

Home Rule

Charter Commission

(HRCC)

Reminder -

Please remember

to push your

microphone button

when speaking.

Thanks!

Table of Contents

TML Survey Section 1

AnalysisSection 2

Model CharterSection 3

HOME RULE CHARTER SURVEY

City: _____ Date: _____

Completed by: _____ E-mail: _____

Title: _____ Phone: _____

Form of Government

1. a) Council-Manager b) Mayor-Council c) Commission d) Other

Mayor

2. Is mayor member? a) Yes b) No c) n/a
 3. Selection of mayor a) Elected b) By council c) Other

Authority of Mayor

- | | | | | |
|-----|---------------------------------|--------|-------|--------|
| 4. | Appoints boards and commissions | a) Yes | b) No | c) n/a |
| 5. | --w/approval of council | a) Yes | b) No | c) n/a |
| 6. | Regular vote | a) Yes | b) No | c) n/a |
| 7. | Vote only in tie | a) Yes | b) No | c) n/a |
| 8. | No vote | a) Yes | b) No | c) n/a |
| 9. | Enumerated ceremonial duties | a) Yes | b) No | c) n/a |
| 10. | Martial law | a) Yes | b) No | c) n/a |
| 11. | Enumerated emergency powers | a) Yes | b) No | c) n/a |
| 12. | Appoint CAO | a) Yes | b) No | c) n/a |
| 13. | Appoint department heads | a) Yes | b) No | c) n/a |
| 14. | -- w/approval of council | a) Yes | b) No | c) n/a |
| 15. | Prepare budget | a) Yes | b) No | c) n/a |
| 16. | Mayor veto | a) Yes | b) No | c) n/a |

Council

- | | | | | |
|-----|---|----------|-----------------|----------|
| 17. | Total on council | _____ | | |
| 18. | Number of members for regular meeting quorum | _____ | | |
| 19. | Number of members for special meeting quorum | _____ | | |
| 20. | Number of votes for council to take action on <u>ordinary</u> matters | | | |
| | a) Majority of those present b) Majority of quorum c) Majority of total council | | | |
| 21. | Residency length requirement | a) Yes | b) No | c) n/a |
| 22. | If yes to previous question | a) 6 mo | b) 1 yr | c) 2 yrs |
| | | d) Other | e) Not specific | |
| 23. | Reside in district | a) Yes | b) No | c) n/a |
| 24. | Owner of property | a) Yes | b) No | c) n/a |
| 25. | Minimum age | _____ | | |
| 26. | Registered/qualified voter | a) Yes | b) No | c) n/a |
| 27. | Barred if tax delinquent | a) Yes | b) No | c) n/a |
| 28. | Other qualifications | a) Yes | b) No | c) n/a |

29. Missed meetings vacancy a) Yes b) No c) n/a
 30. Council votes to impeach a) Yes ____ # b) No c) n/a
 31. Council votes to override mayoral veto a) Yes ____ # b) No c) n/a

Elections

32. In some cities, a federal court or the U.S. Department of Justice has mandated a new way of electing city council members, BUT the charter has not been changed to reflect this new method. If your city council is NOT elected the way your charter currently reads, please check here _____.
33. Uniform election date to hold regular city election a) May b) November c) Other
34. Filling one vacancy a) Appointment b) Election c) Other
35. Filling two vacancies a) Appointment b) Election c) Other
36. Term limit applies a) Both b) Separately c) n/a
37. Terms staggered a) Yes b) No c) n/a
38. Elections by a) Majority b) Plurality
39. Name on ballot a) Fill out form b) Petition c) Other
40. If petition, number of names _____
41. Fee for name on ballot a) Yes \$ _____ b) No c) n/a

Election Turnout (Two most recent + most recent contested)

42. Date of most recent mayor/city council election _____ (MM/DD/YY)
43. Number voting in election _____
44. Total registered at time of election _____
45. Population at time of election _____
46. Contested? a) Yes b) No (See 53)
47. Date of next most recent mayor/city council election _____ (MM/DD/YY)
48. Number voting in election _____
49. Total registered at time of election _____
50. Population at time of election _____
51. Contested? a) Yes b) No (see 53)
52. Date of most recent contested mayor/city council election _____ (MM/DD/YY)
53. Number voting in election _____
54. Total registered at time of election _____
55. Population at time of election _____

Council Meetings

56. Required a) Weekly b) Twice/mo c) Once/mo d) Not specific
57. Actual a) Weekly b) Twice/mo c) Once/mo d) Not specific
58. Mayor Term a) 1 yr b) 2 yrs c) 3 yrs d) 4 yrs
59. Council Term a) 1 yr b) 2 yrs c) 3 yrs d) 4 yrs
60. Term limits a) Two b) Three c) Four d) Four+ e) n/a

Mayor Salary

61. Salary a) Yes b) No c) n/a
62. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other

63. Salary set by Council a) Yes b) No c) n/a
 64. Expenses: a) Yes b) No c) n/a
 65. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 66. Expenses set by council a) Yes b) No c) n/a

Mayor Pro Tem Salary

67. Salary a) Yes b) No c) n/a
 68. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 69. Salary set by Council a) Yes b) No c) n/a
 70. Expenses a) Yes b) No c) n/a
 71. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 72. Expenses set by council a) Yes b) No c) n/a

Council Salary

73. Salary a) Yes b) No c) n/a
 74. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 75. Salary set by Council a) Yes b) No c) n/a
 76. Expenses a) Yes b) No c) n/a
 77. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 78. Expenses Set by Council a) Yes b) No c) n/a

City Manager

79. City manager established by charter a) Yes b) No c) n/a
 80. City manager established by ordinance a) Yes b) No c) n/a
 *If yes, please enclose a copy of the ordinance.
 81. Former member of CC not eligible for a) 1 yr b) 2 yrs c) n/a
 82. Manager participates in CC mtgs a) Yes b) No c) n/a
 83. Vote required to hire manager a) Majority b) Majority of CC c) Other
 84. Hearing provided to discharge manager a) Yes b) No c) n/a
 85. Council prohibited from interference in personnel matters a) Yes b) No c) n/a
 86. All department head appointments require confirmation by council a) Yes b) No c) n/a
 87. If not all dept heads, which of the following require confirmation?
 Finance Director a) Yes b) No c) n/a
 Police Chief a) Yes b) No c) n/a
 Other _____ a) Yes b) No c) n/a
 88. Vote required to discharge manager a) Majority b) Maj of CC c) Other

City Clerk/Secretary

89. Title a) City Clerk b) City Secretary
 90. Appointed by a) Manager b) Mgr w/CC approval c) Council
 d) CC on rec of Mgr e) Mayor f) Mayor on rec of mgr
 g) Mayor w/CC approval
 91. Term a) 1 yr b) 2 yrs c) 3 yrs d) 4 yrs
 e) Pleasure of CC f) Other g) n/a

City Attorney

92. Appointed by a) Manager b) Mgr w/CC approval c) Council
d) CC on rec of Mgr e) Mayor f) Mayor on rec of mgr
g) Mayor w/CC approval

Municipal Judge

- | | | | | |
|-----|--------------|------------------------|----------------------|------------------------|
| 93. | Appointed by | a) Manager | b) Mgr w/CC approval | c) Council |
| | | d) CC on rec of Mgr | e) Mayor | f) Mayor on rec of mgr |
| | | g) Mayor w/CC approval | | h) Elected |
| 94. | Term | a) 1 yr | b) 2 yrs | c) 3 yrs |
| | | e) Pleasure of CC | f) Other | d) 4 yrs |
| | | | | g) n/a |

Municipal Court Clerk

- | | | | | |
|-----|--------------|------------------------|----------------------|------------------------|
| 95. | Appointed by | a) Manager | b) Mgr w/CC approval | c) Council |
| | | d) CC on rec of Mgr | e) Mayor | f) Mayor on rec of mgr |
| | | g) Mayor w/CC approval | | |
| 96. | Term | a) 1 yr | b) 2 yrs | c) 3 yrs |
| | | d) 4 yrs | e) Pleasure of CC | f) Other |
| | | | | g) n/a |

Financial Administration

- | | | | | | | | |
|------|---|---------------------------------|----------------------------|-----------------|----------|----------|----|
| 97. | Outside audit required | a) Yes | b) No | c) n/a | | | |
| 98. | Fiscal year begins (month) | 1 | 2 | 3 | 4 | 5 | 6 |
| | | 7 | 8 | 9 | 10 | 11 | 12 |
| 99. | FY may be changed by ordinance | a) Yes | b) No | c) n/a | | | |
| 100. | Borrowing auth in anticipation of revenue | a) Yes | b) No | c) n/a | | | |
| 101. | Limits set on sale of city property | a) Yes | b) No | c) n/a | | | |
| 102. | Vote required for adoption of budget | a) Simple Majority | b) Maj of CC | | | | |
| 103. | If no vote by EOFY | a) Mgr/Mayor's budget effective | b) Continuation of last yr | c) No provision | d) Other | | |
| 104. | Detailed budget requirements | a) Yes | b) No | c) n/a | | | |
| 105. | Revenues must equal expenditures | a) Yes | b) No | c) n/a | | | |
| 106. | Transfer of appropriations | a) Mgr btwn depts | b) w/approval of CC | c) Council | | | |
| 107. | Capital budget or program | a) Yes | b) No | c) n/a | | | |
| 108. | Vote required to set tax rate | a) Yes | b) No | c) n/a | | | |
| 109. | Vote required to submit bond election | a) Yes | b) No | c) n/a | | | |
| 110. | Purchase limit before CC must act | \$ _____ | | | | | |
| 111. | Purchase limit before written bids required | \$ _____ | | | | | |
| 112. | Charter maximum tax rate: | a) Yes | b) No | c) n/a | | | |
| 113. | If, yes: Operating | \$ _____ | Debt Service | \$ _____ | Total | \$ _____ | |

Initiative, referendum, recall

- | | | | | |
|------|---------------------------------|---------------|--------------|------------------|
| 114. | Charter provides for initiative | a) Yes | b) No | c) n/a |
| 115. | If yes, % of | a) Registered | b) Last vote | c) Minimum names |

116. If yes, how many times during the past five years has this provision been used by the citizenry and what were the results:

<u>Year</u>	<u>Subject</u>	<u>Resulting Action</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

117. Charter provides for referendum a) Yes b) No c) n/a
 118. If yes, _____% of a) Registered b) Last vote c) Minimum names _____
 119. If yes, how many times during the past five years has this provision been used by the citizenry and what were the results:

<u>Year</u>	<u>Subject</u>	<u>Resulting Action</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

120. Voluntary referendum a) Yes b) No c) n/a
 121. Charter provides for recall a) Yes b) No c) n/a
 122. If yes, _____% of a) Registered b) Last vote c) Minimum names _____
 123. If yes, how many times during the past five years has this provision been used by the citizenry and what were the results:

<u>Year</u>	<u>Position (Mayor/Councilmember)</u>	<u>Result</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

124. Limits on recall a) Yes b) No c) n/a
 125. If yes, not before 6 months a) Yes b) No c) n/a
 126. If yes, after unsuccessful election a) Yes b) No c) n/a
 127. If yes, before election a) Yes b) No c) n/a

Charter & Amendments

128. Year of adoption of first charter _____
 129. Year of latest amendment _____
 130. Charter revision commission required every
 a) 5 yrs b) 10 yrs c) 15 yrs d) Other e) State Law f) Not addressed
 131. Charter revision commission presently underway? a) Yes b) No
 132. Charter revision commission presently contemplated? a) Yes b) No
 133. If so, what is expected date of charter election _____ (MM/YY)

Charter Amendment Election Voter Turnout

134. Date of most recent charter amendment election _____ (MM/DD/YY)
135. Number voting in election _____
136. Total registered at time of election _____
137. Population at time of election _____
138. Number of propositions on ballot _____

Departments established by charter

- | | | |
|--------------------------|---------------|-------------|
| 139. Finance | a) Authorized | b) Mandated |
| 140. Personnel | a) Authorized | b) Mandated |
| 141. Legal | a) Authorized | b) Mandated |
| 142. Planning | a) Authorized | b) Mandated |
| 143. Police | a) Authorized | b) Mandated |
| 144. Fire | a) Authorized | b) Mandated |
| 145. Recreation | a) Authorized | b) Mandated |
| 146. Park and Recreation | a) Authorized | b) Mandated |
| 147. Library | a) Authorized | b) Mandated |
| 148. Health | a) Authorized | b) Mandated |
| 149. Health Officer | a) Authorized | b) Mandated |
| 150. Aviation | a) Authorized | b) Mandated |
| 151. Hospital | a) Authorized | b) Mandated |
| 152. Other _____ | a) Authorized | b) Mandated |

Boards established by charter

- | | <u>Board Name</u> | <u>Authorized</u> | <u>Mandated</u> | <u>Admin.</u> |
|------|-------------------|-------------------|-----------------|---------------|
| 153. | _____ | Y / N | Y / N | Y / N |
| 154. | _____ | Y / N | Y / N | Y / N |
| 155. | _____ | Y / N | Y / N | Y / N |
| 156. | _____ | Y / N | Y / N | Y / N |
| 157. | _____ | Y / N | Y / N | Y / N |
| 158. | _____ | Y / N | Y / N | Y / N |
| 159. | _____ | Y / N | Y / N | Y / N |
| 160. | _____ | Y / N | Y / N | Y / N |
| 161. | _____ | Y / N | Y / N | Y / N |
| 162. | _____ | Y / N | Y / N | Y / N |
| 163. | _____ | Y / N | Y / N | Y / N |
| 164. | _____ | Y / N | Y / N | Y / N |

Personnel/Officers

- | | | | |
|--|---------------|-------------|--------|
| 165. Charter establishes civil service | a) Yes | b) No | c) n/a |
| 166. Charter establishes CS commission | a) Yes | b) No | c) n/a |
| 167. Charter establishes merit system | a) Yes | b) No | c) n/a |
| 168. Personnel department | a) Authorized | b) Required | |
| 169. Personnel rules | a) Authorized | b) Required | |
| 170. Own retirement system | a) Yes | b) No | c) n/a |
| 171. Authorized to participate | | | |

	in retirement/pension system	a) Yes	b) No	c) n/a
172.	Political activity prohibited	a) Yes	b) No	c) n/a
173.	Acceptance of gifts prohibited	a) Yes	b) No	c) n/a
174.	Nepotism prohibited	a) Yes	b) No	c) n/a
175.	Personal interest in contracts prohibited	a) Yes	b) No	c) n/a

Miscellaneous

176.	Vote required to grant franchise	a) Majority	b) Maj of CC	
177.	Gross receipts	a) 1% b) 2% c) 3%	d) 4% e) Not specified	
178.	Franchise subject to referendum	a) Yes	b) No	c) n/a
179.	Maximum franchise (yrs) specified	a) 10 b) 15 c) 20	d) 25 e) 30	f) Not
180.	Council required to adopt comp plan	a) Yes	b) No	c) n/a
181.	Redistricting commission established	a) Yes	b) No	c) n/a
182.	Eminent domain restrictions	a) Yes	b) No	c) n/a
183.	Revenue cap	a) Yes	b) No	c) n/a
184.	Annexation authorized	a) Yes	b) No	c) n/a
185.	Disannexation authorized	a) Yes	b) No	c) n/a

**TEXAS MUNICIPAL LEAGUE
HOME RULE CHARTER SURVEY**

City: _____ Date: _____

Completed by: _____ E-mail: _____

Title: _____ Phone: _____

Note: Unless otherwise indicated, the answers below should be based on current charter provisions. Please enter all of the information below even if some of it may be spelled out in your charter. If you have questions regarding this survey, please contact Scott Houston with the TML legal department at (512) 231-7400.

Form of Government

1. a) Council-Manager b) Mayor-Council c) Commission d) Other

Mayor

2. Is mayor member of gov. body? a) Yes b) No
3. Selection of mayor a) Elected b) By council c) Other

Authority of Mayor

- | | | |
|------------------------------------|--------|-------|
| 4. Appoints boards and commissions | a) Yes | b) No |
| 5. --w/approval of council | a) Yes | b) No |
| 6. Regular vote | a) Yes | b) No |
| 7. Vote only in tie | a) Yes | b) No |
| 8. No vote | a) Yes | b) No |
| 9. Enumerated ceremonial duties | a) Yes | b) No |
| 10. Martial law | a) Yes | b) No |
| 11. Enumerated emergency powers | a) Yes | b) No |
| 12. Appoint CAO | a) Yes | b) No |
| 13. Appoint department heads | a) Yes | b) No |
| 14. -- w/approval of council | a) Yes | b) No |
| 15. Prepare budget | a) Yes | b) No |
| 16. Mayor veto | a) Yes | b) No |

Council

17. Total on council _____
18. Number of members for regular meeting quorum _____
19. Number of members for special meeting quorum _____
20. Number of votes for council to take action on ordinary matters
a) Majority of those present b) Majority of quorum c) Majority of total council
21. Residency length requirement a) Yes b) No
22. If yes to previous question a) 6 mo b) 1 yr c) 2 yrs
d) Other e) Not specific
23. Reside in district a) Yes b) No

- | | | | |
|-----|--|----------------|-------|
| 24. | Owner of property | a) Yes | b) No |
| 25. | Minimum age | _____ | |
| 26. | Registered/qualified voter | a) Yes | b) No |
| 27. | Barred if tax delinquent | a) Yes | b) No |
| 28. | Other qualifications | a) Yes | b) No |
| 29. | Missed meetings vacancy | a) Yes | b) No |
| 30. | Council votes to impeach | a) Yes _____ # | b) No |
| 31. | Council votes to override mayoral veto | a) Yes _____ # | b) No |

Elections

32. In some cities, a federal court or the U.S. Department of Justice has mandated a new way of electing city council members, BUT the charter has not been changed to reflect this new method. If your city council is NOT elected the way your charter currently reads, please check here _____.
33. Uniform election date to hold regular city election
- | | | |
|--------|-------------|----------|
| a) May | b) November | c) Other |
|--------|-------------|----------|
34. Filling one vacancy
- | | | |
|----------------|-------------|-----------|
| a) Appointment | b) Election | c) Either |
|----------------|-------------|-----------|
35. Filling two vacancies
- | | | |
|----------------|-------------|-----------|
| a) Appointment | b) Election | c) Either |
|----------------|-------------|-----------|
36. Term limit applies
- | | | |
|----------------------|---------------|--------|
| a) council and mayor | b) Separately | c) n/a |
|----------------------|---------------|--------|
37. Terms staggered
- | | | |
|--------|-------|--------|
| a) Yes | b) No | c) n/a |
|--------|-------|--------|
38. Elections by
- | | | |
|-------------|--------------|--|
| a) Majority | b) Plurality | |
|-------------|--------------|--|
39. Name on ballot
- | | | |
|------------------|-------------|----------|
| a) Fill out form | b) Petition | c) Other |
|------------------|-------------|----------|
40. If petition, number of names _____
41. Fee for name on ballot
- | | |
|-----------------|-------|
| a) Yes \$ _____ | b) No |
|-----------------|-------|

Election Turnout

42. Date of most recent mayor/city council election _____ (MM/DD/YY)
43. Contested? a) Yes b) No
44. If yes, number voting in election _____
45. Total registered at time of election _____
46. Population at time of election _____
47. Date of next most recent mayor/city council election _____ (MM/DD/YY)
48. Contested? a) Yes b) No
49. If yes, number voting in election _____
50. Total registered at time of election _____
51. Population at time of election _____

Council Meetings

- | | | | | |
|------------------|-----------|-------------|------------|-----------------|
| 52. Required | a) Weekly | b) Twice/mo | c) Once/mo | d) Not specific |
| 53. Actual | a) Weekly | b) Twice/mo | c) Once/mo | d) Not specific |
| 54. Mayor Term | a) 1 yr | b) 2 yrs | c) 3 yrs | d) 4 yrs |
| 55. Council Term | a) 1 yr | b) 2 yrs | c) 3 yrs | d) 4 yrs |
| 56. Term limits | a) Two | b) Three | c) Four | d) Four+ e) n/a |

Mayor Salary

57. Salary a) Yes b) No
 58. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 59. Salary set by Council a) Yes b) No
 60. Expenses: a) Yes b) No
 61. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 62. Expenses set by council a) Yes b) No

Mayor Pro Tem Salary

63. Salary a) Yes b) No
 64. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 65. Salary set by Council a) Yes b) No
 66. Expenses a) Yes b) No
 67. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 68. Expenses set by council a) Yes b) No

Council Salary

69. Salary a) Yes b) No
 70. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 71. Salary set by Council a) Yes b) No
 72. Expenses a) Yes b) No
 73. \$ _____ Per: a) Mtg b) Wk c) Mo d) Yr e) Other
 74. Expenses set by council a) Yes b) No

City Manager

75. City manager established by charter a) Yes b) No
 76. City manager established by ordinance a) Yes b) No
*If yes, please enclose a copy of the ordinance.
 77. Former member of CC not eligible for a) 1 yr b) 2 yrs c) n/a
 78. Manager participates in CC mtgs a) Yes b) No
 79. Vote required to hire manager a) Majority b) Majority of CC c) Other
 80. Hearing provided to discharge manager a) Yes b) No
 81. Council prohibited from interference
 in personnel matters a) Yes b) No c) n/a
 82. All department head appointments
 require confirmation by council a) Yes b) No
 83. If not all dept heads, which of the following require confirmation?
 Finance Director a) Yes b) No
 Police Chief a) Yes b) No
 Other _____ a) Yes b) No
 84. Vote required to discharge manager a) Majority b) Maj of CC c) Other

City Clerk/Secretary

85. Title a) City Clerk b) City Secretary
 86. Appointed by a) Manager b) Mgr w/CC approval c) Council
 d) CC on rec of Mgr e) Mayor f) Mayor on rec of mgr

87. Term g) Mayor w/CC approval
a) 1 yr b) 2 yrs c) 3 yrs d) 4 yrs
e) Pleasure of CC f) Other g) n/a

City Attorney

88. Appointed by a) Manager b) Mgr w/CC approval c) Council
d) CC on rec of Mgr e) Mayor f) Mayor on rec of mgr
g) Mayor w/CC approval

Municipal Judge

89. Appointed by a) Manager b) Mgr w/CC approval c) Council
d) CC on rec of Mgr e) Mayor f) Mayor on rec of mgr
g) Mayor w/CC approval h) Elected
90. Term a) 1 yr b) 2 yrs c) 3 yrs d) 4 yrs
e) Pleasure of CC f) Other g) n/a

Municipal Court Clerk

91. Appointed by a) Manager b) Mgr w/CC approval c) Council
d) CC on rec of Mgr e) Mayor f) Mayor on rec of mgr
g) Mayor w/CC approval
92. Term a) 1 yr b) 2 yrs c) 3 yrs d) 4 yrs
e) Pleasure of CC f) Other g) n/a

Financial Administration

93. Outside audit required a) Yes b) No
94. Fiscal year begins (month) 1 2 3 4 5 6
7 8 9 10 11 12
95. FY may be changed by ordinance a) Yes b) No
96. Borrowing auth in anticipation of revenue a) Yes b) No c) n/a
97. Limits set on sale of real property a) Yes b) No c) n/a
98. Limits set on sale of personal property a) Yes b) No c) n/a
99. Vote required for adoption of budget a) Simple Majority b) Maj of CC
100. If no vote by EOFY a) Mgr/Mayor's budget effective
b) Continuation of last yr c) No provision d) Other
101. Detailed budget requirements a) Yes b) No c) n/a
102. Revenues must equal expenditures a) Yes b) No c) n/a
103. Transfer of appropriations a) Mgr btwn depts
b) w/approval of CC c) Council
104. Capital budget or program a) Yes b) No c) n/a
105. Vote required to set tax rate a) Yes b) No c) n/a
106. Vote required to submit bond election a) Yes b) No c) n/a
107. Purchase limit before CC must act \$ _____
108. Purchase limit before written bids required \$ _____
109. Charter maximum tax rate: a) Yes b) No c) n/a
110. If, yes: Operating \$ _____ Debt Service \$ _____ Total \$ _____

Initiative, referendum, recall

111. Charter provides for initiative a) Yes b) No c) n/a
112. If yes, _____ % of a) Registered b) Last vote c) Minimum names _____

113. If yes, how many times during the past five years has this provision been used by the citizenry and what were the results:

<u>Year</u>	<u>Subject</u>	<u>Resulting Action</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

114. Charter provides for referendum a) Yes b) No c) n/a
115. If yes, _____ % of a) Registered b) Last vote c) Minimum names _____

116. If yes, how many times during the past five years has this provision been used by the citizenry and what were the results:

<u>Year</u>	<u>Subject</u>	<u>Resulting Action</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

117. Voluntary referendum a) Yes b) No c) n/a
118. Charter provides for recall a) Yes b) No c) n/a
119. If yes, _____ % of a) Registered b) Last vote c) Minimum names _____
120. If yes, how many times during the past five years has this provision been used by the citizenry and what were the results:

<u>Year</u>	<u>Position (Mayor/Councilmember)</u>	<u>Result</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

121. Limits on recall a) Yes b) No c) n/a
122. If yes, not before 6 months a) Yes b) No c) n/a
123. If yes, after unsuccessful election a) Yes b) No c) n/a
124. If yes, before election a) Yes b) No c) n/a

Charter and Amendments

125. Year of adoption of first charter _____
126. Year of latest amendment _____
127. Charter revision commission required every _____
a) 5 yrs b) 10 yrs c) 15 yrs d) Other e) State Law f) Not addressed
128. Charter revision commission presently underway? a) Yes b) No
129. Charter revision commission presently contemplated? a) Yes b) No

130. If so, what is expected date of charter election _____ (MM/YY)

Charter Amendment Election Voter Turnout

131. Date of most recent charter amendment election _____ (MM/DD/YY)

132. Number voting in election _____

133. Total registered at time of election _____

134. Population at time of election _____

135. Number of propositions on ballot _____

Departments established by charter

136. Finance	a) Authorized	b) Mandated
137. Personnel	a) Authorized	b) Mandated
138. Legal	a) Authorized	b) Mandated
139. Planning	a) Authorized	b) Mandated
140. Police	a) Authorized	b) Mandated
141. Fire	a) Authorized	b) Mandated
142. Recreation	a) Authorized	b) Mandated
143. Park and Recreation	a) Authorized	b) Mandated
144. Library	a) Authorized	b) Mandated
145. Health	a) Authorized	b) Mandated
146. Health Officer	a) Authorized	b) Mandated
147. Aviation	a) Authorized	b) Mandated
148. Hospital	a) Authorized	b) Mandated
149. Other _____	a) Authorized	b) Mandated

Boards established by charter

	<u>Board Name</u>	<u>Authorized</u>	<u>Mandated</u>
150.	_____	Y / N	Y / N
151.	_____	Y / N	Y / N
152.	_____	Y / N	Y / N
153.	_____	Y / N	Y / N
154.	_____	Y / N	Y / N
155.	_____	Y / N	Y / N
156.	_____	Y / N	Y / N
157.	_____	Y / N	Y / N
158.	_____	Y / N	Y / N
159.	_____	Y / N	Y / N
160.	_____	Y / N	Y / N
161.	_____	Y / N	Y / N

Personnel/Officers

162. Charter establishes civil service	a) Yes	b) No	c) n/a
163. Charter establishes CS commission	a) Yes	b) No	c) n/a
164. Charter establishes merit system	a) Yes	b) No	c) n/a
165. Personnel department	a) Authorized	b) Required	
166. Personnel rules	a) Authorized	b) Required	

167.	Own retirement system	a) Yes	b) No	c) n/a
168.	Authorized to participate in retirement/pension system	a) Yes	b) No	c) n/a
169.	Political activity prohibited	a) Yes	b) No	c) n/a
170.	Acceptance of gifts prohibited	a) Yes	b) No	c) n/a
171.	Nepotism prohibited	a) Yes	b) No	c) n/a
172.	Personal interest in contracts prohibited	a) Yes	b) No	c) n/a

Miscellaneous

173.	Vote required to grant franchise	a) Majority	b) Maj of CC	
174.	Gross receipts	a) 1% b) 2% c) 3%	d) 4% e) Not specified	
175.	Franchise subject to referendum	a) Yes	b) No	c) n/a
176.	Maximum franchise (yrs) specified	a) 10 b) 15 c) 20	d) 25 e) 30	f) Not
177.	Council required to adopt comp plan	a) Yes	b) No	c) n/a
178.	Redistricting commission established	a) Yes	b) No	c) n/a
179.	Eminent domain restrictions	a) Yes	b) No	c) n/a
180.	Revenue cap	a) Yes	b) No	c) n/a
181.	Annexation authorized	a) Yes	b) No	c) n/a
182.	Disannexation authorized	a) Yes	b) No	c) n/a

An Analysis of Texas Home Rule Charters

By

Charles E. Zech

**An Applied Research Project
(Political Science 5397)
Submitted to the Department of Political Science
Texas State University
In Partial Fulfillment for the Requirements for the Degree of
Masters of Public Administration
Summer 2008**

Faculty Approval:

Dr. Patricia M. Shields

Dr. Kay Hofer

Ms. Micky Autrey, MPA

A Survey of Texas Home Rule Municipalities

by

Charles E. Zech

Abstract

Purpose: The purpose of this Applied Research Project is two-fold. The first is a description of the content of current Texas home rule charters. The second is a description of what changes, if any, have occurred in that content since Blodgett's 1994 monograph.

Method: The research method is a hybrid approach combining surveys and content analysis in order to determine how local government is structured within Texas home rule charters. Survey questionnaire/coding sheets are sent out to the 340 currently existing home rule cities in Texas which are then used to review their content for a determination of what, if any, changes have occurred in home rule structure since 1994.

Findings: Overall findings reveal forms of government remain relatively unchanged since Blodgett's 1994 survey. However, certain aspects of those forms have changed. Generally, there is a trend towards requiring more unanimity in city council decisions, an increase in term limit requirements, and increased mandatory capital budget requirements.

ABOUT THE AUTHOR



Charles E. Zech is a 1995 graduate of Southwest Texas State University with a B.B.A. in Economics and Finance. He is 1998 graduate of St. Mary's School of Law where he received a J.D. He currently works for the law firm of Denton, Navarro, Rocha & Bernal, P.C. where he specializes in all aspects of local government law. He represents local governments and economic development corporations in all aspects of their operation and activities. Prior to his joining Denton, Navarro, Rocha and Bernal P.C., Charlie represented the City of New Braunfels as its sole in-house City Attorney and served in the additional capacity of Deputy City Manager. As Deputy City Manager, his duties included supervisory responsibility over the offices of Finance, Human Resources, Municipal Court, Information Technology, and the City Secretary's Office.

Charlie is a member of the Board of Directors of the Texas City Attorneys Association (TCAA). This Board consists of 10 city attorneys from various regions of the state whose primary responsibility is to prepare the continuing legal education programs for the Texas City Attorneys Association. He is a 2007 International Municipal Lawyers Association (IMLA) Local Government Fellow and previously served as Chair of the IMLA Ethics Section and is a member of the San Antonio Bar Association, Comal County Bar Association, Texas City Managers Association, Phi Alpha Delta International Legal Fraternity, and the College of the State Bar Association. He has served as Faculty speaker to the Suing and Defending Governmental Entities State Bar Program and written numerous papers and given numerous presentations to local government officials and lawyers regarding planning and zoning, ethics, annexation, water issues and other matters.

Charlie is a veteran of the U.S. Navy and the first Gulf War.

TABLE OF CONTENTS

CHAPTER ONE: INTRODUCTION	3
RESEARCH PURPOSE	5
CHAPTER DESCRIPTIONS	6
CHAPTER TWO: HISTORICAL AND LEGAL SETTING FOR TEXAS MUNICIPALITIES	7
CHAPTER PURPOSE	7
HISTORICAL AND LEGAL SETTING	7
GENERAL LAW MUNICIPALITIES	9
Type "A" Municipalities	9
Type "B" Municipalities	10
HOME RULE MUNICIPALITIES	11
CHAPTER THREE: HOME RULE STRUCTURE AND BLODGETT'S 1994 FINDINGS	14
CHAPTER PURPOSE	14
FORMS OF GOVERNMENT	14
Council -Mayor	15
Council-Manager	16
Commission	18
CITY COUNCIL	19
Council Elections	19
Terms of Office – Years and Limits	20
Years	20
Limits	21
CITY MANAGER	21
Appointment and Removal	23
DEPARTMENTS, OFFICES, BOARDS	24
City Secretary	24
City Attorney	25
Municipal Judge	26
BOARDS AND COMMITTEES	26
FINANCIAL ADMINISTRATION	26
DIRECT DEMOCRACY: INITIATIVE, REFERENDUM AND RECALL	27
Initiative and Referendum	28
Type of Percentage Requirements	30
Percentage Requirements	30
Recall	30
FRANCHISES	32
CHARTER AMENDMENTS	32
SUMMARY OF CONCEPTUAL FRAMEWORK	33
CHAPTER FOUR: METHODOLOGY AND ETHICAL ISSUES	35
STATEMENT OF PURPOSE	35
METHODOLOGY – A HYBRID APPROACH	35
Content Analysis	36
Surveys	37
Process	38
Operationalization	39
ETHICAL ISSUES	43
CHAPTER FIVE: RESULTS AND ANALYSIS	44
CHAPTER PURPOSE	44
FORMS OF GOVERNMENT	44

CITY COUNCIL	45
<i>Council Elections</i>	45
<i>Terms of Office – Years and Limits</i>	46
<i>Years</i>	46
<i>Limits</i>	49
CITY MANAGER	50
<i>Appointment</i>	50
<i>Removal</i>	50
<i>Public Hearing Requirements</i>	51
DEPARTMENTS, OFFICES, BOARDS	52
<i>City Secretary</i>	53
<i>City Attorney</i>	54
<i>Municipal Judge</i>	55
BOARDS AND COMMITTEES	56
FINANCIAL ADMINISTRATION	57
DIRECT DEMOCRACY: INITIATIVE, REFERENDUM AND RECALL	60
<i>Initiative and Referendum</i>	60
Types of Signatures	60
Number of Signatures	61
<i>Recall</i>	63
Types of Signatures	63
Number of Signatures	64
FRANCHISES	65
<i>Vote to Award a Franchise</i>	65
<i>Number of Years a Franchise may be Awarded</i>	66
CHARTER AMENDMENTS	66
CHAPTER SIX: SUMMARY	68
BIBLIOGRAPHY	70
APPENDICIES	72
A – 2008 Home Rule Charter Survey	
B – Blodgett’s 1994 Survey	
C – 2008 Survey: Responding Cities	
D – Blodgett’s 1994 Survey: Responding Cities	
E – McDonald’s 2000 Survey: Responding Cities	
F – IRB Exemption	
G – Selected Sections of the City of Buda Home Rule Charter	

CHAPTER ONE

INTRODUCTION

Our people are firmly committed to the doctrine of local self-government. Even as subjects of Spain and citizens of Mexico they lost no opportunity to exhibit the faith, and throughout the history of Texas as a republic and as a state they have taken great pains to give the principle definite application in usage, enactment, and Constitution. (ADAMS v. ROCKWALL COUNTY Tex.Com.App. 1926)

Good Government is no substitute for self-government (Mahatma Ghandi)

In the Forward to Terrell Blodgett's 1994 study of Texas home rule charters, Frank Sturzl, Executive Director of the Texas Municipal League, calls local self-government the "cornerstone of democratic government." In Texas it is the home rule charter that provides citizens the freedom to choose how they would like to structure the "cornerstone of democratic government."

It is axiomatic then that the type of local self-government a municipality's electorate embraces has a tremendous impact on the public administrator. The local government's public administrator is closer to the citizens, who pay their salaries in the form of taxes, than any other public administrator. The local government public administrator's and public official's full scope of authority and power is entirely dependent upon the form of government in which she works. As examples, and without exhaustion, a city administrator who reports directly to a mayor will have different interactions with the governing body, and will have significantly different duties and responsibilities, than a city manager who reports to a city council as a whole;

a council that is subject to an initiative or referendum for the citizens is subject to different political pressures than a council that is not subject to those types of home rule charter provisions; and term limits will directly affect both public administrators and public officials' ability to deal with issues.

From the perspective of citizens, local self government puts them closer to their local elected and appointed officials than any other government official. Those elected by citizens as legislators for local governmental entities are their friends and neighbors. They all work together and play together. However, they have different ideas on how local government should work. How should the power be distributed between elected officials and employees? Should a mayor be the chief administrative officer of the city or should the elective body be required to hire a professional city manager? How long should the locally elected legislators serve in office? How should the powers of taxation, annexation, and spending be dealt with? How should the powers of initiative, referendum and recall be dealt with? These are just a few of the issues that need to be considered when creating a home rule charter, and it is the fact that people are able to make those decisions that is a big part of why local self government is the "cornerstone" of democratic government.

Prior to 1994, Texas citizens, when going through the process to create or amend a home rule charter, had no single collective source for information regarding options available, applicable laws (either constitutional, statutory or case law) or insight into how other municipalities set up their local governments. Such a document would be invaluable to those creating or amending a home rule charter in terms of information regarding limitations, authority and how other municipalities are addressing the operations and formation of government.

In 1994, Terrell Blodgett completed a comprehensive review of the charters of Texas home rule municipalities (Blodgett 1994b). Blodgett very diligently collected survey information regarding all 290 home rule charter cities then existing for the purpose of “reporting the current practices of the 290 home rule cities” (Blodgett 1994b, vii). In addition, for the first time, all of the major statutory provisions limiting home rule authority were listed in one place. This monograph encompassed 139 pages of written text (Blodgett 1994b). Previous to this undertaking, there had been no comprehensive review of Texas home rule charters (McDonald 2000). In 2000, John V. McDonald, in an Applied Research Project for Texas State University, reviewed the twenty Texas home rule charters that had been adopted in the six years since Blodgett’s review (McDonald 2000). Since 2000 many general law cities have adopted a home rule charter, and existing home rule cities have amended a currently existing charter.¹ While McDonald (2000) reviewed the twenty new charters adopted since Blodgett’s (1994b) study, he states in his conclusion that “[c]ontinued research in charters will aid cities that pursue home rule in the future...” It is therefore time to update Blodgett’s study.

Research Purpose

The purpose of this Applied Research Project is two-fold. The first is a description of the content of current Texas home rule charters. The second is a description of what changes, if any, have occurred in that content since Blodgett’s 1994 monograph.

An updated review of the content of municipal charters in Texas would benefit all Texas cities which are either attempting to draft their first charter or going through the process of reviewing and recommending amendment of currently existing charters. Findings are compared

¹ In the previous year and a half, I personally have acted as legal counsel for three municipalities which drafted, and ultimately, adopted their initial home rule charter. I have additionally assisted 2 municipalities as legal counsel in adopting amendments to their currently existing charters and been hired by numerous municipalities to interpret various provisions of their charters for legal purposes.

against those of Blodgett to determine what, if any, changes have occurred in the content of home rule charters in specific areas since 1994.

As part of his analysis, McDonald (2000) completed a case study of the city of Kyle's process in adopting their initial home rule charter. McDonald indicated that the Charter Commissioners relied solely on Blodgett's book for their personal research, and often as the main source of information, when making determinations regarding their charter (McDonald 2000, 39).² To this extent, an update of Blodgett's 1994 study would be beneficial to all cities in Texas.

Chapter Descriptions

This applied research project contains six chapters. Chapter 2 details the historical and legal setting of municipalities in Texas. Its purpose is to give the reader a perspective of how local government evolved. Chapter 3 discusses the structure of home rule governments in Texas via a survey of the literature relevant to various elements of that structure, details Blodgett's findings of 1994, and provides a table summary of the conceptual framework. Chapter 4 discusses the methodology of the study along with the associated strengths and weaknesses and how the weaknesses are managed. Chapter 5 provides an assessment of the results and a comparison to Blodgett's 1994 study. Chapter 6 is a summary of the study.

² In my personal experiences I have discovered that Blodgett's work is the first document a Charter Commission receives when beginning the process of drafting a home rule charter.

CHAPTER TWO

HISTORICAL AND LEGAL SETTING FOR TEXAS MUNICIPALITIES

Chapter Purpose

Texas municipal governments, regardless of whether they are called cities, towns, or villages, developed as a means to manage and cope with the various issues and circumstances that arise when people move within close proximity of each other to live, work and play. Today people decide to incorporate as a home rule municipality for a variety of reasons. Upon reaching the appropriate threshold for becoming a home rule city, it is important that those making the decision as to its form and structure understand the implications and legal issues associated with doing so. It is impossible to make informed decisions regarding “how one wishes to be governed” without knowing and understanding the historical and legal issues of local government prior and up to home rule authority. This Chapter is intended to provide a basic framework for understanding the historical and current legal and policy aspects of home rule authority.

Historical and Legal Setting

The creation of Texas cities is a function of statutory enactments by the Texas legislature and the relevant provisions of the Texas Constitution. Statutes enacted by the Texas legislature that provide authority for the creation or “incorporation” of a city are either specific or general in nature. Specific legislation was special legislation adopted in order to allow the incorporation of an individual city. From 1836 (the date of the establishment of the Republic of Texas) to 1912, the Texas legislature had constitutional authority to incorporate cities by a special legislative act. These special legislative acts were frequently amended or repealed and replaced entirely by a

subsequent act of the legislature. By the end of the republic, there were approximately 53 municipal corporations (Blodgett 1994b, 1).

In 1858, the Texas Legislature enacted a law providing general rules for incorporation of small cities (Blodgett 1994b, 2). This was one of two of the most important early developments (between 1845 and 1861) in municipal creation according to Blodgett (1994b, 2). The other development was the first law allowing for local ratification of a charter, specifically, in 1846 the legislature granted a special charter to New Braunfels, subject to charter ratification by the local voters at a special election (Blodgett 1994b, 2). While this charter was created by the legislature, it was the first time that the legislature had granted a charter subject to approval by local election (Blodgett 1994b, 2).

The Texas Constitution of 1876 provided that cities under 10,000 in population could be incorporated under the general laws of the state, and cities over 10,000 population were subject to specially enacted laws of the legislature (Blodgett 1994b, 2). By 1911 the number of cities over 10,000 had grown so substantially and become so complex, that 25 percent of all legislative enactments were specifically for the purpose of dealing with each city's unique needs (Blodgett 1994b, 2). Subsequently, Texas citizens passed a Constitutional amendment in 1912 adopting a home rule provision (Blodgett 1994b, 2). As passed, Article XI, Section 5 of the Texas Constitution provides that any city with a population of 5,001 or greater may, by vote of its citizens, adopt a home rule charter subject only to those requirements that the legislature may provide. The following year, 1913, the legislature passed the necessary enabling act (Blodgett 1994b, 2). The statute was the last major piece of legislation enacted by the Texas legislature regarding the incorporation of Texas Municipalities.

General Law Municipalities

As a result, today there are generally two types of incorporated municipalities in the State of Texas, general law and home rule. Broadly speaking, general law cities are those municipalities 5,000 in population or less that have chosen to incorporate pursuant to the statutory enactments of the Texas legislature. To that extent the Texas legislature not only prescribes how these cities are to be incorporated but also their specific powers, duties and form of government. A general law city has no authority to act unless the State legislature gives them the specific authority to do so via a statutory enactment. Under the general category of cities, the Texas legislature has created three types, they are: general law: Type "A"; Type "B"; and Type "C".

Type "A" Municipalities

Type "A" municipalities operate under one of two plans of government: aldermanic or commission. A municipality with the aldermanic form of government operates in accordance with statutes applicable to Type "A" municipalities. The governing body of a municipality operating as a Type "A" municipality is known as the "city council." If the municipality has been divided into wards, the city council consists of a mayor and two council members from each ward. If the municipality has not been divided into wards, the governing body always consists of a mayor and five council members.

In addition to the city council, other municipal officers include a treasurer, tax assessor-collector, city secretary, city attorney, and city engineer, all of which are either elected or appointed, depending on the method chosen by the city council.

Type “B” Municipalities

Type “B” cities may be created by incorporating an area of 201 to 10,000 inhabitants. If the incorporated Type “B” municipality has a population greater than 600, it may become a Type “A” municipality. A Type “B” general city may operate as either an “aldermanic” or “commission” form of government. In a Type “B” municipality with the aldermanic form of government, the governing body is known as the “board of aldermen” and includes six members (a mayor and five aldermen), all of whom are elected at-large by its citizens. At the discretion of the board of aldermen, a Type “B” municipality may provide by ordinance for the appointment or election of such additional officers as are needed to conduct the business of the municipality. Any municipality which has adopted the commission form of government can change over to the aldermanic form of government, and vice versa.

Type “C” Municipalities

A Type “C” municipality operates under a commission form of government. Its governing body is referred to as a “board of commissioners” and consists of a mayor and two commissioners. No other elective officers are required under a Type “C” municipality; however, the board of commissioners must appoint a city clerk and may provide by ordinance for the election or appointment of such other officers as may be required.

In a municipality of 500 or less population, the board of commissioners must follow the requirements applicable to a Type “B” municipality. In a municipality over 500 in population the board of commissioners must follow the requirements applicable to a Type “A” municipality, unless provided for differently. A Type “C” municipality operating under the commission form of government may revert to an aldermanic form of government and vice versa.

Home Rule Municipalities

The second general type of municipality is a home rule city. In 1912, Texas voters approved an amendment to the Texas Constitution authorizing cities on a local basis to adopt a home rule charter (Blodgett 1994b, 3). In 1913 the Texas legislature followed the adoption of the constitutional amendment with the appropriate enabling legislation to allow for home rule authority (Blodgett 1994b, 134). The 1912 amendment is the most significant event in Texas law regarding the affairs of municipal government. The home rule charter amendment took away from the legislature the authority to regulate locally and placed that power in the hands of the city electorate.

The home rule amendment appears as Article XI, Section 5 of the state Constitution. The amending language stated that it was “contemplated to bestow upon any city adopting the charter or amendment hereunder the full power of local self government ...”³

The amendment itself reads generally as follows:

Cities having more than five thousand (5,000) inhabitants may, by a majority vote of qualified voters of said city, at an election held for that purpose, adopt or amend their charters. ... The adoption or amendment of charters as subject to such limitations as may be prescribed by the Legislature, and no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State or of the general laws enacted by the Legislature of this State. ... Furthermore, no city charter shall be altered, amended or repealed oftener than every two years⁴

³ Session Laws—Acts 1913, 33rd Leg., p. 310, § 4.

⁴ Vernon's Ann. Tex. Const. art. XI, § 5.

Chapter 9 of the Texas Local Government Code, *Home-Rule Municipality*, contains the primary provisions for the adoption of a home rule charter,⁵ and Chapter 26 of the Texas Local Government Code allows a home rule city to adopt “any form of government.”⁶

The Texas Supreme Court has repeatedly recognized that the home rule amendment grants to home rule cities the “full power of local self-government.”⁷ Texas courts of appeals have consistently held that home rule cities derive their authority from the Constitution and look to the legislature only for a limitation on that authority. In other words, legislation is not required for home rule cities to act. One of the first cases decided regarding the challenge of home rule authority says it most eloquently:

The contention that we must look to the laws passed by the Legislature for all power for a city to act cannot be sustained since the adoption of Section 5 of article 11 of the Constitution. That was the rule prior to the adoption of this provision of the Constitution—that a city must be able specifically to point out the authority to act in the grant given it by the Legislature; otherwise it was powerless to act. It was because of this well-recognized rule of law that article 11, § 5, of the Constitution was adopted in 1912. Our Legislature meets but once in every two years, and, as new evils arose to require the different cities and towns to rush to it and ask and secure a grant of authority and power to suppress the evil, it was regarded as too ineffectual a rule of law, and it was intended by this amendment to give the cities the power to act, without the specific grant of authority from the Legislature, and for the Constitution by its terms to confer this power on cities and towns, and it did so, only limiting the power that is granted to such limitation as may be prescribed by the Legislature, and provided that such power should not be so exercised as to be inconsistent with the Constitution of the state or the general laws of the state.

[A] city does not since the adoption of Section 5 of article 11 long have to look to the Legislature for a grant of power to act (this being given by the Constitution), but only look to the acts of the Legislature to see if it has placed any limitations on the power to

⁵ V.T.C.A., Local Government Code §§ 9.001 et seq.

⁶ V.T.C.A., Local Government Code § 26.021.

⁷ *City of Houston v. State ex rel City of West University Place*, 142 Tex. 190, 176 S.W.2d 928, 929 (1943), quoting from, *City of Houston v. City of Magnolia Park*, 115 Tex. 101, 276 S.W. 685, 689 (Com.App.1925).

act granted by Section 5 of article 11. If the Legislature has placed no limitations on the power of a city to act, and the provision is inconsistent with no provision of the Constitution or the general laws of the state, the power of the city is as general and broad as is the power of the Legislature to act.⁸

According to Blodgett (1994b, 3), “[b]y 1920, sixty-five cities had taken advantage of the home rule privilege. And, except for the depression era of the 1930s, the movement has steadily continued.” It is easy to see why. Removal from within the purview of the state and providing for “self-rule” is a strong incentive to change from general law to home rule authority, but it is not enough to understand that removal from state oversight is possible. As discussed in Chapter 3, knowledge as to the extent of home rule authority, specifically, its structure, and history is important.

⁸ *Le Gois v. State*, 80 Tex.Crim. 356, 190 S.W. 724, 725 (1916)

CHAPTER THREE

HOME RULE STRUCTURE AND BLODGETT'S 1994 FINDINGS

Chapter Purpose

This Chapter discusses the history and structure of home rule charters, the different forms of local government found within them, certain components related to those forms, literature associated with them, and Blodgett's 1994 survey results regarding those forms. Finally, it provides an exhibit summarizing the conceptual framework.

Forms of Government

The history of how home rule authority was derived and the various forms of general law cities have been described. As discussed briefly in Chapter Two, a municipality receives its power, or authority, to act from two general sources, either from its state legislature or, more recently, from local authority (Goodnow 1906, 83). Local control is obtained through a document called a "charter." Keller (2002, 61) notes that a "charter is a critical public document." It organizes the government closest to the citizens and is the one document over which they have the most control. A home rule charter gives citizens an unparalleled opportunity for realizing a just and effective corporate political reality at the local level." It is generally understood that before the creation of home rule authority, municipalities lacked the basic independent initiatory authority to perform even routine functions and certainly did not possess exemption from state legislative direction on how those functions should be performed. A city with home rule authority is, for local purposes, a constituent body and within specified limits "escapes the bondage of the State Legislature" and provides a municipality the right to frame and adopt its own governmental powers subject to the limitations of general law (Dodds 1924, 183).

Determining the form of a home rule government is the first step in the process of creating the local government structure. The power of the people to determine the structure of its government via a popular vote (home rule) has led to a wide variety of forms of government; however, three standard forms have emerged: (1) council-mayor; (2) council-manager; and (3) commission (Dodds 1924, 183). Blodgett's (1994b, 31) survey indicated that as of May 7, 1994 there were 290 home rule charters in Texas. Of the 290 home rule charters, Blodgett (1994b) found that 86% used the Council-Manager form of government, and 14% used the Council-Mayor form of government. No home rule charter used the commission form of government. These forms of government are discussed in-depth below.

Council –Mayor

According to Hays and Chang (1990, 167), the governmental structure of council-mayor cities is composed of: “(1) an executive branch with a popularly elected mayor who has the authority to hire and fire other city officials outside the merit system, and (2) a legislative branch in a relatively small city council with 5 to 9 members.” Generally, under this form of government, the mayor has the authority to hire and fire department heads, prepare the budget for consideration, administer it after adoption, and veto acts of the council, which can override that veto only by an extraordinary majority (Blodgett 1994a). The authority of a mayor is determined by the structure of the council-mayor form of government in place either: (1) a strong-mayor or (2) weak-mayor (McClesky 1978).

Under the strong-mayor system, key administrative and appointive powers are concentrated in the hands of a full-time mayor who appoints department heads and handles all administrative duties (Dodds 1924, 183). The Mayor also presides over meetings of the city council. Specific powers given to a mayor in a strong-mayor form of government are: (1) the

power to appoint and remove department heads and the members of most major boards and commissions; (2) the prerogative to prepare the city budget and, following its adoption by the council, to execute the budget; (3) a high enough salary to enable the officeholder to devote full time to being mayor as well as an office budget sufficient to hire an adequate staff; and (4) the power to veto actions by the city council. Council members have no administrative duties. Their role is to enact laws, formulate policies governing the business of the city, and act as the legislative branch of the city government (Texas Municipal League 2005, 10).

Under the weak-mayor form of government, the powers of the mayor are much more restricted. These restrictions on power are a result of various different aspects of the weak-mayor form of government. For example, rather than direct election by the people, the mayor may be selected by the council which dilutes the mayor's political influence; department heads often are appointed and removed by majority vote of the city council, which dilutes the mayor's administrative authority; and very few weak mayors have either the authority to veto actions of the council or the exclusive power to develop and execute the budget (Texas Municipal League 2005, 10).

Council-Manager

The city manager form of government also has the popularly elected council as a legislative body; however, it eliminates the mayor as the chief administrative officer, and instead puts in place a city manager who is chosen and removed by the city council (Dodds 1924, 183). Dayton, Ohio was the first major city in the United States to adopt the council-manager form of government. It was adopted by Dayton shortly after the flood of 1913, which the then current form of government was unable to manage (Dodds 1924, 184). Effective functioning of the council-manager form of government depends on the relationship between the city council and

the city manager and the ability of the city council to play the roles that contribute to the sound governance of the municipality (Svara 2002, 5).

The intention of the city manager form of government is to replace the politically chosen executive (the mayor in the council-mayor form or the commission in the commission form) with a single individual chosen on the basis of administrative ability and to relegate the politics to the elected council (Dodds 1924, 184). Unlike the council-mayor form of government, Terrell Blodgett (1994a) believes the council-manager form of government “uniquely blends political and professional leadership” and “[a]lthough political supremacy of the mayor and council are assured, the elected officials empower the manager with the independence needed to make sound recommendations to council and to manage the local government organization using the highest professional standards.”

The Mayor in a council-manager form of government is selected by vote of the city council or the popular vote of the people (Hays 1990, 167). The 1964 edition of the *Model City Charter* by the then National Municipal League is cited by Hays and Chang (1990, 175) to express the understanding of the traditional role of the mayor under the council-manager form of government. The mayor presides at the meetings of the council, is recognized as head of the city government for all ceremonial purposes and the governor for purposes of military law, but having no administrative responsibilities. Despite this traditional definition Hays and Chang (1990, 175), citing studies by James Svara⁹ and Nelson Wikstrom,¹⁰ state the distinction between the council-manager and council-mayor forms of government “is not as distinctive as the names

⁹ Svara found that although the mayor in a council-manager form of government was not a pale imitation of the executive mayor in a council-mayor form of government, the mayor in council-mayor form of government still provided effective leadership by strengthening other participants in the governing process.

¹⁰ Wikstrom found through field interviews with mayors and managers in council-manager forms of government in Virginia that a majority of mayors functioned as strong policy leaders, whereas only a minority of mayors fit the usual description of a ceremonial head.

suggest owing to the active role that the mayor in a [council-manager] form plays in the provision of leadership.”

Commission

The commission form of government, like the council-mayor form of government, concentrates on both legislative and executive powers in a board called the commission (Dodds 1924, 183). The commission holds all authority within the city (Munro 1911). Each commission member becomes the head of an administrative department based on the decision of the full commission (Dodds 1924, 183). Each commissioner devises the policy of, and represents their department before, the entire commission (Munro 1911). The commission as a whole then coordinates the administrative policies of all the city departments (Dodds 1924, 183). The simplicity of this form of government made for an attractive alternative to many municipalities (Munro 1911). However, the commission form of Government peaked in the early twentieth century after its success in Galveston, Texas (McClesky 1978). As a result of the mismanagement of the city of Galveston by the mayor and city council and in an attempt to expedite recovery from the devastating hurricane of 1900, the Texas state legislature replaced the city's mayor and council with five commissioners (Munro 1916). Many American cities watched the rebirth of Galveston through the commission form of government and made the decision to adopt the form, creating a quick expansion (Munro 1916, 2). However, the commission form of government fell out of favor with the American public just as quickly as it arose. Two issues led to the collapse: (1) many commissioners focused their attention exclusively on the department they represented becoming experts in their area but ignoring other interests of the city; and (2) while many commissioners become experts in their department, they were poor administrators (McClesky 1978, 268).

City Council

Regardless of a Texas home rule city's form of government, many aspects of the city council are common between each. Blodgett (1994b) discusses these major commonalities.

Council Elections

There are two methods of electing city council members - "at-large" and by "district" (Blodgett 1994b, 45). In the at-large system, all candidates for election are placed on the ballot, and candidates who receive the most votes are elected to office (Blodgett 1994b, 45). A variation of the at-large election is the "at-large-by-place" system where each candidate runs for a specific "place" on the city council, and citizen's vote for each place with the candidates receiving the most votes for each place being elected to office (Blodgett 1994b, 46). There are two ways of determining who is elected in at-large and at-large-by place elections, either by a plurality or a majority (Blodgett 1994b, 46). In a plurality system, the candidates receiving the greatest number of votes, regardless of number, are elected to office (Blodgett 1994b, 46). In a majority system, candidates must receive at least 50% of the vote in order to be elected to office (Blodgett 1994b, 46).

The single member district has been argued to provide the greatest opportunity for ethnic minority representation. The single member district approach divides a city into a specific number of geographic regions with a single council member representing each district. In such an election, a citizen may only cast a vote for that council member running for office in her district. Variations of these themes abound: for example, some charters require all council members be elected with the Mayor elected at-large (Blodgett 1994b, 46).

Terms of Office – Years and Limits

All elected officials serve a specific term of office regardless of the form of government in place. However, there are differences in the number of years a council member serves, whether concurrently with each other or staggered, and differences regarding whether limits to the number of terms applies (Blodgett 1994b, 51). Blodgett found that terms of office were the same for Mayors and Council Members. Blodgett (1994b) found that by far the majority of cities in Texas provide for two year terms, with 77% doing so and the remaining cities adopting three or four year terms.

Years

The years in a term of office vary from two to four years. Two year terms require council members to submit their qualifications to voters much more frequently; however, it is further argued that such short terms do not give a council member enough time to become acquainted with the intricacies of city government and its needs (Blodgett 1994b, 51-52). Three year terms clearly lengthen the amount of time a council member has to become educated regarding government issues and to further establish their qualifications for office (Blodgett 1994b, 51-52). The only disadvantage identified by Blodgett associated with three-year terms is the fact that every two municipal elections would fall into a state or national election year which could create confusion and possibly create partisanship issues for the municipal election (Blodgett 1994b, 51-52). Four-year terms clearly give the elected official the greater amount of time to invest in working on municipal issues without having to worry about reelection. However, at the same time, such a longer term can work to insulate a council member from the electorate (Blodgett 1994b, 51-52).

Limits

Blodgett identifies term limits as the legislative issue that has gained more momentum than any other. According to Blodgett (1994b, 52), arguments regarding the merits of term limits are constant and intense. Opponents of the term limits are typically political scientists and “urban experts” who insist that voters have the power of recall every time a particular member comes up for reelection. Proponents of the term limits argue that the advantages of incumbency, both in finances and name recognition give, great advantage to the incumbents. They argue that term limits are essential to ensuring government stays in the hands of the people (Blodgett 1994b, 52).

Home rule charters express term limits in two ways. The first is separate limits for the mayor and council members, and the second is to count the service as a mayor and a council member together for purposes of limits (Blodgett 1994b, 52). Blodgett (1994b, 54) found that a substantial majority of cities in Texas had no limits on a council member or mayor’s ability to run for a city council (76%), with a fairly equal split between separate limits for council members and mayors (14%) and combined limits (10%).

City Manager

The basic structure of the council-manager form of government is similar to that of a private corporation where the stockholders elect a board of directors which then hires a president to run the company. The voters elect a city council which, in turn, hires a city manager to administer the city’s day-to-day affairs (Texas Municipal League 2005, 10). The administrative duties are vested in the city manager, who is designated, either by charter or ordinance, as the chief executive and administrative officer of the city and is responsible for the day-to-day

operations of the municipality in accordance with the policy direction provided by the city council (Texas Municipal League 2005, 10-11). The city manager's role in the council-manager form of government can be divided into three broad areas: (1) external relations, (2) management of daily operations, and (3) coordination between departments (Box 1994, 734-36).

The typical city manager in Texas is appointed for an indefinite term and may be terminated at the will of the city council. Specific duties of the manager may include the following:

- (1) Enforcing all city ordinances, rules, and regulations;
- (2) Supervising all municipal employees and programs;
- (3) Preparing and executing the city's annual budget pursuant to the revenue and expenditure plans adopted by the council;
- (4) Managing the city's funds and preparing periodic reports that advise the council and the general public of the city's financial condition;
- (5) Providing information to the council to facilitate its ability to make informed decisions in the best interests of the community;
- (6) Preparing council meeting agendas and attending all such meetings to serve as a resource to the council and the public; and
- (7) Drawing the council's attention to community needs and recommending alternatives by which the council can respond to those needs.

(Texas Municipal League 2005, 10-11). H. W. Dodds (1924, 191) analogizes the manager as something less than a mayor of a municipality under the council-mayor form of government, yet something more than any single official in an English municipality and struggles to find any other municipal official in the world strictly analogous to the position of city manager.

The city manager is seen both positively as serving "to advance the rational separation of politics from administration, thereby achieving greater efficiency, cooperation, and harmony in government" and negatively as "wielding anti-democratic power over the public policy agenda through control of information and budgets" (Box 1994, 715-16). This negative view persists despite the fact that, ultimately, the city council sets municipal policy via such actions as approval of the budget, setting of the tax rate, determination of payroll, and is the final authority

on all of the many policy decisions that determine the scope and functions of the city government (Texas Municipal League 2005, 10).

While a city manager should not become a political issue and should not become overly involved in questions of policy, it is inevitable that they can and will be pulled into these issues. City councils look to city managers for recommendations as to public improvements and ideas for advancement of civic interests. As a result, people are apt to include the city manager in any policy position, therefore, making it difficult for the city manager to remain in the background. At any time, a question of pure administration could be made a political issue (Dodds 1924, 191). Despite the idea that a city manager should refrain from becoming intimately involved in policy making, John Nalbandian (2001, 63) acknowledges that city managers play a prominent role in policy making through the setting of agendas, developing alternatives for consideration by city council and making other policy recommendations. A 1998 survey of city managers established that managers are heavily involved in the policy-making process. According to the survey, the primary roles reported by managers are: supporting the governing body by providing it with information (99.9 %); supporting the council by identifying community needs and initiating policy proposals (96.0 %); and playing a role in policy initiation through advice and recommendations to the governing body (94.9 %) (DeSantis 1998).

Appointment and Removal

Blodgett (1994b, 76) describes Texas charters as not having paid much attention to the wording requiring appointment of the city manager. Most cities require a majority vote of those council members “present and voting” rather than a majority vote of the entire city council. While Blodgett did not give specific numbers regarding this issue, he did state “only a few of the charters require [a] ‘full’ majority of council for appointment.”

Regarding removal, Blodgett (1994b, 77) determined that 72.5% of the council-manager charters require the majority vote of the entire council membership to remove the city manager, with “virtually all other cities require[ing] only a majority of a quorum.” He further discovered that 67% of Texas cities require a public hearing to be held before the termination of the city manager (Blodgett 1994b, 78).

Departments, Offices, Boards

Administration activities are clarified by the proper division of work among various departments through the coordination and connection of all offices. It is this organization of a municipality into city departments, offices, and boards that insures the success of local government (Munro 1916, 19). There is no standard for the creation, function, or number of departments, and each municipality may form their departments as they desire (Munro 1916, 123). A central issue to be addressed in any home rule charter is who appoints or hires the heads of each department which may be created. According to McDonald (2000, 25), “there is literature and experience to support council involvement in the appointment of the city secretary, city attorney, and the municipal judge;” however, appointment of any remaining department heads is left to the discretion of the city manager. Home rule charters that infringe on the City Manager’s ability to appoint other department heads severely hampers the effectiveness of the city manager. Blodgett (1994b, 79) found that 30% of Texas council-manager charters require the city council to confirm department head appointments.

City Secretary

The position of City Secretary is frequently handled separately within a charter (Blodgett 1994b, 85). Most charters that deal with the position spell out the responsibilities of the position as well (Blodgett 1994b, 85). The other issue dealt with regarding City Secretaries is how they

are appointed and Blodgett (1994b, 85) found a wide disparity between how city secretaries are appointed; however, most charters require the position be appointed by city council (35%), reinforcing the “widespread opinion of city officials that this position is one that ‘belongs’ to the city council.” Blodgett’s (1994b, 86) study indicated that other than direct appointment by city council, 24% of city secretaries were appointed directly by the city manager. The remaining cities used some variation of city council approval; such as appointment by city manager with council approval (15%) or appointment by city council upon recommendation of the city manager (12%). In total, 62% of all cities require approval by the city council in some form (Blodgett 1994b, 86).

City Attorney

Blodgett (1994b, 84) notes that every city should have either a full-time or part-time legal officer depending on the size of the municipality and amount of legal issues they face. Small towns may often contract with outside council to handle legal issues (Blodgett, 84). Many charters provide that the “city attorney, with council approval, can bring in special counsel when the need to do so for a particular court case or other problem arises” (Blodgett 1994b, 84). Pursuant to charter provisions, city attorneys are also the primary authors of municipal ordinances (Blodgett 1994b, 84). As with the city secretary, appointment of city attorneys is handled in various ways including appointment by council, by the city manager or a combination thereof. However, unlike the position of city secretary, the overwhelming majority of cities required the city attorney be appointed directly by the city council (73%). The remaining charter provisions are fairly equally split between variations of council approval with recommendations by the mayor or city manager and direct hire by the city manager.

Municipal Judge

State law establishes a municipal court in every Texas city, and many issues regarding municipal judges are dealt with via state law, therefore restricting a city's authority regarding judges (Blodgett 1994b, 86). However, a city does have some flexibility regarding municipal judges through its charter; for example a charter can: 1) provide for the manner in which the judge is to be chosen (appointed or elected); 2) provide for the appointment of associate or temporary judges; 3) require the judge to be an attorney; and 4) provide for a court clerk (Blodgett 1994b, 86). Blodgett's (1994b, 87) findings on appointment of municipal judges show an extensive number of municipalities appointing directly by council (79%). Unlike the appointment of city secretaries and city attorneys there is no direct appointment by the city manager. All remaining cities either appoint the municipal judges via some variation of approval by the city council (16%), or they are elected (5%) (Blodgett 1994b, 87).

Boards and Committees

McDonald (2000, 27) states that "the use of committees and advisory boards is an increasingly important aspect of citizen involvement in local affairs and that appointment to committees is often left to the mayor, with or without approval of the council." Blodgett (1994b, 94) indicates that 25 different boards or commissions are established in home rule charters with many of them setting out requirements for membership, number of members, duties, and replacement of members.

Financial Administration

One of the most important jobs for a chief executive officer, whether it be the city manager or mayor, is the maintaining of fiscal responsibility, and home rule charters are normally very specific as to the powers and duties of chief executive officers regarding this duty

(Blodgett 1994b, 97). Home rule charters include provisions regarding the designation of the fiscal year, the power to tax and other issues associated with property taxes, the preparation and adoption of an annual operating budget and a capital improvement plan, purchasing and contractual requirements and the issuance of short and long term debt (Blodgett 1994b, 107). Blodgett (1994b, 97) ascertained that a majority of city managers prepared the budgets for their cities. According to Blodgett (1994b, 97), the reason city managers prepare the budget is due to the increased presence of the council-manager form of government. Though cities continually plan for the future, Blodgett (1994b, 97) found that only 39% of the charters reviewed contained a requirement for a capital improvement budget. Blodgett (1994b, 105) also identified October as the month the majority of charters require the fiscal year to begin, keeping them in line with the state. Twenty-three percent of the charters do not require a specific beginning for the fiscal year (Blodgett 1994b, 105). Regarding the necessary vote to adopt the budget, cities were evenly split between whether a majority vote of the entire council or a majority vote of those “present and voting” was required (Blodgett 1994b, 103). Finally, just over half of the charters had a specific provision limiting borrowing to anticipation of revenues (Blodgett 1994b, 107).

Direct Democracy: Initiative, Referendum and Recall

The authority of the people’s participation in the policy making process is referred to as “direct democracy” and includes the tools of initiative, referendum, and recall (Munro 1911, 70). Munro (1926, 241) declares the main reason for the rise of these tools to be deterioration in the abilities of elected officials, particularly aldermen and councilmen. Blodgett (1994b, 111) indicates that the “three tools for direct citizen participation in government are residuals of pre-revolutionary debates, and particularly, of the drafting of the federal constitution” and that “the debate participants, our founders, argued the merits of ‘direct’ democracy with maximum citizen

participation versus the merits of ‘representative’ democracy with elected representatives of the people as the predominant decision-makers.” Texas has no direct democracy provisions at the state level; however, it is very prevalent on the municipal level with “an overwhelming number of Texas city charters call[ing] for all three” (Blodgett 1994b, 112). Blodgett’s research indicated that of the 290 home rule charters, the recall provision is found in 88%¹¹ with the initiative and referendum procedures found in 84% and 82% of the charters, respectfully (Blodgett 1994b, 112).

Initiative and Referendum

The right to petition the executive or the legislature for redress of grievances has been at the root of the United States’ governmental development (Crouch 1943, 491) However the right to petition for redress of grievances has been contentious and was not always approved by everyone as shown by President Taft’s statement that:

I want to show the young men of this country the absurdity of having weary armies of voters tramping frequently to the polls-at the call of would-be reformers-in a struggle for incessant changes in the laws.

(Taylor 1914, 96)

Despite the roots of the initiative and referendum on the state and federal level, the people’s ability to participate directly in the legislative process through petition on the municipal level is a comparatively recent development arising primarily via the home rule movement. In 1897, Nebraska was the first legislature to pass a statute that allowed municipal electors to use the initiative and the petition referendum to legislate on a municipal issue (Crouch 1943, 491).

Crouch (1943, 492) indicates that while municipal direct legislation can assume a number of different forms, it is most seen as the municipal electorate being permitted to initiate

¹¹ Blodgett indicated in his study that 264 cities had a recall provision in their charter. However, when actually added up the number was 257.

ordinances by the petition method. In terms of referendum, the usual type seen is a petition filed with the governing body for the purpose of forcing the governing body to repeal those ordinances enacted with which the electorate disagrees. Crouch states that another variety of referendum is the advisory referendum or "straw vote" where an item is placed on a ballot for vote by the city council but the outcome generally has no binding effect upon the council's decisions. In 1914, Charles Freemont Taylor (1914, 93-4) described the initiative and referendum process thusly:

That is, a reasonable number of voters may, by petition, initiate a law, or suspend the operation of any law passed by the legislature until said law is ratified by direct vote. In either case the direct vote on the initiated or referred statute is taken " at the next general election;" and if it receives an affirmative majority of the votes cast thereon, it is confirmed and becomes law; but if a majority of votes cast thereon are negative, the initiated law is defeated, or the proposed law which passed the legislature is vetoed. This last is sometimes called the voters' veto.

This definition has not changed over the last 80 to 90 years, at least in the State of Texas. Blodgett (Blodgett 1994b, 111) defined initiative as allowing a municipality's citizens "to petition the city council to take action on a particular issue not previously addressed" and a referendum as a request of the "city council to undo a previous decision." The Texas Municipal League (2005, 9) defines initiative as:

A procedure under which local voters directly propose (initiate) legislation . . . allow[ing] local voters to circumvent the city council by direct ballot box action on new ordinances that have wide support in the community, but which the council refuses to enact" and defined referendum as "a procedure under which local voters can repeal unpopular, existing ordinances the council refuses to rescind by its own action.

Blodgett (1994b, 111) describes the typical process in the initiative and referendum process as requiring citizens to present a petition, signed by a certain percentage of voters in the last election or a certain percentage of the total number of registered voters in the city, to the city

council. The city council then must either act upon the issue or put it on a ballot for a vote by the electorate. Similar to the initiative, a petition requiring a certain number of signatures is needed for a referendum. The council then either repeals the ordinance that is the subject of the petition or places it on a ballot for a vote by the electorate.

Type of Percentage Requirements

Blodgett (1994b, 113) found two different requirements for signatures on petitions for initiative, referendum and recall. They are by “percentage of registered voters” and by “percentage of those voting in the most recent election.” Charters requiring a “percentage of registered voters” were slightly lower at 43% compared to “percentage of those voting in the most recent election” at 57% (Blodgett 1994b, 113). Those percentages are the same for both initiative and referendum requirements.

Percentage Requirements

Blodgett (1994b, 113-14) showed a wide variety of percentage requirements for initiative and referendum ranging from a low of only 3% and a high of 51%. However approximately half of all charters required a percentage of either 20% or 25% for both initiative and referendum petitions.

Recall

Recall is a process by which local voters may oust city council members prior to the expiration of their term in office (Texas Municipal League 2005, 9). Taylor (1914, 96) defended some of the early criticisms of the initiative and referendum, such as those of President Taft, by touting the benefits of the power of recall. Taylor believed that a “unicameral legislative body of few members, carefully chosen, with long terms, ample salary, in constant service, kept conscious of their duties with the possibility of recall could from time to time promulgate laws so

maturely considered and fitted to the requirements of the people that need would seldom if ever be felt for the statutory initiative or referendum.”

The recall created a relationship between representative and constituent that had not previously been in existence. Prior to the power of recall, no elective public officer could be removed from office before the end of a definite term without initiation of some sort of legal process. The recall changed that by making the public office more of a public trust in that a representative can be removed not only for being found guilty of some statutory crime but also for “behavior unbecoming a representative” (Gilbertson 1911, 163). For those reasons, recall was often, during its inception, challenged in the courts but usually upheld. In affirming the validity of the recall provision in the Dallas Charter, Chief Justice Brown of the Supreme Court of Texas said:

We are unable to see from our viewpoint how it can be that a larger measure of sovereignty committed to the people by this method of government and a more certain means of securing a proper representation in any way militates against its character as a republican form of government and that it is thereby rendered in any sense obnoxious to the provisions of the Constitution of the United States.

(Gilbertson 1911, 163).

Currently, in Texas charter provisions dealing with recall, the voters may typically request that the city council call an election to vote on the removal of an elected official by using a petition for recall, which may be directed at the mayor or any council member (Blodgett 1994b, 111). As with initiative and referendum, Blodgett (1994b, 116) found the type of percentage of voters authorized to sign a recall petition was fairly evenly split between “registered voters” and those “voting in the most recent election” at 41% and 56%, respectfully. However, the actual percentage of those voters was higher on average with 28% of the charters requiring 30% sign the petition and a combined 29% requiring either 20% or 25% to sign the petition.

Franchises

Cities have been authorized to require companies to obtain permission to use the public streets and right-of-way to conduct their business (Blodgett 1994b, 119). Cities provide businesses the right to use the public streets and right-of-way, and in return, the businesses agree to certain regulations such as rates regulation, annual audits, payment for use of the streets and right-of-ways and other regulations. Much of the authority of Cities to regulate public streets and right-of-ways has been preempted by state and federal law;¹² however, Blodgett (1994b, 119) indicates that many charters still addressed certain aspects of the granting of franchises including the power to grant, transfers, length of grant, rates and review of records.

Blodgett (1994b, 121) determined that fewer than 15% of home rule charters require a majority of the entire city council to award a franchise. The number of years that a franchise could be awarded was wide and considerable ranging from 10 years to 50 years, with the terms of 20 and 50 years combining for just over half of required terms (Blodgett 1994b, 122). Only a fraction of the charters did not address such a requirement (Blodgett 1994b, 122).

Charter Amendments

Texas Local Government Code § 9.005 provides for the adoption and amendment of home rule charters. According to Blodgett (1994b, 134), many elected officials keep notes and other records dealing with what sections, paragraphs or phrases in their charter they have questions about. Additionally, many times, work sessions will prompt discussion regarding the charter and the need for certain amendments (Blodgett 1994b, 134). Regarding the charters themselves, most home rule charters address amendments at the end of the charter, with some

¹² For example the State of Texas passed the Public Utility Regulatory Act (PURA) in 1975 and the Gas Utility Regulatory Act in 1983.

mandating the city council review the charter for any needed changes every 5 or 10 years and others require the appointment of a charter commission to review the charter periodically but leave the times up to the then sitting city council. Blodgett's (1994b, 135) survey indicated that between 1960 and 1994, there had been 257 elections to amend existing charters, with 148 of those occurring between 1990 and 1994.

Summary of Conceptual Framework

Exhibit 3.1 summarizes the categories used and links them to the literature.¹³

¹³ For a comprehensive discussion on conceptual framework in research see Shields (1998) and Shields & Tajalli (2006).

Exhibit 3.1
Descriptive Categories Linked to the Literature

DESCRIPTIVE CATEGORIES	SOURCE
Forms of Government 1. Council-Mayor 2. Council Manager 3. Commission	Blodgett (1994a), Blodgett (1994b), Box (1994), Dodds (1924), Goodnow (1906), Hays and Chang (1990), McDonald (2000), McClesky (1978), Munro (1911), Munro (1916)
City Council 1. Council Elections 2. Terms of office a. Years b. Limits	Blodgett (1994b)
City Manager 1. Appointment 2. Removal	Blodgett (1994b)
Departments/Personnel/Boards 1. City Secretary 2. City Attorney 3. Municipal Judge 4. Boards and Committees	Blodgett (1994a), Blodgett (1994b), DeSantis (1998), McDonald (2000), Nalbandian (2001), Munro (1916)
Financial Administration 1. Fiscal Year 2. Budgets 3. Capital programs	Blodgett (1994b), McDonald (2000)
Direct Democracy 1. Initiative 2. Referendum 3. Recall	Blodgett (1994b), Crouch (1943) McDonald (2000), Munro (1911), Munro (1926)
Franchises 1. Votes on Franchise issuance 2. Time limits on Franchise	Blodgett (1994a), Blodgett (1994b), Gilbertson (1911), McDonald (2000), Munro (1911), Munro (1926), Taylor (1914)
Charter Amendments 1. Original Charters 2. Amendments	Blodgett (1994b)
Forms of Government 1. Council-Mayor 2. Council Manager 3. Commission	Blodgett (1994b)

CHAPTER FOUR

METHODOLOGY AND ETHICAL ISSUES

Statement of Purpose

This chapter introduces the methodology utilized by this applied research project. The chapter additionally addresses the ethical issues associated with social scientific research.

Methodology – A Hybrid Approach

How the citizens of a particular municipality structure their government is best reviewed by a content analysis of their respective charters. In 1994, Blodgett, via a hybrid of survey questionnaire/coding sheets and content analysis, reviewed Texas home rule charters to determine how local government is structured within those charters.¹⁴ As a follow-up, this study utilizes the same methodology. Survey questionnaire/coding sheets sent out to the 340 currently existing home rule cities in Texas are used to review their content and for a determination of what, if any, changes have occurred in home rule structure since 1994.

The study is a limited update to Blodgett's 1994 Texas Home Rule Charter's monograph.¹⁵ As stated, it replicates Blodgett's hybrid survey questionnaire/coding sheet and content analysis method of study. This hybrid method is a form of "unobtrusive research." Babbie (2007, 319) indicates that most modes of research require the researcher to intrude to

¹⁴ Blodgett's original study took over a year to complete with assistance in the form of grants and numerous people, whom he recognized in his Forward. Blodgett personally reviewed every charter included within his study after receiving the survey completed by each individual city. It was an incredible undertaking.

¹⁵ Quite clearly a complete update of Blodgett's 1994 study is not possible within the time and resource limitations of a three-hour Applied Research Project course for Texas State University. As such, it was necessary to "pick and choose" what areas were to be updated. Using McDonald's (2000) study as a model, the basic areas of home rule charter are used for the update generally and then broken down into specific areas that, based on my eight years of experience in municipal law and representing Texas municipalities as City Attorney, I have found to be the most widely discussed by citizens and public administrators. Essentially, the study opens the silverware drawer and takes a closer look at specific utensils within that drawer.

some degree on the subject of the study. However “unobtrusive research” allows the research to study the subject without affecting its outcome (Babbie 2007, 319).

Content Analysis

Like Blodgett’s study, this study asks administrators in cities to describe the characteristics of their home rule charters. Since the charter is the unit of analysis, this study is a content analysis. Content analysis specifically is the “study of recorded human communications, such as books, websites, paintings, and laws” (Babbie 2007, 319). Berelson (1952) names a substantial number of reasons for conducting content analysis which includes to:

1. describe trends in content over time
2. describe the relative focus of attention for a set of topics
3. compare international differences in content
4. compare group differences in content
5. compare individual differences in communication style
6. trace conceptual development in intellectual history
7. compare actual content with intended content
8. expose use of biased terms in propaganda research
9. test hypotheses about cultural and symbolic use of terms

This particular study is appropriate for content analysis because its intent is to describe the difference in content of a document (home rule charters) over time and focus on a particular set of topics (particular components of home rule charters). Through this hybrid of survey and content analysis, the “manifest” content of Texas home rule charters is reviewed. Manifest content is that content of a document that is “concrete” in nature; it is the “visible surface content” as opposed to the underlying meaning (Babbie 2007, 325).

Surveys¹⁶

Because individuals are sent survey questionnaire/coding sheets to fill out, the methodology is much like a survey. There are several advantages to using survey research. First, survey research allows researchers to obtain demographic information from large samples of a population (McIntyre, 1999, 74). Secondly survey research is considered to have a high reliability because it uses a research format in the questionnaire (Babbie 2007, 252). Further, survey research allows for the collection of the large amount of data needed to assess whether changes have occurred since 1994 in how Texas municipalities structure their government through home rule charters.

There are, however, weaknesses associated with using survey research. Babbie (2007, 277) states that “survey research is generally weak on validity and strong on reliability” and that poor participation can be a major problem when conducting survey research, as a poor response rate can result in the data obtained from surveying not being representative of the population being studied. This research project, while not resulting in 10% participation, had good participation. An attempt to have every home rule city in Texas respond was made; but, ultimately 73% of all existing Texas home rule charters were analyzed in this project. Finally, Isaac & Michael (1997, 37) discuss the dangers associated with biases inherent in the wording of questions. However, because the survey questionnaire used in this research is designed to extrapolate only the manifest content of home rule charters, there are no biases associated with

¹⁶ For more Texas State Applied Research Projects that survey Texas Municipalities see Jeffers (2003), Francois (2004), Lester (2005), Lindsey (2005) and Sinclair (2005).

the questions. Further, the terms used in the survey are common terms with which all local government officials are familiar.¹⁷

Process

The survey and content analysis is conducted by using a self-administered survey questionnaire/coding sheet designed to determine the content of that city's home rule charter. In other words, the content analysis coding sheet for each city is filled out by administrators of each representative city. The first step is to send the administrator the survey questionnaire/coding sheet about the charter. The second step occurs when they use the coding sheet and their charter to answer the questions. One would expect that many of the questions would be self evident (form of government) and others would require a more careful review of the charter, resulting in a potential issue of inherent reliability.

In order to establish the proper baseline for comparison of Blodgett's original 1994 work, his city charter worksheet is used as the basis for the survey for this project. Blodgett (1994b) used the general categories of form of government, city council, elections, city manager, departments, offices, boards, financial administration, direct democracy (initiative, referendum and recall), franchises and charter amendments as the descriptive categories included in all Texas home rule charters. Based on the limited nature of this study, the following selected descriptive categories and their distinct sub-parts are reviewed:

- Forms of Government
 - Council-Manager
 - Council-Mayor
 - Commission
- City Council/Mayor
 - Council Elections

¹⁷ In an additional step towards ensuring inter-reader reliability between surveys, whenever there appeared to be an inconsistency, contradiction or mistake in a survey response I would review the charter in question for further clarification and/or confirmation of the accuracy of the response.

- Terms of Office
- City Manager
- Departments, Personnel, Boards
- Financial Administration
- Direct Democracy
 - Initiative and Referendum
 - Recall
- Charter Amendments

Operationalization

The operational relationship between the survey questionnaire/coding sheet and each descriptive category is depicted in *Exhibit 4.1*:

Exhibit 4.1 Operationalization of Descriptive Categories			
DESCRIPTIVE CATEGORIES	CODING SHEET		
Forms of Government 1. Council-Mayor 2. Council Manager 3. Commission	a) Council-Manager Other	b) Mayor-Council	c) Commission d)
City Council 1. Council Elections 2. Terms of office a. Years b. Limits	Mayors Term a) 1 yr Councils Term a) 1 yr Term limit applies n/a	b) 2 yrs c) 3 yrs b) 2 yrs c) 3 yrs a) Both b) Separately	d) 4 yrs d) 4 yrs c)
City Manager 1. Appointment 2. Removal	City manager established by charter c) n/a Vote required to hire manager c) Other Hearing provided to discharge manager c) n/a Vote required to discharge manager Maj of CC c) Other All department head appointments require confirmation by council a) Yes b) No c) n/a If not all dept heads, which of the following require confirmation? Finance Director a) Yes b) No c) n/a Police Chief a) Yes b) No c) n/a Other a) Yes b) No c) n/a	a) Yes a) Majority a) Yes a) Majority a) Yes b) No c) n/a b) No b) No b) No	b) No b) Majority of CC b) No b) b) No b) No b) No c) n/a
Departments/Personnel/Boards 1. City Secretary 2. City Attorney 3. Municipal Judge 4. Boards and Committees	City Secretary Appointed by a) Manager b) Mgr w/CC approval c) Council d) CC on rec of Mgr e) Mayor f) Mayor on rec of mgr g) Mayor w/CC approval City Attorney Appointed by a) Manager b) Mgr w/CC approval c) Council d) CC on rec of Mgr e) Mayor f) Mayor on rec of mgr g) Mayor w/CC approval Municipal Judge Appointed by a) Manager b) Mgr w/CC approval c) Council d) CC on rec of Mgr e) Mayor f) Mayor on rec of mgr g) Mayor w/CC approval h) Elected		

	Boards and Committees addressed in charter			
	Finance	a) Authorized	b) Mandated	
	Personnel	a) Authorized	b) Mandated	
	Legal	a) Authorized	b) Mandated	
	Planning	a) Authorized	b) Mandated	
	Police	a) Authorized	b) Mandated	
	Fire	a) Authorized	b) Mandated	
	Recreation	a) Authorized	b) Mandated	
	Parks & Rec	a) Authorized	b) Mandated	
	Library	a) Authorized	b) Mandated	
	Health	a) Authorized	b) Mandated	
	Health Officer	a) Authorized	b) Mandated	
	Aviation	a) Authorized	b) Mandated	
	Hospital	a) Authorized	b) Mandated	
	Other	a) Authorized	b) Mandated	
Financial Administration	Fiscal year begins (month)			
1. Fiscal Year				
2. Budgets	Vote required for adoption of budget			
3. Capital programs	Maj of CC			
	Capital budget or program	a) Yes	b) No	c)
	n/a			
	Borrowing in Anticipation of Revenue?			
Direct Democracy	Charter provides for initiative			
1. Initiative	a) Yes	b) No	c) n/a	
2. Referendum	If yes, _____% of			
3. Recall	a) Registered	b) Last vote	c)	
	Minimum names _____			
	Charter provides for referendum			
	a) Yes	b) No		
	c) n/a			
	If yes, _____% of			
	a) Registered	b) Last vote	c)	
	Minimum names _____			
	Charter provides for recall			
	a) Yes	b) No	c)	
	n/a			
	If yes, _____% of			
	a) Registered	b) Last vote	c)	
	Minimum names _____			
Franchises	Vote required to grant franchise			
1. Votes on Franchise issuance	CC	a) Majority	b) Maj of	
2. Time limits on Franchise	Maximum franchise (yrs) specified			
	a) 10	b) 15	c) 20	d)
	25	e) 30	f) Not	
Charter Amendments	Year of adoption of first charter			
1. Original Charters				
2. Amendments	Year of latest amendment			

When taken together, the survey questionnaire/coding sheet provide insight into how Texas municipalities structure their government through home rule charters. Each survey questionnaire/coding sheet, with the assistance of the Texas Municipal League, is sent to all home rule municipalities in Texas. The survey is emailed and mailed to every home rule city in Texas with follow up emails and telephone calls to help ensure maximum participation. The information derived from the survey questionnaire/coding sheet is used to both, determine the structure of home rule charters in Texas and to compare against Blodgett's original findings. *Appendix 1* is the survey questionnaire utilized in the research project¹⁸ and *Appendix 2* is Blodgett's original survey questionnaire. Response rates are always a concern in survey research. According to Babbie (2001, 262 "[t]he body of inferential statistics used in connection with survey analysis assumes that all members of the initial sample complete and return their questionnaires. Because this almost never happens, response bias becomes a concern, with the researcher testing (and hoping) for the possibility that the respondents look essentially like a random sample of the initial sample, and thus a somewhat smaller random sample of the total population." However, what is a "high" or "low" response rate is debatable (Babbie 2001, 262). Babbie (2001, 262) indicates that a "review of the published social research literature suggests that a response rate of 50 percent is considered adequate for analysis and reporting" with response rates of 60 percent being good and response rates of 70 percent being very good. This study had a response rate of 74 percent. Of the 74% of responding cities, 14 percent were not included in Blodgett's 1994 study. Therefore 74% of the cities surveyed were also surveyed in Blodgett's original survey. *Appendix 3* is a list of all cities responding to the survey, *Appendix 4*

¹⁸ As discussed previously because of the inherent time and manpower limitations associated with a project of this nature, this researcher "piggybacked" the survey questions with a survey by the Texas Municipal League and therefore not all survey questions present on the questionnaire are used in this project.

is a list of Blodgett's (1994b) original study and *Appendix 5* is a list of those cities studied by McDonald (2000).

Ethical Issues

Anyone conducting social scientific research needs to be aware of the general agreements shared by researchers about what is proper and improper in the conduct of scientific inquiry (Babbie 2001, 62). Babbie (2001) discusses the ethical tenants that should be observed when conducting social science research. Two important tenants discussed by Babbie is that social scientific research should ensure voluntary participation by the participants and should never result in injury (Babbie 2001, 63). Informed consent is important to these tenants in that it ensures that a participant's voluntary participation is done with a full understanding of the possible risks involved (Babbie 2001, 64). With regards to survey research, the biggest concern often times is ensuring the subjects anonymity and confidentiality (Babbie 2001, 64). One of the means developed to ensure that the participants of a particular study are protected is through the use of an Institutional Review Board (IRB) (Babbie 2001, 69). The main responsibility of an IRB is to ensure that the risks faced by human participants involved in researchers study are minimal (Babbie 2001, 69). Texas State University has implemented an IRB that requires researchers to submit their proposed study for review unless found to be exempt. *Appendix 6* is notification of exemption from review provided by the Texas State University Institutional Review Board for this study.

CHAPTER FIVE

RESULTS AND ANALYSIS

Chapter Purpose

This chapter organizes and summarizes the collected data. The results are produced from responses to specific survey questions. The data are presented by category as outlined in Chapter 3. Comparisons are offered between the results of this study and Blodgett's research.

Forms of Government

No major changes are found between the forms of government in Blodgett's original survey and 2008. The 2008 survey indicates that 89% of the cities surveyed have adopted the council-manager form of government. Blodgett's (1994b, 31) survey indicated that as of May 7, 1994, there were 290 home rule charters in Texas. Of those 290 home rule charters, 86% were under the Council-Manager form of government and 14% were organized under the Council-Mayor form of government. The number of cities with a council-manager form of government increased slightly since Blodgett's survey. Exhibit 5.1 summarizes the findings regarding the forms of government. The survey indicated that 89% of those charters surveyed use the council-manager form of government, 9% use the mayor-council form of government with a minimum of charters implementing a commission form of government. The very small percentage of cities which identified themselves as having a commission form of government in this study have, by charter, mandated the hiring of a city manager. To that extent, they are not a "true" commission form of government but rather operate as council-manager form of government. The survey result could indicate a trend of moving away from the council-mayor form of government to council-manager form of government. This, move away from the council-mayor form of

government may be explained by the ever increasing complexity of running municipal government and the need to have “professionals” in the role of chief executive officer.

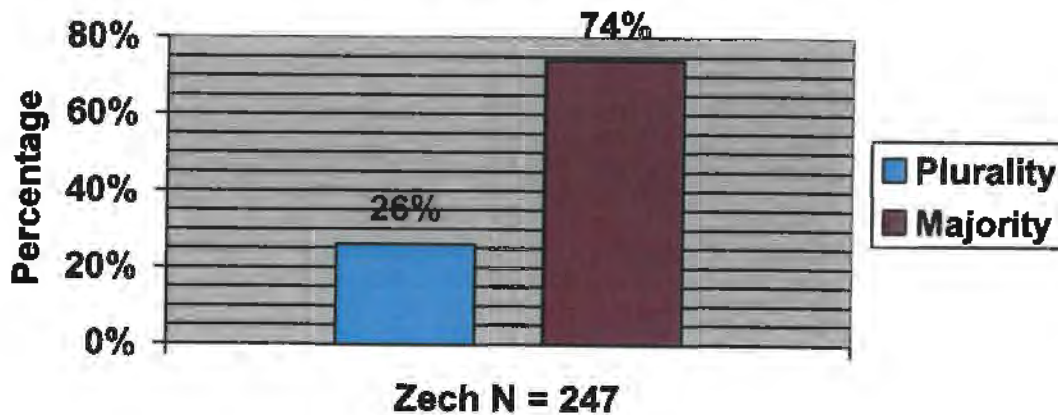
Exhibit 5.1		
FORMS OF GOVERNMENT		
	Blodgett N = 290	Zech N = 247
Council-Manager	86 %	89 %
Council-Mayor	14 %	9 %
Commission	0 %	2 %
Total	100 %	100%

City Council

Council Elections

Seventy-four percent of the cities responding utilize a “majority” system for voting, a clear preponderance of those responding. While Blodgett entered into an in-depth discussion regarding the pros and cons for adopting either a “majority” or “plurality” form of voting, he did not survey the cities to determine which was most prevalent in home rule cities. The 2008 survey requested information to that end, and the results are summarized in Exhibit 5.2:

Exhibit 5.2 Plurality or Majority



Terms of Office – Years and Limits

Years

In terms of percentages, the number of years in a term for council members and mayors remains relatively unchanged with the clear majority being two-year terms. However, Blodgett found that the years for terms of office were the same for Mayors and Council Members in his 1994 survey; i.e., no city differed in how many years a mayor served in a term compared to a council member. The 2008 results indicate that the terms of office for city council members are different than that of the Mayor in 7% of the cities surveyed. This small change certainly is a difference compared to Blodgett's findings. The findings regarding years in a term of office are summarized in Exhibits 5.3 and 5.4:

Exhibit 5.3 Terms of Office - Mayors

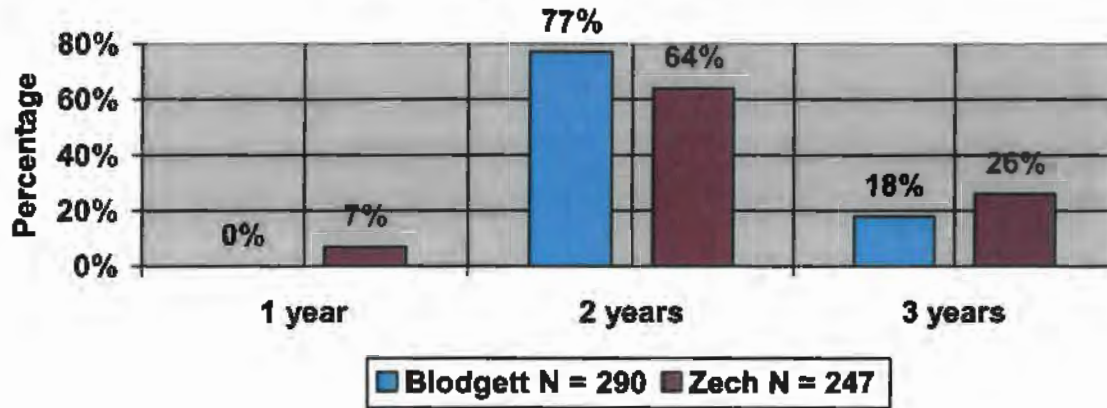
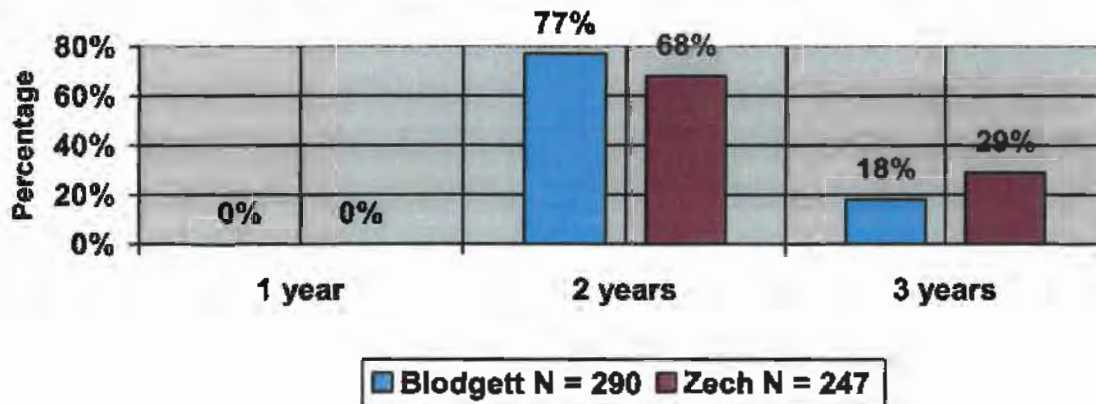
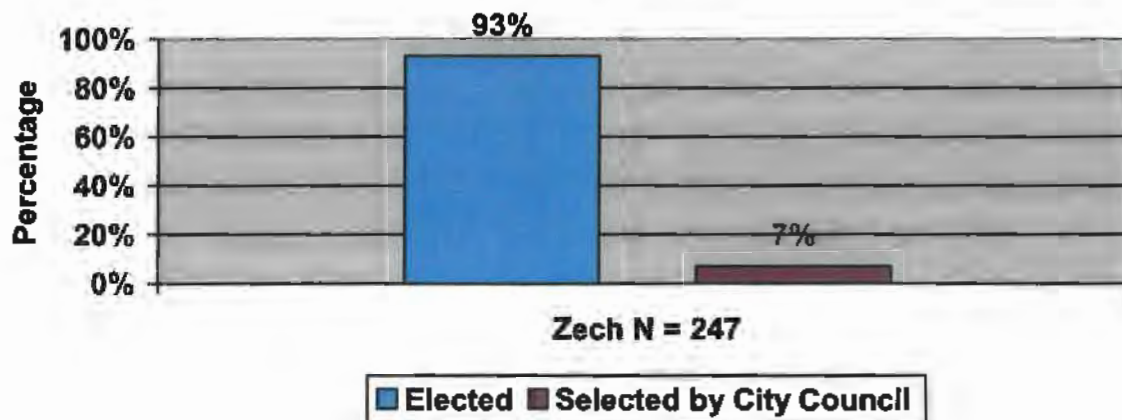


Exhibit 5.4 Terms of Office -City Council



In the 7% percent of cities responding having mayors serving a different number of years than the council members, those mayors serve one-year terms. At first blush, it may appear strange that mayors in these cities serve only one-year terms. However, in these cities, the mayors are selected by the council as a whole following an election rather than being elected by the citizens. Whether the mayor is elected or selected by council is summarized in Exhibit 5.5.

Exhibit 5.5 Selection of Mayor



Generally, where the mayor is appointed by City Council, those cities have charter provisions similar to that of the City of Hewitt, which reads as follows:

Sec. 2.7. Mayor/mayor pro tem.

At its first meeting following each regular election of councilmen, the council shall by election designate one of its numbers as mayor and another of its numbers as mayor pro tem., each of whom shall serve in such capacity for a term of one (1) year. The mayor shall preside at all meetings of the council and shall be recognized as head of the city government for all ceremonial purposes, for the purpose of receiving service of civil process and for emergency purposes, and for military or police purposes, but shall have no administrative duties. The mayor, as a member of the council, shall be entitled to vote upon all affairs considered by the council, but shall have no veto power. The mayor pro tem. shall act as mayor during the absence or disability of the mayor, and shall have power to perform every act the mayor could perform if present.

Blodgett's (1994b) original survey did not find any city where the mayor was appointed by city council. While the difference is slight, only 7%, this change is certainly noticeable in the process to select a mayor by home rule cities.

Limits

There is a substantial difference between the two surveys in the number of terms a council member or mayor may serve. Compared to Blodgett's 1994 study, 17% more cities have charters requiring term limits for council members, and mayors, with a 26% increase in the number of cities that have combined limits for the mayor and council members. Accordingly, there has been a decrease in the number of cities that have separate term limits for mayors and council members. The data from this survey show a trend of limiting the number of years an individual may serve on a city council either as a council member or as a mayor.

Findings regarding term limits and their applicability to Mayor and Council are summarized in Exhibit 5.6.

Exhibit 5.6		
TERM LIMITS BOTH COUNCIL AND MAYOR		
	Blodgett N = 290	Zech N = 247
Separate limits for Mayor and Council	14 %	5 %
Combined limits	10%	36 %
No term limits	76 %	59 %
Total	100 %	100 %

City Manager

Appointment

Sixty-one percent of those surveyed require a majority of the full council to appoint the city manager, while only 35% require a majority vote of those council members present. The number is even more dramatic when one considers that another four percent of the cities responding to the survey require the more restrictive "super-majority" of at least two-thirds of the full council to appoint the city manager. As determined in Chapter 3, Blodgett did not give specific numbers regarding what number of cities required a majority of the entire council to hire the city manager; however, he stated that "only a few of the charters require [a] 'full' majority of council for appointment." There has clearly been a substantial shift in policy regarding the appointment of the city manager. The survey results for this project regarding the vote required to hire the city manager is summarized in Exhibit 5.7:

Exhibit 5.7	
VOTE REQUIRED TO HIRE CITY MANAGER	
Zech N = 223	
Majority of those present	35 %
Majority of the entire city council	61 %
Super-Majority of entire city council	4 %
Total	100 %

Removal

The 2008 results, while not dramatically different from Blodgett's survey, show a decrease in the number of cities requiring a majority vote of the entire council to remove the City

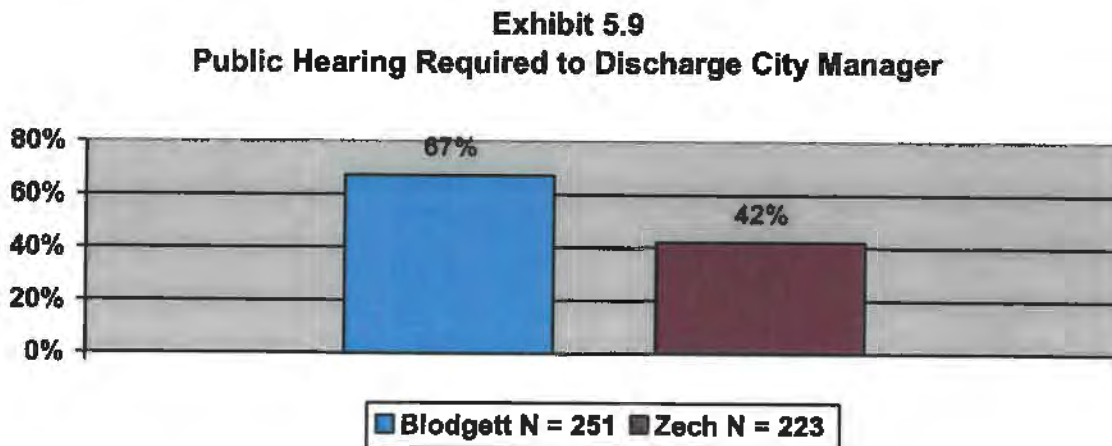
Manager. The distinguishing difference between Blodgett's survey and 2008 is the requirement of a "super majority" of the entire city council to discharge the city manager. As with the vote required to appoint the city manager, there is now a slight percentage of charters requiring a super majority of at least two-thirds of the entire city council to discharge the city manager. Blodgett (1994b, 77) determined that almost three quarters of the council-manager charters require the majority vote of the entire council membership to remove the city manager, with "virtually all other cities require[ing] only a majority of a quorum." The summary of results regarding the type of vote necessary to discharge the city manager is found in Exhibit 5.8:

Exhibit 5.8 VOTE REQUIRED TO DISCHARGE CITY MANAGER		
	Blodgett N= 251	Zech N = 223
Majority of those present	27.5 %	30 %
Majority of the entire city council	72.5 %	66 %
Super majority of the entire city council	0 %	4 %
Total	100%	100 %

Public Hearing Requirements

While there appears to be a slight trend in Texas home rule charters requiring the hiring and discharge of city managers be closer to a unanimous decision by the city council, there also appears to be trend moving away from providing the city manager a right to a public hearing

prior to his discharge, as only just under half of those responding have such a requirement. The findings are summarized in Exhibit 5.9:

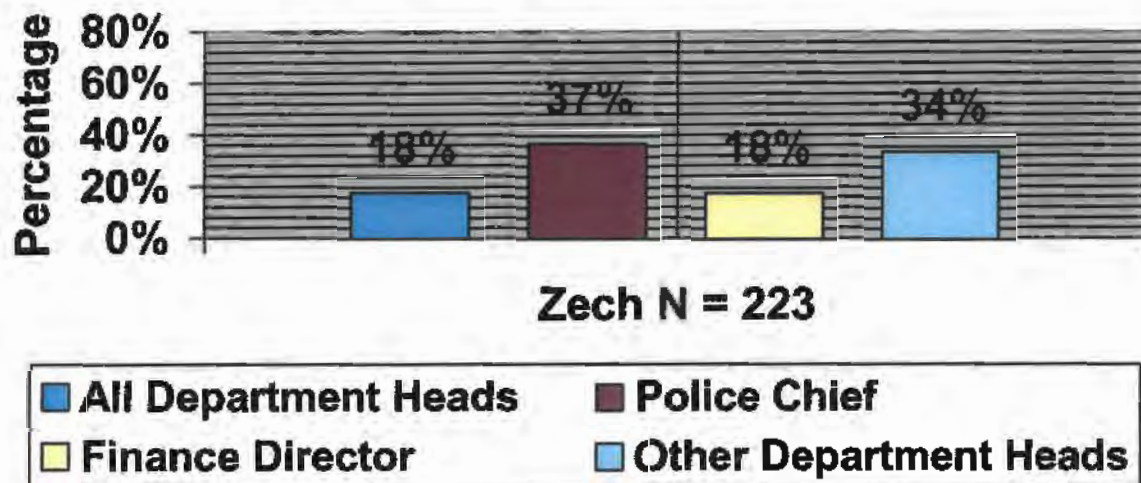


Departments, Offices, Boards

The current survey results established that 18% of those cities responding have charters requiring the city council to confirm the appointment of all department heads hired by the city manager. The remaining 82% require only a select few be confirmed or do not require any of the department heads be confirmed, a substantial decrease as compared to Blodgett's finding that 39% of Texas home rule charters require the city council to confirm department heads by appointment.

Of those cities in the current survey that do not require all department heads hired by the city manager be confirmed by the city council, 18% percent require the finance director to be confirmed; 37% require the Chief of Police to be confirmed; and 34% require other various department heads to be confirmed. Exhibit 5.10 summarizes this information:

Exhibit 5.10 Council Appointment of Department Heads



City Secretary

The appointment of the position of city secretary continues to be firmly held in the hands of the city council as the responses to this survey do not deviate substantially from Blodgett. It can still safely be stated that the position of city secretary “belongs” to the city council, especially when you consider that city council approves the appointment of the city secretary either directly or upon recommendation 70% of the time. Exhibit 5.11 summarizes the survey findings regarding appointment of the City Secretary:

Exhibit 5.11 CITY SECRETARY APPOINTMENT		
	Blodgett N = 290	Zech N = 247
By City Manager	24 %	28 %
By City Manager with City Council Approval	15 %	20 %
By City Council	35 %	33 %
By City Council on recommendation of City Manager	12 %	11 %
By Mayor with City Council Approval	7 %	6 %
Other	7 %	2 %
Total	100 %	100 %

City Attorney

As with the appointment of the city secretary, the method of appointing the city attorney has not changed substantially since Blodgett's 1994 survey. The one noticeable difference occurs in appointment by the city manager, where there appears to be a shift from a straight appointment by the city manager (6% percent in 1994 and 2% in 2008) to appointment by the city council on the recommendation of the city manager (3% in 1994 and 9% in 2008). As with the appointment of the city secretary, the city attorney appointment appears to be held securely in the hands of the city council. Council is involved in the appointment of the city attorney in 97% of the charters, either by direct appointment or upon recommendation. Exhibit 5.12 summarizes the survey findings on appointment of the City Attorney:

Exhibit 5.12 CITY ATTORNEY APPOINTMENT		
	Blodgett N = 290	Zech N = 247
By City Manager	6 %	2 %
By City Manager with City Council Approval	9 %	8 %
By City Council	73 %	72 %
By City Council on recommendation of City Manager	3 %	8 %
By Mayor with City Council Approval	7 %	9 %
Other	2 %	1 %
Total	100 %	100 %

Municipal Judge

As of 2008, there has been no noticeable change in the appointment of the municipal judge, with city council appointing the judge, either directly or by recommendation 95% of the time. This finding is very similar to Blodgett's findings in 1994. Exhibit 5.13 summarizes the survey findings on appointment of the Municipal Judge:

Exhibit 5.13 MUNICIPAL JUDGE APPOINTMENT		
	Blodgett N = 290	Zech N = 247
By City Manager with City Council Approval	3 %	6 %
By City Council	79 %	74 %
By City Council on recommendation of City Manager	3 %	7 %
By Mayor with City Council Approval	6 %	8 %
Elected	5 %	3 %
Other	4 %	2 %
Total	100 %	100 %

Boards and Committees

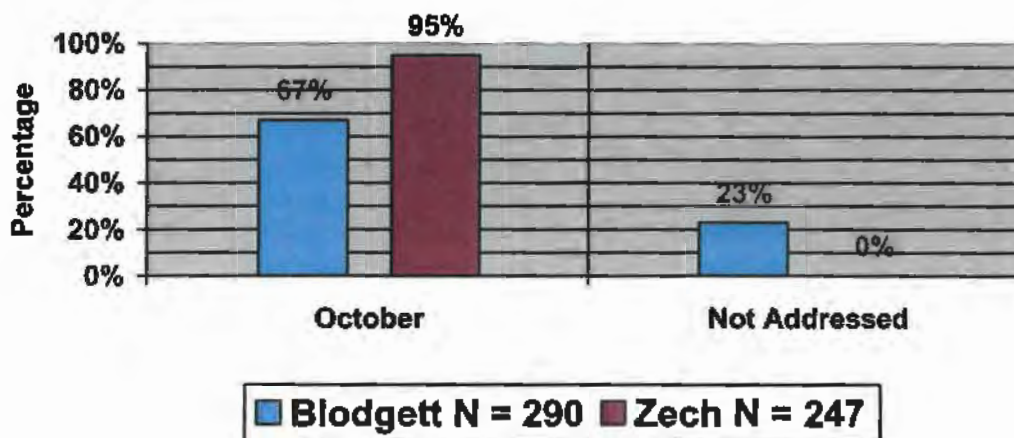
Blodgett (1994b, 94) indicates that twenty-five (25) different boards or commissions are established in home rule charters with many of them setting out requirements for membership, number of members, duties, and replacement of members. This survey indicates that there are thirty-six (36) different boards and committees established in the two hundred forty-seven (247) responding city charters. This number is an increase of eleven (11) boards and commissions as compared to those found by Blodgett, indicating that the citizens are increasing the number of boards and committees that they are mandating be created by their legislative bodies.

Financial Administration

A substantial shift is seen in the beginning of a city's fiscal year between surveys. Ninety-five percent of those cities responding have charter provisions requiring their fiscal year begin in the month of October. Blodgett's 1994 survey results established that 67% of charters mandated their fiscal year begin in October. This 28% increase is substantial and establishes a move towards the business norm of using the month of October as the beginning of a fiscal year.¹⁹ Additionally, 23% of the charters Blodgett surveyed did not address the beginning of the municipality's fiscal year at all, whereas only 1 charter does not do so in 2008.

Exhibit 5.14 details the findings of this survey regarding various charter provisions providing when a municipality's fiscal year begins:

Exhibit 5.14
Beginning of Fiscal Year



¹⁹ My personal experience has shown that many cities prefer that their regular elections for council members and mayors not interfere with the budget cycle. As most regular city elections occur in May, this could also account for this shift in fiscal year beginning.

Upon a comparison between Blodgett's 1994 survey results and current results, a pattern emerges establishing an apparent desire for closer unanimity in a council vote for the adoption of the budget. The 2008 survey indicates that 61% of all charters require a majority vote of the entire city council to approve and adopt the budget, a 12% increase over Blodgett's 1994 survey results showing 49% of the charters requiring a majority vote of the entire council.

The 2008 survey results establish that seventy-two percent of those responding have charter provisions requiring a capital budget or program, and 71% have a specific provision requiring borrowing only upon the anticipation of certain revenue. In Blodgett's 1994 survey, only thirty-nine percent of the charters mandated a capital budget or program, and just over half of the charters had a specific provision requiring borrowing only on the anticipation of certain revenue. This is a clear move towards mandating specific provisions for adequate planning and may reflect a desire by citizens for more fiscal responsibility within the budget, a municipality's biggest policy document. The results are summarized in Exhibits 5.15, 5.16 and 5.17:

Exhibit 5.15 Vote Required to Adopt Budget

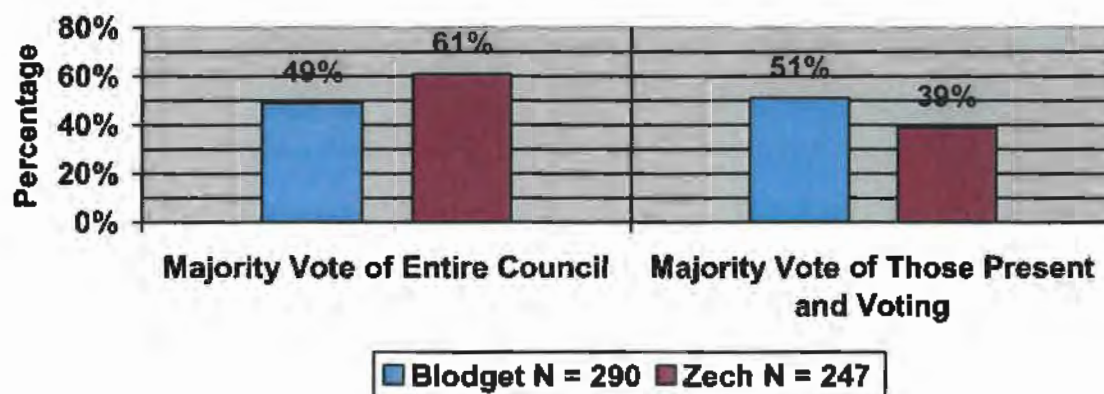


Exhibit 5.16
Capital budget or Program Mandated by Charter

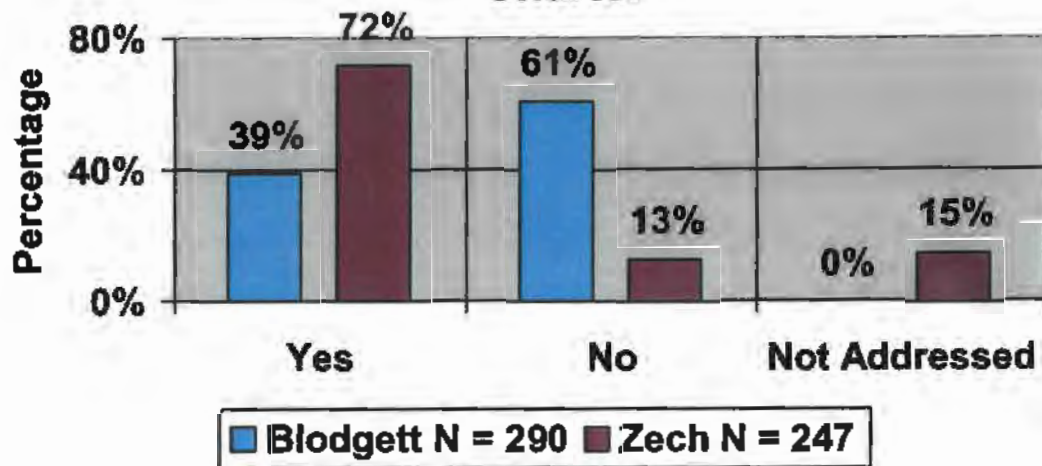
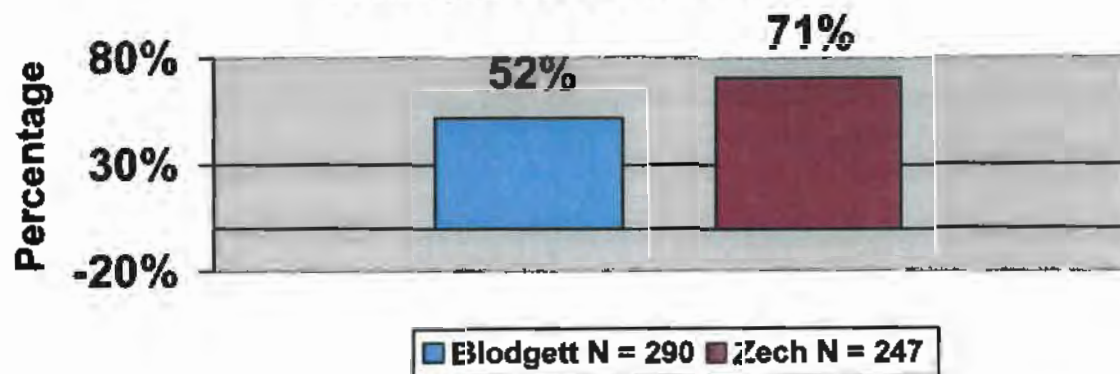


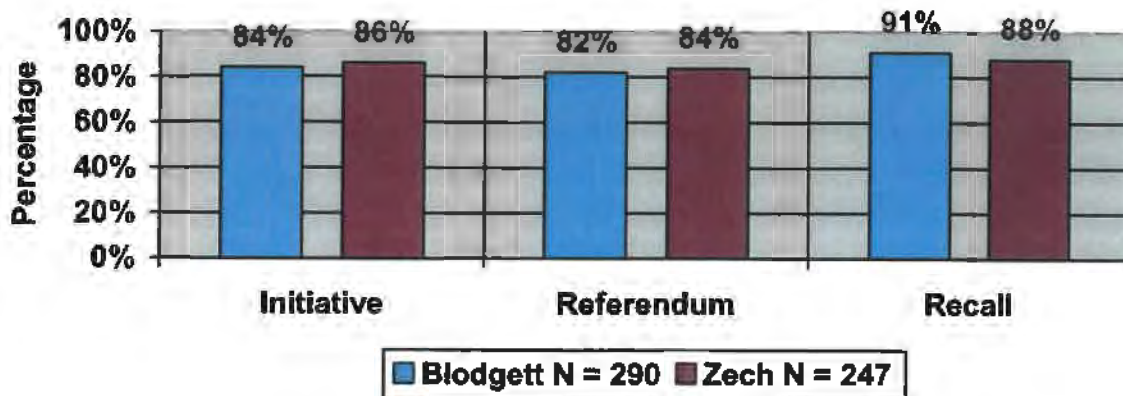
Exhibit 5.17
Specific Charter Provision for Borrowing in Anticipation of Revenue



Direct Democracy: Initiative, Referendum and Recall

Blodgett (1994b) found that Texas charters overwhelmingly provide for all three direct democracy tools. There is relatively little change in that position today. As seen in Exhibit 5.18, the percentages of charters containing provisions for initiative, referendum and recall remain at nearly the same levels as in Blodgett's 1994 survey. It may be stated that the citizen's desire for these local tools are as great today as they were fourteen years ago.

Exhibit 5.18
Initiative, Referendum and Recall



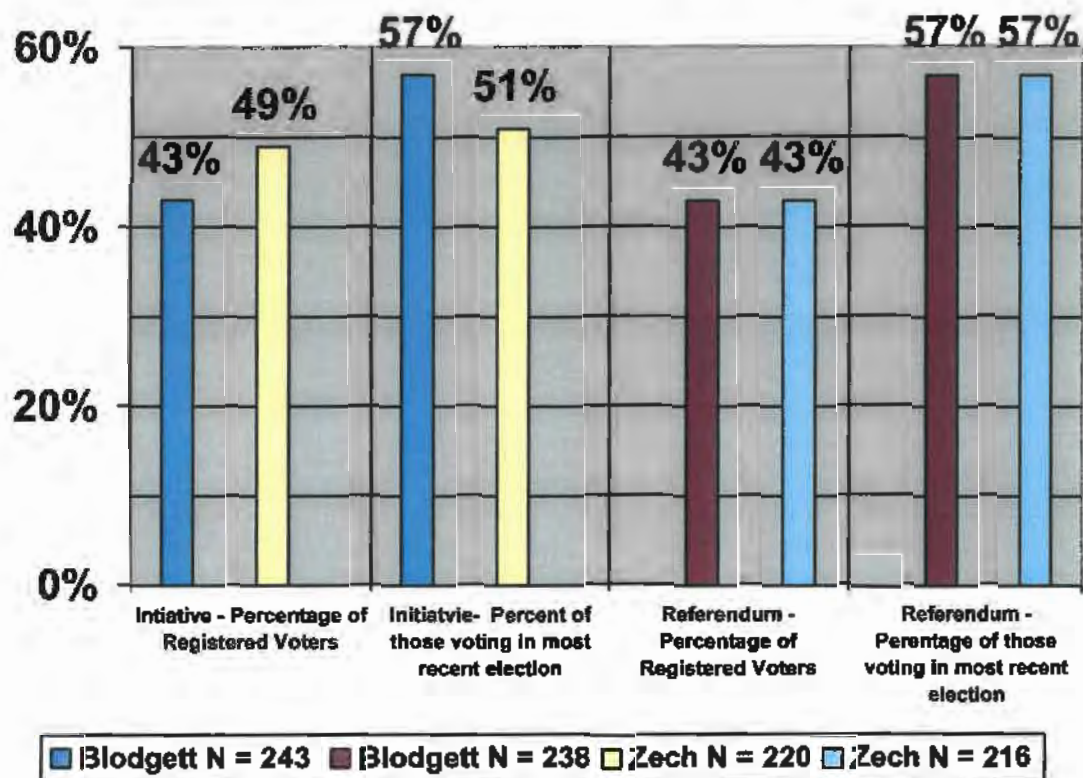
Initiative and Referendum

Types of Signatures

The two surveys do not differ in the types of signatories required from a percentage standpoint. Generally charter provisions remain relatively constant with regard to whether a signature on an initiative or referendum petition needs to be a percentage of the total registered voters in a city or a percentage of those who voted in the last regular election. There is a slight increase in charters requiring a percentage of registered voters for initiative petitions and a corresponding decrease in those charters requiring signatories be a percentage of those voting in

the most recent election. Exhibit 5.19 summarizes the findings with regard to signature requirements for initiatives and referendum:

Exhibit 5.19
Type of Percentage Required on Initiative
and Referendum Petitions



Number of Signatures

As with the types of signatures required, the two surveys do not differ significantly in the number of signatures necessary for petitions from a percentage standpoint. Where there is a difference between the two, is in the “minimum names” category. The 2008 survey indicates a new requirement has arisen that was not present in Blodgett’s 1994 survey.

Five (5) percent and four (4) percent of the charters, in regards to initiative and referendum requirements respectively, require a minimum number of signatures rather than a percentage of voters. Additionally, two other forms of this type of measurement were present in 2008. A small percentage of the charters provide for the greater of either a “particular percentage of voters” or a “minimum number of names”, whichever is greater in order to qualify an initiative or referendum petition. Finally, just fewer than 6% of the charters require a minimum number of names to be met regardless of the percentage requirement in initiative and referendum petitions. Blodgett’s survey indicated that a “percentage of registered voters” or a “percentage of those voting in the most recent election” were the only two criteria used for qualifying a petition for an initiative or referendum. The introduction of a “minimum” number of signatories is new to the process of calculating signatures for either initiative or referendum petitions. Exhibits 5.20 and 5.21 summarize the 2008 survey results and Blodgett’s 1994 findings regarding the percentage number necessary to meet for submitting initiative and referendum petitions:

Exhibit 5.20		
SIGNATURE REQUIREMENTS FOR INITIATIVE PETITION		
	Blodgett N = 243	Zech N = 220
10 %	18 %	19 %
15 %	12 %	10 %
20 %	22 %	21 %
25 %	26 %	19 %

Exhibit 5.20 - Continued		
30 %	13 %	13 %
Other	9 %	13 %
Minimum Names	0 %	5 %

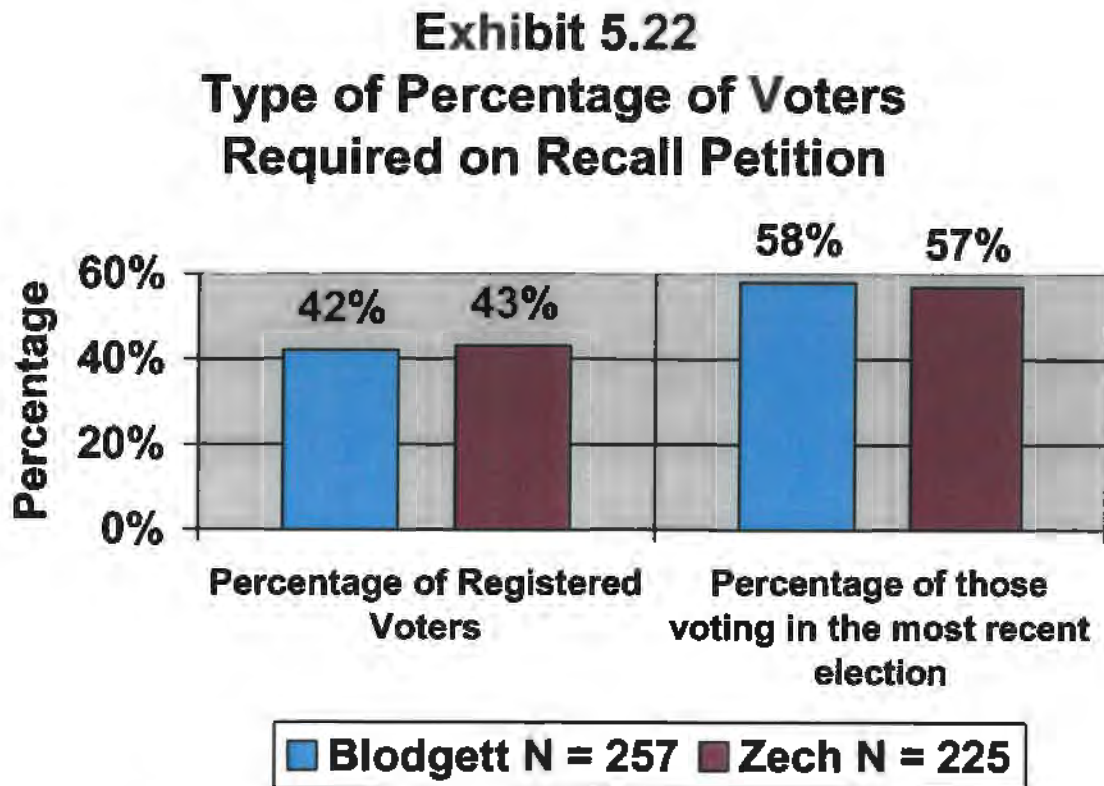
Exhibit 5.21		
SIGNATURE REQUIREMENTS FOR REFERENDUM PETITION		
	Blodgett N = 238	Zech N = 216
10 %	16 %	17 %
15 %	12 %	10 %
20 %	23 %	20 %
25 %	28 %	22 %
30 %	13 %	15 %
Other	8 %	12 %
Minimum Names	0 %	4 %

Recall

Types of Signatures

As with initiative and referendum, the two surveys do not differ in the types of signatories required from a “percentage of voters” standpoint. Generally charter provisions are almost exactly the same with regard to whether a signature on a recall petition needs to be a percentage of the total registered voters in a city or a percentage of those who voted in the last

regular election. Exhibit 5.22 summarizes the findings with regards to signature requirements for recall petitions:



Number of Signatures

As with the types of signatories required, the two surveys do not differ significantly with respect to the number of signatures necessary for petitions from a percentage standpoint. Again, as with initiatives and referendums, the difference exists in the “minimum names” category. The 2008 survey indicates a new requirement has arisen that was not present in Blodgett’s 1994 survey. Blodgett’s survey indicated that a “percentage of registered voters” or a “percentage of those voting in the most recent election” were the only two criteria used for qualifying a petition for a recall. However, a very small percentage of charters now do not require a “percentage” of a

particular type of voter but rather a “minimum number of signatures” regardless of the overall percentage.

Two other alternative forms of this type of measurement were present in Blodgett’s survey as well as the 2008 survey. The first is a requirement that provide for the greater of either, a particular percentage of voters or, a minimum number of names, whichever is greater, in order to qualify a recall petition. The second is to require a minimum number of names to be met regardless of the percentage requirement. These findings are summarized in Exhibit 5.23:

Exhibit 5.23		
SIGNATURE REQUIREMENTS FOR RECALL PETITION		
	Blodgett (N = 257)	Zech (N = 225)
10 %	10 %	13 %
15 %	6 %	8 %
20 %	13 %	12 %
25 %	17 %	13 %
30 %	28 %	27 %
50 %	6 %	4 %
51 %	8 %	8 %
Other	12 %	13 %
Minimum Names	0 %	2 %

Franchises

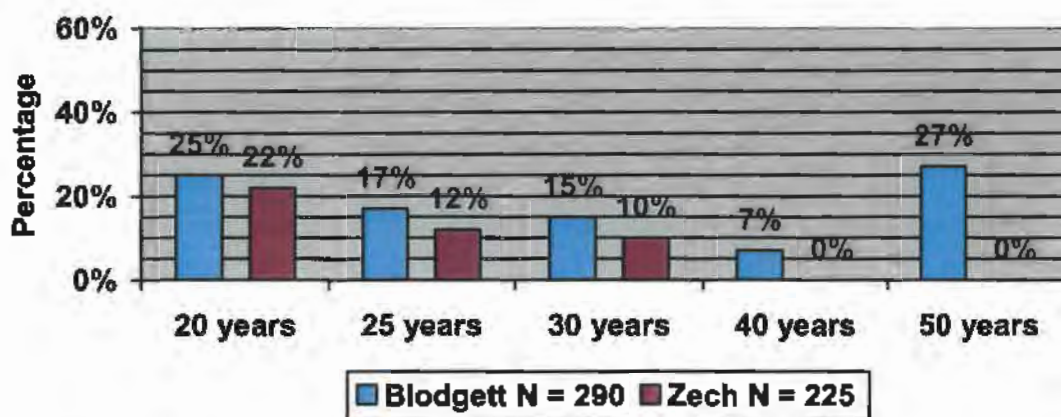
Vote to Award a Franchise

The 2008 survey indicated that 56% of cities surveyed, which address franchises in their charter, require a vote of the majority of the entire city council to award a franchise. This change in how franchises are awarded is substantial, as Blodgett's 1994 survey found that fewer than 15% of home rule charters have the same requirement.

Number of Years a Franchise may be Awarded

The 2008 survey establishes a trend of lengthening the amount of time a franchise may be awarded. It shows that 27% of current charters allow a maximum term of fifty years whereas in 1994, no city allowed for such an extended term for a franchise. Exhibit 5.24 summarizes the 2008 and Blodgett's 1994 survey regarding the number of years that a franchise may be awarded:

**Exhibit 5.24
Maximum Franchise Terms**



Charter Amendments

Blodgett's (1994b, 135) survey indicated that between 1960 and 1994, there had been 257 elections to amend existing charters, with 148 of those occurring between 1990 and 1994.

Of the 247 responses to this survey, fifty-two of the cities had adopted their charter after 1994, and there had been 163 amendments to those chose charters.

CHAPTER SIX

SUMMARY

No major changes are found between the forms of government in Blodgett's original 1994 survey and the 2008 survey. Obviously, the council-manager form of government is just as popular today as it was in 1994 with an unmistakable majority of cities adopting it. Given today's complexities in running city government it is not surprising that citizens' would prefer to have "professionals" in the role of chief executive officer. Additionally, there are no substantial differences between the two surveys in regards to terms and the number of years served; however, a substantial increase is seen in the number of cities that now require specific limits on "how many" terms an elected representative may serve. The move towards restricting terms of office for elected officials is a significant difference between the Blodgetts' 1994 survey and 2008.

A clear pattern emerges with most charters regarding a requirement of greater unanimity in decision making. The requirement of greater unanimity in decision making is found in the hiring and firing decisions over the individuals which the city council has direct control (whether those individuals be a city manager, city attorney, city secretary or municipal judge), in adopting the budgetary documents of the city and, in the awarding of franchises.

As with the form of government, the direct democracy tools of initiative, referendum and recall are still very strong in Texas home rule cities; however, small changes are found in how these tools may be implemented by the citizens. Changes are seen in how signatures are calculated for the purpose of presenting initiative and referendum petitions; specifically the introduction of a "minimum names" requirement which was not present in Blodgett's 1994 study.

In observation of the substantial differences seen between 1994 and 2008 specific conclusions can be derived; charters are requiring their elected officials to “pull together” on decisions made by the governing body, planning tools are being mandated that were not previously mandated in the area of budgeting, and capital projects, and a clear move is seen towards placing specific limits on the amount of time an elected official may serve on a city council.

By 1920 sixty five cities had taken advantage of Texas home rule authority. Seventy-four years later, 290 Texas Cities had adopted a home rule charter. Today the number of home rule cities is 340 and as that number continues to grow, it will be interesting to see how Texas citizens continue to adopt and amend their local government. Clearly, a future review of every single home rule charter as accomplished by Blodgett (1994b) would take a considerable amount of time and resource. However, further research into specific areas as a follow up to this project would prove insightful. Specifically, a detailed study of how the imitative and referendum process are used by the citizens, how often they are invoked, and their success rate would be particularly insightful given the proclivity of initiative and referendum provisions included in home rule charters.

BIBLIOGRAPHY

- Babbie, E. 2001. *The Practice of Social Research, 9th edition*. Belmont, CA: Wadsworth Publishing/Thompson Learning, Inc.
- Berelson, B. (1952). *Content Analysis in Communication Research*. Glencoe, Ill: Free Press.
- Blodgett, T. 1994a. Beware the Lure of The 'Strong' Mayor. *Public Management*, 76, 6-11.
- Blodgett, T. 1994b. *Texas Home Rule Charters*. Texas Municipal League.
- Box, R. C. 1994. Searching for the best structure for American Local Government. *International Journal of Public Administration*, 18, 711-741.
- Crouch, W.W. 1943. Municipal Affairs: The Initiative and Referendum in Cities. *The American Political Science Review*, 37, 491-504.
- DeSantis, V. and Leal, R. 1998. The manager's role at century's end. *Public Management*, 80, 10-16.
- Dodds, H. W. 1924. City Manager Government in American Municipalities. *Journal of Comparative Legislation and International Law*, 6, 183-192.
- Francois, V. L. "Assessment of Grievance Procedures in Austin and large Texas City Governments" (2004). *Applied Research Projects*. Paper 17.
<http://ecommons.txstate.edu/arp/17>
- Gilbertson, H. S. 1911. Government in American Cities. *Annals of the American Academy of Political and Social Science*, 38, 163-68.
- Goodnow, F. J. 1906. Municipal Home Rule. *Political Science Quarterly*, 21, 77-90.
- Hayes, K. J. and Chang, S. 1990. The relative efficiency of city manager and mayor-council forms of government. *Southern Economic Journal*, 57, 167-77.
- Isaac, S., & Michael, W. B. 1997. *Handbook in research and evaluation: a collection of principles, methods, and strategies useful in the planning, design, and evaluation of studies in education and the behavioral sciences*. (3rd Ed.). San Diego: Educational and Industrial Testing Services.
- Keller, L. E. 2002. Municipal Charters. *National Civic Review*, 91, 55-61.
- Jeffers, Rachael, "Development Sprawl in Texas" (2003). *Applied Research Projects*. Paper 46.
<http://ecommons.txstate.edu/arp/46>

- Lester, N. "Assessing Economic Development Incentives: Central Texas City: Managers Perspectives" (2005). *Applied Research Projects*. Paper 6.
<http://ecommons.txstate.edu/arp/6>
- Lindsey, B. "Examining the Acquisition of Information Technology for Texas Municipal Governments" (2005). *Applied Research Projects*. Paper 7.
<http://ecommons.txstate.edu/arp>
- McClesky, C. 1978. *Government and Politics in Texas*. Boston: Little Brown and Co.
- McDonald, J. V. , "An Analysis of Texas' Municipal Home Rule Charters Since 1994" (2000). *Applied Research Projects*. Paper 124.
<http://ecommons.txstate.edu/arp/124>
- McIntyre, L. J. 1999. *The practical skeptic: Core concepts in Sociology*. Mountain View, CA: Mayfield Publishing.
- Munro, W. B. 1911. *City government by Commission*. New York: D. Appleton and Co.
- Munro, W. B. 1916. *Principles and methods of Municipal Administration*. New York: MacMillan Co.
- Munro, W. B. 1926. *The Government of American Cities*. New York: MacMillan Co.
- Nalbandian, J. 2001. The Manager as Political Leader. *National Civic Review*, 90, 63-73.
- Shields, P. M. 1998. Pragmatism as a philosophy of science: A tool for public administration. *Research in Public Administration* 4(1): 195-225
<http://ecommons.txstate.edu/polsfacp/33/>
- Shields, P. M. and Tajalli, Hassan. 2006. Intermediate theory: The missing link in successful student scholarship. *Journal of Public Affairs Education* 12(3): 313-334. Available on line at <http://ecommons.txstate.edu/polsfacp/39/>
- Sinclair, B. "What Do Texas City Managers Value? An Examination of NASPAA Accreditation Standards" (2005). *Applied Research Projects*. Paper 32.
<http://ecommons.txstate.edu/arp/3>
- Svara, J. H. 2002. The Roles of the City Council and Implications for the Structure of City Government. *National Civic Review*, 1, 5-23.
- Taylor, C.F., 1914. Revision of the State Constitution. Part 1. *Proceedings of the Academy of Political Science in the City of New York*, 5, 89-97.
- Texas Municipal League. 2005. *Home Rule Cities: A Handbook for Mayors and Council Members*. Austin: Texas Municipal League.

APPENDICIES

09/10/93

City Charter Detailed Worksheet

Page: 1 of 3

City:	No.:	Date completed by T.B.:	Date input by D.P.:
-------	------	-------------------------	---------------------

Form of government: 1 Council-Manager 2 Mayor-Council 3 Commission 4 Other

Is mayor member: 1 Yes 2 No 3 N/A Total on CC _____ Selection of mayor: 1 Elected 2 By Council 3 Other

CC elected: 1 AL 2 ALByP 3 SMD 4 Mixed Dist. _____ ALs _____ Reside in Dist. 1 Yes 2 No 3 N/A

Council votes to impeach _____ Mayor veto 1 Yes 2 No 3 N/A / Override votes _____

Authority of mayor: Appoints boards & commissions 1 Yes 2 No 3 N/A With approval of CC 1 Yes 2 No 3 N/A

Regular vote 1 Yes 2 No 3 N/A Vote only in tie 1 Yes 2 No 3 N/A No vote 1 Yes 2 No 3 N/A

Ceremonial duties 1 Yes 2 No 3 N/A Martial law 1 Yes 2 No 3 N/A Spelled in emergency 1 Yes 2 No 3 N/A

Appoint CAO 1 Yes 2 No 3 N/A Appoint dept. heads 1 Yes 2 No 3 N/A Confirmed by Council 1 Yes 2 No 3 N/A

Prepare budget 1 Yes 2 No 3 N/A

Mayor salary: NTE 1 Yes 2 No 3 N/A \$ _____ per: 1 Meeting 2 Week 3 Month 4 Year 5 Other

NTE 1 Yes 2 No 3 N/A \$ _____ per: 1 Month 2 Year

Set by Council: 1 Yes 2 No 3 N/A

Expenses: NTE 1 Yes 2 No 3 N/A \$ _____ per: 1 Meeting 2 Week 3 Month 4 Year 5 Other 6 NEC

Set by Council: 1 Yes 2 No 3 N/A

Terms(years): Mayor 1 2 3 4 Council 2 3 4 Limits: 1 Two- 2 Two 3 Two+ 4 Three- 5 Three 6 Three+

Limit applies: Both 1 Yes 2 No 3 N/A Separately 1 Yes 2 No 3 N/A Rerun wait _____ (years)

Terms staggered 1 Yes 2 No 3 N/A Elections by majority 1 Yes 2 No 3 N/A Plurality 1 Yes 2 No 3 N/A

Name on ballot: Fill out form 1 Yes 2 No 3 N/A Petition 1 Yes 2 No 3 N/A No. of names _____

Fee 1 Yes 2 No 3 N/A Amount \$ _____ Other 1 Yes 2 No 3 N/A

Council qualifications: Residence 1 Yes 2 No 3 N/A If Yes 1 6 mo 2 1 yr 3 2 yrs 4 Other 5 Not specified

Owner of property 1 Yes 2 No 3 N/A Age _____ Registered voter 1 Yes 2 No 3 N/A

Barred if tax delinquent 1 Yes 2 No 3 N/A Other 1 Yes 2 No 3 N/A

Off Council: 1 2 3 4 (missed) 1 Yes 2 No 3 N/A

Filling 1 vacancy: Appointment 1 Yes 2 No 3 N/A Election 1 Yes 2 No 3 N/A Other 1 Yes 2 No 3 N/A

Filling 2 vacancy: Appointment 1 Yes 2 No 3 N/A Election 1 Yes 2 No 3 N/A Other 1 Yes 2 No 3 N/A

Council meets (required): 1 Weekly 2 Twice per month 3 Once per month 4 Not specified

Council meets (actual): 1 Weekly 2 Twice per month 3 Once per month 4 Not specified

Mayor Pro Tem salary: NTE 1 Yes 2 No 3 N/A \$ _____ per: 1 Meeting 2 Week 3 Month 4 Year 5 Other

NTE 1 Yes 2 No 3 N/A \$ _____ per: 1 Month 2 Year

Set by Council: 1 Yes 2 No 3 N/A

Expenses: NTE 1 Yes 2 No 3 N/A \$ _____ per: 1 Meeting 2 Week 3 Month 4 Year 5 Other 6 NEC

Set by Council: 1 Yes 2 No 3 N/A

Council salary: NTE 1 Yes 2 No 3 N/A \$ _____ per: 1 Meeting 2 Week 3 Month 4 Year 5 Other

NTE 1 Yes 2 No 3 N/A \$ _____ per: 1 Month 2 Year

Set by Council: 1 Yes 2 No 3 N/A

Expenses: NTE 1 Yes 2 No 3 N/A \$ _____ per: 1 Meeting 2 Week 3 Month 4 Year 5 Other 6 NEC

Set by Council: 1 Yes 2 No 3 N/A

09/10/93

City Charter Detailed Worksheet

Page: 2 of 3

City:	No.:	Date completed by T.B.:	Date input by D.P.:
<u>City Attorney:</u> Appointed by: <input type="checkbox"/> 1 Manager <input checked="" type="checkbox"/> 2 Manager with approval of CC <input type="checkbox"/> 3 Council <input type="checkbox"/> 4 Council on recommendation of manager <input checked="" type="checkbox"/> 5 Mayor <input type="checkbox"/> 6 Mayor on recommendation of manager <input type="checkbox"/> 7 Mayor with approval of CC			
<u>City Clerk / Secretary:</u> <input type="checkbox"/> 1 Manager <input checked="" type="checkbox"/> 2 Manager with approval of CC <input type="checkbox"/> 3 Council <input type="checkbox"/> 4 Council on recommendation of manager (circle one) <input checked="" type="checkbox"/> 5 Mayor <input type="checkbox"/> 6 Mayor on recommendation of manager <input type="checkbox"/> 7 Mayor with approval of CC			
Term: <input type="checkbox"/> 1 1 year <input checked="" type="checkbox"/> 2 2 years <input type="checkbox"/> 3 3 years <input type="checkbox"/> 4 4 years <input type="checkbox"/> 5 Pleasure of CC <input type="checkbox"/> 6 Other <input type="checkbox"/> 7 N/A			
<u>City Judge:</u> <input type="checkbox"/> 1 Manager <input checked="" type="checkbox"/> 2 Manager with approval of CC <input type="checkbox"/> 3 Council <input type="checkbox"/> 4 Council on recommendation of manager <input checked="" type="checkbox"/> 5 Mayor <input type="checkbox"/> 6 Mayor on recommendation of manager <input type="checkbox"/> 7 Mayor with approval of CC			
Term: <input type="checkbox"/> 1 1 year <input checked="" type="checkbox"/> 2 2 years <input type="checkbox"/> 3 3 years <input type="checkbox"/> 4 4 years <input type="checkbox"/> 5 Pleasure of CC <input type="checkbox"/> 6 Other <input type="checkbox"/> 7 N/A			
<u>Municipal Court Clerk:</u> <input type="checkbox"/> 1 Manager <input checked="" type="checkbox"/> 2 Manager with approval of CC <input type="checkbox"/> 3 Council <input type="checkbox"/> 4 Council on recommendation of manager <input checked="" type="checkbox"/> 5 Mayor <input type="checkbox"/> 6 Mayor on recommendation of manager <input type="checkbox"/> 7 Mayor with approval of CC			
Term: <input type="checkbox"/> 1 1 year <input checked="" type="checkbox"/> 2 2 years <input type="checkbox"/> 3 3 years <input type="checkbox"/> 4 4 years <input type="checkbox"/> 5 Pleasure of CC <input type="checkbox"/> 6 Other <input type="checkbox"/> 7 N/A			
<u>Open Meeting Requirements</u> <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Exception allowed as by law <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A			
<u>City Manager established</u> <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A City manager allowed <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Former member of CC not eligible for: <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 Other (years) Manager participates in CC meeting <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Hearing provided manager on removal <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Vote required to hire manager: <input type="checkbox"/> 1 Majority <input checked="" type="checkbox"/> 2 Majority of CC <input type="checkbox"/> 3 Other Vote required to discharge manager: <input type="checkbox"/> 1 Majority <input checked="" type="checkbox"/> 2 Majority of CC <input type="checkbox"/> 3 Other Council prohibited from interference in personnel matters <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A All department head appointments require confirmation by council <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A If not all, which of these: Finance Director <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Police Chief <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Other <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A			
<u>Departments established in city charter:</u> Finance <input type="checkbox"/> A / <input type="checkbox"/> M Personnel <input type="checkbox"/> A / <input type="checkbox"/> M Legal <input type="checkbox"/> A / <input type="checkbox"/> M Planning <input type="checkbox"/> A / <input type="checkbox"/> M Police <input type="checkbox"/> A / <input type="checkbox"/> M Fire <input type="checkbox"/> A / <input type="checkbox"/> M Recreation <input type="checkbox"/> A / <input type="checkbox"/> M Park & Recreation <input type="checkbox"/> A / <input type="checkbox"/> M Library <input type="checkbox"/> A / <input type="checkbox"/> M Health <input type="checkbox"/> A / <input type="checkbox"/> M Health Officer <input type="checkbox"/> A / <input type="checkbox"/> M Aviation <input type="checkbox"/> A / <input type="checkbox"/> M Hospital <input type="checkbox"/> A / <input type="checkbox"/> M Other <input type="checkbox"/> I / <input type="checkbox"/> M			
<u>Outside audit required</u> <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Limit of years <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Years limit: <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 (years)			
<u>Fiscal year begins:</u> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 (mo.) May be changed by ordinance <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Borrowing authorized in anticipation of revenue <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Limits set on sale of city property <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Purchase limit before CC must act \$ _____ Purchase limit before written bids required \$ _____ Vote required for adoption of budget: <input type="checkbox"/> 1 Simple majority <input checked="" type="checkbox"/> 2 Majority of total Council If no vote adopted by E-O-F-Y: <input type="checkbox"/> 1 Manager/mayor's budget effective <input checked="" type="checkbox"/> 2 Continuation of last year <input type="checkbox"/> 3 No provision <input type="checkbox"/> 4 Other Detailed budget requirements <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Contingency fund <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A \$ _____. % _____. Revenues must equal expenditures <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A No mention <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Transfer of appropriations: <input type="checkbox"/> 1 Manager between departments <input checked="" type="checkbox"/> 2 With approval of Council Capital budget or program <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A			
<u>Charter maximum tax rate:</u> Operating \$ _____ Debt Service \$ _____ Total \$ _____ None <input type="checkbox"/> 1 Yes <input checked="" type="checkbox"/> 2 No <input type="checkbox"/> 3 N/A Vote required to set tax rate: <input type="checkbox"/> 1 Majority <input checked="" type="checkbox"/> 2 Majority of CC <input type="checkbox"/> 3 Other Vote required to submit bond election to citizens: <input type="checkbox"/> 1 Majority <input checked="" type="checkbox"/> 2 Majority of CC <input type="checkbox"/> 3 Other			

09/10/93

City Charter Detailed Worksheet

Page: 3 of 3

[illegible]

Abilene	Coleman
Alamo	College Station
Alamo Heights	Colleyville
Allen	Colorado City
Alpine	Commerce
Amarillo	Conroe
Anna	Converse
Anson	Coppell
Aransas Pass	Copperas Cove
Arlington	Corinth
Athens	Corpus Christi
Atlanta	Crockett
Azle	Cuero
Balch Springs	Dalhart
Ballinger	Dayton
Bastrop	De Leon
Baytown, Texas	Decatur
Beaumont	Deer Park
Bedford	Denison
Beeville	Denton
Bellaire	Denver City
Bellmead	DeSoto
Belton	Dickinson
Benbrook	Dimmitt
Big Spring	Duncanville
Boerne	Eagle Pass
Bonham	Eastland
Borger	Edna
BOWIE	El Campo
Brady	Electra
Breckenridge	Elgin
Brenham	Eules
Bridge City	Everman
Brownfield	Fairview
Brownwood	Farmers Branch
Bryan	Floresville
Burkburnett	Flower Mound
Burleson	Forest Hill
Burnet	Forney
Cameron	Fort Worth
Canyon	Fredericksburg
Carrizo Springs	Friendswood
Carrollton	Frisco
Carthage	Gainesville
Cedar Hill	Galena park
Cedar Park	Garland
Celina	Gatesville
Cibolo	Georgetown
Cleburne	Giddings
Clute	Gilmer

Gladewater	Littlefield
Gonzales	Live Oak
Gorman	Lockhart
Graham	Longview
Granbury	Los Fresnos
Grapevine	Lubbock
Greenville	Lufkin
Gun Barrel City	Lumberton
Haltom City	Mansfield
Harker Heights	Marble Falls
Harlingen	Marshall
Heath	McAllen
Henderson	McGregor
Hewitt	Mesquite
Highland Park	Mexia
Highland Village	Midland
Hillsboro	Mineral Wells
Humble	Missouri City
Huntsville	Monahans
Hurst	Mount Pleasant
Hutto	Muleshoe
Ingleside	Nacogdoches
Irving	Nassau Bay
Jacksonville	Navasota
Jasper	Nederland
Joshua	New Braunfels
KATY	North Richland Hills
Kaufman	Olney
Keene	Orange
Kennedale	Palestine
Kermit	Pampa
Kerrville	Paris
Kilgore	Pearland
Killeen	Pflugerville
Kyle	Pharr
La Grange	Plano
La Marque	Port Isabel
Lacy Lakeview	Port Neches
Lago Vista	Portland
Lake Dallas	Prosper
Lake Jackson	Richardson
Lake Worth	Richland Hills
Lakeway	Robinson
Lamesa	Rockdale
Lampasas	Rockport
Lancaster	Rosenberg
LaPorte	Round Rock
Laredo	Rowlett
Levelland	Royse City
Liberty	Rusk

Appendix C

Sachse
Saginaw
San Angelo
San Benito
Sanger
Santa Fe
Schertz
Seabrook
Seagoville
Sealy
Seguin
Seminole
Sherman
Sinton
Snyder
Socorro
Southlake
Stephenville
Sugar Land
Sweetwater
Taylor
Temple
Terrell
Terrell Hills
The Colony
Tomball
Trophy Club
Universal City
University Park
Vernon
Victoria
Vidor
Waco
Watauga
Waxahachie
Weatherford
Webster
West Orange
West University Place
Wharton
White Oak
White Settlement
Wichita Falls
Willis
Windcrest
Wylie
Yoakum

Appendix D - Blodgett's 1994 Survey Responding Cities

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Abilene	04-20-11 ²	11-06-62	same	01-17-81
Addison	---	08-12-78	same	01-16-93
Alamo *	---	01-20-79	same	01-18-92
Alamo Heights *	---	11-23-54	same	none
Alice	---	09-10-49	same	04-04-81
Allen	---	01-20-79	same	none
Alpine	---	05-01-93	same	none
Alvin	---	02-23-63	same	05-07-94
Amarillo	05-06-09	11-18-13	same	08-09-80
Andrews	---	06-09-59	same	05-07-94
Angleton	---	02-17-67	same	05-04-91
Anson *	---	04-29-20	same	04-01-52
Aransas Pass	---	11-20-51	same	06-02-86
Arlington	---	01-17-20	same	11-02-93
Athens	09-01-1856	09-10-60	12-10-66	08-13-77
Atlanta	---	11-12-68	same	05-07-94
Austin	12-27-1839	08-09-24	01-31-53	05-07-94
Azle	---	04-06-71	same	05-05-90
Balch Springs	---	01-20-90	same	05-07-94
Ballinger	---	04-02-63	same	05-01-93
Bay City *	---	01-21-89	same	05-04-91
Baytown	---	01-24-48 ¹	same	01-20-79
Beaumont	12-16-1838	12-30-19	12-06-47	04-05-86
Bedford	---	09-24-66	same	08-14-93

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Beeville	----	10-05-51	same	04-10-73
Bellaire	----	04-02-49	same	11-03-87
Bellmead	----	11-12-55 ¹	same	09-30-61
Belton	01-15-1852	08-18-14	08-20-51	05-05-90
Benbrook	----	04-02-83	same	05-05-90
Big Spring	----	12-07-26	same	10-02-73
Bonham	02-02-1848	03-11-47	same	04-04-87
Borger	----	11-08-27	06-24-30	05-02-92
Bowie *	----	04-07-84	same	05-06-89
Brady	----	08-14-82	same	11-02-93
Breckenridge	----	03-19-54	same	01-16-88
Brenham	11-03-1866	09-07-20	same	05-01-93
Bridge City	----	04-06-74	same	05-01-93
Brownfield	----	11-16-54 ¹	same	none
Brownsville	01-24-1850	12-31-15	same	11-02-93
Brownwood	----	07-08-16	04-08-55	04-05-80
Bryan	----	03-23-17	11-04-41	05-07-94
Burkburnett	----	05-08-23	same	04-04-67
Burleson	----	04-05-69	same	08-14-82
Cameron *	01-14-1856	01-28-56	same	08-09-80
Canyon	----	06-23-59	same	02-20-78
Carrizo Springs	----	04-07-59	same	08-15-89
Carrollton	----	09-16-61	same	05-02-92
Carthage	01-19-1852	11-30-48	same	04-05-86
Cedar Hill *	----	05-31-75	same	05-01-93

Appendix D - Blodgett's 1994 Survey Responding Cities

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Cedar Park	----	01-17-87	same	none
Center	----	04-07-84	same	none
Childress *	----	11-27-17	same	05-07-88
Cisco	----	07-28-19	02-22-74	none
Cleburne	05-03-1871	09-17-14	03-28-50	04-05-86
Cleveland	----	01-17-81	same	05-01-93
Clute	----	11-05-57	same	05-01-93
Coleman	----	03-14-50	same	01-19-91
College Station	----	01-08-52	same	05-02-92
Colleyville	----	01-15-77	same	01-18-92
Colorado City	----	12-03-48 ¹	same	04-03-88
Commerce	----	01-30-54	same	04-07-79
Conroe *	----	12-14-65	same	08-08-92
Converse	----	08-08-91	same	04-07-84
Coppell	----	01-18-86	same	11-05-91
Copperas Cove	----	01-20-79	same	05-01-93
Corpus Christi	04-25-1846	04-30-26	same	04-03-93
Corsicana	02-08-1854	12-11-17	same	05-05-90
Crockett	12-29-1837	04-07-64	same	04-03-82
Crystal City	----	01-31-58	same	04-02-83
Cuero	04-23-1873	11-21-44	06-10-69	11-02-93
Daingerfield	12-24-1851	04-05-80	same	05-06-89
Dalhart	----	05-17-60	same	08-11-79
Dallas	02-02-1856	01-22-14	same	05-01-93
Dayton	----	04-03-76	same	05-02-92

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
DeLeon *	—	12-16-19	same	05-02-92
DeerPark	—	12-06-60	same	12-08-81
Del Rio	—	05-07-18	05-27-67	04-05-86
Denison	03-07-1873	10-23-56	04-01-75	01-19-85
Denton	09-26-1866	04-04-14	02-24-59	01-19-80
Denver City	—	04-06-85	same	05-07-88
DeSoto	—	05-17-69	same	05-04-91
Dickinson	—	01-17-87	same	05-07-94
Dimmitt	—	05-05-90	same	none
Donna	—	02-19-57	same	05-07-94
Dumas	—	03-04-55	same	05-01-93
Duncanville	—	05-05-62	same	01-21-89
Eagle Pass	—	03-05-18	01-30-64	05-07-94
Eastland	—	05-16-19	same	05-07-94
Edinburg	—	05-05-28	04-05-49	11-03-81
Edna	—	04-05-66	same	04-01-84
El Campo	—	11-30-54	same	05-01-93
El Paso *	05-17-1873	01-21-84	same	05-07-94
Electra *	—	08-25-17	same	08-13-88
Elgin	05-31-1873	08-10-85	same	05-01-93
Elsa	—	01-17-81	same	none
Ennis	—	10-07-13	same	01-17-81
Eules	—	07-21-62	same	11-05-91
Everman	—	04-05-86	same	05-06-89
Farmers Branch	—	12-03-56	same	01-21-89

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Flower Mound	---	11-03-81	same	05-06-89
Forest Hill	---	08-14-76	same	none
Fort Worth	02-17-1873	12-11-24	same	05-06-89
Fredricksburg	---	05-04-91	same	none
Freeport	---	10-01-49	06-18-60	05-07-94
Friendswood	---	10-16-71	same	05-04-92
Frisco	---	04-04-87	same	none
Gainesville	02-17-1873	05-07-94	same	none
Galena Park *	---	05-31-46	same	11-06-79
Galveston	01-28-1839	04-19-60	same	11-02-93
Garland	---	10-16-51	same	05-07-94
Gatesville	---	12-06-66	same	none
George West	---	01-19-80	same	05-02-92
Georgetown	09-26-1866	04-04-70	04-16-86	05-07-94
Giddings	04-18-1873	01-16-82	same	04-01-84
Gladewater	05-02-1874	10-18-55	same	08-10-85
Glenn Heights	---	08-08-87	same	none
Gonzales	12-14-1837	12-10-57	same	04-02-83
Gorman *	---	04-26-20	same	07-15-60
Graham	---	07-28-20	same	05-04-91
Granbury	---	01-21-89	same	05-04-91
Grand Prairie	---	05-01-48	same	11-03-87
Grapevine	---	11-16-65	same	05-02-92
Greenville	02-14-1852	11-21-53	same	08-08-92
Groves	---	12-30-53	same	04-02-77

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Haltom City	—	12-03-55	same	01-15-94
Harker Heights	—	12-13-71	same	05-04-91
Harlingen	—	02-23-27	same	04-04-87
Hearne	04-11-1871	05-18-64	same	none
Henderson	02-01-1845	04-01-47	same	04-06-85
Hereford	—	09-06-52 ¹	same	05-02-79
Hewitt	—	04-03-82	same	none
Highland Park	—	08-26-75	same	none
Highland Village	—	01-18-86	same	05-02-92
Hillshoro	11-12-1866	06-01-48	04-04-81	none
Hitchcock *	—	05-28-60	same	04-12-75
Houston *	06-05-1837	10-15-13	same	01-15-94
Humble	—	12-19-70	same	05-02-92
Huntsville	01-30-1845	09-28-68	same	01-18-92
Hurst	—	12-29-56	same	05-02-92
Ingleside	—	11-06-79	same	none
Irving	—	10-25-52	same	01-21-89
Jacinto City	—	01-17-81	same	08-15-87
Jacksonville	05-07-1873	01-20-31	same	01-08-77
Jasper	12-16-1838	10-20-64	same	08-10-91
Jersey Village	—	08-09-86	same	05-01-93
Katy *	—	01-17-81	same	05-01-93
Kaufman	11-09-1866	11-03-87	same	none
Keller	—	04-03-82	same	none
Kermit	—	11-07-89	same	none

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Kerrville	—	02-25-42	same	05-02-92
Kilgore	—	09-13-60	same	none
Killeen	—	03-03-49	same	01-15-94
Kingsville	—	04-18-16	same	05-07-94
Kirby	—	05-07-88	same	05-04-91
La Feria	—	11-07-89	same	none
La Grange	11-18-1837	01-15-83	same	none
La Marque	—	03-01-57 ¹	same	01-19-85
La Porte	—	03-22-49	08-09-80	05-05-90
Lake Jackson	—	01-30-54	same	05-07-94
Lake Worth *	—	04-06-65	same	05-11-68
Lakeway	—	05-05-90	same	05-07-94
Lamesa	—	05-01-45	same	12-28-71
Lampasas	10-10-1866	08-09-86	same	none
Lancaster	—	05-05-56	same	01-29-74
Laredo	01-29-1848	01-14-81	same	01-16-88
League City *	—	03-27-62	same	01-16-93
Levelland	—	01-18-49	same	05-02-92
Lewisville	—	01-29-63	same	05-02-92
Liberty	06-07-1837	05-06-58	same	08-10-91
Littlefield	—	02-20-59	same	none
Live Oak	—	08-31-76	same	05-05-90
Lockhart	02-10-1852	02-23-73	same	05-05-90
Longview	05-17-1871	02-20-23	04-01-78	none
Lubbock	—	12-27-17	same	01-18-92

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Lufkin	---	03-10-19	02-01-66	05-07-94
Luling	---	01-15-77	same	none
Mansfield	---	01-28-75	same	05-07-88
Marble Falls	---	08-09-86	same	08-11-90
Marlin *	11-12-1866	11-08-77	same	01-16-93
Marshall	12-31-1844	12-18-13	same	01-30-62
McAllen *	---	01-31-27	same	08-16-80
McGregor	---	01-20-79	same	05-01-89
McKinney	02-19-1854	09-30-13	12-21-59	05-07-88
Mercedes	---	09-21-71	same	05-02-92
Mesquite *	---	08-22-53	same	04-04-87
Mezia	04-07-1873	07-07-24	same	08-08-92
Midland *	---	11-05-40 ¹	same	05-04-91
Midlothian	---	08-09-80	same	none
Mineral Wells		08-19-18	07-26-66	11-05-91
Mission	---	11-09-28	08-29-61	01-17-87
Missouri City	---	11-23-74	same	05-02-92
Monahans	---	10-30-54	same	05-04-91
Mt. Pleasant	03-20-1848	04-06-48	same	04-05-80
Muleshoe	---	07-05-60	same	04-07-79
Nacogdoches *	06-05-1837	03-21-29 ¹	same	05-07-88
Nassau Bay	---	04-07-73	same	05-07-94
Navasota	10-27-1866	03-20-22	10-11-47	01-21-84
Nederland	---	03-10-55	same	04-04-72
New Braunfels	05-11-1846	01-18-44	11-22-66	05-01-93

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
North Richland Hills	—	11-03-64	same	08-08-92
Odessa	—	04-03-45	same	11-05-91
Olney	—	04-07-79	same	05-05-90
Orange	09-01-1856	07-21-14	01-12-60	08-09-86
Palestine	03-14-1848	08-13-83	same	05-02-92
Pampa	—	11-08-27	same	08-24-82
Paris	02-03-1845	11-02-48 ¹	same	none
Pasadena *	—	01-12-43	12-12-64	08-08-92
Pearland	—	02-06-71	same	05-07-94
Pearsall	—	05-07-94	same	none
Pecos City	—	04-06-85	same	05-06-89
Pflugerville	—	11-02-93	same	none
Pharr	—	11-01-49	same	05-06-89
Plainview	—	04-06-20	same	11-05-85
Plano	06-02-1873	06-10-61	same	05-01-93
Pleasanton	—	08-14-82	same	08-12-89
Port Aransas	—	08-12-78	same	05-04-91
Port Arthur	05-06-11 ²	03-08-32	01-26-63	05-02-92
Port Isabel	—	01-23-84	same	none
Port Lavaca	—	01-31-56 ¹	same	04-04-72
Port Neches	—	04-18-55	04-04-67	01-15-83
Portland	—	08-08-67	same	04-04-87
Quannah *	—	12-11-19	same	04-05-69
Ranger *	—	04-03-19	same	11-28-61
Raymondville *	—	03-29-55	same	04-07-70

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Richardson	—	06-23-56	01-23-89	none
Richland Hills	—	08-09-86	same	05-01-93
River Oaks *	—	01-11-49	same	12-07-57
Robstown *	—	03-09-48	same	04-06-85
Rockdale	—	04-01-78	same	none
Rockport	05-26-1871	04-12-83	same	05-07-94
Rockwall	—	01-19-85	same	05-01-93
Rosenberg	—	11-20-56 ¹	same	08-08-87
Round Rock	—	08-13-77	same	04-05-86
Rowlett	—	01-19-80	same	05-04-91
Rusk	02-02-1850	08-08-87	same	none
Sachse	—	04-05-86	same	05-05-90
Saginaw	—	01-16-88	same	none
San Angelo	— ³	08-03-15	same	05-06-89
San Antonio	12-14-1837	10-02-51	same	05-04-91
San Benito *	—	09-22-20	same	12-09-69
San Juan	—	04-05-75	same	none
San Marcos	—	02-24-67	same	05-07-94
Santa Fe	—	08-08-81	same	none
Schertz	—	04-06-74	same	05-07-94
Seabrook	—	08-11-79	same	05-05-90
Seagoville	—	10-25-69	same	05-04-91
Seguin	02-07-1853	11-09-71	same	05-02-92
Seminole *	—	05-04-91	same	none
Sherman	04-02-1873	03-06-15	02-20-73	01-16-93

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Silsbee	---	11-03-56	same	08-10-87
Sinton	---	11-19-66	same	05-01-93
Slaton *	---	03-19-29	same	04-05-80
Snyder	---	10-21-52	same	05-06-89
Southlake	---	04-04-87	same	01-19-91
Stamford	---	03-26-18 ¹	same	11-05-55
Stephenville *	---	04-04-61	same	05-01-93
Sugar Land	---	01-17-81	same	05-05-90
Sulphur Springs	02-13-1852	02-18-47	same	11-08-83
Sweetwater	---	12-18-13	07-29-47	11-08-83
Taylor	---	04-16-14 ¹	same	04-04-87
Temple	03-27-07	07-08-22	09-22-53	01-20-90
Terrell	03-20-11 ⁴	04-03-73	same	07-04-84
Terrell Hills	---		11-05-57	05-02-92
Texarkana	05-02-07	04-05-60	same	11-18-83
Texas City *	---	02-16-46	same	09-06-52
The Colony	---	01-20-79	same	01-17-87
Tomball	---	01-17-87	same	none
Tulia	---	12-06-72 ¹	same	none
Tyler	01-29-1850	04-06-15	02-09-37	05-05-90
Universal City	---	05-06-72	same	05-05-89
University Park	---	11-07-89	same	none
Uvalde *	---	09-18-34	same	11-13-63
Vernon	---	03-03-16	same	01-21-84
Victoria	02-05-1840	10-05-15	01-31-56	05-07-94

City	Date of First Special Legislative Charter	Date of First Home Rule Charter	Date of Current Charter	Date of Last Charter Amendment
Vidor	---	11-08-69	same	05-02-92
Waco	08-29-1856	01-29-13	11-01-58	04-03-87
Watauga	---	01-19-80	same	01-15-94
Waxahachie	04-28-1871	06-27-16	04-03-71	04-02-75
Weatherford	01-02-1858	04-23-18	same	04-02-83
Webster	---	01-15-94	same	none
Weslaco *	---	12-14-27	same	05-03-93
West Orange *	---	05-19-56	same	05-07-88
West University Place	---	12-17-40	04-02-83	05-06-89
Wharton	10-11-1866	01-20-70	same	05-07-94
White Oak *	---	05-07-94	same	none
White Settlement	---	04-06-54	same	08-10-91
Wichita Falls	---	11-26-13	03-20-20	01-16-93
Woodway	---	11-13-73	same	05-07-94
Wylie	---	01-19-85	same	05-02-92
Yoakum	---	04-01-15	01-16-88	none

⁵ Sources:

Hans Peter Neilson Gammel, compiler, Laws of Texas, 1822-1897. Ann Arbor, MI: University Microfilms.

Session Laws, Legislature of the State of Texas.

Records, Office of the Secretary of State, Texas.

Charters, Secretary of State's Record Group (RG 307), Archives Division, Texas State Library.

Records, offices of City Secretaries/Clerks, home rule cities, Texas.

City

Boerne

Corinth

Crowley

Forney

Gilmer

Gun Barrel City

Hidalgo

Horizon City

Joshua

Keene

Kennedale

Lacy Lakeview

Lake Dallas

Lumberton

Red Oak

Robinson

Sanger

Sealy

Whitehouse

Appendix F - IRB Exemption

From: ospirb (ospirb@txstate.edu)
To: cezlaw@yahoo.com
Date: Monday, May 19, 2008 4:02:03 PM
Subject: Exemption request 18-84103

Exemption Request

Based on the information in the exemption request 18-84103, which you sent Sunday, May 18, 2008, your project has been found exempt.

Your project is exempt from full or expedited review by the Texas State Institutional Review Board.

Institutional Review Board

ospirb@txstate.edu

Office of Research Compliance
Texas State University-San Marcos
(ph) 512/245-2314 / (fax) 512/245-3647
JCK 488

601 University Drive
San Marcos, TX 78666

Texas State University-San Marcos is a member of the Texas State University System

NOTE: This email, including attachments, may include confidential and/or proprietary information and may be used only by the person or entity to which it is addressed. If the sender of this email is not the intended recipient or if he or she sends, the reader is hereby notified that any dissemination, distribution or copying of this email is prohibited. If you have received this email in error, please notify the sender by replying to this message and deleting this email immediately. Unless otherwise indicated, all information included within this document and any documents attached should be considered working papers of this office. Subject to the laws of the State of Texas.

ARTICLE I

FORM OF GOVERNMENT AND POWERS

SECTION 1.01 Establishment

The City of Buda shall have a "Council-Manager" form of government. All powers of the City shall be vested in the Council, hereinafter referred to as the "City Council," which shall enact local legislation, adopt budgets, determine policies and appoint the City Manager. The City Manager shall answer to the City Council for the execution of the laws and the administration of the government of the City. All powers of the City shall be exercised in the manner prescribed by the laws of the State of Texas, this Charter and as may be prescribed by ordinance.

SECTION 1.02 General Powers

The City of Buda shall have the power of local self government to the fullest extent permitted by law. The City shall have all the powers granted to cities by the Constitution and Laws of the State of Texas together with all of the implied powers necessary to carry into execution those powers and those express and implied powers necessary for the government, interests, health, welfare and good order of the City and its inhabitants. All powers shall be exercised and enforced in the manner prescribed by the laws of the State of Texas, in this Charter and the City's ordinances.

SECTION 1.03 Intergovernmental Relations

The City of Buda may exercise any of its powers or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise with the Government of Texas or any agency thereof, or with the Federal Government or any agency thereof, or with the government of any county, city or political subdivision to accomplish any lawful municipal purpose.

SECTION 1.04 Eminent Domain

The City shall have the full power and right to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter or by the Constitution and laws of the State of Texas. The City shall have and possess the power of condemnation for any municipal or public purposes even though not specifically enumerated in this Charter, except the power to take private property under the circumstances described in Tex. Gov't Code §2206.001 as it presently exist or may hereafter be amended.

ARTICLE III

THE CITY COUNCIL AND MAYOR

SECTION 3.01 General Powers and Duties

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

SECTION 3.02 Number, Selection, and Term

The City Council shall be composed of the Mayor and six (6) Council members. The Mayor and Council members shall be elected from the City at large for three (3) year terms. Each Council member shall occupy a place on the Council, such places being numbered 1 through 6. Each year two Council places shall be elected for their respective terms except as set forth in the transitional provisions hereinafter set forth.

SECTION 3.03 Qualifications

The Mayor and each Council member shall meet the following:

1. Be a qualified voter in the City and State at the time of taking office;
2. Be a resident of the City;
3. Have resided continuously in the corporate limits of the City for 12 months immediately preceding the date of the election;
4. Not be in violation of any provision in this Charter;
5. Be 21 years of age or older on the first day of the term to be filled at the election;
and
6. Satisfy any other eligibility requirements prescribed by law for the office for which they are a candidate.

SECTION 3.04 Judge of Qualifications

The City Council is the final judge of all elections and the qualifications of its members and of any other elected officials of the City.

SECTION 3.05 Compensation

Each Councilmember shall be paid fifty dollars (\$50.00) per meeting, and the Mayor shall be paid seventy-five dollars (\$75.00) per meeting. Any future increases in compensation for City Council and the Mayor may be set by ordinance by the City Council. When a Council member or Mayor votes for an increase in compensation that increase shall not be effective for that Mayor or Council member until they have been elected at a subsequent election, but it shall be effective for any Council member or Mayor elected after the adoption of the increase in compensation. In addition, each Councilmember shall be entitled to reimbursement for his/her actual and necessary expenses incurred in the performance of his/her specific official duties of office. Said expenses shall be subject to the approval of the council. The policy regulating payment of expenses incurred in performance of official duty shall be determined by the City Council by Resolution.

SECTION 3.06 Mayor

The Mayor shall be the presiding officer of the City Council and shall be recognized as the head of the City government for all ceremonial purposes, for emergency management purposes, and by the governor for purposes of military law. The Mayor may debate and discuss any matters before the City Council and shall vote on all issues with the City Council. The Mayor shall, when authorized as necessary by the City Council, sign all official documents. The Mayor shall appoint, with the advice and consent of the City Council, the members of citizen advisory boards and commissions, whose conditions of membership shall have been set previously by ordinance.

The Mayor shall have no veto power.

ARTICLE V

ADMINISTRATIVE ORGANIZATION

SECTION 5.01 City Manager

A. Appointment and Qualifications. The City Council shall appoint a City Manager who shall be the chief administrative and executive officer of the City and shall be responsible to the City Council for the administration of all the affairs of the City. The City Manager shall be chosen by the City Council solely on the basis of the City Manager's executive and administrative training, experience and ability. No member of the City Council shall, during the term to which they are elected and for one year thereafter, be appointed City Manager.

B. Term and Compensation. The City Manager shall be appointed for an indefinite term, and may be removed at the discretion of the City Council by an affirmative vote of five (5) members of the City Council. The action of the City Council in suspending or removing the City Manager shall be final, it being the intention of this Charter to vest all authority and fix all responsibility of such suspension or removal in the City Council. The City Manager shall receive compensation as may be fixed by the City Council.

C. Powers and Duties. The City Manager shall have the following powers and duties:

1. The City Manager shall appoint and, when the City Manager deems it necessary for the good of the City, may suspend or remove any City employee except as otherwise provided by law, this Charter, or personnel rules adopted pursuant to this Charter. The City Manager may authorize any employee who is subject to the City Manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
2. The City Manager shall direct and supervise the administration of all departments, officers, and agencies of the City, except as otherwise provided by this Charter or by law.
3. The City Manager shall attend all City Council meetings, except when excused by the Mayor or Mayor Pro-Tem, and shall have the right to take part in discussion but may not vote.
4. The City Manager shall see that all laws, provisions of this Charter and acts of the City Council, subject to enforcement by the City Manager or by Employees subject to the City Manager's direction and supervision, are faithfully executed.

Appendix G - Selected Sections of the City of Buda Home Rule Charter

5. The City Manager shall prepare and submit the annual budget and capital program to the City Council.
6. The City Manager shall administer the annual budget and capital program.
7. The City Manager shall ensure that the City Comprehensive Plan is maintained and all changes approved by the City Council.
8. The City Manager shall submit to the City Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year.
9. The City Manager shall make such other reports as the City Council may require concerning the operations of the City departments, offices and agencies subject to the City Manager's direction and supervision.
10. The City Manager shall keep the City Council fully advised as to the financial condition and future needs of the City and make such recommendations to the City Council concerning the affairs of the City as the City Manager deems desirable.
11. The City Manager shall keep a written inventory of all real property and all permanent equipment belonging to the City, said inventory to be subject to annual audit. A system shall be established to control the use and replacement of expendable items.
12. The City Manager shall have the authority to execute on behalf of the City, standard form documents, including but not limited to deeds, releases of liens, rental agreements, easements, right-of-way agreements, joint use agreements, and other similar documents, under the following conditions:
 - a. The execution of the document is necessary to carry out a public works project; utilize, maintain or improve a City facility, street, right-of-way, easement, park or other City property, or to implement other City policies; provided that such project, program or policy has been approved by the City Council;
 - b. That all blanks are filled in on any document correctly and that such document is consistent with the objectives approved by the City Council; and
 - c. That the form of such document shall be approved by the City Attorney.
13. The City Manager shall perform such other duties as are specified in this Charter or may be required by the City Council.

D. **Acting City Manager.** By letter filed with the City Secretary the City Manager shall designate, subject to approval of the City Council, a qualified employee to exercise the powers and perform the duties of City Manager during the City Manager's temporary absence or disability. The City Council may revoke such designation at any time and appoint another employee of the City to serve until the City Manager shall return or his disability shall cease.

SECTION 5.02 Other Departments, Offices, and Agencies

A. General Provisions.

1. **Creation of Departments.** The City Council may continue or establish City departments, offices or agencies in addition to those created by this Charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this Charter to a particular department, office or agency may be discontinued or, unless this Charter specifically so provides, assigned to another department.
2. **Direction by City Manager.** All departments, offices and agencies under the direction and supervision of the City Manager shall be administered by an employee appointed by and subject to the direction and supervision of the City Manager. With the consent of Council, the City Manager may serve as the head of one or more such departments, offices or agencies or may appoint one person to serve as the head of two or more of them.

B. **City Attorney.** The City Manager shall appoint a City Attorney for an indefinite term and fix the City Attorney's compensation. The City Attorney must be a member of the State Bar of Texas. The City Attorney shall serve as chief legal advisor to the City Council, the City Manager, directors of City departments and other City officers and agencies. The City Attorney shall represent the City in all legal proceedings and shall perform any other duties prescribed by this Charter, ordinance or State Laws.

C. **Municipal Court; Judge(s).** The City Council shall establish a municipal court and shall appoint a presiding judge(s) and any such other associate judge(s) as are deemed necessary and fix the compensation therefore. The judge(s) of the municipal court shall serve at the will and pleasure of the City Council, unless otherwise provided by law.

D. **City Secretary.** The City Manager shall appoint the City Secretary. The City Secretary, or their designee, shall give notice of City Council meetings, shall keep the minutes of the proceedings of such meetings, shall authenticate by signature all ordinances and resolutions, and shall perform such other duties as the City Manager shall assign and those elsewhere provided for in this Charter

E. **Department of Taxation.** There shall be established a Department of Taxation to assess and collect taxes, the head of which shall be the City Tax Assessor-Collector, which office shall be filled by appointment by the City Manager with concurrence of the City Council.

The City Tax Assessor-Collector shall give a surety bond for faithful performance of his duties, including compliance with all controlling provisions of the State Law bearing upon the functions of his office, in a sum which shall be fixed by the City Council at not less than fifty thousand dollars (\$50,000.00).

The City Council may, in the interest of economy and efficiency, contract with another political subdivision to handle the assessment and/or collection of taxes. The City Tax Assessor-Collector may be removed from office by the City Manager with the concurrence of the City Council.

SECTION 5.03 Personnel Rules

The City Manager shall be responsible for the preparation of personnel rules, which rules shall be submitted by the City Manager to the City Council. The City Council may accept and adopt such rules as proposed or may adopt them with such amendments as the City Council deems necessary or may reject them in their entirety and direct the City Manager to further consider the rules and present new proposals at a subsequent meeting.

SECTION 5.04 Freedom From Interference

It shall be unlawful for the City Council or any of its members to dictate to the City Manager the appointment of any person to office or employment. The City Council or its members will not interfere in any manner with the City Manager in the performance of the duties of that office or prevent the City Manager from exercising the City Manager's own judgment in the appointment of officers and employees whose employment, appointment, and supervision are reserved by this Charter for the City Manager. Except for the purpose of inquiry and investigations, the City Council and its members shall deal with the City Staff solely through the City Manager, and neither the City Council, as a body or any individual member, nor any individual not having administrative or executive functions under this Charter shall give orders to any of the subordinates of the City Manager, either publicly or privately.

ARTICLE VI

FINANCIAL PROCEDURES

SECTION 6.01 Fiscal Year

The fiscal year of the City shall begin on the first day of October and end on the last day of September.

SECTION 6.02 Preparation and Submission of Budget

The City Manager shall submit a proposed budget containing a complete financial plan for each fiscal year. Such a budget shall be submitted to the City Council not more than one hundred twenty (120) days but not less than sixty (60) days prior to the beginning of each fiscal year. The budget shall contain the following:

- (a) A brief budget message which shall outline the proposed financial policies of the City for the fiscal year, shall set forth the reasons for any major changes in expenditure and revenue items from the previous fiscal year, and shall explain any major change in financial policies.
- (b) Revenue Summary
- (c) Departmental Expenditure Summary
- (d) Departmental Budget
- (e) Schedule of Outstanding Bonded Debt
- (f) Schedule of Capital Outlays by Department
- (g) Review of Property Valuations
- (h) An Analysis of Tax Rates
- (i) Tax Levies and Tax Collection by Year for the Last Three (3) Years
- (j) A Provision for Financing the Current Capital Improvement Program

In preparing the budget, the City Manager shall place in parallel columns opposite the several items of revenues and expenditures, the actual amount of each item for the last complete fiscal year, the estimated amount for the current fiscal year, and the proposed amount for the ensuing fiscal year.

SECTION 6.03 Council Action on Budget

A. **Notice of Hearings.** The City Council shall have published in the official newspaper(s) of the City a notice stating:

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

B. **Amendment before Adoption.** After the public hearing, the City Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service, provided that no amendment to the budget shall increase expenditures to an amount greater than the estimated income.

C. **Adoption.** The City Council shall adopt the budget on or before the 20th day of the last month of the fiscal year currently ending. If it fails to adopt the budget by this date, the amounts appropriated for current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it pro-rated accordingly, until such time as the City Council adopts a budget for the ensuing fiscal year. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed.

SECTION 6.04 Budget Amendments after Adoption

A. **Supplemental Appropriations.** If, during the fiscal year, the City Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the City Council may make supplemental appropriations for the year up to the amount of such excess.

B. **Emergency Appropriations.** To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency appropriations. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may by such ordinance authorize the issuance of emergency notes, which may be renewed as necessary.

C. **Reduction of Appropriations.** If at any time during the fiscal year it appears probable to the City Manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the City Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The City Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may reduce one or more appropriations.

D. Transfer of Appropriations. At any time during the fiscal year the City Manager may transfer part or all of any unencumbered appropriation balance among programs within a fund department, office or agency and, upon written request by the City Manager, the City Council may transfer part or all of any unencumbered appropriation balance from one fund department, office or agency to another.

E. Limitations; Effective date. No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

SECTION 6.05 Balanced Budget

The total of proposed expenditures shall not exceed the total of estimated income.

SECTION 6.06 Lapse of Appropriations

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three (3) years pass without any disbursement from or encumbrance of the appropriation.

SECTION 6.07 Payments and Obligations Prohibited

No payment shall be made or obligation incurred against any allotment or appropriation unless the City Manager or his designee first certifies that there is a sufficient unencumbered balance in such allotments or appropriations and that sufficient funds there from are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal. Such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and he shall also be liable to the City for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.

SECTION 6.08 Contracts and Purchase Procedure

The City Council may by ordinance set a maximum amount for which the City Manager shall be authorized to execute contracts and/or to expend funds for budgeted items; provided however, that all contracts and expenditures must comply with state laws requiring competitive bids. The City Council may by ordinance establish an amount above which all contracts or purchases must be approved in advance by the City Council. All contracts and purchases shall be handled in a

manner to obtain the best value for the City.

SECTION 6.09 General Obligation Debt and Certificates of Obligation

The City shall have the power to borrow money on the credit of the City and to issue general obligation bonds and certificates of obligation for permanent public improvements or for any other public purpose not prohibited by the Constitution and Laws of the State of Texas, and to issue refunding bonds to refund outstanding bonds of the City previously issued. All such bonds shall be issued in conformity with the Laws of the State of Texas.

SECTION 6.10 Revenue Bonds

The City shall have power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the constitution and laws of the State of Texas, and to issue revenue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable solely from the properties, or interest therein pledged, or the income there from, or both, and shall never be a debt of the City. All such bonds shall be issued in conformity with the laws of the State of Texas.

ARTICLE VIII

PUBLIC UTILITIES AND FRANCHISES

SECTION 8.01 Powers of the City

The City of Buda shall have the full power, to the extent the same is conferred by the Constitution and Laws of the State of Texas, to own, lease, operate, prohibit, regulate and control any public utility within or without the limits of the City and to provide for the compensation and rental to be paid to the City by any public utility for the use of its streets, highways and public areas.

In addition to the City's power to buy, construct, lease, maintain, operate, and regulate public utilities and to manufacture, distribute, and sell the output of such utility operations, the City shall have such regulatory and other powers as may now or hereafter be granted under the Constitution and Laws of the State of Texas.

SECTION 8.02 Board of Directors

The City Council shall be and act as the Board of Directors of all utilities owned and operated by the City.

SECTION 8.03 Franchises

The City Council shall have power by ordinance to grant, renew and extend all franchises of public utilities of every character operating within the City and for such purposes is granted full power. The term "public utility" as used herein is construed to mean any person, firm or corporation furnishing to the public any general public service, including, but not limited to heat, light, gas, power, telephone service, communication services, community antenna or cable television service, sewer service and the treatment thereof, water, wrecker service, the carrying of passengers for hire, or any other public service whereby a right to, in part, appropriate or use the streets, highways, or other property of the City, as necessary or proper is granted. Any ordinance granting, renewing or extending franchises shall not take effect until at least thirty (30) days after its passage; and during such thirty (30) day period the descriptive caption of the ordinance shall be published at least twice in the official newspaper(s) of the City, the expense of the publication being borne by the proponents of the franchise.

SECTION 8.04 Franchise Value Not to be Allowed

Franchises granted by the City under this Charter shall be considered to be of no value in fixing reasonable rates and charges for utility service within the City, and in determining the just compensation to be paid by the City for public utility property which the City may acquire by condemnation or otherwise.

SECTION 8.05 Right of Regulation

All grants, renewals, extensions, or amendments of public utility franchises, whether so provided in the ordinance or not, shall be subject to the right of the City Council:

- (a) To repeal the same by ordinance at any time upon the failure of the grantee to comply with the terms of the franchise, the ordinance, this Charter, any applicable statute of the State of Texas, or the rule of any applicable governmental body, such power to be exercised only after written notice to the franchise holder stating wherein the franchise holder has failed to comply with the terms of the franchise, and if said default is not cured within a reasonable time such power shall be exercised only after the grantee has been given the opportunity for hearing.
- (b) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.
- (c) To require such expansion, extension, and improvements of plants and facilities as are necessary to provide adequate service to the public; and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency.
- (d) To prescribe the accounts and accounting system to be used by a franchise holder so that they will accurately reflect the value of the property used in rendering its service to the public; and the expenses, receipts, and profits of all kinds of such franchises. (It shall be deemed sufficient compliance with this paragraph if the franchisee keeps its accounts in accordance with the uniform system established by an applicable Federal or State agency for such service.) To examine and audit, at any reasonable time during regular business hours, the accounts and other records of any franchise holder; and to require annual and other reports including reports on operations within the City of Buda.
- (e) To impose such reasonable regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare, and accommodation of the public.
- (f) To require such compensation and rental as may be permitted by the Laws of the State of Texas.

- (g) To require that the franchise holder restore to the applicable City standards at that time, at his expense, all public and private property damaged or destroyed by construction, maintenance, or removal by such franchise holder.

SECTION 8.06 Extensions

All extensions of public utility service shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this Charter. The extension of any public utility shall be considered as a part of the original grant and shall be terminable at the same time and under the same conditions as the original grant.

SECTION 8.07 Other Franchise Conditions

All franchises heretofore granted are recognized as contracts between the City of Buda and the grantee, and the contractual rights as contained in any such franchise shall not be impaired by the provisions of this Charter, except that the power of the City to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved; and except that the general power of the City, heretofore existing and herein provided for to regulate the rates and services of a grantee, shall include the right to require proper and adequate extension of plant and service and the maintenance of the plant and equipment at the highest reasonable standard of efficiency. All franchises hereafter granted shall be held subject to all terms and conditions contained in the various sections of this article whether or not such terms are specifically mentioned in the franchise.

SECTION 8.08 Regulation of Rates and Service

The City Council subject to State and Federal laws shall have full power, after due notice and hearing, to regulate by ordinance the rates, charges, and fares of every public utility franchise holder operating in the City. Every franchise holder who shall request an increase in rates, charges or fares shall have, at a hearing of the Council called to consider such request, the burden of establishing by clear, competent, and convincing evidence the value of its investment property allocable to service in the City, the amount and character of its expenses and revenues connected with the rendering of such service, and any additional evidence required by the Council. If no agreement between the Council and the franchise holder can be reached on such request for an increase in rates, charges, or fares, the Council may select and employ rate consultants, auditors and attorneys to investigate and, if necessary, litigate such request. The franchise holder shall reimburse the City for its reasonable and necessary expenses so incurred and may be allowed to recover such expenses through its rates during the period of recovery if authorized to do so by the City Council.

ARTICLE IX

INITIATIVE, REFERENDUM AND RECALL

SECTION 9.01 General Authority

A. **Initiative.** The qualified voters of the City shall have power to propose ordinances to the City Council. Such power shall not extend to the budget or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes or salaries of City officers or employees, or any other ordinance not subject to initiative as provided by state statute or case law.

B. **Referendum.** The qualified voters of the City shall have power to require reconsideration by the City Council of any adopted ordinance. Such power shall not extend to the budget or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes or salaries of City officers or employees, or any other ordinance not subject to referendum as provided by state statute or case law.

C. **Recall.** The qualified voters of the City shall have the power to petition for recall of the Mayor or any member of the City Council.

SECTION 9.02 Commencement of Petition; Petitioners' Committee; Affidavit

Any three (3) qualified voters may commence initiative, referendum, or recall proceedings by filing with the City Secretary an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent and setting out in full the proposed initiative ordinance or citing the ordinances sought to be reconsidered, or the name of the Council member or Mayor to be recalled.

SECTION 9.03 Scope of Recall

Any elected City official, whether elected to office by qualified voters or appointed by the City Council to fill a vacancy, shall be subject to recall and removal from office by the qualified voters of the City on those grounds as set forth in Section 22.077 of the Texas Local Government Code as it may be amended from time to time.

SECTION 9.04 Petitions for Recall

Before the question of recall of such officer shall be submitted to the qualified voters of the City, a petition demanding such question to be so submitted shall first be filed with the person performing the duties of City Secretary, which said petition must contain the number of valid signatures of qualified voters totaling at least thirty percent (30%) of the number of qualified voters registered to vote at the last general City election. Each signer of such recall petition shall personally sign their name thereto in ink or indelible pencil and shall write after their name their place of residence, giving the name of the street and the number, and shall also write thereon the day, the month and the year their signature was affixed.

SECTION 9.05 Form and Content of Recall Petition

All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall comply with Chapter 277 of the Texas Election Code as it may be amended from time to time. The petition shall be addressed to the City Council of the City and the content shall distinctly and specifically point to the ground upon which such petition for removal is predicated. Further, said petition shall state distinctly and specifically the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the official that warrant the charge as to give the officer sought to be removed notice of the matter(s) and thing(s) with which the officer is charged. If there be more than one (1) ground, said petition shall distinctly and specifically state each ground upon which such petition for removal is predicated and shall distinctly and specifically state the alleged action(s) and the factual circumstance(s) surrounding such action(s) taken by the official that warrant the charges as to give the officer sought to be removed notice of the matter(s) and thing(s) with which the officer is charged. The signatures shall be verified by oath in the following form:

STATE OF TEXAS

COUNTY OF HAYS

I, _____, being first duly sworn, on oath depose and say that I am one of the signers of the above petition, and that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is the genuine signature of the person it purports to be.

Signature _____

Sworn and subscribed before me this ____ day of _____ 20__.

NOTARY PUBLIC, STATE OF TEXAS

My commission expires: _____

SECTION 9.06 Certificate of City Secretary; Amendment; Presentation to Council; Council Review

A. Certificate of City Secretary. Within thirty (30) working days after the petition is filed, the City Secretary shall complete a certificate as to its sufficiency or insufficiency as mandated herein, specifying, if it is insufficient, the particulars wherein it is defective and shall within that thirty (30) working day period send a copy of the certificate to the petitioners' committee by certified mail or by hand delivery to a committee member.

B. Amendment. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the City Secretary within two (2) working days after receiving the copy of the certificate and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of Section 9.05, and within five (5) working days after it is filed, the Secretary shall complete a certificate as to the sufficiency of the petition as amended and send a copy of such certificate to the petitioners' committee by certified mail or by hand delivery to a committee member as in the case of an original petition.

C. Presentation to Council. If a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend under Subsection B of this Section within the time required, the City Secretary shall at the next regular Council meeting present such certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

SECTION 9.07 Public Hearing to be Held

The officer whose removal is sought may, within five (5) working days after such recall petition has been presented to the City Council, request that a public hearing be held to permit him/her to present the facts pertinent to the charges specified in the recall petition. In this event, the City Council shall order such public hearing to be held, not less than five (5) working days nor more than fifteen (15) working days after receiving such request for a public hearing.

SECTION 9.08 Calling of Recall Election

If the officer whose removal is sought does not resign, then the City Council shall for the next available election date, order an election for holding such recall election. If, after the recall election date is established, the officer vacates his/her position, the election shall be cancelled, in accordance with State Law.

SECTION 9.09 Ballots in Recall Election

Ballots used at recall elections shall conform to the following requirements:

- (1) With respect to each person whose removal is sought, the question shall be submitted: "Shall _____ be removed from the office of _____ by recall?"
- (2) Immediately below each such question, there shall be printed the following words, one above the other, in the order indicated:

"Yes"

"No"

SECTION 9.10 Result of Recall Election

If a majority of the votes cast at a recall election shall be "No", that is against the recall of the person named on the ballot, the officer shall continue in office for the remainder of his/her unexpired term, subject to recall as provided herein. If a majority of the votes cast at such election be "Yes", that is for the recall of the person named on the ballot, the officer shall, regardless of any technical defects in the recall petition, be deemed removed from office upon passing of the resolution canvassing the election, and the vacancy shall be filled by the City Council as provided in Section 3.08 subsection C of this Charter.

SECTION 9.11 Recall Restrictions

No recall petition shall be filed against any officer of the City within six (6) months after the officer's election, nor within six (6) months after an election for such officer's recall.

SECTION 9.12 Initiative; Petition; Procedure

(1) Following a review by the City Attorney for enforceability and legality, qualified voters of the City may initiate legislation by ordinance by submitting a petition addressed to the City Council, which requests the submission of the proposed ordinance to a vote of the qualified voters of the City. Said petition must contain the number of valid signatures totaling at least twenty percent (20%) of the total number of qualified voters registered to vote at the last general City election. Each copy of the petition shall have attached to it a copy of the full text of the proposed ordinance. The petition, its form and content, shall be the same as for recalls as provided in this Article. The certification of the City Secretary, and any amendment to the petition and its presentation to City Council shall be the same as for recalls as provided in this Article.

(2) When an initiative petition has been fully determined sufficient, the Council shall at their next regular Council meeting consider the proposed initiative ordinance in the manner provided in Article III. Upon presentation to the City Council, it shall become the duty of the City Council, within sixty (60) days after the date the petition was finally determined sufficient, to pass and adopt such ordinance without alteration as to meaning or effect, or to call for an election, to be held on a date allowed under the Texas Election Code, at which the qualified voters of the City shall vote on the question of adopting or rejecting the proposed ordinance. Unless otherwise provided by law, any election for an initiative under this Charter shall be held on the first authorized uniform election date that occurs after the seventieth (70th) calendar day after the City Council's decision to submit the ordinance to the voters.

(3) If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

SECTION 9.13 Referendum; Petition; Procedure; Effect Prior to Election

(1) Qualified voters of the City may require that any ordinance, with the exception of ordinances dealing with any budget or any capital program, or relating to appropriation of money, issuing of bonds, setting of utility rates and levy of taxes or salaries of City officers or employees, or any other ordinance not subject to referendum as provided by state statute or case law, passed by the City Council be submitted to the voters of the City for approval or disapproval, by submitting a petition for this purpose within sixty (60) days after the date the ordinance sought to be reconsidered was adopted.

Said petition must contain the number of valid signatures totaling at least twenty percent (20%) of the total number of registered voters qualified to vote at the last general City election. The petition, its form and content, shall be the same as for recalls as provided in this Article. The certification of the City Secretary, any amendment to the petition and its presentation to City Council shall be the same as for recalls as provided in this Article.

City Council shall either repeal the referred ordinance or submit the referred ordinance to the qualified voters of the City within thirty (30) days after the date the petition was finally determined sufficient.

(2) Pending the holding of such election, each ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof. Unless otherwise provided by law, any election for a referendum under this Charter shall be held on the first authorized uniform election date that occurs after the seventieth (70th) day after the decision by the City Council.

(3) If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

SECTION 9.14 Voluntary Submission of Legislation by the City Council

The City Council, upon its own motion and by the affirmative vote of a majority of the full membership of the City Council, may submit to popular vote at an election for adoption or rejection any proposed ordinance or resolution or measure, or may submit for repeal any existing ordinance, or resolution, or measure, in the same manner and with the same force and effect as provided in this Article for submission of initiative and referendum petitions, and may, at its discretion, call for an election for this purpose on an authorized uniform election date as provided by State Law.

SECTION 9.15 Form of Ballots

The ballots used when voting upon initiative or referendum shall set forth their nature sufficiently to identify them and shall also set forth, upon separate lines, the words:

"For the Ordinance"

or

"Against the Ordinance"

SECTION 9.16 Ordinances Passed by Popular Vote, Repeal or Amendment

No ordinance which may have been passed by the City Council upon a petition or adopted by popular vote under the provisions of this Article may be repealed or amended by the City Council for a period of three (3) years from the date said ordinance became effective. An ordinance which may have been passed by the City Council upon a petition or adopted by popular vote under the provisions of this Article may be repealed or amended at any time in response to a referendum petition or by submission as provided by Section 9.14 of this Charter.

SECTION 9.17 Franchise Ordinances

Nothing contained in this Article shall be construed to be in conflict with any of the provisions of this Charter pertaining to ordinances granting franchises when valuable rights shall have accrued thereunder.

Eighth Edition

Model City Charter

**A Publication of the
National Civic League**

**National Civic League
National Headquarters**
1445 Market Street, Suite 300
Denver, Colorado 80202-1717
Office: 303-571-4343
Fax: 303-571-4404
Web: www.ncl.org

Washington D.C. Office
1319 F Street N.W. Suite 204
Washington, D.C. 20004
Office: 202-783-2961
Fax: 202-347-2161

Model City Charter, Eighth Edition

Copyright © 2003 National Civic League, Inc

All rights reserved; unauthorized duplication by any means is a violation of applicable law.

To obtain additional copies, contact:

National Civic League Press

1445 Market Street, Suite 300

Denver, Colorado 80202-1717

Office: 303-571-4343

Fax: 303-571-4404

Web: www.ncl.org

Email: ncl@ncl.org

DEDICATED TO THE MEMORY OF
Betty Jane Narver

Table of Contents

Acknowledgements	i
Introduction	iii
Model Building: A Continuing Process	vii
PREAMBLE	1
Article I – POWERS OF THE CITY	2
Section 1.01 Powers of the City.....	2
Section 1.02 Construction.....	3
Section 1.03 Intergovernmental Relations.....	3
Article II – CITY COUNCIL	5
Section 2.01 General Powers and Duties.....	5
Section 2.02 Eligibility, Terms, and Composition.....	6
Section 2.03 Mayor	10
Section 2.04 Compensation; Expenses.....	12
Section 2.05 Prohibitions	13
Section 2.06 Vacancies; Forfeiture of Office; Filling Vacancies	14
Section 2.07 Judge of Qualifications.....	15
Section 2.08 City Clerk	16
Section 2.09 Investigations	16
Section 2.10 Independent Audit	16
Section 2.11 Procedure.....	17
Section 2.12 Action Requiring an Ordinance	17
Section 2.13 Ordinances in General.....	18
Section 2.14 Emergency Ordinances.....	19
Section 2.15 Codes of Technical Regulations	20
Section 2.16 Authentication and Recording; Codification; Printing of Ordinances and Resolutions	21
Article III – CITY MANAGER	22
Section 3.01 Appointment; Qualifications; Compensation	22
Section 3.02 Removal.....	24
Section 3.03 Acting City Manager	24
Section 3.04 Powers and Duties of the City Manager.....	25
Article IV – DEPARTMENTS, OFFICES, AND AGENCIES	26
Section 4.01 General Provisions	26
Section 4.02 Personnel System	27
Section 4.03 Legal Officer	28
Section 4.04 Land Use, Development, and Environmental Planning	29
Article V – FINANCIAL MANAGEMENT	30
Section 5.01 Fiscal Year	30
Section 5.02 Submission of Budget and Budget Message.....	30
Section 5.03 Budget Message	31
Section 5.04 Budget.....	31
Section 5.05 City Council Action on Budget.....	32
Section 5.06 Appropriation and Revenue Ordinances.....	34

Section 5.07 Amendments After Adoption.....	34
Section 5.08 Administration and Fiduciary Oversight of the Budget	36
Section 5.09 Capital Program	36
Section 5.10 City Council Action on Capital Program	37
Section 5.11 Independent Audit	38
Section 5.12 Public Records	39
Article VI – ELECTIONS	39
Section 6.01 City Elections.....	39
Section 6.02 Council Districts; Adjustment of Districts (for use with Alternatives II, III and IV of § 6.03).....	42
Section 6.03 Methods of Electing Council Members.....	46
Section 6.04 Initiative, Citizen Referendum, and Recall	48
Article VII – GENERAL PROVISIONS	53
Section 7.01 Conflicts of Interest; Board of Ethics.....	53
Section 7.02 Prohibitions	54
Section 7.03 Campaign Finance.....	55
Article VIII – CHARTER AMENDMENT.....	56
Section 8.01 Proposal of Amendment	56
Section 8.02 Election.....	57
Section 8.03 Adoption of Amendment	58
Article IX – TRANSITION AND SEVERABILITY	58
Section 9.01 Officers and Employees	58
Section 9.02 Departments, Offices, and Agencies	58
Section 9.03 Pending Matters	59
Section 9.04 State and Municipal Laws	59
Section 9.05 Schedule.....	59
Section 9.06 Severability	61
Appendix – OPTIONS FOR MAYOR-COUNCIL CITIES	61
Change with Continuity in the Values of Local Government Reform	69
Citizen-Based Government: A Process to Engage Citizens in Charter Revision.....	73

ACKNOWLEDGEMENTS

It is with great pride in the accomplishment that we present the eighth edition of the *Model City Charter*, one that is truly a model for the 21st century. A number of important changes have been made in accordance with the changing needs of communities in this new century. The *Model* itself is now over a century old but its importance as a guide for communities remains as relevant as ever.

The 8th Edition Model City Charter Revision Committee was appointed on March 29, 2001. The National Civic League's Board approved the new edition of the Model on November 16, 2002. Betty Jane Narver, Director of the Institute for Public Policy and Management of the University of Washington, first chaired the committee. Her untimely passing left far more than just the revision committee bereft of her wisdom and understanding. We were exceedingly fortunate to benefit from the admirable talents and leadership contributed by Bob O'Neill, who succeeded Betty Jane as chair of the revision committee. Bob is the executive director of the International City/County Management Association, a long-standing partner with the National Civic League in the charter revision process.

We also benefited enormously from the continued dedication of a group of seasoned professionals whose expertise in this area is unmatched. Terrell Blodgett, professor emeritus at the LBJ School of Public Affairs, served as one of the senior advisors for the revision project. Blodgett also chaired the revision committee that produced the seventh edition of the *Model*, and he was the chairman of the National Civic League in 1986 and 1987. William Cassella, Jr., former executive director of the National Civic League (1969-1985) and coordinator for both the sixth and seventh editions, also served as a senior advisor. Robert Kipp, group vice president at Hallmark Cards, Inc., and James Svava, department head of political science and public administration at North Carolina State University, were the other senior advisors, and they both made invaluable contributions throughout the revision process.

Once again we had the great fortune of assembling an outstanding set of individuals to serve as committee members for this project. The other members of the 8th Edition Model City Charter Revision Committee were Eric Anderson, City Manager, City of Des Moines, Iowa; Linda Barton, City Manager, City of Livermore, California; Donald Borut (*ex officio*), Executive Director, National League of Cities; Peter Buchsbaum, Greenbaum, Rowe, Smith et al., American Bar Association; John Buechner, President Emeritus, University of Colorado; Jacqueline Byers, Director of Research, National Association of Counties; Jim Dailey, Mayor, City of Little Rock, Arkansas; Mony Flores-Bauer, League of Women Voters; R. Scott Fosler, former Chair, National Civic League; George Frederickson, Professor, Department of Public Administration, University of Kansas; Christopher T. Gates, President, National Civic League; Guy Goodson, Councilperson, City of Beaumont, Texas; Charles Gossett, Director, Masters of Public Administration Program, Department of Political Science, Georgia Southern University; Neil Giuliano, Mayor, City of Tempe, Arizona; John Hall, Professor, Arizona State University; Bill Hansell, immediate past Executive Director, International City/County Management Association; James Keene, City Manager, City of Tucson, Arizona; Ron Loveridge, Mayor, City of Riverside, California; David Miller, Associate Dean, GSPIA, University of Pittsburgh; Sylvester Murray, Professor, Urban Studies, Cleveland State University; John Nalbandian, Chair, Department of Public Administration, University of Kansas; Neil Reichenberg, Executive Director, International Personnel Management Association; Dorothy Ridings (*ex officio*), President and Chief Executive Officer, Council on

Foundations, and Chair, National Civic League; Tanis Salant, Director, Institute For Local Government, University of Arizona; Phil Schenck, City Manager, Town of Avon, Connecticut; David Schultz, Asst. Professor, Public Administration and Management Graduate School, Hamline University; David Sink, Professor, Department of Public Administration, University of Arkansas, Little Rock; Henry Underhill, Executive Director/General Counsel, International Municipal Lawyers Association; and John Vocino, Senior Analyst, U.S. General Accounting Office.

The National Civic League also thanks the organizations that provided the financial support to undertake this work. Generous contributions from the Hallmark Corporate Foundation, the Carl and Lily Pforzheimer Foundation, the Murray and Agnes Seasongood Good Government Foundation, and the Alfred P. Sloan Foundation made the work of the 8th Edition Model City Charter Revision Committee possible.

Finally, I want to thank the staff of the National Civic League who worked so hard over the past two years to organize this effort and pull all the new ideas into the document you now hold in your hands. They were:

Matt Krumme, Manager, Model City Charter Revision Project;
Robert Loper, Research Director and Editor, National Civic Review;
Camilla Modesitt, Director, New Politics Program;
Derek Okubo, Director, National Headquarters; and
Bill Schechter, Director, Community Services, Washington DC.

Christopher T. Gates
President

INTRODUCTION

The eighth edition of the *Model City Charter* strongly endorses the council-manager structure of municipal government that was first proposed in 1915 as the National Civic League's (then the National Municipal League's) model form. In the years since, the *Model* has been refined to reflect the evolution of the council-manager plan, the most widely used governmental structure in American cities with a population over 10,000. The fundamental principle of the model, that all powers of the city be vested in a popularly elected council that appoints a professional manager who is continuously responsible to and removable by the council, has endured ever since.

A Model for the 21st Century

The realization that the *Model City Charter* has exerted enormous influence in promoting the municipal reform agenda for more than a century made those responsible for the eighth edition acutely aware of the model's evolution and of the obligation to make it an effective force for the future. Reforming reform is a delicate undertaking. To make revisions in the specifics of reform measures and to suggest alternatives to strongly held positions should not be viewed as rejecting the past but as building on it to meet changing circumstances with the benefit of wider experience. Institutions must be adapted to address new priorities and new concerns, and to be useful, models must assist in the process of adaptation.

As the National Civic League's Model City Charter Revision Committee undertook development of the eighth edition, participants considered the concept of a model. Back in 1944, on the occasion of the National Civic League's 50th anniversary, Harold Dodds, then president of Princeton University and a former executive director and president of the National Municipal League, described the purpose of a model as being

... to set patterns clearly and specifically, delineating the best practice and the best thought on a problem, to correct existing defects, to set high standards which provide something to fight for instead of against ... the model laws brought stability, dignity and scientific fact to 'reform.' They made readily available to officials and citizens the product of the able thinkers on governmental problems.

There have been two views as to how best to fulfill this purpose. One insists that a model presents the ideal structure of local government while the other sees a model as being based on a general principle of organization or process. In the latter case the model presents alternative means for achieving the basic end.

The first view was an essential part of the tactics of the zealous reformers of the Progressive Era. They were promoting new approaches with limited proven records, and they advocated the adoption of the new package in its entirety to ensure that the innovative logic for government reorganization was given a chance to work. At a time when the council-manager plan was a novel form of government, this view of the *Model City Charter* was quite understandable. The successors to the Progressive reformers advocated what they considered to be a tried-and-true approach and felt that alternatives deviating from this ideal were invitations to dilution and distortion that could undermine the basic reform goal. With the widespread acceptance of the council-manager form of government and its use in communities of varying size and circumstance, the current situation is quite different. A more pressing need today is to consider whether and how the council-manager

plan might be adapted to respond to contemporary challenges. Such response may include using alternatives that depart from the original reform formulation.

Beginning with the 1964 edition of the *Model City Charter*, a modification of the view of the earlier reformers was evident. The foreword to that edition stated:

For the first time, the *Model* presents, in addition to the preferred provisions, alternatives on such matters as the composition and election of the council and the selection of mayor. Some advisors and consultants objected to the inclusion of legal texts which depart from the stated preferences, but the overwhelming majority agreed that it is advisable to provide guidance for adapting the council-manager plan to a variety of local circumstances without sacrificing the fundamental principle that the top professional serves at the pleasure of the governing body.

The eighth edition of the *Model City Charter* continues to endorse the council-manager plan, but it presents alternatives for certain key provisions without indicating an absolute preference.

A Model with Alternatives

One of the changes made in the eighth edition is the inclusion of a preamble, which emphasizes that the charter is the constitution of the municipality adopted by its citizens. Some of the more important changes to the model provisions dealing with the council and the mayor are considered below.

The Council. Out of a concern for increasing the capacity for governance, the second edition stressed the importance of a small council whose members had a perspective that was greater than that of a particular neighborhood or small section of city. At the same time, proportional representation from the city at-large, or from multi-member districts in "great" cities, was included to insure that the governing body provides "fair representation of all large minorities" and is "truly representative of all elements and groups of opinion." The option of using districts was dropped until the sixth edition, but through 1941, the Hare system of proportional representation was endorsed as the preferred way to elect the council. The current edition offers five alternatives. The importance of the at-large principle is emphasized, but the need for geographical representation or even more flexible proportional representation under certain circumstances is explained.

There is strong support for the all at-large council alternative in smaller municipalities and in those cities where assuring fair representation of minority populations is not an issue. In cities where minority representation is enhanced by election from districts, consideration of the alternatives for mixed systems, with some council members elected at large and some by districts, is recommended.

It is also recognized that councils elected entirely from districts frequently have been mandated by the U.S. Justice Department or by court decisions to assure equitable representation of racial minorities. Therefore, the all-district alternative is included in the article on elections and a special emphasis is given to districting criteria and procedures. The proportional representation alternative is continued. Concern for representation of minorities and the possibility of technological improvements that will simplify the voting process have renewed interest in proportional representation.

Whatever the alternative used to determine the composition of the council, the wide use of the council-manager plan has emphasized the central importance of the municipal council in local government. The basic principle that the executive is appointed by and responsible to the council has meant that particular attention is given to the composition of the council when local charters are under review.

The Mayor. The basic theory of the council-manager plan, which rejects the separation of powers concept with powers divided between the council and an elected chief executive, has been ambivalent on the role of the mayor in council-manager cities. Beginning in 1915, the *Model City Charter* provided that the mayor would be chosen by and from the council and would be the presiding officer of the council and head of the city for ceremonial purposes and for purposes of military law. No consideration was given to the role of the mayor as a policy leader. The 1964 edition recognized that in practice more than half of the council-manager cities had mayors elected directly by the voters. A direct election alternative was provided, but the preference for election by council was continued.

The 1964 commentary on the mayor did take notice of the policy leadership role of the mayor and cited the fact that many mayors elected by the council -- the preferred model -- had provided dynamic leadership. One such mayor was Murray Seasongood of Cincinnati, who in the early 1960s said, "I am on record over the years as believing that the mayor should be a person of real importance in the council-manager plan and is as essential to its proper operation as is the manager.... The emphasis should be on giving the mayor greater stature than he now possesses in the ordinary council-manager government."

This edition of the model charter emphasizes the need to further clarify the role of the mayor. It specifies certain duties of the non-executive mayor that are entirely consistent with the basic concept of the council-manager plan. The office is quite different from that of the elected chief executive in a system that separates executive and legislative powers. Rather, the mayor in the council-manager form is the chief legislator, the leader of the policy making team. This mayor can be a "strong" mayor who, not having to overcome the offsetting power of the council or not being bogged down with the details of managing the city's staff, can focus on facilitative leadership. The mayor is effective by helping the council and staff perform better. High involvement by the council and the manager and constructive relationships among officials are indicators of successful leadership by the mayor. Effectiveness does not mean charting an independent path or taking over tasks from the manager.

The new *Model* also specifically addresses the importance of strong political leadership and the potential for such leadership by the mayor in council-manager cities. This is based on three premises. First, relationships among officials in council-manager cities are cooperative rather than contentious because powers are not divided among officials. Second, this approach to mayoral leadership stresses the contributions of all officials rather than focusing on the mayor as the driving force in city government. Third, the potential for mayoral leadership is inherent in the council-manager form so long as the office is not actually hamstrung by arbitrary limitations. The mayor occupies a strategic location shaped by his or her close relationships with the council, manager, and individual citizens and groups in the community. The mayor is able to promote communications among officials and with the public. Unusual powers are not needed for leadership and may actually curtail leadership by separating the mayor from other officials. Any augmentation of the role of the mayor must not be construed as reducing the power of the council but rather as a way to provide

focus and leadership in the development of city policy. Nor should the role of the mayor intrude on the management of the city's operations by the manager.

The *Model* presents two alternative methods for choosing the mayor without stating a preference: direct election by the voters and election by and from the council. Communities are advised to consider the local situation in choosing between the two alternatives, determining which would be most conducive to the development of strong political leadership and effective professional administration.

Looking Ahead

The latest revision of the model charter was undertaken with the recognition that most municipalities now operate in a regional context that makes intergovernmental cooperation a necessity. This understanding led members of the revision committee to specify that along with his or her other duties the city manager should encourage regional and intergovernmental cooperation. A greater role for citizen participation in local governance has also been emphasized in the new model. While a time will certainly come for this edition to be revised in turn, there is no doubt that it ensures continuity with the purposes of the *Model City Charter* even as it recommends changes to meet the challenges of a new century.

MODEL BUILDING: A CONTINUING PROCESS

The influence of the *Model City Charter*, direct and indirect, can be measured in the ever-increasing use of the form of government it advocates. When it was proposed that the National Municipal League (League) endorse the council-manager plan as its model form, fewer than 50 cities had adopted the plan; by 2002 the number exceeded 3,000. Hundreds more communities operate with essential features of the plan, particularly the provision of responsible professional management. It has always been made quite clear that the model is not an absolute. It must be tailored to fit local circumstances, traditions, and legal restraints, and features of it may be used to strengthen governments, even those that do not follow the basic council-manager form.

The *Model City Charter* through its several editions has been the product of many minds and has reflected an enormous diversity of experience and preferences. It has always been informed by an abiding and unanimous commitment to the strengthening of self-government in America.

The Beginning

The publication of this new edition of the *Model* is the latest stage in the continuing process that began in 1894 with the establishment of the League. At the conclave that launched the organization, Theodore Roosevelt told his fellow founders, the leaders of municipal reform: "There are two gospels I always preach to reformers.... The first is the gospel of morality; the next is the gospel of efficiency.... I don't have to tell you to be upright, but I do think I have to tell you to be practical and efficient...."

These 1894 reformers agreed that to be practical and efficient" more was required than Roosevelt's exhortation for the "vindication of public virtue and popular rights of conscience and duty in public life...." They had a determination "to change the conditions which prevent good government [and] to simplify the machinery which interferes with free expression and practical enforcement of the intelligent will of the majority" (Horace E. Deming, City Club of New York). This group of farsighted leaders was clearly focused on the new century just ahead. They knew that they must develop a method for addressing not only the immediate crisis in city government but also a means for giving systematic attention to the fundamental elements in the machinery of local government. Thus began the process of model building that has endured for over a century.

The "elements of a model charter for American cities" were first laid out by Edmund Janes James, then a University of Pennsylvania political scientist and later the president of the University of Illinois. He emphasized that "a model city charter must be...adapted to local and temporal conditions...That scheme of government is the ideal one...which under any given set of conditions makes the working of good influence easy and of bad influence hard -- a form of government under which all the excellences of which a people or community is capable in a political sense can be realized...a city charter should give the people of the city the greatest degree of self-determination, both as to the form of government and as to the things which the government shall do...."

The First *Model City Charter*

In 1897 a committee of distinguished scholars and civic reformers was given the task of developing a municipal program embodying "the essential principles that must underlie successful municipal government and ... set forth a working plan or system ... for putting such principles into practical operation...." In 1899 the committee reported its recommendations, which were published in 1900 as *A Model Municipal Program*. It included a proposed state constitutional amendment defining the relation of the municipality to the state and a model charter in the form of "a municipal corporations act." This first *Model City Charter* called for a council elected for six-year staggered terms, a strong, elected chief executive system with very extensive powers assigned to the mayor, including appointment of all major municipal officials (except the comptroller) without advice and consent of the council. An independent civil service commission and civil service regulations were also recommended.

The recommendation of a strong elected executive was such a drastic departure from prevailing practice that it gained little acceptance. Indeed, there not only was an unwillingness to entrust such extensive powers to a mayor but there were also strong movements to interpose boards or commissions between the executive and the operating department heads to provide protective cover for many services, e.g., boards of public works, health, parks, recreation and planning. The desire was to prevent scandal, but the result was to diffuse responsibility.

A New Municipal Program and a New Model Charter. In the same year (1900) that the League published its first *Model City Charter*, the reform agenda was affected by the aftermath of a tidal wave in Galveston, Texas. The special commission used to deal with that emergency evolved into the commission form of municipal government. The legislative and executive functions were merged in a commission. The ballot was shortened and separately elected and independent boards were eliminated. It became a popular reform in the early years of the century. There was pressure for the League to endorse the commission plan model. Then as now, however, the League rejected the commission plan because it fragmented the executive and permitted too little attention to policy development. The question was how to combine the "short ballot" result that characterized the commission plan with the integrated, responsible executive provided in the League's first model.

The answer to this question was seen clearly by Richard S. Childs as he built on the short ballot principle that he had been espousing with Woodrow Wilson and others. He promoted the ingenious combination of experience in commission-governed cities and the basic organizational feature of private business -- the appointed chief executive officer.

The Childs position was most persuasive in the deliberations of a new League Committee on Municipal Program, which was established in 1913 to review the first *Model* and other reform experience. The committee's first report in 1914 endorsed what became known as the council-manager plan. In 1915 the League adopted a new municipal program presenting the second *Model City Charter*, which provided that all powers be vested in the council and that the

administration of the city's operations be by a city manager appointed by and serving at the pleasure of the council.

The committee was not only convinced that the new form of government was sound in theory but was also able to observe it in operation in a few pioneering cities. The committee was unaware of a proposal made by the first secretary of the League of California Cities, Haven S. Mason, in 1899 for a "distinct profession of municipal managers" to administer the affairs of a city or the fact that the small town of Ukiah, California, in 1904 established the position of "executive officer," who was responsible to its governing body, to administer its activities. The committee was aware that beginning in 1908, Staunton, Virginia, had a general "city manager" serving a two-house council and sharing the executive function with the mayor. The first city to have a manager responsible to a single elected council was Sumter, South Carolina, in 1912. It was followed two years later by Dayton, Ohio, the first city of substantial size to adopt the plan. By the end of 1915, the council-manager plan had been adopted by 82 cities, with the number almost doubling by 1920.

Unquestionably, the League made the important shift in its model charter from endorsement of an elected chief executive to advocacy of an appointed manager because of the conviction that the latter provided the most desirable arrangement for securing a responsible chief executive. In describing the 1915 *Model*, it was stated: "... the most distinguishing characteristic of the form of city government advocated in the *New Municipal Program* is to be found in the concentration of administrative powers and responsibilities in the hands of a city manager ... declaring that the city manager shall be the chief executive of the city." It was clearly recognized, however, that the new *Model* rejected the "separation of powers" concept which characterized the national and state governments, stating: "The dominant note in our new *Model City Charter* is elimination of the system of checks and balances in the organization of our cities and the substitution therefore of responsible government under a small legislative chamber which in turn selects a single administrative head. The city manager plan not merely represents the type in common use in business corporations but also in parliamentary government."

The *Model* has continued to endorse the unitary structure provided in the council-manager plan, although alternative approaches within this structure are now provided.

Evolution of the Reform Agenda

In addition to the provisions for the basic form of municipal government -- the legislative body and executive structure -- the *Model* has addressed other aspects of the reform agenda.

Civil Service. The architects of the first two model charters included some of the leaders of the civil service reform movement. Indeed, the chairman of the committee that developed the 1915 *Model* was William Dudley Foulke, who served as a member of the U.S. Civil Service Commission under Theodore Roosevelt and was president of the National Civil Service Reform League. Thus, it is not surprising that the early models contained detailed provisions for municipal civil service systems, including an independent civil service commission with extensive rule making authority with respect to "the appointment, promotion, transfer, layoff,

reinstatement, suspension, and removal of city officials and employees ... [and the duty] to supervise the execution of the civil service sections [of the charter] and the rules made thereunder....”

The manner in which municipal personnel organization and procedure are treated in the successive editions of the *Model City Charter* (1900, 1915, 1927, 1933, 1941, 1964, 1989, and 2002) shows how the reform agenda evolved during the 20th century. From the first two editions with an independent civil service commission, the *Model* moved in 1927 to an organization with a personnel director appointed by the city manager and a personnel board with limited powers. This was the approach followed in the 1933 and 1941 editions, but the provisions continued to be extremely detailed, covering classification procedures, promotions, pay plans, pensions and retirement systems. Notes accompanying these provisions indicated that some advisors were even then urging greater simplicity. This was done in the 1964 edition, which contained only a listing of the elements of personnel rules, restricted the personnel board to an advisory role, and recommended that details of personnel organization and procedure should be included in the administrative code.

The *Model* now recognizes that personnel systems in some states are controlled in large part by state law and everywhere are subject to certain federal regulations. The charter simply states a commitment to the merit principle and mandates the council to provide by ordinance for a personnel system based on the merit system and consistent with state and federal law. Thus, the *Model's* treatment of municipal personnel administration has evolved from prescribing in detail an organization and procedures concerned with the elimination of spoils to a general and flexible provision permitting the city to provide by ordinance an adaptable system that will increase the competence of the public service in meeting changing needs.

Planning. Treatment of planning in the *Model City Charter* has had a somewhat different evolution. In early editions the provisions were quite general, with new sections on zoning and other detailed aspects of planning not being added until 1927. The 1941 edition had the most detailed planning provisions, continuing to call for an independent planning commission with specific powers but with the planning director appointed by the city manager rather than by the commission. There were provisions for the master plan, official map, subdivision control, plat approval, zoning, slum clearance, blighted areas, housing, neighborhood redevelopment and disaster areas.

By 1964 the approach was substantially changed, with the *Model* indicating that planning should be considered preeminently a staff function tied directly to the city's executive, with the planning board's role being exclusively advisory. Further, it was indicated that planning policy is finally expressed and carried out by the council through various enactments. The *Model* did continue to provide procedures for adoption, modification and implementation of the comprehensive plan.

The 1989 *Model* recognized that land use development and environmental protection are increasingly the subject of regulation by state and federal statutes. This continues to be the case. In order to permit the municipality the greatest possible flexibility to carry out the planning

function effectively, the *Model* does not provide for a specific structure. The city council is mandated to establish the planning organization and procedures.

The eighth edition emphasizes the importance of integrating municipal planning with the planning of other local jurisdictions and regional agencies.

Finance. The *Model's* treatment of financial procedures has undergone an evolution from relatively simple prescriptions in the early editions to highly detailed and restrictive procedures in 1941 and back to much simpler procedures in recent and current editions. The 1941 edition was closer in time to the local government financial crises in the 1930s. Its provisions seemed overly rigid and unnecessarily complicated to those developing the next edition 20 years later, when economic conditions and fiscal procedures in local governments were substantially improved. The 1964 edition emphasized the importance of developing a comprehensive financial program and maximum flexibility within the boundaries of sound fiscal practices.

The 1989 edition made only minor modifications, clarifying some procedures and taking note of the need to provide for revenue ordinances covering non-property tax revenues.

The eighth edition further clarifies financial procedures, renaming the relevant article "Financial Management." The provision for an independent audit, previously found in Article II dealing with the city council now appears in Article V with new emphasis. The *Model* places attention on long-term goals and community priorities in the budget process and the importance of methods to measure outcomes and performance.

Initiative, Referendum, and Recall. The enthusiasm for some reform measures has varied over time. Provisions for the initiative, referendum, and recall were first included in 1915. Initiative and referendum have been provided in all subsequent editions of the *Model* but support for their inclusion has been far from unanimous. The commentary on the 1964 provision stated: "Since the initiative and referendum are more valuable in their availability than in their use, this *Model* sets up an exacting procedure."

The 1989 and 2002 editions have a simple provision that takes note of the fact that in most states where the initiative and referendum are available they are governed by the state election law. The recall was eliminated in the 1941 edition and was considered and rejected for inclusion in 1964 and 1989 but has been restored in the eighth edition.

Ethics. Since its early editions, the *Model* has had provisions prohibiting municipal officers from having conflicts of financial interest. The 1989 edition replaced statutory language in the charter with a mandate for council passage of ordinances covering ethics issues and measures for their enforcement. The eighth edition continues this approach and provides additional guidance for the council.

Campaign Finance. The eighth edition adds campaign finance disclosure and limitation provisions.

PROGRESS AND CONTINUITY

The continuity of the model-building process is well illustrated by Luther H. Gulick (then chairman of the Advisory Committee on the Revision of the *Model City Charter* and subsequently chairman of the Institute of Public Administration), in the statement which introduced the 1964 edition:

The American people have worked long and hard to achieve good city government. When the first edition of this *Model City Charter* was presented by the National Municipal League in 1900, the chairman of the drafting committee observed, "It has been confidently claimed by many that the most conspicuous failure of democracy ... is demonstrated by the American city...."

No one could make that statement today because it is no longer true. We now have many conspicuously successful local governments.... [A] new or modernized city charter...not only presents a concise and workable legal framework for the government but also sets before citizens a clear picture of their own responsibilities and powers and before the officials and employees a statement of their duties and mutual interrelations. Thus the adoption of a good city charter is both an affirmation by the citizens that they mean to have good government and is the legal framework within which such government can be won and the more easily maintained.

The objective of the *Model City Charter* is to present in the form of a legal document a general plan of municipal government which is (a) democratic -- that is to say responsive to the electorate and the community -- and at the same time (b) capable of doing the work of the city effectively and translating the voters' intentions into efficient administrative action as promptly and economically as possible.

Accordingly, the *Model* embodies the provisions and tested legal language, which in theory and practice have helped to realize this double objective -- democracy and effective management. And, following the precedent established by the founding fathers when they wrote the Constitution of the United States, it does this with the fewest possible words....

This charter is based on the principles of the council-manager plan because the National Municipal League has found during many years of experience that this arrangement of powers, responsibilities and duties best fits the good government needs of the American city.... There are cities, especially in the largest population class, where the strong mayor plan is preferred. Provisions of this *Model* are appropriate for such a charter, or may be readily adapted....

The machinery of government, designed by constitutions and charters, is not an end in itself. It is rather an agreed-upon framework through which [citizens] work

together to govern and to service themselves. The importance of the machinery is that these institutions when properly designed facilitate self-government and encourage effective management....

Participation by citizens will take many forms -- as voters, as members of local political or civic organizations, as elected officials, as appointed officials and employees, and as members of official and unofficial advisory bodies. The *Model* endeavors to present a fabric within which each type of participation and leadership can have its appropriate place. As [the *Model*] is used to aid charter drafting, each city should think in terms of how its particular resources of participating civic manpower will operate to make a new charter a vital going enterprise. There will be wide variation from city to city.

Leadership. Those engaged in charter preparation will be particularly concerned with a search for leadership to achieve municipal progress. Local government problems today more than ever challenge imagination and courage. The task is more than one simply of reflecting popular sentiment and administering the resulting programs. Increasingly, the task must begin with an aggressive campaign to inform and educate the electorate on new programs. The *Model* presents no absolute prescription for the organization conducive to the development of necessary leadership. Nor can this be done from afar by anyone for a specific community.

Another problem of overriding importance is how the city fits into the general framework of government. Few if any functions of government today are the absolute preserve of a city. Aspects of virtually all functions are distributed among all levels of government and frequently among several local units. The *Model* recognizes this fact of urban life. Again, it offers no formula, but suggests that charter commissions must look beyond the legal and geographical jurisdiction of the municipality. The effectiveness of local political leadership may well be judged ultimately by its capacity to mesh municipal programs with those of other jurisdictions.

Responsibility. Finally, this *Model*...asserts that the ultimate responsibility for all basic policy decisions should be assigned to a single responsible legislative body, the city council. It also insists that within the executive structure all officials be appointed by and under the direction of the chief executive...It endorses the use of advisory bodies, with no operating powers but with significant duties, which can utilize the talents of citizens to assess the implications of future programs.

This...edition endeavors to refine and update the conception of municipal government and its component parts presented in earlier editions. It reaffirms the position that a municipality should have discretion to design the form and structure of its own local government directly or through a "home rule" charter. It sounds a warning, however, and emphasizes that home rule today does not mean isolation from neighboring local governments. The goal of efficient, economic

and progressive municipal government is meaningful only when viewed as part of the local, state and federal partnership.

Terrell Blodgett
William N. Cassella, Jr.

Terrell Blodgett is the former Mike Hogg Professor of Urban Management, Lyndon B. Johnson School of Public Affairs, University of Texas, Austin. He was chairman of the Model City Charter Revision Committee that developed the seventh edition and was the former chairman of the National Civic League.

William N. Cassella, Jr., was coordinator for the Model City Charter Revision Committee that developed the seventh edition, and he is the retired executive director of the National Civic League.

Blodgett and Cassella were senior advisors to the committee that developed the eighth edition of the *Model City Charter*.

PREAMBLE TO THE CHARTER

Introduction.

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

PREAMBLE

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

Commentary.

Source of Authority

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

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

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

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

Action Taken

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

. . . do hereby adopt this charter.”

. . . do hereby adopt this home rule charter.”

Intent

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

"By this action, we:

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

secure the benefits of home rule, increase citizen participation, improve efficiency, and provide for a responsible and cooperative government. . . ."

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

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

Article I POWERS OF THE CITY

Introduction.

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

Section 1.01. Powers of the City.

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

Commentary.

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

Nevertheless, some cities, particularly smaller ones, may not wish to exercise all available powers. Cities may restrict their own power: (1) by specific provisions in the appropriate parts of the

charter; (2) by ordinance, since the section does not require that all the powers claimed be exercised; or (3) by inaction—i.e., failure to exercise powers. The powers of the city may also be limited by state or federal court decisions.

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

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

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

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

Section 1.02. Construction.

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

Commentary.

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

Section 1.03. Intergovernmental Relations.

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

Commentary.

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

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

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

N.H.R.S. Title 3, Chapter 53-A:1 Agreements between government units.

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

If states have neither specific nor general authorization, charter drafters should look for court opinions on intergovernmental agreements in the state. Courts may provide guidance on the extent of a city's power to cooperate with other governments in the absence of enabling state legislation.

Specific legislation on intergovernmental agreements often involves political questions and considerations of state constitutional and statutory limitations on cities' financial and borrowing powers. In joint federal-municipal projects involving substantial sums, state legislative control over municipal powers, coupled with restrictive judicial doctrines, may require specific state legislative approval.

Article II CITY COUNCIL

Introduction.

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

Section 2.01. General Powers and Duties.

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

Commentary.

This section does not specifically enumerate the powers of the council. An enumeration of specific powers in this article will not enlarge the powers of the council and may operate to diminish them if utilized by the courts to support restrictive interpretations (see commentary to § 1.02).

In his commentary on the first *Model City Charter* endorsing the council-manager plan ("The City Council" in The New Municipal Program, 1919), William Bennet Munro noted that

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

Recognizing that all of the powers that can be exercised by the city rest in the popularly elected city council, the charter must provide for a council, which is truly representative of the community. Therefore, the *Model* presents several alternatives without expressing an absolute preference for any one, which was done in earlier editions. Each city's population pattern—economic level, racial, geographical, etc.—has implication for the method of electing the council to assure equitable representation. While the Voting Rights Act governs all jurisdictions, in some cities the problem of

compliance with its provisions and avoidance of court challenges is a matter of particular concern. Just as there is no absolute model for providing competent and effective legislators, there is no absolute pattern which will assure equitable representation.

As the body charged with making municipal policy, the council can create permanent or *ad hoc* mechanisms to assist in that process. For example, it can create planning and recreation boards or study committees. Likewise it can create agencies with quasi-legislative or quasi-judicial status, such as a human rights commission or a zoning appeals board.

The *Model* makes no provision for specific instrumentalities designed to provide input at the neighborhood level for policy-making or service delivery evaluation. Nor does it list as charter agencies any advisory boards and commissions. The council has the power to establish such agencies.

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

Section 2.02. Eligibility, Terms, and Composition.

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

Commentary.

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

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

Commentary.

The *Model* recommends four-year, staggered terms (§ 6.03). Under this approach, elections of council members take place every two years. In the seventh edition, the *Model* listed concurrent terms as an alternative. However, a strong majority of cities today—82.6% of cities surveyed according to the 2001 ICMA Form of Government Survey—have chosen staggered terms over concurrent terms to avoid dramatic changes in council composition at each election.

The *Model* does not restrict reelection to subsequent four-year terms. Limiting reelection restricts the citizens' opportunity to keep in office council members of whom they approve. Unlimited terms allow voters to provide a vote of confidence for council members who represent majority sentiment

and a vote of opposition for members in the minority. Finally, the city benefits from the institutional memory of reelected council members.

(c) Composition. There shall be a city council composed of [] members [see alternatives below].

Commentary.

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

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

Alternative I – Option A – Council Elected At Large; Mayor Elected by the Council

The council shall be composed of [odd number] members elected by the voters of the city at large in accordance with provisions of Article VI. The mayor shall be elected as provided in § 2.03(b), Alternative I.

Alternative I – Option B – Council Elected At Large; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large in accordance with provisions of Article VI. The mayor shall be elected as provided in § 2.03(b), Alternative II.

Commentary.

The *Model* continues to stress the value of the at-large principle in designing the composition of a city council, while recognizing the necessity of providing for representation of geographical areas under certain circumstances. In considering the appropriateness of using the at-large system, each city must assess its own situation. The at-large system has generally allowed citizens to choose council members best qualified to represent the interests of the city as a whole.

Nevertheless, in larger cities, citizens may feel isolated from and unconnected to their government without some geographical basis of representation. Cities with significant differences in or conflicts

among ethnic, racial, or economic groups may wish to consider whether one of the alternative systems may achieve more equitable representation of the city's population and avoid legal challenges under the Voting Rights Act without sacrificing council effectiveness.

Alternative II – Option A – Council Elected At Large with District Residency Requirement; Mayor Elected by the Council

The council shall be composed of [odd number] members elected by the voters of the city at large in accordance with provisions of Article VI. Not more than one council member shall reside in each district. The mayor shall be elected as provided in § 2.03(b), Alternative I.

Alternative II – Option B – Council Elected At Large with District Residency Requirement; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large in accordance with provisions of Article VI. Not more than one council member shall reside in each district. The mayor shall be elected as provided in § 2.03(b), Alternative II.

Commentary.

A complaint frequently lodged against the all at-large council system is that a majority of the council may live in the same area of the city. This may give rise to questions concerning the equitable distribution of services with allegations that particular sections receive partial treatment. This objection can be met while still maintaining a council elected at-large by establishing districts of equal population and requiring that one council member reside in each district.

Although this alternative builds geographical representation into an at-large system, depending upon the local situation, it may be subject to the same objections under § 2 and § 5 of the Voting Rights Act as Alternative I.

Alternative III – Option A - Mixed At-Large and Single Member District System; Mayor Elected by the Council

The council shall be composed of [odd number] of council members elected by the voters of the city at large and one member from each of the even-numbered council districts elected by the voters of those districts, as provided in Article VI. The mayor shall be elected from among the at-large members as provided in § 2.03(b), Alternative I [specifying that the mayor is an at-large member].

Alternative III – Option B – Mixed At-Large and Single Member District System; Mayor Elected Separately

The council shall be composed of [even number] members elected by the voters of the city at large and one member from each of the even-numbered council districts elected by the voters of those districts, as provided in Article VI. The mayor shall be elected as provided in § 2.03(b), Alternative II.

Commentary.

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

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

A problem can arise in mixed systems when at-large council members consider their position to be superior to that of district members and are perceived as rivals to the mayor. To prevent this, at-large and district council members should have equal status with respect to offices, services, and length of terms.

Local preference should decide the ratio of at-large to district members. Opinion ranges from favoring a majority being elected at large to a majority being elected by and from districts. However, for jurisdictions concerned about scrutiny by the U. S. Department of Justice or the courts under either § 2 or § 5 of the Voting Rights Act, precedent shows a clear preference for the majority of the council to be elected by and from districts.

Alternative IV – Single-Member District System

The council shall be composed of an even number of members each of whom shall be elected by district by the voters in that district. The mayor shall be elected in accordance with the provisions of § 2.03(b), Alternative II.

Commentary.

If communities adopt the district system, the mayor should be elected separately by the voters of the city at large and not chosen by and from the council. This provides a necessary at-large element in an otherwise all district system.

The growing recognition that membership on councils should represent all racial and ethnic groups more adequately has spurred increased use of the single-member district system. With racial

minorities concentrated in particular sections of the city, it is easier to elect minority council members. Also, because district campaigns cost substantially less than citywide campaigns, single-member districts can open the way for greater diversity among candidates. Citizens feel closer to district elected council members, whom they can hold responsible for addressing their community concerns.

In cities where courts have found that the at-large method of electing the city council violates the Voting Rights Act, the Justice Department has regularly approved the single-member district system as a replacement.

The single-member system has drawbacks. An inherent problem is the danger that district elected members will subordinate citywide concerns to parochial problems. Single-member systems also have potential for the classic problem of "log-rolling" or vote swapping. Whenever districts are used, the drawing of district lines to provide "fair and equal" districts is of utmost importance and may involve litigation. Section 6.03 provides districting procedures and criteria designed to prevent gerrymandering and unequal districts, which are unconstitutional under the one person, one vote doctrine.

Section 2.03. Mayor.

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

(b) Election - Alternative I – Mayor Elected by the Council. The city council shall elect from among its members officers of the city who shall have the titles of mayor and deputy mayor, each of whom shall serve at the pleasure of the council. The deputy mayor shall act as mayor during the absence or disability of the mayor.

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

Commentary.

(a) The office of mayor in cities having the council-manager form assumes a different character from city to city depending upon local political, economic, and social conditions. This variation has meant that the office is not well understood, and its potential has too often gone unrecognized.

While the mayor of a council-manager city is not an executive as in the mayor-council form, he or she is uniquely positioned to be the political and policy leader of the city. As the presiding officer of the council and ceremonial head of the city, the mayor is the most conspicuous official of the city. Freedom from executive responsibilities for the day-to-day municipal operations allows the mayor to focus attention on major policy issues and important facilitative activities.

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

The specific responsibilities of the mayor listed in the *Model* enhance the mayor's leadership position. The traditional responsibility of presiding at council meetings allows the mayor to set the tone for city government and help the council make decisions. Designation of the mayor as intergovernmental representative reflects the increased importance of relationships with other local governments as well as with the state and federal governments. Mayoral appointment of boards and commissions with council advice and consent, and of the membership of council committees, creates the opportunity for purposeful balanced representation and can be used to forge coalitions and tap into networks of community activity.

Finally, the mayor delivers the state of the city message. When the state of the city message includes the setting out of needs and goals for the city, it should reflect the thinking of the council and information provided by the staff, as well as the mayor's own priorities. In presenting the state of the city message, the mayor acts as spokesperson, educator, team leader, goal setter, and policy advocate. To avoid confusion, the time of delivery of the message should be sufficiently distanced from the presentation of the budget by the manager.

(b) As with mayoral responsibilities, the method of election of the mayor has implications for office effectiveness. The *Model* provides two alternative methods for electing the mayor. A community's choice of election method depends on local preference and tradition and to some extent on the method chosen to elect the council (see Article VI).

Many communities feel that local policy leadership can best function when a cohesive team of council members chooses its leader as mayor. These cities use Alternative I, election of the mayor by and from the council, and thus avoid the possibility of conflict between the mayor and the council majority. Such an approach may be best suited for cities with at-large council elections. In cities with councils elected from districts, council selection of the mayor presents the mayor with conflicting roles—district and citywide.

Cities that provide for council selection of the mayor should avoid two practices which diminish the prospect of effective leadership. First is rotation of the office of mayor among members. This approach may hinder the emergence of a respected leader by preventing any one member from

acquiring experience and increasing competence in the exercise of leadership skills. It can also mean that the true leader of the council is not the mayor, which may create a misperception of inside dealing and secret manipulation. The second practice is to automatically designate as mayor the council member who receives the largest number of votes. This awkward approach prevents the council from choosing its leader and does not give voters full knowledge for which office—council member or mayor—they were casting votes.

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

Whatever the method of election or the strength of the mayor's leadership role, the mayor is preeminently a legislator, a member, and leader of the council; the mayor is not an executive. However, the office may require some special staff support. Whatever arrangements are made for support either through the city manager or staff in the mayor's office should be consistent with two premises. First, the mayor should not encroach on the executive responsibilities of the manager. Second, the mayor and council collectively, as a body, oversee the operations of the city by the manager.

Communities should avoid granting special voting status to the mayor (e.g., vote on council only to make or break a tie). Such power will likely impede rather than enhance the mayor's capacity to lead. Similarly, giving the mayor veto power in a council-manager city cannot help but confuse his or her role with that of the executive mayor in a mayor-council city.

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

Section 2.04. Compensation; Expenses.

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

Commentary.

Under the *Model*, council members are part-time officials and do not direct city departments. Council salary level depends on a variety of factors specific to each community, including the part-time nature of the position and the emphasis on policy-making rather than administration. The city should reimburse council members for expenses incurred in performing their duties, e.g., travel to the state capital to testify on behalf of the city.

The *Model* rejects the setting of the actual amount of compensation in the charter except for the salary of the first council after the charter goes into effect (see § 9.05(f)). The delay in the effective date of any salary increases provides ample protection.

The city should provide extra compensation for the mayor because, in addition to regular responsibilities as a council member, the mayor has intergovernmental, ceremonial, and city-related promotional responsibilities.

Section 2.05. Prohibitions.

(a) Holding Other Office. Except where authorized by law, no council member shall hold any other elected public office during the term for which the member was elected to the council. No council member shall hold any other city office or employment during the term for which the member was elected to the council. No former council member shall hold any compensated appointive office or employment with the city until one year after the expiration of the term for which the member was elected to the council, unless granted a waiver by the Board of Ethics.

Nothing in this section shall be construed to prohibit the council from selecting any current or former council member to represent the city on the governing board of any regional or other intergovernmental agency.

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

(c) Interference with Administration. Except for the purpose of inquiries, and investigations under § 2.09, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

Commentary.

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

(b) and (c) The prohibition against interference by council members in the appointment and removal of employees and in the administration of city programs does not include the broad language of earlier editions of the *Model* because it was considered too rigid and unrealistic. This provision, while expressing the general policy of noninterference, does not exclude communication between council members and the manager on questions of appointment and removal. The manager may seek advice from the council regarding appointments.

Council members are strictly prohibited from giving orders to city officers or employees. However, the prohibition against interference with administration does not prevent council members from making inquiries of department heads or employees for the purpose of obtaining information needed by them in the discharge of their duties including response to constituent requests. Information provided to one council member should be shared with the entire council as warranted. The council and manager should define the parameters for such requests and establish reasonable boundaries. In some cities, automated information systems make information on aspects of departmental operations readily available to council members on computer terminals.

Section 2.06. Vacancies; Forfeiture of Office; Filling of Vacancies.

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

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

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

(c) **Filling of Vacancies.** A vacancy in the city council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than sixty days upon the occurrence of the vacancy, but the council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the council fails to do so within thirty days following the occurrence of the vacancy, the election authorities shall call a

special election to fill the vacancy, to be held not sooner than ninety days and not later than 120 days following the occurrence of the vacancy, and to be otherwise governed by law. Notwithstanding the requirement in § 2.11(c), if at any time the membership of the council is reduced to less than _____, the remaining members may by majority action appoint additional members to raise the membership to _____.

Commentary.

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

Subsection (b)(3) requires forfeiture of office for crimes involving “moral turpitude.” This is a legal standard that in most jurisdictions means the crime – felony or misdemeanor – violates community standards of morality and involves an element of knowing intent by the perpetrator. Court findings include *In re Flannery*, 334 Or. 224 (2002) (misrepresenting address in renewing driver license to obtain valid license to rent a car was not a crime involving moral turpitude); *Klontz v. Ashcroft*, 37 Fed. Appx. 259 (9th Cir. 2002) (petty theft and grand theft are both crimes of moral turpitude); *Antorietto v. Regents of the University of California*, 2002 WL 1265552 (Cal. App. 4 Dist. June 7, 2002) (misuse of university funds and fraudulent diversion of donor funds intended for the university are crimes that involve moral turpitude). Another approach focuses on felonies, as in Kansas City’s charter, which reads: “No member of the council shall, during the term for which he is elected, be found guilty or enter a plea of guilty or nolo contendere to a felony under the laws of the United States or of any state, even if subsequently followed by the suspended imposition of the sentence.”

The council shall temporarily fill vacancies until the next regular election, when the voters will fill such vacancies for the remainder of the term (unless that election occurs within sixty days of the vacancy, in which case the candidates would have insufficient time to file). The provision calls for a special election if the council fails to fill a vacancy within thirty days. This provision should insure that the council will act, but in the event of a deadlock a special election will resolve the situation.

Finally, the section provides for filling vacancies by council action even if the membership falls below the quorum otherwise required for council action by § 2.11(c).

Section 2.07. Judge of Qualifications.

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

Commentary.

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

Section 2.08. City Clerk.

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

Commentary.

See §§ 2.15 and 2.16 for other duties assigned to the city clerk. In a number of states, certain statutory duties may be assigned to the city clerk, even in cities operating with their own charters.

Section 2.09. Investigations.

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

Commentary.

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

Section 2.10. Independent Audit.

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

Commentary.

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

Section 2.11. Procedure.

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

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

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. _____ members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council, except as otherwise provided in the preceding sentence and in § 2.06(c), shall be valid or binding unless adopted by the affirmative vote of _____ or more members of the council.

Commentary.

This section sets forth what are, for the most part, standardized and well accepted procedural rules to govern the official action of the council. The frequency of meetings can, of course, be suited to the needs of the particular city. The section contains the important, standard protection that meetings must be public and that a journal of proceedings be kept as a public record. Most states have open meeting laws which specify the circumstances when closed or executive sessions may be held; such meetings are sometimes necessary for effective council functioning. This charter and state law contain ample safeguards to assure open meetings. All council actions require majority vote, except actions to adjourn, to compel attendance of members in the absence of a quorum, and to appoint additional members if the membership falls below a majority of the total authorized membership as provided in § 2.06(c).

Section 2.12. Action Requiring an Ordinance.

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

- (1) Adopt or amend an administrative code or establish, alter, or abolish any city department, office, or agency;

- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Levy taxes;
- (4) Grant, renew, or extend a franchise;
- (5) Regulate the rate charged for its services by a public utility;
- (6) Authorize the borrowing of money;
- (7) Convey or lease or authorize the conveyance or lease of any lands of the city;
- (8) Regulate land use and development;
- (9) Amend or repeal any ordinance previously adopted; or
- (10) Adopt, with or without amendment, ordinances proposed under the initiative power.

Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution.

Commentary.

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

Other subjects requiring an ordinance are not mentioned here because the requirement is specifically stated elsewhere in the charter. These include adoption of codes of technical regulations (§ 2.15), appropriation and revenue ordinances (§ 5.06), supplemental and emergency appropriations and reduction of appropriations (§ 5.07), and creation of a charter commission or proposal of charter amendments (§ 8.01).

Council may act via ordinance or resolution on matters other than those enumerated in this section or as required by law or by specific provision in the charter to be by ordinance. This does not preclude motions relating to matters of council procedure, which may involve even less formality than resolutions.

Section 2.13. Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be "The city of _____ hereby ordains . . ." Any ordinance which repeals or amends an existing ordinance or part of the city code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matters by underscoring or by italics.

(b) Procedure. Any member at any regular or special meeting of the council may introduce an ordinance. Upon introduction of any ordinance, the city clerk shall distribute a copy to each council member and to the city manager, shall file a reasonable number of

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

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

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

Commentary.

This section dispenses with the unnecessary and cumbersome requirements of a full reading of all ordinances and publication of their full text both before and after adoption. Distribution of a copy to each council member obviates the need for a full reading. Permitting the printing of a brief summary, together with notice of the times and places where copies are available for public inspection, simplifies publication. Further simplification occurs in §§ 2.14 and 2.15, which contain special provisions for expeditious handling of emergency ordinances and for adoption by reference of standard codes of technical regulations.

The section retains the basic safeguards of a public hearing following notice by publication, and a second publication with notice of adoption. It does not go so far as charters that dispense with publication or that permit adoption at the same meeting at which a non-emergency ordinance is introduced. It retains protective features deemed necessary for full and careful consideration. Section 2.14 provides sufficient leeway for emergency situations.

Section 2.14. Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the city council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for

its services or authorize the borrowing of money except as provided in § 5.07(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least _____ members shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to § 5.07(b) shall automatically stand repealed as of the sixty-first day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Commentary.

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

Section 2.15. Codes of Technical Regulations.

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

- (1) The requirements of § 2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city clerk pursuant to § 2.16(a).

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

Commentary.

This provision permits adoption of standard and often lengthy, detailed, and technical regulations, such as building and sanitary codes, by an ordinance which simply incorporates and adopts the code by reference. Publication of the adopting ordinance satisfies publication requirements. The adopting ordinance should indicate the nature of the code. The council is not required to include all such technical codes in the general city code pursuant to § 2.15. This approach minimizes burden and

expense while at the same time preserving the essential safeguards of the general ordinance procedure of § 2.12.

Section 2.16. Authentication and Recording; Codification; Printing of Ordinances and Resolutions.

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

(b) Codification. Within three years after adoption of this charter and at least every ten years thereafter, the city council shall provide for the preparation of a general codification of all city ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published, together with this charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of _____, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the _____ city code. Copies of the code shall be furnished to city officers, placed in libraries, public offices, and, if available, in a web site for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

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

Commentary.

Subsections (a) and (c) of this section state essential procedures for maintaining legally authenticated records of all ordinances and resolutions and for making them available to the public.

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

Article III CITY MANAGER

Introduction.

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

Section 3.01. Appointment; Qualifications; Compensation.

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

Commentary.

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

Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement municipal policies adopted by elected officials.

Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with members [of ICMA, i.e., city managers]. Refrain from all political activities, which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body [including the mayor].

Keep the community informed on local government affairs; encourage communication between citizens and all local government officers; emphasize

friendly and courteous service to the public; and seek to improve the quality and image of public service.

(The ICMA Code of Ethics can be found online at www.icma.org. The other items in the code refer to the manager's personal and professional beliefs and conduct.)

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

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

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

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

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

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

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

Section 3.02. Removal.

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

Commentary.

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

The council may delay the effective date of the final removal resolution in order to provide for termination pay. When an employment agreement exists between the city and the city manager, termination pay should be covered in that agreement.

Section 3.03. Acting City Manager.

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

Commentary.

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

Section 3.04. Powers and Duties of the City Manager.

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

- (1) Appoint and suspend or remove all city employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (2) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;
- (3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;
- (4) See that all laws, provisions of this charter and acts of the city council, subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;
- (6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;
- (7) Make such other reports as the city council may require concerning operations;
- (8) Keep the city council fully advised as to the financial condition and future needs of the city;
- (9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;
- (10) Provide staff support services for the mayor and council members;
- (11) Assist the council to develop long term goals for the city and strategies to implement these goals;
- (12) Encourage and provide staff support for regional and intergovernmental cooperation;
- (13) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community; and
- (14) Perform such other duties as are specified in this charter or may be required by the city council.

Commentary.

Although this section equips the manager with the necessary legal authority to discharge administrative responsibilities, the manager's authority may be limited in some states by provisions

of state constitutions or laws. The listing of the manager's powers and duties assumes that the manager will not only perform managerial duties in the city's operations but will also have a significant role in the development of policy. There are important policy implications in the manager's duties to prepare and submit the budget; to report on the city's finances, administrative activities, departmental operations and future needs; and to make recommendations on city affairs. The duty to provide staff support for the mayor and council members includes providing information on policy issues before the council.

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

Article IV DEPARTMENTS, OFFICES, AND AGENCIES

Introduction.

This Article provides for the creation of the departments, offices, and agencies which perform the day-to-day operations of the city. It provides that the city manager appoint and supervise department heads. It makes exceptions in the case of the city attorney, acknowledging the close relationship of the department of law and the city council in some cities. Finally, the Article addresses planning, focusing on environmentally sensitive planning that takes the needs of the surrounding region into account.

Section 4.01. General Provisions.

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

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

Commentary.

This section authorizes the city council to establish city departments, offices, and agencies. It neither enumerates the operating departments nor details their internal organization. It provides that

the manager appoint, direct, and supervise the officer who administers city departments, thus precluding administration by a board or commission. The number of departments will vary in accordance with local needs as well as the distribution of functions among units of local government; for example, in some cases, cities or special districts will be responsible for services elsewhere performed by counties.

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

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

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

Section 4.02. Personnel System.

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

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

Commentary.

The personnel provisions are designed to provide a flexible system which will encourage the development of competent staff. As personnel systems are increasingly controlled by state law and are subject to federal regulatory authority, the charter should not impose additional constraints and details affecting personnel administration. It should, however, strongly state the commitment to the merit principle. The *Model* states that commitment and calls on the council to provide, by ordinance, for the organization and procedures of the personnel system. It lists subjects that may be

covered by personnel policies. Particularly in smaller jurisdictions, state law may cover some of these adequately, and their inclusion in the local ordinance could be unnecessary.

Section 4.03. Legal Officer.

(a) Appointment.

Alternative I

There shall be a legal officer of the city appointed by the city manager as provided in § 4.01(b).

Alternative II

There shall be a legal officer of the city appointed by the city manager subject to confirmation by the city council.

Alternative III

There shall be a legal officer of the city appointed by the city council.

(b) Role. The legal officer shall serve as chief legal adviser to the council, the manager and all city departments, offices and agencies, shall represent the city in all legal proceedings and shall perform any other duties prescribed by state law, by this charter or by ordinance.

Commentary.

Every municipality must have either a full-time or part-time legal officer, depending on the size of the city and the volume of legal problems. This officer normally will head the city's law department. Both the title and the precise nature of the legal officer's duties will depend on state law, local practice, and the organization of the court systems.

Because of wide variations in local practice and state law, subsection (a) provides three alternatives for who appoints the legal officer. Strong arguments can be made for Alternatives I and II.

Proponents of Alternative I point out that the legal officer, as a city department head, should have the same relationship to the manager as other department heads. The manager and the manager's top staff members, including the city attorney, serve as advisors to the council. Alternative II, which requires confirmation by the council, focuses on the special role of the legal officer as the city's attorney who must provide legal advice to the council and represent the council in legal proceedings. This means that the legal officer has a different relationship to the council than other department heads.

Alternative III is included as an option, though not a preferred one.

Subsection (b) describes the role of the legal officer in advising and representing the city and its offices, departments, and agencies. Some communities allow the legal officer to represent, in

addition to the city, individual officers, and agencies in legal proceedings. For example, the charter of the Town of Avon, Connecticut, states:

The Town Attorney shall:

With approval of the Town Council based on criteria determined by said Town Council appear for and protect the rights of individual officers, members of boards, commissions, committees and agencies in all actions, suits or proceedings brought by or against them. Avon Town Charter, 6.1.1(v)(b).

Other situations, such as dealing with labor relations or bond issues, may justify retaining outside counsel rather than adding to the city attorney's responsibilities. Implicit in the council's power to make investigations of the conduct of a city department (§ 2.09) is the power to engage special counsel in the unusual circumstances in which the council requires independent legal assistance, for example, if the city attorney would otherwise have a conflict of interest.

Some cities have proposed creating separate positions of city attorney, one for city council, and one for the city manager or mayor. The eighth edition discourages this because of the belief that local government should be unitary.

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

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

- (1) Designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by ordinance;
- (2) Adopt a comprehensive plan and determine to what extent zoning and other land use control ordinances must be consistent with the plan;
- (3) Determine to what extent the comprehensive plan and zoning and other land use ordinances must be consistent with regional plan(s); and
- (4) Adopt development regulations, to be specified by ordinance, to implement the plan.

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

Commentary.

Regulation of land use and development is a council function and an important aspect of home rule, allowing local governments to manage growth and enhance quality of life in the community. However, federal and state laws on land use, development, and environmental protection impose not only regulation but in some cases specific procedures on local governments. The *Model* provision provides the needed flexibility for the city to establish workable structures and procedures

for exercising the planning function within the context of constraints imposed by higher levels of government.

Most cities are integral parts of metropolitan and other regions. The planning and development policies of a city have implications beyond its boundaries. The overall health of a metropolitan region is dependent on some integration of local and regional planning. In addition to establishing appropriate processes and relevant agencies, a city should seek consistency with regional plans in its planning endeavors.

Article V FINANCIAL MANAGEMENT

Introduction.

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

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

Section 5.01. Fiscal Year.

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

Commentary.

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

Section 5.02. Submission of Budget and Budget Message.

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

Commentary.

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

Section 5.03. Budget Message.

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

Commentary.

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

Section 5.04. Budget.

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

- (1) The proposed goals and expenditures for current operations during the ensuing fiscal year, detailed for each fund by department or by other organization unit, and program, purpose or activity, method of financing such expenditures, and methods to measure outcomes and performance related to the goals;
- (2) Proposed longer-term goals and capital expenditures during the ensuing fiscal year, detailed for each fund by department or by other organization unit when

- practical, the proposed method of financing each such capital expenditure, and methods to measure outcomes and performance related to the goals; and
- (3) The proposed goals, anticipated income and expense, profit and loss for the ensuing year for each utility or other enterprise fund or internal service fund operated by the city, and methods to measure outcomes and performance related to the goals. For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance exclusive of reserves.

Commentary.

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

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

Performance measures used in the budget may include input, output, efficiency, and outcome measures with comparisons over time so as to encourage the government to benchmark its performance for continuous improvement. A city should strive toward development of outcome measures which reflect actual impact of a program, service, or project on its citizens. Citizens, council, and city staff should work together to undertake performance measurement subject to the year-to-year needs and demands of the community.

Section 5.05. City Council Action on Budget.

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

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

(b) Amendment Before Adoption. After the public hearing, the city council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except

expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income.

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

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

Commentary.

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

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

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

The *Model* promotes a favored course of action for dealing with the failure of the council to adopt the budget by the prescribed deadline. It recommends that the budget as submitted by the manager be deemed adopted. Among other possibilities in such a situation are (1) for the amounts appropriated for operations in the current fiscal year to be deemed adopted; (2) for the manager's budget to be deemed adopted but with amendments by the council being permitted during the first month of the new fiscal year; (3) to authorize the council to make temporary appropriations for a period not to exceed one month, during which time it would presumably complete adoption of the budget for the remainder of the fiscal year; and (4) to provide that the budget of the preceding fiscal year should be applicable automatically for the first month of the ensuing year, with the presumption that action will be completed during that time.

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

Section 5.06. Appropriation and Revenue Ordinances.

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

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

Commentary.

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

Section 5.07. Amendments after Adoption.

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

(b) Emergency Appropriations. To address a public emergency affecting life, health, property or the public peace, the city council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of § 2.14. To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid or refinanced as long-term debt not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

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

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

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

Commentary.

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

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

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

Section 5.08. Administration and Fiduciary Oversight of the Budget.

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

Commentary.

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

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

Section 5.09. Capital Program.

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

(b) Contents. The capital program shall include:

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

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

Commentary.

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

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

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

Section 5.10. City Council Action on Capital Program.

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

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

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

Commentary.

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

Other projects, to be financed from current income, also may extend over more than one year and will normally involve construction contracts with adequate safeguards for both parties. Still other capital projects may be completed within a single fiscal period as part of the work program of various city departments. In all cases, actual disbursements for capital items during a single fiscal

year, whether in the form of debt service or direct outlays, are carried as the capital outlay section of the budget for that year.

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

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

Section 5.11 Independent Audit.

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

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

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

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

Commentary.

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

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

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

Section 5.12. Public Records.

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

Commentary.

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

Article VI ELECTIONS

Introduction.

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

Section 6.01. City Elections.

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

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

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

(d) Proportional Representation. The council may be elected by proportional representation by the method of the single transferable vote.

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

Commentary.

(a-c) Although most states regulate local elections entirely or to a very substantial extent by state statutes, a local charter may provide certain variations. For example, home rule charters may provide for nonpartisan local elections as provided in this section. Traditionally, the *Model* has advocated separating municipal elections from state and national elections to allow a clear focus on local issues. State election laws and city charters frequently schedule municipal elections in the fall of odd-numbered years or in the spring of the year. However, recent evidence suggests that turnout is higher during state and national elections. Some now advocate moving local elections to coincide with state and national elections to increase participation in local races. The Committee that developed this *Model* recognized the trade-off involved with each choice and decided not to express a preference. If permissible under the state election laws, such timing should be specified in the charter.

(d) As in the sixth and seventh editions, the eighth edition includes proportional representation (PR) via the single transferable vote method as an alternative means for electing the council. Until 1964 (when the sixth edition of the *Model City Charter* was published), the *Model* recommended the Hare system (also known as preference voting, choice voting, and the single transferable vote system) of PR as the preferred method of electing city councils. It had been used in 22 American cities but by the early 1960s had been discarded in all but Cambridge, Massachusetts, where it is still used to elect the city council and school committee. The Republic of Ireland also uses it to elect members of the House of Parliament. Unquestionably, PR provides the greatest equity in representing all sectors of the community. However, the relative complexity of PR when using antiquated voting procedures and the long and expensive process of counting ballots by hand concerned some voters where it was used and prevented it from becoming a widespread reform measure. There is renewed interest in PR because of its potential to assure representation of minority populations and because technological developments now allow a computerized voting and counting system, thus eliminating the major objection to PR.

The single transferable vote method allows voters to rank candidates in a multi-member district by preference. The method depends on creation of a winning threshold—a share of votes that each council member must receive to be elected. Election officials determine the threshold after all votes are counted, using a formula to determine the fewest number of votes that only the winning number of candidates can receive. In Cambridge, for example, officials divide the total number of valid ballots cast by the number of positions to be elected plus one. Under this approach, in an election for nine council seats where voters cast 15,000 valid ballots, the winning threshold is 1,501, or 15,000 divided by ten, plus one. Ten candidates theoretically could receive 1,500 votes, but only nine can obtain 1,501. Once a particular candidate receives the designated threshold of first choices, ballot counters redistribute any surplus votes for that candidate to another candidate based upon the voter's preferential ranking. Cambridge redistributes some ballots at full value, but modern technology now allows a more precise redistribution of the calculated share of every ballot at an equally reduced value.

After all surplus votes are redistributed, the weakest candidate is eliminated, and ballots from that candidate are counted for the next choice candidate on those voters' ballots. This process of redistributing votes from winning candidates and weak candidates continues until the necessary number of candidates have reached the threshold, or only nine candidates remain. In Cambridge, this has consistently led to ninety percent of voters helping to elect a candidate, more than sixty-five percent of voters having their first choice candidate win, and more than ninety-five percent of voters seeing one of their top three choices win.

The PR alternative assumes that the mayor will be elected by and from the council and thus calls for an odd-number of council members. If PR is used in conjunction with a separately elected mayor who serves on the council, there should be an even number of council members elected by PR. When considering the PR alternative, charter reviewers may also wish to investigate semi-proportional representation systems—the limited vote and cumulative vote—which have been adopted in more than 75 localities since 1985 to settle voting rights cases, including in Peoria (IL), Amarillo (TX), and Chilton County (AL). While more uneven in their results than PR, these systems increase minorities' access to representation and may boost turnout. More information about the mechanics of PR can be obtained from the Center for Voting and Democracy, www.fairvote.org.

Another relatively new voting procedure that incorporates the transferable vote method is the instant runoff. It can be used in single member districts or single office elections, such as the mayor's office. Instant runoff voting eliminates the need for costly runoff elections and the typical drop-off in turnout in runoffs. Voters rank candidates for a single office; if no candidate wins a majority of votes, election officials remove the candidate with the fewest first-place votes and redistribute those votes to other candidates based upon their second-place designations until one candidate achieves a majority. This ensures that a vote cast for a voter's favorite candidate does not potentially contribute to the election of that voter's least favorite candidate. It also means that the victor has a credible claim of majority support without recourse to a runoff. In 2002, San Francisco became the first major U.S. city to adopt instant runoff voting to elect its mayor, board of supervisors, district attorney, city attorney, treasurer, sheriff, assessor-recorder and public defender. The disadvantage is that voters may have difficulty sorting out the candidates in a large field of contenders and cannot

rely on the runoff campaign to learn in more detail how the two remaining contenders differ in their characteristics and positions.

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

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

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

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

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

- (1) Following each decennial census, the commission shall consult the city council and shall prepare a plan for dividing the city into districts for the election of council members. In preparing the plan, the commission shall be guided by the criteria set forth in § 6.02(d). The report on the plan shall include a map and description of districts recommended.
- (2) The commission shall hold one or more public hearings not less than one month before it submits the plan to the city council. The commission shall

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

(d) Districting Plan; Criteria. In preparation of its plan for dividing the city into districts for the election of council members, the commission shall apply the following criteria which, to the extent practicable, shall be applied and given priority in the order in which they are herein set forth.

- (1) Districts shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent of the average population for all city council districts according to the figures available from the most recent census.
- (2) Districts shall consist of contiguous territory; but land areas separated by waterways shall not be included in the same district unless said waterways are traversed by highway bridges, tunnels or regularly scheduled ferry services both termini of which are within the district, except that, population permitting, islands not connected to the mainland or to other islands by

bridge, tunnel or regular ferry services shall be included in the same district as the nearest land area within the city and, where such subdivisions exist, within the same ward or equivalent subdivision as described in paragraph (5) below.

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

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

Commentary.

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

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

The *Model* provides for a bipartisan commission. Even cities with nonpartisan elections may have problems with political parties (either local or national) wanting to dominate the process to achieve advantage. To facilitate the commission’s ability to work together despite partisan differences, the *Model* recommends that the four council appointees (and mandates that at least three of the four) agree on the choice of chairman.

Once the bipartisan commission submits its plan to the city council, the council can neither approve nor veto the result. This avoids the conflict of interest created when council members consider new districts whose lines may materially affect their political futures. The council may, however,

prevent implementation of the plan if it finds the plan in violation of the charter and files with the courts for such a determination.

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

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

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

(c) Procedures.

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

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

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

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

Section 6.03. Methods of Electing Council Members.

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

Alternative I – Option A – Council Elected At Large; Mayor Elected By the Council

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

Alternative I – Option B – Council Elected At Large; Mayor Elected Separately

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

Alternative II – Option A – Council Elected At Large with District Residency Requirement; Mayor Elected By the Council

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

Alternative II – Option B – Council Elected At Large with District Residency Requirement; Mayor Elected Separately

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

Alternative III – Option A – Mixed At-Large and Single Member District System; Mayor Elected by the Council

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

Alternative III – Option B – Mixed At-Large and Single Member District System; Mayor Elected Separately

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

Alternative IV – Single-Member District System

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

Commentary.

The single-member district system should be used only where the mayor is elected at large as provided in Alternative II of § 2.03.

Section 6.04. Initiative, Citizen Referendum, and Recall.

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

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

(1) Initiative. The registered voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of city officers or employees.

(2) Citizen Referendum. The registered voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money or levy of taxes.

(3) Recall. The registered voters of the city shall have power to recall elected officials of the city, but no recall petition shall be filed against any official within six months after the official takes office, nor, in case of a member subjected to a recall election and not removed, until at least six months after the election.

(b) Commencement of Proceeding; Petitioners' Committee; Affidavit. Any five registered voters may commence initiative, citizen referendum, or recall proceedings by filing with the city clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance, citing the ordinance sought to be reconsidered, or stating the name and title of the officer sought to be recalled accompanied by a statement, not to exceed 200 words, of the reasons for the recall. Grounds for recall should relate to and affect the administration of the official's office, and be of a substantial nature directly affecting the rights and interests of the public. Promptly after receipt of a recall petition, the clerk shall serve, personally or by certified mail, a copy of the affidavit on the elected officer sought to be recalled. Within 10 days of service of the affidavit, the elected officer sought to be recalled may file a statement with the city clerk, not to exceed 200 words, in response. Promptly after the affidavit of the petitioners' committee is filed, and the response, if any, of the elected official sought to be recalled is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.

(c) Petitions.

(1) Number of Signatures. Initiative and citizen referendum petitions must be signed by registered voters of the city equal in number to at least [5 to 10] percent of the total number of registered voters to vote at the last regular election. Recall petitions must be signed by registered voters of the city equal in number to at least [10 to 20] percent of the total number of registered voters to vote at the last regular election.

(2) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Initiative and citizen referendum petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered. Recall petitions shall contain the name and title of the official sought to be recalled, the statement of grounds for the recall, and the response of the official sought to be recalled, if any. If no response was filed, the petition shall so state.

(3) Affidavit of Circulator. Each paper of a petition shall have attached to it when filed an affidavit executed by the person circulating it stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(4) Time for Filing Referendum and Recall Petitions. Referendum petitions must be filed within 30 days after adoption by the council of the ordinance sought to be reconsidered. Recall petitions must be filed within [40 to 160] days of the filing of the petitioners' affidavit initiating the recall procedure.

(d) Procedure after Filing.

(1) Certificate of Clerk; Amendment. Within twenty days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his or her certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of paragraphs (2) and (3) of § 6.04(c), and within five days after it is filed the clerk shall complete

a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under paragraph (2) of this subsection within the time required, the clerk shall promptly present his or her certificate to the council and the certificate shall then be a final determination as to the sufficiency of the petition.

(2) Council Review. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition. A council member who is the subject of a recall petition shall not be eligible to act in the determination of sufficiency or insufficiency of the petition.

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

(e) Referendum Petitions; Suspension of Effect of Ordinance. When a referendum petition is filed with the city clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

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

(f) Action on Petitions.

(1) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner provided in Article II or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance within sixty days or fails to repeal the referred ordinance within thirty days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the city. The council shall promptly order a recall

election to occur within _____ [30 to 90] days of the date the recall petition was finally determined sufficient.

(2) Submission to Voters of Proposed or Referred Ordinances. The vote of the city on a proposed or referred ordinance shall be held not less than 30 days and not later than one year from the date of the final council vote thereon. If no regular city election is to be held within the period prescribed in this subsection, the council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

(3) Withdrawal of Petitions. An initiative, referendum, or recall petition may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for a vote of the city by filing with the city clerk a request for withdrawal signed by at least two-thirds of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

(g) Results of Election.

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

(2) Referendum. If a majority of the registered voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

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

Commentary.

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

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

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

(c) The number of signatures required for initiative and referendum petitions in the seventh edition was fifteen percent of the total number registered to vote at the last regular city election. The eighth edition permits charter drafters to decide upon a reasonable threshold for their city, chosen from a range equal to or greater than five percent but less than or equal to ten percent of registered voters to vote at the last city election. The percentage used should neither be too easy nor too burdensome. Communities typically require more signatures for recall petitions than for initiative and referendum petitions. In determining the recall percentage, drafters should consider distinguishing between at-large and district offices.

Limiting the period for filing a referendum petition to thirty days after passage insures that the effective date of an ordinance will not be delayed unless the referendum effort is of serious proportions. The timing of the recall procedure prevents the threat of recall from pending without limitation. The time period for signature collection should be reasonably related to the signature requirement and the size of the city, within the provided range of 40 to 160 days.

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

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

(f) This section mandates council consideration of the proposed "initiative ordinance" and reconsideration of the "referred ordinance" prior to the circulation of petitions and the ensuing ballot question. The words "adopt a proposed initiative ordinance without any change in substance" permit correction of technical imperfections.

If an election is necessary, provisions for submitting a proposed or referred ordinance to the voters, or ordering a recall election, permit considerable latitude as to the election date to encourage holding the vote at a regular election if possible.

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

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

Article VII GENERAL PROVISIONS

Introduction.

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

Section 7.01. Conflicts of Interest; Board of Ethics.

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

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

Commentary.

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

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

Other provisions councils could adopt, but not listed in the *Model*, relate to acting in an official capacity over any campaign donor who contributes \$_____ or more to the official's campaign; the hiring of relatives; acting in an official capacity on matters affecting a prior employer within a designated time period after leaving the employer; accepting outside employment while in office; and accepting employment with an employer over whom the official or employee acted in an official capacity, within a designated time period after leaving office. Westminster, Colorado, pioneered the conflict of interest approach to limiting campaign contributions, via charter amendment, and other cities have expressed interest in following its example either by charter or ordinance. A substantial number of cities restrict hiring of relatives and prior, outside, and subsequent employment arrangements.

Section 7.02. Prohibitions.

(a) Activities Prohibited.

- (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, gender, age, sexual orientation, disability, religion, country of origin, or political affiliation.
- (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this charter or the rules and regulations made there under, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.
- (3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.

- (4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any city election from any city officer or city employee.
- (5) No city officer or city employee shall knowingly or willfully make, solicit or receive any contribution to the campaign funds of any political party or committee to be used in a city election or to campaign funds to be used in support of or opposition to any candidate for election to city office or city ballot issue. Further, no city employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for city office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.

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

Commentary.

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

Section 7.03. Campaign Finance.

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

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

Commentary.

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

Section 7.03(a) provides for disclosure of candidate contributions and expenditures. A strong majority of cities in the United States have some form of campaign contribution and expenditure disclosure requirements. This section of the charter requires the city to provide for timely disclosure of such funds. It further requires that disclosure of contributions above a certain threshold include the donor's employer and occupation. Such information allows citizens to identify the sources of funding that influence local elections. The requirement that the city provide for "convenient public disclosure" is meant to encourage electronic disclosure over city web sites when such technology and resources are available.

Section 7.03(b) provides the city with express authority, but not a mandate, to enact any of the several innovative campaign finance laws that cities have enacted over the last three decades. This includes options such as contribution limitations, time limits on fund raising, and public financing as an incentive for candidates to adhere to voluntary spending limits.

Article VIII CHARTER AMENDMENT

Introduction.

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

Section 8.01. Proposal of Amendment.

Amendments to this charter may be framed and proposed:

- (a) In the manner provided by law, or

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

Proposal of an amendment by the voters of the city shall be by petition containing the full text of the proposed amendment and shall be governed by the same procedures and requirements prescribed in Article VI for initiative petitions until such time as a final determination as to the sufficiency of the petition is made, except that there shall be no limitation as to subject matter and that the petition must be signed by registered voters of the city equal in number to at least [5 to 10] percent of the total number of those registered to vote at the last regular city election. The petitioners' committee may withdraw the petition at any time before the fifteenth day immediately preceding the day scheduled for the city vote on the amendment.

Commentary.

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

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

Section 8.02. Election.

Upon delivery to the city election authorities of the report of a charter commission or delivery by the city clerk of an adopted ordinance or a petition finally determined sufficient, proposing an amendment pursuant to § 8.01, the election authorities shall submit the proposed amendment to the voters of the city at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the city at least thirty days prior to the date of the election. The election shall be held not less than 60 and not more than 120 days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be as specified in state law.

Section 8.03. Adoption of Amendment.

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

Article IX TRANSITION AND SEVERABILITY

Introduction.

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

Section 9.01. Officers and Employees.

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

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

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

Section 9.02. Departments, Offices, and Agencies.

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

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

Section 9.03. Pending Matters.

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

Section 9.04. State and Municipal Laws.

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

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

- (1) The following laws and parts of laws generally affecting counties or city agencies, officers or employees are inapplicable to the city of _____ or its agencies, officers or employees: [enumeration]
- (2) The following public local laws relating to the city of _____ are superseded: [enumeration]
- (3) The following ordinances, resolutions, orders, and regulations of _____ [former city governing body] are repealed: [enumeration]

Section 9.05. Schedule.

(a) First Election. At the time of its adoption, this charter shall be in effect to the extent necessary in order that the first election of members of the city council may be conducted in accordance with the provisions of this charter. The first election shall be held on the _____ of _____. The [city officials to be designated] shall prepare and adopt temporary regulations that are applicable only to the first election and designed to insure

its proper conduct and to prevent fraud and provide for a recount of ballots in cases of doubt or fraud.

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

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

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

(d) Temporary Ordinances. In adopting ordinances as provided in § 9.05(c), the city council shall follow the procedures prescribed in § 2.12, except that at its first meeting or any meeting held within sixty days thereafter, the council may adopt temporary ordinances to deal with cases in which there is an urgent need for prompt action in connection with the transition of government and in which the delay incident to the appropriate ordinance procedure would probably cause serious hardship or impairment of effective city government. Every temporary ordinance shall be plainly labeled as such but shall be introduced in the form and manner prescribed for ordinances generally. A temporary ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption of a temporary ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances. A temporary ordinance shall become effective upon adoption or at such later time preceding automatic repeal under this subsection as it may specify, and the referendum power shall not extend to any such ordinance. Every temporary ordinance, including any amendments made thereto after adoption, shall automatically stand repealed as of the ninety-first day following the date on which it was adopted, renewed, or otherwise continued except by adoption in the manner prescribed in § 2.12 for ordinances of the kind concerned.

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

(f) Initial Salary of Mayor and Council Members. The mayor shall receive an annual salary in the amount of \$_____ and each other council member in the amount of

\$_____, until such amount is changed by the council in accordance with the provisions of this charter.

Section 9.06. Severability.

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

Commentary.

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

Appendix OPTIONS FOR MAYOR-COUNCIL CITIES

Since 1915, the *Model City Charter* has been based on the council-manager form of government. Some cities have a tradition of using or prefer to use the mayor-council form, and in some states the adoption of council-manager government may be limited by state statutes.¹ Cities that use the mayor-council form can make choices to “reform” their city government within the framework of this form of government. There are structural approaches that can clarify the structure and improve the performance of the mayor-council city government.

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

¹ Two examples illustrate how state statutes can affect the choice of form of government. Indiana law prescribes that all cities use the mayor-council form; small towns have an option in the choice of form. In Wisconsin, state statute specifies that the “council-manager” optional charter have a council president rather than mayor and gives the manager unusual powers such as the authority to appoint council committees. Only ten of 190 cities in Wisconsin operate under the council-manager form. In Dale Krane, Platon Rigos, and Melvin Hill, Jr., Eds., *Home Rule in America: A Fifty-State Handbook* (Washington: CQ Press, 2001), see chapters on Indiana by William Blomquist and on Wisconsin by Stephen E. C. Hintz.

efficient in their delivery of services to citizens. Some cities still retain these features in their charter.

The first *Model City Charter* proposed replacing the fragmented authority and confused assignment of responsibility of existing nineteenth century city governments with simplified and centralized executive authority exercised by an elected mayor. After the first edition, the model charter assigned this centralized executive authority to an appointed city manager. From the second through the fourth editions of the charter, no provisions were proposed for mayor-council cities. With the fifth edition, the strong mayor-council form from the first edition reappeared as an alternative for those cities that chose not to use the preferred council-manager form with the suggestion that a “vice mayor” or what would later often be called a chief administrative officer (CAO) might be appointed by the mayor. These recommendations appeared in the sixth and seventh editions as well.

The approach taken in this edition is different. Officials and citizens who are reviewing a mayor-council charter are given analytical questions to guide their assessment of the governmental structure. In contrast to exclusive reliance on the strong mayor alternative, two options for organizing the mayor-council form are now proposed.

Analytical Questions about Mayor-Council Governments

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

- *First, how should authority be divided between the mayor and the council?* The Model Charter Committee recommends two options for the division of authority: the first option is to provide for a blend of separation and sharing of authority between the mayor and the council; the second option is the classic strong mayor-council approach.
- *Second, should a chief administrative officer be appointed?* The Model Charter Committee recommends the addition of a CAO to all types of mayor-council governments. How the CAO is appointed and the responsibilities of the position are determined by which of the two optional approaches is taken to dividing authority between the mayor and council.

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

A. How is authority divided between the mayor and the council?

There are several broad patterns of dividing authority in mayor-council cities. Although these cities are commonly divided into “strong mayor” and “weak mayor” variations, this two-way division is misleading. Some cities have a strong executive and clearly separated powers, and some have true “weak” mayor governments in which the authority is extensively fragmented and assigned to the mayor, council, and other officials. Most cities, however, have both separated and shared powers between the mayor and the council. Thus, distinctions can be made between the strong mayor, the “standard” mayor-council, and the weak mayor subtypes of the mayor-council form. Each of these patterns has a different internal logic.

The first pattern is the original reform ideal of a strong elected executive with centralized authority. In this approach, the mayor is a strong chief executive officer who provides the functions filled by the city manager in the council-manager form of government. This “pure” strong mayor approach clearly divides powers between the mayor and the council. If there is a CAO, this official is an extension of the mayor’s office. This approach is used in approximately one-quarter of the mayor-council cities.² For simplicity, this subtype of the mayor-council form is called the *strong mayor-council* or *strong mayor-CAO-council form*, depending on whether a CAO is present. In the latter label, the CAO is placed next to the mayor to signify the close connection between the mayor and the CAO. In sum, the strong mayor type is characterized by clear separation of powers and substantial independent authority for the mayor.

The second pattern is based on separated and shared authority between the mayor and the council. This is the standard mayor-council pattern in the sense that it is used by a large majority of mayor-council cities.² The mayor has separate executive authority but major decisions are either proposed by the mayor and approved by the council or made jointly by the mayor and council. When the mayor proposes and the council approves, the approach is similar to the “advice and consent” authority of the Senate in handling nominations by the President for Supreme Court judges or cabinet secretaries. In other cities in this pattern, the mayor and council make major decisions jointly. If there is a CAO in these cities, this official is nominated by the mayor and approved by the council or chosen jointly. Potentially, this official serves as a bridge between the mayor and the council. For simplicity, this subtype of the mayor-council form is called the *mayor-council* or *mayor-council-CAO form*. In the latter label, the CAO is placed after both mayor and council to signify the mutual responsibility the CAO has to both sets of officials.³ In sum, the standard mayor-council form is characterized by a combination of separated and shared powers. Commonly, the staff support and organizational authority of the mayor and the high visibility of the office make the mayor the recognized leader of city government. Still there is less independent authority concentrated in the mayor’s office than in the strong mayor type.

² According to the 2001 Form of Government (FOG) Survey of the International City Management Association, thirty-eight percent of cities over 2,500 in population use the mayor-council form. Of these, the mayor has separate authority for appointing department heads and preparing the budget in fifteen percent of the cities and controls one function and shares the other in another eight percent. Thus, twenty-three percent of the cities have more or less strong mayors. Using somewhat different criteria, Steve Leach and Donald F. Norris, “Elected Mayors in England: A Contribution to the Debate,” *Public Policy and Administration*, 17 (Spring, 2002), pp. 30-31, report similar findings based on 1996 data—twenty-seven percent have budget and staff appointment authority alone or shared with a CAO as well as veto authority. Only 1.8% of mayor-council cities have “very strong mayors.”

¹ In the 2001 FOG Survey, the mayor shares the exercise of authority for appointing department heads and preparing the budget with the city council in forty-three percent of the mayor-council cities. Finally, in thirty-three percent of the cities, the council or other officials are responsible and the mayor has no separate authority.

² In cities that have a CAO in 2001, the mayor and council appointed the CAO in forty-four percent of the cities and by the council in thirty-nine percent. The mayor alone appoints the CAO in only sixteen percent of the cities. Although appointment by the mayor is much more common in cities over 100,000 in population, even in these cities the mayor has sole appointment authority in less than half the cases.

The term *weak mayor-council* is reserved for cities in which there is substantial fragmentation of authority. Beyond separated and shared authority between the mayor and the council, there are other features that divide authority widely. These include direct election of certain department heads or commissions and the assignment of independent policy-making authority to some commissions. A committee that is controlled by neither the mayor nor the council may formulate the budget. This is the kind of structure that was common in the late nineteenth century. The early municipal reformers sought to overcome the extreme decentralization that characterizes it. Although it is based on the premise that extensive checks will prevent excessive concentration of power and direct election of many offices will promote democratic control, in practice many weak mayor cities functioned poorly and it was difficult to pin down who was responsible for problems in performance. It is difficult to estimate how many cities still use these approaches, but the proportion is fairly small.⁴

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

An increasing proportion of cities have added a central administrative position occupied by a CAO to their governmental structure.⁵ Experience has demonstrated that it is beneficial for cities to have an administrative officer. This officer can offer assistance to the mayor in filling the executive responsibilities such as preparing the budget. The officer will provide central coordination of administrative functions and may also assist the council in handling its policy-making authority. Adding a chief administrative officer to city government is consistent with the longstanding reform principle of providing for both political and professional leadership. A central administrative official is able to contribute to sound governance as well as directing service delivery. Professional managers serving elected officials and the public bring distinctive values that enrich and elevate the governmental process in both policymaking and service delivery. These professional values include the commitment to basing policy and service delivery on need rather than demand, to stressing the long-term interests of the community as a whole, to promoting equity and fairness, to recognizing the interconnection among policies, and to advancing citizen participation that is broad and inclusive. There are benefits from having a professional chief administrator who channels these values into the governmental process at the highest and most general level through interactions with both the mayor and the council.

There are other advantages as well. It is difficult to find candidates for mayors who are equally adept at providing both political and also administrative leadership to city government. It is also hard for voters to assess the administrative capabilities of candidates before they have served in the mayor's office. Mayors (except in the largest cities), unlike new presidents and governors, are not supported by large transition teams. Nor can they persuade prominent leaders from the public and private sectors to accept key appointments for the duration of that executive's administration. Adding administrative assistance through a CAO helps to solve these problems. The office of CAO builds into the charter a support position for the mayor and institutionalizes the professional coordination of the departments of city government.

³ In 2001, fourteen percent of mayor-council cities elected some or all department heads. A finance committee for formulating the budget appears to be used by approximately three percent of cities.

⁴ In 2001, fifty-six percent of the mayor-council cities over 2,500 in population have a CAO or equivalent position. City administrator is another common title.

Recommended Structures in Mayor-Council Cities

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

The preferred approach in mayor-council cities is to promote shared authority between the mayor and the council along with the separation of powers that defines the mayor-council form. In the shared authority mayor-council cities, both the mayor and the council play an active role. The alternative approach is to have a strong mayor with greater separation of powers between the mayor and the council. In the strong mayor-council cities, leadership is concentrated in the mayor's office and council reviews and approves the mayor's recommendations.

In both options, it is recommended that provisions be made for the appointment of a CAO in a manner consistent with the overall division of authority between the mayor and the council. In the shared authority mayor-council cities, the CAO is nominated by the mayor and approved by the council. This official serves as a bridge between the two sets of officials and is assigned administrative responsibilities. In the strong mayor-council cities, the CAO is appointed by the mayor and provides professional assistance to the mayor.

Option 1: Mayor-Council-CAO government

This option is based on the combination of separated and shared powers between the mayor and the council found in most mayor-council cities. Some modifications will need to be made to the *Model City Charter* by charter drafters to accommodate this approach. The mayor is the chief executive officer who oversees the work of the CAO. The CAO is nominated by the mayor and approved by the council (a corresponding change to §§ 2.03 and 3.01 of the *Model City Charter* should be made). The mayor may remove the CAO (change §§ 2.03 and 3.01). The charter should provide for the CAO to have the same professional qualifications as the city manager (as described in § 3.01). The CAO formulates the budget and the capital program for the mayor (change §§ 2.03, 3.04(5), 5.02, 5.03, 5.04, 5.05(c), and 5.09), and the mayor presents the budget and capital program to the council with his or her own recommendations added to those of the CAO (change §§ 2.03, 5.02, 5.03, 5.04, 5.05(c), and 5.09). The CAO recommends major personnel appointments to the mayor who presents them to the council for approval (change §§ 2.03 and 3.04(1)). The mayor may remove department heads (change § 2.03).⁵ Other changes should be made in accordance with the General Provisions, see below.

When appointed in this way, the CAO helps to link the mayor and council and promotes communication between them. The CAO serves as a bridge to span the separation of powers

⁵ Some cities, particularly smaller ones, prefer to have even greater shared authority with the mayor and the council acting together on most decisions. Under this approach, the mayor and council jointly appoint the CAO. The council approves the removal of the CAO. The CAO formulates the budget for the mayor and council as a whole, and recommends major personnel appointments to the mayor and council for approval. Governments operating in this way share many characteristics with the council-manager form.

between the mayor and the council. The CAO provides professional advice and detached assessment regarding key decisions to both the mayor and the council. The CAO can promote a higher level of performance and shared information by both sets of officials. The CAO assists the mayor in preparing policy recommendations to the council but is cognizant of his or her responsibility to provide information that the council needs to make policy decisions.⁷ The CAO is responsible directly to the mayor for administrative matters and to the council for providing information to support their oversight function, i.e., the assessment of how well policies are working and how well services are being delivered. It should be acknowledged that the position occupied by the CAO can be difficult if there is conflict between the mayor and council. The CAO can get caught in the middle. Still, the presence of a CAO who feels a sense of accountability to both the mayor and the council can reduce the level of conflict compared to conditions in mayor-council cities without a CAO.

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

Option 2: Strong Mayor-Council or Strong Mayor-CAO-Council government

This is the approach recommended in the first *Model City Charter*, and it is the basis for the commentary that appeared in the seventh edition. Under this option the city government is organized around the mayor as the central force. As stated in the seventh edition, “in the strong mayor and council form, the mayor must have sufficient authority to operate as a genuinely responsible executive.” There are no provisions for having major appointments be subject to the “advice and consent” of the council. In this view, it is important that the mayor be left relatively free to provide leadership subject to the final approval of the city council. Essentially, the mayor in this type of mayor-council city assumes the authority assigned to the city manager in the model charter. It is possible to change the word “city manager” to “mayor” throughout the charter, except in Article III, which must be substantially altered to provide for election of the mayor. (See General Provisions below.)⁸

There is value to having a CAO in the strong mayor-council form. Consistent with the principle of promoting a strong central executive in this option, the CAO should serve the mayor and be appointed and removed by the mayor alone. The seventh edition recommends, “The mayor should be solely responsible for the appointment and removal of the administrator without any

⁶ A survey of CAOs indicates that with nomination by the mayor and approval by the council, the CAO is likely to simultaneously see himself or herself as the agent of the mayor and also as being accountable to both the mayor and the council. Seven in ten CAOs agree with these positions. If the mayor does not nominate the CAO, only thirty-seven percent of the CAOs see themselves as the mayor’s agent. If the council does not approve the appointment, only twenty-eight percent of the CAOs see themselves as accountable to the council. See James H. Svara, “Do We Still Need Model Charters? The Meaning and Relevance of Reform in the Twenty-First Century,” *National Civic Review*, 90 (Spring, 2001), pp. 19-33.

⁷ It should be noted that giving the mayor the same powers as the city manager (plus the veto power as well) does not make the offices comparable as to the centralized executives. The strong mayor is not accountable to the council in the exercise of his or her powers. The mayor is not selected by the council and subject to removal by the council as the city manager is.

requirement of approval by the council.” A CAO appointed under this option would be strictly accountable to the mayor. The mayor has maximum flexibility in making the appointment and deciding what tasks to delegate to the CAO. Consistent with the strong-mayor principle of undiluted mayoral power, the CAO’s duties under this option are not specified in the charter.

Assessment of the two mayor-council options

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

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

The pure strong-mayor approach concentrates a substantial amount of authority in one office. The approach also limits the contribution of the council to accepting or rejecting policy and budget proposals from the mayor and overriding the mayor’s veto. Although the council has a general oversight role, the fact that the mayor appoints all top administrators may limit the flow of information to the council to support its exercise of this role. There is concentrated power with limited checks on the exercise of the power.

The case for the strong mayor option is based on the need for strong centralized leadership. The mayor-council-CAO option with more shared powers can be criticized on the grounds that it creates confusion over who is responsible for exercise of powers between the mayor and the council when they are both involved in certain key areas of decision-making. Additionally, the mayor’s ability to recruit administrative staff may be reduced if the appointees have to be approved by the council. In view of the tendency for separation of powers to generate conflict between branches, having more actions that must be carried out by the mayor and council simply creates additional opportunities for conflict.

General Provisions

There are certain provisions that would be common to all mayor-council cities. Election of the mayor and veto are found in both options of the mayor-council form.

Election of the mayor and chair of the council

The provisions in the *Model City Charter* for direct election of the mayor should be used in mayor-council cities (§ 2.03, Alternative I). The council chair and presiding officer should be elected by the council from among its members.⁸

Veto

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

⁸ This would not be the case in cities where the mayor and council jointly exercise authority. In these cities, the mayor presides in the council.

CHANGE WITH CONTINUITY IN THE VALUES OF LOCAL GOVERNMENT REFORM

Participants in the urban reform movement seek to promote certain values in local government. From its inception in 1899, the Model City Charter has been distinguished from other local government reform efforts by the conviction that structure matters. Advocates of this view argue that the legal arrangements for cities and the features included in a charter can, at the margins, make it more likely that preferred values will be actualized in the governmental process. The first model charter was built on the bedrock value of local self-governance with an emphasis on home rule and broad assignment of authority to cities as the foundation of reform. All subsequent editions assume this value as well. The first edition also stressed the value of simplification and centralization of city government structure. It sought to replace the condition common in cities at the time of having multiple elected officials and the assignment of authority to a number of officials and boards. With centralization, all governmental authority is assigned to the mayor and council. Other boards are advisory, and all administrative officials and departments report to the executive. This value is also present in all subsequent editions.

The first charter organized the governmental form around the principle of the strong elected executive. This approach accomplished the objectives of concentrating authority and strengthening leadership, but reformers recognized limitations in this approach and soon sought an alternative that moved beyond the separation of powers between a powerful mayor and a council with a limited legislative function. The second Model City Charter, adopted in 1915, recommended the council-manager form with unified authority in the hands of the council. The second edition was based on fundamental values of representative democracy and responsible professionalism.¹² Rather than relying on a powerful elected executive, the reformers now broadened the base of political leadership and provided for an appointed executive who could be both effective and directly accountable to the council. Council appointment of the city manager strengthened the council and the executive without perpetuating separation of powers. Each value is briefly explained as follows:

Representative democracy. Democratically accountable representatives who make policy on behalf of the citizenry constitute the core component of representative democracy. At the local government level, the council should be relatively small so it can act in a deliberative way. Council members are connected to citizens through election and regular interaction during their terms in office. They act as a body of trustees who govern the city and select the executive. The early model charters stressed collective leadership and assumed that citizens would participate in the governmental process through the election of their representatives and the contact they had with council members between elections. The goal was to have a cohesive council that concentrated on the good of the city as a whole. To strengthen these qualities, the current edition recommends four-year, staggered terms—features that reinforce continuity and somewhat greater detachment from the electoral process since only half of the council stands for election in any election and all have longer terms. A small cohesive council would also be better able to provide regular and comprehensive supervision of the appointed executive.

Responsible professionalism. The early editions of the model charter envisioned the city manager as a professional chosen on the basis of appropriate training and experience. Responsibility would come from balancing the need to be accountable to the city council with the need to serve the public and advance the best interests of the community as a whole. To strengthen these qualities, the current edition specifies in more detail than previous editions the qualifications the city manager should have. The city manager is expected to offer policy advice

and recommendations to the council in its enactment of legislation and to achieve a high level of effectiveness and efficiency in city government. Furthermore, this edition provides specific recommendations that the city manager should focus on goals, performance, and outcomes in policy recommendations, budget formulation, and organizational leadership.

A key feature that links representative democracy to professionalism is to make the city manager accountable to the entire council. Another change in the eighth edition is to apply these values to mayor-council government. The preferred option in mayor-council cities is to have a chief administrative officer (CAO) with professional qualifications who is responsible to both the mayor and the council (either the mayor would appoint the CAO and the council would approve the selection or the appointment would be made jointly). The CAO would also inform the council of budget and personnel recommendations developed by the CAO for the mayor.

The values of representative democracy to provide collective political leadership and professional leadership by an appointed chief executive were dominant from the second through the fifth editions. They continue to be central—and as noted above have been strengthened in the eighth edition. Still, in this edition and the previous two, other values have received increased attention as well. Although early reformers were convinced that a cohesive board of governors could provide appropriate leadership and link citizens to government, beginning with the sixth model charter efforts have been made to strengthen democratic leadership and further enhance representativeness among the mayor and members of the city council. Political leadership and representativeness emerged as important values in their own right.

Political leadership. In the early editions of the model charter no special role was assigned to the mayor except to be presiding officer of the council, which provided collective leadership in functioning like a board of governors. Direct election of the mayor was an alternative in the sixth edition and by the time of the seventh edition, it was clear that special provision needed to be made for the value of political leadership. The mayor does not supplant the council but has more resources to draw upon in leading the council and the city as a whole. As problems became more complex and councils more diverse, the charter has been revised to provide options that can make the mayor the focal point for leadership. To more closely link the mayor to the council, the eighth edition recommends that the mayor have the same voting power as other members of the city council. If direct election of the mayor is used and all the activities enumerated in section 2.03 are assigned to the mayor, this official has charter support to promote cohesion on the council and lead the council to set clear goals for the city.

Representativeness. The sixth edition also started the process of enhancing the representativeness of the council. Although the charter has always supported representative democracy over direct democracy as noted earlier, the concern in the past three charter revisions has been to ensure that the officials who are making decisions more closely reflect the characteristics and preferences of the citizenry. District elections used exclusively or in combination with at-large seats ensure direct representation of all parts of the city. In addition, the long-standing endorsement of proportional representation has been reaffirmed in the current edition, and it is linked to a number of other measures designed to improve the way that elections translate citizen preferences into the membership of the governing body. Whereas district elections can only address geographical representativeness and provide voice for groups concentrated in particular neighborhoods, proportional representation allows the election of representatives from any sufficiently large group with a common bond. Efforts to increase the

fairness of the electoral process, through allowing local government to undertake campaign reform and to increase the number of voters who participate in the selection of leaders, also reflect the emphasis on enhancing representativeness. For example, since voter participation rates are greater during general elections than in runoff elections, the use of instant runoff voting to eliminate the need for a subsequent runoff election would ensure that electoral outcomes are more representative (instant runoff voting allows voters to decide the winner of the election by indicating their first choice and their backup choice). Local governments are encouraged to look for other ways to increase turnout including holding local elections at the same time as state and national elections.

The current edition includes two additional values. Just as the sixth edition offered initial recognition of the option of mayoral election and district elections and thus began strengthening the values of political leadership and representativeness, the current edition directs attention to citizen participation and the integration of urban regions.

Citizen participation. There is widespread recognition that it is not sufficient for cities to rely on elections and the representational activities of council members, as important as these activities are. Exclusive reliance on representative democracy as the basis for citizen participation raises three concerns: some voices are not heard and, therefore, do not get represented, representation of citizen views by council members is not a complete substitute for the direct expression of views by citizens, and citizens need to have the opportunity to take part directly in the work of government. Opportunities for direct citizen participation in the process of making and implementing policy in cities can be a positive supplement to the conscientious work of representatives. The current edition reexamines the traditional mechanisms of direct democracy—the initiative, referendum, and recall—and offers recommended guidelines that would make these mechanisms uniformly available but would discourage capricious use of citizen-initiated actions that might undermine the continuing importance of representative democracy.

Over most of the history of the reform movement, citizen participation has been subsumed under representative democracy. In this view, the primary channels for citizen participation are voting and the ongoing interaction with elected representatives. Without diminishing the importance of effective and responsive representation, there are many ways that cities can promote citizen participation and enrich the quality and increase the inclusiveness of the community's dialogue concerning its current needs and its future aspirations. In the 8th edition, officials are encouraged to join with citizens in exploring which of these ways best match the conditions of their city.

Regional integration. Governance of urban regions with multiple jurisdictions is a longstanding challenge that is becoming ever more critical—and perplexing—as metropolitan areas continue to sprawl farther from the urban core. Previous model charters have addressed this only as a matter of intergovernmental relations. The eighth edition seeks to promote the value of regional integration through a number of new provisions. City governments are encouraged to find ways to cooperate and enter into agreements with each other; the city manager has the responsibility to "encourage and provide staff support for regional and intergovernmental cooperation" and to include in the capital program "a commentary on how the plan addresses the sustainability of the community and the region of which it is a part."

Finally, elected officials and administrators should take into account how the comprehensive plan and zoning and other land use ordinances relate to regional plans.

In sum, the eighth edition of the Model City Charter seeks to promote the values of local self-governance, centralization, representative democracy, responsible professionalism—the bedrock values of reform—along with political leadership (or executive democracy in mayor-council cities), representativeness, citizen participation, and regional integration. Each of these values is important and has adherents who might claim that one should be given precedence of the others. Over the course of its revision the Model City Charter has incorporated an expanding range of values and provided for balance among them. Political leadership by the mayor should not undermine representative democracy. Citizen participation should not undermine representative democracy and the responsibility of all elected officials for setting the course of government. Changes to strengthen political leadership and representativeness should not infringe on responsible professionalism. The smoothing out of the governmental process through centralization and clear assignment of authority should not preclude effective citizen participation and neither should citizen participation lead to a fragmentation of governmental authority. The effort to promote the integration of a single city with its urban region does not mean the abandonment of local self-governance. Indeed, increased cooperation can contribute to the redefinition of “local” and “self-governance” in a world of blurring boundaries.

With a wider range of values to consider, the challenge of preventing contradictions among them increases, but the Model Charter offers guidance in doing so. The eighth edition is the current statement about what values are important in local government and how to promote them in a balanced, mutually reinforcing way.

James H. Svara

James H. Svara is Head of the Department of Political Science and Public Administration at North Carolina State University and served as a member of the Model City Charter Revision Committee that developed the Eighth Edition.

¹ In mayor-council cities, the dominant value continued to be “executive democracy,” i.e., a reliance on the elected chief executive to be the primary force in policy-making.

CITIZEN-BASED GOVERNMENT: A PROCESS TO ENGAGE CITIZENS IN CHARTER REVISION

In simpler times, when it became apparent that the city charter needed attention, whether a quick maintenance check or a major overhaul, the mayor or city council would turn to the small group of steadfast civic leaders that had the time and inclination to take part in a charter commission. This group was pretty recognizable to the community. They were the acknowledged community leaders that willingly and regularly stepped into the public space to make decisions on citizens' behalf.

More recently, jurisdictions have begun to hold public meetings to apprise citizens of proposed changes developed by charter commissions. While some of these efforts genuinely seek citizen feedback, more often they are perfunctory gatherings for telling citizens what has already been decided. However, the emerging challenges confronting our communities call into question the adequacy of these methods for revising city charters. The latest edition of the *Model City Charter* reflects the importance of citizen participation in the governance of communities, including involvement in the revision of a city's charter. The increasing diversity of communities across the country, the impact of civic infrastructure on collective governance capacity, and the need for citizen education and buy-in for the charter reform process to be successful make citizen participation in charter revision essential.

Diversity

With our cities and towns becoming increasingly diverse, ensuring that government is of the people, by the people and for the people is becoming more problematic. Today, the challenge for many jurisdictions across the country is to reform government structure and practice in a manner that reflects the needs and aspirations of everyone in the community. This is best accomplished by involving as broad a cross-section of the people and perspectives in a community as possible.

Civic Infrastructure

Over the last several years, a growing body of research has documented a decline in citizen trust and participation in formal and informal political and governmental activities. To some, these findings indicate that citizens just don't care about public life the way they used to. But a deeper and more plausible analysis is that citizens don't believe that their participation in politics and government will result in significant changes. They don't think they have any power within the system as currently configured and therefore opt to focus their energies elsewhere. Perfunctory town hall meetings that communicate to citizens an already developed set of ideas or policies exemplify the kind of approach that drives citizens away from public life. City leaders must develop methods for enhancing meaningful citizen involvement. Perhaps the most fundamental way to do this is to involve citizens in structuring the government that is closest to them.

Citizen Education

Many people simply don't know how government works. They aren't aware of the opportunities that are available to citizens to impact a policy or problem in their community or they don't have the confidence to navigate what can appear to be a very complex system. Direct involvement in reforming government not only helps to create a governing structure that reflects citizens' needs, it also educates them about the manner in which government works and prepares the way for future participation.

Citizen Buy-In

There are countless examples in which well-conceived changes to a city charter make their way onto the ballot only to be rejected by the voters. In some cases this occurs because citizens simply don't understand the need for or the potential impact of the change and therefore vote against it. Another obstacle arises when a small but well-organized interest group mounts a campaign against a proposed revision. While their opinions may not accurately reflect the sensibility of most citizens, such groups can often develop and deliver a message that prevents passage of the proposed reform. In both cases, the missing element is a deeper understanding among citizens of the importance of the revision. It's not enough to invest in radio and TV ads or rely on a few op-ed articles to inform people about the issue. The best chance of getting charter changes accepted is to involve many people in the discussion, develop reforms that reflect their ideas, and educate participants throughout the process about the deeper impact of the proposed changes. In this manner, support for charter revisions is developed over the course of the revision process and the chances that special interest groups can derail the proposed reforms are held in check.

In the following pages, a new model for revising a city charter is proposed. This model is based on the notion that citizens have both the right and the ability to be integrally involved in shaping the structure of their local government. Specific process steps for developing a citizen-owned charter revision effort are advanced and examples of successful reform efforts are detailed.

Citizen Engagement in Charter Revision

A credible citizen engagement process for charter revision contains three basic stages: an initiating stage, a citizen engagement stage, and an enactment stage. The initiating stage focuses on the design of the process for charter revision. It is usually driven by a steering committee and focuses on the process, not the content, of the charter revision. The citizen engagement stage brings together a diverse group of citizens to analyze the current charter and make recommendations for change. The enactment stage focuses on the formal electoral process used to pass charter revisions. As this process may differ in each community, it is not discussed in great detail here.

Initiating Stage

This first step in designing a city charter reform process is to review the existing regulations governing charter revision. This should occur before the steering committee is formed because, in many instances, the mayor or council is required to appoint a commission to revise the charter. The process for selecting a commission should be designed to ensure significant citizen involvement.

As in any community engagement effort, a citizen-based charter revision process will require a steering committee of 15 to 20 people that represents the diverse interests of the community. The composition of the steering committee should be guided by the need to represent three important perspectives. The committee should include both some of the traditional leaders of the community and some of the emerging voices. As the charter is the blueprint for the city government, it is important that the committee include key experts who possess practical knowledge about how local government functions. Citizen representation that reflects community diversity in terms of ethnic composition, gender, age, income level, and other key characteristics is also an essential component for ensuring a balanced deliberative process.

The steering committee is not responsible for developing the content of the proposed changes. Its charge is to facilitate the development of a credible citizen engagement process that will formulate recommendations for change. Specifically, this group will be responsible for the following tasks:

Design the community engagement process. The steering committee is responsible for developing and refining a process that works best for their community. Considerations such as timeframe, local events, and customs will impact design of the citizen engagement stage.

Recruit stakeholders to participate. In order to develop recommendations for change that reflect the ideas of many citizens, it is critical to invite people of various interests and perspectives to participate in the analysis of the existing charter. It is recommended that the steering committee involve one hundred to one hundred fifty stakeholders to meet on a regular basis over the course of three to six months to analyze the charter and develop recommendations for change.

Conduct outreach to the broader community. In addition to involving a core group of stakeholders in the revising the charter, the steering committee must develop methods to reach out to the broader community. Mechanisms such as neighborhood-based meetings, town hall meetings, radio, TV, newspaper and speakers bureaus can assist in educating the general public about potential changes to the charter and gathering additional feedback.

Provide staff to manage the process. Projects that bring many people together to deliberate over important community issues require significant staff support to ensure success. At a minimum, a half-time staff position will be required. Additionally, the steering committee may consider utilizing a professional facilitator to assist in the design and implementation of the citizen engagement phase of the project.

Recruit technical experts who will support the process. A charter reform process requires technical assistance and advice in a number of areas such as municipal law, municipal finance, electoral process, and governmental structure and accountability. Additionally, the reform effort may require research into the experiences of other cities as a way of providing citizens with examples of possible reforms and their potential impact on government structure and performance.

Address and manage logistics such as meeting sites and food. Meeting sites must be selected that encourage strong and equal participation. Issues such as transportation and childcare should be taken into consideration and food should be provided to ensure attendance.

Citizen Engagement Stage

After the foundation for the project has been laid through the efforts of the steering committee in the Initiating Stage, one hundred to one hundred and fifty stakeholders will meet over the course of three to six months to analyze the charter and develop recommendations for change. We suggest that stakeholders meet approximately every three weeks to conduct the work of charter revision. The steps of this process are discussed below.

A. Review current charter (one to two meetings)

Before citizens can begin to assess the strengths and weaknesses of the charter, they need to have a clear understanding of its current configuration. A summary document of the current charter should

be developed for stakeholder use, and educational presentations need to be developed to inform stakeholders how particular government structures affect the practice and conduct of governmental affairs in their city. This will lay the groundwork for informed decision-making in the latter stages of the process.

B. Creating a shared vision for local government (one to two meetings)

Successful citizen engagement projects often start with agreement on the shared values and overall vision that drive the project. Creating a shared vision of local government will allow participants to find agreement on the broad goals for the project and provide a framework for the meetings that follow. It can also serve as “the glue” of the project when disagreements arise and consensus seems hard to reach. An exercise to develop a shared vision for government could be catalyzed by set of simple questions such as “What should government be about? What should it do? If our local government was working at an optimal level, what would it be doing? What would it look like?

C. Identify key areas to address (one to two meetings)

After stakeholders have had some education on the current charter and developed a vision for the kind of government they would like to see, discussions can begin about the areas of government structure and the charter that need attention. Presumably the existing charter is not going to be discarded in its entirety. (For communities that are creating their first charter, recourse to the eighth edition of the *Model City Charter* is strongly recommended.) The steering committee, especially those members who are key experts in one or another area of government structure, should help the stakeholders frame this discussion. At this juncture, these key areas do not have to very specific. They will be further defined and analyzed later on. Key areas could include composition of the city council, power of the mayor, role of the city manager or chief administrative officer, municipal finance, and redistricting among others.

Another important task in determining the key areas for charter revision is to develop some way of prioritizing the areas in which stakeholders want to make reforms. It may be that stakeholders develop a long list of possible changes that can’t all be explored at the same time. It is therefore necessary to develop an agreed-upon set of criteria such as significance, legal feasibility, and political viability to rank the areas in order of importance.

D. Evaluating key areas of the charter (8 to 12 meetings)

After an agreed-upon set of key areas have been developed, the steering committee will need to consider two process options as they continue to guide the charter revision project. Both of these options have their strengths and weaknesses.

Option 1

One possibility is to keep the original stakeholder group intact as an ongoing body to analyze each of the key areas for charter revision. This option allows for continuity and stronger citizen education in all aspects of the charter under consideration. Its drawbacks are that it relies heavily on technical experts to fill in the gaps that will undoubtedly emerge as citizens attempt to assess an incredible amount of material. Furthermore, this approach requires a sequential, one-at-a-time assessment of the key areas and will likely take many months.

Option 2

The second option is to break the stakeholder group up into work groups around each of the key areas. Work groups of 15 to 30 people meet every two weeks to analyze their key area and develop charter revision recommendations. This approach ensures deeper citizen analysis of each key area. It creates the opportunity for additional citizen involvement as the work groups can recruit other citizens to join a work group. And it allows each key area to be analyzed concurrently and thus avoids an extremely lengthy citizen engagement process. The challenges are that it requires additional facilitative expertise (to guide each of the work groups), it requires additional efforts to ensure overlap between the work groups is synthesized, and it necessitates the identification and involvement of technical experts in each of the key area work groups.

Issues such as the number of key areas, the complexity of the issues to be addressed, the enthusiasm/attendance of citizens to this point in the process, the timeline and resources available should all be taken into consideration when making the decision about the best process option. Option 2 is the more thorough of the two approaches, and the description of the process design below is based on this choice. But the steps described can easily be adapted to suit Option 1 as well.

A. Structure work groups for charter revision

Strong leadership and guidance is required for each work group to ensure that sound and credible recommendations for charter revision are developed. It is likely that each work group will need a chairperson(s) to manage the development of their recommendations. This person must be viewed as a respected community leader who has the ability to rise above the fray to solve disputes and keep the group focused on its goals. If process facilitators cannot be identified to work with each work group, then the chair must also possess strong facilitative and group process skills.

In addition to strong leadership, each work group will require technical support in their key area. The technical expert(s) should be a resource for the specific key area the work group has undertaken. This person(s) should possess strong research and writing skills.

As citizens break into work groups of their choice, it is likely that key individuals and perspectives will be absent. It is therefore necessary to identify and invite key individuals that can bring additional knowledge and perspective to the work group. It is critical that the chairperson ensure that a Work Group is balanced and is not dominated by one interest group.

B. Education – what is the current status?

Before deliberations can begin, each work group will need well-presented information about the current condition of their key area for charter revision. This information should include a thorough description of the current design and structure, the legal parameters of this structure, the impact of this structure on government practices and on the overall quality of life of the community, and examples of structures from other cities and towns. This presentation will be used as a springboard into the assessment of the key area.

C. Analyze the key area

Early discussions should focus on identifying the key issues and problems within the scope of the work group. It is important to first guide participants to agreement on what the problems and challenges are before they begin to move into solving the problems. From these discussions, the

work group should emerge with a set of clearly identified and agreed-upon issues for further analysis.

D. Draft option memos

Technical experts play a critical role during this phase in the process. Most citizens are not aware of alternatives to the current element under scrutiny and require additional information and education from technical experts. Based on the early deliberations of the work group and the issues and challenges they have identified, the technical experts will draft option memos for work group consideration. Option memos are documents that present a series of alternatives for revision of the charter. An option memo presents alternatives for charter revision on a particular topic and describes the potential impact of each option, with supplementary material from case study examples from other cities and towns, if available.

E. Select options

It may take a few meetings for the each work group to come to agreement on the options that they want to propose to the stakeholder group. But with three to four clear alternatives presented in the option memos, the work group should be able to stay focused on the issues and their potential solutions. Leadership by the chairperson(s) during these discussions is crucial because disagreements will emerge during these discussions. The chairperson must ensure balanced participation from the entire group as he/she leads them towards the development of a viable set of revisions.

F. Propose changes to the stakeholder group

Up until this point, all of the deeper analysis of key areas for charter change has occurred in separate work groups. Before final agreement can be reached, it will be necessary to bring the recommended changes from each work group back to the entire stakeholder group to review the proposed changes. It is possible that some of the work groups have overlapped in their assessment of the charter or have analyzed interdependent aspects of the city charter. In one to two meetings, stakeholders will go through all of the proposed changes, identify areas of overlap, ask questions of clarification and come to agreement on a final set of recommended revisions for the charter. Careful attention must be given to the agreed-upon language as it has significant impact in the final drafting for charter change.

An additional but worthwhile activity during this step in the process is to have the stakeholder group recall the shared vision of government that they developed early on and ask them if the proposed changes to the charter reflect that vision.

G. Draft charter revision

Technical experts and staff will incorporate any changes brought about during the presentation to the stakeholder group. It is possible that one additional work group meeting for a particular area is required to ensure that any changes made reflect the opinions and ideas of the work group. Staff and technical experts will then begin the process of adapting the recommendations into the language and format used in the charter.

H. Present charter language to the stakeholder group

As a final check to guarantee clear communication of and support for the charter revisions, the charter language should be brought back to the stakeholder group for final approval. Since the final revisions will be expressed in a different form than the proposals of the work groups, participants

should have the chance to consider the actual language that is being proposed. This extra step should forestall any perception that the steering committee or technical experts might have dismissed the work of citizens and will ensure strong support for the changes when the measure reaches the ballot.

Enactment Stage

Once the appropriate language has been drafted for the proposed reforms and the stakeholder group has signed off on them, the next step involves a formal electoral process to pass the charter revisions. This process differs across communities and it is difficult to prescribe best practices for it. However, it is important that the method for getting the changes to the electorate is decided well before the final version of the charter recommendations is drafted. Enactment is a vital part of the process and the choices and time lines for doing so should be kept in mind throughout the process. The best-case scenario is that revisions are drafted in time for an upcoming election. This allows the steering committee to build upon the momentum of the citizen engagement process and rely upon the knowledge of participating citizens to help them create support within the broader community.

Following is an example of a recent charter revision process that may be a useful guide to this process.

Charter Revision in Alachua County, Florida

Alachua County, Florida, recently revised its charter to obtain home rule authority. Alachua County provides a good example of a charter revision that was citizen based but which received critical support from the local government.

The citizens of Alachua County were concerned about the growing influence of money in local politics, but Alachua County lacked laws or the ability to create laws governing campaign finance reform. In December 2000, approximately a dozen citizens gathered together and formed Alachua County Citizens for Campaign Reform (ACCCR).

The top three concerns of ACCCR were (1) the amount of money being raised and spent by the candidates, (2) the difficulty in determining who was giving money to which candidates, and (3) the loopholes in state law that permitted, if not ensured, that contributions did not have to be disclosed prior to elections.

ACCCR decided that its first step would be to try to get home rule authority that would give the citizens of Alachua County regulatory power over campaign finance for their elections.

A law professor specializing in Florida constitutional law, and a member of ACCCR, wrote the language of the home rule authority bill that was submitted to the local legislative delegation. ACCCR realized from the beginning that it would require overwhelming public pressure to get the legislative delegation to introduce the bill at the legislature. To that end, it began an intensive campaign by writing letters to newspaper editors and legislators, sponsoring a public forum on the topic, and pursuing radio and TV interviews/coverage, press coverage, and literature drops. ACCCR also decided that another way to induce the legislators to act was to show actual voter support for local campaign finance regulation, so it placed a nonbinding referendum (straw poll) on the ballot in an upcoming county election.

According to the law, getting this nonbinding referendum on the ballot required either 1) thousands of petition signatures or 2) action by the county commissioners. Ultimately, ACCCR was able to convince the county commissioners to place the referendum on the upcoming ballot.

To aid in its efforts, ACCCR built coalitions with the Sierra Club, League of Women Voters, Common Cause Florida, and some other local groups (Sustainable Alachua County, Women for Wise Growth, etc). It sought support from the local political parties and unions with mixed success. It also received official endorsement from three individual local unions.

ACCCR also held two public forums to educate citizens on the issue. The forums were taped for local radio broadcast and cable TV replay. Replaying these forums helped tremendously in ACCCR's efforts to reach the local county public and to raise awareness of and support for the issue.

There was no organized opposition prior to the straw poll ballot. Once the results of the straw poll came in (68% in favor of local regulation) it became difficult for many groups to oppose the issue because of its overwhelming support.

Some opposition materialized, however, prior to the binding referendum last November. Leaders of the local Democratic, Republican and Libertarian parties spoke publicly against it, as did some key local union representatives. But ACCCR had already gained wide public support and the endorsement of several individual local unions and, consequently, no formal opposition emerged on behalf of any organized group other than the Libertarian party.

In November 2002, ACCCR succeeded in obtaining home-rule authority for campaign finance in Alachua County elections. Alachua County now has the power to adopt local campaign finance regulations, provided that the local regulations do not conflict with those of the state or court rulings.

For more information on the requirements for charter revision in your city, town, or county, contact your local government.