

**CITY OF DELAWARE
2024 CHARTER REVIEW COMMISSION
1 S. SANDUSKY STREET
DELAWARE, OHIO 43015**

ORGANIZATIONAL MEETING AGENDA

4:00 PM

MARCH 26, 2024

1. WELCOME /INTRODUCTIONS

Reference items

2. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

3. REVIEW OF DELAWARE CITY CHARTER

Current City Charter

4. COMMUNITY OUTREACH

5. SET MEETING DATES

6. ADJOURNMENT



Item Cover Page

2024 CHARTER REVIEW COMMISSION AGENDA ITEM REPORT

DATE: March 26, 2024
SUBMITTED BY: Sarah Dinovo, City Clerk
ITEM TYPE: Discussion Item
AGENDA SECTION: WELCOME /INTRODUCTIONS
SUBJECT: Reference items

SUGGESTED ACTION:

ATTACHMENTS:

[Charter Review Commission Process Memo.docx](#)
[Charter Review Commission Message 20080618.pdf](#)
[Charter Review Commission Message Final 6-10-16.docx](#)
[Model-City-Charterâ€™9th-Edition.pdf](#)



Memo

TO: Charter Review Commission

CC: R. Thomas Homan, City Manager
Natalia Harris, City Attorney

FROM: Kaitlyn Hulten, Assistant City Attorney/Prosecutor

SUBJECT: Charter Review Commission Process

DATE: March 22, 2024

Pursuant to Section 128 of the Charter of the City of Delaware, Ohio, beginning at the first meeting of the Council in January 1984, and every eight years thereafter, a Charter Review Commission of nine electors of the municipality shall be appointed by Council. The Charter Review Commission's duty shall be to review the existing Charter, and recommend revisions as it may see fit. The Commission shall submit the report to Council not later than 45 days prior to the date required to certify for the November election of the same year. Upon receipt of such report, Council may take such action as it deems justified with respect to the recommendations provided by the Commission.

The last Charter Review occurred in 2016, thus 2024 is the next year that requires the appointment of the Charter Review Commission. Resolution No. 24-15 established the 2024 Charter Review Commission, and the following individuals were appointed to the Commission: Dave Berwanger, Mallorie Watts, Zach Price, Jim Bibler, and Tony Bonofiglio. Resolution No. 24-16 appointed Kent Shafer, Holly Quaine, Terri Smiles, and Amy Burrows McCabe to the Charter Review Commission.

The 2024 Charter Review Commission will meet on March 26, 2024, at 4:00 p.m. for the Organizational Meeting. Following introductions, a Chairperson and Vice-Chairperson shall be elected and then the Commission shall begin its review. Once the Commission has completed its review and established any recommendations, the Commission shall create a report and submit it to Council on or before June 21, 2024, which is not less than 45 days prior to the date required to certify for the November 5, 2024, election (August 7, 2024). The revision shall be followed by community outreach.

DELAWARE CITY CHARTER REVIEW
COMMISSION
DELAWARE OHIO

June 18, 2008

To Mayor Windell Wheeler and Members of the Delaware City Council:

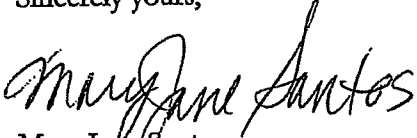
The Delaware City Charter Review Commission was appointed to review and make recommendations to City Council regarding possible City Charter changes. The members of the Commission are Mary Jane Santos, Chair, Sean Kay, Vice Chair, Mike Shade, Jay Wolf, Ted Heiskell, Robert Owens, Marci DeWitt, Carolyn Kay Riggle and Jack Hilborn.

The Commission has met approximately every two weeks since its first meeting on February 13th 2008. We have considered at least fifteen possible amendments to the City Charter. City Attorney Dan Bennington provided invaluable counsel and information during the Charter Review Commission's deliberation of these amendments. Additionally, we have heard from Robert Meyer, who served on the very first City Council after the adoption of the Charter in 1954 and other interested citizens, city staff and officials interested in the sections we reviewed.

The Commission worked diligently in and out of the meetings to come to these conclusions. I have enjoyed working with the members of the Commission; to a person, each is dedicated and passionate about the City of Delaware. It is truly my privilege to have been associated with such a fine group of concerned citizens.

As a result of our work and on behalf of the Commission, I am submitting a draft ordinance including the changes to the Delaware City Charter that the Commission recommends.

Sincerely yours,



Mary Jane Santos
Chair of the 2008
Delaware City Charter Review Commission

Repeal Existing Section 8 in its entirety and replace with the following:

SEC. 8. ELECTION FROM WARDS AND AT LARGE; TERMS OF OFFICE

Three members of Council shall be elected from the City at large in the 2009 general municipal election and one Council Member from each of the four wards shall be elected in the 2011 general municipal election.

All Council Members shall be elected for four year terms commencing on the second Monday in November following their election and ending at 12:01 on the second Monday in November following the general municipal election in the fourth year following his/her election.

SEC. 61. ESTABLISHMENT: APPOINTMENT OF DIRECTOR; COMPOSITION.

There is hereby established a Department of Public Safety, the principal officer in which shall be a Director of Public Safety who shall be appointed by the City Manager. The Department of Public Safety shall comprise the police ~~force~~ department, the fire ~~force~~ department, and such other divisions, bureaus, offices, officers and employees as shall be provided by or pursuant to ordinance.

SEC. 62. POLICE FORCE

The City shall maintain a police ~~force~~ department consisting of a Chief directly in charge thereof and of such number of other officers, ~~patrolmen~~ police officers, and employees, as may be fixed in accordance with the provisions of Section 121 of this Charter. In case of riot or like emergency the City Manager may appoint additional ~~patrolmen~~ and police officers for temporary service who need not be in the classified service of the City. The Chief of the police ~~force~~ department shall have control of the stationing and other disposition of all members of the force, under such rules and regulations as he/she may establish with the approval of the Director of Public Safety.

SEC. 65. FIRE FORCE.

The City shall maintain a fire ~~force~~ department consisting of a Chief in charge thereof and of such number of other officers, ~~firemen~~ fighters and employees as may be fixed in accordance with the provisions of Section 121 of this Charter. In case of riot, conflagration, or other emergency, the City Manager may appoint additional officers and ~~firemen~~ fighters for temporary service who need not be in the classified service of the City. The Chief of the fire ~~force~~ department shall have control of the stationing and other disposition of all members of the fire-~~force~~ department, under such rules and regulations as he/she may establish with the approval of the Director of Public Safety.



June 10, 2016

To: City Council
From: Charter Review Commission
Re: Recommended changes to the Delaware City Charter

Pursuant to the Delaware City Charter, a Charter Review Commission is convened every eight years to review the charter and make recommendations to Council for changes to be submitted to the voters. The 2016 Charter Review Commission recommendations (attached), fall into three categories: modernization, clarification, and style/cleanup. In addition to the recommended revisions, the Commission has future recommendations for Council action on provisions it considered and ultimately did not recommend at this time.

Modernization Changes: Based on the age of the charter, many provisions that made sense years ago simply do not apply to how government operates today.

Clarification Changes: These changes aim to clarify existing sections by improving confusing or ambiguous charter sections. Some of these recommended clarifications have substantive elements geared towards improving processes, but the intent of the section remains the same. For example, in many sections, dates have been updated.

Style/Cleanup Changes: The Commission carefully reviewed each section of the charter. These recommendations are simple changes to style or wording, with the goal of making the document more readable and understandable. These proposed revisions are not substantive changes.

The following chart provides a quick summary of the changes recommended by the Commission.

Charter Section	Type of Change	Notes/Explanation
4A	Clarification	Section 4A: The existing charter section is confusing in that it includes a sunset date that has already passed, rendering the section moot. The limitation on using eminent domain for economic development is not a statewide restriction, so Section 4A is no longer necessary. However, the Commission felt that striking the section could cause confusion because it would look like the voters were voting to remove the prohibition. The recommended change aligns the Charter with State law without appearing to endorse using eminent domain for economic development projects.
5	Modernization	This change allows Council to approve intergovernmental agreements by Resolution, which is a faster process than the current practice of approving these agreements by ordinance. This change is recommended based on the shift towards intergovernmental cooperation and shared services, the uncontroversial nature of these agreements, and the short time frames necessary to enter into some of these agreements.
7	Clarification	This section clarifies the definition of residency by adopting language used in state law.
8	Clarification	This section rewords the existing process to make it easier to understand and changes dates to current dates.
11	Clarification	This section provides the process for discipline and expulsion of council members. The current language does not provide adequate detail on the types of offenses a council member can be disciplined for, the process for determining whether that member should be disciplined, and the rights of a member facing expulsion.
12	Modernization	The proposed revision limits the section to the circumstances where a conflict could occur which would require a council member to vacate a seat.
13	Clarification + Style/Cleanup	Substantively, the Commission has added a requirement that notice of a council vacancy be provided to the public to provide an opportunity for citizens to apply. The remaining changes are aimed at making it easier to understand how the vacancy process works.

14	Style/Cleanup + Modernization	The one substantive change to this section is changing the position that draws lots from the City Clerk to the City Attorney. This change is made to reflect the role the City Attorney currently plays at the Council Organizational Meeting.
15	Clarification + Modernization	The Commission believes that Council should be able to decrease its own salaries by ordinance immediately, which could become necessary in times of economic crisis. The prohibition on increasing salaries remains. The \$120 salary cited is a holdover from the first charter, which was passed before the first ordinance setting salaries existed. Because there is currently an ordinance, the reference to \$120 is confusing and unnecessary.
16	Modernization	Today, the bulk of communication with City Council members is done electronically. Given the ability to provide notification more effectively in many ways, the Commission believes personal service at a residence is no longer necessary.
17	Modernization	This change allows a shift to electronic records, which are preferable to a paper book because it can be shared with the public easier.
21	Modernization	This change allows a shift to electronic records, which are preferable to a paper book because it can be shared with the public easier.
26	Modernization	This change also allows the city to use its website as a means to provide notice to the public, which is becoming the primary method people use to get information about the City.
45	Clarification	Like the change to article 16, this change removes the confusing reference to the original mayor's salary.
46	Modernization	Given the process for hiring City Managers, the Commission felt the situation the deleted language seems to be trying to address is not likely to occur, and if it were to occur, it is unclear why it would be prohibited.
47	Style/Cleanup	This change simply clarifies the language and timing parameters for a possible suspension of the City Manager.
Article XI	Style/Cleanup	Removes "Department" from the Article Title
66	Clarification	The current language treats departments differently. Some are listed as departments while in other sections, the charter spells out responsibilities that must be handled, but leaves it up to council to determine how they are covered. The Commission feels that the second approach provided council with the most flexibility to determine

		which departments the City should have, as long as the function is being performed.
67	Clarification	Given the change to Section 66, this section is no longer needed.
70	Modernization	This section contains references to a process that the City followed when it was a lot smaller. For example, the City does not have general storerooms or warehouses for supplies. These changes reflect how purchasing is performed.
71	Modernization	This section removes references to a process that doesn't relate to the way the City budget operates now.
74	Modernization	This change reflects changes in the standard for awarding contracts that has been adopted by the Ohio Revised Code. Using a lowest and best bid standard allows the City to use alternative construction delivery methods that benefit taxpayers. In some cases, a bid could be the 'best' bid even if it costs more (for example, it could come with an earlier completion date).
75	Style/Cleanup	Very minor change removing "But" from the sentence start.
76	Style/Cleanup	Very minor change moving a comma.
77	Modernization	This change provides flexibility in the medium the City can make the budget and message available to the public by expanding permitted methods to include electronic copies and the City's website.
83	Clarification	Removes reference to date that has passed.
84	Style/Cleanup	Renamed section to provide better description.
85	Style/Cleanup	Very minor change moving commas to make it easier to read.
86	Style/Cleanup	Removes unnecessary use of "Generally" in title.
89	Modernization	Given timing of when data for reports is available, this change provides flexibility regarding when the report shall be submitted to City Council.
90	Clarification	Improves the process by which Council can request special audits.
92	Modernization	Securities are now kept electronically and the City does not even receive paper copies.
95	Modernization	Bonds and Notes now kept electronically and the City does not even issue paper copies.
101	Clarification	Adds specific requirement (currently understood but unstated) that the Civil Service Commission members must be electors of the City. Removes reference to long past effective date.
102	Style/Cleanup	Removes unnecessary use of "Generally" in title.
104	Style/Cleanup	Removes unnecessary use of "Generally" in title.

107	Style/Cleanup	Removes unnecessary use of “Generally” in title.
109	Modernization	This section is a hold-over from the role of the Planning Commission prior to the Charter. As a Commission of the City, the Commission no longer has the ability to hire its own employees.
110	Style/Cleanup	The stricken section is redundant in that it simply references another section of the Charter.
113	Style/Cleanup	Clarifies that the number of Council wards may only be changed through the Charter review process.
114	Style/Cleanup	Clarifies reference to ward “resident” as defined by Section 7 of Charter.
118	Clarification	Updates the dates referenced to improve ease of use.
119	Modernization	Given the changes made earlier leaving the establishment of department heads up to Council and the City Manager, this change moves the department heads into the existing process for all employees aside from the Clerk and City Manager.
126	Modernization	Allows copies of the Charter to be maintained electronically.

In addition to the changes outlined above, the Commission considered the following proposals that, while not recommended this year, should receive future consideration:

Expansion in the number of wards: The Commission spent a considerable amount of time examining whether the City should expand beyond the current four wards. Ultimately, the Commission does not recommend an expansion at this time. However, given the growth of the City, the Commission believes the next Charter Review Commission should give this topic strong consideration. To help prepare the next Charter Review Commission eight years from now and to ensure that the topic is given a full vetting, the Commission recommends City Council request that staff compile information that could aid the next commission, which would include the number of wards in other cities and the typical ratio of ward council member to residents.

Requiring 50% of the vote to be elected as a ward council member: Another proposal that received strong consideration was a requirement that a candidate receive 50% of the vote to win election to a ward seat. The rationale for this proposal was the seeming lack of representation when a candidate in a crowded field wins an election with a very small percentage of the vote. Had this change been adopted, it would have required many corresponding Charter changes, as a runoff would be required. Given the fundamental shift in the elections calendar, the Commission ultimately rejected this proposal. However, the Commission recommends that Council request staff compile information regarding the potential implications of adding a ‘primary’ election to ensure that the successful candidate earns 50% or more of the vote. This would include possible election dates, how the change would impact the schedule, a list of charter sections that would

have to be altered to accommodate this change, and the cost of holding another election. This information could be used by the next Charter Review Commission to give this proposal further consideration.



National Civic League

Model City Charter

9th
edition
2021



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

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

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November 2021

Letter from our Co-Chairs:

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

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

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

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

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

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

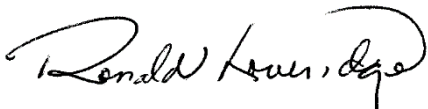
Signed,



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



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



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



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

INTRODUCTION

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

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

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

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

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

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

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

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

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

Commitment to Social Equity

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

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

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

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

Expanding Public Engagement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

² Svava and Watson, pp. 312-320.

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

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

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

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

the mayor in the council-manager form is the chief legislator, the leader of the policy-making team. This mayor can be a “strong” mayor who, not having to overcome the offsetting power of the council or not being bogged down with the details of managing the city's staff, can focus on facilitative leadership. The mayor is effective by helping the council and staff perform better. High involvement by the council and the manager and constructive relationships among officials are indicators of successful leadership by the mayor. Effectiveness does not mean charting an independent path or taking over tasks from the manager.

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

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

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

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

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

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

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

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

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

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

PREAMBLE

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

Preamble

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

Source of Authority

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

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

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

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

Action Taken

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

. . . do hereby adopt this charter

. . . do hereby adopt this home rule charter.

Intent

This can be the most creative section of the preamble (and of the charter itself). The standard beginning of the intent section is: “By this action, we . . .” An expression of objectives, goals, purposes, and/or values typically follows. The intent section can contain merely a reference to home rule or self-determination, or it can contain a combination of purposes, goals, values, and even civic aspirations. Preambles typically reflect values such as self-determination, diversity and inclusiveness, justice, equality, equity, efficiency, responsiveness, participation of community members, and environmental stewardship.

Diversity and inclusiveness references should address the right of every individual to equal opportunities and establish nondiscrimination rules. Examples follow.

“By this action, we:

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

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

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

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

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

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

Article I POWERS OF THE CITY

Introduction.

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

Section 1.01. Powers of the City.

The city shall have all powers possible for a city to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter.

Commentary.

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

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

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

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

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

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

Section 1.02. Construction.

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

Commentary.

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

Section 1.03. Intergovernmental Relations.

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

Commentary.

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

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

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

For example, New Hampshire state law provides: N.H.R.S. Title 3, Chapter 53-A:1 Agreements between government units.

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

If states have neither specific nor general authorization, charter drafters should look for court opinions on intergovernmental agreements in the state. Courts may provide guidance on the extent of a city's power to cooperate with other governments in the absence of enabling state legislation. Specific legislation on intergovernmental agreements often involves political questions and considerations of state constitutional and statutory limitations on cities' financial and borrowing powers. In joint federal-municipal projects involving substantial sums, state legislative control over municipal powers, coupled with restrictive judicial doctrines, may require specific state legislative approval.

Article II CITY COUNCIL

Introduction.

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

Section 2.01. General Powers and Duties.

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

Commentary.

This section does not specifically enumerate the powers of the council. An enumeration of specific powers in this article will not enlarge the powers of the council and may operate to diminish them if utilized by the courts to support restrictive interpretations (see commentary to § 1.02). In his commentary on the first Model City Charter endorsing the council-manager plan (—The City Council in The New Municipal Program, 1919), William Bennet Munro noted that:

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

Recognizing that all of the powers that can be exercised by the city rest in the popularly elected city council, the charter must provide for a council that is truly representative of the community. Therefore, the Model presents several alternatives with recognition of the advantages of certain alternatives over others. Each city's population pattern— economic level, racial, ethnicity, geographical, etc.—has implications for the method of electing the council to assure equitable representation. While the Voting Rights Act governs all jurisdictions, in some cities the problem of compliance with its provisions and avoidance of court challenges is a matter of particular concern. Just as there is no absolute model for providing competent and effective legislators, there is no absolute pattern which will assure equitable representation.

As the body charged with making municipal policy, the council can create permanent or ad hoc mechanisms to assist in that process. For example, it can create planning and recreation boards or study

committees. Likewise, it can create agencies with quasi-legislative or quasi-judicial status, such as a human rights commission or a zoning appeals board.

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

Section 2.02. Eligibility, Terms, and Composition.

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

Commentary.

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

(b) Terms.

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

Commentary.

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

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

(c) Composition.

There shall be a city council composed of [] members [see alternatives below].

Commentary.

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

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

Alternative 1 - Option A - District elections of an even number of council members.

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

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

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

Commentary.

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

Community members may feel isolated from and unconnected to their government without some geographical basis of representation. Cities with significant differences in or conflicts among ethnic, racial, or economic groups should consider which of the first two alternative systems will achieve more equitable representation of the city's population, promote sound governance, and avoid legal challenges under the Voting Rights Act.

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

In cities where courts have found that the at-large method of electing the city council violates the Voting Rights Act, the Justice Department has regularly approved the single-member district system as a replacement. The single-member system has drawbacks. An inherent problem is the danger that district elected members will subordinate citywide concerns to parochial problems. Single-member systems also have potential for the classic problem of "log-rolling" or vote swapping. Whenever districts are used, the drawing of district lines to provide "fair and equal" districts is of utmost importance and may involve litigation. Section 6.03 provides districting procedures and criteria designed to prevent gerrymandering and unequal districts, which are unconstitutional under the one person, one vote doctrine.

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

member district system is opposed. The mixed system combines the citywide perspective of the at-large council members with the local concerns and accountability of district council members. It can allow underrepresented residents who live in concentrated areas to influence or even determine the outcome of elections in their districts.

A problem can arise in mixed systems when at-large council members consider their position to be superior to that of district members and are perceived as rivals to the mayor. To prevent this, at-large and district council members should have equal status with respect to offices, services, and length of terms. Local preference should decide the ratio of at-large to district members. Opinion ranges from favoring a majority being elected at large to a majority being elected by and from districts. However, for jurisdictions concerned about scrutiny by the U. S. Department of Justice or the courts under either § 2 or § 5 of the Voting Rights Act, precedent shows a clear preference for a majority of the council to be elected by and from districts.

Section 2.03. Mayor.

(a) Powers and Duties. The mayor shall be a voting member of the city council and shall attend and preside at meetings of the council, represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of community advisory boards and commissions, present an annual state of the city message, appoint the members and officers of council committees, assign subject to the consent of council agenda items to committees, and perform other duties specified by the council. The mayor shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties.

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

Commentary.

(a) The office of mayor in cities having the council-manager form assumes a different character from city to city depending upon local political, economic, and social conditions. This variation has meant that the office is not well understood, and its potential has too often gone unrecognized. While the mayor of a council-manager city is not an executive as in the mayor-council form, he or she is uniquely positioned to be the political and policy leader of the city. As the presiding officer of the council and ceremonial head of the city, the mayor is the most conspicuous official of the city. Freedom from executive responsibilities for the day-to-day municipal operations allows the mayor to focus attention on major policy issues and important facilitative activities.

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

The specific responsibilities of the mayor listed in the Model enhance the mayor's leadership position. The traditional responsibility of presiding at council meetings allows the mayor to set the tone for city

government and help the council make decisions. Designation of the mayor as intergovernmental representative reflects the increased importance of relationships with other local governments as well as with the state and federal governments.

Mayoral appointment of boards and commissions with council advice and consent and of the membership of council committees creates the opportunity for purposeful balanced representation and can be used to forge coalitions and tap into networks of community activity. Finally, the mayor delivers the state of the city message. When the state of the city message includes the setting out of needs and goals for the city, it should reflect the thinking of the council and information provided by the staff, as well as the mayor's own priorities. In presenting the state of the city message, the mayor acts as spokesperson, educator, team leader, goal setter, and policy advocate. To avoid confusion, the time of delivery of the message should be sufficiently distanced from the presentation of the budget by the manager.

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

Whatever the method of election or the strength of the mayor's leadership role, the mayor is preeminently a legislator, a member, and leader of the council; the mayor is not an executive. However, the office may require some special staff support. Whatever arrangements are made for support either through the city manager or staff in the mayor's office should be consistent with two premises. First, the mayor should not encroach on the executive responsibilities of the manager. Second, the mayor and council collectively, as a body, oversee the operations of the city by the manager. Communities should avoid granting special voting status to the mayor (e.g., vote on council only to make or break a tie). Such power will likely impede rather than enhance the mayor's capacity to lead. Similarly, giving the mayor veto power in a council-manager city cannot help but confuse his or her role with that of the executive mayor in a mayor-council city.

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

Section 2.04. Compensation; Expenses.

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

Commentary.

Under the Model, council members are part-time officials and do not direct city departments. Council salary level depends on a variety of factors specific to each community, including the part-time nature of

the position and the emphasis on policy-making rather than administration. The city should reimburse council members for expenses incurred in performing their duties, e.g., travel to the state capital to testify on behalf of the city. The Model rejects the setting of the actual amount of compensation in the charter except for the salary of the first council after the charter goes into effect (see § 10.05(f)). The delay in the effective date of any salary increases provides ample protection. The city should provide extra compensation for the mayor because, in addition to regular responsibilities as a council member, the mayor has intergovernmental, ceremonial, and city-related promotional responsibilities.

Section 2.05. Relationship to City Manager.

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

Commentary.

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

Section 2.06. Prohibitions.

(a) Holding Other Office. Except where authorized by law, no council member shall hold any other elected public office during the term for which the member was elected to the council. No council member shall hold any other city office or employment during the term for which the member was elected to the council. No former council member shall hold any compensated appointive office or employment with the city until one year after the expiration of the term for which the member was elected to the council, unless granted a waiver by the Board of Ethics. Nothing in this section shall be construed to prohibit the council from selecting any current or former council member to represent the city on the governing board of any regional or other intergovernmental agency.

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

(c) Interference with Administration. Except for the purpose of inquiries, and investigations under § 2.10, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

Commentary.

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

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

Section 2.07. Vacancies; Forfeiture of Office; Filling of Vacancies.

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

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

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

(c) Filling of Vacancies. A vacancy in the city council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than sixty days upon the occurrence of the vacancy, but the council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the council fails to do so within thirty days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than ninety days and not later than 120 days following the occurrence of the vacancy, and to be otherwise governed by law. Notwithstanding the requirement in § 2.12(c), if at any time the membership of the council is reduced to less than _____,

the remaining members may by majority action appoint additional members to raise the membership to _____.

Commentary.

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

Subsection (b)(3) requires forfeiture of office for crimes involving “moral turpitude.” This is a legal standard that in most jurisdictions means the crime – felony or misdemeanor – violates community standards of morality and involves an element of knowing intent by the perpetrator. Court findings include *In re Flannery*, 334 Or. 224 (2002) (misrepresenting address in renewing driver license to obtain valid license to rent a car was not a crime involving moral turpitude); *Klontz v. Ashcroft*, 37 Fed. Appx. 259 (9th Cir. 2002) (petty theft and grand theft are both crimes of moral turpitude); *Antorietto v. Regents of the University of California*, 2002 WL 1265552 (Cal. App. 4 Dist. June 7, 2002) (misuse of university funds and fraudulent diversion of donor funds intended for the university are crimes that involve moral turpitude). Another approach focuses on felonies, as in Kansas City’s charter, which reads: —No member of the council shall, during the term for which he is elected, be found guilty or enter a plea of guilty or nolo contendere to a felony under the laws of the United States or of any state, even if subsequently followed by the suspended imposition of the sentence. The council shall temporarily fill vacancies until the next regular election, when the voters will fill such vacancies for the remainder of the term (unless that election occurs within sixty days of the vacancy, in which case the candidates would have insufficient time to file). The provision calls for a special election if the council fails to fill a vacancy within thirty days. This provision should ensure that the council will act, but in the event of a deadlock a special election will resolve the situation.

Finally, the section provides for filling vacancies by council action even if the membership falls below the quorum otherwise required for council action by § 2.12(c).

Section 2.08. Judge of Qualifications. The city council shall be the judge of the election and qualifications of its members, and of the grounds for forfeiture of their office. In order to exercise these powers, the council shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand and notice of such hearing shall be published in one or more newspapers of general circulation in the city at least one week in advance of the hearing.

Commentary.

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

Section 2.09. City Clerk. The city council or the city manager shall appoint an officer of the city who shall have the title of city clerk. The city clerk shall give notice of council meetings to its members and the public, keep the journal of its proceedings and perform such other duties as are assigned by this charter or by the council or by state law.

Commentary.

See §§ 2.16 and 2.17 for other duties assigned to the city clerk. In a number of states, certain statutory duties may be assigned to the city clerk, even in cities operating with their own charters.

Section 2.10. Investigations. The city council may make investigations into the affairs of the city and the conduct of any city department, office, or agency and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Failure or refusal to obey a lawful order issued in the exercise of these powers by the council shall be a misdemeanor punishable by a fine of not more than \$ _____, or by imprisonment for not more than _____ or both.

Commentary.

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

Section 2.11. Independent Audit. The city council shall provide for an independent annual audit of all city accounts and may provide for more frequent audits as it deems necessary. Such audits shall be carried out in accordance with § 5.12.

Commentary.

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

Section 2.12. Procedure

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

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

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. _____ members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council, except as otherwise provided in the preceding sentence and in § 2.07(c), shall be valid or binding unless adopted by the affirmative vote of _____ or more members of the council.

Commentary.

This section sets forth what are, for the most part, standardized and well accepted procedural rules to govern the official action of the council. The frequency of meetings can, of course, be suited to the needs of the particular city. The section contains the important, standard protection that meetings must be public

and that a journal of proceedings be kept as a public record. Most states have open meeting laws which specify the circumstances when closed or executive sessions may be held; such meetings are sometimes necessary for effective council functioning. This charter and state law contain ample safeguards to assure open meetings. All council actions require majority vote, except actions to adjourn, to compel attendance of members in the absence of a quorum, and to appoint additional members if the membership falls below a majority of the total authorized membership as provided in § 2.07(c).

Section 2.13. Action Requiring an Ordinance.

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

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

Commentary.

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

Other subjects requiring an ordinance are not mentioned here because the requirement is specifically stated elsewhere in the charter. These include adoption of codes of technical regulations (§ 2.16), appropriation and revenue ordinances (§ 5.06), supplemental and emergency appropriations and reduction of appropriations (§ 5.07), and creation of a charter commission or proposal of charter amendments (§ 9.01). Council may act via ordinance or resolution on matters other than those enumerated in this section or as required by law or by specific provision in the charter to be by ordinance. This does not preclude motions relating to matters of council procedure, which may involve even less formality than resolutions.

Section 2.14. Ordinances in General

(a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be "The city of _____ hereby ordains . . ." Any ordinance which repeals or

amends an existing ordinance or part of the city code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matters by underscoring or by italics.

(b) Procedure. Any member at any regular or special meeting of the council may introduce an ordinance. Upon introduction of any ordinance, the city clerk shall distribute a copy to each council member and to the city manager, shall file a reasonable number of copies in the office of the city clerk and such other public places as the council may designate, and shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the council.

The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing, the council may adopt the ordinance with or without amendment or reject it, but if it is amended as to any matter of substance, the council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures herein before required in the case of a newly introduced ordinance. As soon as practicable after adoption, the clerk shall have the ordinance and a notice of its adoption published and available at a reasonable price.

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

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

Commentary.

This section dispenses with the unnecessary and cumbersome requirements of a full reading of all ordinances and publication of their full text both before and after adoption. Distribution of a copy to each council member obviates the need for a full reading. Permitting the printing of a brief summary, together with notice of the times and places where copies are available for public inspection, simplifies publication.

Further simplification occurs in §§ 2.15 and 2.16, which contain special provisions for expeditious handling of emergency ordinances and for adoption by reference of standard codes of technical regulations. The section retains the basic safeguards of a public hearing following notice by publication, and a second publication with notice of adoption. It does not go so far as charters that dispense with publication or that permit adoption at the same meeting at which a non-emergency ordinance is introduced. It retains protective features deemed necessary for full and careful consideration. Section 2.15 provides sufficient leeway for emergency situations.

Section 2.15. Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in § 5.07(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and

describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least _____ members shall be required for adoption.

After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to § 5.07(b) shall automatically stand repealed as of the sixty-first day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Commentary.

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

Section 2.16. Codes of Technical Regulations.

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

- (1) The requirements of § 2.14 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city clerk pursuant to § 2.17(a).

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

Commentary

This provision permits adoption of standard and often lengthy, detailed, and technical regulations, such as building and sanitary codes, by an ordinance which simply incorporates and adopts the code by reference. Publication of the adopting ordinance satisfies publication requirements. The adopting ordinance should indicate the nature of the code. The council is not required to include all such technical codes in the general city code pursuant to § 2.16. This approach minimizes burden and expense while at the same time preserving the essential safeguards of the general ordinance procedure of § 2.13.

Section 2.17. Authentication and Recording; Codification; Printing of Ordinances and Resolutions.

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

(b) Codification. Within three years after adoption of this charter and at least every ten years thereafter, the city council shall provide for the preparation of a general codification of all city ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published, together with this charter and any amendments thereto, pertinent

provisions of the constitution and other laws of the State of _____, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the _____ city code. Copies of the code shall be furnished to city officers, placed in libraries, public offices, and, if available, in a web site for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

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

Commentary.

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

Article III CITY MANAGER

Introduction.

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

Section 3.01. Appointment; Qualifications; Compensation.

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

Commentary.

Six of the twelve items in the Code of Ethics established by the International City/County Management Association (ICMA) for members of the city management profession refer to the manager's relationships to the popularly elected officials and to the community: ⁶

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

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

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

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

Refrain from all political activities, which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body [including the mayor].

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

(The ICMA Code of Ethics can be found online at <https://icma.org/icma-code-ethics-guidelines>. The other items in the code refer to the manager's personal and professional beliefs and conduct.)

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

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

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

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

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

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

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

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

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

Section 3.02. Removal.

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

adopt a final resolution of removal. The city manager shall continue to receive full salary until the effective date of a final resolution of removal.

Commentary.

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

Section 3.03. Acting City Manager.

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

Commentary.

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

Section 3.04. Powers and Duties of the City Manager.

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

- (1) Appoint and suspend or remove all city employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (2) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;
- (3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;
- (4) See that all laws, provisions of this charter and acts of the city council, subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;

- (5) Prepare and submit the annual (or biennial) budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;
- (6) Submit to the city council and make available and accessible to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year and provide information needed by the council for its annual evaluation of performance;
- (7) Make available and accessible such other reports as the city council may require concerning operations;
- (8) Keep the city council fully advised as to the financial condition and future needs of the city;
- (9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;
- (10) Provide staff support services for the mayor and council members;
- (11) Assist the council to develop long term goals for the city and strategies to implement these goals;
- (12) Encourage and provide staff support for partnerships with community organizations and for regional and intergovernmental cooperation and equitable programming;
- (13) Promote partnerships among council, staff, and community members in developing public policy and building a sense of community; and
- (14) Perform such other duties as are specified in this charter or may be required by the city council.

Commentary.

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

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

Article IV
DEPARTMENTS, OFFICES, AND AGENCIES

Introduction.

This Article provides for the creation of the departments, offices, and agencies which perform the day-to-day operations of the city. It provides that the city manager appoint and supervise department heads. It makes exceptions in the case of the city attorney, acknowledging the close relationship of the department of law and the city council in some cities. Finally, the Article addresses planning, focusing on environmentally sensitive planning that takes the needs of the surrounding region into account, and social equity, paying careful attention to race, ethnicity, and other social characteristics when analyzing problems, looking for solutions, and defining success throughout the organization.

Section 4.01. General Provisions.

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

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

Commentary.

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

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

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

The staff departments—such as finance, personnel, planning and law—likewise should be covered by the administrative code. To varying degrees, their organization may depend upon state law. For example, it may not be possible to provide for an integrated finance department which includes all aspects of finance administration. Instead, it may be necessary to provide for a city assessor and tax collector.

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

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

Section 4.02. Personnel System.

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

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

Commentary.

The personnel provisions are designed to provide a flexible system which will encourage the development of competent staff. As personnel systems are increasingly controlled by state law and are subject to federal regulatory authority, the charter should not impose additional constraints and details affecting personnel administration. It should, however, strongly state the commitment to the merit principle. The Model states that commitment and calls on the council to provide, by ordinance, for the organization and procedures of the personnel system. It lists subjects that may be covered by personnel policies. Particularly in smaller jurisdictions, state law may cover some of these adequately, and their inclusion in the local ordinance could be unnecessary. Cities should consider conducting an equity analysis in its personnel system, for example in terms of recruitment, retention, hiring, and promotion policies and practices. This type of audit can highlight the gaps in human resources that limit or undermine diversity and inclusion.

Section 4.03. City Attorney.

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

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

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

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

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

Alternative III – Part time City Attorney

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

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

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

Commentary.

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

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

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

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

- (1) Designate an agency or agencies to carry out the equitable planning function and such decision-making responsibilities as may be specified by ordinance;

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

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

Commentary.

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

Article V
FINANCIAL MANAGEMENT

Introduction.

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

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

Section 5.01. Fiscal Year.

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

Commentary.

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

Section 5.02. Submission of Budget and Budget Message.

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

Commentary.

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

Section 5.03. Budget Message.

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

Commentary.

The budget message should clearly present the manager's program for accomplishing the council's

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

In Section 5.04. Budget.

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

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

Commentary.

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

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

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

social equity, particularly in terms of the measurement, allocation, and impacts of resources. The city should determine whether there is equal access to programs and services, the same quality of services for all groups and all parts of the city, and fair and consistent law enforcement. A city should strive toward development of outcome measures which reflect actual impact of a program, service, or project on its residents, as well as the equitable distribution of impacts. Community members, council, and city staff should work together to undertake performance measurement subject to the year-to-year needs and demands of the community.

Section 5.05. City Council Action on Budget.

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

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

(b) Amendment Before Adoption. After the public hearing, the city council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income.

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

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

Commentary.

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

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

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

The Model promotes a favored course of action for dealing with the failure of the council to adopt the budget by the prescribed deadline. It recommends that the budget as submitted by the manager be deemed adopted. Among other possibilities in such a situation are (1) for the amounts appropriated for operations in the current fiscal year to be deemed adopted; (2) for the manager's budget to be deemed

adopted but with amendments by the council being permitted during the first month of the new fiscal year; (3) to authorize the council to make temporary appropriations for a period not to exceed one month, during which time it would presumably complete adoption of the budget for the remainder of the fiscal year; and (4) to provide that the budget of the preceding fiscal year should be applicable automatically for the first month of the ensuing year, with the presumption that action will be completed during that time.

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

Section 5.06. Appropriation and Revenue Ordinances.

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

- (a) an appropriation ordinance making appropriations by department, fund, service, strategy or other organizational unit and authorizing an allocation for each program or activity;
- (b) a tax levy ordinance authorizing the property tax levy or levies and setting the tax rate or rates; and
- (c) any other ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

Commentary.

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

Section 5.07. Amendments after Adoption.

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

(b) Emergency Appropriations. To address a public emergency affecting life, health, property or the public peace, the city council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of § 2.15. To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid or refinanced as long-term debt not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

(c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the city

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

(d) Transfer of Appropriations. At any time during or before the fiscal year, the city council may by resolution transfer part or all of the unencumbered appropriation balance from one department, fund, service, strategy or organizational unit to the appropriation for other departments or organizational units or a new appropriation. The manager may transfer funds among programs within a department, fund, service, strategy or organizational unit and shall report such transfers to the council in writing in a timely manner.

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

Commentary.

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

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

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

Section 5.08. Administration and Fiduciary Oversight of the Budget.

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

Commentary.

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

and spending by departments within the policy goals and appropriations set by the council.

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

Section 5.09. Capital Program.

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

(b) Contents. The capital program shall include:

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

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

Commentary.

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

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

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

Section 5.10. City Council Action on Capital Program.

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

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

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

Commentary.

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

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

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

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

Section 5.11 Independent Audit.

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

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

- (1) Lead the process of selecting an independent auditor;
- (2) Direct the work of the independent auditor as to the scope of the annual audit and any matters of concern with respect to internal controls; and
- (3) Receive the report of the internal auditor and present that report to the council with any recommendations from the Committee.

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

Commentary.

Since the value of independent audits is directly related to the caliber of those who conduct them, it is provided that certified public accountants be retained, except when a state audit is required.

Selection of a professional accountant or firm does not lend itself to the usual requirement, however, of choosing the “lowest responsible bidder.” While the council should not disregard cost, this is a case where the factors of competence, reliability and reputation are more significant. For an audit to be most beneficial, some of it must extend over the entire year, which necessitates designation of the auditor during the first month. If the state conducts periodic audits of the city's finances that meet council-established requirements, the state audit may be an acceptable and money-saving substitute for an audit by a private firm.

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

Section 5.12. Public Records.

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

Commentary.

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

Article VI ELECTIONS

Introduction.

Previous editions of the Model contained detailed provisions on the nomination and election process. Since the election laws of each state apply to municipalities whether or not they operate with a local charter, these provisions from earlier editions have been removed. The text on methods of electing council members that appears below has been moved from Article II in the earlier editions of the Model. Provision for nonpartisan elections and control over the timing of elections are among the few aspects of elections that remain under local discretion. Operating within the limitations imposed by state law, the city may by ordinance adopt regulations deemed desirable.

Section 6.01. City Elections.

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

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

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

(d) Ranked-Choice Voting or Proportional Representation. The council may be elected in a single election by the method of ranked-choice voting or the single transferable vote form of proportional representation.

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

Commentary.

(a-c) Although most states regulate local elections entirely or to a very substantial extent by state statutes, a local charter may provide certain variations. For example, home rule charters may provide for nonpartisan local elections as provided in this section. Traditionally, the Model has advocated separating municipal elections from state and national elections to allow a clear focus on local issues. State election laws and city charters frequently schedule municipal elections in the fall of odd-numbered years or in the spring of the year. Evidence suggests that turnout is higher during state and national elections, and some now advocate moving local elections to coincide with state and national elections to increase participation in local races. Although the Eighth Edition did not make a choice regarding holding local elections at the same time as state and national elections or in separate years, the preference for off-year elections has been reasserted by the Committee. There is an increasing risk that partisan polarization will carry over from the higher-level races to the local races even if they are supposedly nonpartisan when all elections are held at the same time. The focus on local issues is difficult to achieve with the attention being given

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

(d) Since the sixth edition, proportional representation (PR) via the single transferable vote method has been advocated as an alternative means for electing the council. Until 1964 (when the sixth edition of the Model City Charter was published), the Model recommended the Hare system (also known as preference voting, choice voting, and the single transferable vote system) of PR as the preferred method of electing city councils. It had been used in 22 American cities but by the early 1960s had been discarded in all but Cambridge, Massachusetts, where it is still used to elect the city council and school committee.

Unquestionably, PR provides the greatest equity in representing all sectors of the community. However, the relative complexity of PR when using antiquated voting procedures and the long and expensive process of counting ballots by hand concerned some voters where it was used and initially prevented it from becoming a widespread reform measure. Now referred to as ranked-choice voting, it is used in 21 local government elections in 2021. It is a local option for adoption by local governments in Colorado, New Mexico, Utah, and Virginia.

Ranked-choice voting addresses a common issue when elections are a two-stage process with either a primary before or a runoff after the general election—uneven turnout. The turnout for the primaries that narrow the field of candidates or for run-off elections if no candidate receives a majority of votes is generally lower than the general election. The use of ranked-choice voting provides an “instant runoff” that determines winners in a single election, and the Charter Committee recommends that local governments consider adopting this type of election. In 2002, San Francisco became the first major U.S. city to adopt instant runoff voting to elect its mayor, board of supervisors, district attorney, city attorney, treasurer, sheriff, assessor-recorder and public defender.

There is an interest in RCV because of its potential to assure representation of minority populations and because technological developments now allow a computerized voting and counting system, thus eliminating the major objection to RCV. Voters rank candidates by preference. The method depends on creation of a winning threshold—a share of votes that each council member must receive to be elected. Election officials determine the threshold after all votes are counted, using a formula to determine the fewest number of votes that only the winning number of candidates can receive.

In Cambridge, for example, officials divide the total number of valid ballots cast by the number of positions to be elected plus one. Under this approach, in an election for nine council seats where voters cast 15,000 valid ballots, the winning threshold is 1,501, or 15,000 divided by ten, plus one. Ten candidates theoretically could receive 1,500 votes, but only nine can obtain 1,501. Once a particular candidate receives the designated threshold of first choices, ballot counters redistribute any surplus votes for that candidate to another candidate based upon the voter’s preferential ranking. After all surplus votes are redistributed, the weakest candidate is eliminated, and ballots from that candidate are counted for the next choice candidate on those voters’ ballots. This process of redistributing votes from winning candidates and weak candidates continues until the necessary number of candidates have reached the threshold, or only nine candidates remain. In Cambridge, this has consistently led to ninety percent of voters helping to elect a candidate, more than sixty-five percent of voters having their first choice candidate win, and more than ninety-five percent of voters seeing one of their top three choices win.

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

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

More information about the mechanics of RCV can be obtained from the Ranked Choice Voting Resource Center, www.rcvresources.org.

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

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

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

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

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

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

⁷ https://www.fairvote.org/research_rcvcampaigncivility

- (2) The commission shall hold one or more public hearings not less than one month before it submits the plan to the city council. The commission shall 39 make its plan available to the public for inspection and comment not less than one month before its public hearing.
- (3) The commission shall submit its plan to the city council not less than one year before the first general election of the city council after each decennial census.
- (4) The plan shall be deemed adopted by the city council unless disapproved within three weeks by the vote of the majority of all members of the city council. If the city council fails to adopt the plan, it shall return the plan to the commission with its objections and with the objections of individual members of the council.
- (5) Upon rejection of its plan, the commission shall prepare a revised plan and shall submit such revised plan to the city council no later than nine months before the first general election of the city council after the decennial census. Such revised plan shall be deemed adopted by the city council unless disapproved within two weeks by the vote of two-thirds of all of the members of the city council and unless, by a vote of two-thirds of all of its members, the city council votes to file a petition in the _____ Court, _____ County, for a determination that the plan fails to meet the requirements of this charter. The city council shall file its petition no later than ten days after its disapproval of the plan. Upon a final determination upon appeal, if any, that the plan meets the requirements of this charter, the plan shall be deemed adopted by the city council and the commission shall deliver the plan to the city clerk. The plan delivered to the city clerk shall include a map and description of the districts.
- (6) If in any year population figures are not available at least one year and five months before the first general election following the decennial census, the city council may, by local law, shorten the time periods provided for districting commission action in paragraphs (2), (3), (4), and (5) of this subsection.

(d) Districting Plan; Criteria.

- (1) In preparation of its plan for dividing the city into districts for the election of council members, the commission shall apply the following criteria which, to the extent practicable, shall be applied and given priority in the order in which they are herein set forth.
- (2) Districts shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent of the average population for all city council districts according to the figures available from the most recent census.
- (3) Districts shall consist of contiguous territory; but land areas separated by waterways shall not be included in the same district unless said waterways are traversed by highway bridges, tunnels or regularly scheduled ferry services both termini of which are within the district, except that, population permitting, islands not connected to the mainland or to other islands by bridge, tunnel or regular ferry services shall be included in the same district as the nearest land area within the city and, where such subdivisions exist, within the same ward or equivalent subdivision as described in paragraph (5) below.

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

(e) Effect of Enactment.

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

Commentary.

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

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

The Model provides for a bipartisan commission. Even cities with nonpartisan elections may have problems with political parties (either local or national) wanting to dominate the process to achieve advantage. To facilitate the commission’s ability to work together despite partisan differences, the Model recommends that the four council appointees (and mandates that at least three of the four) agree on the choice of chairman. Once the bipartisan commission submits its plan to the city council, the council can neither approve nor veto the result. This avoids the conflict of interest created when council members consider new districts whose lines may materially affect their political futures. The council may, however, prevent implementation of the plan if it finds the plan in violation of the charter and files with the courts for such a determination.

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

equivalent subdivisions) should be adjusted to conform to state law. Depending on the jurisdiction, wards and districts sometimes have the same meaning and sometimes have different meanings.

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

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

(c) Procedures.

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

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

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

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

Section 6.03. Methods of Electing Council Members.

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

Alternative I –Mixed At-Large and Single Member District System; Mayor Elected Separately

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

two years. Commencing at the next regular election and at all subsequent elections, all council members shall be elected for four-year terms.

Alternative II – Single-Member District System; Mayor Elected Separately.

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

Limited Alternative III – Council Elected At Large; Mayor Elected Separately.

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

Commentary.

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

Section 6.04. Initiative, Referendum, and Recall.

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

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

- (1) **Initiative.** The registered voters of the city shall have power to propose legislation and charter amendments to the council and, if the council fails to adopt legislation or charter amendment so proposed without any change in substance, to adopt or reject it at a city election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes, salaries of city officers or employees or effect any existing contract the city is party to, including Collective Bargaining Agreements or other contracts between the city and its officers and

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

- (2) **Referendum.** The registered voters of the city shall have power to require reconsideration by the council of any adopted legislation and, if the council fails to repeal a legislative ordinance so reconsidered, to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes or to salaries or benefits of public officers or employees.
- (3) **Recall.** The registered voters of the city shall have power to recall elected officials of the city, but no recall petition shall be filed against any official within six months after the official takes office, nor, in case of a member subjected to a recall election and not removed, until at least six months after the election.

(b) Commencement of Proceeding; Petitioners' Committee; Affidavit. Any five of city's registered voters entitled to vote in city elections may commence initiative, referendum, or recall proceedings by filing with the city clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance, citing the legislation sought to be reconsidered, or stating the name and title of the officer sought to be recalled accompanied by a statement, not to exceed 200 words, of the reasons for the recall. Grounds for recall should relate to and affect the administration of the official's office and be of a substantial nature directly affecting the rights and interests of the public.

Promptly after receipt of a recall petition, the clerk shall serve, personally or by certified mail, a copy of the affidavit on the elected officer sought to be recalled. Within 10 days of service of the affidavit, the elected officer sought to be recalled may file a statement with the city clerk, not to exceed 200 words, in response. Promptly after the affidavit of the petitioners' committee is filed, and the response, if any, of the elected official sought to be recalled is filed, the clerk shall submit the proposed initiative, proposed referendum petition and recall petition to the city attorney for review.

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

(c) Petitions.

- (1) **Number of Signatures.** Initiative and referendum petitions must be signed by registered voters of the city equal in number to at least [5 to 10] percent of the total number of registered voters to vote at the last regular election. Recall petitions must be signed by registered voters of the city equal in number to at least [10 to 20] percent of the total number of registered voters to vote at the last regular election.
- (2) **Form and Content.** All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Referendum

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

- (3) **Affidavit of Circulator.** Each paper of a petition shall have attached to it when filed an affidavit executed by the person circulating it stating that he or she is a registered voter of the city entitled to vote in a city election, personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the legislation proposed or sought to be reconsidered if requested.
- (4) **Time for Filing Referendum and Recall Petitions.** Referendum petitions must be filed within 30 days after adoption by the council of the ordinance sought to be reconsidered. Recall petitions must be filed within [40 to 160] days of the filing of the petitioners' affidavit initiating the recall procedure.

(d) Procedure after Filing.

- (1) **Certificate of Clerk; Amendment.** Within twenty days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his or her certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of paragraphs (2) and (3) of § 6.04(c), and within five days after it is filed the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under paragraph (2) of this subsection within the time required, the clerk shall promptly present his or her certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.
- (2) **Council Review.** If a petition has been certified insufficient or deemed illegal by the city attorney and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient or deemed illegal by the city attorney, or if the committee disagrees with the title or description provided by the city attorney, the committee may, within two days after receiving the copy of such certificate or notice of the city attorney's determination, file a request that it be reviewed by the council. The council shall review the certificate or determination at its next meeting following the filing of such request and approve or disapprove it or modify the title or description, and the council's determination shall then be a final determination as to the sufficiency of the petition.

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

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

When a referendum petition is filed with the city clerk, the legislation sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

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

(f) Action on Petitions.

- (1) **Action by Council.** When a referendum or initiative petition has been finally determined sufficient, the council shall promptly reconsider the referred legislation by voting its repeal or adopting the initiative proposed. If the council fails to repeal the referred legislation or adopt the initiative as proposed within thirty days after the date the petition was finally determined sufficient, it shall submit the referred or initiated legislation to the voters of the city.
- (2) **Submission to Voters of Referred or Initiated Legislation.** The vote of the city on referred or initiated legislation shall be held not less than 30 days and not later than one year from the date of the final council vote thereon. If no regular city election is to be held within the period prescribed in this subsection, the council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the referred or initiated legislation shall be made available at the polls.
- (3) **Withdrawal of Petitions.** A referendum or initiated petition may be withdrawn at any time prior to a determination that the petition is sufficient. Once determined sufficient, the petition may only be withdrawn if the council enacts the initiated legislation or repeals the referred legislation.

(g) Results of Election.

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

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

Commentary.

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

(a) Neither the initiative nor the referendum should be applicable to the budget, capital program, any ordinance relating to the appropriation of money or the levy of taxes, or, of course, to salaries of city officers or employees, for this would interfere with responsible officials striving to achieve a properly balanced long-range fiscal program. Recall should not apply to recently elected officials, because officials need time to establish themselves in office, and because election results should not be promptly challenged by another election.

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

(c) The number of signatures required for initiative and referendum petitions in the seventh edition was fifteen percent of the total number registered to vote at the last regular city election. The eighth edition permits charter drafters to decide upon a reasonable threshold for their city, chosen from a range equal to or greater than five percent but less than or equal to ten percent of registered voters to vote at the last city election. The percentage used should neither be too easy nor too burdensome. Communities typically require more signatures for recall petitions than for initiative and referendum petitions. In determining the recall percentage, drafters should consider distinguishing between at-large and district offices. Limiting the period for filing a referendum petition to thirty days after passage insures that the effective date of an ordinance will not be delayed unless the referendum effort is of serious proportions. The timing of the recall procedure prevents the threat of recall from pending without limitation. The time period for signature collection should be reasonably related to the signature requirement and the size of the city, within the provided range of 40 to 160 days.

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

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

(f) This section mandates council consideration of the proposed "initiative ordinance" and reconsideration of the "referred ordinance" prior to the circulation of petitions and the ensuing ballot question. The words "adopt a proposed initiative ordinance without any change in substance" permit correction of technical imperfections. If an election is necessary, provisions for submitting a proposed or referred ordinance to the voters, or ordering a recall election, permit considerable latitude as to the election date to encourage

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

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

Article VII
THE ROLE OF PUBLIC ENGAGEMENT IN LOCAL GOVERNANCE

Introduction.

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

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

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

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

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

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

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

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

⁹ Anchor institutions are major organizations that can shape the development of the city including universities, hospitals, museums, sports franchises, military installations, and large corporations.
https://www.huduser.gov/portal/pdredge/pdr_edge_hudpartprt_062211.html.

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

Commentary.

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

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

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

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

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

Section 7.02. Institutional structures to support and coordinate engagement.

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

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

Commentary.

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

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

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

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

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

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

Section 7.03. Principles of public engagement.

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

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

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

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

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

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

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

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

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

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

Commentary.

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

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

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

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

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

General Commentary.

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

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

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

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

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

Article VIII GENERAL PROVISIONS

Introduction.

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

Section 8.01. Conflicts of Interest; Board of Ethics.

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

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

Commentary.

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

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

Other provisions councils could adopt, but not listed in the Model, relate to acting in an official capacity

over any campaign donor who contributes \$__ or more to the official's campaign; the hiring of relatives; acting in an official capacity on matters affecting a prior employer within a designated time period after leaving the employer; accepting outside employment while in office; and accepting employment with an employer over whom the official or employee acted in an official capacity, within a designated time period after leaving office. Westminster, Colorado, pioneered the conflict of interest approach to limiting campaign contributions, via charter amendment, and other cities have expressed interest in following its example either by charter or ordinance. A substantial number of cities restrict hiring of relatives and prior, outside, and subsequent employment arrangements.

Section 8.02. Prohibitions.

(a) Activities Prohibited.

- (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, gender, age, sexual orientation, disability, religion, country of origin, or political affiliation. The city may adopt policies to increase diversity in employment and contracting and/or to remedy the effects of past discrimination.
- (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this charter or the rules and regulations made there under, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.
- (3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.
- (4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any city election from any city officer or city employee.
- (5) No city officer or city employee shall knowingly or willfully make, solicit, or receive any contribution to the campaign funds of any political party or committee to be used in a city election or to campaign funds to be used in support of or opposition to any candidate for election to city office. Further, no city employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for city office. This section shall not be construed to limit any person's right to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.
- (6) City officers or employees may spend public funds and advocate for the city's position on a city ballot issue when the city is authorized to adopt a position to support or oppose a specific city ballot issue and has formally: adopted a position to support or oppose a specific ballot issue, authorized the expenditure of public funds, or authorized city officers or employees to speak and campaign on its behalf on the measure.

(b) Penalties.

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

Commentary.

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

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

Section 8.03. Campaign Finance.

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

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

Commentary.

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

Section 8.03(a) provides for disclosure of candidate contributions and expenditures. A strong majority of cities in the United States have some form of campaign contribution and expenditure disclosure requirements. This section of the charter requires the city to provide for timely disclosure of such funds. It further requires that disclosure of contributions above a certain threshold include the donor's employer and occupation. Such information allows the public to identify the sources of funding that influence local elections. The requirement that the city provide for "convenient public disclosure" is meant to encourage electronic disclosure over city web sites when such technology and resources are available.

Section 8.03(b) provides the city with express authority, but not a mandate, to enact any of the several innovative campaign finance laws that cities have enacted over the last three decades. This includes options such as contribution limitations, time limits on fund raising, and public financing as an incentive for candidates to adhere to voluntary spending limits.

Article IX
CHARTER AMENDMENT

Introduction.

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

Section 9.01. Proposal of Amendment.

Amendments to this charter may be framed and proposed:

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

Proposal of an amendment must be submitted to the Clerk in advance of a petition and reviewed by the City Attorney for conformity with this Charter, legality and for the City Attorney to provide a title to be used on the petition and ballot and a description of the effect of the proposed charter amendment. Upon approval of sufficiency of the proposed amendment, the amendment will be submitted to the voters of the city.

A proposed amendment initiated by the voters shall be by petition containing the description of the amendment and title approved by the City Attorney and on forms issued by the Clerk. The subject matter of a charter amendment must not be legislative and must be directed at the form of government and governance of the city authorizing or limiting its powers and directing the manner of exercise of those powers. The petition must be signed by registered voters of the city equal in number to at least [5 to 10] percent of the total number of those registered to vote at the last regular city election. The petitioners' committee may withdraw the petition at any time before the Clerk certifies the petition for sufficiency.

Commentary.

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

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

Section 9.02. Election.

Upon delivery to the city election authorities of the report of a charter commission or delivery by the city clerk of an adopted ordinance or a petition finally determined sufficient, proposing an amendment pursuant to § 9.01, the election authorities shall submit the proposed amendment to the voters of the city at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the city at least thirty days prior to the date of the election. The election shall be held not less than 60 and not more than 120 days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be as specified in state law.

Section 9.03. Adoption of Amendment.

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

Article X
TRANSITION AND SEVERABILITY

Introduction.

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

Section 10.01. Officers and Employees.

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

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

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

Section 10.02. Departments, Offices, and Agencies.

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

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

Section 10.03. Pending Matters.

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

Section 10.04. State and Municipal Laws.

(a) In General. All city ordinances, resolutions, orders and regulations which are in force when this

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

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

- (1) The following laws and parts of laws generally affecting counties or city agencies, officers or employees are inapplicable to the city of _____

or its agencies, officers or employees: [enumeration]
- (2) The following public local laws relating to the city of _____ are superseded: [enumeration]
- (3) The following ordinances, resolutions, orders, and regulations of _____

[former city governing body] are repealed: [enumeration]

Section 10.05. Schedule.

(a) First Election. At the time of its adoption, this charter shall be in effect to the extent necessary in order that the first election of members of the city council may be conducted in accordance with the provisions of this charter. The first election shall be held on the ___ of ___. The [city officials to be designated] shall prepare and adopt temporary regulations that are applicable only to the first election and designed to ensure its proper conduct and to prevent fraud and provide for a recount of ballots in cases of doubt or fraud.

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

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

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

(d) Temporary Ordinances. In adopting ordinances as provided in § 10.05(c), the city council shall follow the procedures prescribed in § 2.13, except that at its first meeting or any meeting held within sixty days thereafter, the council may adopt temporary ordinances to deal with cases in which there is an urgent need for prompt action in connection with the transition of government and in which the delay incident to the appropriate ordinance procedure would probably cause serious hardship or impairment

of effective city government. Every temporary ordinance shall be plainly labeled as such but shall be introduced in the form and manner prescribed for ordinances generally. A temporary ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption of a temporary ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances. A temporary ordinance shall become effective upon adoption or at such later time preceding automatic repeal under this subsection as it may specify, and the referendum power shall not extend to any such ordinance. Every temporary ordinance, including any amendments made thereto after adoption, shall automatically stand repealed as of the ninety-first day following the date on which it was adopted, renewed, or otherwise continued except by adoption in the manner prescribed in § 2.13 for ordinances of the kind concerned.

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

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

Section 10.06. Severability.

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

Commentary.

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

Appendix 1

OPTIONS FOR MAYOR-COUNCIL CITIES

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

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

The first Model City Charter proposed replacing the fragmented authority and confused assignment of responsibility of existing nineteenth century city governments with simplified and centralized executive authority exercised by an elected mayor. After the first edition, the model charter assigned this centralized executive authority to an appointed city manager. From the second through the fourth editions of the charter, no provisions were proposed for mayor-council cities. With the fifth edition, the strong mayor-council form from the first edition reappeared as an alternative for those cities that chose not to use the preferred council-manager form with the suggestion that a “vice mayor” or what would later often be called a chief administrative officer (CAO) might be appointed by the mayor. These recommendations appeared in the sixth and seventh editions as well. The approach taken in the Eighth Edition was different. Officials and citizens who are reviewing a mayor-council charter were given analytical questions to guide their assessment of the governmental structure. In contrast to exclusive reliance on the strong mayor alternative, two options for organizing the mayor-council form were proposed. In this edition, the responses to revised analytical questions lead to a different conclusion. One alternative that is consistent with reform ideals is recommended.

Analytical Questions about Mayor-Council Governments

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

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

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

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

An increasing proportion of cities have added a central administrative position occupied by a CAO to their governmental structure.¹¹ Experience has demonstrated that it is beneficial for cities to have an administrative officer. This officer can assist in filling the executive responsibilities of the mayor, such as preparing the budget. The officer will provide central coordination of administrative functions and may also assist the council in handling its policy-making authority. Adding a chief administrative officer to city government is consistent with the longstanding reform principle of providing for both political and professional leadership. A central administrative official is able to contribute to sound governance as well as directing service delivery.

Professional managers serving elected officials and the public bring distinctive values that enrich and elevate the governmental process in both policymaking and service delivery. These professional values include the commitment to basing policy and service delivery on need rather than demand, to stressing the long-term interests of the community as a whole, to promoting equity and fairness, to recognizing the interconnection among policies, and to advancing citizen participation that is broad and inclusive. There are benefits from having a professional chief administrator who channels these values into the governmental process at the highest and most general level through interactions with both the mayor and the council.

There are other advantages as well. It is difficult to find candidates for mayors who are equally adept at providing both political and administrative leadership to city government. Furthermore, it is important for the mayor to devote a substantial amount of time to interacting with the public, making it difficult to devote sufficient attention to policy development, administration, and management. So-called “strong” mayors may actually be overextended mayors. It is also hard for voters to assess the administrative capabilities of candidates before they have served in the mayor’s office. Mayors (except in the largest cities), unlike new presidents and governors, are not supported by large transition teams, nor can they persuade prominent leaders from the public and private sectors to accept key appointments for the duration of that executive’s administration. Adding administrative assistance through a CAO helps to solve these problems. The office of CAO builds into the charter a support position for the mayor and institutionalizes the professional coordination of the departments of city government.

B. How is the CAO chosen?

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

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

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

The participation of the council in the selection of the CAO reflects a form with both separated and shared authority between the mayor and the council. The mayor has separate executive authority but major decisions are either proposed by the mayor and approved by the council or made jointly by the mayor and council. When the mayor proposes and the council approves, the approach is similar to the “advice and consent” authority of the Senate in handling nominations by the President for Supreme Court judges or cabinet secretaries. In other cities in this pattern, the mayor and council make major decisions jointly. Potentially, the CAO chosen jointly serves as a bridge between the mayor and the council. In sum, the standard mayor-council form is characterized by a combination of separated and shared powers. Commonly, the staff support and organizational authority of the mayor and the high visibility of the office make the mayor the recognized leader of city government. Still there is less independent authority concentrated in the mayor’s office than in the strong mayor type, and the presence of the CAO offers professional leadership to both the mayor and the council.

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

Recommended Structure in Mayor-Council Cities

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

The recommended approach in mayor-council cities is to promote shared authority between the mayor and the council along with the separation of powers that defines the mayor-council form. It is recommended that provisions be made for the appointment of a CAO consistent the shared authority between the mayor and the council. In the shared authority mayor-council cities, the CAO is nominated by the mayor and approved by the council or appointed jointly by the mayor and council—similar to the way that the city manager is chosen. This official serves as a bridge between the two sets of officials and is assigned administrative responsibilities. In the strong mayor-council cities where the CAO is appointed by the mayor, the CAO provides professional assistance to the mayor but is not accountable to the council.

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

Among mayor-council cities with a CAO, approximately three quarters have involvement of the council in the appointment. This option is based on the combination of separated and shared powers between the mayor and the council found in most mayor-council cities. When appointed in this way, the CAO helps to link the mayor and council and promotes communication between them. The CAO serves as a bridge to span the separation of powers between the mayor and the council. The CAO provides professional advice and detached assessment regarding key decisions to both the mayor and the council. The CAO can promote a higher level of performance and shared information by both sets of officials.

The CAO assists the mayor in preparing policy recommendations to the council but is cognizant of his or her responsibility to provide information that the council needs to make policy decisions.¹² The CAO is responsible directly to the mayor for administrative matters and to the council for providing information to support their oversight function, i.e., the assessment of how well policies are working and how well services are being delivered. It should be acknowledged that the position occupied by the CAO can be difficult if there is conflict between the mayor and council. The CAO can get caught in the middle. Still, the presence of a CAO who feels a sense of accountability to both the mayor and the council can reduce the level of conflict compared to conditions in mayor-council cities without a CAO.

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

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

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

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

¹² A survey of CAOs indicates that with nomination by the mayor and approval by the council, the CAO is likely to simultaneously see himself or herself as the agent of the mayor and also as being accountable to both the mayor and the council. Seven in ten CAOs agree with these positions. If the mayor does not nominate the CAO, only thirty-seven percent of the CAOs see themselves as the mayor’s agent. If the council does not approve the appointment, only twenty-eight percent of the CAOs see themselves as accountable to the council. See James H. Svara, “Do We Still Need Model Charters? The Meaning and Relevance of Reform in the Twenty-First Century,” *National Civic Review*. 90 (Spring, 2001), pp. 19-33.

The pure strong-mayor approach concentrates a substantial amount of authority in one office. The approach also limits the contribution of the council to accepting or rejecting policy and budget proposals from the mayor and overriding the mayor's veto. The council is not likely to receive a full and fair assessment of policy options from the CAO, but rather to hear the arguments for the mayor's preferred approach. Although the council has a general oversight role, the fact that the mayor appoints all top administrators may limit the flow of information to the council to support its exercise of this role. There is concentrated power with limited checks on the exercise of the power.

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

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

Election of the mayor and chair of the council

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

Veto

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

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

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Appendix 2

THE CONTEXT FOR SOCIAL EQUITY AND LOCAL GOVERNANCE

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

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

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

Why Equity and Why Now?

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

Equity as a Core Value of Public Administration

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

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

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

Equity and Local Governments: the current context

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

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

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

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

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

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

What is Equity

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

Equity vs. Equality

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

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

Operationalizing Equity

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

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

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

ultimately eliminate) disparity, marginalization, and discrimination while increasing social and political inclusion.¹⁷

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

What vs. Where of Equity

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

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

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

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

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

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

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

Glossary

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

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

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

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

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

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

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

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

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

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

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

Harassment: Unwelcome, intimidating, or hostile behavior.

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

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

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

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

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

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

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

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

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

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

Using the Ninth Edition of the Model City Charter

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

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

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

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

Additional Resources

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

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

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

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

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- Chuck Thompson, Executive Director, International Municipal Lawyers Association

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

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

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

Legal Issues/City Attorneys/Home Rule

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

Mayors/City Councils

- Anthony Santiago, Institute for Youth, Education and Families, National League of Cities
- Christine Sederquist, City of Leander, Texas
- Doug Linkhart, National Civic League
- Hon Ronald Loveridge, Center for Sustainable Suburban Development, University of California, Riverside.
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- Tom Carroll, Village of Silverton, Ohio
- Teresa Gerton, National Academy of Public Administration
- Benoy Jacob, University of Wisconsin
- Derek Okubo, City and County of Denver
- Tina Nabatchi, Syracuse University

The Ninth Edition

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

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

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

We encourage you to view and use the Model City Charter online at www.ncl.org, where the full text and links to related documents can be found.



Item Cover Page

2024 CHARTER REVIEW COMMISSION AGENDA ITEM REPORT

DATE: March 26, 2024

SUBMITTED BY: Sarah Dinovo, City Clerk

ITEM TYPE: Discussion Item

AGENDA SECTION: **REVIEW OF DELAWARE CITY CHARTER**

SUBJECT: Current City Charter

SUGGESTED ACTION:

ATTACHMENTS:
[Delaware, OH Code of Ordinances.pdf](#)

CHARTER - OF THE CITY OF DELAWARE, OHIO

Footnotes:

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Editor's note— *The Delaware City Charter was adopted originally at the general election on November 6, 1951. Dates appearing in parentheses following a section heading indicate that those provisions were subsequently adopted or amended on the date given.*

ARTICLE I. - INCORPORATION, FORM OF GOVERNMENT AND POWERS GENERALLY

SEC. 1. - INCORPORATION; PERPETUAL SUCCESSION.

The inhabitants of the City of Delaware, State of Ohio, within its corporate limits as now or hereafter established, shall continue to be a body politic and corporate by name The City of Delaware, and as such shall have perpetual succession.

SEC. 2. - FORM OF GOVERNMENT; DISTRIBUTION OF POWER.

The municipal government provided by this Charter shall be known as the "council-manager government," the representative branch of which shall consist of a City Council elected by the voters of the City, and shall possess the legislative and executive powers specified in this Charter. The chief executive and administrative officer of the City shall be the City Manager, who shall be chosen by the City Council.

SEC. 3. - POWERS OF CITY GENERALLY.

The City of Delaware shall have all powers of local self-government which now are or which hereafter may be granted by the Constitution or laws of the State of Ohio, either expressly or by implication, as fully as though every such power were expressly stated herein. The statement of or reference to particular powers by this Charter shall not be construed to be exclusive.

(Amended 11-6-84)

SEC. 4. - EXERCISE OF POWERS.

All powers of local self-government which the City of Delaware exercises by virtue of the provisions of the Constitution of Ohio or of this Charter, or of statutes under which it is competent for the City by this Charter to regulate the manner of exercise, shall be exercised in the manner prescribed by this Charter, and, to the extent that this Charter does not specifically prescribe, in such manner as shall be prescribed by ordinance or resolution; and when not prescribed by this Charter or by ordinance or resolution, then in such manner as may now or hereafter be provided by the general laws of Ohio.

(Amended 11-6-84)

SEC. 4A. - CITY PROHIBITED FROM USING EMINENT DOMAIN SOLEY FOR ECONOMIC DEVELOPMENT.

It is the intent of the City of Delaware to protect the private property of its citizens. The City of Delaware hereby recognizes and adheres to State Law restricting the use of eminent domain powers solely for economic development.

Economic Development — For purposes of this Section 4A, the term "economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public ownership; (2) the transfer of land to a private entity that is a common carrier, such as a railroad or utility; or (3) the transfer of property to a private entity when eminent domain will remove a harmful use of the land, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property.

(Added 11-8-05; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

ARTICLE II. - INTERGOVERNMENTAL RELATIONS

SEC. 5. - INTERGOVERNMENTAL COMMITTEES AND CONTRACTS.

City Council may by resolution authorize or require an officer or officers of the City to participate with officers of the County of Delaware and of the City School District of the City of Delaware or with other cities, villages, and political subdivisions in committees and organizations for studying or coordinating programs of finance, taxation, public improvements, and other official activities of all such public authorities, for the purpose of improving public services and facilities by them rendered to the public and for the purpose of effecting economies therein. City Council may authorize contracts with other governmental subdivisions in relation to the performance of the functions of the City, as may be authorized by the Constitution and general laws of Ohio. The City may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the United States or any agency thereof or with any one or more states, or subdivisions or agencies thereof.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

ARTICLE III. - CITY COUNCIL

SEC. 6. - POWERS GENERALLY.

The legislative and executive powers of the City, except the legislative powers reserved to the electors by this Charter, shall be vested in a Council and shall be exercised in the manner hereinafter provided.

SEC. 7. - COMPOSITION; QUALIFICATIONS.

Council shall consist of seven electors of the City of Delaware elected under the provisions of Sections 111 to 118, inclusive, of this Charter. No person shall be eligible for election to Council from a ward who is not at the time of his/her nomination and of his/her election a resident of such ward. Residency is defined as the place the person has established his or her home on other than a temporary or transient basis. Any person elected to Council from a particular ward who at any time after his/her nomination for a particular term shall cease to be a resident of such ward as the same existed at the time of such nomination, shall thereupon be deemed to have forfeited his/her election to or his/her membership in Council.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 8. - ELECTION FROM WARDS AND AT LARGE; TERMS OF OFFICE.

All Council members shall be elected to four year terms commencing on the second Monday in November following their election and ending at 12:01 a.m. on the second Monday in November following the general municipal election in the fourth year following his/her election.

Three members of Council shall be elected from the City at large starting with the 2017 General Municipal Election and every four years thereafter and one Council member from each of the four wards shall be elected starting with the 2019 general municipal election and every four years thereafter.

(Amended 11-4-08; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 9. - OATH OF OFFICE.

At 12:01 a.m., on the second Monday following their election, duly elected Council members shall be deemed qualified to assume the duties of office. Each member elected to Council shall publicly take and subscribe to the oath or affirmation of office at the first regular meeting of the term for which he/she was elected, as provided in Section 16 of this Charter or, if he/she be unable to attend that meeting and be excused therefrom by a majority of all the members elected to Council, at the first meeting which he/she shall be able to attend. The oath or affirmation of office shall be in the form provided by Section 123 of this Charter.

(Amended 11-7-00)

SEC. 10. - COUNCIL TO JUDGE ELECTION AND QUALIFICATION OF MEMBERS.

Council shall be judge of the elections and qualifications of its own members, but before any person certified to have been elected to Council by the election authorities shall be excluded or removed from Council on the ground of nonelection or of nonqualification he/she shall be notified of the grounds alleged for disqualifying him/her, and shall be permitted to be heard in person or by counsel, and shall have process to compel the attendance and testimony of witnesses and the production of books, papers, and records in his/her behalf. No such person shall be disqualified by the votes of fewer than four members of Council, nor unless proceedings for his/her disqualification shall be commenced not later than thirty days after the occurrence or discovery of the grounds therefor. The determination of any question in any such proceeding shall not be revoked or set aside by any court except for mistake of law.

SEC. 11. - DISCIPLINE AND EXPULSION OF MEMBERS.

Council may, with the consent of at least five members, discipline its members for disruptive and disorderly behavior that obstructs the administration of Council business, violations of the Delaware City Charter or Codified Ordinances, or ethics violations.

Council may, with the consent of at least five members, expel a member from office for disruptive and disorderly behavior that remains consistent or is especially disruptive, conviction of a felony or a crime involving an ethics violation, or committing or attempting to commit a violation of Section 52 of this Charter; but no member shall be expelled unless he/she first be notified by Council in writing of the grounds for such expulsion and be given an opportunity to be heard before Council thereon at the next regular meeting of Council following the provision of notice. At the hearing, a member facing expulsion may be represented by legal counsel, present evidence and witness testimony in his/her favor, and cross-examine any witness testimony presented by Council before Council holds a vote on expulsion.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 12. - COUNCIL MAY DECLARE SEATS OF MEMBERS VACANT.

Council shall declare vacant the seat of any person elected to Council who during the term for which he/she was elected shall hold any other employment in the service of the City of Delaware or who shall cease to possess the qualifications of his/her office, or who shall be convicted of bribery, corruption, or any other crime involving moral turpitude, or who shall be absent from three consecutive regular meetings of Council unless one or more of absences shall have been excused by Council, or who shall forfeit his/her office by the operation of any other provision of this Charter.

The seat of any Council member shall be vacated upon the swearing in of the member to another elected public office.

(Amended 11-7-00; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 13. - MANNER OF FILLING VACANCIES, GENERALLY.

When the office of any member of Council becomes vacant, notice shall be provided to the public. The remaining members of Council shall by the concurrence of at least four votes appoint his/her successor from the applicants, who shall qualify and serve during the remainder of the unexpired term or until a successor is elected. If a vacancy occurs more than ninety days before the next general election for Council members, a successor shall be chosen at that election to fill the unexpired term agreeably to the provisions of Sections 111 to 118, inclusive, of this Charter. Any person so elected to fill any vacancy shall qualify as a member of Council at the first regular or special meeting thereof occurring after the election authorities shall have certified his/her election. He/she shall be notified of any such special meeting, agreeably to the provisions of Section 16 of this Charter. When a successor is so elected and qualified, the prior appointment by Council for such vacancy shall thereupon be terminated.

(Amended 11-3-70; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 14. - MANNER OF RESOLVING TIE VOTES OF APPOINTMENTS TO FILL VACANCIES.

If any vacancy shall happen more than three months before the expiration of the regular term in which it happens and if by reason of the failure of any person to receive as many as four votes it shall not be filled by Council during the first or second meeting of Council at which it might be filled, lots shall be drawn to determine which of the persons who shall have received the same and the highest number of votes at the last roll call on such appointment shall be deemed to be chosen to fill such vacancy. All such lots shall be drawn under the supervision of the City Attorney, at the usual place of meeting of Council. Council may direct such lots to be drawn prior to the second meeting at which the vacancy could be filled by a majority vote. Any person deemed to be chosen to be a member of Council pursuant to any such lot shall qualify as such member agreeably to the provisions of Section 13 of this Charter relating to the qualification of persons elected by the people to fill vacancies in Council.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 15. - COMPENSATION.

Each member of Council shall receive a salary payable at such times as may be prescribed by ordinance. No ordinance increasing the salaries of members of Council shall be passed as an emergency measure, nor shall any increase made thereby be put into effect before the first day of January next occurring more than ninety days after the passage of such ordinance.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 16. - MEETINGS.

The first regular meeting of each regular term of Council shall convene at 7:00 p.m. on the second Monday following the November municipal election. Council shall meet at the usual place for holding meetings of the Council, and shall proceed to elect a Mayor and Vice Mayor as provided in Section 42 of this Charter. Thereafter Council shall meet at such times as may be prescribed by rule of Council or by ordinance, not fewer than twelve times each year. The Mayor or any three members of Council may call special meetings of the Council upon at least twelve hours' notice to each member of Council. Such notice shall state the subjects to be considered at such special meeting and no other subject shall be considered thereat. All meetings of Council or of committees thereof shall be public, except for executive sessions limited to such subjects and subject to such procedures as are now or hereafter provided by the general laws of Ohio.

(Amended 11-7-00; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 17. - RULES OF ORDER AND JOURNAL OF PROCEEDINGS.

Council shall determine its own rules and order of business and shall keep a journal of its proceedings, in a form determined by Council, which shall be open to public inspection at all reasonable times. The journal need only reflect the general subject matter of discussions in executive sessions and the opening and closing time of such sessions.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 18. - QUORUM; ATTENDANCE; MANNER OF VOTING GENERALLY.

Four members of Council shall be a quorum to do business, but a less number may adjourn from time to time and compel the attendance of the absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative votes of at least four members shall be necessary to pass any ordinance or to adopt any resolution. The vote upon the passage of every ordinance, upon the adoption of every resolution having any force or effect of law, upon every appointment or choice and upon every removal made by Council, and upon any action taken under the provisions of Section 10, Section 11, or Section 12 of this Charter, shall be taken upon a roll call and the vote of every member of Council thereon shall be entered upon the journal.

ARTICLE IV. - ORDINANCES AND RESOLUTIONS GENERALLY

SEC. 19. - ALL ACTION BY ORDINANCE; EXCEPTION.

Every measure enacted by Council having the force or effect of law, except such resolutions as are prescribed by general law beyond the power of this Charter to alter, shall be in the form of an ordinance.

SEC. 20. - SINGLE SUBJECT; READINGS BEFORE PASSAGE; STYLE.

Every proposed ordinance or resolution shall be introduced in written or printed form, and shall not contain more than one subject, which shall be clearly expressed in the title. The making of general appropriations shall be deemed to be a single subject; no ordinance making appropriations or transfers therein shall contain matter upon any other subject. No ordinance shall be passed until it has been read at three separate meetings, unless upon a roll call this requirement shall have been dispensed with by the affirmative votes of at least five members of Council, and the vote of every member thereon shall be entered on the journal. The final reading shall be in full unless a written or printed copy of the ordinance shall have been furnished to each member of Council at least three hours prior to the commencement of the meeting of Council. The style of all ordinances passed by Council shall be "Be It Ordained by The Council of The City of Delaware, State of Ohio."

SEC. 21. - MUNICIPAL CODE AND SUPPLEMENTS.

Any ordinance enacting a complete municipal code or code of ordinances of the City of Delaware, which shall supersede or repeal all general ordinances prior thereto, and any ordinance enacting a complete revision or re-enactment thereof, shall be deemed to be confined to a single subject. All general ordinances enacted after the enactment of any such code or revision thereof shall be enacted as supplements to, amendments of, or as re-enactments or revisions of such code. The ordinance enacting such code and any ordinance enacting a complete revision or re-enactment thereof, shall be made available to the public in a manner determined by Council.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 22. - MANNER OF AMENDING AND REPEALING.

No ordinance or section thereof shall be revised, amended, or repealed except by ordinance, and no ordinance or resolution or section of either shall be revised or amended unless the ordinance or resolution making such revision or amendment set forth the full text of the ordinance, resolution, or section as revised or amended; and the ordinance, resolution, or section as it existed prior to such revision or amendment shall be deemed to be repealed. The repeal of any ordinance, resolution, or section whereby another ordinance, resolution, or section was expressly repealed shall not have the effect of reviving or re-enacting such prior ordinance, resolution, or section.

SEC. 23. - EMERGENCY MEASURES GENERALLY.

No ordinance or resolution shall be passed or adopted as an emergency measure unless it shall have been introduced as such and unless it shall set forth in the final section thereof a declaration of the circumstances constituting the emergency which exists, necessitating the immediate going into effect of the ordinance or resolution in order to provide for the preservation of the public peace, property, health, safety, or welfare from an immediate danger, or to provide for the usual daily operation of a department or an office of the City. A separate roll call vote shall be had upon such emergency declaration after the third reading and before the final vote upon the passage or adoption of the measure, and if five members of Council affirmatively so vote, the emergency declaration shall stand as part of the measure, and the affirmative votes of five members of Council shall be required for its passage or adoption. If fewer than five members of Council vote in favor of the emergency declaration it shall not thereafter stand as part of the measure; and the measure as it then stands shall have the same status as though introduced without an emergency declaration. No measure making or amending a grant, renewal, or extension of a franchise or other special privilege, or regulating or fixing the rate or rates to be charged for its service by any public utility, shall ever be passed as an emergency measure.

SEC. 24. - EFFECTIVE DATE.

An emergency measure, or a measure to which the referendum is not applicable, shall take effect and be in force on and after the date of its passage as such or on and after such later date as shall be specified in its terms. Every other ordinance or resolution shall take effect and be in force on and after the thirtieth day following its passage or adoption, unless before such time a referendum petition be filed against such measure, or unless a later date therefor be specified in its terms.

SEC. 25. - RECONSIDERATION.

The vote by which any measure was passed or adopted may be reconsidered at the same meeting, and the vote by which any measure which does not go into force and effect until a later date shall have been passed or adopted, may be reconsidered at any time before the date of its going into force and effect, but not later than the twenty-ninth day after the vote by which it was passed or adopted. A vote by which any measure failed of passage or adoption may be reconsidered not later than the next regular meeting of Council after such vote.

SEC. 26. - PUBLICATION.

Every ordinance and resolution shall upon its final passage or adoption be recorded. Penal and regulatory ordinances, other than those published in the Ohio Revised Code or supplements thereto, shall be published by title with such further statement as may be necessary to indicate the nature of their

provisions and penalties if any, and with their respective numbers and dates. Publication shall be made by advertisement in a newspaper of general circulation in the City of Delaware or by posting on the City of Delaware website.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

ARTICLE V. - INITIATIVE AND REFERENDUM; RECALL

SEC. 27. - POWERS RESERVED; DEFINITIONS.

The electors of the City of Delaware hereby reserve to themselves the legislative powers of the initiative and referendum, to be exercised in accordance with the provisions of this Charter, the Ohio Constitution, Article II, Section 1f, and the general laws of the State of Ohio. The initiative is the power reserved to the electors to require the submission to the electors of the question of the passage of ordinances or the adoption of resolutions having the force or effect of law. The referendum is the power reserved to the electors to require the submission to the electors of the question of repealing ordinances passed or resolutions adopted by Council. But nothing in this Charter shall be construed to derogate in any way or to any extent from the operation and effect of Section 5, Section 8, or Section 14 of Article XVIII of the Constitution of Ohio, in respect of measures within the contemplation of such sections.

All initiative and referendum petitions shall be filed with the City Clerk, who shall be responsible for transmittal and certification thereof to the Board of Elections as required by state law. Upon receipt of an initiative or referendum petition, the Clerk of Council shall, within ten days after such receipt, notify Council thereof, and provide each member of Council with a copy of such petition.

(Amended 11-3-92)

SEC. 28. - INITIATIVE PETITION; REQUIREMENTS GENERALLY.

Editor's note— Former Section 28 was repealed by the voters on November 3, 1992.

SEC. 29. - INITIATIVE PETITION; FORM AND CONTENT.

Editor's note— Former Section 29 was repealed by the voters on November 3, 1992.

SEC. 30. - INITIATIVE PETITION; FILING AND VERIFICATION; SUPPLEMENTAL PETITIONS.

Editor's note— Former Section 30 was repealed by the voters on November 3, 1992.

SEC. 31. - INITIATIVE PETITION; ACTION BY COUNCIL.

Editor's note— Former Section 31 was repealed by the voters on November 3, 1992.

SEC. 32. - INITIATIVE PETITION; PROCEDURE WHERE COUNCIL FAILS TO PASS ORDINANCE OR RESOLUTION.

Editor's note— Former Section 32 was repealed by the voters on November 3, 1992.

SEC. 33. - VERIFICATION OF AND ACTION ON ADDITIONAL PETITIONS.

Editor's note— Former Section 33 was repealed by the voters on November 3, 1992.

SEC. 34. - REFERENDUM GENERALLY; FORM AND CONTENT; INVALIDITY OR INSUFFICIENCY; ACTION.

Editor's note— Former Section 34 was repealed by the voters on November 3, 1992.

SEC. 35. - REFERENDUM; SUSPENSION OF EFFECTIVE DATE OF NONEMERGENCY MEASURES.

Editor's note— Former Section 35 was repealed by the voters on November 3, 1992.

SEC. 36. - REFERENDUM; EFFECT ON OTHER MEASURES; EFFECTIVE DATE OF REPEAL.

Passage as an emergency measure shall not exempt any measure from the referendum, but the filing of a referendum petition shall not suspend or postpone the going into force or effect of an emergency measure. The referendum shall not be applicable to ordinances making or repealing appropriations or to ordinances transferring items of appropriations of money, to the annual tax budget or to the annual tax levy upon tangible real and personal property, to any measure providing for the discharge of any obligation legally due from the City, to any measure under the Constitution or laws of Ohio or under this Charter submitting any question or measure to the vote electors, to measures directing the performance of any official duty or providing for any investigation or report under the authority of this Charter, to resolutions not having the force or effect of law, to any repealing measure passed by Council in compliance with a referendum petition, or to any measure relating to any public improvement subsequent to the measure determining to proceed therewith, nor to any measure passed or adopted more than twenty-nine days prior to the filing of a referendum petition against it. No referendum petition shall be received against any measure to which the referendum is not applicable. The timely filing of a referendum petition, which purports and appears to be valid and sufficient, against any measure to which the referendum is applicable, shall, if such measure be not an emergency measure, stay the going into effect of such measure until it shall be determined that such referendum petition is invalid or insufficient, and otherwise until the result of the referendum election thereon shall be determined. If a majority of those voting on the question disapprove the measure sought to be repealed it shall be thereby immediately repealed.

SEC. 37. - BALLOTS AND ELECTIONS.

Editor's note— Former Section 37 was repealed by the voters on November 3, 1992.

SEC. 38. - PRELIMINARY ACTION PENDING REFERENDUM.

Editor's note— Former Section 38 was repealed by the voters on November 3, 1992.

SEC. 39. - EFFECTIVE DATE OF MEASURES.

Editor's note— Former Section 39 was repealed by the voters on November 3, 1992.

SEC. 40. - CONFLICTING MEASURES.

If two or more initiated or referendum measures approved at the same election conflict in respect of any of their provisions they shall go into force and effect in respect of such of their provisions as are not in conflict, and that measure receiving the highest affirmative vote shall prevail in so far as their provisions conflict.

SEC. 40A. - RECALL.

Any Council member may be removed from office by the qualified voters of the City of Delaware. No such Council member may be removed unless he or she has served a minimum of one (1) year of his or her term of office. No Council member may be subject to recall more than twice a term. A petition for a subsequent recall may not be filed sooner than one year from the date of the certification of the previous recall election.

A petition demanding that the question of removing a Council member be submitted to the electors shall be addressed to Council and filed with the Clerk of Council. Such petition shall be circulated by a resident or residents of the City and shall be signed by the qualified voters of the City. In the case of a Council member elected at large, such petition must be signed by at least twenty percent (20%) of the total number of qualified voters registered to vote in the City at the time of the last general election; further, a minimum of at least one-fourth (1/4) of these required signatures must be from each of the four wards. In the case of a Council member elected from a ward, such petition must be signed by at least twenty percent (20%) of the total number of qualified voters registered to vote in the ward at the time of the last general election. Such petition shall contain the name and office of the person whose removal is sought and a statement in not more than two hundred (200) words of the grounds for the removal.

If the Clerk of Council shall find the petition sufficient, the Clerk shall promptly certify to Council and shall deliver a copy of such certificate to the Council member whose removal is sought, and make a record of such delivery. If such Council member shall not resign within five (5) days after such delivery shall have been made, the Council shall fix a day for holding a recall election not less than thirty (30) days nor more than forty-five (45) days from the date of delivery.

The ballots at such recall shall, with respect to each person whose removal is sought, submit the question: "Shall (name of person) be removed from the office of City Council by recall?" Immediately following each such question, there shall appear on the ballot the two propositions in the order set forth: "For the recall of (name of person)", "Against the recall of (name of person)". Electors may vote for either proposition.

(Added 11-7-00)

ARTICLE VI. - CITY CLERK

SEC. 41. - APPOINTMENT; DUTIES GENERALLY; TERM.

Council shall appoint a City Clerk, whose duty it shall be to keep the journal and other records of Council and to perform such other duties as Council may require, consistently with the provisions of this Charter. The City Clerk and other employees of Council shall serve during the pleasure of Council. Council shall make provision by ordinance for the appointment of an Acting Clerk who shall perform the duties of the City Clerk during absence or disability, or during temporary vacancies in the office of the City Clerk.

(Amended 11-3-92)

ARTICLE VII. - MAYOR AND VICE MAYOR

SEC. 42. - SELECTION; TERM.

At the first regular meeting of each regular term of Council, Council by the concurrence of at least four votes shall choose one of their number elected from the City at large, to be Mayor, for a term ending with the second Monday following the November municipal election. If no Mayor shall be chosen on the day so appointed therefor, Council shall meet again not later than 7:30 p.m. on the next day and shall then proceed to choose a Mayor. If on such day no person shall have been chosen Mayor before 9:00 p.m. a Mayor shall forthwith be chosen by lot, under the rules applying to the filling of a vacancy in Council by lot. Immediately upon the choice of Mayor another member of Council, likewise elected from the City at large, shall be chosen to be Vice Mayor, in the same manner as the Mayor, to serve during the same term.

(Amended 11-7-00)

SEC. 43. - POWERS AND DUTIES OF MAYOR.

The Mayor shall preside at meetings of Council and shall perform such other duties not inconsistent with his/her office as Mayor and as member of Council as may be imposed upon him/her by this Charter or by Council. He/she shall be recognized as the official head of the City for all ceremonial purposes, by the Governor for military purposes, and by the courts for the purpose of serving civil process. Nothing in this Charter shall be construed either to deprive the Mayor of his/her vote as a member of Council or to give him/her any power of veto.

SEC. 44. - ABSENCE OR DISABILITY OF MAYOR; SUCCESSION IN CASE OF VACANCY; PRESIDENT PRO TEM.

If the Mayor shall be absent or disabled the Vice Mayor shall act as Mayor during the continuance of the absence or disability of the Mayor. If a vacancy shall happen in the office of Mayor the Vice Mayor shall succeed to the office of Mayor for the unexpired term. If a vacancy shall happen in the office of Vice Mayor Council shall forthwith choose a Vice Mayor for the unexpired term, agreeably to the provisions for the choice of a Mayor. If both the Mayor and the Vice Mayor be absent or disabled, Council shall choose one of its members to be president pro tempore and to act in the stead of the Mayor.

SEC. 45. - SALARY OF MAYOR.

For his/her services as Mayor the Mayor shall receive additional compensation to be set by ordinance, which may be changed agreeably to the provisions of Section 15 of this Charter governing the change of salaries of members of Council.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

ARTICLE VIII. - GENERAL EXECUTIVE AND ADMINISTRATIVE OFFICERS

SEC. 46. - CITY MANAGER; QUALIFICATIONS, ABSENCE OR DISABILITY.

Council shall appoint a City Manager who shall be the chief executive and administrative officer of the City. The appointee shall be chosen by Council solely on the basis of executive and administrative qualifications and with special reference to actual experience in, or knowledge of the best practices in respect of the duties of the office as set forth in this Charter. The City Manager need not when appointed be a resident of the City of Delaware or of the State of Ohio, but shall reside in the City while performing the duties of the office. No person who serves as a member of Council during any term, shall be appointed City Manager until at least one year after the expiration of such term. Council shall designate or provide by ordinance for the designation of some qualified officer in the administrative service of the City who shall perform the duties of the City Manager during absence or disability, or during temporary vacancies in the office of City Manager.

(Amended 11-3-92; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 47. - TERM, SUSPENSION AND REMOVAL OF CITY MANAGER.

The City Manager shall be appointed for an indefinite term, and shall be removable by Council at its pleasure, at least four members concurring therein. Council may at any time suspend the City Manager from the exercise of the duties and powers of his/her office, for not longer than forty days. Any action of Council to remove the City Manager shall be effective at such time as Council shall determine, except that if the City Manager demands a public hearing thereon, the City Manager shall continue in office but under suspension from the exercise of the powers and duties of his/her office until the completion of such hearing, which shall be begun and diligently proceeded with between seven and thirty five days, as set by Council, unless the City Manager consents to an earlier day. At such hearing Council shall hear the testimony of the City Manager and of witnesses in his/her behalf and adverse to him/her, and shall receive writings and exhibits in evidence supporting or contradicting the grounds which may be alleged for his/her removal, and the City Manager may have process to compel the attendance and testimony of witnesses and the production of books, papers, records, accounts, and exhibits in his/her behalf. The action of Council in removing the City Manager shall be final, it being the intent of this Charter to vest all authority and fix all responsibility for such removal in Council. If the City Manager submits a written statement in response within two weeks of his/her removal, the statement shall be included with the records relating to the removal.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 48. - DUTIES GENERALLY OF CITY MANAGER.

It shall be the duty of the City Manager to act as chief conservator of the peace within the City; to supervise the administration of the affairs of the City; to see that the ordinances of the City and the laws of the State are enforced; to make such recommendations to Council concerning the affairs of the City as may seem to him/her desirable; to keep Council advised of the financial condition and future needs of the City; to prepare and submit to Council the annual tax and appropriation budgets of the City; to prepare and submit to Council an annual report and such other reports as may be required; and to perform such other duties as may be prescribed by this Charter or required of him/her by ordinance or resolution.

SEC. 49. - RIGHT OF CITY MANAGER AND OTHER OFFICERS TO TAKE PART IN COUNCIL MEETINGS.

The City Manager shall have the right to take part in the discussion of all matters coming before Council, and the other administrative officers shall be entitled to take part in all discussions relating to their respective departments and offices.

SEC. 50. - APPOINTMENT, SUSPENSION AND REMOVAL OF SUBORDINATES OF CITY MANAGER.

The City Manager shall be responsible to Council for the proper execution and administration of all affairs of the City appertaining to him/her as chief executive and administrative officer, and to that end, subject to the civil service provisions of this Charter, he/she shall have power to appoint, suspend, and remove all officers and employees in the service of the City, for whose appointment this Charter makes no other provision. The City Manager may authorize the head of a department or office responsible to him/her to appoint, suspend, and remove subordinates in such department or office. Appointments made by or under the authority of the City Manager shall be made on the basis of executive ability and on the training, experience, and fitness of such appointees in the work which they are to perform.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 51. - DUAL CAPACITY OF DEPARTMENT HEADS AND CITY MANAGER; EXCEPTION.

The City Manager may appoint the same person as the head of more than one department or office under the City Manager's supervision, except that neither the City Attorney nor the Director of Finance shall be appointed to any other office or employment under the City other than Acting City Manager. The City Manager may also act as the head of any department or office, except as City Attorney or Director of Finance.

(Amended 11-3-92)

SEC. 52. - COUNCIL NOT TO INTERFERE WITH THE ADMINISTRATIVE SERVICE.

Neither Council nor any of its members or committees shall direct or request the appointment of any person to, or his/her removal or transfer from, office or employment by the City Manager or by any of his/her subordinates, or in any manner take part or interfere in the appointment, discipline, transfer, or removal of officers and employees in that part of the administrative service of the City for which the City Manager shall be responsible. No member of Council shall intercede for or participate as counsel or attorney for any officer or employee subordinate to the City Manager, in any hearing or investigation having to do with the discipline or removal of such officer or employee, except in hearings before Council. Except for purposes of inquiry, Council and its members shall deal with that portion of the service of the City for which the City Manager is responsible solely through the City Manager. Neither Council nor any member thereof shall give orders to any subordinate of the City Manager except as provided in Article XVIII, Section 89, either publicly or privately, either directly or indirectly.

(Amended 11-6-84)

SEC. 53. - AUTHORITY OF COUNCIL OVER DEPARTMENTS AND OFFICES; AUTHORITY OF CITY MANAGER TO PRESCRIBE POWERS.

Council may not abolish any department or office established by this Charter, or diminish or transfer to any other office or department powers and duties conferred upon any office or department by this Charter. Council may confer powers and impose duties upon such departments and offices in addition to those conferred and imposed by this Charter. Council may by ordinance establish, abolish, divide, or combine departments or offices under the City Manager not enumerated in this Charter, and may by ordinance prescribe the functions, powers, and duties of such departments and offices. The City Manager shall prescribe what officers and employees shall exercise the powers of the City, so far as may be consistent with this Charter and with the ordinances.

SEC. 54. - AUTHORITY OF CITY MANAGER TO REQUIRE REPORTS.

The City Manager shall annually, and at such other times as he/she may require or as may be required by action of Council, require a report from each of his/her principal subordinates of the transactions of his/her office or department.

ARTICLE IX. - CITY ATTORNEY AND CITY PROSECUTOR

SEC. 55. - APPOINTMENT; ASSISTANTS; QUALIFICATIONS; DUTIES GENERALLY.

The City Manager shall appoint a City Attorney who shall be the chief law officer of the City, and such assistants, employees, and special counsel as shall be required by the work of the office. The City Attorney shall be an attorney-at-law admitted to practice in the State of Ohio. He/she shall be the legal advisor of and attorney and counsel for the City and for all officers and departments thereof in all matters relating to their official duties and powers, and shall, when so requested, give his/her opinion or advice as such in writing. He/she shall prosecute or defend or direct the prosecution or defense, as the case may require, in all civil suits or cases in which the City may be a party. He/she shall be responsible for the preparation of all contracts, bonds, and other instruments in writing in which the City is concerned, and shall endorse on each his/her approval of the form and correctness thereof. He/she shall collect all delinquent special assessments not collected by the County Treasurer as the same may be due. The City Manager shall appoint a City Prosecutor and such assistants, employees, and special counsel as shall be required by the work of the office. The Prosecutor shall prosecute in the Municipal Court, or similar court which may be established by law, for the City of Delaware, for all offenses against the ordinances of the City and for such offenses against the laws of the State as State law may require City solicitors to prosecute for. The City Attorney and the City Prosecutor shall perform such other duties of a legal nature as Council by ordinance or resolution may require. They shall also perform any other duties imposed upon the chief legal officers of municipalities by the general law of the State of Ohio, beyond the competence of this Charter to alter. The City Attorney shall not represent or provide services to the local school district.

(Amended 11-6-84)

SEC. 56. - DUTY TO PREVENT MISAPPLICATION OF FUNDS.

The City Attorney shall apply, in the name of the City, to a court of competent jurisdiction for an order of injunction to restrain the misapplication of funds of the City, or the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the City in contravention of law, or which shall have been procured by fraud or corruption.

SEC. 57. - ENFORCEMENT OF CONTRACTS; PREVENTION OF ILLEGAL PAYMENT OF FUNDS.

When a contract, agreement, or obligation entered into on behalf of the City granting a right or easement, or creating a public duty, is being violated or evaded, the City Attorney shall likewise apply for the specific performance or for the forfeiture thereof as the nature of the case shall require. When money belonging to the City is about to be paid out without legal authority he/she shall institute appropriate proceedings to prevent such payment, and when money belonging to the City shall have been paid out without legal authority he/she shall institute appropriate proceedings to recover the same.

SEC. 58. - DUTY TO COMPEL PERFORMANCE OF DUTIES.

In case any officer or commission of the City shall fail to perform any duty required by or pursuant to law or this Charter, the City Attorney shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of such duty.

SEC. 59. - TAXPAYER'S SUIT FOR ENFORCEMENT.

In case the City Attorney, upon the written request of any taxpayer of the City, shall fail or refuse to make any application provided for in either of the three sections next preceding, such taxpayer may institute suit or proceedings for such purpose in his/her own name on behalf of the City. No such suit or proceeding shall be entertained by any court until such request shall first have been made to the City Attorney, nor until the taxpayer shall have given security for the costs of the proceedings.

SEC. 60. - ORDER OF COURT; ALLOWANCES.

If the court hearing any such action be satisfied that the taxpayer had good cause to believe that his/her allegations were well founded, or that they were sufficient in law, it shall make such order as the equity and justice of the case may demand. In such case the taxpayer may be allowed his/her costs, and if judgment be finally entered in his/her favor, he/she may be allowed as part of the costs a reasonable compensation for his/her attorney.

ARTICLE X. - DEPARTMENT OF PUBLIC SAFETY

SEC. 61. - ESTABLISHMENT: APPOINTMENT OF DIRECTOR; COMPOSITION.

There is hereby established a Department of Public Safety, the principal officer in which shall be a Director of Public Safety who shall be appointed by the City Manager. The Department of Public Safety shall comprise the police department, the fire department, and such other divisions, bureaus, offices, officers and employees as shall be provided by or pursuant to ordinance.

(Amended 11-4-08)

SEC. 62. - POLICE FORCE.

The City shall maintain a police department consisting of a Chief directly in charge thereof and of such number of other officers, police officers, and employees, as may be fixed in accordance with the provisions of Section 121 of this Charter. In case of riot or like emergency the City Manager may appoint additional police officers for temporary service who need not be in the classified service of the City. The Chief of the police department shall have control of the stationing and other disposition of all members of the force, under such rules and regulations as he/she may establish with the approval of the Director of Public Safety.

(Amended 11-4-08)

SEC. 63. - POLICE POWERS OF CITY OFFICERS AND EMPLOYEES.

Council may by ordinance provide for the exercise of police powers in the course of their employment by officers and employees of the City other than those of the regular police force.

SEC. 64. - PRIVATE POLICE AND DETECTIVES.

No person shall act as a special or private policeman, special or private detective, or other special or private police officer for any purpose whatsoever, except upon the written authority of the Chief of Police or of the City Manager. Such authority shall be exercised only under the direction and control of the Chief of Police and for a specified time, not to exceed six months.

SEC. 65. - FIRE FORCE.

The City shall maintain a fire department consisting of a Chief in charge thereof and of such number of other officers, fire fighters and employees as may be fixed in accordance with the provisions of Section 121 of this Charter. In case of riot, conflagration, or other emergency, the City Manager may appoint additional officers and fire fighters for temporary service who need not be in the classified service of the City. The Chief

of the fire department shall have control of the stationing and other disposition of all members of the fire department, under such rules and regulations as he/she may establish with the approval of the Director of Public Safety.

(Amended 11-4-08)

ARTICLE XI. - PUBLIC WORKS

SEC. 66. - ADMINISTRATION OF PUBLIC WORKS

Council shall provide for the administration of the public works. Such public works shall be administered by such department, division, bureau, or office under the City Manager as shall be determined by or pursuant to ordinance.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 67. - DUTIES OF DIRECTOR OF PUBLIC WORKS.

Editor's note— Former Section 67 was repealed by the voters on November 8, 2016.

ARTICLE XII. - PUBLIC PARKS AND RECREATION

SEC. 68. - MAINTENANCE AND CONDUCT OF FACILITIES; ADMINISTRATION.

Council shall provide for the maintenance and conduct of the public parks and public recreation facilities of the City. Such parks and recreation facilities shall be administered by such department, division, bureau, or office under the City Manager as shall be determined by or pursuant to ordinance.

ARTICLE XIII. - PUBLIC UTILITIES

SEC. 69. - ADMINISTRATION; RATES.

Public utilities belonging to the City shall be administered and operated by such department, division, bureau, or office as in each case shall be determined by or pursuant to ordinance. Rates to be charged for the product or service of any such public utility shall be fixed by ordinance.

ARTICLE XIV. - PURCHASING AND INVENTORY

SEC. 70. - DESIGNATION AND DUTIES GENERALLY OF PURCHASING AGENT.

The City Manager or one of his/her subordinates designated by the City Manager shall act as City Purchasing Agent. Any purchase or contract for supplies, materials, and equipment for the City shall be in accordance with policies and regulations made by the City Manager or by ordinance or both, and who shall, in accordance with such regulations, sell all property, real and personal, of the City not needed for public use, or which may have become unsuitable for public use, or which may have been condemned as useless under such regulations. All advertising of purchases, sales, and contracts shall be approved by the Purchasing Agent, and all bids shall be received and opened by him/her or his/her designee.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 71. - PURCHASING REGULATIONS.

Before making any purchase or sale or contract therefor the City Purchasing Agent shall give opportunity for competition under such policies and regulations as may be made by the City Manager or by ordinance.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 72. - INVENTORY OF CITY PROPERTY.

An inventory of all property belonging to the City shall be maintained in such form and detail as the City Manager shall determine.

ARTICLE XV. - CONTRACTS**SEC. 73. - COMPETITIVE BIDDING REQUIRED; EXCEPTIONS; REPORT OF CONTRACTS.**

Opportunity for competitive bidding shall be given before the awarding of any contract, so far as circumstances render it practicable. No contract or agreement shall be entered into except pursuant to advertisement and competitive bidding if such contract or agreement exceeds the amount established from time to time by State law for competitive bidding. Procedures for advertisement and bidding shall be established by ordinance, or in the absence thereof by the general laws of Ohio. Contracts for professional or expert services or contracts for the acquisition of real property or any interest therein, shall not require advertisement and competitive bidding. But notwithstanding the foregoing provisions of this section, the City Manager may in cases of disaster or emergency determine that immediate action is necessary to preserve the public property, health, safety, or to restore or replace essential facilities, machinery, or equipment, which have been destroyed or rendered unusable, and thereupon may enter into contracts, agreements, or obligations without competitive bidding or without advertising, as in his/her judgment shall

be for the best interest of the City and the public service. He/she shall report every contract, agreement, or obligation so entered into to Council at its next meeting, together with a statement of the reasons and circumstances therefor.

(Amended 11-6-84)

SEC. 74. - MANNER OF AWARDING CONTRACTS; EXECUTION.

The City Manager shall award every contract as to which competitive bidding is required or obtained to the bidder with the lowest and best bid, except that contracts pertaining to investigations or audits made by or under the direction of Council shall be awarded by Council. The City Manager shall execute all contracts and agreements to which the City shall be a party, except that the City Purchasing Agent may be authorized to execute contracts and agreements for the purchase of supplies, materials, and equipment or any of the same, by ordinance or by written order of the City Manager, and except that bonds and notes of the City shall be executed as may be provided by general law. The City has authority to use alternative construction project delivery methods, including but not limited to design-build, construction manager at risk, or single prime contractor.

(Amended 11-3-92; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 75. - AUTHORITY TO MAKE CONTRACTS AND AGREEMENTS.

The annual appropriation ordinance and supplements thereto shall be sufficient authority for the City Manager to enter into any contract or agreement the consideration of which is to be paid from monies appropriated therein. No other contract or agreement shall be entered into unless the ordinance appropriating money to be paid thereunder shall authorize such contract, or unless such contract shall be authorized by a separate ordinance. Council shall have no power by ordinance or otherwise to direct or require the City Manager to award any contract to any particular person, firm, or corporation as a condition of authorizing such contract, or otherwise. Every contract to which the parties are the City of Delaware and any other governmental subdivision or subdivisions of the State of Ohio shall be specifically authorized by ordinance, except routine contracts for the services or products of public utilities, and final grant agreements once the grants have been approved by Council.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

ARTICLE XVI. - APPROPRIATION BUDGETING

SEC. 76. - BUDGET MESSAGE AND ORDINANCE; FORM AND CONTENT OF BUDGET.

On or before November 15 of each year the City Manager shall lay before Council a comprehensive annual appropriation budget and budget message for the ensuing year. One section of the annual appropriation budget shall correspond in form to the requirements of general law as to annual appropriation ordinances. Another section or sections shall present data for the two preceding fiscal years and estimates for the current fiscal year and the ensuing fiscal year, exhibiting and analyzing revenues and estimates thereof by amounts and by sources; expenditures by object, operating unit, and otherwise, as the City Manager shall determine or as Council shall require. So far as it may be practicable to do so the annual appropriation budget shall state, for the same respective years, what services have been rendered and are proposed to be rendered, in comparable units or quantities, and shall if practicable state the costs or proposed costs thereof for each such service during each such year, both in total and in unit costs. It is the intent thereof that the annual appropriation budget and message shall set forth, clearly and in readily intelligible form, language, figures, and exhibits, a concrete financial and operating plan for the City during the ensuing year, together with data facilitating comparisons with like data of the performances of preceding years, indicating and explaining contemplated increases or decreases in either services or expenditures and the means of defraying them. With such annual appropriation budget and message the City Manager shall present a draft of an annual appropriation ordinance, which shall be deemed to be regularly introduced into Council.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 77. - HEARINGS; COPIES OF BUDGET.

Upon receipt of the City Manager's annual appropriation budget and message Council shall cause the same to be referred to an appropriate committee for consideration and for the holding of not fewer than two public hearings thereon by such committee or by Council, at which hearings reasonable opportunity shall be afforded to interested citizens to present their views. The annual appropriation budget shall be made available, on the City's website, electronically, or via another method determined by Ordinance, to enable such citizens to inform themselves as to the contents thereof, before such hearings.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 78. - APPROPRIATION ORDINANCE, TEMPORARY AND ANNUAL.

After public hearings on the City Manager's annual appropriation budget and message, and after consideration thereof by Council and its committee, and before the beginning of the ensuing fiscal year, Council shall pass an annual appropriation ordinance providing the means of operating the City services during such ensuing fiscal year. The total appropriations made by such ordinance from any fund shall not exceed the total resources of such fund for such year, as determined by official estimates. Such estimates for, and the appropriations from any fund may thereafter be increased whenever within such year the

resources and receipts in such fund actually exceed the official estimates upon which the annual appropriation was based. If Council be unable to complete public hearings upon and its consideration of the annual appropriation ordinance before expenditures must be commenced in any fiscal year, it may pass a temporary appropriation ordinance or ordinances for such period not longer than three months as it may find to be necessary, and expenditures made thereunder shall be charged against the annual appropriations when the same are made.

(Amended 11-6-84)

ARTICLE XVII. - CAPITAL IMPROVEMENT BUDGET AND PROGRAMS

SEC. 79. - CAPITAL PROGRAM.

The City Manager shall prepare and submit to the City Council on or before August 15 a five-year capital improvements program. The capital improvements program shall include, but not be limited to, the following:

1. A clear general summary of contents.
2. A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements.
3. Cost estimates, available funds, proposed method of financing and recommended time schedules for the implementation of each such improvement.
4. The estimated annual cost of operating and maintaining the facilities to be constructed, acquired or developed.

The above information shall be in such form as determined by the City Manager and shall be revised and extended each year with regard to capital improvements still pending or in process of construction, acquisition or development.

(Amended 11-6-84)

SEC. 80. - ACTION BY COUNCIL ON CAPITAL IMPROVEMENTS PROGRAM.

Council shall consider the five-year capital program submitted by the City Manager as required by Section 79 of this Charter, and shall, by resolution, on or before October 15 adopt the same as the City's future public improvement program, either in its original form or as Council may modify it by additions, deletions or otherwise. In adopting a five year program, Council shall consider existing master plans and may refer the

plan to the City Planning Commission or other City planning agencies or advisory groups for comment and/or review. Upon adoption of the five year plan, Council shall take such actions as may be necessary or appropriate to finance proposed improvements, subject to the provision or availability of monies therefor.

(Amended 11-6-84)

SEC. 81. - PRESENTATION OF ANNUAL CAPITAL BUDGET.

On or before November 15 of each year, the City Manager shall lay before Council the capital improvement budget for the ensuing fiscal year. Such budget shall be prepared in accordance with the program adopted in the five-year capital improvement plan and adopted by City Council as set forth in Section 80 of this Charter.

(Amended 11-6-84)

SEC. 82. - ADOPTION OF ANNUAL CAPITAL IMPROVEMENT BUDGET.

No less than two public hearings on the Annual Capital Improvement Budget shall be held in conjunction with public hearings on the annual appropriations budget, and copies of the Capital Improvement budget shall be provided to interested citizens prior to any such hearings, on request. After the public hearings as required previously in this section, and as part of the annual appropriation ordinance, Council shall provide for the financing of the annual capital improvements budget for the ensuing fiscal year. Should Council be unable to complete the required number of public hearings and its consideration of the annual appropriation ordinance prior to the time capital expenditures must be commenced in any fiscal year, it may pass a temporary capital improvements ordinance or ordinances for such period not to exceed three months, and expenditures made thereunder shall be charged against the annual appropriations for said capital improvements when the same are made and passed.

(Amended 11-6-84)

ARTICLE XVIII. - DEPARTMENT OF FINANCE

SEC. 83. - ESTABLISHMENT; APPOINTMENT OF DIRECTOR.

There is hereby established a Department of Finance, the principal officer in which shall be the Director of Finance. The Director of Finance shall be appointed by the City Manager and shall report thereafter to the City Manager.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 84. - FINANCE DIRECTOR PROHIBITED FROM HOLDING OTHER POSITION

Except as otherwise provided in the Charter, if the Director of Finance shall accept appointment by the City Manager to any office other than that of Director of Finance he/she shall thereupon be deemed to have vacated the office of Director of Finance.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 85. - ACTING DIRECTOR OF FINANCE.

The City Manager shall designate an officer or employee in the Department of Finance or some suitable person who, during the absence or disability of or during a vacancy in the office of the Director of Finance, shall on a temporary basis exercise the powers and discharge the duties of the Director of Finance, under the title of Acting Director of Finance.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 86. - DUTIES OF DIRECTOR OF FINANCE.

The Director of Finance under the supervision of the City Manager shall be the fiscal officer and chief accounting officer of the City. He/she shall discharge all the duties and exercise all the powers vested in him/her by or pursuant to this Charter, and those which shall be vested in City auditors by general law. Except as is otherwise provided by or pursuant to this Charter, he/she shall have charge of the keeping and supervision of its accounts, the receipt or collection of all taxes, assessments, fees, and other revenues of the City; the prevention of expenditures not authorized under law and ordinance; and such other duties of financial nature as may be required of him/her under this Charter. He/she shall discharge all the duties and exercise all the powers of officers of the City in connection with the payment of the principal of and interest on bonds and notes of the City, and with the administration of the Bond Retirement Fund.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 87. - ACCOUNTS AND PROCEDURE.

Accounts shall be kept showing financial transactions of the City and of all departments and offices. The forms of all such accounts, whether kept in the Department of Finance or elsewhere, shall be prescribed by the Director of Finance, and no account shall be kept in any office or department of the City unless it be authorized by the Director of Finance. The regulations of the Director of Finance under the foregoing provisions of this section and any changes therein made as to accounts not kept in the Department of Finance shall be subject to the approval of the City Manager, and shall be a public record. The accounts and the accounting procedures of the City shall be adequate to exhibit the condition of all appropriations and expenditures therefrom and encumbrances thereof at all times; to record all cash receipts and

disbursements; all revenues accrued and liabilities incurred; all transactions affecting the acquisition, custody, and disposition of values; and for making such reports of the financial transactions and condition of the City as may be required by law or ordinance.

SEC. 88. - APPROPRIATION ACCOUNTS.

Accounts shall be kept for each item of appropriation made by Council, and every warrant drawn on the Treasury shall state specifically against which of such items the warrant is drawn. Each such account shall show in detail the appropriations made thereto, the amount drawn thereon, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof.

SEC. 89. - MONTHLY FINANCIAL STATEMENT; OTHER REPORTS.

Each month, the Director of Finance shall prepare for submission to the City Manager and Council, a summary statement of revenues and expenses for the preceding month, by appropriations and funds, so as to show the exact financial condition of the City and of each department and office thereof as of the last day of the next preceding month. He/she shall prepare and submit to Council and to the City Manager a complete report of the finances and financial operations of the City for each fiscal year immediately after the end thereof. Such report shall be in such form and detail as the Director of Finance shall determine, or as may be prescribed by ordinance. Whenever Council or the City Manager shall so require, the Director of Finance shall forthwith prepare and furnish to the authority so requiring it a report of any information concerning the finances of the City, or of any office, department, division, bureau, commission, officer, or employee thereof, for such period of time, and in such form and detail, as the authority requiring such report shall prescribe. Upon request, the Director of Finance shall permit inspection of all public records in his/her custody which are not otherwise prohibited from being disclosed by general law.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 90. - SPECIAL AUDITS; ACTION ON RESULT OF SUCH AUDITS.

Upon request by City Council, the Director of Finance or other designated individual shall audit the accounts of any officer or department and shall report the results thereof to the City Manager and to Council. If, as a result of any such audit, any officer or department be found indebted to the City, the Director of Finance or other designated individual shall immediately give notice thereof to Council, the City Manager, and the City Attorney, and the City Attorney shall forthwith proceed to collect such indebtedness.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 91. - ADMINISTRATION OF TREASURY; MONEYS PAID INTO TREASURY; DEPOSIT OF CITY MONEY.

The Director of Finance shall administer the Treasury of the City. All money received by any officer or employee of the City, for or in connection with the affairs of the City, shall be paid without delay into the City Treasury. Public money, other than that of the City coming into the hands of any officer or employee of the City, shall be paid into and kept in the Treasury and administered as other moneys therein, except as may be otherwise required by law applicable thereto. All moneys in the Treasury, except such amounts, limited by ordinance, as it may be necessary to retain in the offices of the City for use in the regular daily transactions of the City, and except such amounts as are in accordance with the provisions of law or ordinance invested in the obligations of the City or of other public authorities, shall be deposited in such responsible banking institutions as agree to pay the highest rate of interest to the City and to furnish such security as may be required under law or ordinance. All interest on money so deposited or invested shall accrue to the benefit of the City.

SEC. 92. - SAFEKEEPING OF SECURITIES.

All securities owned by the City or held by it in trust or on deposit, and all instruments of title, and all instruments in writing indemnifying the City against loss or liability, shall be recorded by the Director of Finance.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 93. - PREPARATION AND CERTIFICATION OF SPECIAL ASSESSMENTS.

The Director of Finance shall have charge of the preparation and certification of all special assessments for public improvements and services; of the giving of notice of special assessments to persons liable for the payment thereof, and of all other duties connected therewith, other than the duties which Council shall perform in pursuance of general law, and other than the duties of boards of revision of special assessments; of the collection of such assessments as are payable directly to the City; and of the preparation and certification of all unpaid special assessments to the County Auditor for collection.

SEC. 94. - COUNCIL MAY REQUIRE CERTAIN DUTIES OF DIRECTOR OF FINANCE.

Council may by ordinance require the Director of Finance to discharge any of the following duties:

- (a) To administer any specified tax or taxes imposed by ordinance;
- (b) To administer any specified license or licenses, including the collection of fees therefor, in such manner and subject to such regulations as may be provided by ordinance.

If not otherwise provided by ordinance, every such duty shall be discharged and administered under the supervision of the City Manager.

SEC. 95. - RECORDATION OF BONDS AND NOTES.

Editor's note— Former Section 95 was repealed by voters on November 8, 2016.

SEC. 96. - INTERESTS AND EARNINGS BELONGING TO BOND RETIREMENT FUND.

Interest and earnings on account of the investment or deposit of the resources of the Bond Retirement Fund, interest or earnings upon unexpended balances of all bond proceeds, and premiums and accrued interest received upon the issue of bonds or other securities shall belong to the Bond Retirement Fund.

ARTICLE XIX. - PUBLIC HEALTH

SEC. 97. - BOARD OF HEALTH; COMBINATION OF HEALTH DISTRICTS.

The Board of Health of the City Health District of the City of Delaware heretofore established under provisions of general law shall be deemed to be established agreeably to the provisions of this Charter. Nothing in this Charter shall be construed to prevent any combination of the City Health District of the City of Delaware with any other health district in accordance with the provisions of general law. Members of any Board of Health, to be appointed under provisions of general law by any officer or authority of the City of Delaware shall be appointed by the Mayor, subject to confirmation by Council.

SEC. 98. - HEALTH POWERS OF CITY PRESERVED.

Nothing in this Charter or in the laws of Ohio shall be construed to impair or to derogate from the power of the City of Delaware to make by ordinance local sanitary and similar regulations not in conflict with general laws. Council may by ordinance confide the enforcement of such regulations to any Board of Health established pursuant to general law and having jurisdiction within the City of Delaware, or may provide for their enforcement by or under the direction of the City Manager.

ARTICLE XX. - CIVIL SERVICE

SEC. 99. - MERIT SYSTEM.

All original and promotional appointments in the service of the City shall be made according to merit and fitness, to be ascertained, so far as practical, by open competitive examination according to the rules of the Civil Service Commission.

No officer or employee in the classified civil service shall be suspended, demoted or removed except for cause.

(Amended 11-7-00)

SEC. 100. - UNCLASSIFIED SERVICE.

With the exception of the Chief of Police and Chief of Fire, the unclassified civil service of the City of Delaware shall consist of the City Manager, the Assistant City Manager, all directors of departments, the City Attorney and his/her assistants, the subordinates of the Director of Finance, and other officers and employees who are in the unclassified service under provisions of general law. The suspension, removal or dismissal or any person serving in the unclassified service for an indefinite term or at the pleasure shall be made by the body or officer having the power to appoint a successor or the person removed or dismissed, and shall not be subject to appeal.

(Amended 11-7-00)

SEC. 101. - CIVIL SERVICE COMMISSION.

There shall be a Civil Service Commission consisting of three members, being electors of the City of Delaware. The Civil Service Commission shall be deemed to be established agreeably to the provisions of this Charter. Appointments of members of the Civil Service Commission of Delaware shall be made by the Mayor, subject to confirmation by Council.

The Civil Service Commission shall establish rules and regulations for the determination of merit and fitness for the appointment and promotion of employees in the classified service. Except for Chief of Police and Chief of Fire, vacancies in positions above the rank of patrol in the Police Department and firefighter in the Fire Department shall be filled by promotion from among the persons holding positions in a rank lower than the position to be filled. The Civil Service Commission shall also establish rules and regulations governing appeal rights and procedures for employees in the classified service. These rules and regulations shall be submitted to Council for approval by ordinance and may modify, supplement or supersede the general laws of the State of Ohio, and in the case of conflict shall prevail over the laws of the State of Ohio.

(Amended 11-7-00; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

ARTICLE XXI. - CITY PLANNING, ZONING AND PLATTING

SEC. 102. - CITY PLANNING COMMISSION.

There shall be a City Planning Commission composed of seven members, consisting of one member from each of the four wards and three members at-large. One member shall be a City Councilperson and six being electors of the City of Delaware who hold no elective office. All members shall be chosen by the Mayor and confirmed by Council.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 103. - OFFICIAL CITY PLAN.

The City Planning Commission shall make and from time to time amend, extend, add to, and revise the official Plan of the City, subject to the provision of this Charter. Such Plan shall include maps, charts, exhibits, and text as the City Planning Commission shall determine. It shall show and state the recommendations and requirements of the City for the location and dimensions of all public ways, parks, playgrounds, public buildings and works and of public utilities whether publicly or privately owned; for the marking of historical sites; for the locations, relocation, or removal of statuary in public ways or property, for the removal, relocation, extension, widening, narrowing, vacation, abandonment, or change of use of any of the foregoing; for the improvement, development, redevelopment, or reconstruction of areas or neighborhoods which have been destroyed or seriously damaged by disaster, or in which housing and other buildings, and public works or facilities, do not conform to reasonable standards and requirements in respect to sanitation and sanitary facilities, open space, access to light or air, or other conditions of wholesome living or work.

Furthermore, the City Planning Commission shall make and from time to time amend, extend, add to, and revise the official Plan of the City, subject to recommendations of any strategic and/or long range planning commission or committee that may be directed by City Council.

Whenever the City Planning Commission shall have made, amended, extended, added to, or revised any plan or map in whole or in part as is provided in this section it shall recommend a draft ordinance adopting the same to Council, and such ordinance shall be deemed to be regularly introduced and shall be considered in Council. If before passage such ordinance be amended or modified, or if any ordinance proposing to make, adopt, amend, extend, add to, or revise the official City Plan or any part thereof be otherwise introduced into Council it shall be referred to the City Planning Commission, and subsequent action thereon shall be subject to the provisions of Section 104 of this Charter. The plans, maps, and materials adopted by the ordinance or ordinances contemplated in this section shall be the official plan of the City of Delaware.

(Amended 11-6-84)

SEC. 104. - PROCEDURE IN CITY PLAN LEGISLATION.

When Council refers any measure to the City Planning Commission under the provisions of Sections 103, 105, 106, 107, or 108 of this Charter, the City Planning Commission shall within twenty-five days (unless Council shall extend such period) consider the same and report to Council whether such measure or plat conforms to the City Plan or to the zoning plan or to the platting rules or regulations, as the case may be, and whether the Commission approves or disapproves the same, the reasons for its approval or disapproval, and if it disapproves, any recommendation it may have for the modification of the measure so

that it may be approved. If the Commission approves such measure, either in its original form or as modified, the affirmative votes of four members of Council shall suffice for its passage or adoption. If the Commission disapproves, the affirmative votes of five members of Council shall be required for its passage or adoption notwithstanding such disapproval.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 105. - PLANNING COMMISSION REVIEW AND RECOMMENDATION OF PLANS FOR DEVELOPMENT.

All Council actions relating to planning, development, redevelopment, subdivision, zoning, rezoning and zoning text amendments of private or public owned property shall be referred to the City Planning Commission for review and recommendation prior to any such action by Council.

(Amended 11-3-92)

SEC. 106. - ZONING.

The City Planning Commission shall upon the basis of the official City Plan and of studies, surveys, and investigations made by it or under its authority, make or prepare plans and regulations for the zoning and from time to time for the rezoning or the amendment, modification, or revision of the existing zoning of all the territory within, and which shall hereafter be brought within the City of Delaware. Such zoning regulations shall govern the use and occupancy of premises and buildings; the requirement of open spaces and areas, and the dimensions thereof, between buildings and between lot lines and property lines and the buildings on such lots; the bulk and height of buildings, and setback lines in buildings exceeding designated heights. Whenever the City Planning Commission shall have made or prepared any such plan, regulation, amendment, or revision for the zoning or rezoning of the City or any part thereof it shall recommend the same to Council, and Council shall cause an ordinance embodying such recommendation to be introduced and considered. If before passage such draft ordinance be amended or modified, or if any ordinance proposing to zone, rezone, or to amend or modify any provision of the zoning ordinance be otherwise introduced into Council it shall be referred to the City Planning Commission, and subsequent action thereon shall be subject to the provisions of Section 104 of this Charter.

SEC. 107. - PLATTING.

The City Planning Commission shall be the platting commission of the City. It shall prepare and recommend to Council rules and regulations governing the subdivision and platting of land within the City and adjacent to the City within such distance as may be provided by general law, and prescribing requirements for the provision, location, width, and improvement of streets and other ways and other public grounds, or the security to be given to assure that such improvements as may be required will be made, as conditions for the approval of such plats and subdivisions, or the acceptance of such streets, ways, or grounds. Such rules and regulations, and amendments thereto or revisions thereof, shall be passed as

ordinances by Council. Any ordinance on any such subject, not previously approved by the City Planning Commission, shall be referred to the City Planning Commission, and subsequent actions thereon shall be subject to the provisions of Section 104 of this Charter.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 108. - RECORDATION AND ACCEPTANCE OF PLATS.

No plat of any subdivision or land within the City of Delaware or subject to its platting jurisdiction, nor any instrument dedicating land to any public use of the City of Delaware, shall be accepted or recorded or shall have any validity unless it be first submitted to Council for its acceptance or rejection. Upon any such submission Council shall refer any measure proposing to accept such plat or instrument or to approve or accept such subdivision, or to accept any ways or grounds dedicated thereby or therein, to the City Planning Commission, and subsequent actions thereon shall be subject to the provisions of Section 104 of this Charter. The dedication of any such lands for ways or public grounds shall be deemed to convey to the City the title thereof in fee simple.

SEC. 109. - PLANNING COMMISSION ASSISTANTS AND EMPLOYEES.

Editor's note— Former Section 109 was repealed by voters on November 8, 106.

SEC. 110. - ADDITIONAL POWERS AND FUNCTIONS OF PLANNING COMMISSION.

Council may by ordinance confer upon the City Planning Commission such other powers and functions as appertain by nature or general law to planning authorities, and as do not appertain under this Charter to City Council or the City Manager.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

ARTICLE XXII. - CITY ELECTIONS

SEC. 111. - DATE; PRIMARY ELECTIONS.

A regular municipal election for the election of members of Council shall be held and conducted on the first Tuesday after the first Monday in November in each odd-numbered year. Special elections for any purpose authorized by the Constitution or laws of Ohio or by this Charter may be held and conducted on any day which shall be fixed in accordance with such provisions. No primary elections shall be held for the nomination of candidates for any office of the City of Delaware.

SEC. 112. - APPLICATION OF STATE ELECTION LAWS.

All general and special elections which shall be held and conducted for the choice of officers of the City of Delaware, or upon any question or issue submitted to the electors thereof, shall be held and conducted, and the results thereof shall be ascertained and certified by the election authorities prescribed by general law. The general election laws of Ohio shall govern all such elections in all respects save only as it may be otherwise provided in this Charter or in ordinance agreeable to this Charter.

SEC. 113. - WARDS.

The City of Delaware shall be divided into four wards for the purpose of electing four members of Council. The wards existing at the time of the adoption of this Charter shall be deemed to be the wards contemplated in this Charter, until and unless the City shall be redivided into wards agreeably to general law and this Charter. It shall be lawful for Council at any time to redivide the City into four wards in compliance with general law. The number of wards shall not be increased or decreased except through the charter change process. Nor shall the City ever be divided into wards by any officer or authority other than Council, or otherwise than by ordinance.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 114. - NOMINATING PETITIONS FOR COUNCIL CANDIDATES.

Candidates for election as members of Council shall be nominated only by non-partisan petition. Each petition paper shall present the name of not more than one person as a candidate, together with a statement of the address at which the candidate resides, a statement that the candidate is an elector of the City of Delaware, and a statement over the candidate's signature accepting the nomination. If the petition be one nominating a candidate for election from a ward it shall include a statement that the person is a resident of such ward, as defined by Section 7 of this Charter, and is nominated as a candidate from such ward. No signature on any nominating petition shall be counted unless it be made in ink, nor unless such signature shall have been made after the 1st day of January, next preceding the election, nor unless there shall appear on the same line with it a statement of the subscriber's address with street and number, and the date on which the subscriber shall have signed. Any number of petition papers may be combined to form a petition for any one candidate, and such petition shall be filed with the County Board of Elections not later than the date prescribed by the general laws of Ohio, but no petition bearing more than fifty nor less than twenty-five signatures shall be received. If any signature appears on more than one petition nominating candidates for election from a ward, or on more than three petitions nominating candidates for election from the City at large, it shall be counted only on the one or on the three petitions respectively which shall be first filed.

(Amended 11-3-92; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 115. - BALLOTS FOR COUNCIL ELECTIONS.

Ballots to be used in the election of members of Council shall be without party marks or designations. Write-in candidates must file their declaration of intent to be a write-in candidate with the County Board of Elections not later than the date prescribed by the general laws of Ohio.

(Amended 11-6-84)

SEC. 116. - COUNTING OF VOTES.

Ballots used in the election of members of Council shall be separate and distinct from those used for elections of any other officers or upon any other question, and except as is otherwise provided in this Charter ballots shall be prepared, marked, and counted under the provisions of general law. If any ballot bears more than one vote for member of Council from any ward, or more votes for members of Council at large than there are such seats to be filled, none of such votes shall be counted. Nor shall any votes be counted which shall appear on any ballot which bears marks not authorized by this Charter or by the general election laws, whether such marks be intended to identify the elector by whom such ballot was cast, or otherwise. No votes shall be counted for any person who on the day of such election did not possess the qualifications of an elector of the City of Delaware, and no person shall be deemed to have possessed such qualifications on such day if he/she shall have lost such qualifications or shall have died before the hour of opening the polling places on such day.

(Amended 11-6-84)

SEC. 117. - VOTING MACHINES AND DEVICES.

Council shall have power to approve and consent to the use of voting machines or other devices for voting or for counting the votes for members of Council by the election authorities under the provisions of general law.

(Amended 11-6-84)

SEC. 118. - DETERMINATION OF SUCCESSFUL CANDIDATES.

In 2019, and every fourth year thereafter, that candidate in each ward who shall have received the greatest number of votes cast therein for member of Council from such ward shall be elected as member of Council from such ward. In 2017 and every fourth year thereafter the three candidates for member of Council at large who shall have received the three greatest numbers of votes respectively shall be deemed to be elected. In other years candidates for election as members of Council at large who shall have received the greatest numbers of votes respectively, to the number of the vacancies to be filled at any such election in the Council at large, shall be deemed to be elected. If it be impossible to determine which candidates for

election from any ward, or which three (or other requisite number) candidates for election from the City at large shall have received the greatest numbers of votes respectively by reason that two or more candidates shall have received the same number of votes, such candidates having such same numbers of votes shall draw lots to determine the election, under the supervision of the election authorities. Any candidate eligible to participate in any such lot shall personally draw his/her own lot if he/she be present; otherwise the election authorities shall appoint another person to draw in behalf of the person who shall be absent. If any person eligible to participate in any such lot shall decline to do so, he/she shall be deemed to have drawn the lower or lowest order therein. But no candidate shall be deemed to have waived any right under general law or under this Charter to require a recount of ballots, or to contest an election, by reason of any such drawing of lots.

(Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

ARTICLE XXIII. - MISCELLANEOUS PROVISIONS

SEC. 119. - COMPENSATION OF OFFICERS AND EMPLOYEES.

The salaries or compensation of the City Clerk and his/her assistants, and of the City Manager shall be fixed by ordinance. Salaries or compensation of all other officers or employees appointed by or under the authority of the City Manager shall be fixed by ordinance, or by the City Manager within limits established by ordinance, which ordinances shall fix schedules of minimum and maximum salaries or compensation for each class or grade within the City service. Such schedules shall provide uniform compensation for like service, and in fixing individual salaries the City Manager shall take into consideration the length of service and the efficiency of the employee. Salaries or compensation of the Civil Service Commission, and of the City Planning Commission, shall be fixed by ordinance.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 120. - FEES.

All fees pertaining to any office or received by any officer or employee in connection with the affairs of the City or with his/her duties as such officer or employee of the City, shall be paid into the City Treasury and shall belong to the City.

SEC. 121. - NUMBER OF ASSISTANTS AND SUBORDINATES.

The number of assistants and other subordinates to be employed in or by each department or office shall be fixed by ordinance, unless Council by ordinance shall authorize the officer or commission having authority to appoint such assistants and subordinates to determine the number of such assistants and

other subordinates, subject to the appropriation made for the payment thereof.

SEC. 122. - OFFICIAL BONDS.

The City Manager, the Director of Finance, and such other officers and employees as may be specified by ordinance or by the City Manager in pursuance of ordinance, shall give bond in such amount as may be required by ordinance or by the City Manager under authority of ordinance. The surety of such bonds shall always be such as is specified by ordinance and approved by the City Manager, and by the City Attorney, as may be stipulated by ordinance. The premiums upon such bonds may be paid from appropriations made for that purpose.

(Amended 11-6-84)

SEC. 123. - OATH OF OFFICE.

Every officer, every member of the Police Force and of the Fire Force, and such other employees as may be specified by ordinance, shall, before entering upon the duties of his/her office or employment, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the Civil Service Commission.

I solemnly swear (or affirm) that I will support the constitution of the United States and of the State of Ohio, and that I will in all respects obey and comply with the provisions of the Charter and ordinances of the City of Delaware, and will faithfully discharge the duties of my office or employment.

SEC. 124. - INVESTIGATIONS.

The Council, the City Manager, or any committee or person authorized by either of them, shall have the power to inquire into the conduct of any department, office, officer, or employee of the City and to make investigations as to any affair of the City, and for that purpose may subpoena witnesses, administer oaths, and compel the giving of testimony and the production of books, papers, records, accounts, and other evidence. Council shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena, or to produce such books, papers, records, accounts, or other evidence, and shall have power to punish any such contempt in the manner provided by ordinance.

SEC. 125. - PRIOR AGREEMENTS, CONTRACTS, LEGISLATION.

All contracts and agreements entered into by the City or for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect. Public improvements for which legislative steps shall have been taken under general laws at the time this Section takes effect may be carried to completion in

accordance with such laws, or with the provisions of this Charter, as may in each case be determined. All ordinances and resolutions in force and effect at the time this section takes effect, not inconsistent with the provisions of this Charter, shall continue in force and effect until amended or repealed.

SEC. 126. - AUTHENTICATION OF CHARTER.

The City shall maintain an official copy of the Charter and any amendments. The official copy may be maintained electronically. Copies thereof certified to be such over the signature of the Clerk of Council and impressed with the seal of the City of Delaware shall be accepted as prima-facie evidence of the official text of said Charter in all courts and in all instances where copies may be required by law.

(Amended 11-6-84; Ord. 16-45. Passed 7-11-16, Approved 11-8-16)

SEC. 127. - GENDER.

The City Attorney is authorized and directed to amend the Charter to replace gender specific language with inclusive language.

(Amended 11-3-92)

ARTICLE XXIV. - AMENDMENTS TO THE CHARTER

SEC. 128. - AMENDMENT PROCEDURE; REVIEW; CONFLICTS.

- (a) Submission. Any provisions of this Charter may be amended by submission to the electors of the Municipality as provided in Article XVIII, Section 9 of the Ohio Constitution.
- (b) Review. At the first meeting of the Council in January 1984 and every eight years thereafter, Council shall appoint a Commission of nine electors of the Municipality. It shall be the duty of the Commission to review the existing Charter and make such recommendations as it may see fit for revision. The Commission shall submit its report to Council not later than 45 days prior to the date required to certify for the November election of the same year. Thereupon, the Council may take such action as it deems warranted with respect to such recommendations.
- (c) Conflicting Amendments. In the event two conflicting amendments to the Charter are approved at the same election by a majority of the total number of votes cast, the one receiving the highest number of affirmative votes shall be the amendment to the Charter.

(Amended 11-6-84)

ARTICLE XXV. - EFFECT OF PARTIAL INVALIDITY

SEC. 129. - EFFECT OF INVALIDITY.

A determination that any article, section, or part of any article or section, of this Charter is invalid shall not invalidate or impair the force or effect of any other part thereof, except to the extent that such other part is wholly dependent for its operation upon the part declared invalid.

(Amended 11-4-75)

CHARTER COMPARATIVE TABLE

This table shows the location of the sections of the basic Charter and any amendments thereto.

Ordinance Number	Date	Section	Section this Charter
<u>16-45</u>	7-11-16	1	<u>4A, 5</u>
			<u>7, 8</u>
			<u>11—17</u>
			<u>21, 26</u>
			<u>45—47</u>
			<u>50,66</u>
		Rpld	<u>67</u>
			<u>70, 71</u>
			<u>74—77</u>
			<u>83—86</u>
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			<u>101, 102</u>
			<u>104, 107</u>
		Rpld	<u>109</u>
			<u>110, 113</u>
			<u>114, 118</u>

		<u>119,</u> <u>126</u>
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