons.

**State law reference**— *Deadline for certification of levy, MCL 211.216.*

### **Sec. 10.12. - City tax roll.**

After the assessed value of the real and personal property in the city has been finally established, the assessor shall prepare a tax roll, or a combined assessment and tax roll, to be known as the "city tax roll." Upon receiving the certification of the several amounts to be raised, assessed, and charged for city taxes, as provided in the preceding section, the assessor shall proceed forthwith, (1) to spread the amounts of the general ad valorem tax according to and in proportion to the several valuations set forth in said assessment roll, and (2) to place such other assessments and charges upon the roll as are required and authorized by the council.

### **Sec. 10.13. - Taxes a debt and lien.**

The taxes on real and personal property shall become a debt to the city from the owner or person otherwise to be assessed, on the tax day provided by law. All taxes levied and assessed against personal property and the amounts assessed on any interest in real property shall become a lien upon such real property on the first Monday in June next subsequent to the tax day, and shall so remain, until paid. Tax liens on personal property shall be a first lien, prior, superior, and paramount on all the personal property of persons assessed therefor and shall take precedence over all other claims, encumbrances, and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment, or otherwise, and no transfer of personal property assessed for taxes shall operate to divest or destroy such lien, except where such property is actually sold in the regular course of retail trade.

**State law reference**— *Similar provisions, MCL 211.40.*

### **Sec. 10.14. - Tax roll certified for collection.**

After spreading the taxes and placing other assessments and charges upon the roll, the assessor shall certify the tax roll, and attach his warrant thereto directing and requiring the treasurer to collect, prior to March first of the following year, from the several persons named in the roll the several sums mentioned therein opposite their respective names as a tax, charge, or assessment. Said warrant shall grant to and vest in the treasurer, all the statutory powers and immunities possessed by township treasurers for the collection of taxes. The tax roll shall be delivered to the treasurer on or before the fifteenth day of June.

**State law reference**— *Tax collection, MCL 211.44 et seq.*

### **Sec. 10.15. - Tax payment date.**

City taxes shall be due and payable on July first of each year.

### **Sec. 10.16. - Taxes due—Notification thereof.**

The treasurer shall not be required to make personal demand for the payment of taxes but, upon receipt of the city tax roll, he shall, forthwith, mail a tax statement to each person named in the tax roll, which mailed statement shall be a sufficient demand for the payment of all taxes assessed. Neither the failure on the part of the treasurer to mail such statement, nor the failure of any person to receive the same, shall invalidate the taxes on the tax roll or release any person or property assessed from the liabilities

provided in this chapter in case of nonpayment.

### **Sec. 10.17. - Tax payment schedule.**

No collection charge, penalty, or interest shall be charged for or added to city taxes paid on or before the tenth day of August. The council shall provide by ordinance, the tax payment schedule for city taxes paid after the tenth day of August, and the amount of collection charges and interest to be added thereafter. All amounts collected as collection charges and interest shall be paid into the city's treasury for the use and benefit of the city.

### **Sec. 10.18. - Failure or refusal to pay personal property tax.**

If any person shall neglect or refuse to pay any tax on personal property assessed to him, the treasurer shall collect the same by seizing any personal property of such person, to an amount sufficient to pay such tax, together with any charges and interest added thereto, wherever the same may be found in the state. No property shall be exempt from such seizure. He may sell the property seized, to an amount sufficient to pay the taxes and all charges, fees, penalties, and interest, in accordance with statutory provisions. The treasurer may also sue the person to whom a personal property tax is assessed, in accordance with the powers granted to him by law.

*State law reference*— *Seizure of property, MCL 211.47, 211.48.*

### **Sec. 10.19. - State, county, and school taxes.**

For the purpose of assessing and collecting taxes for state, county, and school purposes, the city shall be considered the same as a township, and all provisions of law relative to the collection of, and accounting for, such taxes and the penalties and interest thereon shall apply. For the purpose of collecting state, county, and school taxes, the treasurer shall perform the same duties and have the same powers as township treasurers under state law.

### **Sec. 10.20. - Collection of delinquent taxes.**

All taxes and charges, together with fees, penalties, and interest upon real property on the tax roll, remaining uncollected by the treasurer on the first day of March following the date when the roll was received by him shall be subject to one of the following procedures:

- (1) The real property against which such taxes and charges are assessed shall be subject to disposition, sale, and redemption for the enforcement and collection of the tax lien against the same in the method and manner which may be provided by ordinance. The council may provide by ordinance the procedure for the sale and redemption of real property for such unpaid taxes and charges, together with fees, penalties, and interest, by judicial sale on petition filed in behalf of the city. Such procedure shall correspond substantially to the procedure provided by law for the sale by the state of tax delinquent real property and redemption therefrom, except that the acts performed by state and county officers shall be performed by appropriate city officers and that city tax sales shall be held not less than thirty (30) nor more than ninety (90) days prior to the date of corresponding tax sales under the general law.
- (2) If no ordinance is in effect pursuant to subsection (1) of this section, such taxes shall be returned to the county treasurer, to the extent and in the same manner and with like effect as provided by law for returns by township treasurers of township, school, and county taxes. Such returns shall include all the additional assessments, charges, fees, penalties, and interest hereinbefore provided, which shall be added to the amount assessed in said tax roll against such property or person. The taxes, assessments, charges, fees, penalties, and

interest thus returned shall be collected in the same manner as other taxes returned to the county treasurer are collected, in accordance with law, and shall be and remain a lien upon the property against which they are assessed, until paid.

**State law reference**— *Tax sales, MCL 211.60 et seq.*

### **Sec. 10.21. - Protection of city lien.**

The city shall have power, insofar as the exercise thereof shall not conflict with or contravene the provisions of law, to acquire such an interest in any premises within the city, by purchase at any tax or other public sale, or by direct purchase from or negotiation with the State of Michigan or the owner, as may be necessary to assure to the city the collection of its taxes, special assessments, charges, and any interest thereon which are levied against any lot or parcel of real property or to protect the lien of the city therefor, and may hold, lease, or sell the same. Any such procedure exercised by the city to assure the collection of its taxes or the protection of its tax or other liens shall be deemed to be for a public purpose. The council may adopt any ordinance which may be necessary to make this section effective.

### **Sec. 10.22. - Disposition of real property held by city.**

When the city has acquired any interest in property to protect the city's tax lien thereon, the owner of any interest therein by fee title, as mortgagee, or as vendor or vendee under a land contract, shall have the right to purchase the city's interest therein, upon payment to the city of the amount of money which the city has invested therein in the form of taxes, special assessments, charges, fees, penalties, interest, and costs, paid by the city to protect its title in such property. After the lapse of ninety (90) days after the date that the city acquires title to any such property, the council may remove the same from the market by determining that such property is needed for and should be devoted to public purposes, naming such purposes, or may sell the same at a price which shall be not less than the market value, as determined, and certified to the council by the assessor.

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#### FOOTNOTE(S):

<sup>(2)</sup> **State Law reference**— *Mandatory that charter provide for tax procedure, MCL 117.3(i).* [\(Back\)](#)

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## **CHAPTER 11. - SPECIAL ASSESSMENTS AND PUBLIC IMPROVEMENTS** [3]

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### **Sec. 11.1. - General power relative to special assessments and public improvements.**

- (a) The council shall have the power to make public improvements, including local improvements, within the city and, to the extent permitted by law, outside the city. The council may determine the necessity for any public improvement, and may determine that the whole or any part of the cost thereof including, but not limited to, the cost of plans, specifications, administration, engineering, architectural and legal expenses, and of the acquisition of property in connection therewith, shall be levied by special assessments upon the property specially benefited thereby.
- (b) Any special assessment for local improvements, levied against property benefited shall be in proportion to, and shall not exceed, the value of the benefit received therefrom. The council shall establish the method of apportioning such benefits by ordinance.
- (c) If protests as to the necessity of a local improvement are made by the owners of property which will bear fifty (50) percent or more of the estimated cost of the improvement, or by more than fifty (50) percent of the owners of such property the public improvement, shall not proceed until the objections have been reduced to less than fifty (50) percent, except upon the approval of at least five (5) members of the council.

### **Sec. 11.2. - Detailed procedure to be fixed by ordinance.**

The procedure for legal improvements may be commenced by the council either on its own initiative or upon receipt of a petition therefor. The council shall prescribe, by ordinance, the complete special assessment procedure for local improvements and for agreements for furnishing such improvements to be financed under such agreements in lieu of special assessments. For local improvements, such ordinance provisions shall include and require the following:

- (1) the procedure for filing petitions for local improvements;
- (2) a survey and report by a designated city officer concerning the need for, desirable extent of and estimated cost of each proposed local improvement;
- (3) a public hearing by the council on the necessity for the local improvement: Provided, that no public hearing shall be required when a petition for the improvement has been signed by all of the owners of property to be assessed therefor according to the records of the assessor, or where there is an agreement in lieu of special assessments;
- (4) a resolution of the council determining to proceed or not to proceed with the proposed local improvement;
- (5) a public hearing by the council on the special assessment roll for the local improvement;
- (6) publication of notice of each hearing required by this section in a newspaper published within the city and by first class mail to persons whose names appear on the current assessment roll as owners of real property against which a special assessment will be levied therefor;
- (7) a resolution confirming the special assessment roll for the local improvement.

### **Sec. 11.3. - Expenditures before funds for improvements are available.**

No expenditures, other than for administrative, engineering, and legal work for any local improvement, the cost of which is to be borne by special assessment on the property benefited, shall be made unless the cash is on hand or provided for by proper appropriation, or will be on hand, before the improvement is completed, or bonds have been authorized to finance the cost thereof.

### **Sec. 11.4. - Limitations on suits and actions.**

No special assessment procedure shall be contested by any action at law or in equity, unless commenced within sixty (60) days after the confirmation of the special assessment roll therefor. If no such action be so commenced, the procedure for such local improvement shall be conclusively presumed to have been regular and complete.

### **Sec. 11.5. - Correction of invalid special assessments.**

If any special assessment procedure of the council shall be irregular or invalid for any reason, the council may correct the same at any time prior to sixty (60) days after the confirmation of the special assessment roll, or at any time after final determination of any litigation thereon, whether before or after the completion of the local improvement to which the special assessment applies. If payments of special assessments have been made under the irregular or invalid procedure, such payments shall be credited to payments required under the corrected procedure, or in the alternate, the council may provide in the special assessment ordinance for the payment of refunds.

### **Sec. 11.6. - Lien for and collection of special assessments.**

- (a) The city shall have a first lien upon all real property against which special assessments are assessed, and any such lien and the lien for collection charges and interest thereon, shall be of the same character, effect, and duration, and shall be enforceable in the same manner as the lien for city taxes.
- (b) The council shall provide procedure in the special assessment ordinance for the collection of special assessments and the collection charges, and interest which shall be added for the delayed or delinquent payment thereof.

### **Sec. 11.7. - Receipts from special assessments.**

Accounts for special assessment rolls shall be created and kept separate from all other city accounts. Moneys collected on account of special assessments shall be used solely to pay the cost of the improvements to which they apply and to the principal of and interest on indebtedness of the city therefor, and, if they cannot be so used, shall be refunded to property owners or placed in the city treasury as provided in the special assessment ordinance.

### **Sec. 11.8. - All real property liable for special assessments.**

All real property, including such as is exempt from taxation by law, shall be liable for the cost of local improvements assessed in accordance with this chapter, unless specifically exempted from special assessments by law.

### **Sec. 11.9. - Additional assessments.**

No additional assessments for any local improvements shall be made when the amount exceeds ten (10) percent of the original assessment, unless a special assessment roll therefor be reviewed in the same manner and after the same notice required for the original assessment.

### **Sec. 11.10. - Certain postponements of payments.**

The council may provide that any person who, in the opinion of the assessor and council, by reason of poverty is unable to contribute toward the cost of the making of a public improvement, may execute to the city an instrument creating a lien for the benefit of the city on all or any part of the real property owned by him and benefited by any public improvement, which lien will mature and be effective from and after the execution of such instrument, shall be recorded with the Register of Deeds of Calhoun County, and shall not be discharged or released until the terms thereof are met in full. The council shall establish the procedure for making this section effective, by ordinance.

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#### FOOTNOTE(S):

<sup>(3)</sup> **State Law reference**— Powers re special assessments, MCL 117.4a, 117.4b, 117.4d, 117.5. ([Back](#))

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 12. - MUNICIPAL BORROWING POWER >>**

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**CHAPTER 12. - MUNICIPAL BORROWING POWER**

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[Sec. 12.1. - Municipal borrowing power.](#)

[Sec. 12.2. - Limitations upon borrowing power.](#)

**Sec. 12.1. - Municipal borrowing power.**

- (a) Subject to the applicable provisions of law, the city may borrow money for any purpose within the scope of its powers or which may be permitted by law, and may issue bonds or other evidences of indebtedness therefor. Such bonds or other evidences of indebtedness shall include, but not be limited to, the following types:
- (1) General obligation bonds for the payment of which the full faith and credit of the city is pledged;
  - (2) Special assessment bonds which are issued in anticipation of defraying the cost of any one or more public improvements which bonds shall be both an obligation of the special assessment district and a general obligation of the city;
  - (3) Revenue bonds, as authorized by law;
  - (4) Tax anticipation notes, which may be issued in anticipation of the collection of taxes for the current or next succeeding fiscal years of the city or any other year permitted by law, in the manner and subject to any limitations provided by law;
  - (5) Mortgage bonds, as authorized by law, for the acquiring, owning, purchasing, constructing, improving, or operating of any public utility which the city is authorized by law to finance in this manner;
  - (6) Bonds issued in anticipation of future payments from the motor vehicle highway fund or any other fund of the state which the city may be permitted by law to pledge for the payment of the principal and interest thereof which bonds, if the law so permits, may also be a general obligation of the city;
  - (7) Water main extension bonds, in an amount not to exceed one percent of the assessed valuation of all real and personal property in the city, for the payment of which the full faith and credit of the city are pledged for the refunding from time to time of moneys advanced or paid on special assessments imposed for water main extensions as buildings are connected with such extensions, which bonds shall be payable in not more than thirty (30) years with interest thereon at a rate which shall not exceed six (6) percent per annum;
  - (8) Calamity bonds, issued in case of fire, flood, or other calamity for the relief of the inhabitants of the city and for the preservation of municipal property, in a sum not to exceed three-eighths of one percent of the assessed value of the real and personal property in the city, which shall become due in not more than five (5) years.
- (b) Whenever any portion of a public improvement shall be assessed by or charged to the city at large and the balance of such cost assessed against the property benefited, the council may provide for the payment of the city's portion of such cost in installments. In such case, bonds may be issued in anticipation of the payment of the amount assessed against the city at large the same as they may be issued in anticipation of the payment of the amount assessed against the benefited property. In such case, the council shall appropriate in each fiscal year an amount which is sufficient to pay the principal and interest on such bonds which is required to be paid during that year. Such bonds may be included as a part of a total issue of bonds for the public improvement to which they apply and need not be separated from bonds issued in anticipation of the payment of special assessments

- assessed against the benefited property.
- (c) Bonds may be issued in anticipation of the collection of special assessments levied with respect to two (2) or more public improvements, but no special assessment district shall be required to pay the obligation of any other special assessment district and the special assessment ordinance providing for the creation of such districts shall so provide.
  - (d) As to special assessment bonds which are also a general obligation of the city, if there is any deficiency in any special assessment fund to meet the payment of the principal or interest, or both, to be paid therefrom, moneys shall be advanced from the general funds of the city and repaid when the special assessment fund shall be sufficient therefor.
  - (e) Each bond or other evidence of indebtedness shall contain on its face a statement specifying the purpose for which the same is issued, and the proceeds thereof shall not be used for any other purpose, except that, whenever the proceeds of any bond issue, or a part thereof remain unexpended and unencumbered for the purpose for which said bond issue was made, the council may, by the confirming vote of not less than five (5) members, authorize the use of such unexpended and unencumbered funds:
    - (1) For the retirement of such bond issue; or
    - (2) If such bond issue has been fully retired, then for the retirement of other bonds or obligations of the city provided for by this section: Provided, that in the case of special assessment bonds, such funds shall be refunded to the owners of property against which special assessments therefor were made, or placed in the general fund of the city in accordance with the provisions of the special assessment ordinance adopted by the council; and
    - (3) For such other purposes as may be permitted by law, subject to the proviso in paragraph (2) above; or
    - (4) If such funds cannot be so used, then in any manner approved by the vote of not less than six (6) members of the council.
  - (f) No bond or other evidence of indebtedness, regardless of type or purpose, shall bear interest at a rate exceeding that fixed by law.
  - (g) All bonds and other evidences of indebtedness shall be signed by the mayor and countersigned by the clerk, under the seal of the city. Interest coupons may be executed with the facsimile signatures of the mayor and clerk. A complete and detailed record of all bonds and other evidences of indebtedness shall be kept by the treasurer. Upon the payment of any bond or other evidence of indebtedness, the same shall be marked "Cancelled" or otherwise defaced by the treasurer to indicate payment. After all bonds of any issue have been paid, they may be destroyed by the paying bank or trust company if a certificate of such destruction is given to the city.

**State law reference**— *Permissible that charter contains provisions re: borrowing funds, MCL 117.4a et seq.; Municipal Finance Act, MCL 131.1 et seq.*

## **Sec. 12.2. - Limitations upon borrowing power.**

- (a) The net bonded indebtedness incurred for all public purposes shall not at any time exceed ten (10) per cent of the assessed value of all the real and personal property in the city: Provided, that in computing such net bonded indebtedness, there shall be excluded money borrowed under the provisions of [Section 12.1\(a\)](#), clauses (2), (3), and (4), of this chapter and any other bonds which are not, by law, subject to the debt limitation of the city. The resources of any debt retirement or sinking fund pledged for the retirement of any outstanding bonds which are subject to the debt limitation herein established, shall also be deducted from the amount of the bonded indebtedness.
- (b) If bonds are not sold within three (3) years after authorization, such authorization shall be null and void, except when delay is caused by litigation or when a bond issue has been authorized by the electors to be issued in two (2) or more parts or series. In case of litigation, three-year period shall start at the time of the filing of the final judgment or decree. In case of bonds authorized to be issued in two (2) or more parts or series, the first part or series shall be sold within three (3) years after

authorization and the final part or series shall be sold within ten (10) years after authorization.

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 13. - MUNICIPAL COURT** >>

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**CHAPTER 13. - MUNICIPAL COURT** [4]

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[Sec. 13.1. - Municipal court created.](#)

[Sec. 13.2. - Associate municipal judge.](#)

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[Sec. 13.5. - Term of office of municipal judge.](#)

[Sec. 13.6. - Records and files of justices of the peace.](#)

[Sec. 13.7. - Jurisdiction of municipal court.](#)

[Sec. 13.8. - Court clerk.](#)

[Sec. 13.9. - General municipal court act.](#)

[Sec. 13.10. - Bonds of municipal judge.](#)

[Sec. 13.11. - Constable—Court officer.](#)

[Sec. 13.12. - Violations bureau.](#)

**Sec. 13.1. - Municipal court created.**

The justice courts of the City of Albion are hereby abolished and the powers, jurisdictions, and duties of said courts are hereby consolidated into one court to be presided over by a municipal judge who is a qualified resident elector of the city and is an attorney admitted to practice law in the Supreme Court of Michigan immediately preceding the date of his appointment or election. Such court shall be known and designated as the "Municipal Court of the City of Albion."

**Sec. 13.2. - Associate municipal judge.**

The council may provide for the office of associate municipal judge in accordance with and subject to the provisions of Act No. 109 of the Public Acts of Michigan of 1947 [MCL 730.321 et seq.].

**Sec. 13.3. - Legal practice of judge.**

The municipal judge shall not practice law in any court of the state, except the probate courts. Neither the associate municipal judge nor any partner of the municipal judge shall practice law in the municipal court.

**Sec. 13.4. - Compensation of municipal judge.**

- (a) The municipal judge shall be compensated by the City of Albion by a salary in such sum and in such manner as the council shall determine, but not less than five thousand dollars (\$5,000.00), nor more than twelve thousand dollars (\$12,000.00) per year. No action of the council determining the salary of the municipal judge shall be taken less than thirty (30) days before the last day for filing nominating petitions for election to that office at the next regular city election. In the event that no change is so made, the compensation of the municipal judge during the previous term shall continue as the compensation of the municipal judge after he has been elected and assumes his office.
- (b) The salary of the municipal judge shall be in lieu of all fees, both in civil and criminal cases, to which the municipal judge might be entitled, but for the provisions of this section. Such fees in civil cases, shall be collected by the municipal judge and turned over by him to the treasurer on the first and

fifteenth day of each month, or as otherwise required by law. The municipal judge shall turn over to the treasurer all fines and costs collected by him for violations of this charter, and of the ordinances of the city. He shall account for and turn over to the County Treasurer of Calhoun County all fines and costs received by him in connection with state criminal cases in the manner and with like effect as provided by law relative thereto and shall pay the same over to the city treasurer when the same are received by him from said county treasurer.

### **Sec. 13.5. - Term of office of municipal judge.**

The terms of office of the municipal judge shall be six (6) years and shall commence on the first day of January following his election. Except in the case of the first municipal judge, each person who is appointed to fill a vacancy in that office shall assume office upon his appointment and shall serve for a term ending on the first day of January following the next regular city election at which time the municipal judge who is elected at such election shall assume the duties of his office.

### **Sec. 13.6. - Records and files of justices of the peace.**

The municipal judge is empowered to receive and shall take from the justices of the peace, herein abolished, all files, records, and dockets kept by them pertaining to their offices. He shall be empowered to issue executions according to the law as if said judgment were rendered by him. He shall, further, have transferred to him any or all actions or proceedings pending in either of the said offices so abolished, and shall have full jurisdiction to proceed with such actions or proceedings in the same manner as if they had been brought before him originally.

### **Sec. 13.7. - Jurisdiction of municipal court.**

- (a) The municipal judge shall have the same powers, jurisdiction, and duties as were by the previous charter of the city and by law conferred upon the justices of the peace herein abolished, and all provisions of law relative to jurisdiction which governed said justices of the peace shall equally govern the municipal court, unless they are inconsistent with this chapter and the law applicable to the municipal court herein established.
- (b) The municipal court shall have exclusive jurisdiction in the trial of actions involving violations of this charter and of ordinances of the city, subject to appeals therefrom to the Circuit Court for the County of Calhoun and the supreme court.
- (c) The municipal court shall have such original jurisdiction as is provided by law for justices of the peace and municipal courts, including Act No. 5 of the Public Acts of Michigan of 1956, as amended [MCL 730.501 et seq.], in civil and criminal actions and, as provided and permitted in that act, shall have concurrent jurisdiction with the Circuit Court for the County of Calhoun in all civil actions, and actions of replevin, wherein the debt or damages claimed, or the value of the property involved, as the case may be, does not exceed one thousand dollars. Should any law permit the court to have a higher dollar limit jurisdiction at any time, the court shall have jurisdiction to the amount of such higher limit, without the necessity of amending this charter or any action by the council.
- (d) The municipal court shall have the same jurisdiction, power, and authority to set aside a verdict or judgment and grant a new trial therein, upon timely and legal cause shown, as the Circuit Courts of the State possess, in accordance with the provisions of [Section 28](#) of Act No. 279 of the Public Acts of Michigan of 1909, as amended [MCL 117.28], pertaining thereto. The filing of a motion for a new trial or to set aside a verdict or judgment shall have such effect on the time for taking an appeal, the issuance of levy of an execution, and other proceedings as provided and permitted to Municipal Courts in said [Section 28](#) of Act No. 279 of the Public Acts of Michigan of 1909, as amended [MCL 117.28].
- (e) If permitted or required by law, the municipal court shall have the jurisdiction herein granted in all townships throughout the County of Calhoun.

### **Sec. 13.8. - Court clerk.**

The council may provide for a court clerk for the municipal court and prescribe by ordinance the duties thereof. Such court clerk and deputy clerk or clerks shall, by virtue of their office, be empowered to administer oaths and do all things required of and permitted to them by law, including Sections [28](#) of Act No. 279 of the Public Acts of Michigan of 1909, as amended [MCL 117.28], subject to audit as in such section required.

### **Sec. 13.9. - General municipal court act.**

As provided and permitted by Act No. 5 of the Public Acts of Michigan of 1956, as amended [MCL 730.501 et seq.], such act shall apply to and govern the municipal court, except as the same may be inconsistent with [Section 28](#) of Act No. 279 of the Public Acts of Michigan of 1909, as amended [MCL 117.28].

### **Sec. 13.10. - Bonds of municipal judge.**

The municipal judge shall give bond to the city and to the County of Calhoun in the sum of five thousand dollars (\$5,000.00), each, for the faithful performance of the duties of his office and the requirements of law.

### **Sec. 13.11. - Constable—Court officer.**

The municipal judge shall appoint a constable, subject to the confirmation of the council before such appointment shall be final. Such constable shall serve for an indefinite term and may be removed by the municipal judge. In all other respects, he shall be subject to the general provisions of this charter concerning officers of the city. The constable shall have all of the powers conferred upon constables, and shall do and perform all acts and duties required of constables, by law. At the request and under the direction of the municipal judge, the constable shall be the court officer of the municipal court and shall be responsible to the municipal judge for the maintenance of order in the court room and for the custody of violators of the provisions of this charter and of the ordinances of the city while such persons are in the court. With the consent of the chief of police, the constable may be one of the members of the police department of the city. As his compensation, the constable shall be entitled to the fees to which constables are entitled by law. In addition to such compensation, the council may provide for the payment of such additional salaried compensation as it deems proper. If the constable is a member of the police department of the city and receives a salary from the city for his duties as a police officer, he shall not receive any additional salary for his duties as a constable.

### **Sec. 13.12. - Violations bureau.**

The court shall have power to establish a violations bureau, comparable to the provisions of any law permitting the establishment of violations bureaus. In addition to violations of the traffic ordinances, the said bureau shall also assist the court in the disposition of such other ordinance violations which may lawfully be handled by such bureau, as the council shall prescribe. Any person who has received notice to appear in answer to any such violation, may, within the time specified in the notice, answer at the violations bureau to the charge set forth in such notice by paying a prescribed fine, which fine cannot be waived by the bureau and, in writing, pleading guilty to the charge, waiving a hearing in court and giving power of attorney to the person in charge of the bureau to make such a plea and pay such a fine in court. Acceptance of the prescribed fine and the power of attorney by the bureau shall be deemed to be complete satisfaction for the violation, and the violator shall be given a receipt which so states. The creation of such a bureau by the court shall not operate so as to deprive any person of the right to a full and impartial hearing in court, either with or without a jury, should such person so choose.

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**FOOTNOTE(S):**

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<sup>(4)</sup> **Editor's note**— This chapter is obsolete due to the abolishment of the municipal court and its replacement by a district court. See MCL 600.9921. ([Back](#))

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Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 14. - ELECTIONS** >>

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**CHAPTER 14. - ELECTIONS** [5]

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- [Sec. 14.1. - Qualifications of electors.](#)
- [Sec. 14.2. - Election procedure.](#)
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- [Sec. 14.13. - Canvass of votes.](#)
- [Sec. 14.14. - Tie vote.](#)
- [Sec. 14.15. - Recount.](#)
- [Sec. 14.16. - Recall.](#)

**Sec. 14.1. - Qualifications of electors.**

Each person who has the constitutional qualifications of an elector in the State of Michigan, or who will have such qualifications at the next ensuing regular or special election, shall be entitled to register as an elector of the City of Albion.

**State law reference**— *Qualifications of electors, MCL 168.492.*

**Sec. 14.2. - Election procedure.**

The general election laws of the state shall apply to and control, as nearly as may be, all procedure relating to registration and city elections, except as such general laws relate to political parties or partisan procedure, and except as otherwise provided in this charter.

**State law reference**— *Michigan election law, MCL 168.1 et seq.*

**Sec. 14.3. - Regular elections.**

A nonpartisan regular city election shall be held at the time of the general November elections of the State of Michigan for the election of city officers, as hereinafter enumerated, and for the submission of such propositions as may be authorized for submission to the electors of the city.

**State law reference**— *General November election, MCL 168.641.*

**Sec. 14.4. - Special elections.**

Special city elections shall be held when called by resolution of the council at least forty-five (45) days in advance of such election, or when required by this charter or the general laws of the state. Any resolution calling a special election shall set forth the purpose of such election.

### **Sec. 14.5. - Notice of election.**

Notice of the time and place of holding any city election and the officers to be elected and the questions to be voted upon shall be given by the clerk in the same manner and at the same time as provided in the state election laws for the giving of notices in state elections.

**State law reference**— *Notice of special elections, MCL 168.653a.*

### **Sec. 14.6. - Council districts and election precincts.**

- (a) For the purpose of electing members of the council, the City of Albion shall be divided into six (6) council districts, whose boundaries shall be as fixed by ordinance on the effective date of this charter. The council may amend such ordinance so as to provide more equal representation of the electors of the city among the council districts, but no such amendment shall be effective as to any regular city election occurring within six (6) months after it is adopted by the council.
- (b) Each council district shall be divided into such number of election precincts as are required by law.
- (c) The clerk shall maintain and keep available in his office for public inspection a full description of the current boundaries of each council district and of each voting precinct therein.

**State law reference**— *Mandatory that charter contain provisions for wards, MCL 117.3(e); election precincts, MCL 168.654 et seq.*

### **Sec. 14.7. - Voting hours.**

The polls of all elections shall open at such time and shall remain open for the period of time as provided by the election laws of the State of Michigan.

**State law reference**— *Opening and closing of polls, MCL 168.720 et seq.*

### **Sec. 14.8. - Nominating petitions.**

- (a) Persons desiring to qualify as candidates for the office of mayor under this charter shall file with the clerk a petition therefor signed by not less than one hundred (100) nor more than two hundred (200) registered electors of the city. Persons desiring to qualify as candidates for the office of councilman shall file with the clerk petitions signed by not less than twenty-five (25) nor more than fifty (50) registered electors of the council district in which they reside and from which they seek to be elected. Such petitions shall be filed with the clerk not later than 5:00 p.m., on the second Monday prior to the date of the State of Michigan primary election. At least one week before and not more than three (3) weeks before the last day for filing nominating petitions, the clerk shall publish notice to that effect.
- (b) Official blank nominating petitions, in substantially the same form designated by the secretary of state for use in the nomination of nonpartisan judicial officers, shall be prepared and furnished by the clerk. Before the clerk shall furnish official blank nominating petitions to any person, he shall enter thereon with typewriter or in ink the name of the person who is to be nominated as a candidate. No petition which has been altered with respect to such entries shall be received by the clerk for filing. Nominating petitions for the purpose of filling a vacancy shall so state in connection with the name of the office for which they are to be used. No person shall sign his name to a greater number of petitions for any one office than there are candidates to be elected to said office. Where any name appears on more petitions than there are candidates to be elected to said office, such name shall not be counted upon any petition for that office.

*(As amended 11-7-78)*

**State law reference**— *Nonpartisan nominating petitions, MCL 168.544a et seq.*

### **Sec. 14.9. - Approval of petitions.**

The clerk shall accept for filing only nominating petitions on official blanks furnished by him. At the time of, and as a prerequisite for, filing any nominating petition, there shall also be filed an affidavit, signed by the person named as a candidate in the petition, or by someone in his behalf, stating under oath that the person named in the petition possesses the qualifications required by law for eligibility to assume and hold the elective office for which the petition is filed. Such affidavit shall be on a form provided by the clerk. Within five (5) days after the filing of a petition, the clerk shall determine the sufficiency of the number of genuine signatures on the petition. If he finds that any petition does not contain the required number of genuine signatures of registered electors of the city, he shall immediately notify the candidate in writing of the insufficiency of his petition. No additional signatures on any petition shall be received by the clerk after the final date and time fixed for filing nominating petitions. Each petition which is found by the clerk to contain the required number of genuine signatures shall be marked "Valid," with the date thereof and the clerk shall give to the county clerk the notice thereof required by law.

### **Sec. 14.10. - Public inspection of petitions.**

All nominating petitions shall be open to public inspection after being filed in the office of the clerk, in accordance with such reasonable rules and regulations as shall be prescribed by him.

### **Sec. 14.11. - Names on ballots.**

The form of the ballot used in any city election shall conform as nearly as may be to that prescribed by the general laws of the state, except that no party designation or emblem shall appear upon any city ballot. The names of qualified candidates for each office shall be listed in a single column and shall be rotated on the ballots. In all other respects the printing and numbering of ballots shall conform to the general laws of the state relating to elections. Ballots for absentee voting may conform to the face of voting machines used by the city.

**State law reference**— *Form of ballots, MCL 168.703a et seq.*

### **Sec. 14.12. - Election commission.**

An election commission is hereby created, consisting of the clerk, the city attorney, and the chief of police. The clerk shall be chairman. The commission shall have charge of all activities and duties required of it by state law and this charter relating to the conduct of city elections. The compensation of the election personnel shall be determined in advance by the council. In the event of a conflict in election procedure as between the general election laws of the state and the provisions of this charter, or in any case where election procedure is in doubt, the election commission shall prescribe the procedure to be followed.

### **Sec. 14.13. - Canvass of votes.**

The election commission shall be the board of canvassers to canvass the votes cast at all elections under this charter. The commission shall meet in the city hall at 10:00 in the forenoon on the second day following each city election and publicly canvass the election returns, and shall determine the vote upon all questions and propositions, and declare whether the same have been adopted or rejected and what persons have been elected at such election. The candidate, or candidates, where more than one are to be elected to the same office, who shall receive the greatest number of votes shall be elected.

**Editor's note**—

As the city has more than five election precincts, the above section is superceded by MCL 168.30a et seq.

### Sec. 14.14. - Tie vote.

If at any city election there shall be a choice between candidates because two (2) or more persons received an equal number of votes, the election commission shall name a date for the appearance of such persons for the purpose of resolving the tie by lot. Should any person fail or refuse to appear, in person or by representative, to determine the result of any tie at the time and place named, such determination shall be made by lot in his absence, at the direction and under the supervision of the election commission. Such determination shall be final.

*State law reference*— Board of election commissioners, MCL 168.25.

### Sec. 14.15. - Recount.

A recount of the votes cast at any city election for any office or upon any proposition may be had in accordance with the provisions of law.

*State law reference*— Recounts, MCL 168.861 et seq.

### Sec. 14.16. - Recall.

Any elective official may be recalled from office by the electors of the city in the manner provided by the general laws of the state. A vacancy created by the recall of any elective official shall be filled by election in the manner prescribed by and subject to the provisions of law.

*State law reference*— Recall, MCL 168.951 et seq.

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#### FOOTNOTE(S):

<sup>(5)</sup> *State Law reference*— Mandatory that charter provide for the time, manner and place of holding elections, MCL 117.3(c); Michigan election law, MCL 168.1 et seq. ([Back](#))

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Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> CHAPTER 15. - CONTRACTS >>

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## CHAPTER 15. - CONTRACTS

[Sec. 15.1. - Contracting authority of council.](#)

[Sec. 15.2. - Purchase and sale of personal property.](#)

[Sec. 15.3. - Limitations on contractual power.](#)

[Sec. 15.4. - Business dealings with city.](#)

### Sec. 15.1. - Contracting authority of council.

- (a) The power to authorize the making of contracts on behalf of the city is vested in the council and shall be exercised in accordance with the provisions of law.
- (b) All contracts, except as otherwise provided by ordinance in accordance with the provisions of [Section 15.2](#) hereof, shall be authorized by the council and shall be signed on behalf of the city by the mayor and the clerk.

### Sec. 15.2. - Purchase and sale of personal property.

The council shall establish, by ordinance, the procedure for the purchase and sale of personal

property. Such ordinance may provide for centralized purchasing on behalf of the city. The ordinance shall also provide the dollar limit within which purchases of personal property may be made without the necessity of securing competitive bids and the dollar limit within which purchases may be made without the necessity of council approval. No purchase of personal property shall be made unless a sufficient unencumbered appropriation is available therefor.

### **Sec. 15.3. - Limitations on contractual power.**

- (a) The council shall only have power to enter into contracts which, by the terms thereof, will be fully executed within a period of ten (10) years, unless such contracts shall first receive the approval of a majority of the qualified electors of the city voting thereon at a regular or special election. This limitation shall not apply to any contract for services with a public utility or one or more other governmental units, nor to contracts for debt secured by bonds or notes which are permitted to be issued by the city by law.
- (b) The city shall not have power to purchase, sell, lease, or dispose of any real estate unless:
  - (1) The resolution authorizing the sale, lease, or disposal shall be completed in the manner in which it is to be finally passed and has been published as a part of the council proceedings and has remained on file with the clerk for public inspection for ten (10) days before the final adoption or passage thereof, and unless,
  - (2) Such action is approved by the affirmative roll call vote of five (5) or more members of the council, and unless,
  - (3) When the proposition is to sell any park, cemetery or any part thereof, except when such park is not required under an official master plan of the city, the proposition to sell, lease, or dispose of the same shall also be approved by a three-fifths majority vote of the electors of the city voting thereon at any general or special election.
- (c) Except as provided by ordinance authorized by [Section 15.2](#) of this chapter, each contract for the construction of public improvements or for the purchase or sale of personal property shall be let after opportunity for competitive bidding. All bids shall be opened in public in the council room by the clerk at the time designated in the notice of letting, and shall be reported to the council at its next meeting. The council may reject any or all bids, if deemed advisable. If, after two (2) or more opportunities for competitive bidding, no bids are received or such bids as were received were not satisfactory to the council, the council may either endeavor to obtain new competitive bids or may authorize the proper official of the city to negotiate for a contract in the open market.
- (d) No contract shall be made with any person who is in default to the city.
- (e) No extra compensation shall be paid to any agent, employee, or contractor after the service has been rendered or the contract entered into.

*(As amended 11-2-76)*

### **Sec. 15.4. - Business dealings with city.**

An officer or employee of the city who intends to have business dealings with the city, whereby he may derive any income or benefits, other than such as are provided as remuneration for his official duties or employment, shall file with the clerk a statement, under oath, setting forth the nature of such business dealings, and his interest therein. The statement shall be filed with the clerk and made a part of the record or [of] the proceedings of the council at the meeting prior to the meeting at which action will be taken by the council or any other agency of the city upon the matter involved. In each case where the type of dealings with the city is on a continuing basis, involving more than one or a sequence of transactions described in the statement, each such statement shall stand for and apply to such transactions for a period of one year and may be renewed at the end of each one year's period for so long as such transactions continue. Each such renewal shall be filed with the clerk and made a part of the record of the proceedings of the council at the meeting prior to the meeting at which action will be taken by the council or any other agency of the city

upon the matter involved, as in the case of the original statement. In the event that the interest of any officer or employee of the city in any business dealings with the city changes at any time, he shall file a statement thereof as herein required, which statement shall also be spread upon the proceedings of the council and published as herein required. Approval of any such business dealings shall require a concurring vote of at least five (5) members of the council, not including the member affected and any member who does not vote under [Section 5.6\(k\)](#) of this charter. Any business dealings with the city made in violation of this section shall be void.

**Editor's note—**

The above section may be superceded by MCL 15.321—15.329. See MCL 15.328. See also MCL 15.341 et seq., and opinion no. 6906 in which the attorney general discusses the history and interaction of three conflict of interest public acts.

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 16. - PUBLIC UTILITY FRANCHISES**  
>>

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**CHAPTER 16. - PUBLIC UTILITY FRANCHISES** <sup>[6]</sup>

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[Sec. 16.1. - Granting of public utility franchises.](#)

[Sec. 16.2. - Conditions of public utility franchise.](#)

[Sec. 16.3. - Regulation of rates.](#)

[Sec. 16.4. - Use of public places by utilities.](#)

**Sec. 16.1. - Granting of public utility franchises.**

- (a) Public utility franchises and all renewals or extensions thereof and amendments thereto shall be granted by ordinance only. No exclusive franchise shall ever be granted. No franchise shall be granted for a longer period than thirty (30) years.
- (b) No franchise ordinance which is not subject to revocation at the will of the council shall be enacted nor become operative until the same shall have first been referred to the electors of the city at a regular or special election and received the affirmative vote of three-fifths of the electors voting thereon. No such franchise ordinance shall be approved by the council for referral to the electorate until at least thirty (30) days after application therefor has been filed with the council, nor until a public hearing has been held thereon, nor until the grantee named therein has filed with the clerk his unconditional acceptance of all terms of such franchise. No special election for such purpose shall be ordered by the council unless the expense of holding such election, as determined by the council, shall have first been paid to the treasurer by the grantee.
- (c) A franchise ordinance or renewal or extension thereof or amendment thereto which is subject to revocation at the will of the council may be enacted by the council without referral to the voters, but shall not be enacted unless it shall have been in the form in which it is finally enacted and shall have been on file in the office of the clerk for public inspection for at least four (4) weeks after publication of a notice that such ordinance has been so filed.

**State law reference—** *Franchises limited to thirty (30) years, Mich. Const. 1963, Art. VII, § 30; submission of irrevocable franchise to electors required, Mich. Const. 1963, Art. VII, § 25; expenses of special elections to approve franchises to be submitted to voters, MCL 117.5(i).*

**Sec. 16.2. - Conditions of public utility franchise.**

All public utility franchises granted after the adoption of this charter, whether it be so provided in the granting ordinance or not, shall be subject to the following rights of the city, but this enumeration shall not

be exclusive or impair the right of the council to insert in such franchise any provision within the power of the city to impose or require:

- (a) To repeal the same for misuse, nonuse, or failure to comply with the provisions thereof;
- (b) To require proper and adequate extension of plant and service and maintenance thereof at the highest practicable standard of efficiency;
- (c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates;
- (d) To require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof;
- (e) To use, control, and regulate the use of its streets, alleys, bridges, and public places and the space above and beneath them;
- (f) To impose such other regulations as may be determined by the council to be conducive to the safety, welfare, and accommodation of the public.

### **Sec. 16.3. - Regulation of rates.**

All public utility franchises shall make provision therein for fixing rates, fares, and charges and may provide for readjustments thereof at periodic intervals. The value of the property of the utility used as a basis for fixing such rates, fares, and charges shall in no event include a value predicated upon the franchise, goodwill, or prospective profits.

### **Sec. 16.4. - Use of public places by utilities.**

Every public utility, whether it has a franchise or not, shall pay such part of the cost of improvement or maintenance of any streets, alleys, bridges, and public places as shall arise from its use thereof and shall protect and save the city harmless from all damages arising from said use. Every such public utility may be required by the city to permit joint use of its property and appurtenances located in the streets, alleys, and other public places of the city by the city and by other utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor. In the absence of agreement and upon application by any public utility, the council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor, and the arbitration award shall be final.

**State law reference**— *Permissible that charter provide for use of streets, etc., by public utilities, MCL 117.4h(2).*

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#### FOOTNOTE(S):

<sup>(6)</sup> *Code cross reference—Franchises, app. A. ([Back](#))*

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**Albion, Michigan, Code of Ordinances >> [PART I - CHARTER](#) >> CHAPTER 17. - MUNICIPALLY OWNED UTILITIES >>**

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## **CHAPTER 17. - MUNICIPALLY OWNED UTILITIES**

[Sec. 17.1. - General powers respecting utilities.](#)

[Sec. 17.2. - Administration of municipal utilities.](#)

[Sec. 17.3. - Rates.](#)

[Sec. 17.4. - Utility rates and charges—Collection.](#)

[Sec. 17.5. - Disposal of utility plants and property.](#)

[Sec. 17.6. - Diversion of utility department funds.](#)

### Sec. 17.1. - General powers respecting utilities.

The city shall possess and hereby reserves to itself all the powers granted to cities by law to acquire, construct, own, operate, improve, enlarge, extend, repair, and maintain, either within or without its corporate limits and the corporate limits of Calhoun County, including, but not by the way of limitation, public utilities for supplying water, light, heat, power, gas, sewage treatment, and garbage disposal facilities, or any of them, to the municipality and the inhabitants thereof; and also to sell and deliver water, light, heat, power, gas, and other public utility services without its corporate limits to an amount not to exceed the limitations set by law or in accordance therewith.

**State law reference**— *Charter may provide for acquisition, etc., of utilities, MCL 117.4c, 141.104; authority to acquire, operate, etc., water systems, MCL 124.251 et seq.*

### Sec. 17.2. - Administration of municipal utilities.

All municipally owned or operated utilities shall be administered as a regular department of the city government, and shall be subject to the same budget requirements and controls as other departments.

### Sec. 17.3. - Rates.

The council shall have the power to fix, from time to time, such just and reasonable rates and other charges as may be deemed advisable for supplying the inhabitants of the city and others with such public utility services as the city may provide. There shall be no discrimination in such rates within any classification of users thereof. Higher rates may be charged for services outside the corporate limits of the city. The rates and charges for any municipal public utility shall be so fixed as to at least meet all the costs of such utility, including depreciation.

### Sec. 17.4. - Utility rates and charges—Collection.

- (a) The council shall provide, by ordinance, for the collection of all public utility rates and charges of the city. Such ordinance shall provide at least:
  - (1) the terms and conditions under which utility services may be discontinued in case of delinquency in paying such rates or charges.
  - (2) that suit may be instituted by the city before a competent tribunal for the collection of such rates or charges.
- (b) With respect to the collection of rates charged for water, the city shall have all the powers granted to cities by Act 178 of the Public Acts of Michigan of 1939, as amended [MCL 123.161 et seq.], and Act 94 of the Public Acts of Michigan of 1933, as amended [MCL 141.121].

**State law reference**— *Collection of water charges, MCL 123.161 et seq., 141.121.*

### Sec. 17.5. - Disposal of utility plants and property.

Unless approved by the affirmative vote of three-fifths of the electors voting thereon at a regular or special election, the city shall not sell, exchange, lease, or in any way dispose of any property, easements, equipment, privilege, or asset belonging to and appertaining to any municipally owned public utility which is needed to continue operating such utility. All contracts, negotiations, licenses, grants, leases, or other forms of transfer in violation of this section shall be void and of no effect as against the city. The restrictions of this section shall not apply to the sale or exchange of any articles of machinery or equipment of any city owned public utility which are worn out or useless or which have been, or could with advantage to the service be, replaced by new and improved machinery or equipment; to the leasing of property not necessary for the operation of the utility; or to the exchange of property or easements for other needed property or easements. The provisions of this section shall not extend to vacation or abandonment of streets, as provided by law.

**State law reference**— *Sale of capital asset of municipally owned utility, MCL 117.4e(3).*

## **Sec. 17.6. - Diversion of utility department funds.**

The funds of a city utility department shall not be diverted to or used for any other municipal purpose, unless the proposition to do so be first approved by three-fifths of the electors voting on the proposition at a regular or special city election.

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> **CHAPTER 18. - SUPERVISORS** >>

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## **CHAPTER 18. - SUPERVISORS** [7]

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[Sec. 18.1. - Number of supervisors.](#)

[Sec. 18.2. - Appointed supervisors.](#)

[Sec. 18.3. - Temporary absences or inability to serve.](#)

[Sec. 18.4. - Duties of city supervisors.](#)

[Sec. 18.5. - Compensation of supervisors.](#)

### **Sec. 18.1. - Number of supervisors.**

The city shall be entitled to five (5) representatives upon the Board of Supervisors of Calhoun County. One of such representatives shall be the assessor, another shall be the mayor, or, if he cannot serve regularly in such capacity, a member of the council designated by the council. The remaining members shall be appointed by the mayor, subject to confirmation by the council.

### **Sec. 18.2. - Appointed supervisors.**

Appointed supervisors shall be appointed and confirmed during the month of March in odd-numbered years. Such members shall have the qualifications required by this charter of elective city officers. No person shall be disqualified from any such appointment because he is an officer of the city. When, by law, the city is entitled to any additional representative on the Board of Supervisors of Calhoun County or any other county, the mayor shall appoint a qualified person forthwith after such eligibility occurs for a term ending on the second Monday in April of the next following odd-numbered year.

### **Sec. 18.3. - Temporary absences or inability to serve.**

In case of the temporary absence or inability of any city member of the board of supervisors, including the mayor, to serve or perform the duties of his office, the mayor shall designate another city officer or an elector of the city having the qualifications required by this charter of elective city officers to serve in his stead during the period of such absence or inability.

### **Sec. 18.4. - Duties of city supervisors.**

Supervisors shall perform the duties required to be performed by members of boards of supervisors under the general laws of the state.

### **Sec. 18.5. - Compensation of supervisors.**

Each supervisor shall be entitled to retain any compensation and mileage paid to him by the county as a member of its board of supervisors.

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**FOOTNOTE(S):**

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<sup>(7)</sup> **Editor's note**— *The provisions of this chapter are superceded by MCL 46.401 et seq. ([Back](#))*

Albion, Michigan, Code of Ordinances >> **PART I - CHARTER** >> [CHAPTER 19.] - SCHEDULE >>

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**[CHAPTER 19.] - SCHEDULE** [8]

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[Sec. 19.1. - Purpose and status of schedule chapter.](#)

[Sec. 19.2. - Election to adopt charter.](#)

[Sec. 19.3. - Form of ballot.](#)

[Sec. 19.4. - Effective date of charter.](#)

[Sec. 19.5. - Elected officers of the city.](#)

[Sec. 19.6. - Council meetings.](#)

[Sec. 19.7. - Administrative officers.](#)

[Sec. 19.8. - First board of review.](#)

[Sec. 19.9. - Boards and commissions under previous charter.](#)

[Sec. 19.10. - City supervisors.](#)

[Sec. 19.11. - Municipal court.](#)

[Sec. 19.12. - Constable.](#)

[Sec. 19.13. - Compensation of officers.](#)

[Sec. 19.14. - Council action.](#)

[Sec. 19.15. - Vested rights and liabilities.](#)

**Sec. 19.1. - Purpose and status of schedule chapter.**

The purpose of this schedule chapter is to inaugurate the government of the City of Albion under this charter and provide the transition from the government of the city under the previous charter to that under this charter. It shall constitute a part of this charter only to the extent and for the time required to accomplish that end.

**Sec. 19.2. - Election to adopt charter.**

- (a) This charter shall be submitted to a vote of the qualified electors of the territory comprising the City of Albion at a special city election to be held on Tuesday, August 2, 1960, between the hours of 7:00 a.m. and 8:00 p.m. All provisions for the submission of the question of adopting this charter at such election shall be made in the manner provided by law.
- (b) If, at said election, a majority of the electors voting thereon shall vote in favor of the adoption of this charter, then the city clerk shall perform all other acts required by law to carry this charter into effect.

**Sec. 19.3. - Form of ballot.**

The form of the question on submission of this charter shall be as follows:

Shall the proposed charter of the City of Albion, drafted by the Charter Commission be adopted:

YES

NO

**Sec. 19.4. - Effective date of charter.**

If the canvass of the votes upon the adoption of this charter shows it to have been adopted, it shall take effect and become law as the charter of the city for all purposes on Monday, September 5, 1960, at 12:01 a.m., except such provisions as pertain to the composition of the council.

### **Sec. 19.5. - Elected officers of the city.**

The elected officers of the city who held office on the effective date of this charter, shall continue and be the first such officers of the city under this charter, and shall be subject to the provisions thereof. Each of said officers shall serve in the capacity to which he was elected for the term for which he was elected, unless otherwise limited by the provisions of this charter.

### **Sec. 19.6. - Council meetings.**

Until otherwise provided by resolution, regular meetings of the council shall be held on alternate Mondays following the sequence established by the council under the previous charter of the city.

### **Sec. 19.7. - Administrative officers.**

Notwithstanding any other requirements or limitations contained in this charter, but subject to Section 5 of this Schedule [19.5], the persons who held the offices of city attorney, clerk, treasurer, assessor, and each other administrative office of the city on the effective date of this charter shall continue in such offices as though and on the same basis as if appointed under this charter, and shall perform their several duties and, in all respects, be subject to the provisions of this charter.

### **Sec. 19.8. - First board of review.**

The first members of the board of review created by this charter shall be appointed during the month of January, 1961, and their terms shall be so arranged that thereafter the term of one member shall expire in each year, beginning with January 1, 1962.

### **Sec. 19.9. - Boards and commissions under previous charter.**

All boards and commissions of the city existing on the effective date of this charter that have been created or continued by this charter or by ordinance, shall continue without change, except that they shall be subject to the provisions of this charter. Each member of any such board or commission shall serve for the balance of the term for which he has been appointed. Successors to such members shall be appointed subject to this charter.

### **Sec. 19.10. - City supervisors.**

The supervisors representing the city and its inhabitants under the previous charter shall be and remain such supervisors for the balance of the terms for which they were severally appointed, and until their successors are appointed or assume such office in accordance with the provisions of this charter.

### **Sec. 19.11. - Municipal court.**

The municipal court established by this charter shall come into existence on the fourth day of July, 1961, and the existence of the justice courts created under the previous charter of the city shall cease to exist at midnight at the end of July 3, 1961. The terms of office of the justices of the peace of such courts shall thereupon be terminated. At the time the municipal court comes into existence, a vacancy shall exist in the office of the municipal judge, which vacancy shall be filled by the council by a municipal judge who shall be appointed not later than the first Monday in June for a term commencing July 4, 1961, and terminating at 12:01 a.m. on the first day of January, 1963, or at such time thereafter as his successor who

is elected at the city election held in the year 1962 qualifies for and assumes the duties of his office.

### **Sec. 19.12. - Constable.**

The council shall appoint a constable for the interim period of January 1, 1961 to the 4th day of July, 1961, and his successor shall then be appointed under and subject to the provisions of this charter.

### **Sec. 19.13. - Compensation of officers.**

The compensation of elective officers set forth in this charter shall apply to officers elected after the effective date of this charter. The stating of any such compensation in this charter shall not operate to change the compensation of an officer after his election or appointment to office in violation of the constitutional prohibition thereof.

### **Sec. 19.14. - Council action.**

In all cases involving the transition of the city government from that under the previous charter to that under this charter which are not covered by this schedule, the council shall supply necessary details and procedure and may adopt such rules, regulations, and ordinances as may be required therefor.

### **Sec. 19.15. - Vested rights and liabilities.**

After the effective date of this charter, the city and all its agencies shall be vested with all proper moneys, contracts, rights, credits, effects, and the records, files, books, and papers belonging to it under and by virtue of the previous charter. No right or liability, contract, lease, or franchise, either in favor of or against the city, existing at the time this charter became effective, and no suit or prosecution of any character, shall be affected in any manner by any change resulting from the adoption of this charter, but the same shall stand or proceed as if no change had been made. All taxes, debts, and liabilities due to the city from any person, and all fines and penalties, imposed and existing at the time of such changes, shall be collected by the city. All trusts established for any municipal purpose shall be continued in accordance with the terms thereof, subject to the cy pres doctrine.

### **> RESOLUTION OF ADOPTION <sup>[9]</sup>**

At a meeting of the Charter Commission of the City of Albion, held on the 26th day of May at the usual meeting time and place of the Commission, the following members of the Charter Commission were present: Commissioners Dailey, Hill, King, Mather, Messick, Pollard, Roland, Turnbull—A quorum.

At such meeting, the following resolution was offered by Commissioner Mather and seconded by Commissioner King:

Resolved, That the Charter Commission of the City of Albion, does hereby adopt the foregoing instrument as the proposed revised charter of the City of Albion, and the Secretary of this Commission is hereby instructed to transmit the same to the Governor of the State of Michigan, in accordance with the provisions of Act No. 279 of the Public Acts of 1909, for his approval.

The vote on the adoption of the resolution was as follows:

Ayes: 8

Nays: None

Absent: 1

Marthan A. Schumacher,

Secretary of the Charter Commission of the City of Albion, Michigan

## Attested by the following Commissioners:

Arthur Dailey  
Stuart D. Hill  
George V. Mather  
Howard A. Messick  
Darrell H. Polland  
L. L. Reed  
David L. Turnbull  
Betty King  
Secretary  
Harold W. Roland  
Chairman

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**FOOTNOTE(S):**

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<sup>(8)</sup> **Editor's note**— To create a consistent format the "schedule chapter" has been designated as chapter 19 and sections herein, none of which had the chapter number as a part thereof, have had the chapter number incorporated into them. ([Back](#))

<sup>(9)</sup> **Editor's note**— This charter was subsequently ratified by the voters of the City of Albion August 2, 1960 by a vote of nine hundred thirty-nine (939) yes, and four hundred twenty-seven (427) no. ([Back](#))

# **Eighth Edition**

## **Model City Charter**

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**A Publication of the  
National Civic League**

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**DEDICATED TO THE MEMORY OF**  
*Betty Jane Narver*

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## ACKNOWLEDGEMENTS

It is with great pride in the accomplishment that we present the eighth edition of the *Model City Charter*, one that is truly a model for the 21<sup>st</sup> century. A number of important changes have been made in accordance with the changing needs of communities in this new century. The *Model* itself is now over a century old but its importance as a guide for communities remains as relevant as ever.

The 8<sup>th</sup> Edition Model City Charter Revision Committee was appointed on March 29, 2001. The National Civic League's Board approved the new edition of the Model on November 16, 2002. Betty Jane Narver, Director of the Institute for Public Policy and Management of the University of Washington, first chaired the committee. Her untimely passing left far more than just the revision committee bereft of her wisdom and understanding. We were exceedingly fortunate to benefit from the admirable talents and leadership contributed by Bob O'Neill, who succeeded Betty Jane as chair of the revision committee. Bob is the executive director of the International City/County Management Association, a long-standing partner with the National Civic League in the charter revision process.

We also benefited enormously from the continued dedication of a group of seasoned professionals whose expertise in this area is unmatched. Terrell Blodgett, professor emeritus at the LBJ School of Public Affairs, 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, also served as a senior advisor. Robert Kipp, group vice president at Hallmark Cards, Inc., and James Svava, department head of political science and public administration at North Carolina State University, were the other senior advisors, and they both made invaluable contributions throughout the revision process.

Once again we had the great fortune of assembling an outstanding set of individuals to serve as committee members for this project. The other members of the 8<sup>th</sup> Edition Model City Charter Revision Committee were 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; George Frederickson, Professor, Department of Public Administration, University of Kansas; Christopher T. Gates, President, National Civic League; 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; John Nalbandian, Chair, Department of Public Administration, University of Kansas; Neil Reichenberg, Executive Director, International Personnel Management Association; Dorothy Ridings (*ex officio*), President and Chief Executive Officer, Council on

Foundations, and Chair, 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; David Sink, Professor, Department of Public Administration, University of Arkansas, Little Rock; Henry Underhill, Executive Director/General Counsel, International Municipal Lawyers Association; and John Vocino, Senior Analyst, U.S. General Accounting Office.

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Finally, I want to thank the staff of the National Civic League who worked so hard over the past two years to organize this effort and pull all the new ideas into the document you now hold in your hands. They were:

Matt Krumme, Manager, Model City Charter Revision Project;  
Robert Loper, Research Director and Editor, National Civic Review;  
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Derek Okubo, Director, National Headquarters; and  
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Christopher T. Gates  
President

## INTRODUCTION

The eighth edition of the *Model City Charter* strongly endorses the council-manager structure of municipal government that was first proposed in 1915 as the National Civic League's (then the National Municipal League's) model form. In the years since, the *Model* has been refined to reflect the evolution of the council-manager plan, the most widely used governmental structure in American cities with a population over 10,000. The fundamental principle of the model, that all powers of the city be vested in a popularly elected council that appoints a professional manager who is continuously responsible to and removable by the council, has endured ever since.

### A Model for the 21<sup>st</sup> 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 eighth 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 latest revision of the model charter 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, 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 *Models* 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.

Terrell Blodgett  
William N. Cassella, Jr.

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William N. Cassella, Jr., was coordinator for the Model City Charter Revision Committee that developed the seventh edition, and he is the retired executive director of the National Civic League.

Blodgett and Cassella were senior advisors to the committee that developed the eighth edition of the *Model City Charter*.

## **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, 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, justice, equality, efficiency, responsiveness, citizen participation, and environmental stewardship. Three 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, improve efficiency, and provide for a responsible and cooperative government. . . .”

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, 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, geographical, etc.—has implication for the method of electing the council to assure equitable representation. While the Voting Rights Act governs all jurisdictions, in some cities the problem of

compliance with its provisions and avoidance of court challenges is a matter of particular concern. Just as there is no absolute model for providing competent and effective legislators, there is no absolute pattern which will assure equitable representation.

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

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

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

## **Section 2.02. Eligibility, Terms, and Composition.**

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

### **Commentary.**

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

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

### **Commentary.**

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

The *Model* does not restrict reelection to subsequent four-year terms. Limiting reelection restricts the citizens' opportunity to keep in office council members of whom they approve. Unlimited terms allow voters to provide a vote of confidence for council members who represent majority sentiment

and a vote of opposition for members in the minority. Finally, the city benefits from the institutional memory of reelected council members.

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

**Commentary.**

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

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

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

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

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

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

**Commentary.**

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

Nevertheless, in larger cities, citizens may feel isolated from and unconnected to their government without some geographical basis of representation. Cities with significant differences in or conflicts

among ethnic, racial, or economic groups may wish to consider whether one of the alternative systems may achieve more equitable representation of the city's population and avoid legal challenges under the Voting Rights Act without sacrificing council effectiveness.

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

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

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

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

**Commentary.**

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

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

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

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

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

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

#### **Commentary.**

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

The mixed system combines the citywide perspective of the at-large council members with the local concerns and accountability of district council members. It can allow minorities who live in concentrated areas to influence or even determine the outcome of elections in their districts.

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

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

### **Alternative IV – Single-Member District System**

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

#### **Commentary.**

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

The growing recognition that membership on councils should represent all racial and ethnic groups more adequately has spurred increased use of the single-member district system. With racial

minorities concentrated in particular sections of the city, it is easier to elect minority council members. Also, because district campaigns cost substantially less than citywide campaigns, single-member districts can open the way for greater diversity among candidates. Citizens feel closer to district elected council members, whom they can hold responsible for addressing their community concerns.

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

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

### **Section 2.03. Mayor.**

**(a) Powers and Duties.** The mayor shall be a voting member of the city council and shall attend and preside at meetings of the council, represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of citizen advisory boards and commissions, present an annual state of the city message, appoint the members and officers of council committees, assign subject to the consent of council agenda items to committees, and perform other duties specified by the council. The mayor shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties.

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

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

### **Commentary.**

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

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

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

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

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

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

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

Cities that provide for council selection of the mayor should avoid two practices which diminish the prospect of effective leadership. First is rotation of the office of mayor among members. This approach may hinder the emergence of a respected leader by preventing any one member from

acquiring experience and increasing competence in the exercise of leadership skills. It can also mean that the true leader of the council is not the mayor, which may create a misperception of inside dealing and secret manipulation. The second practice is to automatically designate as mayor the council member who receives the largest number of votes. This awkward approach prevents the council from choosing its leader and does not give voters full knowledge for which office—council member or mayor—they were casting votes.

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

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

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

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

#### **Section 2.04. Compensation; Expenses.**

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

## **Commentary.**

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

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

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

## **Section 2.05. Prohibitions.**

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

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

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

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

## **Commentary.**

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

(b) and (c) The prohibition against interference by council members in the appointment and removal of employees and in the administration of city programs does not include the broad language of earlier editions of the *Model* because it was considered too rigid and unrealistic. This provision, while expressing the general policy of noninterference, does not exclude communication between council members and the manager on questions of appointment and removal. The manager may seek advice from the council regarding appointments.

Council members are strictly prohibited from giving orders to city officers or employees. However, the prohibition against interference with administration does not prevent council members from making inquiries of department heads or employees for the purpose of obtaining information needed by them in the discharge of their duties including response to constituent requests. Information provided to one council member should be shared with the entire council as warranted. The council and manager should define the parameters for such requests and establish reasonable boundaries. In some cities, automated information systems make information on aspects of departmental operations readily available to council members on computer terminals.

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

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

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

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

**(c) Filling of Vacancies.** A vacancy in the city council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than sixty days upon the occurrence of the vacancy, but the council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the council fails to do so within thirty days following the occurrence of the vacancy, the election authorities shall call a

special election to fill the vacancy, to be held not sooner than ninety days and not later than 120 days following the occurrence of the vacancy, and to be otherwise governed by law. Notwithstanding the requirement in § 2.11(c), if at any time the membership of the council is reduced to less than \_\_\_\_\_, the remaining members may by majority action appoint additional members to raise the membership to \_\_\_\_\_.

### **Commentary.**

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

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

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

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

### **Section 2.07. Judge of Qualifications.**

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

### **Commentary.**

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

### **Section 2.08. City Clerk.**

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

### **Commentary.**

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

### **Section 2.09. Investigations.**

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

### **Commentary.**

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

### **Section 2.10. Independent Audit.**

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

### **Commentary.**

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

## **Section 2.11. Procedure.**

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

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

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

### **Commentary.**

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

## **Section 2.12. Action Requiring an Ordinance.**

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

- (1) Adopt or amend an administrative code or establish, alter, or abolish any city department, office, or agency;

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

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

### **Commentary.**

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

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

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

### **Section 2.13. Ordinances in General.**

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

**(b) Procedure.** Any member at any regular or special meeting of the council may introduce an ordinance. Upon introduction of any ordinance, the city clerk shall distribute a copy to each council member and to the city manager, shall file a reasonable number of

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

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

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

#### **Commentary.**

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

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

#### **Section 2.14. Emergency Ordinances.**

To meet a public emergency affecting life, health, property or the public peace, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for

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

**Commentary.**

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

**Section 2.15. Codes of Technical Regulations.**

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

- (1) The requirements of § 2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city clerk pursuant to § 2.16(a).

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

**Commentary.**

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

expense while at the same time preserving the essential safeguards of the general ordinance procedure of § 2.12.

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

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

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

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

### **Commentary.**

Subsections (a) and (c) of this section state essential procedures for maintaining legally authenticated records of all ordinances and resolutions and for making them available to the public.

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

## **Article III CITY MANAGER**

### **Introduction.**

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

### **Section 3.01. Appointment; Qualifications; Compensation.**

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

### **Commentary.**

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

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

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

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

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

Keep the community informed on local government affairs; encourage communication between citizens and all local government officers; emphasize

friendly and courteous service to the public; and seek to improve the quality and image of public service.

(The ICMA Code of Ethics can be found online at [www.icma.org](http://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](http://www.icma.org)).

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

Increasingly, appointment of the manager involves an employment agreement between the municipality and the manager. These agreements can cover all aspects of the manager's job, including salary, other forms of compensation, duties, performance standards, evaluation, and severance procedures. Employment agreements provide mutual protection for the manager and the local government. However, they are not tenure agreements and do not impede the council's power to remove the manager. A model employment agreement can be found at [http://icma.org/documents/icma\\_model\\_employee\\_agreement.doc](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](http://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).
- (4) In the event of a vacancy on the commission by death, resignation or otherwise, the city council shall appoint a new member enrolled in the same political party from which his or her predecessor was selected to serve the balance of the term remaining.
- (5) No member of the districting commission shall be removed from office by the city council except for cause and upon notice and hearing.
- (6) The members of the commission shall serve without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges.
- (7) The commission may hire or contract for necessary staff assistance and may require agencies of city government to provide technical assistance. The commission shall have a budget as provided by the city council.

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

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

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

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

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

- (1) Districts shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent of the average population for all city council districts according to the figures available from the most recent census.
- (2) Districts shall consist of contiguous territory; but land areas separated by waterways shall not be included in the same district unless said waterways are traversed by highway bridges, tunnels or regularly scheduled ferry services both termini of which are within the district, except that, population permitting, islands not connected to the mainland or to other islands by

bridge, tunnel or regular ferry services shall be included in the same district as the nearest land area within the city and, where such subdivisions exist, within the same ward or equivalent subdivision as described in paragraph (5) below.

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

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

#### **Commentary.**

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

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

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

Once the bipartisan commission submits its plan to the city council, the council can neither approve nor veto the result. This avoids the conflict of interest created when council members consider new districts whose lines may materially affect their political futures. The council may, however,

prevent implementation of the plan if it finds the plan in violation of the charter and files with the courts for such a determination.

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

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

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

**(c) Procedures.**

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

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

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

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

### **Section 6.03. Methods of Electing Council Members.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Alternative IV – Single-Member District System**

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

**Commentary.**

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

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

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

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

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

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

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

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

**(c) Petitions.**

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

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

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

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

**(d) Procedure after Filing.**

**(1) Certificate of Clerk; Amendment.** Within twenty days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his or her certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of paragraphs (2) and (3) of § 6.04(c), and within five days after it is filed the clerk shall complete

a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under paragraph (2) of this subsection within the time required, the clerk shall promptly present his or her certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.

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

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

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

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

**(f) Action on Petitions.**

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

election to occur within \_\_\_\_\_ [30 to 90] days of the date the recall petition was finally determined sufficient.

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

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

#### **(g) Results of Election.**

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

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

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

#### **Commentary.**

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

(a) Neither the initiative nor the referendum should be applicable to the budget, capital program, any ordinance relating to the appropriation of money or the levy of taxes, or, of course, to salaries of city officers or employees, for this would interfere with responsible officials striving to achieve a properly balanced long-range fiscal program. Recall should not apply to recently elected officials, because officials need time to establish themselves in office, and because election results should not be promptly challenged by another election.

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

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

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

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

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

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

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

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

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

## **Article VII GENERAL PROVISIONS**

### **Introduction.**

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

### **Section 7.01. Conflicts of Interest; Board of Ethics.**

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

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

## **Commentary.**

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

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

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

## **Section 7.02. Prohibitions.**

### **(a) Activities Prohibited.**

- (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, gender, age, sexual orientation, disability, religion, country of origin, or political affiliation.
- (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this charter or the rules and regulations made there under, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.
- (3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.

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

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

**Commentary.**

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

**Section 7.03. Campaign Finance.**

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

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

**Commentary.**

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

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

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

**Article VIII  
CHARTER AMENDMENT**

**Introduction.**

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

**Section 8.01. Proposal of Amendment.**

Amendments to this charter may be framed and proposed:

- (a) In the manner provided by law, or

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

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

### **Commentary.**

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

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

### **Section 8.02. Election.**

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

### **Section 8.03. Adoption of Amendment.**

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

## **Article IX TRANSITION AND SEVERABILITY**

### **Introduction.**

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

### **Section 9.01. Officers and Employees.**

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

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

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

### **Section 9.02. Departments, Offices, and Agencies.**

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

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

### **Section 9.03. Pending Matters.**

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

### **Section 9.04. State and Municipal Laws.**

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

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

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

### **Section 9.05. Schedule.**

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

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

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

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

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

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

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

**(f) Initial Salary of Mayor and Council Members.** The mayor shall receive an annual salary in the amount of \$\_\_\_\_\_ and each other council member in the amount of

\$\_\_\_\_\_, until such amount is changed by the council in accordance with the provisions of this charter.

### **Section 9.06. Severability.**

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

### **Commentary.**

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

## **Appendix OPTIONS FOR MAYOR-COUNCIL CITIES**

Since 1915, the *Model City Charter* has been based on the council-manager form of government. Some cities have a tradition of using or prefer to use the mayor-council form, and in some states the adoption of council-manager government may be limited by state statutes.<sup>1</sup> 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

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

efficient in their delivery of services to citizens. Some cities still retain these features in their charter.

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

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

#### Analytical Questions about Mayor-Council Governments

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

- *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.<sup>2</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>2</sup> 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.”

<sup>1</sup> 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.

<sup>2</sup> 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.

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.<sup>4</sup>

#### 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.<sup>5</sup> 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.

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<sup>3</sup> 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.

<sup>4</sup> 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.

## 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).<sup>5</sup> 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

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<sup>5</sup> 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.

between the mayor and the council. The CAO provides professional advice and detached assessment regarding key decisions to both the mayor and the council. The CAO can promote a higher level of performance and shared information by both sets of officials. The CAO assists the mayor in preparing policy recommendations to the council but is cognizant of his or her responsibility to provide information that the council needs to make policy decisions.<sup>7</sup> The CAO is responsible directly to the mayor for administrative matters and to the council for providing information to support their oversight function, i.e., the assessment of how well policies are working and how well services are being delivered. It should be acknowledged that the position occupied by the CAO can be difficult if there is conflict between the mayor and council. The CAO can get caught in the middle. Still, the presence of a CAO who feels a sense of accountability to both the mayor and the council can reduce the level of conflict compared to conditions in mayor-council cities without a CAO.

The mayor-council-CAO government is not a “weak” mayor structure but rather one in which the mayor and council share authority in a number of areas. On the other hand, this option is also not a “strong” mayor structure. 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.)<sup>8</sup>

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

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<sup>6</sup> A survey of CAOs indicates that with nomination by the mayor and approval by the council, the CAO is likely to simultaneously see himself or herself as the agent of the mayor and also as being accountable to both the mayor and the council. Seven in ten CAOs agree with these positions. If the mayor does not nominate the CAO, only thirty-seven percent of the CAOs see themselves as the mayor’s agent. If the council does not approve the appointment, only twenty-eight percent of the CAOs see themselves as accountable to the council. See James H. Svara, “Do We Still Need Model Charters? The Meaning and Relevance of Reform in the Twenty-First Century,” *National Civic Review*. 90 (Spring, 2001), pp. 19-33.

<sup>7</sup> 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.

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.<sup>8</sup>

### Veto

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

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<sup>8</sup> 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.

## 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.<sup>12</sup> 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 8<sup>th</sup> 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.

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<sup>1</sup> 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.

## **CITIZEN-BASED GOVERNMENT: A PROCESS TO ENGAGE CITIZENS IN CHARTER REVISION**

In simpler times, when it became apparent that the city charter needed attention, whether a quick maintenance check or a major overhaul, the mayor or city council would turn to the small group of steadfast civic leaders that had the time and inclination to take part in a charter commission. This group was pretty recognizable to the community. They were the acknowledged community leaders that willingly and regularly stepped into the public space to make decisions on citizens' behalf.

More recently, jurisdictions have begun to hold public meetings to apprise citizens of proposed changes developed by charter commissions. While some of these efforts genuinely seek citizen feedback, more often they are perfunctory gatherings for telling citizens what has already been decided. However, the emerging challenges confronting our communities call into question the adequacy of these methods for revising city charters. The latest edition of the *Model City Charter* reflects the importance of citizen participation in the governance of communities, including involvement in the revision of a city's charter. The increasing diversity of communities across the country, the impact of civic infrastructure on collective governance capacity, and the need for citizen education and buy-in for the charter reform process to be successful make citizen participation in charter revision essential.

### *Diversity*

With our cities and towns becoming increasingly diverse, ensuring that government is of the people, by the people and for the people is becoming more problematic. Today, the challenge for many jurisdictions across the country is to reform government structure and practice in a manner that reflects the needs and aspirations of everyone in the community. This is best accomplished by involving as broad a cross-section of the people and perspectives in a community as possible.

### *Civic Infrastructure*

Over the last several years, a growing body of research has documented a decline in citizen trust and participation in formal and informal political and governmental activities. To some, these findings indicate that citizens just don't care about public life the way they used to. But a deeper and more plausible analysis is that citizens don't believe that their participation in politics and government will result in significant changes. They don't think they have any power within the system as currently configured and therefore opt to focus their energies elsewhere. Perfunctory town hall meetings that communicate to citizens an already developed set of ideas or policies exemplify the kind of approach that drives citizens away from public life. City leaders must develop methods for enhancing meaningful citizen involvement. Perhaps the most fundamental way to do this is to involve citizens in structuring the government that is closest to them.

### *Citizen Education*

Many people simply don't know how government works. They aren't aware of the opportunities that are available to citizens to impact a policy or problem in their community or they don't have the confidence to navigate what can appear to be a very complex system. Direct involvement in reforming government not only helps to create a governing structure that reflects citizens' needs, it also educates them about the manner in which government works and prepares the way for future participation.

### *Citizen Buy-In*

There are countless examples in which well-conceived changes to a city charter make their way onto the ballot only to be rejected by the voters. In some cases this occurs because citizens simply don't understand the need for or the potential impact of the change and therefore vote against it. Another obstacle arises when a small but well-organized interest group mounts a campaign against a proposed revision. While their opinions may not accurately reflect the sensibility of most citizens, such groups can often develop and deliver a message that prevents passage of the proposed reform. In both cases, the missing element is a deeper understanding among citizens of the importance of the revision. It's not enough to invest in radio and TV ads or rely on a few op-ed articles to inform people about the issue. The best chance of getting charter changes accepted is to involve many people in the discussion, develop reforms that reflect their ideas, and educate participants throughout the process about the deeper impact of the proposed changes. In this manner, support for charter revisions is developed over the course of the revision process and the chances that special interest groups can derail the proposed reforms are held in check.

In the following pages, a new model for revising a city charter is proposed. This model is based on the notion that citizens have both the right and the ability to be integrally involved in shaping the structure of their local government. Specific process steps for developing a citizen-owned charter revision effort are advanced and examples of successful reform efforts are detailed.

### **Citizen Engagement in Charter Revision**

A credible citizen engagement process for charter revision contains three basic stages: an initiating stage, a citizen engagement stage, and an enactment stage. The initiating stage focuses on the design of the process for charter revision. It is usually driven by a steering committee and focuses on the process, not the content, of the charter revision. The citizen engagement stage brings together a diverse group of citizens to analyze the current charter and make recommendations for change. The enactment stage focuses on the formal electoral process used to pass charter revisions. As this process may differ in each community, it is not discussed in great detail here.

#### Initiating Stage

This first step in designing a city charter reform process is to review the existing regulations governing charter revision. This should occur before the steering committee is formed because, in many instances, the mayor or council is required to appoint a commission to revise the charter. The process for selecting a commission should be designed to ensure significant citizen involvement.

As in any community engagement effort, a citizen-based charter revision process will require a steering committee of 15 to 20 people that represents the diverse interests of the community. The composition of the steering committee should be guided by the need to represent three important perspectives. The committee should include both some of the traditional leaders of the community and some of the emerging voices. As the charter is the blueprint for the city government, it is important that the committee include key experts who possess practical knowledge about how local government functions. Citizen representation that reflects community diversity in terms of ethnic composition, gender, age, income level, and other key characteristics is also an essential component for ensuring a balanced deliberative process.

The steering committee is not responsible for developing the content of the proposed changes. Its charge is to facilitate the development of a credible citizen engagement process that will formulate recommendations for change. Specifically, this group will be responsible for the following tasks:

*Design the community engagement process.* The steering committee is responsible for developing and refining a process that works best for their community. Considerations such as timeframe, local events, and customs will impact design of the citizen engagement stage.

*Recruit stakeholders to participate.* In order to develop recommendations for change that reflect the ideas of many citizens, it is critical to invite people of various interests and perspectives to participate in the analysis of the existing charter. It is recommended that the steering committee involve one hundred to one hundred fifty stakeholders to meet on a regular basis over the course of three to six months to analyze the charter and develop recommendations for change.

*Conduct outreach to the broader community.* In addition to involving a core group of stakeholders in the revising the charter, the steering committee must develop methods to reach out to the broader community. Mechanisms such as neighborhood-based meetings, town hall meetings, radio, TV, newspaper and speakers bureaus can assist in educating the general public about potential changes to the charter and gathering additional feedback.

*Provide staff to manage the process.* Projects that bring many people together to deliberate over important community issues require significant staff support to ensure success. At a minimum, a half-time staff position will be required. Additionally, the steering committee may consider utilizing a professional facilitator to assist in the design and implementation of the citizen engagement phase of the project.

*Recruit technical experts who will support the process.* A charter reform process requires technical assistance and advice in a number of areas such as municipal law, municipal finance, electoral process, and governmental structure and accountability. Additionally, the reform effort may require research into the experiences of other cities as a way of providing citizens with examples of possible reforms and their potential impact on government structure and performance.

*Address and manage logistics such as meeting sites and food.* Meeting sites must be selected that encourage strong and equal participation. Issues such as transportation and childcare should be taken into consideration and food should be provided to ensure attendance.

### Citizen Engagement Stage

After the foundation for the project has been laid through the efforts of the steering committee in the Initiating Stage, one hundred to one hundred and fifty stakeholders will meet over the course of three to six months to analyze the charter and develop recommendations for change. We suggest that stakeholders meet approximately every three weeks to conduct the work of charter revision. The steps of this process are discussed below.

#### A. Review current charter (one to two meetings)

Before citizens can begin to assess the strengths and weaknesses of the charter, they need to have a clear understanding of its current configuration. A summary document of the current charter should

be developed for stakeholder use, and educational presentations need to be developed to inform stakeholders how particular government structures affect the practice and conduct of governmental affairs in their city. This will lay the groundwork for informed decision-making in the latter stages of the process.

**B. Creating a shared vision for local government (one to two meetings)**

Successful citizen engagement projects often start with agreement on the shared values and overall vision that drive the project. Creating a shared vision of local government will allow participants to find agreement on the broad goals for the project and provide a framework for the meetings that follow. It can also serve as “the glue” of the project when disagreements arise and consensus seems hard to reach. An exercise to develop a shared vision for government could be catalyzed by set of simple questions such as “What should government be about? What should it do? If our local government was working at an optimal level, what would it be doing? What would it look like?”

**C. Identify key areas to address (one to two meetings)**

After stakeholders have had some education on the current charter and developed a vision for the kind of government they would like to see, discussions can begin about the areas of government structure and the charter that need attention. Presumably the existing charter is not going to be discarded in its entirety. (For communities that are creating their first charter, recourse to the eighth edition of the *Model City Charter* is strongly recommended.) The steering committee, especially those members who are key experts in one or another area of government structure, should help the stakeholders frame this discussion. At this juncture, these key areas do not have to very specific. They will be further defined and analyzed later on. Key areas could include composition of the city council, power of the mayor, role of the city manager or chief administrative officer, municipal finance, and redistricting among others.

Another important task in determining the key areas for charter revision is to develop some way of prioritizing the areas in which stakeholders want to make reforms. It may be that stakeholders develop a long list of possible changes that can’t all be explored at the same time. It is therefore necessary to develop an agreed-upon set of criteria such as significance, legal feasibility, and political viability to rank the areas in order of importance.

**D. Evaluating key areas of the charter (8 to 12 meetings)**

After an agreed-upon set of key areas have been developed, the steering committee will need to consider two process options as they continue to guide the charter revision project. Both of these options have their strengths and weaknesses.

*Option 1*

One possibility is to keep the original stakeholder group intact as an ongoing body to analyze each of the key areas for charter revision. This option allows for continuity and stronger citizen education in all aspects of the charter under consideration. Its drawbacks are that it relies heavily on technical experts to fill in the gaps that will undoubtedly emerge as citizens attempt to assess an incredible amount of material. Furthermore, this approach requires a sequential, one-at-a-time assessment of the key areas and will likely take many months.

## *Option 2*

The second option is to break the stakeholder group up into work groups around each of the key areas. Work groups of 15 to 30 people meet every two weeks to analyze their key area and develop charter revision recommendations. This approach ensures deeper citizen analysis of each key area. It creates the opportunity for additional citizen involvement as the work groups can recruit other citizens to join a work group. And it allows each key area to be analyzed concurrently and thus avoids an extremely lengthy citizen engagement process. The challenges are that it requires additional facilitative expertise (to guide each of the work groups), it requires additional efforts to ensure overlap between the work groups is synthesized, and it necessitates the identification and involvement of technical experts in each of the key area work groups.

Issues such as the number of key areas, the complexity of the issues to be addressed, the enthusiasm/attendance of citizens to this point in the process, the timeline and resources available should all be taken into consideration when making the decision about the best process option. Option 2 is the more thorough of the two approaches, and the description of the process design below is based on this choice. But the steps described can easily be adapted to suit Option 1 as well.

### A. Structure work groups for charter revision

Strong leadership and guidance is required for each work group to ensure that sound and credible recommendations for charter revision are developed. It is likely that each work group will need a chairperson(s) to manage the development of their recommendations. This person must be viewed as a respected community leader who has the ability to rise above the fray to solve disputes and keep the group focused on its goals. If process facilitators cannot be identified to work with each work group, then the chair must also possess strong facilitative and group process skills.

In addition to strong leadership, each work group will require technical support in their key area. The technical expert(s) should be a resource for the specific key area the work group has undertaken. This person(s) should possess strong research and writing skills.

As citizens break into work groups of their choice, it is likely that key individuals and perspectives will be absent. It is therefore necessary to identify and invite key individuals that can bring additional knowledge and perspective to the work group. It is critical that the chairperson ensure that a Work Group is balanced and is not dominated by one interest group.

### B. Education – what is the current status?

Before deliberations can begin, each work group will need well-presented information about the current condition of their key area for charter revision. This information should include a thorough description of the current design and structure, the legal parameters of this structure, the impact of this structure on government practices and on the overall quality of life of the community, and examples of structures from other cities and towns. This presentation will be used as a springboard into the assessment of the key area.

### C. Analyze the key area

Early discussions should focus on identifying the key issues and problems within the scope of the work group. It is important to first guide participants to agreement on what the problems and challenges are before they begin to move into solving the problems. From these discussions, the

work group should emerge with a set of clearly identified and agreed-upon issues for further analysis.

#### D. Draft option memos

Technical experts play a critical role during this phase in the process. Most citizens are not aware of alternatives to the current element under scrutiny and require additional information and education from technical experts. Based on the early deliberations of the work group and the issues and challenges they have identified, the technical experts will draft option memos for work group consideration. Option memos are documents that present a series of alternatives for revision of the charter. An option memo presents alternatives for charter revision on a particular topic and describes the potential impact of each option, with supplementary material from case study examples from other cities and towns, if available.

#### E. Select options

It may take a few meetings for the each work group to come to agreement on the options that they want to propose to the stakeholder group. But with three to four clear alternatives presented in the option memos, the work group should be able to stay focused on the issues and their potential solutions. Leadership by the chairperson(s) during these discussions is crucial because disagreements will emerge during these discussions. The chairperson must ensure balanced participation from the entire group as he/she leads them towards the development of a viable set of revisions.

#### F. Propose changes to the stakeholder group

Up until this point, all of the deeper analysis of key areas for charter change has occurred in separate work groups. Before final agreement can be reached, it will be necessary to bring the recommended changes from each work group back to the entire stakeholder group to review the proposed changes. It is possible that some of the work groups have overlapped in their assessment of the charter or have analyzed interdependent aspects of the city charter. In one to two meetings, stakeholders will go through all of the proposed changes, identify areas of overlap, ask questions of clarification and come to agreement on a final set of recommended revisions for the charter. Careful attention must be given to the agreed-upon language as it has significant impact in the final drafting for charter change.

An additional but worthwhile activity during this step in the process is to have the stakeholder group recall the shared vision of government that they developed early on and ask them if the proposed changes to the charter reflect that vision.

#### G. Draft charter revision

Technical experts and staff will incorporate any changes brought about during the presentation to the stakeholder group. It is possible that one additional work group meeting for a particular area is required to ensure that any changes made reflect the opinions and ideas of the work group. Staff and technical experts will then begin the process of adapting the recommendations into the language and format used in the charter.

#### H. Present charter language to the stakeholder group

As a final check to guarantee clear communication of and support for the charter revisions, the charter language should be brought back to the stakeholder group for final approval. Since the final revisions will be expressed in a different form than the proposals of the work groups, participants

should have the chance to consider the actual language that is being proposed. This extra step should forestall any perception that the steering committee or technical experts might have dismissed the work of citizens and will ensure strong support for the changes when the measure reaches the ballot.

### Enactment Stage

Once the appropriate language has been drafted for the proposed reforms and the stakeholder group has signed off on them, the next step involves a formal electoral process to pass the charter revisions. This process differs across communities and it is difficult to prescribe best practices for it. However, it is important that the method for getting the changes to the electorate is decided well before the final version of the charter recommendations is drafted. Enactment is a vital part of the process and the choices and time lines for doing so should be kept in mind throughout the process. The best-case scenario is that revisions are drafted in time for an upcoming election. This allows the steering committee to build upon the momentum of the citizen engagement process and rely upon the knowledge of participating citizens to help them create support within the broader community.

Following is an example of a recent charter revision process that may be a useful guide to this process.

#### *Charter Revision in Alachua County, Florida*

Alachua County, Florida, recently revised its charter to obtain home rule authority. Alachua County provides a good example of a charter revision that was citizen based but which received critical support from the local government.

The citizens of Alachua County were concerned about the growing influence of money in local politics, but Alachua County lacked laws or the ability to create laws governing campaign finance reform. In December 2000, approximately a dozen citizens gathered together and formed Alachua County Citizens for Campaign Reform (ACCCR).

The top three concerns of ACCCR were (1) the amount of money being raised and spent by the candidates, (2) the difficulty in determining who was giving money to which candidates, and (3) the loopholes in state law that permitted, if not ensured, that contributions did not have to be disclosed prior to elections.

ACCCR decided that its first step would be to try to get home rule authority that would give the citizens of Alachua County regulatory power over campaign finance for their elections.

A law professor specializing in Florida constitutional law, and a member of ACCCR, wrote the language of the home rule authority bill that was submitted to the local legislative delegation. ACCCR realized from the beginning that it would require overwhelming public pressure to get the legislative delegation to introduce the bill at the legislature. To that end, it began an intensive campaign by writing letters to newspaper editors and legislators, sponsoring a public forum on the topic, and pursuing radio and TV interviews/coverage, press coverage, and literature drops. ACCCR also decided that another way to induce the legislators to act was to show actual voter support for local campaign finance regulation, so it placed a nonbinding referendum (straw poll) on the ballot in an upcoming county election.

According to the law, getting this nonbinding referendum on the ballot required either 1) thousands of petition signatures or 2) action by the county commissioners. Ultimately, ACCCR was able to convince the county commissioners to place the referendum on the upcoming ballot.

To aid in its efforts, ACCCR built coalitions with the Sierra Club, League of Women Voters, Common Cause Florida, and some other local groups (Sustainable Alachua County, Women for Wise Growth, etc). It sought support from the local political parties and unions with mixed success. It also received official endorsement from three individual local unions.

ACCCR also held two public forums to educate citizens on the issue. The forums were taped for local radio broadcast and cable TV replay. Replaying these forums helped tremendously in ACCCR's efforts to reach the local county public and to raise awareness of and support for the issue.

There was no organized opposition prior to the straw poll ballot. Once the results of the straw poll came in (68% in favor of local regulation) it became difficult for many groups to oppose the issue because of its overwhelming support.

Some opposition materialized, however, prior to the binding referendum last November. Leaders of the local Democratic, Republican and Libertarian parties spoke publicly against it, as did some key local union representatives. But ACCCR had already gained wide public support and the endorsement of several individual local unions and, consequently, no formal opposition emerged on behalf of any organized group other than the Libertarian party.

In November 2002, ACCCR succeeded in obtaining home-rule authority for campaign finance in Alachua County elections. Alachua County now has the power to adopt local campaign finance regulations, provided that the local regulations do not conflict with those of the state or court rulings.

For more information on the requirements for charter revision in your city, town, or county, contact your local government.

## Section 1: Local Government

# Chapter 3: Charter Revision and Amendment

### Background for Change

Michigan cities and villages exist within a framework that is part of a greater system of state and federal law. The system is described in governing documents which fit into a hierarchy of importance and must be kept current. Constitutions, statutes, and charters are primary examples of these documents.

Most Michigan cities are incorporated under the Home Rule City Act, 1909 PA 279 (HRCA) (MCL 117.1 et seq.). Home rule villages are created through the Home Rule Village Act, 1909 PA 278 (HRVA) (MCL 78.1 et seq.). The HRCA and HRVA are statutes that were authorized by the Michigan Constitution of 1908, and currently by Article VII, Section 22, of the Michigan Constitution of 1963.

Locally, the city or village charter is the principal governing document. This chapter addresses existing charters of home rule cities and villages. As each community changes in various ways over time, its charter has to change with it. The same is true at the state and federal levels. The U.S. Constitution has been amended 27 times to date. Michigan has had four constitutions and numerous amendments. Statutes are being enacted and amended constantly.

When a charter becomes outdated it hinders the ability of local government to serve properly. A charter that is no longer current is one with provisions that are illegal, obsolete, or missing. Changes are needed to correct misleading, unreliable, or unresponsive charters.

### Illegal Charter Provisions

Charter provisions may be preempted by other law. No provision of any city or village charter shall conflict with or

contravene the provisions of any general law of the state (MCL 117.36; 78.27). Other instances of illegality result when a court declares them so.

### Obsolete Charter Provisions

The mere passage of time contributes to charter obsolescence. Provisions that once made sense in the history of a community may later be irrelevant or too restrictive. Certain dollar limitations for expenditures, titles of municipal officers and departments, and descriptions of functions are some of them. Archaic charter language, or charters dominated by male pronouns, also contribute to examples of obsolescence. One charter provision may be in conflict with another, leading to confusion of interpretation.

### Omitted Charter Provisions

Does the charter claim all powers allowed by law or does it unduly limit their exercise?

The HRCA and HRVA provide in similar language that each city or village charter may provide “for the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers are expressly enumerated or not; for any act to advance the interests of the city or village, the good government and prosperity of the municipality and its inhabitants and to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state” (MCL 117.4j(3); 78.24(m)).

The HRVA permits a village to adopt as part of its charter any chapter, act, or section of state statutes not inconsistent with the Act, which relates to the powers or

government of villages generally (MCL 78.25).

The HRCA and HRVA prescribe certain charter content. Essential provisions are mandated. Others are permissive. Still other provisions are prohibited, or are further restricted.

### **Room for Improvement**

With decades of experience under municipal home rule, generations of citizens have come to view home rule as deserving of the public trust, as reflected increasingly in modern charter language.

Does the community want or need more innovative charter provisions than presently exist? It is possible to guide local officials, officers, and employees in their various functions by specific creative charter authorizations declared to be in the public interest. Examples are continual planning for change; providing continuing education at all levels of civic participation; improving intergovernmental relationships; employing alternative dispute resolution methods; conserving resources (both human and environmental); keeping the public informed of vital concerns; enhancing cultural qualities; and promoting ethical standards and behavior.

Examination of the local charter for practical use should also raise the following questions:

- Is it organized in logical sequence?
- Does it define key terms?
- Is the language clear and understandable?
- Are provisions easy to locate when needed?
- Does it have an index?
- Is it preceded by a meaningful preamble and historic statement?

### **To Revise or Amend**

The two forms of legally authorized charter changes are by revision or amendment.

The home rule acts allow communities to make substantial or nominal changes in their charters by different routes. Charter revision implies re-examination of the entire

document, and that it may be recreated without obligation to maintain the form, scheme, or structure of the former charter. Amendment implies that the general plan and scope of the former will be maintained, with corrections to better accomplish its purpose. Revision suggests fundamental change, while amendment is a correction of detail, according to the Michigan Supreme Court.

A change in the form of government will require charter revision and not merely amendment. What constitutes such a change may require in-depth study. Legal advice should be sought if that question arises.

### **Charter Revision**

#### *Cities*

Revision of city charters may be initiated by a resolution adopted by 3/5 of the legislative body or by petition signed by at least five percent of the registered voters, unless the present charter provides otherwise. In any case, the decision to revise is for the electors to approve or reject. They must also select a nine member charter commission to revise the charter, none of whom may be an elected or appointed city officer or employee. Both matters may be voted upon at the same or separate elections. An advisory vote may also be taken on the question of a change in the form of government.

The city council determines the place of meeting, the compensation of charter commission members, and provides funds for expenses and ballots.

The city charter commission convenes on the second Tuesday after the election. The city clerk presides at the first meeting. The clerk administers oaths of office and acts as the clerk of the commission.

The city charter commission assesses the qualifications of its members, chooses officers, determines rules of procedure, keeps a journal, and fills vacancies. City charter commission members are compensated for attending a maximum of 90 meetings (one per day). A majority of city charter commission members constitute a quorum. Commission sessions are public.

It is generally advisable for a city charter commission to engage a legal consultant experienced in these matters as there are numerous legal issues at stake.

A proposed revised charter is submitted to the governor for approval. The attorney general reviews it and advises the governor regarding its legality. The governor signs the charter if approved; otherwise the charter is returned to the charter commission with a commentary of recommended corrections.

An approved proposed city charter is to be published in full as prescribed by the charter commission. The adoption of the revised charter is for the electorate to decide by a simple majority of those voting on the question. Specific provisions for a city charter may also be decided as separate ballot propositions. The ballot questions are to be approved for clarity and impartiality by the attorney general. The ballot contains voting instructions and explains the effect of each proposal.

If a proposed city charter revision is rejected, the charter commission reconvenes and determines whether to take no further action or to proceed with a further revision. If no action is taken, the city charter commission ceases to exist. Proposed revised city charters may be submitted to electors by a charter commission three times within a three-year period. A new proposal to revise a charter may be voted upon at any time after termination of the charter commission.

#### *Home Rule Villages*

The initiation of a home rule village charter revision requires a 2/3 approval vote by the legislative body, or by electors' petition of at least 20 percent of the total vote cast for president (village) at the last preceding election, unless otherwise provided by charter. The village charter commission consists of five elected members.

The village council determines the place of meeting, the compensation of charter commission members, and provides funds for expenses and ballots.

The village charter commission convenes within ten days after its election,

and frames a charter within 60 days thereafter.

The village charter commissions assesses the qualifications of its members, chooses officers, determines rules of procedure, keeps a journal, and fills vacancies. Three or more village charter commission members constitutes a quorum. Commission sessions are public. The county prosecutor is required by statute to advise village charter commissions.

A proposed revised charter is submitted to the governor for approval. The attorney general reviews it and advises the governor regarding its legality. The governor signs the charter if approved; otherwise the charter is returned to the charter commission with a commentary of recommended corrections.

The attorney general's position is that publication is to be in a newspaper in general circulation within the community, which is the statutorily required method of publication of village charters.

The adoption of the revised charter is for the electorate to decide by a simple majority of those voting on the question. A proposed revised village charter must be filed with the village clerk not less than 90 days before the election. A revision may be submitted to the electors only once in two years.

#### **Charter Amendment**

Amendment of a city charter may be proposed by 3/5 of the members of the legislative body, or by an initiatory petition of electors containing the signature of at least 5 percent of the qualified registered electors of the city. If proposed by the legislative body, the proposal is submitted to the electors at the next municipal or general state election, or special election held in the city not less than 60 days after it is proposed. In the case of petitions, the election is to occur not less than 90 days following their filing.

A village charter amendment may be submitted to the electors by a 2/3 vote of the legislative body or petitioned for by not less than 20 percent of the number of electors voting for president at the last election.

The governor is presented with the proposed amendment of a city or village charter for approval, and signs it if approved. If not approved, it is returned to the legislative body with stated objections for reconsideration. If 2/3 of the members agree to pass it, it is submitted to the electors. If the amendment was initiated by petition, it is submitted to electors notwithstanding the objections.

An amendment to a village charter is submitted to electors at the next general or special election. An amendment originated by the legislative body is published and remains on the table for 30 days before action on it is taken. The form of a proposed amendment to appear on the ballot is determined by resolution of the legislative body, unless provided for in the initiatory petition. Publication is made in a newspaper published or circulating in the village at least once, not less than two weeks, nor more than four weeks before the election.

Proposed amendments are to be published in full with existing charter provisions to be altered or abrogated by them. The purpose of a city charter amendment is designated on the ballot in not more than 100 words, including the short title or caption. The statement of purpose must be true and impartial so as to create no prejudice for or against the amendment. The attorney general examines it for compliance before its printing. The form of the proposed amendment is determined by resolution of the legislative body unless provided for in the initiatory petition. In the latter case the legislative body may add an explanatory caption.

A proposed amendment is confined to one subject. If a subject embraces more than one related proposition, each of them must be separately stated to allow an elector to vote for or against each proposition.

A majority vote of electors voting on the question is required to pass an amendment.

A failed proposed amendment to a city charter may not be resubmitted for two years.

## **Legal References**

The sections of the Home Rule City Act that directly relate to charter revision are 18, 19, 20, 22, 23, 24, 26, and 28. Those that govern amendment are 21, 22, 23, 24, 25, 26, and 28. The corresponding sections of the Home Rule Village Act are 14, 15, 18, 19, 20, 21, and 26 for revision and 17, 18, 19, 20, and 21 for amendment.

The remaining provisions of each of the acts, respectively, must be referred to in considering changes to a city or village charter. Certain features of each municipal charter are mandatory and are not subject to exclusion. Others, as noted above, are permissive or restrictive and deliberate consideration is to be given to them. Constitutional provisions and a host of statutory laws also bear upon what may appear in charters, and to what extent and content.

Courts have interpreted the validity of various charter provisions and the statutes that dictate their use. The Michigan attorney general has also rendered opinions, when requested, for guidance in areas of specific legal concern.

All sources of law that bear upon charter issues need to be consulted in any effort to reform charters, to achieve the desired benefit to the communities served by them.

## **Charter Revision Strategies**

To do justice to the charter revision process, it is well to project an 18-month time frame after the election of the charter commission in order to complete the task. Each commission will set its own pace. It should meet regularly and assign a chapter of the charter at a time to be considered at a subsequent meeting or meetings. The review of each provision should be by all members so that each participant has a grasp of the issues involved. The entire charter document is subject to revision and improvement. Officeholders are to be consulted for views regarding the effect of current charter provisions upon their duties and performances.

It is well for the commission members to wrestle with and to dispose of the most

volatile issues first, and to resolve them expeditiously—and to then close ranks. The charter commission must present to the public a unified approach and avoid divisions caused by single or limited issue positions, which tend to discourage voters and lead to defeat of the product of countless hours of study, debate, and drafting. It is also well to have one person draft all segments of the document, to preserve continuity of style and form. Until the commission approves a final version, each draft should be regarded as tentative to allow the entire work product to evolve into a cohesive whole.

The election cycle is a foremost consideration in the timing of charter submission to the electorate. To achieve timely completion of the charter is to also allow sufficient opportunity for review by the attorney general on behalf of the governor. It is prudent, and a courtesy to those offices, to request their optimum timing in advance. The review of total charter language is given expert, in-depth analysis by the highly experienced assistant attorney general in charge of that service. The reviewer may need to refer various articles of the charter to other state agencies for inspection. Further consideration must be given to the prospect that added time will be needed for adjustment if objections are raised.

Revised charters and amended charter provisions approved by the electorate with the vote for and against are filed in duplicate with the county clerk and the secretary of state, within 30 days after the vote is taken. They become effective upon filing, unless a different effective date is specified in the document, in the case of a city charter.

### **Conclusion**

The service performed for the community by the members of a charter commission is immeasurable and has its own reward. It is a significant honor to participate in the creation of the document that most directly affects the quality of local government and the well-being of its citizens.

The League's Resource Center and its city charter database are excellent resources for research as to what other city and village charters contain. In addition, the League has an online Charter Revision Handbook to aid charter commissions in this effort.

Chapter based on materials provided by **Dan Matson**, city attorney for the City of DeWitt and village attorney for the Village of Fowler. He chair of the Michigan Association of Municipal Attorneys' Charter Focus Group and Ethics Roundtable Committee.

# Charter Amendment—HRC Legislative Body Resolution

## Introduction

Home rule cities can amend their charters in accordance with procedures found in the Home Rule City Act. MCL 117.21-117.25. The amendment process may be used to change details in the charter. It is not permissible to change the form of government by charter amendment (e.g. providing for a council-manager system in place of a mayor-council form). Examples of changes that can be made by amendment are: increasing or decreasing the number of councilmembers, changing the clerk or treasurer position from elected to appointed, setting the purchasing limit that can be spent before the municipality is required to establish a bid process, and establishing pension plans.

Any proposed amendment must be confined to one subject. If a subject embraces more than one related proposition, each proposition must be separately stated to afford electors the opportunity to vote for or against each proposition (MCL 117.21).

## Proposal

Charter amendments may be proposed in one of two ways, either by resolution of 3/5 of the members of the city's governing body (MCL 117.21) or by initiatory petition (MCL 117.21, 117.25).

## Publication

The proposed charter amendment must be published in full with existing charter provisions which would be altered or abrogated by the amendment (MCL 117.21). The manner of publication shall be as prescribed by the city governing body (MCL 117.23). The publication requirement may be met by setting forth the amendment and the existing sections altered or abrogated in:

- the resolution proposing the amendment, if proceedings are published; or
- the election notice; or
- a separate publication.

## Submission to the Governor

All proposed charter amendments must be submitted to the Governor for approval. This should be done immediately after the council resolution to submit the amendment to a vote of the electors is adopted. The amendment is approved by the Governor if it is found to be legally unobjectionable.

## Statement of Purpose

The Act requires that a statement of the purpose of the proposed charter amendment be prepared to consist of a true and impartial statement of the purpose in not more than 100 words, including the short title or caption, in such language as shall create no prejudice for or against such amendment. The statement is prepared for printing on the ballot. However, the Act requires that the text of the statement be submitted to the Attorney General for approval as complying with the Act. It is necessary that it be submitted for such approval as early as conveniently possible. (This latter requirement is not to be confused with the requirement for submission of the proposed amendment to the Governor).

Frequently the "statement of purpose" is framed as a question and in this form is submitted directly to the electors. This has been held to be a valid method (*Thompson v Dearborn*, 348 Mich 23)

## **Election Procedure**

(a) Election Date. The amendment can be submitted either at a special or regular city election or general state election to be held not earlier than 60 days after adoption of the council resolution to submit the amendment to a vote of the electors (MCL 117.21).

(b) Election Notice. If the proposed amendment is to be submitted at a regular or general election, notice of the proposition to be voted on will be added to the regular election notice, by including a caption or brief description of the proposal(s) along with the location where an elector can obtain the full text (MCL 168.653a). The publication of the election notice must be at least 7 days before election day, while the publication of the notice of last day of registration must be at least 7 days before the last day for receiving registrations. (See Appendix C for suggested election notice form).

(c) Form of Ballot. The form of ballot customarily is established by the resolution of the governing body calling for the election on the proposal to amend the charter. If the section of the charter to be amended is reasonably short, the ballot will usually set forth the section in its amended form in full. Occasionally in such cases both the section in its existing form and in its proposed amendment form will be set forth on the ballot.

However, it is required only that the statement of purpose appear on the ballot (MCL 117.21), and the statement of purpose may be in the form of the question itself. If it is not, then the question can be framed with reference to the statement of purpose somewhat like this:

“Shall Section\_\_\_\_\_of the city charter be amended to provide\_\_\_\_\_, as explained above?”

A short title or caption may be used on the ballot for quick identification; however, together with the statement of purpose it must not exceed 100-words.

The proposed charter amendment in full shall be posted in a conspicuous place in each polling place (MCL 117.21).

## **Filing**

If the amendment is approved by the electors, two printed copies must be filed within 30 days after the election with the Secretary of State and two copies with the county clerk, together with a statement certified by the city clerk of the vote for and against the amendment. Upon such filing, the amendment becomes effective unless a different date for taking effect is set forth in the amendment (MCL117.24).

## **Resubmission**

A proposed charter amendment defeated in an election may not be resubmitted to the electors for a period of two years (MCL 117.21).

APPENDIX A  
CHECKLIST

PROCEDURE FOR CHARTER AMENDMENT  
PROPOSED BY GOVERNING BODY

MCL Reference

- MCL 117.21 1. A resolution proposing the amendment and setting the date for election is adopted. requires a 3/5 vote of the members of the governing body.
- MCL 117.22 2. City clerk sends copy of the proposed amendment to the Governor for approval.
- MCL 117.21 3. City clerk sends copy of the “statement of purpose” of the proposed amendment to the Attorney General.
- MCL 117.21 4. City clerk publishes proposed amendment in full with charter sections altered or abrogated, as directed by governing body. (This can be fulfilled in the Resolution, the notice of last day of registration, the election notice, or a separate publication.)
- MCL 168.498 5. City clerk publishes notices of last day for registration (at least seven days before the last day for receiving registrations). The notice shall include a caption or brief description of the ballot proposal, along with the location where the full text can be obtained.
- MCL 168.653a 6. City clerk publishes the election notice (at least seven days before the election). The notice shall include a caption or brief description of the proposal along with the location where the full text can be obtained.
- MCL 117.21 7. Election day (at least 60 days after adoption of resolution).
- MCL 117.24 8. City clerk will file two copies of the approved amendment with the Secretary of State and two copies with the county clerk (within 30 days after election day).

APPENDIX B  
SUGGESTED RESOLUTION FORM

BE IT RESOLVED, by the city council of the city of \_\_\_\_\_, Michigan as follows:

1. By a 3/5 vote of its members-elect, pursuant to the authority granted by Public Act 279 of 1909, as amended, proposes [that section \_\_\_\_\_ of the charter of the city of \_\_\_\_\_ shall be amended to read as follows:] or [that a new section \_\_\_\_\_ be added to the charter of the city of \_\_\_\_\_, to read as follows:]

[Insert the section in the proposed form.]

Provisions of existing section \_\_\_\_\_ of the charter of the city of \_\_\_\_\_ to be altered or abrogated by such proposal, if adopted, now read as follows:

[Insert the section altered or abrogated in full.]

2. The purpose of the proposed amendment shall be designated on the ballot as follows:

[Insert the purpose of the amendment and a brief title or caption, in not more than 100 words.]

3. The city clerk shall transmit a copy of the proposed amendment to the Governor of the State of Michigan for approval, and transmit a copy of the foregoing statement of purpose of such proposed amendment to the Attorney General of the State of Michigan for approval, as required by law.

4. The proposed charter amendment shall be submitted to the qualified electors of this city at an election to be held in \_\_\_\_\_ on \_\_\_\_\_, and the city clerk is directed to give notice of the election and notice of registration in the manner prescribed by law.

5. The proposed amendment shall be submitted to the electors in the following format:

PROPOSED AMENDMENT TO SECTION \_\_\_\_\_ of the CHARTER OF THE CITY OF \_\_\_\_\_ TO \_\_\_\_\_.

A city charter amendment proposed by the city council to amend section \_\_\_\_\_ of the charter by \_\_\_\_\_

[Insert statement of purpose as set forth in paragraph 2, above]

“Shall section \_\_\_\_\_ of the charter of the city of \_\_\_\_\_ be amended to \_\_\_\_\_?”

[Here insert the brief title, as above, or, if the amendment is short and not too complex, it may be desirable to insert the proposed amended section in full.]

[YES] [NO]

6. The proposed amendment shall be published in full together with the existing charter provision altered or abrogated by the amendment [as part of the notice of election] or [once in \_\_\_\_\_ newspaper not less than \_\_\_\_\_ days prior to the election.]

(Note: This section may be omitted altogether if the resolution will be printed in full as part of the minutes of the meeting at which adopted.)

7. The canvass and determination of the votes of said question shall be made in accordance with the laws of the State of Michigan and the charter of the city of \_\_\_\_\_.

APPENDIX C  
SUGGESTED FORM FOR ELECTION NOTICE

ELECTION NOTICE

To the qualified electors of the city of \_\_\_\_\_,

Notice is hereby given that a \_\_\_\_\_ election

(indicate whether regular, special, or primary)

will be held in \_\_\_\_\_, on \_\_\_\_\_(date),

from 7 a.m. to 8 p.m. for the purpose of voting on the following proposals:

(list all proposals to be submitted to voters)

Proposal No. 1

[Insert caption of proposal, if any, as it will appear on ballot.]

[Insert statement of purpose as submitted to and approved by Attorney General] so as to read as follows:

[Insert section of charter in its proposed amended form.]\*

Provisions of existing charter to be altered by such proposal, if adopted, now reads as follows:

[Insert the section or sections abrogated or altered in full.]\*

List of polling place locations \_\_\_\_\_

(clerk)

[Insert the section or sections abrogated or altered in full.]\*

List of polling place locations \_\_\_\_\_

(clerk)

\* If proposed charter amendment together with existing charter provisions which would be altered or abrogated have been published in full with the published proceedings of the meeting at which the resolution was adopted or in a separate publication, these portions of the election notice may be omitted.