

# Shady Cove City Charter



Prepared for the City of Shady Cove, Oregon

Shady Cove Charter Revision Committee

## TABLE OF CONTENTS

<b>Foreword</b> .....	<b>1</b>
<b>Preamble</b> .....	<b>1</b>
<b>Section I – NAMES AND BOUNDARIES</b> .....	<b>1</b>
Section 1.1. Title.....	1
Section 1.2. Name.....	1
Section 1.3. Boundaries .....	1
<b>Section II – POWERS</b> .....	<b>1</b>
Section 2.1. Powers .....	1
Section 2.2. Construction.....	1
Section 2.3. Distribution .....	1
<b>Section III – COUNCIL</b> .....	<b>1</b>
Section 3.1. Council.....	2
Section 3.2. Mayor.....	2
Section 3.3. Council President.....	2
Section 3.4. Rules .....	2
Section 3.5. Meetings .....	2
Section 3.6. Quorum.....	2
Section 3.7. Vote Required.....	2
Section 3.8. Record.....	2
<b>Section IV – LEGISLATIVE AUTHORITY</b> .....	<b>2</b>
Section 4.1. Ordinances .....	2
Section 4.2. Ordinance Adoption.....	3
Section 4.3. Effective Date of Ordinances.....	3
<b>Section V – ADMINISTRATIVE AUTHORITY</b> .....	<b>3</b>
Section 5.1. Resolutions .....	3
Section 5.2. Resolution Approval .....	3
Section 5.3. Effective Date of Resolutions .....	4
<b>Section VI – QUASI-JUDICIAL AUTHORITY</b> .....	<b>4</b>
Section 6.1. Orders .....	4
Section 6.2. Order Approval.....	4
Section 6.3. Effective Date of Orders .....	4
<b>Section VII – ELECTIONS</b> .....	<b>4</b>
Section 7.1. Councilors.....	4
Section 7.2. Mayor.....	4
Section 7.3. State Law.....	4
Section 7.4. Qualifications.....	4
Section 7.5. Nominations.....	5
Section 7.6. Terms.....	5
Section 7.7. Oath .....	5
Section 7.8. Vacancies.....	5
Section 7.9. Filling Vacancies .....	6
Section 7.10. Tie Votes.....	6
<b>Section VIII – APPOINTIVE OFFICERS</b> .....	<b>6</b>

Section 8.1. City Manager .....	6
Section 8.2. City Attorney .....	7
Section 8.3. Municipal Court and Judge.....	7
<b>Section IX – PERSONNEL.....</b>	<b>8</b>
Section 9.1. Compensation .....	8
Section 9.2. Merit Systems .....	8
<b>Section X – PUBLIC IMPROVEMENTS.....</b>	<b>9</b>
Section 10.1. Procedure .....	9
Section 10.2. Special Assessments .....	9
<b>Section XI – MISCELLANEOUS PROVISIONS.....</b>	<b>9</b>
Section 11.1. Debt .....	9
Section 11.2. Ordinance Continuation.....	9
Section 11.3. Repeal .....	9
Section 11.4. Severability .....	9
Section 11.5. <del>Time of Effect</del> Bids.....	9
Section 11.6. Time of Effect.....	9
<b>Appendix A – GENERAL GRANTS OF POWER.....</b>	<b>15</b>
<b>Appendix B – PROVISIONS NOT INCLUDED IN THE MODEL CHARTER.....</b>	<b>17</b>
Foot Notes.....	10

## PREAMBLE

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

### Section I NAMES AND BOUNDARIES

Section 1.1. Titles. This charter may be referred to as the 2020 Shady Cove Charter.<sup>3</sup>

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

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

### Section II POWERS

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

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

Section 2.3. Distribution. The Oregon Constitution reserves initiative and referendum powers as to all municipal legislation to City voters.<sup>10</sup> This charter vests all other City powers in the Council except as the charter otherwise provides. The Council has legislative, administrative and quasi-judicial authority. The Council exercises legislative authority by ordinance, administrative authority by resolution, and quasi-judicial authority by order. The Council may not delegate its authority to adopt ordinances.<sup>11</sup>

### Section III COUNCIL

Section 3.1. Council. The Council consists of a mayor<sup>12</sup> and ~~six~~ four Councilors<sup>13</sup> nominated and elected from the City at large, or in case of one or more vacancies in the Council, members who are still in office shall constitute the Council.<sup>14</sup>

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

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

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

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

Section 3.5. Meetings. The Council must meet at least once a month at a time and place designated by its rules and may meet at other times in accordance with the rules and laws of the state of Oregon. The Mayor upon his/her own motion may, or at the request of three Councilors shall, by giving notice thereto all members of the Council than in the City, call a special meeting of the Council.

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

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

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

Section 3.9. 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 provision of the Oregon Open Meetings Law.

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

Section 4.1. Ordinances. The Council will exercise its legislative authority by adopting ordinances. The enacting clause for all ordinances must state "The City of Shady Cove ordains as follows:".

a) In case of adoption or ratification by the voters of the City, the enacting clause of the ordinance must state: “The people of the City of Shady Cove ordain as follows:”.

#### Section 4.2. Ordinance Adoption.

- a) Except as authorized by subsection (b), adoption of an ordinance requires approval by a majority of the Council at two meetings.<sup>28</sup>
- b) The Council may adopt an ordinance at a single meeting by the unanimous approval of at least a quorum of the Council,<sup>29</sup> provided the proposed ordinance is available in writing to the public at least ~~one week~~ 72 hours before the meeting.
- c) Any substantive amendment to a proposed ordinance must be read aloud or made available in writing to the public before the Council adopts the ordinance at that meeting.
- d) After the adoption of an ordinance, the vote of each member must be entered into the Council minutes.
- e) After adoption of an ordinance, the City custodian of records must endorse it with the date of adoption and the custodian’s name and title.

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

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

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

#### Section 5.2. Resolution Approval.

- a) Approval of a resolution or any other Council administrative decision requires approval by the Council at one meeting.<sup>33</sup>
  - b) Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the Council adopts the resolution at that meeting.
  - c) After approval of a resolution or other administrative decision, the vote of each member must be entered into the Council minutes.
  - d) After approval of a resolution, the City custodian of records must endorse it with the date of approval and the custodian’s name and title.
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Section 5.3. Effective Date of Resolutions. Resolutions and other administrative decisions take effect on the date of approval, or on a later day provided in the resolution.<sup>34</sup>

## **Section VI QUASI-JUDICIAL AUTHORITY<sup>35</sup>**

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

Section 6.2. Order Approval.

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

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

## **Section VII ELECTIONS**

Section 7.1. Councilors. The term of a Councilor in office when this charter is adopted is the term for which the Councilor was elected.<sup>37</sup> At each general election after the adoption, ~~three~~ two Councilors will be elected<sup>38</sup> for four-year terms.<sup>39</sup>

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

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

Section 7.4. Qualifications.

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

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. 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.<sup>44</sup>

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

Section 7.7. Oath. The Mayor and each Councilor must swear or affirm to faithfully perform the duties of the office and support the constitutions and laws of the United States, ~~and~~ Oregon and City of Shady Cove.

Section 7.8. Vacancies. The Mayor or a Council office becomes vacant:

- a) Upon the incumbent's:
    - 1) Death;
    - 2) Adjudicated incompetence;<sup>46</sup> or
    - 3) Recall from the office.<sup>47</sup>
  - b) Upon declaration by the Council after the incumbent's:
    - 1) Failure to qualify for the office within 10 days of the time the term of office is to begin;
    - 2) Absence from the City for 30 days without Council ~~consent~~ notification, or from all Council meetings within a ~~60~~ 45-day period;
    - 3) Ceasing to reside in the city;<sup>48</sup>
    - 4) Ceasing to be a qualified elector under state law;
    - 5) Conviction of a misdemeanor or felony crime;
    - 6) Resignation from the office; or
    - 7) Removal under Section 8.1(i).
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Section 7.9. Filling Vacancies. A Mayor or Councilor vacancy will be filled by appointment by a majority of the remaining council members.<sup>49</sup> The appointee's term of office runs from appointment until expiration of the term of office of the last person elected to that office. If a disability prevents a Council member from attending Council meetings or a member is absent from the City, a majority of the Council may appoint a Councilor pro tem.<sup>50</sup>

Section 7.10. 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 general election date.

## **Section VIII APPOINTIVE OFFICERS**

### Section 8.1. City ~~Manager~~ Administrator.

- a) The office of City ~~manager~~ **A**dministrator is established as the administrative head of the City government.<sup>51</sup> The City ~~manager~~ **A**dministrator is responsible to the Mayor and Council for the proper administration of all City business. The City ~~manager~~ **A**dministrator will assist the Mayor and Council in the development of City policies, and carry out policies established by ordinances and resolutions.<sup>52</sup>
  - b) A majority of the Council must appoint and may remove the ~~City~~ **A**dministrator. The appointment must be made without regard to political considerations and solely on the basis of education and experience in competencies and practices of local government management.<sup>53</sup>
  - c) The ~~manager~~ **City Administrator** need not reside in the City.<sup>54</sup>
  - d) The ~~manager~~ **City A**dministrator 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) 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.
  - f) The ~~manager~~ **City Administrator** 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;<sup>55</sup>
    - 5) Organize city departments and administrative structure;
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- 6) Prepare and administer the annual City budget;
  - 7) Administer city utilities and property;
  - 8) Encourage and support regional and intergovernmental cooperation;
  - 9) Promote cooperation among the Council, staff and citizens in developing City policies and building a sense of community; <sup>56</sup>
  - 10) Perform other duties as directed by the Council; and
  - 11) Delegate duties, but remain responsible for actions of all subordinates.
- g) The ~~manger~~ City Administrator has no authority over the Council or over the judicial functions of the municipal judge. <sup>57</sup>
  - h) The ~~manager~~ City Administrator and other employees designated by the Council may sit at Council meetings but have no vote. The ~~manager~~ City Administrator may take part in all Council discussions.
  - i) When the ~~manger~~ City Administrator is temporarily disabled from acting as ~~manager~~ City Administrator or when the office of the ~~manager~~ City Administrator becomes vacant, the Council must appoint a ~~manager~~ Administrator pro tem. The ~~manager~~ Administrator pro tem has the authority and duties of ~~manger~~ City Administrator, except that a pro tem ~~manager~~ Administrator may appoint or remove employees only with Council approval.
  - j) No Council member may directly or indirectly attempt to coerce the ~~manager~~ City Administrator or a candidate for the office of ~~manager~~ City Administrator in the appointment or removal of any City employee, or in administrative decisions regarding City property or contracts. <sup>58</sup> Violation of this prohibition is grounds for removal from office by a majority of the Council after a public hearing. In Council meetings, Councilors may discuss or suggest anything with the ~~manager~~ City Administrator relating to City business. <sup>59</sup>

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

Section 8.3. Municipal Court and Judge.

- a) A majority of the Council may appoint and remove a municipal judge. A municipal judge will hold court in the City at such place as the Council directs. The court will be known as the Municipal Court.
  - b) All proceedings of this court will conform to state laws governing justices of the peace and justice courts.
  - c) All areas within the City and areas outside the City as permitted by state law are within the
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territorial jurisdiction of the court.

- d) The municipal court has jurisdiction over every offense created by City ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court also has jurisdiction under state law unless limited by City ordinance.<sup>61</sup>
- e) The municipal judge may:
  - 1) Render judgments and impose sanctions on persons and property;
  - 2) Order the arrest of anyone accused of an offense against the City;
  - 3) Commit to jail or admit to bail anyone accused of a City offense;
  - 4) Issue and compel obedience to subpoenas;
  - 5) Compel witnesses to appear and testify and jurors to serve for trials before the court;
  - 6) Penalize contempt of court;
  - 7) Issue processes necessary to enforce judgments and orders of the court;
  - 8) Issue search warrants; and
  - 9) Perform other judicial and quasi-judicial functions assigned by ordinance.
- f) The Council may appoint and may remove municipal judges pro tem.
- g) The Council may transfer some or all of the functions of the municipal court to an appropriate state court.<sup>62</sup>

## **Section IX PERSONNEL**

Section 9.1. Compensation. ~~The council must authorize the compensation of city officers and employees as part of its approval of the annual city budget.~~ Neither the Mayor nor any Councilor may receive compensation for service in their capacity. The Council shall prescribe the compensation for all 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.<sup>63</sup>

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

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## Section X PUBLIC IMPROVEMENTS

Section 10.1. Procedure. ~~The council may by ordinance provide for procedures governing the making, altering, vacating, or abandoning of a public improvement.<sup>66</sup> A proposed public improvement may be suspended for six months upon remonstrance by owners of the real property to be specially assessed for the improvement. The number of owners necessary to suspend the action will be determined by ordinance.~~ 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 an emergency, shall be suspended for six months upon a remonstrance by the legal owner. Any action declared as an emergency must state the exact harm to the City if the improvement is not made.

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

## Section XI MISCELLANEOUS PROVISIONS

Section 11.1. Debt. City indebtedness may not exceed debt limits imposed by state law.<sup>67</sup> A charter amendment is not required to authorize City indebtedness. A City officer or employee who creates or officially approved indebtedness in excess of this limitation is jointly and severally liable for the excess.

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.<sup>68</sup>

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

Section 11.5. Bidding procedures shall follow the laws of the City of Shady Cove and Oregon State law.

Section 11.56. Time of Effect. This charter takes effect \_\_\_\_\_, 20\_\_\_\_\_.

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

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

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

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

<sup>6</sup> The city home rule amendments to the Oregon Constitution reserve powers to city voters. Oregon Constitution, Article XI, section 2 (1906, 1910). The Oregon Supreme Court has said that the amendments are a “continuous offer” of “all powers properly belonging to municipal government.” *Robertson v. City of Portland*, 77 Or 121, 127 (1915).

The offer is conditional. City voters may accept the offer by adopting charter terms. This general grant of power accepts the offer completely.

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

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

<sup>9</sup> This requires 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>26</sup> The Oregon Public Meetings Law, ORS 192.650, requires cities to provide for sound, video, digital recording or the taking of written minutes. This section provides an independent requirement for council records and authorizes the council to adopt requirements in addition to those of state law.<sup>27</sup> The most significant power granted to cities is the authority to adopt legislation. Legislation is local law that applies throughout a city. Legislative authority is properly exercised in the form of ordinances. City charters traditionally prescribe specific requirements for adoption of ordinances, and no provisions for the approval of resolutions (administrative) or orders (quasi-judicial). Only using ordinances for legislation and using other forms for non-legislative decisions makes clear which council actions are subject to referendum. Oregon Constitution, Article IV, section 1(5) gives voters initiative and referendum powers over “municipal legislation.”

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

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

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

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

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

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

<sup>34</sup> ORS 221.310(3) applies to cities of 2,000 or more. It provides that a resolution may take effect any time after passage by the city council. The resolution must state the resolution effective date in a separate section.<sup>35</sup> Quasi-judicial authority is normally exercised in the form of orders. Under this authority, the council holds hearings and is required to make decisions. The most common examples are land use matters and nuisance proceedings. City charters traditionally prescribe specific requirements for adoption of ordinances (legislative) and include no provisions for adoption of orders (quasi-judicial). This model suggests that charters specifically recognize council orders as the proper form for the exercise of quasi-judicial authority. Use of this form for non-legislative decisions helps make clear which council actions are subject to referendum. Oregon Constitution, Article IV, section 1(5) gives voters initiative and referendum powers over “municipal legislation,” but not municipal quasi-judicial decisions.

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

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

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

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

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

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

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

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

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

<sup>45</sup> These words allow for a successor to be appointed as well as elected, and require that the successor meet the necessary qualifications for the office at the time of election or appointment. Some charters have provisions limiting the number of terms or years that a citizen may serve in an elected office.<sup>46</sup> “Adjudicated incompetence” means inability or unfitness to manage one’s affairs because of mental condition determined in a court proceeding.

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

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

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

<sup>50</sup> A member’s disability under this section is usually temporary. If the disability is permanent, it often results in the

resignation of the disabled member. A permanent disability does not create a vacancy unless the member resigns. However, the council may appoint a pro tem councilor, and the appointment may continue until a successor to the disabled member is elected and takes office.<sup>51</sup> The city manager exercises the administrative authority delegated by the city charter and the city council. The manager and the council both exercise administrative authority. Only the council may exercise legislative authority.<sup>52</sup> This gives the manager a role in policy development consistent with the 8th edition of the NCL Model Charter (2011). It makes the manager responsible for carrying out city policy adopted by council resolution or ordinance.

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

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

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

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

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

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

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

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

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

<sup>62</sup> ORS 51.035.

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

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

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

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

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

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