

Agenda

Shady Cove Charter Revision Committee Work Session

Shady Cove City Council Chamber
22451 Highway 62, Shady Cove, Oregon
Tuesday, July 16, 2019
1:00 p.m.

I. Call to Order

A. Roll Call

1. This meeting is being digitally recorded.
2. Public may comment on agenda items – Public must state name, address and standing to discuss an issue. Issues must have a city-wide impact and not be personal issues.

II. Work Session

A. City Charter (pg. 2-14)

B. Model Charter Code (pg. 15-35)

III. Public Comment on Non-Agenda Items

IV. Adjournment

Print

Shady Cove, OR Code of Ordinances

CITY CHARTER OF SHADY COVE, JACKSON COUNTY, OREGON

Section

Preamble

Chapter I. Names and Boundaries

Section 1. Title of Charter

Section 2. Name of City

Section 3. Boundaries

Chapter II. Powers

Section 4. Powers of the City

Section 5. Construction of Powers

Section 6. Distribution of Powers

Chapter III. Form of Government

Section 7. Council

Section 8. Councilors

Section 9. Mayor

Section 10. Terms of Office

Section 11. Appointive Office

Chapter IV. Council

Section 12. Rules

Section 13. Meetings

Section 14. Quorum

Section 15. Record of Proceedings

Section 16. Proceedings to Be Public

Section 17. Mayor's Function at Council Meetings

Section 18. President of the Council

Section 19. Vote Required

Section 20. Vacancies

Section 21. Filling Vacancies

Chapter V. Powers and Duties of Officers

Section 22. Mayor and Council

Section 23. City Administrator

Section 24. Municipal Court and Judge

Chapter VI. Personnel

Section 25. Qualifications

Section 26. Compensation

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Section 29. Nominations

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PREAMBLE

We, the people of the City of Shady Cove, Oregon, in order to avail ourselves of self-determination in municipal affairs to the fullest extent now or hereafter possible under the constitutions and laws of the United States and the state of Oregon, enact this charter to confer upon the City the following powers, subject it to the following restrictions, prescribe for it the following procedures and governmental structure, and repeal all previous charter provisions of the City.

CHAPTER I. NAMES AND BOUNDARIES

SECTION 1. TITLE OF CHARTER.

This charter may be referred to as the 1998 Shady Cove Charter.

SECTION 2. NAME OF CITY.

The city of Shady Cove, Oregon, continues under this charter to be a municipal corporation with the name City of Shady Cove.

SECTION 3. BOUNDARIES.

The city includes all territory within its boundaries as they now exist or hereafter are modified pursuant to state law. The custodian of the city's records shall keep an accurate, current description of the boundaries and make a copy of it available for public inspection in the city during regular city office hours.

CHAPTER II. POWERS

SECTION 4. POWERS OF THE CITY.

The city has all powers that the constitutions, statutes, and common law of the United States and of the state now or hereafter expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.

SECTION 5. CONSTRUCTION OF POWERS.

In this charter, no specification of a power is exclusive or restricts authority that the city would have if the power were not specified. The charter shall be liberally construed, so that the city may exercise fully all its powers possible under this charter and under United States and Oregon law. All powers are continuing unless a specific grant of power clearly indicates the contrary, included but not limited to the city home rule provisions of the Oregon Constitution.

SECTION 6. DISTRIBUTION OF POWERS.

Except as this charter prescribes otherwise and as the Oregon Constitution reserves municipal legislative power to the voters of the city, all powers of the city are vested in the council.

CHAPTER III. FORM OF GOVERNMENT

SECTION 7. COUNCIL.

The council consists of a mayor and four councilors nominated and elected from the city at large, or, in case of one or more vacancies in the council, the council members who are still in office shall constitute the council.

SECTION 8. COUNCILORS.

The term of office of a councilor in office when this charter is adopted is the term of office for which the councilor has been elected before adoption of the charter. Two councilors shall be elected for a four-year term at the time of the adoption of this charter. At each general election after the adoption, two councilors shall be elected, each for a four-year term.

SECTION 9. MAYOR.

The term of office of the Mayor in office when this charter is adopted continues until the beginning of the first odd-numbered year after that time. A Mayor will be elected for a two-year term at the time this charter is adopted. At each general election, a mayor shall be elected for a two-year term.

SECTION 10. TERMS OF OFFICE.

The term of office of an elective officer who is elected at a general election begins at the first council meeting of the new year immediately after the election.

SECTION 11. APPOINTIVE OFFICE.

A majority of the council may appoint and may remove a city administrator. The majority may:

1) Create, abolish, and combine additional appointive offices.

2) Except as the majority prescribes otherwise, fill such offices by appointment and vacate them by removal.

3) Appointees to standing committees may serve on more than one (1) standing committee. Definition of Standing Committee is defined as Planning Commission and Budget Committee.

CHAPTER IV. COUNCIL

SECTION 12. RULES.

The council shall, by resolution, prescribe rules to govern its meetings and proceedings.

SECTION 13. MEETINGS.

The council shall meet in the city regularly at least once a month at a time and place designated by council rules, and may meet at other times in accordance with its rules. The Mayor upon his own motion may, or at the request of three councilors shall, by giving notice thereto to all members of the council then in the city, call a special meeting of the council.

SECTION 14. QUORUM.

A majority of members of the council shall constitute a quorum for its business, but a smaller number may meet and compel the attendance of absent members in a manner provided by Council rules.

SECTION 15. RECORD OF PROCEEDINGS.

A record of council proceedings shall be kept and authenticated in a manner prescribed by the council. The yes or no upon any question before the council shall be taken, and a record of the vote reflected in the record. The same record of votes shall be added to all ordinances and resolutions by individual names of the members.

SECTION 16. PROCEEDINGS TO BE PUBLIC.

No action by the council shall have legal affect unless the motion for the action and the vote by which it is disposed of takes place at proceedings open to the public, and all within the provisions of the Oregon Open Meetings Law.

SECTION 17. MAYOR'S FUNCTION AT COUNCIL MEETINGS.

The Mayor shall be chairperson of the council and preside over its deliberations. The Mayor shall have a vote on all questions before the council. The Mayor shall have authority to preserve order, enforce the rules of the council and determine the order of business under the rules.

SECTION 18. PRESIDENT OF THE COUNCIL.

At its first meeting of each odd-numbered year, the council shall elect a President from its membership. In the Mayor's absence from a council meeting, the President shall preside over said meeting(s), and shall have all power of the Mayor as set forth as Section 17 of this Charter. Whenever the Mayor is unable to perform the functions of the office, the President shall act as Mayor.

SECTION 19. VOTE REQUIRED.

The expressed concurrence of a majority of the council members present and voting and constituting a quorum is necessary to decide a question before the council.

SECTION 20. VACANCIES.

The office of a member of the council becomes vacant:

- (1) Upon the incumbent's:
 - (a) Death
 - (b) Adjudicated incompetence, or
 - (c) Recall from the office.
- (2) Upon declaration by the council of the vacancy in case of the incumbent's:
 - (a) Failure, following election or appointment to the office, to qualify as specified in Section 25, for the office within ten days after the time for his/her term of office to begin,
 - (b) Unexplained absence from all meetings of the council within a 45-day period.
 - (c) Ceasing to reside in the city.
 - (d) Ceasing to be a qualified elector under state law.
 - (e) Conviction of a public offense punishable by loss of liberty.
 - (f) Resignation from the office.

SECTION 21. FILLING VACANCIES.

In the event of vacancy in the council, the remaining council members may appoint a member to serve until the next available election date, at which time the position will be filled by election for the balance of the unexpired term.

CHAPTER V. POWERS AND DUTIES OF OFFICERS

SECTION 22. MAYOR AND COUNCIL.

The Mayor and council shall appoint:

- (1) Members of committees and commissions established by council, and
- (2) Other persons required by the council to act in an advisory capacity to the council or its appointed committees and commissions.
- (3) The Mayor shall sign all approved records of proceedings of the council, and countersign all orders of the treasury.
- (4) The Mayor shall have no veto power and shall sign all Ordinances and Resolutions passed by the council within seven (7) working days after their passage. After the council approves a bond of a city officer, or a bond for a license, contract or proposal, the Mayor shall endorse the bond.

SECTION 23. CITY ADMINISTRATOR.

- (1) The city Administrator is the administrative head of the city government
- (2) A majority of the council shall appoint and may remove the Administrator. The appointment shall be without regard to political considerations and solely on the basis of administrative qualifications.
- (3) The Administrator need not reside in the city.
- (4) Upon accepting the appointment, the Administrator shall furnish the city a bond in an amount and a surety approved by the council. The city shall pay the bond premium.
- (5) The Administrator shall:
 - (a) Attend all council meetings unless excused by the council or Mayor;
 - (b) Keep the council advised of the affairs and needs of the city;
 - (c) See that the provisions of all ordinances are administered to the satisfaction of the council;
 - (d) See that all terms of franchises, leases, contracts, permits, and privileges granted by the city are fulfilled;

(e) Appoint, discipline and remove appointive personnel, except appointees of the Mayor or council;

(f) Supervise and control the Administrator's appointees in their service to the city;

(g) Organize and reorganize the departmental structure of city government;

(h) Prepare and transmit to the council an annual city budget;

(i) Supervise city contracts;

(j) Supervise operation of all city-owned public utilities and property; and

(k) Perform other duties as the council prescribes and consistent with this charter.

(6) The Administrator may not control:

(a) The council;

(b) The municipal Judge in the Judge's judicial functions; or,

(c) Except as the council authorizes, appointive personnel of the city whom the Administrator does not appoint.

(7) The Administrator and other personnel whom the council designates may sit with the council but may not vote on questions before it. The Administrator may take part in all council discussions.

(8) When the Administrator is absent from the city or disabled from acting as Administrator, or when the office of Administrator becomes vacant, the council shall appoint a manager pro tem, who has the powers and duties of Administrator, except that the Administrator pro tem may appoint or remove personnel only with approval of the council.

(9) Except in council meetings, and/or executive sessions, neither the Mayor nor any council member may directly or indirectly, by suggestion or otherwise, attempt to influence the Administrator or a candidate for the office of Administrator in the appointment, discipline, or removal of personnel or in decisions regarding city property or contracts. A violator of this prohibition may be removed from office by a court of competent jurisdiction. In council meeting, members of the council may discuss with, or suggest to, the Administrator anything pertinent to city affairs.

SECTION 24. MUNICIPAL COURT AND JUDGE.

(1) If the council creates the office of municipal judge and fills it by appointment, the appointee shall hold, within the city at a place and times that the council specifies, a court known as the Municipal Court for the City of Shady Cove, Jackson County, Oregon.

(2) Except as this charter or city ordinance prescribes to the contrary, proceedings of the court shall conform to general laws of this state governing justices of the peace and justice courts.

(3) All area within the city, and to the extent provided by state law, area outside the city is within the territorial jurisdiction of the court.

(4) The Municipal Court has original jurisdiction over every offense that an ordinance of the city makes punishable. The Court may enforce forfeitures and other penalties that such ordinances prescribe.

(5) The Municipal Judge may:

(a) Render judgments and, for enforcing them, impose sanctions on persons and property within the Court's territorial jurisdiction;

(b) Order the arrest of anyone accused of an offense against the city;

(c) Commit to jail, or admit to bail, anyone accused of such an offense;

(d) Issue and compel obedience to subpoenas;

(e) Compel witnesses to appear and testify in the trial matters before the Court.

(f) Penalize contempt of Court;

(g) Issue process necessary to effectuate judgments and orders of the court;

(h) Issue search warrants; and

(i) Perform other judicial and quasi-judicial functions prescribed by Ordinance.

(6) The Municipal Judge shall transfer jury cases to the court of appropriate jurisdiction.

(7) The council may authorize the Municipal Judge to appoint Municipal Judges pro tem for terms of office set by the Judge or the council.

(8) Notwithstanding this section, the council may transfer some or all of the functions of the Municipal Court to an appropriate state court.

CHAPTER VI. PERSONNEL

SECTION 25. QUALIFICATIONS.

(1) An elective city officer shall be a qualified elector under the state constitution and shall have resided in the city during the twelve (12) months immediately before submitting petition, or appointment to the office. In this subsection "city" means area inside the city limits at the time of the election or appointment.

(2) No person may be a candidate at a single election for more than one elective city office.

(a) An elective officer may be employed in a city position that is substantially volunteer in nature.

(b) Except as subsection (1) of this section provided to the contrary, the council is the final judge of the election and qualifications of its members.

(c) The qualifications of appointive officers of the city are whatever the council prescribes or authorizes.

SECTION 26. COMPENSATION.

Neither the Mayor nor any councilor may receive compensation for service in that capacity. The council shall prescribe the compensation of city officers. The council may prescribe a plan for reimbursing city personnel, including Mayor and any councilor, for expenses that they incur in serving the city.

SECTION 27. OATH.

Before assuming city office, an officer shall take an oath or shall affirm the faithful performance of the duties of the office and support the constitution and laws of the United States, the state of Oregon, and the City of Shady Cove.

CHAPTER VII. ELECTIONS

SECTION 28. STATE LAW.

Except as this charter or a city ordinance prescribes to the contrary, a city election shall conform to state law applicable to the election.

SECTION 29. NOMINATIONS.

A qualified elector who shall have resided in the City during the twelve (12) months immediately preceding a nomination, may be nominated for an elective city positive. Nomination shall be by petition specifying the position sought in a form prescribed by the Council. Such petition shall be signed by not fewer than 20 electors. All elections shall conform to applicable state law.

SECTION 30. NON-PARTISAN ELECTIONS.

All elections under this charter shall be non-partisan.

SECTION 31. TIE VOTES.

In the event of a tie vote for candidates for an elective office, the office shall be declared vacant and set for election at the next available election date.

CHAPTER VII. ORDINANCES

SECTION 32. ORDAINING CLAUSES.

The ordaining clause of an ordinance shall read:

- (1) In case of adoption by the council alone, "The council of the City of Shady Cove ordains as follows:".
- (2) In case of adoption or ratification by the voters of the city, "The people of the City of Shady Cove ordain as follows:".

SECTION 33. ADOPTION BY COUNCIL.

(1) An ordinance shall be fully and distinctly read in open council meeting on two (2) different days before being adopted by the council. Except as subsection (2) of the section allows adoption at a single meeting and subsection (3) of this section allows reading by title only.

(2) The council may adopt an emergency ordinance at a single meeting by the express unanimous votes of all council members present, provided the ordinance is read first in full and then by title. Except as subsection (3) of this section allows reading by title only.

(3) A reading of an ordinance may be by title only if:

- (a) No council member present at the reading requests that the ordinance be read in full, or
- (b) At least 72 hours before the reading:
 - (i) A copy of the ordinance is provided for each council member,
 - (ii) Three (3) copies of the ordinance are available for public inspection in the office of the custodian of city records, and
 - (iii) Notice of their availability is given by written notice posted at the city hall and two (2) other public places in the city.

(4) An ordinance read by title only has no legal effect if it differs substantially from its terms as it was filed prior to the reading unless each section so differing is read fully and distinctly in open council meeting before the council adopts the ordinance.

(5) Upon the adoption of an ordinance, the ayes and nays of the council members shall be entered in the record of council proceedings.

(6) After adoption of an ordinance, the custodian of city records shall endorse it with its date of adoption and the endorser's name and title of office.

SECTION 34. EFFECTIVE DATE.

A non-emergency ordinance takes effect on the thirtieth day after its adoption or on a later day the ordinance prescribes. An ordinance adopted to meet an emergency may take effect as soon as adopted.

CHAPTER IX. PUBLIC IMPROVEMENTS

SECTION 35. IMPROVEMENTS.

The procedure for making, altering, vacating or abandoning a public improvement shall be governed by general ordinance, or, to the extent not so governed, by the applicable general laws of the State of Oregon. Action in any proposed public improvement, except an improvement unanimously declared by the council to be needed at once because of an emergency, which shall state the exact harm to the City if the improvement is not made, shall be suspended for six months upon a remonstrance thereto by the owners of two thirds of the property to be specially assessed therefor. For the purpose of this section, "owner" shall mean the record holder of legal title to the land, except that if there is a purchaser of the land according to a recorded land sale contract or according to a verified writing by the record holder of legal title to the land filed with the City Recorder, the said purchaser shall be deemed the owner.

SECTION 36. SPECIAL ASSESSMENTS.

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

CHAPTER X. MISCELLANEOUS PROVISIONS

SECTION 37. BIDS.

Bidding procedures shall follow Oregon state law.

SECTION 38. DEBT.

The city's indebtedness may not exceed debt limits imposed by state law. A city officer or employee who creates or officially approves indebtedness in excess of this limitation is jointly and severally liable for the excess.

SECTION 39. CONTINUATION OF ORDINANCES.

Insofar as consistent with this charter, and until amended or repealed, all ordinances in force when the charter takes effect retain the effect they have at that time.

SECTION 40. REPEAL.

All charter provisions enacted before this charter takes effect are hereby repealed.

SECTION 41. SEVERABILITY.

The terms of this charter are severable. If a part of the charter is held invalid, that invalidity does not affect another part of the charter, except as the logical relation between the two parts requires.

SECTION 42. TIME OF EFFECT.

This charter takes effect upon the date of having been certified by the voters.



MODEL

LEAGUE OF OREGON CITIES

Model Charter for Oregon Cities

**SEVENTH EDITION
JANUARY 2018**

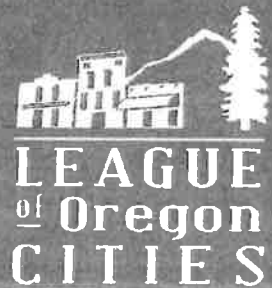


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FOREWORD

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

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

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

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

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

PREAMBLE

We, the voters of _____, Oregon exercise our power to the fullest extent possible under the Oregon Constitution and laws of the state, and enact this Home Rule Charter.²

Section I NAMES AND BOUNDARIES

Section 1.1. Titles. This charter may be referred to as the 20 _____ Charter.³

Section 1.2. Names. The City of _____, Oregon, continues⁴ as a municipal corporation with the name City of _____.⁵

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

Section II POWERS

Section 2.1. Powers. The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant⁶ or allow⁷ the city, as fully as though this charter specifically enumerated each of those powers.⁸

Section 2.2. Construction. The charter will be liberally construed⁹ so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.

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

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

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

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

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

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

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

⁸ Appendix A discusses the legal basis for general grants of authority.

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

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

Section III COUNCIL

Section 3.1. Council. The council consists of a mayor¹² and six councilors¹³ nominated and elected from the city at large.¹⁴

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

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

Section 3.3. Council President. At its first meeting each year, the council must elect a president

¹⁰ Article IV, section 1, subsection (5) of the Oregon Constitution.

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

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

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

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

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

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

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

from its membership. The president presides in the absence of the mayor and acts as mayor when the mayor is unable to perform duties.

Section 3.4. Rules. The council must by resolution adopt rules to govern its meetings.^{18, 19}

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

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

Section 3.7. Vote Required. The express²³ approval of a majority of a quorum of the council is necessary for any council decision,²⁴ except when this charter requires approval by a majority of the council.²⁵

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

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

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

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

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

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

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

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

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

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

Section IV LEGISLATIVE AUTHORITY²⁷

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

Section 4.2. Ordinance Adoption.

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

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

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

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

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

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

Section V ADMINISTRATIVE AUTHORITY³¹

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

Section 5.2. Resolution Approval.

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

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

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

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

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

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

Section V QUASI-JUDICIAL AUTHORITY³⁵

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

Section 6.2. Order Approval.

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

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

Section VII ELECTIONS

Section 7.1. Councilors. The term of a councilor in office when this charter is adopted is the term for which the councilor was elected.³⁷ At each general election after the adoption, three councilors will be elected³⁸ for four-year terms.³⁹

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

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

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

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

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

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

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

Section 7.4. Qualifications.

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

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

Section 7.6. Terms. The term of an officer elected at a general election begins at the first council meeting of the year immediately after the election, and continues until the successor qualifies and assumes the office.⁴⁵

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

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

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

⁴² Courts have consistently invalidated residency qualifications of more than 12 months.

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

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

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

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

- a) Upon the incumbent's:
 - 1) Death;
 - 2) Adjudicated incompetence;⁴⁶ or
 - 3) Recall from the office.⁴⁷

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

Section 7.9. Filling Vacancies. A mayor or councilor vacancy will be filled by appointment by a majority of the remaining council members.⁴⁹ The appointee's term of office runs from appointment until expiration of the term of office of the last person elected to that office. If a disability prevents a council member from attending council meetings or a member is absent from the city, a majority of the council may appoint a councilor pro tem.⁵⁰

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

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

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

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

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

Section VIII APPOINTIVE OFFICERS

Section 8.1. City Manager.

- a) The office of city manager is established as the administrative head of the city government.⁵¹ The city manager is responsible to the mayor and council for the proper administration of all city business. The city manager will assist the mayor and council in the development of city policies, and carry out policies established by ordinances and resolutions.⁵²
- b) A majority of the council must appoint and may remove the manager. The appointment must be made without regard to political considerations and solely on the basis of education and experience in competencies and practices of local government management.⁵³
- c) The manager need not reside in the city.⁵⁴
- d) The manager may be appointed for a definite or an indefinite term, and may be removed at any time by a majority of the council. The council must fill the office by appointment as soon as practicable after the vacancy occurs.
- e) The manager must:
 - 1) Attend all council meetings unless excused by the mayor or council;
 - 2) Make reports and recommendations to the mayor and council about the needs of the city;
 - 3) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits and other city decisions;
 - 4) Appoint, supervise and remove city employees;⁵⁵
 - 5) Organize city departments and administrative structure;
 - 6) Prepare and administer the annual city budget;

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

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

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

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

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

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

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

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

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

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

⁵⁹ This does not affect the ability of a council member to obtain information from the manager or other city employees. Council members also have at least as much right to public records as other members of the public under the Oregon Public Records Law, ORS 192.410 to 192.505.

⁶⁰ If a city attorney office is established by the charter, it is independent of the wishes of the council or manager. This language places office employees under the supervision of the attorney rather than the manager. The charter could establish the office and provide for appointment by the manager. If not created by charter, the city attorney office may

Section 8.3. Municipal Court and Judge.

- a) A majority of the council may appoint and remove a municipal judge. A municipal judge will hold court in the city at such place as the council directs. The court will be known as the Municipal Court.
- b) All proceedings of this court will conform to state laws governing justices of the peace and justice courts.
- c) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court.
- d) The municipal court has jurisdiction over every offense created by city ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court also has jurisdiction under state law unless limited by city ordinance.⁶¹
- e) The municipal judge may:
 - 1) Render judgments and impose sanctions on persons and property;
 - 2) Order the arrest of anyone accused of an offense against the city;
 - 3) Commit to jail or admit to bail anyone accused of a city offense;
 - 4) Issue and compel obedience to subpoenas;
 - 5) Compel witnesses to appear and testify and jurors to serve for trials before the court;
 - 6) Penalize contempt of court;
 - 7) Issue processes necessary to enforce judgments and orders of the court;
 - 8) Issue search warrants; and
 - 9) Perform other judicial and quasi-judicial functions assigned by ordinance.
- f) The council may appoint and may remove municipal judges pro tem.
- g) The council may transfer some or all of the functions of the municipal court to an appropriate state court.⁶²

be created by ordinance. The ordinance may provide for city attorney appointment by the council or manager. Attorney duties may be assigned by ordinance and contract.

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

⁶² ORS 51.035.

Section IX PERSONNEL

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

Section 9.2. Merit Systems. The council⁶⁴ by resolution will determine the rules governing recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees based on merit and fitness.⁶⁵

Section X PUBLIC IMPROVEMENTS

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

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

Section XI MISCELLANEOUS PROVISIONS

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

Section 11.2. Ordinance Continuation. All ordinances consistent with this charter in force when it takes effect remain in effect until amended or repealed.

Section 11.3. Repeal. All charter provisions adopted before this charter takes effect are repealed.⁶⁸

Section 11.4. Severability. The terms of this charter are severable. If any provision is held invalid

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

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

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

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

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

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

by a court, the invalidity does not affect any other part of the charter.

Section 11.5. Time of Effect. This charter takes effect _____, 20__.

APPENDIX A

GENERAL GRANTS OF POWER

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

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

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

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

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

Constitutional Grants in General Terms

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

Specific Power Derived from General Grants

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

- 1) To regulate amusement devices.^c

^a Or. Const. art. XI, sec. 2.

^b Or. Const. art. IV, sec. 1a (1906), sec. 1(5) (1968).

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

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

^d *Paget v. City of Pendleton*, 219 Or 253 346 P2d 1111 (1959).

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

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

^g *Davidson Baking Co. v. Jenkins*, 216 Or 51, 337 P2d 352 (1959).

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

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

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

^k Cf. *Leathers v. City of Burns*, 251 Or 206, 444 P2d 1010 (1968).

^l *City of East Portland v. County of Multnomah*, 6 Or 62, 64 (1876).

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

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

^o *Paget v. City of Pendleton*, 219 Or 253, 346 P2d 1111 (1959).

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

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

APPENDIX B

PROVISIONS NOT INCLUDED IN THE MODEL CHARTER

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

Annexation Procedure

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

Elections

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

Subjects Covered by State Law

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

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

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

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

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

Debt limitations.....	ORS 223.295
Ethics.....	ORS Chapter 244
Public meetings and records.....	ORS 192.410 to 192.710
Land use planning and regulation.....	ORS Chapters 92, 197, 197A and 227
Street vacation.....	ORS 271.080 to 271.230
Condemnation.....	ORS Chapter 35; 223.005 to 223.105, 226.310 to 226.380 and 227.300.
Collective bargaining.....	ORS 243.650 to 243.782
Public Employee’s Retirement System.....	ORS Chapter 238 and 238A

Other Subjects

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

Municipal Judge as Ex Officio Justice of the Peace

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

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

⁸⁹ 123 Or 1, 260 P 1004 (1927).