



Milford City Hall Council Chambers 201 South Walnut Street Milford DE 19963

CITY COUNCIL AGENDA August 28, 2024

Attendees are welcome to participate virtually as well. Public Comments are encouraged on the agenda items designated with a ①. Virtual attendees may alert the City Clerk that they wish to speak by submitting their name, address, and agenda item via the Zoom Q&A function or by using the Raise Your Hand function during the meeting.

Those attending in person may comment when the floor is opened for that purpose.
All written public comments received prior to the meeting will be read into the record.

This meeting is available for viewing by the public by accessing the following link:

<https://zoom.us/j/95859380584>

or

<http://www.cityofmilford.com/553/Watch-Public-Meetings>

Members of the public may also dial in by phone using the following number:

Call 301 715 8592 Webinar ID: 958 5938 0584

6:00 PM

15-Minute Public Comment Period

Virtual attendees must register prior to start time of meeting by calling 302-422-1111 Extension 1300 or 1303, or by sending an email to cityclerk@milford-de.gov and providing your name, address, phone number, and the specific agenda item you wish to comment on. Persons in attendance must sign up prior to the start of the meeting.

WORKSHOP

Council/City Manager Form of Government

ALL SUPPORTING DOCUMENTS MUST BE SUBMITTED TO THE CITY CLERK IN ELECTRONIC FORMAT NO LATER THAN ONE WEEK PRIOR TO MEETING. NO PAPER DOCUMENTS WILL BE ACCEPTED, DISTRIBUTED, OR PRESENTED AT MEETING ONCE PACKET HAS BEEN POSTED ON THE CITY OF MILFORD WEBSITE. ANY MATERIALS UTILIZED DURING THE MEETING SHALL BE FROM THE COUNCIL PACKET AND REFERENCED BY PRESENTER USING AUDIO AND VISUAL MEANS TO ENSURE VIRTUAL PARTICIPATION BY ALL IN ATTENDANCE.

*Time Limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers prior to start of meeting/workshop.

① Designated Items only; Public Comment, up to three minutes per person will be accepted.

Roles and Responsibilities in the Council Manager Form of Government

Presented by:
Larry Comunale
Steve Wiesner
August 28, 2024

For the City of Milford, Delaware

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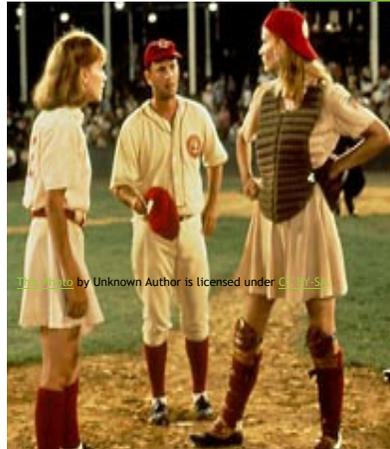
For the City of Milford, Delaware

OUR OBJECTIVES FOR THIS SESSION

- ▶ Provide a brief overview of the Council- Manager form of government
- ▶ Review the distinct roles provided in the Council- Manager Model
- ▶ Generate discussion on the specific roles of the Mayor, Council and Manager in the City of Milford

IF IT WAS EASY.....

- ▶ If it wasn't hard, everyone would do it. It's the hard that makes it great.
- ▶ *Tom Hanks, A League of Their Own 1992*



FORMS OF LOCAL GOVERNMENT

- ▶ Mayor-Council
- ▶ Commission
- ▶ Town Meeting
- ▶ Council-Manager



THE COUNCIL-MANAGER FORM OF GOVERNMENT

- ▶ 54% of all municipalities in the U.S. with populations over 10,000 have a professional municipal manager
- ▶ Council-Manager form is 10% more efficient than other forms (IBM Report)
- ▶ 66% of municipalities with a AAA Bond Rating employ the Council-Manager form

OVERALL OPERATIONS

30,000 foot level

City Council Members and the Mayor
Manager

10,000 foot level

Manager
Department Heads

Ground Level

Other Employees

When we fly below our levels.....We often don't get off the ground!



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National League of Cities
Model City Charter



**MODEL CITY
CHARTER**
A PUBLICATION OF THE
NATIONAL CIVIC LEAGUE



**CHARTER OF
MILFORD & OTHER
DELAWARE CITIES**

The City Council

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 the exercise thereof and for the performance of all duties and obligations imposed on the city by law.

(Source: Model City Charter, National Civic League)

The City Council

"...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."

(Source: Model City Charter, National Civic League)

THE City Council

- Establishes a vision for the City of Milford
- Decides the services the municipality will provide
- Enacts a tax rate necessary to provide services

The City Council

Sets policy to address the issues of the City
Empowers the Manager to conduct the day-to-day business of the City

Approves the annual budget and thereby prioritizes the response to challenges facing the City of Milford

The Mayor

“ The mayor ... is the public face of the community who presides at meetings, assigns agenda items to committees, facilitates communication and understanding between elected and appointed officials, and assists the governing body in setting goals and advocating policy decisions”.

(Source: ICMA Council Manager Form of Government)

The Mayor

"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 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."

(Source: Model City Charter, National Civic League)

The City Clerk

Milford City Charter - Sect 5.06:

The City Council shall appoint an officer of the City who shall have the title of City Clerk. The City Clerk shall give notice of the City Council meetings to its members and the public, maintain a permanent record of all City Council proceedings and documents, manage the city elections, act as the custodian of the City Seal, affixing it to all documents, records, contracts and agreements requiring a seal and attesting to same by signature and perform other duties as are assigned to him or her by this Charter or by the City Council.

The City Solicitor

Milford City Charter - Sect 5.07

At the annual organization meeting, the City Council shall appoint a City Solicitor, who shall be removable at the pleasure of City Council, either with or without cause as stated.

The Chief of Police

Milford City Charter - Sect 5.08

(c) The Chief of Police shall be responsible to City Council and shall be removed from office in accordance with the provisions of State law .

The Manager

- ▶ In the council-manager plan, the city manager is continuously responsible to city council, the elected representatives of the people
- ▶ To be effective, the manager must recognize that the elected representatives of the people are entitled to the credit for the establishment of local government policies and the manager is responsible for policy execution
- ▶ The manager must refrain from participation in the election of the members of the employing legislative body including the mayor

(Source: Model City Charter - National Civic League)

The Manager

Administers the day-to-day business.

As the leader of the management team (Department Heads), enforces all municipal regulations, administers all personnel and financial decisions

Makes policy recommendations

The Manager

- ▶ Is “appointed not anointed.”
- ▶ Serves at the pleasure of the elected officials
- ▶ Charged with carrying out the policies adopted by the elected officials

The Department Heads and Other Employees

At the direction of the manager, the department heads ensure that the services of the city are properly and efficiently delivered

The Employees follow the direction given by the Department Heads

Code of the City of Milford

- ▶ 5.02 - City Manger - Appointment; Qualifications and Compensation.
- ▶ The City Council shall appoint a City Manager for an indefinite term. He or she need not be a resident of the City or state at the time of his appointment but may reside outside the City while in office only with the approval of the City Council. The City Council may enter into an employment contract with the City Manager. An employment contract with a City Manager shall be in writing and shall specify the conditions of employment.
- ▶ [Res. No. 2017-02, adpt. 3-27-2017, eff. 7-10-2017]

CODE OF THE CITY OF MILFORD

5.05 - Powers and Duties of the City Manager.

- ▶ The City Manager shall be the chief administrative officer of the City. He or she shall be responsible to the City Council for the administration of all City affairs placed in his or her charge or under this Charter. He or she shall have the following powers and duties:

Code of the City of Milford

505. Powers and Duties of the City Manager (cont.)

- ▶ (a) He or she shall appoint, and when he or she deems it necessary for the good of the City, suspend or remove 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. He or she may authorize any administrative officer, who is subject to his or her direction and supervision, to exercise these powers with respect to subordinates in that officer's department, office or agency.

Code of the City of Milford

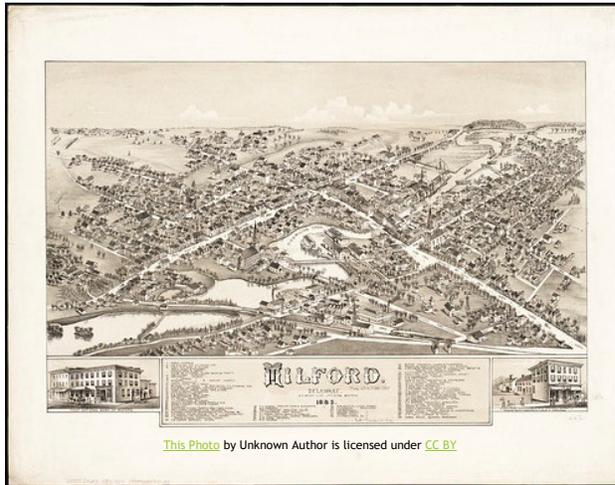
505. Powers and Duties of the City Manager (cont.)

- ▶ (b) He or she shall direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.

ACCOUNTABILITY



THE STRATEGIC PLAN FOR THE CITY OF MILFORD: ADOPTED 8/28/23



The Strategic Plan: Roles and Responsibilities

The Elected Officials Role-30,000 feet

- ▶ City officials established six priority areas:
 - ▶ Community Engagement
 - ▶ Public Safety and Preparedness
 - ▶ Economic Health and Development
 - ▶ Mobility and Infrastructure
 - ▶ Neighborhoods and Community Service
 - ▶ Fiscal Responsibility

The Strategic Plan (cont.)

Manager and Dept. Heads Roles: The 10,000 foot level

- ▶ Regular and timely communication with residents
- ▶ Promote community participation
- ▶ Develop monthly community events

Strategies: Ground level

- ▶ Broaden the City's communication channels, including in-person opportunities

The Strategic Plan (Cont.)

The Manager's Responsibility

"We will continue to provide regular reports on the progress of this plan and will continue to link the plan to employee performance and budgetary decision making."

Excerpt from "City Manager Letter to residents and Employees" in the Strategic Plan

SUCCESSION PLANNING

“The graveyards of the world are full of indispensable men [and women.]”



A SUCCESSION CHECKLIST

- ▶ Make in-house succession a priority.
- ▶ Train and cross train where possible.
- ▶ Maintain a back-up plan for important tasks, i.e. payroll, bill paying.
- ▶ Password access for key programs.
- ▶ Keep a journal listing critical tasks and deadlines.

Challenges to the council- manager plan

Unclear and/or undefined roles
between the primary governmental
functions (Council/Mayor/Manager)

Remaining faithful to long-range
plans (i.e. Vision 2023 and the
Strategic Plan)

Lack of trust between City Council
members, the Mayor and staff

Council-manager form Pitfalls

- ▶ The Manager believing that he/she is indispensable
- ▶ The elected officials getting involved in hiring, directing or disciplining employees
- ▶ The Manager getting involved in the politics of City government

Pitfalls (cont.)

- ▶ Council members acting independently of the rest of Council
- ▶ A Manager believing he/she is accountable to the citizens and not the elected officials
- ▶ Individual elected officials setting the agenda for meetings

Pitfalls (cont.)

- ▶ The Manager being disrespectful toward elected officials
- ▶ The elected officials not respecting the Manager's position as the chief executive officer of the City
- ▶ Operating as independent actors rather than as a team

IN CONCLUSION.....

From the 2023
Strategic Plan:

- ▶ “Milford is a well-managed city with solid fiscal and operational policies and implementation.”



Q & A



Milford

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Article I. Incorporation, Territory and Annexation

1.01 - Incorporation.

The inhabitants of the City of Milford (“the City”) within the corporate limits hereinafter defined in this Charter or as hereafter extended as hereinafter provided, shall be and constitute a body politic and corporate, and shall be known and identified as the City of Milford.

1.02 - Territorial Limits.

The boundaries of the City of Milford are hereby established and declared as recorded on the official map of record in the Recorder of Deeds Offices for Kent County and for Sussex County in the State of Delaware (official recorded copies to be kept by the City Clerk) as presently exists and as hereinafter amended:

In addition to the aforesaid, the Territorial Limits of the City of Milford shall also include all lands annexed by the City of Milford pursuant to Section 1.04 of this Charter. The City Council may, at any time hereafter, cause a survey and plot to be made of the City, and the survey and plot, when made and approved by the City Council, shall be recorded in the offices of the Recorders of Deeds in and for both Kent and Sussex Counties, State of Delaware, and the same, or the record thereof, or a duly certified copy of said record shall be evidence in all courts of law and equity in this State. 81 Del. Laws, c. 136

1.03 - Wards.

The City of Milford shall be divided into four wards and a map entitled “Official Ward Map, Milford, Delaware” will delineate the ward boundaries with legal descriptions of each ward attached and kept on file in the Office of the City Clerk. The official ward map shall be identified by the signature of the Mayor, be attested by the City Clerk and bear the seal of the City. The map, legal descriptions and any future changes shall be recorded in both Kent and Sussex County within a reasonable time after the effective date of the amendment approved by City Council. City Council shall adopt the official map and any future amendments by ordinance. 81 Del. Laws, c. 136

1.04 - Annexation.

The City may from time to time extend its boundaries through the process of annexation in accordance with the Delaware Code and the following procedures shall apply:

- (a) All the property owners of the territory contiguous to the then existing corporate limits and territory of the City of Milford, by written Petition with the signature of each such Petitioner duly witnessed, may request the City Council to annex that certain territory in which they own property.

CHARTER OF MILFORD

- (1) The petition presented to the City Council shall include the tax parcel number(s), a description of the territory requested to be annexed in electronic format, a sealed survey (dated within 1 year of the petition), present and requested zoning, a statement of compliance with the Comprehensive Plan and the reasons for the requested annexation.
 - (2) If the Planning Director deems the petition complete, the petition shall be provided to the Mayor and City Council to be referred to the Annexation Committee. If the Annexation Committee is not duly constituted, the Mayor of the City of Milford shall appoint a Committee composed of not less than 3 of the elected members of the City Council and one member of the City Planning Commission to investigate the possibility of annexation. Not later than 90 days following referral of the petition to the Annexation Committee by the City Council the Committee shall submit a written report containing its findings and conclusions to the Mayor and City Council of Milford. The report so submitted shall include the advantages and disadvantages of the proposed annexation, both to the City of Milford and to the territory proposed to be annexed, and shall contain the recommendation of the Committee whether or not to proceed with the proposed annexation and the reasons therefore, as well as a recommended zoning district for the property to be annexed.
 - (3) A Plan of Services for the property must be completed in accordance with Delaware Code. This Plan of Services must be completed for review and acceptance by all necessary agencies prior to final legislative action on the annexation.
 - (4) The annexation petition and zoning application shall also be referred to the Planning Commission for a Public Hearing and review and recommendation to City Council. Within 60 days of the final recommendation by the Planning Commission, City Council shall hold a public hearing to consider the annexation petition and zoning application.
 - (5) Following the public hearing on the proposed annexation petition and subject to the acceptance of the Plan of Services, City Council may then adopt an ordinance annexing such territory to the City of Milford. Such ordinance shall be passed by the affirmative vote of 2/3 of all the elected members of the City Council. If the ordinance fails to receive the affirmative vote of 2/3 of the elected members of the City Council, the territory proposed to be annexed shall not again be considered for annexation for a period of 6 months from the date that the resolution failed to receive the required affirmative vote. The concurrent zoning application shall be considered for adoption by City Council in accordance with the provisions set forth hereafter and in this Charter and the Code of the City of Milford.
 - (6) The public notice of the annexation ordinance shall contain a description of the territory proposed to be annexed, requested zoning and shall fix a time and place for a public hearing on the subject of the proposed annexation and zoning. The public notice of the annexation ordinance shall be published in a newspaper having a general circulation in the City of Milford at least 1 week prior to the date set for the public hearing, or, at the discretion of the City Council, the said notice shall be posted in 2 public places both in the City of Milford and in the territory proposed to be annexed and the City website.
 - (7) If the ordinance receives a favorable vote for annexation, the City Council shall cause a description and a plot of the territory so annexed to be recorded in the Office of the Recorder of Deeds in and for the county in which the property is located, but in no event shall said recordation be completed more than 90 days following the date of the favorable vote for annexation by the City Council. The territory considered for annexation shall be considered to be a part of the City of Milford from the time of recordation. The failure to record the description of the plot within a specified time shall not make the annexation invalid, but such annexation shall be deemed to be effective at the expiration of the 90 day period from the date of the favorable vote of the City Council.
- (b) If 5 or more property owners, but less than all of the property owners of a territory contiguous to the then limits and territory of the City of Milford, by written Petition with the signature of each such Petitioner duly witnessed, shall request the City Council to annex that certain territory in which they own property.
- (1) The procedure for consideration of a petition under Section 1.04(b) of this Charter shall be the same as the procedure under Section 1.04(1)(1 through 7), unless otherwise stated.
 - (2) The ordinance adopted under the procedures of Section 1.04 (a) (1 through 7) of this Charter applicable to petitions filed under Section 1.04(b) shall be subject to the approval of the property

- owners in the territory to be annexed. Said approval or disapproval shall be signified at a Special Election as set forth hereafter.
- (3) In the event that the ordinance for annexation does not receive an affirmative vote by 2/3 of all the elected members of the City Council, no Special Election shall be held and the territory previously proposed to be annexed shall not again be considered for annexation for a period of 6 months from the date the ordinance failed to receive the required affirmative vote.
 - (4) Following the affirmative vote but in no event later than 30 days after said ordinance has been adopted, the City Council shall order a Special Election to be held not less than 30 nor more than 60 days after said affirmative ordinance was adopted by City Council.
 - (5) The notice of the time and place of the said Special Election shall be published within 30 days immediately preceding the date of this Special Election in at least 2 issues of a newspaper having a general circulation in the City of Milford, or, at the discretion of the City Council, the said notice may be posted in 2 public places, in the City of Milford, in the territory proposed to be annexed, and on the City website at least 15 days prior to the date set forth for the said Special Election.
 - (6) At the Special Election, each person who has an ownership interest in a property in the territory proposed to be annexed shall have 1 vote and every partnership, corporation, company, or other legally created artificial entity in the territory proposed to be annexed which has an ownership interest in a property in the territory proposed to be annexed shall have 1 vote. Property held by a partnership or by a corporation shall vote only by a power of attorney, corporate resolution, or authorization affidavit duly executed. In the event that an individual holds a Power of Attorney or corporate resolution duly executed and acknowledged, specifically authorizing the said individual to vote on behalf of a partnership or by a corporation at the said Special Election, before that person votes, a duly authenticated Power of Attorney or corporate resolution, shall be filed in the Office of the City Manager of the City of Milford. Said Power of Attorney or corporate resolution so filed shall constitute conclusive evidence of the right of said person to vote in the Special Election for such partnership or for such corporation. Property owners, individuals, or entities in the area proposed to be annexed shall have only 1 vote regardless of the number of parcels owned.
 - (7) The City Council of the City of Milford may cause either voting machines or paper ballots to be used in the Special Election, the form of the ballot to be printed as follows:
 - For the proposed annexation.
 - Against the proposed annexation.
 - (8) The Mayor of the City of Milford shall appoint 3 persons to act as a Board of Special Election. One of the said persons so appointed shall be designated as the Presiding Officer. Voting shall be conducted in a public place as designated by the ordinance calling the Special Election. The polling place shall be open from 10:00 a.m. until 6:00 p.m. on the date set for the Special Election or until all those entitled to vote have done so. All persons in the polling place at the time of the closing of the polls shall be permitted to vote, even though such votes are not cast until after the time for the closing of the polls.
 - (9) Immediately upon the closing of the polling place, the Board of Special Election shall count the ballots for and against the proposed annexation and shall announce the result thereof. The Board of Special Election shall make a Certificate under their hands of the votes cast for and against the proposed annexation and the number of void votes and shall deliver the same to the City Council. Said Certificate shall be filed with the papers of the City Council. In order for the territory proposed to be annexed to be considered annexed, a majority of the votes cast from the territory proposed to be annexed must have been cast in favor of the proposed annexation.
 - (10) In the event that the Special Election results in an unfavorable vote for annexation, no part of the territory considered at the Special Election for annexation shall again be considered for annexation for a period of at least 6 months from the date of the said Special Election.
 - (11) If a favorable vote for annexation shall have been cast, the City Council of the City of Milford shall cause a description and a plot of the territory so annexed to be recorded in the Office of the Recorder of Deeds, in and for the county in which the property is located, but in no event shall said recordation be completed more than 90 days following the date of the said Special Election. The territory considered for annexation shall be considered to be part of the City of Milford from the time of recordation. The failure to record the description or the plat within the specified time shall

not make the annexation invalid, but such annexation shall be deemed to be effective at the expiration of the 90 day period from the date of the favorable Special Election.

(c) Annexation Agreement.

Notwithstanding any provision herein to the contrary, where, pursuant to §1.04(a) or (b) of this Charter, annexation proceedings are initiated by a property owner(s) holding record title to real property in territory contiguous to the then existing corporate limits of the City, such petition may be made contingent upon an annexation agreement with the City which agreement may address any matters which would be relevant to the subject lands, if annexed. By way of example and not in limitation, such agreement may address zoning, subdivision approval, tax relief, public utilities and public improvements. In the event the City Council approves such an agreement and votes to accept a petition under this §1.04 of this Charter, such Annexation Agreement shall be deemed a material part of the annexation and shall be included in all subsequent steps of the annexation procedure. City Council may vote to require the Annexation Agreement at any time before adoption of the ordinance annexing the territory into the city.

The ordinances and notices adopted by the City Council shall recite that the proposed annexation includes and is subject to an annexation agreement. The ordinances and ballots, if an election is required, annexing the territory shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such agreement by specific reference. An annexation agreement may be modified or amended by mutual agreement of the petitioner and the City Council at any time prior to the ordinance adopted by City Council annexing the land into the City of Milford. In any event, the Annexation Agreement shall run with the land and be recorded with the annexation ordinance.

(d) Property shall be designated to a contiguous ward(s) when annexed into the City pursuant to Article I. 81 Del. Laws, c. 136

1.05 - Deannexation.

- (a) Except as provided for in Section 1.05(b), below, deannexation shall follow procedures established in the Delaware Code.
- (b) The City Council may authorize the deannexation of either of the following:
 - (1) Property with zero residents and assessed valuation of less than \$25,000 by ordinance following a public hearing.
 - (2) A parcel which contains less square footage than the smallest parcel in the zoning district in which it is located. 81 Del. Laws, c. 136

Article II. Nominations and Elections.

2.01- City Elections.

- (a) The annual municipal election shall be held on the fourth Saturday in the month of April between the hours of 10:00 a.m. to 6:00 p.m. at such places as shall be determined by the City Council and in accordance with State law. Except that, in any year when the fourth Saturday in April falls between Good Friday and Easter Sunday, the annual municipal election shall be held on the third Saturday of April. 78 Del. Laws, c. 4
- (b) The election shall be held under the supervision of an Election Board, consisting of no less than 3 nor more than 5 electors of the City to be appointed by the City Council. The Election Board shall be Judges of the election and shall decide upon the legality of the votes offered.
- (c) A clerk from each respective Ward will be assigned to verify the identity and residence of each prospective voter within their election district that intends to vote on the day of the municipal election. The clerk shall obtain this information from the alphabetical list of registered voters provided for this purpose. Those persons not properly registered shall not be permitted to vote at that particular election and become eligible only after being qualified before the next registration deadline. City Council shall appoint an election clerk for each Ward in which there is a contest.
- (d) Every person who resides within the City of Milford boundaries for at least 30 days prior to the registration deadline or natural persons owning property within the City of Milford at least 30 days prior to the registration deadline, and who are over the age of 18 years, shall be entitled to 1 vote at said annual municipal election or special election; provided, however, that the City Council may, by ordinance, establish a reasonable procedure

for the registration of voters and, in such event, compliance therewith may be a prerequisite to voting at the annual election. A Corporation, Partnership, Limited Partnership or other legally created entity is prohibited from registering and voting as a non-resident property owner unless property within the City is titled in an individual name.

- (e) It is the responsibility of those registered voters who own property in more than 1 Ward to declare at least 60 days prior to the election which Ward they will vote in on the day of the election. In the event that a person owns property in the City in addition to their place of residency, he or she may vote once only where he or she resides.
- (f) Upon the close of an annual municipal election or special election, the votes shall be counted and read publicly. The person having the highest number of votes, for each office, shall be declared duly elected in accordance with State law, and shall continue in office during the terms for which they are chosen, or until their successors are duly elected and qualified.
- (g) The Election Board shall enter in a book to be provided for that purpose, a minute of the election containing the names of the persons chosen, shall subscribe the same, and shall give to the persons elected certificates of Election, which book, containing such minutes, shall be preserved by the Council and shall be evidence in any Court of law or equity. All ballots cast, in the event paper ballots are used, and all tabulations of votes from voting machines, if used at said election, and all other records of election shall be preserved in the Custody of the City Clerk for a period of time as required by State law.
- (h) Any vacancy in the Election Board shall be filled by City Council at a Special Meeting prior to the election.
- (i) In the event of a tie vote for any office, a Special Election for said office only shall be held within 30 days and the registration books shall remain closed until the outcome of the Special Election is determined.
- (j) Not less than 60 days prior to the Annual Election, all candidates for the office of City Councilmember shall file with the City Clerk a nominating petition, stating the name of the candidate, the office for which he or she is nominated, and shall be signed by not less than 10 registered voters in the Ward in the City of Milford in which the candidate resides. Nominations for the Office of Mayor shall be filed with the City Manager not less than 60 days prior to the Annual Election and shall contain the name of the candidate, the office for which he or she is nominated and shall be signed by not less than 10 registered voters in the City of Milford. 81 Del. Laws, c. 136

2.02 - Emergency election postponement; declaration.

After consultation with the City of Milford Board of Elections, the City Clerk of the City of Milford may issue a declaration postponing the date of an election as the result of civil disorder, a natural disaster, a state of emergency or any other catastrophic event. Once the declaration is issued, the affected election is postponed. The City Clerk shall promptly set a date on which the postponed election will be held. The date of the postponed election shall not be later than 14 calendar days after the original date of the election. 81 Del. Laws, c. 136

2.03- Absentee Ballot Procedures.

Absentee voting in the City of Milford is in accordance with State law.

2.04 - Voting Machines for Local Office and Mayor and City Council Ballots.

- (a) Voting machines for Mayor and City Council Elections. The City of Milford shall conduct all elections for local office using voting machines that the Department of Election of the State of Delaware provides.
- (b) Names on Ballots. The Department of Elections shall prepare the voting machines for the election of members of a Municipal Government by listing the names of all certified candidates submitted by the municipality in alphabetical order by last name without political party or other designation. 81 Del. Laws, c. 136

2.05 - Ballots for Ordinances.

An ordinance requiring a vote by eligible voters shall be presented by ballot title. The ballot title of a measure may differ from its legal title and shall be a clear, concise statement describing the substance of the measure without argument or prejudice. Below the ballot title shall appear the following question: "Shall the above described (ordinance) (amendment) be adopted?" Immediately below such questions shall appear, in the following order, the words "yes" and "no" and to the left of each a square in which by making a cross (X) the voter may cast his vote. 81 Del. Laws, c. 136

2.06 - Voting Machines for Referenda and Annexation Elections.

The City Council may provide for the use of mechanical or other devices for voting or counting the votes not inconsistent with law. 81 Del. Laws, c. 136

2.07- Council Districts; Adjustment of Districts.

- (a) Number of Districts. There shall be 4 City Council districts to be known as Wards.
- (b) Report; Specifications. By the first day of January of the second year following the decennial census, a Ward Districting Committee appointed by the Mayor pursuant to Section 3.07 of this Charter shall file with the City Clerk a report containing a recommended plan for adjustment of the Council district boundaries to comply with these specifications:
 - (1) Each district shall be formed of compact, contiguous territory, and its boundary lines shall follow the center lines of streets or other natural boundaries or survey lines as required.
 - (2) Each district shall contain as nearly as possible the same number of qualified voters and Districts shall not differ in population by more than 10% of the population in the smallest district created. The report shall include a map and description of the districts recommended and shall be drafted as a proposed ordinance. Once filed with the Clerk, the report shall be treated as an ordinance introduced by a Council member.
- (c) Procedure. The procedure for the Council's consideration of the report shall be the same as for other ordinances, provided that the summary, including both the map and descriptions of the recommended districts, must be published in 2 newspapers of general circulation in the City of Milford and on the City website, no less than 1 month prior to its adoption.
- (d) Enact Ordinance. The Council shall adopt the ordinance at least 6 months before the next regular City election.
- (e) Effect of Enactment. The new Council districts and boundaries, as of the date of enactment, shall supersede previous Council districts and boundaries for all the 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 Councilmembers elected at the regular City election take office. 81 Del. Laws, c. 136

ARTICLE III. Powers of the City – Council and Mayor**3.01- Enumerated Powers.**

The City of Milford 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 are specifically enumerated in this Charter. Without limiting the scope of the foregoing provision, the City is specifically empowered as follows:

- (a) The City shall have the power to acquire lands, tenements, real property or interests therein by condemnation or by purchase for the purpose of providing sites for public buildings, parks, sewers, sewage disposal or electric plants or the erection or construction of lines or conduits for the transmission of electricity, water, gas, sewerage, public utility of any nature, or for any other municipal purpose, whether within or without the limits of the City, and the procedure therefore shall be as contained in the Delaware Code and shall have the power to dispose of real property by Ordinance. The City of Milford may own and operate public utilities and public services to places or properties beyond the limits of said City and upon such terms, charges and conditions that the Council may determine and approve.
- (b) The City Council is vested with authority on behalf of the City to enter into contracts for the rendering of personal service to the City and the purchase of supplies and doing of work for any municipal purpose for the City provided. Notwithstanding anything herein to the contrary, public competitive bidding shall not be required under any of the following circumstances:
 - (1) A contract for any service to be rendered by the State of Delaware or any political subdivision thereof.
 - (2) A contract for professional services.
 - (3) A contract which is less than \$50,000. Such a contract shall not be for a portion of a project or proposal that would otherwise require bidding. The aggregate amount shall not exceed \$50,000.
- (c) The contract shall be awarded to the lowest responsible bidder, but City Council may reject any or all bids for any cause by it deemed advantageous to the City.

- (d) All contracts approved by the City Council shall be signed by the Mayor with the Seal of the City attached and attested by the City Clerk. The City Manager is authorized to execute all other contracts and agreements for the City of Milford.
- (e) The City Council shall have the power and authority to anticipate revenue by borrowing upon the faith and credit of the City of Milford in accordance with the provision of Article VIII of this Charter.
- (f) The City Council shall have the authority to establish and maintain a pension system for employees of the City of Milford, to be paid to such employees, or dependents, in such amounts, at such times, and in accordance with such rules and regulations as the City Council shall from time to time resolve or decree.
- (g) Notwithstanding any of the provisions of Section 3.01 and without complying with the competitive bidding procedures described herein, the City of Milford may enter into any contract necessary or desired in connection with a TIF District or a special development district created or designated by the City of Milford pursuant to Article IX of this Charter except a contract in which the City of Milford is directly contracting for the procurement of the labor or material for public improvements for the benefit of such district, provided that the foregoing exception shall not apply to development or similar type contracts between the City of Milford and an owner of real property in such district when the contract is generally for the transfer by the owner to the City of Milford of the work performed and the cost of labor or material provided by such owner for the benefit of such district.
- (h) The City Council shall have the authority to enter into public private partnerships.
- (i) The City Council may provide for the organization of a fire department and the control and government thereof, establish fire limits and do all things necessary for the prevention or extinguishment of fires; and, in their discretion, contribute, donate or give such amounts of money as they may deem appropriate unto any Volunteer Fire Company or Companies incorporated under the laws of Delaware, or any firefighting equipment and providing service to the City; provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the use thereof as the City Council shall deem advisable. 81 Del. Laws, c. 136

3.02- 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 of the Charter shall not be construed as limiting in any way the general power stated in this article.

3.03- Intergovernmental Relations.

The City may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with anyone or more states or civil divisions or agencies thereof or the United States of America or any agency thereof. 81 Del. Laws, c. 136

3.04 - Notice of Action.

No action, suit or proceeding shall be brought or maintained against the City of Milford, the Mayor, or the City Council of the City of Milford for damages on account of physical injuries, death, or injury to property by reason of the negligence of the City of Milford or any of its departments, offices, agents, or employees thereof, unless the person by or on behalf of whom such claim or demand is asserted shall, within 1 year of the occurrence of such injury, notify the City Manager in writing of the time, place, cause, and character of the injuries sustained. 81 Del. Laws, c. 136

3.05- 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. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the City Council shall be guilty of a misdemeanor, punishable by a fine of not more than \$500, or by imprisonment for not more than 10 days, or both. 81 Del. Laws, c. 136

3.06 - Independent Audit.

The City Council shall provide for an independent annual audit of all City accounts and may provide for such more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. The City Council shall, without requiring competitive bids, designate such accountant or firm annually or for a period not exceeding 3 years. If the State makes such an audit, the Council may accept it as satisfying the requirements of this Section. City Council must review and accept each annual audit. 81 Del. Laws, c. 136

3.07 – Mayor - General Powers.

The Mayor shall be the executive of the City and shall preside at meetings of the City Council, but shall have no vote except in case of a tie. The Mayor shall execute on behalf of the City all agreements, contracts, bonds, deeds, leases and other documents authorized by City Council necessary to be executed subject to Section 3.01(d) herein. The Mayor or his/her designee shall countersign all orders, checks and warrants authorized by City Council; and shall have all and every power conferred and perform the duties imposed upon him/her by this Charter and the ordinances of the City. The Mayor may establish such committees, appoint committee members, and designate the committee Chairs as he or she deems necessary for the proper administration of City Council. 81 Del. Laws, c. 136

3.08 - Vice Mayor.

At the annual organizational meeting, the Council shall also elect by a majority vote of the entire City Council a Vice-Mayor who shall act as Mayor during the temporary absence or inability of the Mayor, and while so acting, shall be vested with all the powers and authority of the Mayor. The Vice Mayor shall qualify as a City Councilmember while acting as Mayor for the purpose of establishing a quorum and shall be able to vote as a City Councilmember. 81 Del. Laws, c. 136

3.09 - 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. 81 Del. Laws, c. 136

Article IV. City Council Government – Composition, Qualifications, Vacancies and Procedure

4.01 Composition of Government.

The government of the city and the exercise of all powers conferred by this charter except as otherwise provided herein, shall be vested in an elective body called the City Council, consisting of a Mayor and 8 Councilmembers. Whenever the word “Mayor” is used, it shall refer solely to the Mayor. Whenever the words “City Council” are used they shall refer to the 8 duly-elected or appointed Councilmembers. The government of the City of Milford and the exercise of all powers conferred by this Charter, except as otherwise provided herein shall be vested in a Mayor and a City Council. The City Council shall consist of not more than 8 members. Two of the members of the City Council shall reside in that portion of the City known and described as the First Ward, 2 in that portion known as the Second Ward, 2 in that portion known as the Third Ward and 2 in that portion known as the Fourth Ward. The Mayor and City Councilmembers shall each serve for a term of 2 years. 81 Del. Laws, c. 136

4.02 Annual Organizational Meeting.

At 7:00 p.m. on the second Monday following the annual election, the Mayor and City Council shall meet at the City Council Chamber and shall assume the duties of their offices after being first duly sworn or affirmed to perform their duties with fidelity and in accordance with the Charter of the City. 81 Del. Laws, c. 136

4.03 - Compensation and Expenses.

The City Council may determine the annual salary of Councilmembers and the Mayor by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of Councilmembers elected at the next regular election, provided that such election follows the adoption of such

ordinance by at least 6 months. Councilmembers and the Mayor shall receive their actual and necessary expenses incurred in the performance of their duties of office, in accordance with a policy established by City Council by Resolution. 81 Del. Laws, c. 136

4.04- Prohibitions.

- (a) No person who has served as a City employee, officer or elected official shall represent or otherwise assist any private enterprise on any matter involving the City, for a period of 2 years after termination of employment, appointed status or end of elected term, if the person had rendered an opinion, conducted an investigation, was in a position to directly or indirectly be materially responsible of such matter, or was eligible to vote on such matter in the course of his or her official duties as a City employee, officer or elected official. Nor shall such former City employee, officer or elected official disclose confidential information gained by reason of public position nor shall the person otherwise use such information for personal gain or benefit.
- (b) Appointments and removals. Neither the Mayor, City Council nor any of its members shall in any manner dictate the appointment or removal of any City administrative officers or employees whom the Police Chief or City Manager or any of his or her subordinates are empowered to appoint, but the Mayor or City Council may express its views and fully and freely discuss with the City Manager or Police Chief anything pertaining to appointment and removal of such officers and employees.
- (c) Interference with Administration. Except for the purposes of inquiries and investigations under Section 4.08, the Mayor or City Council or its members shall deal with City officers, employees, or independent contractors who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the Mayor or City Council nor its members shall give orders to any such officer, employee, or independent contractor, either publicly or privately. Likewise, the Mayor or City Council or its members shall deal with Police officers, employees or independent contractors who are subject to the direction and supervision of the Police Chief solely through the Police Chief, and neither the Mayor or City Council nor its members shall give orders to any such officer, employee or independent contractor, either publicly or privately. 81 Del. Laws, c. 136

4.05 - Vacancies, Forfeiture of Office; Filling of Vacancies.

- (a) Vacancies.
 - (1) The Office of the Mayor shall become vacant upon death, resignation, forfeiture, or removal from office in any manner authorized by law, or ceases to be a lawfully registered voter of the City and a resident of the City and the vacancy is confirmed by City Council.
 - (2) The Office of a Councilmember shall become vacant upon death, resignation, forfeiture, or removal from office in any manner authorized by law, or ceases to be a lawfully registered voter of the City and a resident of the Ward in which he/she resided at the time of the election and the vacancy is confirmed by City Council.
- (b) Forfeiture of Office. The Mayor or a Councilmember shall forfeit his or her office if he or she (1) lacks at any time during his or her term of office any qualification for the office prescribed by this Charter or by law, (2) violates any express prohibition of this Charter, or (3) is convicted of a crime involving moral turpitude.
- (c) Filling of Vacancies. If a vacancy occurs in the City Council and the remainder of the unexpired term is more than 12 months, the vacancy shall be filled by a special election. If a vacancy occurs in the City Council and the remainder of the unexpired term is less than 12 months, the City Council shall within 45 days of the vacancy being confirmed, by a majority vote of all of its remaining members, appoint a qualified person to fill the vacancy until the person elected at the next regular election takes office. The special election shall be held in accordance with State election laws following the occurrence of the vacancy. Notwithstanding the requirement that a quorum of the City Council consists of 5 members, if at any time the membership of the City Council is reduced to less than 5, the remaining members may, by majority action, appoint additional members to raise the membership to 5. 81 Del. Laws, c. 136

4.06 - Qualification for Mayor and City Council.

- (a) No person shall be eligible for election as Mayor unless he or she is a citizen of the United States of America, a bona fide resident of the City of Milford and has continuously resided therein for a period of 2 years preceding the day of the election, is over the age of 18 years prior to the day of the election, has not been convicted of a

- felony, submits a criminal background check of the person's entire criminal history record from the State Bureau of Identification, and is nominated therefore, as hereinafter provided.
- (b) No person shall be eligible for election as a City Council member unless he or she is a citizen of the United States of America, a bona fide resident of the Ward in the City of Milford where they are seeking election and has continuously resided therein for a period of one year preceding the day of the election, is over the age of 18 years prior to the day of the election, has not been convicted of a felony, submits a criminal background check of the person's entire criminal history record from the State Bureau of Identification, and is nominated therefore, as hereinafter provided.
 - (c) The Mayor shall be eligible to serve in such elected office unless he or she does not continue to be a resident of the City during his or her respective term of office nor shall any member of City Council be eligible to serve in such elected office unless they continue to be a resident of their Ward during their respective terms of office.
 - (d) If a Council member files and runs for Mayor, and is elected before his or her Council term has expired, the elected Mayor's City Council seat shall be considered vacant when the elected Mayor is sworn in on the second Monday following the date of the election. 81 Del. Laws, c. 136

4.07- 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 and for that purpose 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 1 week in advance of the hearing. Decisions made by the City Council under this Section shall be subject to review by the Superior Court. 81 Del. Laws, c. 136

4.08 - Procedure.

- (a) Meetings. The City Council shall meet regularly at least once in every month at such times and places as the City Council may prescribe by rule. Special meetings may be held in compliance with State law and may be on the call of the Mayor or of 4 or more members. All meetings shall be public; however, the City Council may recess for the purpose of discussing in a closed or executive session as permitted by State Law.
- (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. Unless or until other rules are adopted, the City Council shall follow Roberts Rules of Order and parliamentary procedure.
- (c) Voting. Voting, except on procedural motions, shall be by roll call, and the ayes and nays shall be recorded in the journal or by voice vote at the option of the Mayor unless otherwise required by State law. Five members of the City 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 City Council. No action of the City Council, except as otherwise provided in the preceding sentence and in Section 4.05(c), shall be valid or binding unless adopted by the affirmative vote of 4 or more members of the City Council. 81 Del. Laws, c. 136

4.09 - Action Requiring an Ordinance.

The City Council is hereby vested with the authority to enact ordinances or resolutions relating to any subject within the powers and functions of the City, or relating to the government of the City, its peace and order, its sanitation, beauty, health, safety, convenience and property, and to fix, impose and enforce the payment of fines and penalties for the violation of such ordinances or resolutions, and no provision of this Charter as to ordinances on any particular subject shall be held to be restrictive of the power to enact ordinances or resolutions on any subject not specifically enumerated. For purposes of this paragraph, resolutions shall include actions by City Council taken in accordance with this Charter.

In addition to other acts required by State law or by specific provision of this Charter to be done by ordinance, those acts of the City Council which shall be by ordinance are as follows:

- (a) Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency.
- (b) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed.

- (c) Levy taxes, except as otherwise provided in Article VII with respect to the property tax levied by adoption of the budget.
- (d) Grant, renew or extend a franchise.
- (e) Regulate the rate charged for its services or as a public utility.
- (f) Authorize the borrowing of money.
- (g) Sell or lease or authorize the sale or lease of any asset of the City if its value is equal to or greater than 1/5 of 1% of the assessed value of all real property within the corporate limits.
- (h) Amend or repeal any ordinance previously adopted.
- (i) Change of zone or conditional use of land.

Acts other than those referred to in the preceding may be done either by ordinance or by resolution. 81 Del. Laws, c. 136

4.10 - 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 Milford 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 the matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.
- (b) Procedure. An ordinance may be introduced by the Mayor, any member of City Council or the City Manager at any regular or special meeting of the City Council in accordance with City Council Rules established by Resolution. Upon introduction of any ordinance, the City Clerk shall distribute a copy to the Mayor, each Council Member and to the City Manager. An ordinance shall be placed on the agenda for introduction and for adoption by title; the introduction and the adoption may not be on the same meeting date. As soon as practicable after adoption of any ordinance, the Clerk shall have it published together with a notice of its adoption.
- (c) Effective Date. Except as otherwise provided in this Charter, every adopted ordinance shall become effective at the expiration of 10 days after adoption, at any later date specified therein, or as provided by State law.
- (d) "Publish" Defined. As used in this section, the term "publish" means to publish in 1 or more newspapers of general circulation in the City and on the City website:
 - (1) A brief summary of the Ordinance, and
 - (2) The places where complete copies of it have been filed and the times when they are available for public inspection. 81 Del. Laws, c. 136

4.11 - Emergency Ordinances.

To meet a public emergency affecting life, health, property, public safety, or the public peace, the City Council may adopt 1 or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any municipal utility for its services or authorize the borrowing of money except as provided in subsection 6.09(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 5 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 Subsection 6.09(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. 81 Del. Laws, c. 136

4.12 - Codes of Technical Regulation.

- (a) 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:
- (b) The requirements of Section 4.10 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
- (c) A copy of each adopted code of technical regulations, as well as the adopting ordinance, shall be authenticated and recorded by the City Clerk pursuant to Subsection 4.13(a).
- (d) 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. 81 Del. Laws, c. 136

4.13 - Authentication and Recording, Codification Printing.

- (a) Authentication and Recording. The City Clerk shall authenticate by his or her signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the Council.
- (b) Codification. The City Council shall provide for the continual 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 City Council by ordinance and shall be published promptly in bound or loose-leaf form, together with this Charter and any amendments thereto, pertinent provisions of the Constitution and other laws of the State of Delaware, and such codes of technical regulations and other rules and regulations as the City Council may specify. The compilation shall be known and cited officially as the Code of the City of Milford. Copies of the Code may be furnished to City officers, placed in libraries and public offices for free public reference, provided online accessible through the City website, and made available for purchase by the public at a reasonable price fixed by the City 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 to be fixed by the City Council. Following publication of the first Code of the City of Milford 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 City Council shall make such further arrangements as it deems desirable with respect to reproductions and distribution of any current changes in or additions to the provisions of the Constitution and other laws of the State of Delaware, or the codes of technical regulations and other rules and regulations included in the Code. 81 Del. Laws, c. 136

4.13 - Code of Ethics.

The Mayor and City Council shall develop, adopt, and adhere to a Code of Ethics applying to elected officials and to City employees in general. 81 Del. Laws, c. 136

ARTICLE V. Administration and Appointees

5.01 - Form of Government.

The form of government established by this charter shall be known as the "Council-Manager" form.

5.02 - City Manger - Appointment; Qualifications and Compensation.

The City Council shall appoint a City Manager for an indefinite term. He or she need not be a resident of the City or state at the time of his appointment but may reside outside the City while in office only with the approval of the City Council. The City Council may enter into an employment contract with the City Manager. An employment contract with a City Manager shall be in writing and shall specify the conditions of employment. 81 Del. Laws, c. 136

5.03 - City Manager - Removal.

The City Council shall remove the City Manager from office in accordance with the following procedures and those conditions contained in the City Manager's employment contract:

(a) The City Council shall adopt by affirmative vote of a majority of all of its members a preliminary resolution which must state the reasons for removal and may suspend the City Manager from duty for a period not to exceed 45 days. A copy of the resolution shall be delivered promptly to the City Manager.

(b) Within 5 days after a copy of the resolution is delivered to the City Manager, he or she may file with the City Council a written request for a public hearing or Executive Session at the choice of the City Manager. This hearing shall be held at a Council meeting not earlier than 15 days nor later than 30 days after the request is filed. The City Manager may file with the Council a written reply not later than 5 days before the hearing.

(c) The City Council may adopt a final resolution of removal, which may be effective immediately, by affirmative vote of a majority of all its members at any time after 5 days from the date when a copy of the preliminary resolution was delivered to the City Manager, if he or she has not requested a public hearing or Executive Session, or at any time after the public hearing or Executive Session, if he or she has requested one. The City Manager shall continue to receive his or her salary until the effective date of a final resolution of removal. 81 Del. Laws, c. 136

5.04 - Acting City Manager.

By notice filed with the City Clerk, the City Manager shall designate, subject to the approval of the City Council, a qualified City administrative officer to exercise the powers and perform the duties of City Manager during his or her temporary absence or disability. During such 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 shall return or his disability shall cease. 81 Del. Laws, c. 136

5.05 - Powers and Duties of the City Manager.

The City Manager shall be the chief administrative officer of the City. He or she shall be responsible to the City Council for the administration of all City affairs placed in his or her charge or under this Charter. He or she shall have the following powers and duties:

(a) He or she shall appoint, and when he or she deems it necessary for the good of the City, suspend or remove 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. He or she may authorize any administrative officer, who is subject to his or her direction and supervision, to exercise these powers with respect to subordinates in that officer's department, office or agency.

(b) He or she shall direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.

(c) He or she shall attend all City Council meetings and shall have the right to take part in discussion but may not vote.

(d) He or she shall see that all laws, provisions of this Charter and acts of the City Council, subject to enforcement by him or her or by officers subject to his direction and supervision, are faithfully executed.

(e) He or she shall prepare and submit the annual budget and capital program to the City Council.

(f) He or she 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.

(g) He or she shall make such other reports as the City Council may require concerning the operations of City departments, offices and agencies subject to his or her direction and supervision.

(h) He or she shall keep the City Council fully advised as to the financial condition and future needs of the City and make such recommendations to the Council concerning the affairs of the City as he or she deems desirable.

(i) He or she shall perform such other duties as are specified in this Charter or may be required by the City Council. 81 Del. Laws, c. 136

5.06 - City Clerk - Appointment and Duties.

The City Council shall appoint an officer of the City who shall have the title of City Clerk. The City Clerk shall give notice of City Council meetings to its members and the public, maintain a permanent record of all City Council proceedings and documents, manage the City's elections, act as the custodian of the City Seal, affixing it to all documents, records, contracts and agreements requiring a seal and attesting to same by

signature and perform other duties as are assigned to him or her by this Charter or by the City Council. 81 Del. Laws, c. 136

5.07 - City Solicitor.

At the Annual organization meeting, the City Council shall appoint a City Solicitor who shall be removable at the pleasure of the City Council either with or without due cause as stated. It shall be his, her or its duty to give legal advice to the City Council and other officers of the City and to perform other legal services as may be required by the City of Milford. The City Solicitor must be an individual licensed to practice law in the State of Delaware or may be a Delaware law firm any member of which can perform the duties of the City Solicitor. 81 Del. Laws, c. 136

5.08 - Police Department.

The City Council shall appoint a Chief of Police for an indefinite term and fix his or her compensation. The terms of his or her employment shall be contained in an employment contract.

(a) It shall be the duty of the Council to appoint a Chief of the Milford Police Department. The City Council shall, from time to time, make rules and regulations (which may be proposed by the Chief of Police) as may be necessary for the organization, government and control of the Police Department. The police shall preserve peace and order, and shall enforce within the City limits to the ordinances of the City and the laws of the State; and they shall have such other duties as the City Council shall from time to time prescribe.

(b) Each police officer shall be vested, within the City limits and as permitted by State law, with all the powers and authority of a state peace officer, and in the case of the pursuit of an offender, their power and authority shall extend to any part of the State of Delaware.

(c) The Chief of Police shall be responsible to City Council and shall be removed from office in accordance with the provisions of State law.

(d) The Chief of Police shall:

(1) Administer, direct and supervise the operation of the police department.

(2) Prepare an annual budget and capital program in conjunction with the City Manager. This shall then be placed by the City Manager into the Annual Budget and Capital Program for City Council approval.

(3) Attend all City Council Meetings and shall have the right to participate in any discussion of police concern, but shall have no vote. 81 Del. Laws, c. 136

5.09 - City Holding Cells.

The City Council may maintain a holding cell for the City, which shall be used as a place for the temporary detention of persons accused of violations of law or ordinances for a reasonable time, in cases of necessity, prior to transport to a detention facility, hearing and trial or arraignment. 81 Del. Laws, c. 136

5.10 - Finance Department.

There shall be a City Finance Department which shall be directed and supervised by an officer of the city who shall have the title of Finance Director. The Finance Director shall be appointed and supervised by the City Manager. The Finance Director shall have the duties of chief financial officer of the City of Milford, but may delegate such duties to subordinates under his direction. He or she shall pay out any monies upon check signed by 2 members of either Mayor or City Council or their designee. He or she shall keep a true accurate and detailed account of all monies received and all monies paid out by the city in all its activities and for all its departments, offices and agencies; shall preserve all vouchers and financial records, but under a records disposal program and schedule consistent with State law, may periodically destroy such records and vouchers. He or she shall make such reports at such times as the City Manager and Council shall direct and which will keep the City Council, City Manager and the public informed of the financial condition of the city. 81 Del. Laws, c. 136

5.11 - Planning Department.

There shall be a planning department, which shall be directed and supervised by a Planning Director. The Planning Director shall be appointed, supervised and removed by the City Manager. The Planning Director shall have the following responsibilities:

- (a) To advise the City Manager on any matter affecting the physical development of the city.
- (b) To formulate and recommend to the City Manager a comprehensive land use plan and modification thereof.
- (c) To review and make recommendations regarding proposed actions of the City Council in implementing the comprehensive development plan.
- (d) To advise and seek advice from the planning commission in the exercise of his or her responsibilities and in connection therewith, to provide it necessary staff assistance.
- (e) To review and make recommendations regarding proposed actions of the City Council in annexations.
- (f) To strive to give citizens the opportunity to have a meaningful impact on the development of plans.
- (g) To protect the integrity of the natural environment and endeavor to conserve the heritage of the built environment.
- (h) Direction over the administration, management and enforcement of the City's building and nuisance codes.
- (i) Such other duties as may be assigned. 81 Del. Laws, c. 136

5.12 - City Planning Commission.

Pursuant to State law, there is hereby established a Planning Commission for the City of Milford. The City Planning Commission shall consist of no less than 5 and no more than 9 members recommended by the Mayor and appointed by City Council. 81 Del. Laws, c. 136

5.13 – Board of Adjustment.

There shall be a Board of Adjustment pursuant to the provisions of the Delaware Code. The City Council shall, by ordinance, establish a Board of Adjustment and shall provide standards and procedures for such Board to hear and determine appeals from administrative decisions and petitions for variances in the case of peculiar and unusual circumstances which may be required by the City Council or by law. 81 Del. Laws, c. 136

Article VI. Financial Procedures

6.01- Fiscal Year.

The Fiscal year of the City shall be set by the City Council.

6.02- Submission of Budget Date.

On or before the last day of the twelfth month of each fiscal year, the City Manager shall submit to the City Council a budget for the ensuing fiscal year and an accompanying message. 81 Del. Laws, c. 136

6.03 - Budget Message.

The City Manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the City for the ensuing fiscal year, 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 and include such other material as the City Manager deems desirable. 81 Del. Laws, c. 136

6.04 - Operating 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 Council may require. In organizing the budget, the City Manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It 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; 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:

- (a) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures.
- (b) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each such capital expenditure.
- (c) Anticipated net surplus or deficit for the ensuing fiscal year of each utility owned or operated by the City and the proposed method of its disposition; subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached as appendices to the budget.

The total of proposed expenditures shall not exceed the total of estimated income. 81 Del. Laws, c. 136

6.05 - Capital Program.

- (a) Submission to Council. The City Manager shall prepare and submit to the Council a 5 year capital program at the time the annual budget is submitted to City Council as defined in Section 6.02.
- (b) Contents. The capital program shall include all of the following:
 - (1) A clear, general summary of its contents.
 - (2) A list of all capital improvements which are proposed to be undertaken during the 5 fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements.
 - (3) Cost estimates, method of financing and recommended time schedules for each such improvement.
 - (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition. 81 Del. Laws, c. 136

6.06 - City Council Action on Operating Budget.

The City Council shall adopt the operating budget on or before the last day of the 12th 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 prorated accordingly, until such time as the City Council adopts an operating 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. 81 Del. Laws, c. 136

6.07 - City Council Action on Capital Program.

The City Council, by resolution, shall adopt the capital program with or without amendment on or before the last day of the twelfth month of the current fiscal year. 81 Del. Laws, c. 136

6.08 - Public Records.

Copies of the budget and the capital program as adopted for the fiscal year are public records and shall be made available to the public through the Freedom of Information Act and the City of Milford website.

6.09 - Amendments after Adoption.

- (a) Supplemental Appropriations. If during the fiscal year the City Manager certifies that there are 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 additional revenue.
- (b) Emergency Appropriations. To meet 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. To the extent that there are no available un-appropriated revenues to meet such appropriations, the City Council may exercise short term borrowing authority as provided in Section 8.07 of this Charter.

(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 by ordinance 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 department, office or agency and, upon written request by the City Manager, the City Council may by majority vote transfer part or all of any unencumbered appropriation balance from one 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. 81 Del. Laws, c. 136

6.10 - 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 3 years pass without any disbursement from or encumbrance of the appropriation. 81 Del. Laws, c. 136

6.11 - Administration of Budget.

- (a) Work Programs and Allotments. At such time as the City Manager shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The City Manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He or she may revise such allotments during the year if they deem it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations.
- (b) Payments And Obligations Prohibited. No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the City Manager or his/her designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom 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 or she 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. 81 Del. Laws, c. 136

Article VII. Taxation, Assessors and Assessment of Taxes

7.01 General Assessment of Real Property.

(a) A general assessment of real property which shall be a true and impartial valuation of all property within the limits of the City shall occur:

- 1. Every 10 years or concurrently with the real property reassessments conducted by Sussex County for those properties located within the City and Sussex County and the real property reassessments conducted by Kent County for those properties located within the City and Kent County.

(b) In lieu of conducting its own reassessment of real property, the City shall have the option of adopting the reassessments conducted by Sussex County and Kent County.

(c) Notwithstanding subparagraph 7.01(a) and (b), if in the sole determination of the City Manager it is in the best interest of the City, a reassessment of real property shall be conducted in accordance with the procedures set forth in Article VII of the Milford City Charter.

83 Del. Laws, c. 456;

7.02 - Supplemental Assessments.

It shall be the duty of the City Manager to include supplemental assessments prepared by a certified assessor for the purposes of adding property not included in the last assessment or increasing or decreasing the assessment value of property which was included in the last general assessment. In the year that a supplemental assessment is made, the General Assessment then in force as modified by the supplemental assessment, shall constitute the assessment for the year. 81 Del. Laws, c. 136

7.03 - Assessment Copies to City Council.

The City Manager shall make and deliver to the City Council, as soon as the assessments are made, such number of copies as the City Council shall direct. 81 Del. Laws, c. 136

7.04 - Notification of Assessment.

The City Manager or designee shall notify the property owner in writing of any change in assessment. 81 Del. Laws, c. 136

7.05 Public Notice

The City Council shall, prior to a given date set by resolution in each year, cause a copy of the General Assessment as adjusted by the supplemental assessment as made in said year, to be posted in 2 public places in the City for a period of 10 days. Attached to said copies shall be a notice of the day, hour and place that the City Council will sit as a Board of Revision and Appeal; and the notice of the posting of the copies of the assessment and the places where the same are posted and of the day, hour and place when the City Council will sit as a Board of Revision and Appeal shall be published on the City website and in at least 1 issue of a newspaper circulated in the City at least 10 days before the meeting. Provided, however, if the notice states the General or Supplemental Assessment is made in accordance with an assessed value obtained from either Kent County or Sussex County, the appeal must be taken to the County where the property is located in accordance with 9 Del.C. Chapter 83. 81 Del. Laws, c. 136; 83 Del. Laws, c. 456;

7.06 Corrections and Revisions of Assessments.

At the time and place designated in the notice aforesaid, the City Council shall sit as a Board of Revision and Appeal to correct and revise the assessment, and to hear appeals concerning the same, unless such appeal is to be heard by the proper County. City Council shall have full power and authority to alter, revise, add to and take from the said assessment. The decision of a majority of the City Council shall be final and conclusive; and no member of Council shall sit on his or her own appeal. 81 Del. Laws, c. 136; 83 Del. Laws, c. 456;

7.07 Revised Assessment.

The assessment, as revised and adjusted by the City Council or the property County, shall be the basis for the levy and collection of the taxes for the City. If any property owner fails or neglects to perfect his or her appeal to the Board of Revision and Appeal or to the proper County, he or she shall be liable for the tax for such year as shown by the assessment lists. 81 Del. Laws, c. 136; 83 Del. Laws, c. 456;

7.08 - Taxes on Utility Infrastructure.

The City Council shall also have the right to levy and collect taxes on any utility infrastructure installed within the limits of the City, together with the wires and appliances thereto or thereon attached, that are now assessable and taxable, and to this end, may at any time direct the same be included in or added to the City Assessment. In case the owner or lessee of such utility infrastructure shall neglect or refuse to pay the taxes that may be levied thereon, the said taxes may be collected by the City in the same manner as other taxes, and upon continued non-payment, the City Council shall have the authority to cause the same to be removed. 81 Del. Laws, c. 136

7.09 - Determination of Rate of Taxation.

The City Council shall determine and fix a rate of taxation which with other anticipated revenue will produce approximately the amount of money necessary to defray the expenses of the City for the current year, including interest on bonded indebtedness and for redemption of maturing bonds and for maintenance of a sinking fund. 81 Del. Laws, c. 136

7.10 - Limit of Taxation.

The limit of taxation for current expenses shall be that rate which, by estimation, will produce a sum not exceeding 2% the assessed value of real property with improvements located in the City. 81 Del. Laws, c. 136

7.11 - Taxes- Delinquencies.

- (a) Not later than the second month of a new fiscal year, the City Manager shall make available to the City Council a list containing the names of the owners of taxable properties within the City and, opposite the name of each, the amount of the real property assessment, as well as the tax upon the whole of the assessment, and the rate per \$100 of assessed valuation. Attached to a tax list shall be a warrant, under the seal of the City of Milford, signed by the Mayor and attested by the City Clerk commanding the City Manager to make collection, when due, of the taxes as stated and set forth in the tax list.
- (b) All taxes, when and as collected by the City Manager, shall be paid to or deposited to the credit of the City in banking institutions approved by City Council.
- (c) All taxes shall be due and payable on the date set by City Council. To every tax not paid after the said date each year there shall be added a penalty, at a rate charged to be set by City Council through ordinance.
- (d) All taxes assessed upon any real estate and remaining unpaid prior to a new tax year billing shall constitute a first lien against all real estate of the delinquent taxpayer situated within the limits of the City of Milford for a period of 10 years from July 1 of the year for which the taxes were levied, but if the real estate remains the property of the person who was the owner at the time that it was assessed, then the lien shall continue until the tax is collected. In the case of a life estate, the interest of the life tenant shall first be liable for the payment of any taxes so assessed. The City Manager, in the name of the City of Milford, may institute suit before any court of competent jurisdiction in the State of Delaware, for the recovery of the unpaid tax in an action of debt, and upon judgment obtained, may sue out writs of execution as in case of other judgments recovered within those courts.
- (e) In addition, the City Manager, acting on behalf of the City, may pursue the sale of the lands and tenements of the delinquent taxpayer, or the lands or tenements of a delinquent taxpayer alienated subsequent to the levy of the tax by monition sale according to the same procedures and subject to the same rights, authority and powers as are applicable to the Counties under Chapter 87 of Title 9 of the Delaware Code, as may later be amended, replaced or relocated within the Delaware Code. Prior to commencing any action for the sale of lands and tenements, the City shall send written notice to the assessed owner providing the total balance owed and language indicating a failure to pay within 30 days may result in the commencement of legal proceedings for the sale of the assessed property.
- (f) In addition to collection of fees and costs set forth in the Delaware Code, the City shall have the authority to enact such ordinance as necessary to assure recovery of all expenses incurred by the City in collecting said judgment.
- (g) In the event of the death, resignation or removal from office of the City Manager before the proceedings of the sale of land shall have been completed, his or her successor in office shall succeed to have all of his or her powers, rights and duties in respect to said sale.
- (h) There is hereby created a tax lien on any assessment or service charge levied by the City of Milford against a property as it relates to any utility service provided by the City of Milford, including any installation fees, connection fees, and service charges for maintenance or use thereof, and any amount expended by the City in order to complete any improvement, installation, razing, demolition, removal, or repair that is mandated by the City and where the assessed owner refuses or fails to comply, and any other fine, cost or assessment duly levied and authorized by this Charter, by ordinance or by State law. All such assessments and charges shall be collected in the same manner as real estate property taxes and subject to the same lien provisions provided under subsection (d) of this Section 7.11.

- (i) The provisions of this Section 7.11 shall apply to any charge levied by the City that would qualify as a lien under 25 Del.C. §2901(a)(1), as may be amended, and all special ad valorem taxes and special taxes levied by the City of Milford pursuant to Article IX of this Charter, provided that all references in this Section 7.11 to a tax list shall, for all purposes relating to such special ad valorem taxes and special taxes, be deemed to refer to the tax list showing the amounts of special ad valorem taxes or special taxes levied against the real property within a special development district.
- (j) In addition to any method of collection provided under this Section 7.11, the City Manager or representative appointed by the City Manager may pursue collection of any delinquent assessment or charge as may now or later be available under Delaware law. 81 Del. Laws, c. 136

7.12 – Real Estate Transfer Tax.

The City of Milford reserves the right to enact a Real Estate Transfer Tax by ordinance through the City Council. Any change to the Real Estate Transfer Tax must be in accordance with Delaware laws. 81 Del. Laws, c. 136

7.13- Assessment, Payment, and Collection of Taxes For New Construction.

In the event that the Mayor and City Council of the City of Milford desire to collect and levy taxes on newly constructed property not taxed by virtue of the city's annual assessment, the city may enact an ordinance to do so. 81 Del. Laws, c. 136

7.14 - Lodging Tax.

The City of Milford is authorized to impose a lodging tax of no more than 3 percent of the rent, in addition to the amount imposed by the State, for any room or rooms in a hotel, motel or tourist home, as defined in §6101 of Title 30, which is located within the boundaries of the City of Milford. 81 Del. Laws, c. 416;

Article VIII. Borrowing of Money and Issuance of Bonds

8.01 - Bonds.

The City of Milford may borrow money, and to secure the payment of the same, is hereby authorized and empowered to issue bonds or other kinds or forms of certificate or certificates of indebtedness pledging the full faith and credit of the City of Milford; or such other security or securities as the City Council shall elect, for the payment of the principal thereof and the interest due thereon.

All bonds or other kinds or forms of certificate or certificates of indebtedness issued by the City of Milford in pursuance hereof shall be exempt from all State, County or municipal taxes. 81 Del. Laws, c. 136

8.02 - Purpose of Bonds.

This power or authority to borrow money may be exercised by the City of Milford to provide funds for, or to provide for the payment of, any of the following projects or purposes:

- (a) Refunding any or all outstanding bonds or other indebtedness of the City at the maturity thereof or in accordance with any callable feature or provision contained therein.
- (b) Meeting or defraying current annual operating expenses of the City in an amount equal to but not in excess of currently outstanding, due and unpaid taxes, water rents, license fees or other charges due the City and available, when paid, for meeting or defraying current annual operating expenses of the City.
- (c) Erecting, extending, enlarging, maintaining and repairing any plant, building, machinery or equipment for the manufacture, supplying or distribution of any public utility and the condemning or purchasing of any lands, easements and rights-of-way which may be required therefore.
- (d) Constructing, paving, engineering, widening, extending, repairing and maintaining streets, lanes, alleys and ways, and the paving, constructing, engineering, widening, extending, repairing and maintaining of curbing and gutters along the same and the condemning or purchasing of any lands, easements or rights-of-way which may be required therefore.
- (e) Any other purpose consistent with the promotion of health, education, public safety, or the general welfare of the City of Milford. 81 Del. Laws, c. 136

8.03 - Bonds or Certificates of Indebtedness - Resolutions.

The power to borrow money and to secure the payment thereof by the issuance of bonds or other kinds or forms of certificate or certificates of indebtedness for any purpose above specified shall only exercise in the following manner:

The City Council shall adopt a resolution proposing unto the electors of the City that money be borrowed by the City for any of the above-named purposes. The resolution proposing the borrowing shall plainly set forth the following matters:

- (a) The amount of money, or the amount of money not exceeding which, it is proposed shall be borrowed.
- (b) The rate of interest, or the rate of interest not exceeding which, it is proposed shall be paid.
- (c) The manner in which it is proposed to be secured.
- (d) The manner in which it is proposed that it shall be paid or funded, or both.
- (e) A short and clear description of the purpose or purposes for which the money or monies shall be used, and which description shall include the estimated cost of carrying out the purpose or purposes aforesaid.
- (f) A statement of the time and place for a public hearing upon the resolution, whereat the City Council shall vote upon the final authorization for the loan. 81 Del. Laws, c. 136

8.04 - Notice of Resolution.

- (a) It shall then be the duty of the City Council to give notice of the time and place of such public hearing upon the resolution by publishing a copy of the resolution aforesaid in at least 1 issue of a newspaper published in the City of Milford at least 1 week before the time fixed for said hearing, by posting on the City of Milford website and in 2 public places in the City at least 1 week before the time fixed for said hearing.
- (b) At the time and place mentioned in such notice, the City Council shall sit in public session and at such public session, or an adjourned session thereof, shall vote upon a resolution giving its final authorization for the loan. If such resolution shall be adopted by the City Council, then the City Council shall pass a second resolution ordering and directing that a Special Election be held in the City of Milford not less than 30 days nor more than 60 days (as may be determined by the Council) after the date of the hearing and passage of the resolution authorizing the loan by the Council.
- (c) The purpose of such Special Election shall be to vote for or against the proposed loan.
- (d) The City Council shall give notice of the time and place for holding the said Special Election to all the electorate of the City of Milford by posting notices thereof in 2 public places in said City at least 2 weeks prior to the day fixed for the holding of such Special Election, and by publishing a copy of such notice once each week during those 2 weeks immediately preceding that week during which the day fixed for the holding of such Special Election shall fall in a newspaper generally circulated in the City of Milford in addition to the city website. Such notice of the Special Election shall likewise contain the same information with respect to the borrowing as required to be contained in the original resolution proposing the borrowing, excepting a statement of the time and place for a public hearing upon the resolution, whereat the City Council shall vote upon the final authorization for the loan.
- (e) The Special Election shall be conducted by an Election Board whose members shall be appointed or selected in the same manner and they shall have the same qualifications as hereinbefore provided in the case of annual elections of the City.
- (f) At such Special Election every person who would be entitled to vote at an annual election if held on that day shall be entitled to 1 vote.
- (g) The ballot, either by voting machines or paper ballots, shall include a statement of the purpose for which the borrowing is being proposed and the maximum amount of the bonds to be issued. The vote will be in the following form:
 - [] For the Proposed Borrowing.
 - [] Against the Proposed Borrowing.
- (h) Absentee ballots shall be made available by the City Clerk within 5 days of the date of the adoption of the Resolution ordering the Special Election and distributed no later than 4:30 p.m. 2 days prior to the date of the Special Election. Completed absentee ballots received after that time shall not be counted.

The City Clerk shall ensure delivery of the absentee ballots to the Election Board before the polls are opened on the Special Election Day.

- (i) Immediately upon the closing of the polls, the total votes cast by absentee ballot and the total votes cast for and against the borrowing on the Special Election Day shall be counted by the Special Election Board and the results announced. Two Certificates of Special Election shall be prepared and signed by at least 3 Special Election Board Members. One copy of the Certificate shall be entered into the minutes of the next meeting of City Council.
- (j) All election documents, including ballots and the Certificate of Special Election, are public records and available for inspection by the public in accordance with the Delaware Freedom of Information Act [Chapter 100 of Title 29]. Said documents will be maintained in accordance with the retention and disposal schedules approved by Delaware Public Archives. 81 Del. Laws, c. 136

8.05 - Payment of Bonds or Certificates of Indebtedness.

- (a) The form of the bonds or certificates of indebtedness and the thereunto attached coupons, if any, the time or times of payment, the time or times of payment of interest, the classes, the series, the maturity, the registration, any callable or redeemable feature, the denomination and the name thereof and any other relative or pertinent matters pertaining thereto shall all be determined by the City Council after the special election.
- (b) The bond or bonds or certificates of indebtedness shall be offered at public or private sale as determined by the City Council. All bonds or certificates of indebtedness forming a single issue need not be offered for sale at a single sale but any given issue of bonds or certificates of indebtedness authorized as hereinbefore provided may be sold in whole or in part, from time to time and until the entire authorized issue be disposed of, as the City Council may deem most advisable.
- (c) The City Council shall provide in its budget and in fixing of the rate of tax, or otherwise, for the payment of principal or such bond or bonds or certificate or certificates of indebtedness at the maturity thereof together with the interest due or which may hereafter become due thereupon and, in a proper case or as recommended by bond counsel, it shall also provide a sinking fund therefore.
- (d) Unless any such bond or bonds or certificate or certificates of indebtedness shall otherwise provide therein, the faith and credit of the City of Milford shall be deemed to be pledged for the due payment of any such bond or bonds or certificate or certificate of indebtedness and interest thereon according to its terms when and after the same have been duly and properly executed, delivered and due value received therefore. 81 Del. Laws, c. 136

8.06 - Refinancing Of Municipal Bonds.

Notwithstanding the foregoing provisions of this Section, the City Council of the City of Milford may authorize by Resolution the refinancing of existing bonds or other obligations of the City, without the necessity of a Special Election; provided that the issue of the refinancing obligations results in a present value savings to the City. Present value savings shall be determined by using the effective interest rate on the refinancing obligations as the discount rate calculated based on the internal rate of return. The principal amount of the refinancing obligations may exceed the outstanding principal amount of the obligations to be refinanced. 81 Del. Laws, c. 136

8.07- Short Term Borrowing.

Notwithstanding the foregoing provisions of this Section, the City Council may authorize, by resolution, short term borrowing by the City without the necessity of a Special Election. The City of Milford may borrow money up to the amount of the annual tax billings. The borrowed money shall be for 1 of the following: operating deficits, emergencies declared by City Council, and short term capital project funding. The money shall be paid back in no longer than 5 years. 81 Del. Laws, c. 136

Article IX. Tax Increment Financing and Special Development Districts

9.01 - Tax Increment Financing and Special Development Districts.

In addition to all other powers the City of Milford may have, and notwithstanding any limitation of law, the City of Milford shall have all powers and may undertake all actions for the purposes set forth in, and in accordance with Delaware Code relating to the Municipal Tax Increment Financing Act and Delaware Code relating to Special Development Districts.

9.02 – Non-Recourse.

Bonds are non-recourse to the City of Milford and shall only be paid from Tax Increment Financing and Special Development District [hereinafter 'TIF' and 'SDD' respectively] assessments permitted by Delaware Code. Bonds are non-recourse to property owners who purchase subject to a TIF or SDD. Property owners who purchase subject to a TIF or SDD shall only be responsible for TIF or SDD obligations determined by the individual assessment of their property.

Article X. Severance

If any provision of this Charter is held invalid, the other provisions of the Charter shall not be affected thereby. 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 provision to other persons or circumstances shall not be affected thereby.

Article XI. Transitional Provisions**11.01 - 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 Officers and Employees. Except as specifically provided by this Charter, or any amendment thereto, if a City administrative officer or employee holds any office or position which is or can be abolished by or under this Charter, or any amendment thereto, he or she shall continue in such office or position until the taking effect of some specific provision under this Charter directing that he vacate the office or position. 81 Del. Laws, c. 136

11.02 - Departments, Offices and Agencies.

- (a) Transfer of Powers. If a City department, office or agency is abolished by this Charter, or any amendment thereto, the powers and duties given it by law shall be transferred to the City department, office or agency designated in this Charter, or any amendment thereto, or, if the Charter makes no provision, as designated by the City Council.
- (b) Property and Records. All property, records and equipment of any department, office or agency existing when this Charter, or any amendment thereto, 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 Council in accordance with this Charter, or any amendment thereto. 81 Del. Laws, c. 136

11.03 - Pending Matters.

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this Charter, or any amendment thereto, and in each case shall be maintained, carried on or dealt with by the City department, office or agency appropriate under this Charter, or any amendment thereto. 81 Del. Laws, c. 136

11.04 - State and Municipal Laws.

In general, all City ordinances, resolutions, orders and regulations which are in force when this Charter, or any amendment thereto, becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this Charter, or any amendment thereto, or of ordinances or resolutions adopted pursuant thereto. To the extent that the Constitution and laws of the State of Delaware permit, all laws relating to or affecting this City or its agencies, officers or employees which are in force when this Charter, or any amendment thereto, becomes fully effective, are superseded to the extent that they are inconsistent or interfere with the effective operation of this Charter, or any amendment thereto, or of ordinances or resolutions adopted pursuant thereto. 81 Del. Laws, c. 136

11.05 - Survival of Powers and Validations Sections

- (a) All powers conferred upon or vested in the City of Milford by any Act or Law of the State of Delaware, not in conflict with the provisions of this Charter, or any amendment thereto, are hereby expressly conferred upon and vested in the City of Milford as though herein fully set out.
- (b) All ordinances adopted by the City Council of the City of Milford, or which are in force for the government of the City of Milford at the time of the approval of this Charter, or any amendment thereto, are continued in force and effect as ordinances of the City of Milford until repealed, altered or amended under the provisions of this Charter, or any amendment thereto, and the acts of the Council of the City of Milford and of the officials thereof as lawfully done or performed under the provisions of the Charter of the City of Milford, or any amendment thereto, or ordinance thereof, or of any law of this State, prior to the approval of this Act, are hereby ratified and confirmed.
- (c) All taxes, fines, penalties, forfeitures, assessments or debts due the City of Milford and all debts due from the City of Milford, at the effective date of this Charter, or any amendment thereto, shall, respectively, be deemed due to or from the City of Milford and said obligations shall severally remain unimpaired until paid, and the power, right, and authority to collect taxes imposed under the provisions of this Charter, or any amendment thereto, and the processes which may be employed for that purpose, shall be deemed to apply and extend to all unpaid taxes, assessments or charges imposed under the provisions of this Charter, or any amendment thereto, and the processes which may be employed for that purpose, shall be deemed to apply and extend to all unpaid taxes, assessments or charges imposed under the Charter of the City of Milford, or any amendment thereto, immediately preceding the adoption of this Charter, or any amendment thereto.
- (d) The bonds heretofore given by or on account of any official of the City of Milford shall not be affected or impaired by the provision of this Act but shall continue in full force for the benefit of the City of Milford. 81 Del. Laws, c. 136

11.06 - Headings.

The heading of any article, paragraph, subparagraph or section of this Charter shall be for reference purposes only and shall not be deemed to have a substantive meaning. 81 Del. Laws, c. 136

Article XII. Repealer

This Act shall operate to amend, revise and consolidate "An Act to Reincorporate the City of Milford", being Chapter 148, Volume 72, Laws of Delaware, and the several amendments and supplements thereto. The Act shall be deemed to be a public Act and the parts hereof shall be severable and, in the event any part or section hereof shall be held unconstitutional, such holding shall not in any way invalidate the remaining provisions of this Act. 72 Del. Laws, c. 148; 76 Del. Laws, c. 199; 77 Del. Laws, c. 405; 81 Del. Laws, c. 136; 81 Del. Laws, c. 416; 83 Del. Laws, c. 456;



National Civic League

Model City Charter

9th
edition
2021



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

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November 2021

Letter from our Co-Chairs:

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

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

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

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

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

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

Signed,



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



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



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



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

INTRODUCTION

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

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

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

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

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

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

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

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

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

Commitment to Social Equity

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

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

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

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

Expanding Public Engagement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

² Svava and Watson, pp. 312-320.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PREAMBLE

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

Preamble

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

Source of Authority

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

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

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

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

Action Taken

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

. . . do hereby adopt this charter

. . . do hereby adopt this home rule charter.

Intent

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

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

“By this action, we:

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

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

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

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

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

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

Article I POWERS OF THE CITY

Introduction.

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

Section 1.01. Powers of the City.

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

Commentary.

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

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

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

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

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

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

Section 1.02. Construction.

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

Commentary.

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

Section 1.03. Intergovernmental Relations.

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

Commentary.

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

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

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

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

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

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

Article II CITY COUNCIL

Introduction.

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

Section 2.01. General Powers and Duties.

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

Commentary.

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

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

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

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

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

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

Section 2.02. Eligibility, Terms, and Composition.

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

Commentary.

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

(b) Terms.

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

Commentary.

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

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

(c) Composition.

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

Commentary.

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

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

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

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

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

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

Commentary.

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

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

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

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

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

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

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

Section 2.03. Mayor.

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

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

Commentary.

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

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

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

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

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

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

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

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

Section 2.04. Compensation; Expenses.

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

Commentary.

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

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

Section 2.05. Relationship to City Manager.

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

Commentary.

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

Section 2.06. Prohibitions.

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

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

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

Commentary.

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

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

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

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

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

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

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

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

Commentary.

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

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

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

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

Commentary.

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

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

Commentary.

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

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

Commentary.

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

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

Commentary.

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

Section 2.12. Procedure

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

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

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

Commentary.

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

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

Section 2.13. Action Requiring an Ordinance.

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

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

Commentary.

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

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

Section 2.14. Ordinances in General

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

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

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

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

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

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

Commentary.

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

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

Section 2.15. Emergency Ordinances.

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

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

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

Commentary.

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

Section 2.16. Codes of Technical Regulations.

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

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

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

Commentary

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

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

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

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

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

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

Commentary.

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

Article III CITY MANAGER

Introduction.

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

Section 3.01. Appointment; Qualifications; Compensation.

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

Commentary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3.02. Removal.

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

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

Commentary.

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

Section 3.03. Acting City Manager.

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

Commentary.

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

Section 3.04. Powers and Duties of the City Manager.

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

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

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

Commentary.

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

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

Article IV
DEPARTMENTS, OFFICES, AND AGENCIES

Introduction.

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

Section 4.01. General Provisions.

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

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

Commentary.

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

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

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

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

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

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

Section 4.02. Personnel System.

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

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

Commentary.

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

Section 4.03. City Attorney.

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

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

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

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

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

Alternative III – Part time City Attorney

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

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

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

Commentary.

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

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

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

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

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

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

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

Commentary.

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

Article V
FINANCIAL MANAGEMENT

Introduction.

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

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

Section 5.01. Fiscal Year.

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

Commentary.

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

Section 5.02. Submission of Budget and Budget Message.

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

Commentary.

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

Section 5.03. Budget Message.

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

Commentary.

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

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

In Section 5.04. Budget.

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

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

Commentary.

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

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

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

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

Section 5.05. City Council Action on Budget.

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

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

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

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

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

Commentary.

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

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

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

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

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

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

Section 5.06. Appropriation and Revenue Ordinances.

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

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

Commentary.

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

Section 5.07. Amendments after Adoption.

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

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

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

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

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

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

Commentary.

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

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

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

Section 5.08. Administration and Fiduciary Oversight of the Budget.

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

Commentary.

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

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

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

Section 5.09. Capital Program.

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

(b) Contents. The capital program shall include:

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

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

Commentary.

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

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

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

Section 5.10. City Council Action on Capital Program.

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

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

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

Commentary.

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

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

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

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

Section 5.11 Independent Audit.

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

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

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

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

Commentary.

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

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

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

Section 5.12. Public Records.

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

Commentary.

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

Article VI ELECTIONS

Introduction.

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

Section 6.01. City Elections.

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

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

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

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

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

Commentary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Districting Plan; Criteria.

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

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

(e) Effect of Enactment.

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

Commentary.

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

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

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

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

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

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

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

(c) Procedures.

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

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

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

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

Section 6.03. Methods of Electing Council Members.

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

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

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

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

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

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

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

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

Commentary.

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

Section 6.04. Initiative, Referendum, and Recall.

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

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

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

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

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

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

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

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

(c) Petitions.

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

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

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

(d) Procedure after Filing.

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

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

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

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

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

(f) Action on Petitions.

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

(g) Results of Election.

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

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

Commentary.

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

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

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

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

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

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

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

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

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

Article VII

THE ROLE OF PUBLIC ENGAGEMENT IN LOCAL GOVERNANCE

Introduction.

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

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

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

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

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

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

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

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

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

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

Commentary.

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

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

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

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

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

Section 7.02. Institutional structures to support and coordinate engagement.

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

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

Commentary.

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

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

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

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

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

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

Section 7.03. Principles of public engagement.

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

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

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

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

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

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

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

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

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

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

Commentary.

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

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

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

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

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

General Commentary.

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

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

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

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

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

Article VIII GENERAL PROVISIONS

Introduction.

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

Section 8.01. Conflicts of Interest; Board of Ethics.

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

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

Commentary.

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

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

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

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

Section 8.02. Prohibitions.

(a) Activities Prohibited.

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

(b) Penalties.

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

Commentary.

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

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

Section 8.03. Campaign Finance.

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

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

Commentary.

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

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

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

Article IX
CHARTER AMENDMENT

Introduction.

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

Section 9.01. Proposal of Amendment.

Amendments to this charter may be framed and proposed:

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

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

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

Commentary.

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

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

Section 9.02. Election.

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

Section 9.03. Adoption of Amendment.

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

Article X
TRANSITION AND SEVERABILITY

Introduction.

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

Section 10.01. Officers and Employees.

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

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

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

Section 10.02. Departments, Offices, and Agencies.

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

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

Section 10.03. Pending Matters.

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

Section 10.04. State and Municipal Laws.

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

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

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

- (1) The following laws and parts of laws generally affecting counties or city agencies, officers or employees are inapplicable to the city of _____
_____ or its agencies, officers or employees: [enumeration]
- (2) The following public local laws relating to the city of _____ are superseded: [enumeration]
- (3) The following ordinances, resolutions, orders, and regulations of _____
_____ [former city governing body] are repealed: [enumeration]

Section 10.05. Schedule.

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

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

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

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

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

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

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

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

Section 10.06. Severability.

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

Commentary.

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

Appendix 1

OPTIONS FOR MAYOR-COUNCIL CITIES

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

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

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

Analytical Questions about Mayor-Council Governments

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

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

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

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

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

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

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

B. How is the CAO chosen?

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

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

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

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

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

Recommended Structure in Mayor-Council Cities

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

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

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

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

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

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

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

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

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

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

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

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

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

Election of the mayor and chair of the council

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

Veto

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

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

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Appendix 2

THE CONTEXT FOR SOCIAL EQUITY AND LOCAL GOVERNANCE

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

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

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

Why Equity and Why Now?

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

Equity as a Core Value of Public Administration

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

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

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

Equity and Local Governments: the current context

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

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

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

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

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

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

What is Equity

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

Equity vs. Equality

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

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

Operationalizing Equity

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

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

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

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

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

What vs. Where of Equity

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

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

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

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

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

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

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

Glossary

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

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

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

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

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

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

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

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

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

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

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

Harassment: Unwelcome, intimidating, or hostile behavior.

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

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

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

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

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

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

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

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

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

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

Using the Ninth Edition of the Model City Charter

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

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

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

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

Additional Resources

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

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

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

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

Model City Charter Revision Steering Committee

Co-Chairs

- Clarence Anthony, CEO, National League of Cities
- Ronald Loveridge, Director, Center for Sustainable Suburban Development; former Mayor, City of Riverside, California
- Marc Ott, Executive Director, International City/County Management Association
- Kendra Stewart, former President American Society for Public Administration

Members

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- Patti Garrett, Mayor, City of Decatur, Georgia
- Teresa Gerton, President, National Academy of Public Administration
- David Luna, Councilmember, Mesa, Arizona
- Peggy Merriss, CEO, Merriss Management and Leadership Consulting
- Chris Morrill, Government Finance Officers Association
- Sylvester Murray, Visiting Professor, Jackson State University
- Tina Nabatchi, Professor of Public Administration and International Affairs, Syracuse University
- John Nalbandian, Professor Emeritus, University of Kansas
- Kimberly Nelson, Professor of Public Administration and Government, University of North Carolina at Chapel Hill
- Jerry Newfarmer, CEO, Management Partners
- Robert O'Neill, former Executive Director, International City/County Management Association
- Martha Perego, Director, Membership Services and Ethics, International City/County Management Association
- James Svava, Senior Fellow, School of Government, University of North Carolina at Chapel Hill
- Mark Washington, City Manager, Grand Rapids, Michigan
- Chuck Thompson, Executive Director, International Municipal Lawyers Association

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

Community Members/Public Engagement

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

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

Legal Issues/City Attorneys/Home Rule

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

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

The Ninth Edition

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

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

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

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

ICMA Code of Ethics with Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in October 2019. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2019.

The mission of ICMA is to advance professional local government through leadership, management, innovation, and ethics. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

Tenet 1. We believe professional management is essential to efficient and democratic local government by elected officials.

Tenet 2. Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant.

GUIDELINE

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

Tenet 3. Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

GUIDELINES

Public Confidence. Members should conduct themselves so as to maintain public confidence in their position and profession, the integrity of their local government, and in their responsibility to uphold the public trust.

Influence. Members should conduct their professional and personal affairs in a manner that demonstrates that they cannot be improperly influenced in the performance of their official duties.

Length of Service. For chief administrative/executive officers appointed by a governing body or elected official, a minimum of two years is considered necessary to render a professional service to the local government. In limited circumstances, it may be in the best interests of the local government and the member to separate before serving two years. Some examples include

refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or significant personal issues. It is the responsibility of an applicant for a position to understand conditions of employment, including expectations of service. Not understanding the terms of employment prior to accepting does not justify premature separation. For all members a short tenure should be the exception rather than a recurring experience, and members are expected to honor all conditions of employment with the organization.

Appointment Commitment. Members who accept an appointment to a position should report to that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time. However, once a member has accepted a formal offer of employment, that commitment is considered binding unless the employer makes fundamental changes in the negotiated terms of employment.

Credentials. A member's resume for employment or application for ICMA's Voluntary Credentialing Program shall completely and accurately reflect the member's education, work experience, and personal history. Omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a position should show professional respect for persons formerly holding the position, successors holding the position, or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report possible violations to ICMA. In reporting the possible violation, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members shall not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position that has an incumbent who has not announced his or her separation or been officially informed by the appointive entity that his or her services are to be terminated. Members should not initiate contact with representatives of the appointive entity. Members contacted by representatives of the appointive entity body regarding prospective interest in the position should decline to have a conversation until the incumbent's separation from employment is publicly known.

Relationships in the Workplace. Members should not engage in an intimate or romantic relationship with any elected official or board appointee, employee they report to, one they appoint and/or supervise, either directly or indirectly, within the organization.

This guideline does not restrict personal friendships, professional mentoring, or social interactions with employees, elected officials and Board appointees.

Conduct Unbecoming. Members should treat people fairly, with dignity and respect and should not engage in, or condone bullying behavior, harassment, sexual harassment or discrimination on the basis of race, religion, national origin, age, disability, gender, gender identity, or sexual orientation.

Tenet 4. Serve the best interests of the people.

GUIDELINES

Impacts of Decisions. Members should inform their governing body of the anticipated effects of a decision on people in their jurisdictions, especially if specific groups may be disproportionately harmed or helped.

Inclusion. To ensure that all the people within their jurisdiction have the ability to actively engage with their local government, members should strive to eliminate barriers to public involvement in decisions, program, and services.

Tenet 5. 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 local government policies adopted by elected officials.

GUIDELINE

Conflicting Roles. Members who serve multiple roles – working as both city attorney and city manager for the same community, for example – should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

Tenet 6. 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 the members.

Tenet 7. 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.

GUIDELINES

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not participate in an election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members shall not participate in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office, or accept appointment to an elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections relating to the Form of Government. Members may assist in preparing and presenting materials that explain the form of government to the public prior to a form of government election. If assistance is required by another community, members may respond.

Presentation of Issues. Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity.

Personal Advocacy of Issues. Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

Tenet 8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

GUIDELINES

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

Tenet 9. Keep the community informed on local government affairs; encourage communication between the 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.

Tenet 10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

GUIDELINE

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member’s responsibilities as set forth in the charter or enabling legislation.

Tenet 11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member’s decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

GUIDELINE

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members’ personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

Tenet 12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

GUIDELINES

Gifts. Members shall not directly or indirectly solicit, accept or receive any gift if it could reasonably be perceived or inferred that the gift was intended to influence them in the performance of their official duties; or if the gift was intended to serve as a reward for any official action on their part.

The term “Gift” includes but is not limited to services, travel, meals, gift cards, tickets, or other entertainment or hospitality. Gifts of money or loans from persons other than the local government jurisdiction pursuant to normal employment practices are not acceptable.

Members should not accept any gift that could undermine public confidence. De minimus gifts may be accepted in circumstances that support the execution of the member’s official duties or serve a legitimate public purpose. In those cases, the member should determine a modest maximum dollar value based on guidance from the governing body or any applicable state or local law.

The guideline is not intended to apply to normal social practices, not associated with the member’s official duties, where gifts are exchanged among friends, associates and relatives.

Investments in Conflict with Official Duties. Members should refrain from any investment activity which would compromise the impartial and objective performance of their duties. Members should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict of interest, in fact or appearance, with their official duties.

In the case of real estate, the use of confidential information and knowledge to further a member's personal interest is not permitted. Purchases and sales which might be interpreted as speculation for quick profit should be avoided (see the guideline on "Confidential Information"). Because personal investments may appear to influence official actions and decisions, or create the appearance of impropriety, members should disclose or dispose of such investments prior to accepting a position in a local government. Should the conflict of interest arise during employment, the member should make full disclosure and/or recuse themselves prior to any official action by the governing body that may affect such investments.

This guideline is not intended to prohibit a member from having or acquiring an interest in or deriving a benefit from any investment when the interest or benefit is due to ownership by the member or the member's family of a de minimus percentage of a corporation traded on a recognized stock exchange even though the corporation or its subsidiaries may do business with the local government.

Personal Relationships. In any instance where there is a conflict of interest, appearance of a conflict of interest, or personal financial gain of a member by virtue of a relationship with any individual, spouse/partner, group, agency, vendor or other entity, the member shall disclose the relationship to the organization. For example, if the member has a relative that works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties.

Information that may be in the public domain or accessible by means of an open records request, is not confidential.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, marketing materials, social media, or other documents, whether the member is compensated or not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry.

Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.

Smarter, Faster, Cheaper

An Operations Efficiency Benchmarking Study of 100 American Cities

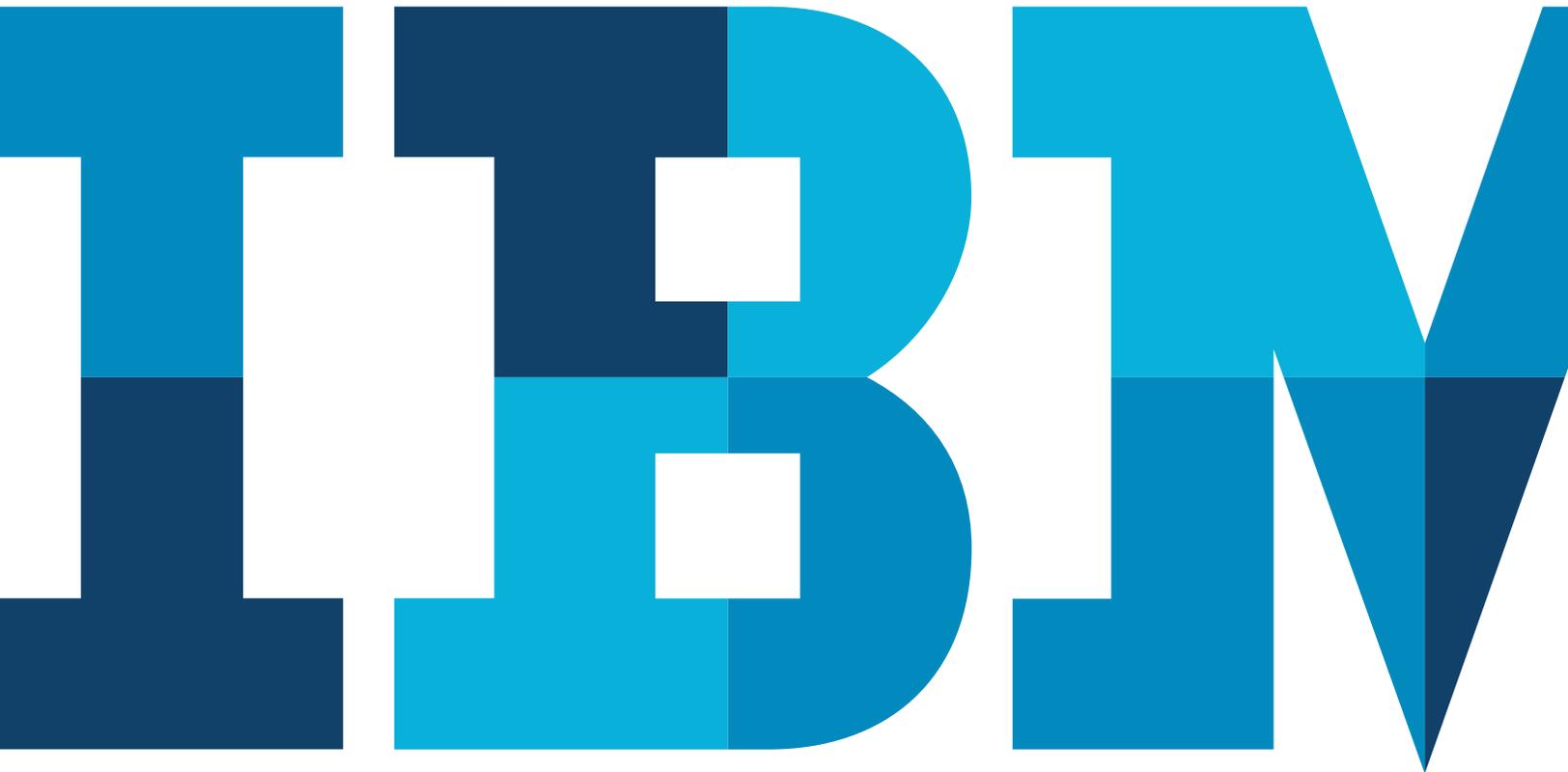


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Introduction

According to the Government Accountability Office (GAO), local governments in the United States are collectively facing a \$225 billion structural budget deficit, which constitutes about 12% of their total spending¹. Since these are structural deficits, they will not diminish even when the economy starts expanding again. These shortfalls represent a fundamental disconnect between the spending commitments city governments have made and the level of revenue growth they can reasonably expect to achieve.

As a consequence of these structural deficits, each year local governments must find a combination of new revenues and spending reductions to close the gap in their budgets. Since 2006 local governments have shed 353,000 jobs, including teachers, police officers and fire fighters. They have furloughed employees, refinanced pension obligations, and spent down reserve funds in order to minimize service reductions. Our analysis of the budget-closing measures employed by 13 cities in the State of California last year suggests that between 30% and 60% of the budget-balancing measures adopted by local governments represent one-time savings or revenue generating measures rather than permanent changes to cost structures. This is not surprising, as a similarly narrow approach has too often dominated conversations around the burgeoning federal deficit. But one-off cuts are not the answer. As these options exhaust themselves, more layoffs and services reductions are inevitable. Instead of just doing less, there is a way for cities to operate smarter, so that they can do more with less.

For this reason, there is no better time than now to take a hard look at the efficiency of local governments. If local government leadership will take the time to perform the analysis required to identify and root out inefficiencies in their operations, they can shed costs without significantly impacting service levels. In many cases, the thoughtful application of innovations in business process, organizational design, and technology can in fact reduce costs and improve services simultaneously.

One effective means for an organization to identify inefficiencies in their operations is through benchmarking. By comparing the operational profile of similarly situated organizations, opportunities for improved performance can be uncovered. To help cities address the worst budget climate in generations, IBM used publicly available data to benchmark the 100 largest cities in the United States to assess and compare how efficiently they operate. The results of that study, and recommendations for what cities can do with these findings, are the subject of this paper.

Our goal is straightforward: by comparing the efficiency with which cities deploy resources, IBM hopes to provide mayors and city managers with a road map for where they should be looking for high-yield savings opportunities in their own local government operations. Given the financial pressures cities face and the likelihood that unfavorable economic conditions will persist for the foreseeable future, there is no better time for local governments to become “smarter, faster, cheaper.”

US Cities Included in the Study

Akron	Boston	Columbus GA	Garland	Kansas City	Madison	Oakland	Portland	San Diego	St. Petersburg
Albuquerque	Chandler	Corpus Christi	Gilbert	Knoxville	Memphis	Oklahoma City	Raleigh	San Francisco	Stockton
Anaheim	Charlotte	Denver	Glendale	Laredo	Mesa	Omaha	Reno	San Jose	Tampa
Arlington TX	Chesapeake	Des Moines	Greensboro	Las Vegas	Miami	Orlando	Richmond	Santa Ana	Thousand Oaks
Atlanta	Chicago	Detroit	Hialeah	Lexington	Milwaukee	Overland Park	Riverside	Scottsdale	Tulsa
Aurora	Chula Vista	Durham	Honolulu	Lincoln	Minneapolis	Peoria	Rochester	Seattle	Virginia Beach
Austin	Cincinnati	El Paso	Houston	Long Beach	Nashville	Philadelphia	Sacramento	Shreveport	Wichita
Bakersfield	Cleveland	Fort Worth	Huntington Beach	Los Angeles	New Orleans	Phoenix	Salem	Springfield	Winston-Salem
Baltimore	Colorado Springs	Fresno	Irvine	Louisville	Newark	Pittsburgh	Salt Lake City	St. Louis	Worcester Mass
Birmingham	Columbus	Ft Lauderdale	Jacksonville	Lubbock	Norfolk	Plano	San Antonio	St. Paul	Yonkers

Figure 1: US Cities included in the study

The Inefficiency in Our Midst

All large organizations harbor inefficiencies. When IBM embarked on its transformation program in the early 1990s, the company eliminated \$6 billion in costs, primarily by simply being smarter about what we did and how we did it. IBM now orchestrates similar exercises on behalf of clients, and what we have learned is that no business operation is perfectly efficient. Just about any business process can be tweaked or adjusted in some manner to yield a cost saving. Mostly it's just a matter of looking for it.

However, once a process inefficiency is identified, fixing it is not a costless endeavor. Re-engineering business processes can be expensive and often require investments in technology, organizational redesign and change management. As a consequence, the biggest challenge for any organization is not necessarily in identifying inefficiencies, but in focusing attention on those inefficiencies where re-engineering investments are likely to yield the highest return.

In our experience, one of the best means for identifying “high yield” operations improvement opportunities is through benchmarking. The reason is quite simple: by comparing the operating performance metrics of a large sample of similarly situated organizations, there is a good chance that you can surface examples of highly efficient operating environments in specific service areas. At the very least, these examples can help management set their performance targets (“if Charlotte can deliver this service at this cost, we should be able to do so as well”). At best, these examples can provide a set of specific lessons that management can attempt to duplicate in their own city (“perhaps we can automate that process the way that Phoenix has”). If nothing else, benchmarking can force managers to take a hard look at their operations simply to explain why their resource deployment differs from their peers.

Our analysis of the spending and employment practices of the 100 American cities included in our study has yielded two major findings:

- The level of resources that cities dedicate to delivering basic municipal services varies enormously. In fact, per capita spending in certain services areas can differ by a factor of ten.



The Tao of Benchmarking

When Mayor Shirley Franklin first took office in 2002 in Atlanta, she managed to secure the pro bono services of a strategy consulting firm to deliver a series of planning projects. One of the first of these projects was a benchmarking study which compared Atlanta's spending profile to seven peer cities. Once the numbers were crunched, it turned out that Atlanta ranked next to last among these peer cities in terms of efficiency as measured by per capita spending.

Franklin established an operation within the Mayor's Office specifically dedicated to fixing this. One of the first places this team decided to look was in the city's court system, which an earlier review had suggested was rife with mismanagement. In 2003 a benchmarking study and organizational redesign of the court system was performed. In relatively short order, the study demonstrated rather convincingly that Atlanta was spending nearly 300% more on its court system than those of the best practice court systems in the country. Based on the re-organization and re-engineering plan subsequently developed and implemented, Atlanta reduced court spending from \$30 million to \$11 million over three years, reduced the number of sitting judges from 18 to 10, and shrank the total municipal court workforce from 249 to 114.

While savings opportunities of that degree are relatively rare, the interesting point is that few people within Atlanta city government at that time thought that the city was overspending on the courts. In fact, there were some council members and court administrators who were pressing for increases in funding.

Over the eight years of Mayor Franklin's term in office, she conducted over a dozen of these operational reviews. Ultimately the city reduced its headcount by 25% and eliminated \$120 million in spending. When the original benchmarking study was repeated in 2009, Atlanta had improved from seventh to second place among the eight cities included in the efficiency rankings. Atlanta ranks 13th in IBM's MICE rankings.

The lesson is that until you look and look hard, you don't really know what is being over-funded. As was the case with Atlanta's courts system, it is not always obvious. Benchmarking can be an indispensable tool for uncovering those opportunities.

- This broad variation in resource deployment does not seem to be driven by exogenous factors: spending does not generally correlate with population, per capita income, geographic size, labor conditions (union vs. non-union), or differences in workloads (e.g., park acreage).

This can lead to only one conclusion: in assessing the relative efficiency of resource allocation among municipal governments, management and policy choices are what matter. Cities spend what they spend because they choose to spend it. These choices come in two forms:

- *Cities make strategic choices.* Although cities are chartered to provide a variety of core municipal services (and are in some cases legally required to provide them), they generally have significant flexibility to determine the breadth and depth of those services. What specific services are provided to whom and at what level are all strategic choices that cities are largely free to make on their own. Those choices have significant cost implications.
- *Cities make operational choices.* Once a city decides which services it should deliver to which citizens at what level, management generally has broad discretion on how they will deliver those services. The choice of delivery model – the mix of capital and labor, the organizations and technologies deployed, and how they are sourced – is generally entirely discretionary to management. The quality of these choices will also have significant cost implications.

This is good news and bad news for those responsible for the management of cities. The good news is that the level of efficiency of your government is within your control and there is no shortage of examples from other cities where responsible (and re-electable) city governments have made different strategic and operational choices. The bad news is that the “usual suspects” that are often offered as excuses for failing to be more efficient – labor unions, operational environment, relative poverty – do not appear to be genuine obstacles to efficiency in local government service delivery.

The Study

The benchmarking study includes 100 of the largest cities in the United States² (see Figure 1). Collectively, these cities account for nearly \$51 billion in annual general government spending. To put that in perspective, municipalities in the United States spend approximately \$440 billion on core local government services³ each year. This means that these 100 cities constitute approximately 12% of total local government spending in the United States.

The cities represented in this study host 17% of the total population of the United States and 20% of the nation's total urban population⁴. These cities have diverse forms of government: 54% of these cities have strong mayor forms of government and 46% have city managers or hybrid governments where management duties are shared by the executive and legislative branch.

The \$51 billion in spending data collected in this analysis occurs within 52 independent budget line items. These line items “roll up” into four major categories: Public Safety, Public Infrastructure, Community Development, and Support Services (see Figure 2). Overall, 57% of the spending is dedicated to public safety. A further 18% is spent on public infrastructure and 11% is spent on community development services such as housing, economic development, and health and human services. Over 14% of spending is on overhead functions including finance, human resources and information technology.

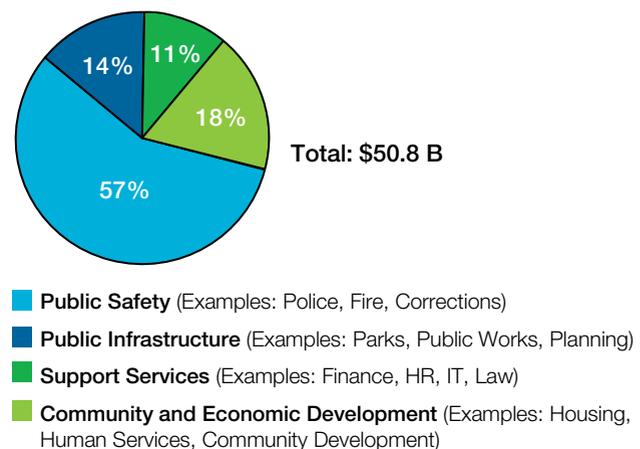


Figure 2: Spending by Functional Area for 100 Cities

For the purposes of the benchmarking analysis, a subset of spending line items have been extracted and included in the efficiency comparisons. The goal is to isolate a shared set of services to ensure that cities are being compared on an “apples to apples” basis. Of the 52 budget line items that were collected, 40 were included in the efficiency analysis. These 40 items constitute \$40 billion dollars in spending or 79% of total general government spending in these 100 cities. It is this spending upon which the efficiency rankings are based⁶.

To compare efficiency levels among cities, an index has been created called the MICE (Multivariate Index of City Efficiency). The MICE captures two key components of resource deployment: how much a city spends and how many people it employs to deliver a defined set of services. The MICE blends these two resource allocation decisions (weighted equally) into a single metric.

To account for the unique operational environments that cities encounter, city spending and employment data has been normalized on several dimensions – including population and

cost of living differences. This normalization effort minimizes the non-operational factors that might contribute to differences in resource allocation patterns. A more detailed explanation of the study’s methodology is included in Appendix A.

The average city in our sample spends \$705 per capita to provide core municipal services and employs 652 employees for every 100,000 citizens to deliver those services. The median city in the most efficient quintile spends \$500 per capita less than the median city in the least efficient quintile.

Efficiency varies to a considerable degree across cities (see Figure 3). The standard deviation within the efficiency distribution is \$178, which means that cities differ on their overall resource allocation choices by a factor of five. In some specific areas, the difference is even larger; spending on police services, for example, varies by a factor of 10. These are not minor differences. Without question, those who manage cities across the country are making very different choices about how they deploy resources to deliver a similar set of municipal services.

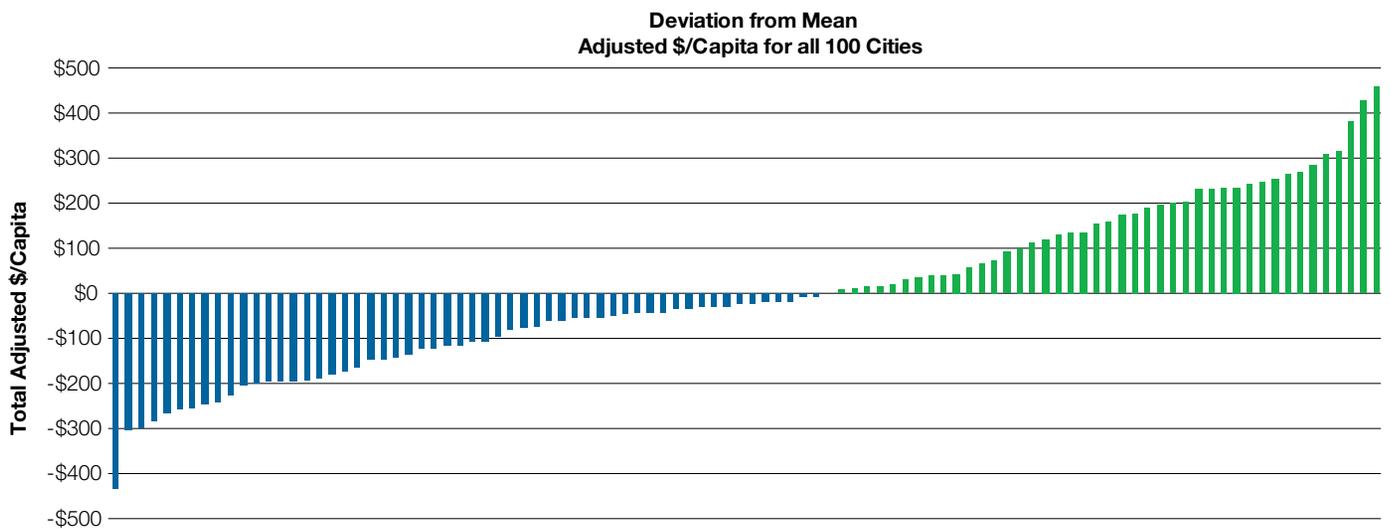


Figure 3: Variation in Spending Across Cities

What Drives Efficiency?

How can these large differences in resource utilization be explained? Observers of local government operations tend to entertain rather vague notions of what makes one city more efficiently run than another. The strength of public sector labor unions is often pointed to as an important factor in determining whether city managers can improve efficiency in operations. The “political environment” – code for the degree to which the legislative branch involves itself in management issues – is another factor that some use to explain relative performance.

Perhaps there are operational factors that come into play. Are city services subject to economies of scale? Some city services – such as public works and IT functions – have significant fixed costs associated with them; this might suggest that larger cities should be more efficient than smaller ones. What about geography? One could imagine that the costs to provide services to citizens who are widely distributed geographically would be higher than serving those living in close proximity.

Do demographic factors matter? Do cities with more prosperous residents choose to increase the breadth and quality of municipal services available to them, thereby increasing their costs? Or are wealthier cities in a better position to attract quality management which has the effect of lowering their costs?

Since one of the primary objectives of this study is to determine if any patterns could be detected among high efficiency performers and low efficiency performers, several of these potential “exogenous” drivers of efficiency have been tested.

What the analysis suggests is that efficiency does not correlate with any of these exogenous factors. As depicted in Figure 4, there appears to be no economies of scale at work: city population does not correlate with efficiency. Nor does the geographic size of the city appear to matter: there does not seem to be any advantage to having a smaller physical footprint in terms of the economics of service delivery. And the presence of labor unions with collective bargaining rights does not seem to matter; we can find no statistically significant difference in

the cost structures of cities with unions that collectively bargain and those that do not. In fact, none of the other exogenous factors that were tested can explain to a significant degree why efficiency varies among cities.

The lack of exogenous factors driving efficiency levels is a curious result. In a sample of this size, one would expect to find a set of variables that correlate with efficiency to some degree. Does scale really not matter? Can cities faced with unionized workforces really spend as little as those that are not subject to collective bargaining?

The analysis cannot fully answer those questions. What the analysis does suggest, however, is that if those factors do impact efficiency, their impact is being masked by a much more important factor. And that factor appears to be management.

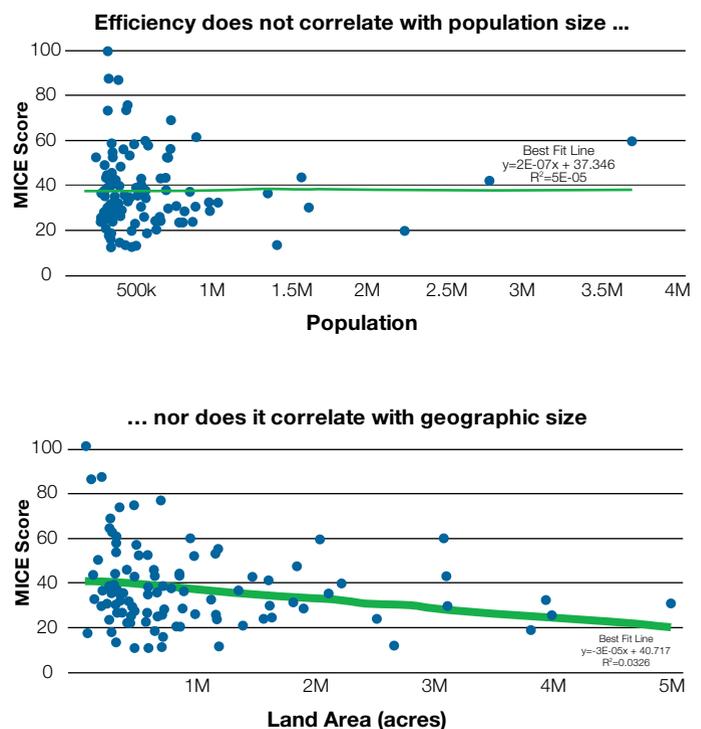


Figure 4: Drivers of Operational Efficiency

Management Matters (And It Matters A Lot)

Since none of the exogenous variables tested seem to account for differences in relative efficiency, it appears that endogenous ones must be operative. It is therefore hard not to conclude that the most important factor in determining the relative efficiency of a city is “management”. The term “management” is used to capture the two major types of impact that leaders can have on the efficiency of their governments:

1. Management makes strategic decisions about what services will be provided to which citizens and at what level of service they will be delivered.
2. Management makes operational decisions about the types of delivery models will be deployed to provide those services.

Management appears to be the key and the study provides some evidence for this. Cities with city manager forms of government are nearly 10% more efficient than cities with strong mayor forms of government. This finding appears to validate the assumption underlying city manager forms of government, notably that investing executive authority in professional management shielded from direct political interference should yield more efficiently managed cities. To put it another way, even if a city operates within conditions most favorable for efficiency – no collective bargaining, geographically compact, and peaking on all scale curves – management choices can still lead a city down the path to inefficiency. It is both a sobering and encouraging conclusion.

It is sobering because it places the spotlight on management. There is no place to hide. Yet it is encouraging because it means that managers are important. They influence outcomes.

So managers need to think hard about the strategic and operational decisions they make because those decisions are what drives the relative efficiency of their governments. The analysis cannot definitively specify which of these two management drivers – strategic or operational – is more important; however, there is some evidence in the study that can be useful in understanding the relative importance of strategic and operational choices.



Cutting Costs While Improving Service

With most cities almost solely pre-occupied with short-term budget cutting exercises, it is easy to forget that efficiency improvement efforts can in fact be thoughtful, deliberate exercises. Many cities have trained staff and adequate resources to identify, diagnose, and remedy inefficiencies in their operating divisions. Others will hire consultants to address specific areas. Unfortunately, financial crises tend to force the reliance on across-the-board cuts, hiring freezes, and other “slash and burn” tactics that rarely lead to sustainable efficiency improvements.

From IBM’s perspective, the use of benchmarking analysis such as that contained in this study can serve two purposes. First, it can place an individual city’s operations into a broader context. Why are we ranked where we are? Why can cities that look like me achieve similar outcomes at lower costs? What are we doing differently?

Secondly, it can provide aspirational targets. Just as Mayor Shirley Franklin compared her city to seven peer cities and launched a program specifically designed to improve her city’s relative efficiency ranking (see sidebar: The Tao of Benchmarking), other cities can do the same.

Once those goals are set, the key is to dedicate the staff and support resources that can focus on medium and long-term savings opportunities. In our experience, a four year program of designing and implementing an efficiency program is not an unreasonable timeframe; it may take longer to fully realize all the projected savings. Cost reduction programs that preserve (and improve) services will take time to execute.

And service levels can be improved. More effective use of technology, for example, often leads to cost reductions and improvements in service quality. Mobile field management technologies have been shown to increase the productivity of building inspectors by 20% while at the same time giving customers the ability to modify appointment schedules in real time. Automating citations have significantly reduced the time it takes for parking enforcement officers to issue tickets while at the same time reducing error rates in parking enforcement, leading to fewer customer complaints. The on-line submission of building plans expedite plan review and shorten the permitting cycle time, to the delight of developers.

Efficiency improvement programs should occupy a prominent and permanent position within city governments. They should be staffed with professionals and resourced appropriately. There is probably no better investment a city can make in its long term fiscal health.

Lost Labor's Love

Approximately 70% of municipal government expenses are labor related. If you add in post-retirement pension and health costs, the number approaches 80%. How labor is deployed and compensated is therefore the most important decision that managers make in constructing an efficient operating environment.

The study suggests that cities vary considerably in the intensity in which they deploy labor as an input in service delivery. On average, cities employ 652 employees per 100,000 residents. However, the average number of employees per 100,000 residents for the top quintile performing cities is 519 while the average for the bottom quintile performers is 983.

The use of labor – or, more accurately, labor “intensity” – is best understood in terms of how the quantity of labor employed relates to total spending. As depicted in Figure 5, cities that have relatively low spending per capita but high employment gravitate toward the top left quadrant of the chart. These are labor intensive cities that appear to retain large numbers of relatively low compensated employees. All things being equal, this is indicative of an operating environment that depends on manual, *labor-intensive* business processes. The leadership of such a city would be advised to seek out technology applications that could automate those business processes and improve overall labor productivity.

On the other hand, cities that gravitate toward to bottom right quadrant of Figure 5 have fewer employees but they appear to be more highly compensated. These are *labor-leveraged* cities. High labor costs may be driving their relative inefficiency, and those cities might be advised to seek out outsourcing opportunities in those areas that do not easily lend themselves to automation.

Cities in the top right quadrant of the chart are likely to be experiencing a combination of both of those labor issues. They would be well advised to deploy both strategies.

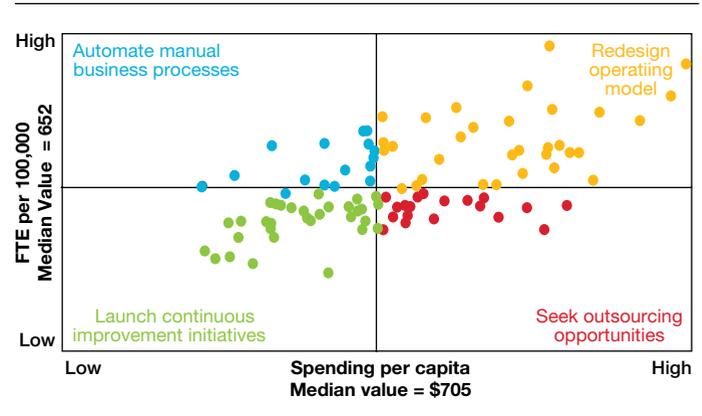


Figure 5: Cities Distributed by Spending and Employee Intensity

Deconstructing Budget Deficits

As mentioned earlier, local governments in the United States are collectively running a 12% structural budget deficit. This deficit is structural in the sense that even when revenues “recover” – that is, when the recession is over and the economy is expanding again – these deficits will not go away. The only means for eliminating these deficits is either to shift the revenue curve up – by say, increasing tax rates or adding new sources of revenue – or by shifting the cost curve down.

There are two ways to shift the cost curve down: eliminate services or become more efficient in the services that are delivered. Under the assumption that cities do not want to increase tax rates or add new taxes, the question becomes how hard will it be to close these structural deficits through cost reduction alone?

Assuming that the structural deficit ratio that applies to local governments nationally also applies to the 100 cities in our sample, these 100 cities together are running a collective \$2.3 billion budget deficit. Since the point of this study is to help cities identify areas where they should be looking for savings opportunities, let’s try to understand what level of performance improvement would be required to eliminate a deficit of this magnitude.

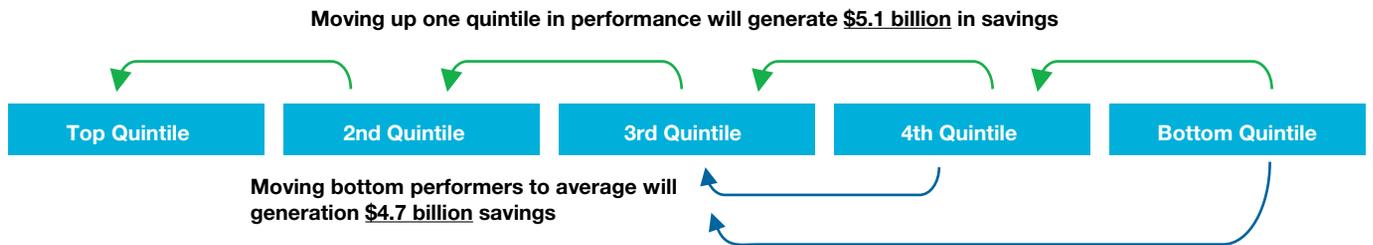


Figure 6: Cost Savings Opportunity Associated with Efficiency Improvements

Based on an analysis of the spending included in this study, if any given city moved up one quintile in the ranking, they would effectively eliminate on average 15% of their operating costs. In other words, cities do not necessarily need to aspire to move to “best practice” status in the rankings in order to achieve substantial savings. A more modest level of improvement can actually yield large expenditure reductions. If all of the cities in the bottom four quintiles simply moved up one quintile in performance (which would require a 15% improvement in efficiency on average), \$5.1 billion in total savings would be generated (see Figure 6). That is more than double of what is required to eliminate the collective \$2.3 billion deficit. If cities in the bottom two quintiles moved to the median level of performance, \$4.7 billion in savings would be realized. In other words, the 100 cities in our sample could run a collective operating surplus without any operating improvements in the top 60 performers. Clearly, the value that can be created through relatively modest improvements in efficiency is substantial.

How much effort would it take to make this level of improvement? One of the interesting findings of this analysis is that efficiency within a city can vary as widely as efficiency across cities. As you can see in Figure 7 the average standard deviation in efficiency within cities is nearly the same as the standard deviation across cities.

This is a very encouraging sign. What it suggests is that most cities already perform efficiently in certain areas. In other words, most organizations have “centers of excellence” that perform at a very high level while at the same time hosting operations that struggle to perform in an efficient manner.

Benchmarking can help management determine which of their operating entities fall in the former category and which fall in the latter.

For example, in Figure 8 (on page 12) the relative efficiency of a real (but unnamed) city in our sample is mapped. In Public Works, Parks & Recreation and IT, the city performs above average in our efficiency ratings. In Police, Fire, Law and Executive Offices, however, that same city performs well below average. Obviously, that city should focus its program of operations improvement in those areas. If it could simply move those operations to an average level of performance, it could yield \$92 million in savings, which is 20% of its total spending. In the case of this particular city, those savings alone would actually eliminate its structural operating deficit.

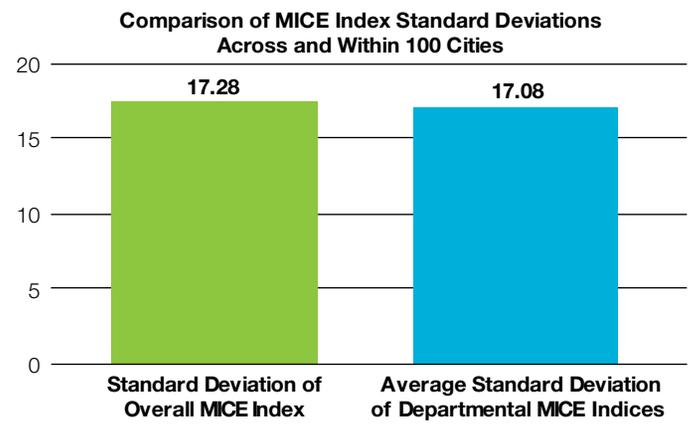


Figure 7: Standard Deviation of Efficiency Within Cities and Across Cities

To Spend or Not to Spend? And How Much?

How much should a city spend on fire fighting? Can a city spend too much on fire fighting? How would it know?

Most cities have a family of measures they rely upon to determine whether their fire departments are functioning effectively. Are the fire fighters trained properly? Are they well equipped? Do they avoid injuries? Is the community satisfied with their performance?

While these measures are important, there is a metric that overrides all others in determining the effectiveness of a fire fighting operation: can they respond quickly? More to the point, can they get the appropriate number of properly-equipped fire fighters to a Priority One fire within four minutes of a call being dispatched? If they cannot, they probably cannot get accredited.

This measure – response time – has a larger impact on the resourcing of fire fighting operations than any other consideration. In order to achieve the target response time standard, fire stations need to be distributed across the city and need to be staffed and equipped. As cities become denser and streets more congested, more fire stations are needed to meet the response goals. For any city growing in population or expanding geographically, the reliance on this measure ensures increased fire response expenditures.

But what if the number of fires is going down? What if the number of fires is actually plummeting? Does that have nothing to do with how much a city should spend on fire response operations?

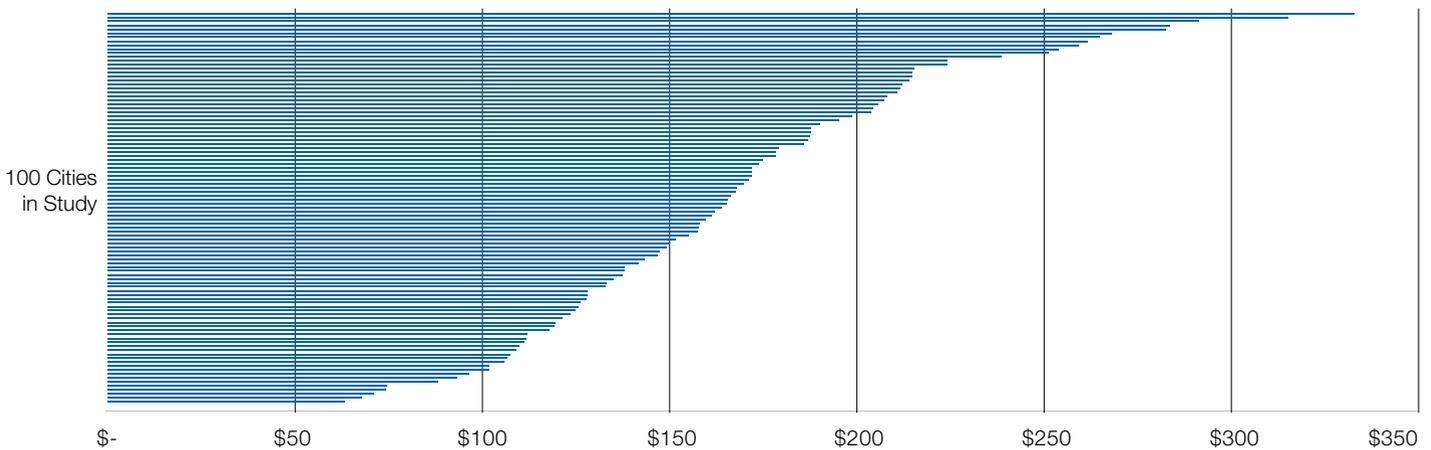
The fact is that by relying on response time as the metric that drives resource deployment, spending has been disconnected from outcomes. Consider this thought experiment: if city management knew for a fact that there would be only one fire in the city next year, but had no idea where it would be, how much should they spend on fire department operations? If they continued to rely on the response time standard, they would have no choice but to continue to fund fire operations at the same level as it did in the prior year in order to preserve its response time.

Most would agree that is an odd result.

But that is what cities do. The number of fires in the country has declined by 60% over the past two decades, but that decline has had no impact on the level of resources dedicated to fire departments.

In addition, city spending on fire operations varies enormously (see chart below). The City of Chula Vista in California spends \$63 per capita (adjusted) each year, while Cincinnati spends \$333. What operational factors could drive such disparate spending levels? Are cities that spend more significantly safer from fires than cities that spend less?

Spending on fire operations is just one example of why it is critical to revisit basic assumptions about what a city spends on the services it provides and why. Such an exercise might not change those choices, but at least it makes them explicit.



Variation in Fire Spending (adjusted \$ per capita spending on fire services)

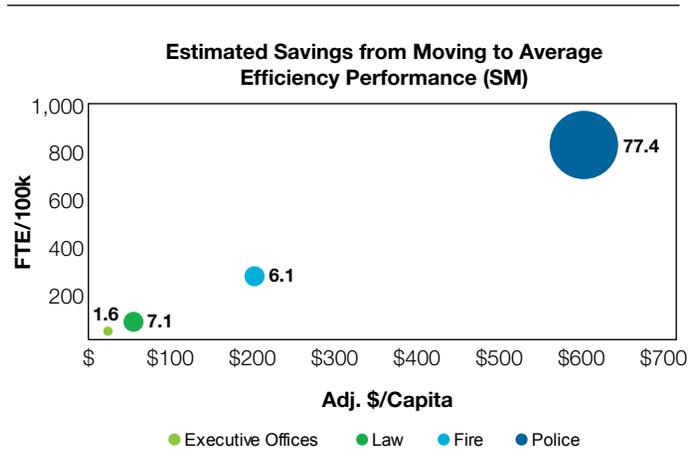


Figure 8: Estimating the Savings Opportunity for Unnamed City

The Path Forward

Like most studies of this type, more questions have been generated than answers. Benchmarking is a blunt instrument; it is more telescope than microscope. Benchmarking can find useful patterns and direct paths of inquiry; rarely does benchmarking specify a solution. In this case, the benchmarking analysis suggests a path forward. First, let's summarize the findings:

- Spending and employment levels varies widely among cities delivering a similar set of services;
- This variation in resource utilization cannot be explained by exogenous factors such as differences in scale, geographic coverage or labor market conditions;
- Management choices – particularly those related to strategic decisions dictating the scope and level of services delivered and operating decisions impacting the productivity of labor – appear to be the primary drivers of relative efficiency.

The challenge for city management is to quantify the difference between their operations and those cities that perform at a higher level of efficiency and determine how much of that difference can be attributed to differences in strategic choices and how much can be attributed to differences in operational choices.

For those differences that are attributable to strategic choices, cities need to revalidate those choices. If some cities can make different choices and justify them to their constituents, then that is powerful evidence that other cities can do so as well. In any case, turning an implicit choice into an explicit choice is a healthy exercise for any organization.

For those differences that are attributable to operating choices, cities need to develop targeted operational improvement initiatives to reduce or eliminate those differences. An efficiency program of this type might include business process redesign, re-organization efforts, automation through technology, or outsourcing initiatives. Our recommendation would be to centralize these efforts around a Chief Efficiency Officer or an equivalent position.

There is no perfectly efficient organization out there. As this study uncovered, within most local governments you will find a mix of highly efficient and highly inefficient operating units. The challenge is to figure out which is which. This, alas, is not always as easy as it seems. Our hope is that this benchmarking assessment can help cities ferret out the inefficiency that lurks within their organizations. While it is just one step, it is an important one.

Appendix - Of MICE and Methodology

In order to compare the relative efficiency of cities, a methodology is required that accounts for several practical challenges. These challenges include:

- **Defining efficiency.** What does it mean to be “efficient” and how do you measure it?
- **Accounting for differences in city missions.** Cities in the United States are generally chartered by states and are authorized to deliver a variable set of services. How do you create a benchmarking study that controls for those differences?
- **Accounting for local operating conditions.** Spending and employment across cities can be dependent on the amount of activity they are required to perform. Cities also face different cost environments (it costs 42 % more to employ a police officer in San Francisco than it does in Winston-Salem, NC). How do you account for these differences in operating environments?

Defining Efficiency

For the purposes of this study, one city is more efficient than another if it can deliver a comparable set of services using fewer resources.

In applying this definition of efficiency, the study acknowledges that resource deployment levels can vary based on both operational decisions and strategic decisions. Operational decisions are those that are typically associated with efficiency measures: how well is the work force trained and equipped, how well is technology deployed, are services sourced efficiently, etc.

For the purposes of this study, strategic decisions are also included. Although cities are generally chartered to provide a largely identical set of services, they have significant discretion to determine the breadth and depth of those services. For example, in “recreation services” cities make unique decisions about the segment of the population they choose to provide recreation services to, what those services are, and at what level

they provide them. City A might provide a wide variety of recreation services to seniors and youths of all socio-economic backgrounds while City B offers a narrow set of services to low income seniors only. For the purposes of this study, since City B spends less on recreation on a per capita basis than City A does, it will be considered more efficient.

It is important to remember that the point of this exercise is to help cities understand where they should be looking for savings opportunities. One place to look for savings are in areas where a city is providing services at a level beyond that which their peers are providing. Cities may be making conscious choices to deliver services to broader populations or at higher levels than other cities, but they should be aware of the costs they are incurring to do so. For that reason, no adjustments have been made to account for the differences in strategic choices that cities make.

The study employs two proxies to capture this admittedly broad measure of efficiency: spending per capita and employment per capita. In other words, the study assumes that the amount of money cities spend and the number of employees they deploy to deliver a comparable set of services – on a per capita basis - is indicative of their relative level of efficiency.

To measure efficiency among cities, IBM has created the Multivariate Index of City Efficiency (MICE). The MICE combines the two major measures of efficiency – spending per capita and employment per capita – into a single metric that gives equal weight to each measure. The resulting score is then applied to a scale that applies the rating of “1” to the most efficient city in the sample and a rating of “100” to the least efficient city in the sample. The remaining 98 cities are then arrayed on the scale based on how their MICE score compares to the other cities in the sample.

Accounting For Differences in City Missions

American cities come in a variety of flavors. Our country's federalized governing structure means that cities are generally incorporated by state legislatures and those legislatures have significant discretion to determine what activities cities are authorized to perform. Some cities run zoos and museums while others run libraries and senior centers. Some manage school systems while others operate airports. For benchmarking purposes, it is critical that these differences in service missions be accounted for.

Cities also vary in terms of their governance structures. Some cities – such as Louisville – are combined city and county governments sitting on the same geographic footprint. Others - like Charlotte-Mecklenburg County - are consolidated in some areas and not in others, with the city serving one geography and the county serving another. Some cities provide a set of municipal services locally and some regionally: Las Vegas looks like a city in every way except that its police department serves the entire Las Vegas metropolitan region.

The challenge for this study has been to identify these differences among cities and to minimize - to the extent possible – the impact they might have when comparing their operating economics. This has been accomplished in two ways:

1. Efficiency comparisons are based on core local government services only⁵. Since there is some variation in the services that cities are chartered to provide, it is important to exclude those that are not (more or less) universally shared. Of the 58 spending categories surveyed, 40 were included in the efficiency index. These categories constitute 79% of the total spending captured in the study.
2. Budget data is analyzed using the appropriate baseline metrics. In Las Vegas, for example, the city's per capita spending on police services is calculated based on the population of the metro region that the department serves. The city population is employed for the balance of the city's services.

While not perfect, the methodology effectively eliminates any material impacts variations in governance structures might have on the study's results.

Accounting For Local Operating Conditions

Each city faces a unique operating environment. Some cities are larger than other cities. Some cities have more crime than other cities. Some have more parks. Some cities have broader missions than others. Some are simply more expensive. To compensate for these differences, the study applies a normalization process. Three major normalization factors have been employed:

1. Spending and employment data is compared on a per capita basis. Ultimately, local governments are chartered to deliver a set of core services to their constituents. The level of resources they deploy to deliver those services on a per person basis is the most compelling means for comparing efficiency.
2. Spending and employment on police services has been normalized by crime rate. The rationale is that cities with higher crime rates are likely to dedicate more resources to police services (which is in fact the case).
3. All spending data has been weighted using the Council of Community and Economic Research's ACCRA Cost of Living Index. Cost of living varies considerably across the country and cities compete, by and large, in local and not national labor markets.

Additional normalization is possible, and in fact additional factors were tested for possible inclusion. For example, it was hypothesized that parks maintenance spending might correlate with parks acreage under management and that fire response spending would correlate with geographic coverage. However, no correlation between spending and these factors could be found, so those factors were not included in the normalization process. While additional normalization is likely possible, it appears that further efforts in this regard will yield rapidly diminishing returns and will not materially impact the results.

Data Sources

The analysis relies on authorized spending and employment data as portrayed in the most recently enacted budgets of these cities (primarily fiscal year 2010 or 2011). The spending and employment data from each city has been distributed across the spending categories. Since cities do not conform to a uniform organizational and budgeting structure, spending was allocated to these categories on a “best efforts” basis. While in some instances this is a challenging exercise (several cities have been eliminated from the study because their budget structures were too non-conforming), the vast majority of the spending was allocated with little difficulty.

IBM and Smarter Government

Government plays an increasingly central role in our economic lives. In the United States, government will be responsible for more than 4 out of every 10 dollars spent within our economy in 2010. Perhaps even more importantly, large sections of the private economy – health care, financial services, communications, and energy to name just a few – are more closely integrated with government than ever before. Traditional lines between the private and public sectors are becoming less distinct, and the overall performance of our economy is now dependent on improved cooperation and alignment between private companies and government. Getting government right – that is, making sure that it operates in a highly efficient and effective manner – has never been more important.

In recognition of the fact that the performance of government is the public’s collective responsibility, IBM has launched its Smarter Government program. Our goal is help governments inject intelligence into their decision support processes, business operations and public infrastructure to improve performance and deliver better public outcomes. Governments need to maximize the public value they generate through every dollar they spend. We think we can help.

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About the Author

David Edwards leads the Smarter Government Campaign for IBM's Public Sector Strategy and Innovation Practice. He served for eight years as the chief policy advisor to Atlanta Mayor Shirley Franklin.



Acknowledgments

Many colleagues contributed to the analysis, findings and recommendations in this paper. I am grateful for their expertise and their partnership. They include:

Brandon Bienvenu

Chris Cafiero

Emily Garrahan

Allan Guyet

Alan Howze

Andrea Jackman

Alison Pine

Daniel Prieto

Tack Richardson

Ashley Wills

Footnotes

- 1 Condition of State and Local Finances, March 2010 Update, Government Accountability Office
- 2 Some cities were excluded either due to their unique organizational structures or to a lack of publically available data. Excluded cities include New York City, Dallas, Washington DC, Indianapolis, Buffalo, and Tucson.
- 3 Excludes public education, enterprise services such as water utilities and airports, and non-distributed costs such as debt service, capital outlays, workers compensation and unemployment insurance contributions.
- 4 Based on CIA World Factbook (2008) urbanization data.
- 5 In some rare cases we included budget information from an associated local government agency that provides one of these core services outside of the city government. The Chicago Parks District is one example.
- 6 Spending areas included in the study: police, fire, parks, public works, planning & building, executive offices, human resources, law, information technology and finance.



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May 2011
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Please Recycle

by James H. Svara and Kimberly L. Nelson

Taking Stock of the Council-Manager Form at 100

In 1908, a single city adopted what would eventually become the council-manager form of government. In 2008, more than 3,500 cities with populations exceeding 2,500 persons and more than 370 counties use the form. Beyond the direct effect of introducing a new structural option for the organization of local government, this new form also elevated the option of appointing a centrally located generalist administrator in other forms of government. Almost half of mayor-council governments and more than half of the commission and town meeting governments have a chief administrative officer (CAO) or city administrator, and such a position is often found in elected county executive governments as well.

With the hundredth anniversary of the establishment of the city manager position in Staunton, Virginia, which ultimately led to the council-manager form of government, it is appropriate to take stock of what the form means, its current status in local government, and its continuing significance. Some suggest that the time of substantial growth is over (and reversals may be coming) and that changes in structure and politics make the council-manager and mayor-council forms indistinguishable.

Furthermore, there are signs of unease among local government managers about the future of professionalism. The arguments presented here are that form continues to make a difference and the use of the council-manager form is still growing. Despite challenges that the council-manager form and professionalism generally face in local government, the future is bright.

There has been much emphasis recently on the supposed “blurring” of distinctions between forms, “adaptation” of forms, and development of “hybrid” forms. The impression is created that the changes that are occurring in the structures of local governments have erased the distinctiveness of form.

Most notably, H. George Frederickson, Gary A. Johnson, and Curtis H. Wood argued in 2004 that a breakdown of two contrasting models of local government based on “traditional” and “reform” elements had by the 1990s altered forms of government: “the fusion of these two *models* had resulted in the dominant modern *form* of American local government, the adapted city.”¹ These impressions affect how practitioners themselves perceive what is happening to their world.

The environmental scan developed for the ICMA Strategic Planning Committee, for example, concluded that “numerous studies suggest that the council-manager form of government has been adapted continually.” Commentator Alan Ehrenhalt has argued that mayor-council and council-manager forms are “merging,” and he asserts that an increasing number of cities “have jumbled the systems together so thoroughly that it’s impossible to put them in any category at all.”²

All these statements confuse “form” and “plan” or “model.” The original reform *model* consisted of the council-manager form and the electoral practices of choosing the mayor within the council, selecting councilmembers at-large, and using a nonpartisan ballot. This combination was contained in the second Model City Charter and also was commonly referred to as the council-manager plan. Changes in electoral practices are important, but they do not alter the form of government itself.

The council-manager form can be and is combined with a wide range of structural features. Beyond direct election of the mayor and district representation, most counties includ-

ing those with the council-manager form use partisan elections, and cities in Europe that use parliamentary systems that approximate the council-manager form usually have active political parties.

The form can create a balanced relationship between politics and professionalism regardless of how the political dimension is organized. The image of instability and corrosive change in the council-manager form is not warranted. The idea that forms themselves are unimportant or indistinguishable can be challenged on conceptual and empirical grounds.

The debate over form of govern-

There are signs of unease among local government managers about the future of professionalism. The arguments presented here are that form continues to make a difference and the use of the council-manager form is still growing.

ment continues because American local governments have a choice of which form they will use. The United States is unusual among countries in the world with widespread use of two major forms of government based on different constitutional principles. The overwhelming majority of cities do not change their form, but circumstances can arise in any local government that puts the question of changing form on the public agenda.

The council-manager form is still competing with the mayor-council or county executive form for the support of elected officials and citizens (and

vice versa). Advocacy of the council-manager form is no longer a crusade to reform corrupt and incompetent governments. Most cities and counties are highly professionalized at the departmental level. Many cities with mayor-council governments have CAOs.

Proponents make the case that distinct advantages can be attained with the council-manager form because of the essential features of this form compared with the mayor-council form. To understand the claims that can be made in support of the council-manager form, it is important to review the essential features of the major forms as practiced in the United States and other countries.

FEATURES THAT DIFFERENTIATE FORMS

There are three major features that differentiate the mayor-council and council-manager forms of government, and all three can be traced back to the origins of the form. Analogous to the distinction between presidential and parliamentary systems, the first feature is the allocation of authority.

The council-manager form places all governmental authority in the hands of the council, with certain functions assigned by law, charter, or convention to the manager appointed by the council. Authority is unified in the collective leadership body of the council. To the early reformers citing the practice of English local government, eliminating separation of powers and strengthening the council was as important to the council-manager form as the creation of the manager’s position.³

The relationship between the council and the manager is based on this allocation of authority. Despite all the words that have been written and spoken about the *separation* of politics and policy from the administration, the unique feature of the council-manager form is the *interaction* of councilmembers and administrators in both policy and administration. As intended by drafters of the model city charter in 1915, the form ensures

that a professional perspective will be presented to the council by the manager on all policy decisions and that council oversight can be directed to any administrative action.

With separation of powers, the mayor can limit the policy advice given to the council and can shield staff from council oversight.⁴ In the mayor-council form, mayors can also have a substantial impact on the amount and quality of professional advice they receive and share with the council and on the level of professionalism that is present in the administrative organization. In contrast with the council-manager form in which the council has authority over the manager, the mayor in the mayor-council form is a separate and independent executive.

The second feature that differentiates forms is how executive responsibilities are assigned to an elected or appointed administrator. In the council-manager form, executive functions are the responsibility of the city or county manager even if some functions on occasion are shared with other officials. In parliamentary-style local governments in northern Europe, the mayor or other top political figure commonly shares executive authority with the top administrator, but this administrator is still the chief executive officer.

In the mayor-council form, executive responsibilities are exercised under the authority of the mayor. A central coordinating administrative position can be created—a CAO—but in contrast with the clear delegation of executive authority to the city manager, the assignments to the CAO may be determined by the will of the executive mayor.⁵ In contrast, the council-manager form ensures the linkage of executive responsibilities with a professional top administrator.

When a top administrator is present in the local government form, the third distinguishing feature is whether the administrator is responsible to the entire council or to the mayor. Responsibility to the entire council is an essential characteristic of the council-manager form and helps to

ensure both transparency and a focus on the public interest rather than the political interests of a single elected official.

Along with its endorsement of the council-manager form, since 1969 ICMA has also supported CAOs and other generalist administrators in mayor-council cities or elected executive governments in counties. The presence of a CAO does not create a hybrid form in the sense of altering the basic features of the governmental structure. CAOs are universal in the cities of European countries that use the strong-mayor form—France, Italy, Spain, Portugal, and Germany—and in English cities that elect executive mayors.

Executive authority is still divided from legislative authority and assigned to a mayor who may in turn delegate assignments to the CAO. Most CAOs appointed by the mayor consider themselves to be agents of the mayor. Council confirmation of the CAO adds accountability to the council as well as to the mayor and helps make the CAO a bridge between the mayor and council but does not change the essential features of the form.

A possible hybrid can be found when the council is solely responsible for appointing the CAO—the situation in about one mayor-council city in four that has a population greater than 10,000 and in a higher proportion of smaller cities. The conditions of unified authority and responsibility of the CAO to the council can be found when the CAO is appointed by the council.

The presence of an elected mayor in the council-manager form does not create a hybrid so long as most executive responsibilities are assigned to the manager and the manager is responsible to the council as a whole. In a small number of council-manager cities—approximately 20 American cities with populations greater than 10,000—the mayor has been formally “empowered” with a greater role in developing the budget and selecting the manager and, in a few cases, removing the manager.

In Long Beach, California, for ex-

ample, the mayor can veto the council's selection or removal of the manager; and in Cincinnati, Ohio, and Columbus, Georgia, only the mayor can initiate removal of the city manager. These practices may represent a hybrid because the manager is aligned with the mayor alone for continuation in office.

When only the mayor can initiate termination of the manager, it is possible that the manager will seek to serve the mayor rather than the entire council and, therefore, be more a CAO than a city manager. Although this specific practice is still extremely rare, observers should continue to monitor its impact.

In sum, the essential differentiating characteristics of the major forms of government in the United States continue to depend on how authority is allocated between the council and the executive, the assignment of executive functions, and the reporting relationship of the top administrator. The cities and counties that fall within one form of government or the other may demonstrate extensive variation in specific formal and informal practices but share the basic defining characteristics.

STATUS: USE OF COUNCIL-MANAGER FORM AND CAOS

The use of the council-manager form has expanded dramatically and continuously throughout its history. Some suggest that the dramatic growth is over, and there has been a widespread impression that the form is losing ground in large cities. Even when examining changes since 1990, however, it is obvious that use of the council-manager form has increased. Overall percentages of cities using the major forms and other forms of government are presented in Figure 1.

There continues to be extensive growth, with a 45 percent increase in the number of council-manager cities. In cities under 10,000 population, there has been a large-scale decline in the use of the mayor-council form and a corresponding increase in council-manager cities, suggesting that many

Figure 1. Use of Major Forms of Government and Change, 1990–2007.

All U.S. cities over 2,500 in population	1990	2007	Change		
	% (number)	% (number)	% (number)	Cities smaller than 10,000	Cities larger than 10,000
Mayor-council	54.5% (3,645)	43.5% (3,131)	-14.1% (-514)	-515	1
Council-manager	36.2% (2,420)	48.9% (3,520)	45.5% (1,100)	574	526
Other	9.2% (617)	7.5% (543)	-12.0% (-74)	-47	-27
Total	100.0% (6,682)	100.0% (7,194)	7.7% (512)		

Source: *The Municipal Year Book 1991 and 2008*. The number of cities under 10,000 was 3,914 in 1990 and 3,926 in 2007. The number of cities over 10,000 was 2,768 in 1990 and 3,268 in 2007.

cities are converting their forms. In cities over this population size, the number of council-manager cities has also increased substantially along with stability in the number of mayor-council cities.

The expansion has occurred in cities of all sizes. Council-manager governments represented a slightly larger share in all but one of nine city size categories in 2007 compared with 1990, as indicated in Figure 2. An absolute majority of cities between 10,000 and 250,000 in population use the council-manager form, council-manager cities have a plurality over mayor-council and other forms in cities between 5,000 and 9,999, and the two forms are almost evenly divided in the cities between 250,000 and 500,000 in population.

The mayor-council form has a higher share of the cities with fewer than 5,000 and more than 500,000 inhabitants, although the number of council-manager cities is growing in these cities as well.

Since 1990, the council-manager form has been replaced with the mayor-council form in nine cities with populations of more than 100,000: Fresno, California; Hartford, Connecticut; Miami, Florida; Oakland, California; Richmond, Virginia; St. Petersburg, Florida; San Diego, California; Spokane, Washington; and

Toledo, Ohio. The council-manager form replaced the mayor-council form in Cedar Rapids, Iowa; El Paso, Texas; and Topeka, Kansas.

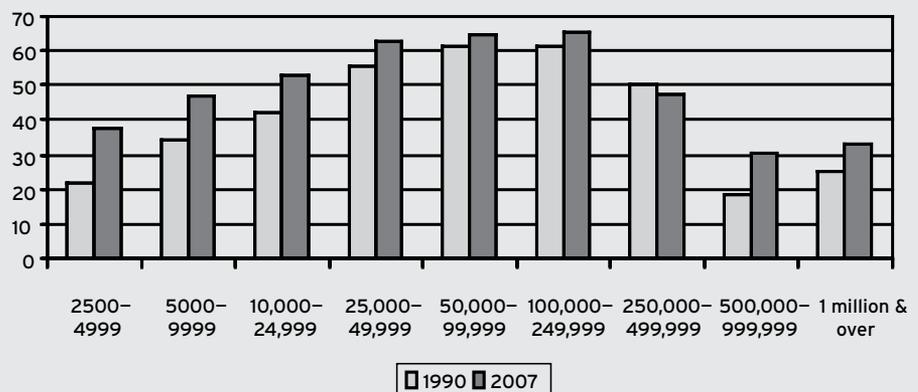
Abandonment of the council-manager form was rejected during this period in nine cities. With these cross-currents of change, there is no clear trend in the use of form in large cities. The council-manager form is used in 55 percent of these cities, and with expected demographic changes there will be more cities over 100,000 population and more of them will use the council-manager form in the future.

To get an accurate measurement of the use of CAOs in mayor-council cities, we have combined the responses

to surveys with other data sources. When all mayor-council cities over 10,000 population are examined, it can be seen that 48 percent have a CAO.⁶ About half of these CAOs are appointed by the mayor with the approval of the council, one-quarter are appointed by the mayor alone, and one-quarter are appointed by the council and in many respects are the functional equivalent of city managers, as noted previously.

In addition, 597 of the mayor-council cities under 10,000 population in the 2001 Form of Government survey have a CAO. Overall, the use of CAOs has probably increased since 1990.

Figure 2. Percentage of Cities Using the Council-Manager Form by Population Category, 1990 and 2007.



The First City Manager

(Excerpt from *The Origin of the City Manager Plan* in Staunton, Virginia, 1954)

The City Council, on April 2, 1908, elected Charles E. Ashburner of Richmond as the first general manager of Staunton.⁴⁰ There had been many applicants for the position, the majority being local men. The City Council deserves credit for conscientiously seeking, and finally selecting, the best qualified applicant and establishing the precedent of selecting an out-of-town man for the job.

The Council's selection of the new manager augured well for the success of the new form of government. Charles Ashburner, the son of a British army officer, was born in Bombay, India, in 1870. He was educated in England, France, and Germany, and received his engineering degree from the University of Heidelberg. After arriving in the United States, he had wide engineering experience in diversified positions in Virginia.⁴²

Ashburner was no stranger to Staunton, as he had been the maintenance engineer for the Staunton division of the Chesapeake and Ohio Railroad several years before. At that time, the Council was receiving bids to repair a washout that had resulted from a leaky dam. The lowest bid from local contractors to repair the damage was \$4,000 and some of the councilmen, particularly W. O. Sydnor, considered the bid too high. Sydnor, the railroad's local agent, consulted with Ashburner who advised him that the job could be done for \$737. The Council took his advice and the repairs were actually accomplished for \$725.⁴³

The first city manager was an aggressive, capable person who was essentially a builder and a promoter. [In *The City Manager*], Leonard D. White has painted a vivid description of Ashburner [as]

“... an inexhaustible human dynamo, forever driving ahead with constant acceleration, never content with the achievements of the past. . . . Surcharged with energy as he is, Ashburner never creates an impression other than that of complete sincerity. His loyalty to his city, to his profession, and to his own high standards of personal conduct is carried to the last degree. . . .”

This picture of Ashburner, as a man of action and impatient of detail, is confirmed by Samuel D. Holsinger who served as Ashburner's clerk and later succeeded him as general manager in 1911.⁴⁵ While Ashburner concerned himself with the primary task of building streets, bridges, and sewers, he left the office work and the details of administrative management to his clerk who actually served as his administrative assistant.

Mr. Ashburner remained in Staunton for three years, from 1908 to 1911, and went on to serve as city manager of Springfield, Ohio; Norfolk, Virginia; and Stockton, California. The value of his services is indicated from the growth of his salary from \$2,500 while at Staunton to the \$20,000 annual salary which he received at Stockton. Ashburner was chosen as the first president of the City Managers' Association in 1914.⁴⁶ This honor probably stemmed from a recognition of his services as the first city manager. Staunton was indeed fortunate to have selected, both as its first city manager, and as the first to represent a new profession, a man whose educational background, experience, and character have seldom been surpassed by later managers.

Note: Original footnote numbers were retained in this excerpt.

SIGNIFICANCE OF FORM

City and county managers have always made a contribution to the administrative competency and standards for service delivery, on the one hand, and to the policy direction of their governments, on the other. During the past century, managers have advised elected officials on the issues that are challenging their communities—from expanding the services provided by the local government in early decades to promoting sustainability by managing growth, preserving resources, and advancing social equity at the present.

A variety of studies document that form of government makes a difference in process and performance. As is normally the case in social science research, the differences are not black and white, but there are tendencies that are related statistically to form of government.

Mayors in council-manager cities are more likely to be facilitative leaders and enhance the performance of all officials, although these mayors are less likely to be visionaries and policy initiators. Councils perform better at handling their governance responsibilities—setting goals and priorities and overseeing administrative performance. City managers are more capable than executive mayors at providing professional advice to elected officials and supporting the council's policy making and oversight. There is a greater degree of cooperation and less conflict among officials.

Studies show that when council-manager cities are compared with mayor-council cities the council-manager cities are more likely to have greater efficiency, sounder finances, and stronger management performance. They have greater representation of minority groups in staff positions. Council-manager cities are more likely to pursue long-term goals, use strategic planning, base service delivery on need and other professional standards, have ethics codes and boards, integrate management functions, and adopt innovative management practices.⁷

In these comparative studies, there



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is usually no distinction between mayor-council cities with and without a CAO. It seems likely that the mayor-council cities with CAOs will occupy an intermediate position between council-manager cities and mayor-council cities without a CAO.⁸ Comparing the perceptions of persons who have served as both CAOs and city managers, scholar David Ammons concludes that “professionalism tends to be advanced by the appointment of a city administrator and advanced even further by the appointment of a city manager.”⁹

CONCLUSION

The council-manager form is growing and continually incorporating new practices to strengthen democratic leadership, citizen involvement, and administrative effectiveness. When the basic principles that define the council-manager form are used as points of reference, it is evident that the form has demonstrated flexibility while it has preserved its basic characteristics.

The council-manager form and other forms based on parliamentary principles operate with various combinations of electoral features and differing degrees of shared executive authority with the mayor. Still, they incorporate the essential features of unified authority, assignment of executive responsibilities to the professional top administrator, and accountability of the administrator to the entire council. At the same time, the use of a chief administrative position is slowly expanding in local governments that use elected executive forms of government although the United States lags behind European countries in which such a position is universal.

The external forces working on all local governments are the same—increased media pressure, fracturing of interest groups, and a decline in social capital that ties groups to each other and to the community. Furthermore, the changes in the orientation of elected officials—more assertive mayors and more activist and constituency-oriented councilmembers—are similar in all governments.

All local governments need the

Capture Professional Management History: Be Part of ICMA’s Legacy Celebration

During the four ICMA Regional Summits held in March and April 2008, ICMA Executive Director Bob O’Neill encouraged attendees to participate in a special project to document the history and value of the management profession, the council-manager form of government, and ICMA.

ICMA’s 100th Anniversary Legacy Celebration kicks off this year at the 2008 annual conference in Richmond, Virginia, with a series of activities commemorating the city of Staunton, Virginia. Staunton is celebrating its 100th anniversary as the first community to establish the position of city manager this year. ICMA will recognize its 100th anniversary in 2014.

But the celebration doesn’t stop with just those communities that will have amassed 100 years of professional management by 2014. ICMA is encouraging all state and affiliate associations to help capture the history of professional management by collecting stories as told by the people who made it happen! To join in this effort, ICMA asks that you:

1. Identify those individuals in your state (early managers, academics, or elected officials involved in the creation of charters) who played a major role in creating or furthering professional management, or who knew or worked for those who helped create the profession. Who, for example, are the “local government heroes” in your state or region?

2. Conduct video interviews with these individuals—interviews that are similar to the one Bob O’Neill conducted with former Federal Reserve Chairman Paul Volcker, whose father was the first city manager in Teaneck, New Jersey. You can view an abbreviated version of that interview online at icmatv.com; click on “Bob O’Neill Chats with Paul Volcker” under the Latest News section on the left side. To watch the longer 13-minute version, go to <http://video.google.com> and enter “Bob O’Neill interviews Paul Volcker” in the search box.

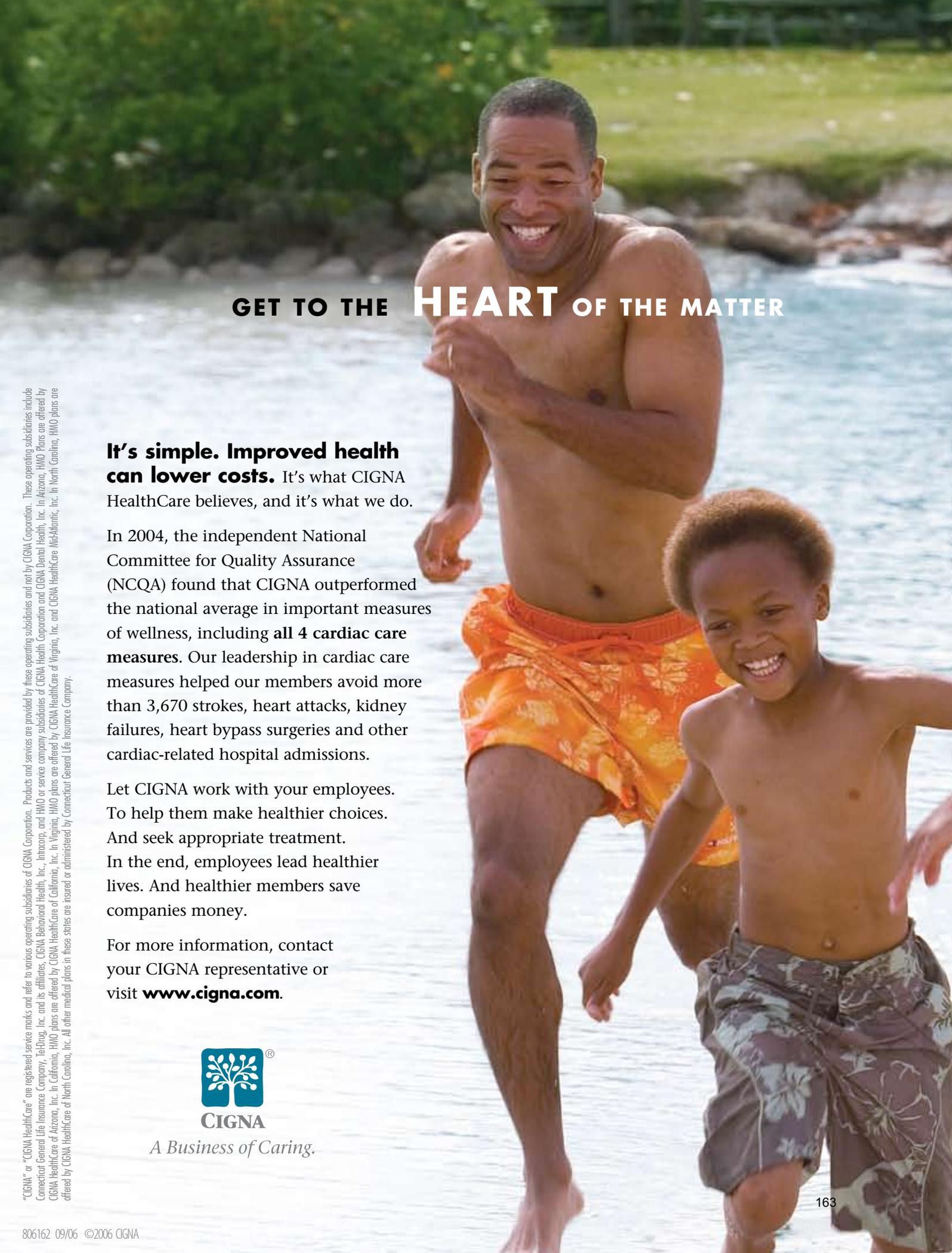
A list of suggested interview questions is available at <http://icma.org/interview> questions. To link together our past, present, and future, we recommend that you consider having a young professional conduct the interview.

3. Submit a copy of your video interview to ICMA for use on icma.org, ICMA tv, and in a larger commemorative video that will be featured at the 2014 annual conference in Charlotte/Mecklenburg County, North Carolina.

Set aside some time at your next state or affiliate association meeting to develop a plan for participating in this important (and fun!) historical project! More information concerning ICMA’s Legacy Celebration is available at icma.org. In the meantime, contact Michele Frisby at mfrisby@icma.org or 202/962-3658 if you have questions or want to express interest in participating in the project.

same qualities—leadership, responsiveness, and administrative effectiveness—as Ehrenhalt has argued. How localities achieve and sustain these qualities is likely to be shaped by their structural features and the principles on which they are based.

The council-manager form does not automatically produce good government without the appropriate contributions by elected and administrative officials. If, however, one is choosing the form of government most likely to produce sound, long-

A photograph of a man and a young boy running on a beach. The man is in the foreground, shirtless, wearing orange patterned shorts, and is smiling broadly. The boy is running alongside him, also smiling. The background shows the ocean and some rocks.

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term governance; effective implementation and service delivery; capable management; and transparent, ethically grounded, and citizen-oriented processes, the council-manager form is the preferred choice based on its essential structural features.

The experiment of 1908 continues to offer a distinct constitutional option in American local government. **PM**

NOTES

¹H. George Frederickson, Gary A. Johnson, and Curtis H. Wood, *The Adapted City: Institutional Dynamics and Structural Change* (Armonk, N.Y.: M. E. Sharpe, 2004), 7. (Italics added.)

²Alan Ehrenhalt, "The Mayor-Manager Merger," *Governing*, October, 2006, www.governing.com/articles/10assess.htm.

³James H. Svara, "The Structural Reform Impulse in Local Government," *National Civic Review* 83 (Summer-Fall 1994), 323–347.

⁴In a 2001 council survey, roughly three councilmembers in five gave the mayor-council mayors only satisfactory

or poor ratings for providing information about policy options and supporting the council's oversight function. James H. Svara, *Two Decades of Continuity and Change in American City Councils* (Washington: National League of Cities, 2003)

⁵Among CAOs, the scope of responsibilities and ability to professionalize administration varies with the method of the CAO's appointment. 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), 19–33.

⁶A complete count of cities has been achieved for cities over 10,000 in population by using the 2001 ICMA survey results as a base, adding the National League of Cities database, and checking with other cities that are missing from the databases. Because cities with CAOs are more likely to respond to surveys, the apparent percentage of cities with CAOs in the results of the form of government surveys is inflated.

⁷James Keene, John Nalbandian, Robert O'Neill, Jr., Shannon Portillo, and James

H. Svara, "How Professionals Can Add Value to Their Communities and Organizations," *PM*, March 2007, 32–39.

⁸Karl Nollenberger ("Cooperation and Conflict in Governmental Decision Making in Mid-Sized U.S. Cities," in *The Municipal Yearbook 2008* (Washington, D.C.: International City/County Management Association, 2008) finds intermediate levels of cooperation and conflict in mayor-council cities with CAOs compared with council-manager and mayor-council cities.

⁹David N. Ammons, "City Manager and City Administrator Role Similarities and Differences: Perceptions Among Persons Who Have Served as Both," *The American Review of Public Administration* 38 (2008), 39.

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Bob O'Neill Captures History of Professional Management With Former Fed Chairman Paul Volcker

As part of ICMA's 100th Anniversary Legacy Celebration, ICMA Executive Director Bob O'Neill sat down with Paul Volcker, 12th chairman of the U.S. Federal Reserve, to capture Volcker's recollections about his boyhood, which included growing up with a father who served as the first town manager of Teaneck, New Jersey.

According to Wikipedia:

"Rapid growth led to financial turmoil and inefficiencies in the town government resulted in the adoption of a new, nonpartisan council-manager form of government under the 1923 Municipal Manager Law in a referendum on September 16, 1930. A full-time town manager, Paul A. Volcker, Sr. . . . was appointed to handle Teaneck's day-to-day business affairs. Volcker's 20-year term, from 1930 to 1950, provided Teaneck with economic stability, zoning and long-term development plans, a paid fire department, and civil service for township employees. It also established a model for future administrations."

Here is a transcript of the abbreviated interview between O'Neill and Volcker. To watch the three-minute interview online, visit www.icmatv.com and click on "Bob O'Neill Chats with Paul Volcker" under the Latest News section of the site.

O'Neill: Thank you for agreeing to talk with us today. I want to test your memory here, and I want you to reflect on both your childhood but more importantly, your father's contribution to the work that we do in public service. . . .

Volcker: I will do that with great pleasure. I hope I remember more or less accurately.

O'Neill: One of the real values that city managers have brought and that was illustrated by the work your father did was . . . of bringing this sort of ethical principles, this focus on performance and service to the community. Could you talk a little bit about that from your experience with your dad?

Volcker: Well, it was very clear to me as a child, as a young man. . . . that my father had great pride in being a city manager; there was no question about that, this was part of the family. And, he was an early city manager, and he was not politically involved. He became clearly a leading citizen of the community as time passed. It was rather con-

troversial, I think, in the early days but as time passed, the town was doing well and considered a model town. In some ways, he became a leading personality in the community.

O'Neill: You've chaired two commissions on public service and had a chance to look at both what's been good about it and what we need to focus on in the future. Are there some lessons learned particularly for those of us who are now trying to attract a new generation to state and local government?

Volcker: I don't notice it in my work on the commission, but I've [personally] felt for some time that interest in the federal government for a variety of reasons has obviously gone down. It's part of the sociology of the country and lack of trust in government, but it's also that federal government tends to be a big bureaucracy, and if you're a young fellow. . . it's easy to feel you're far from the action, depending upon where you are. I think for a lot of young people [who are] interested in government and want to [work] in government, going to the city or state where they're going to have a lot more impact and opportunity to be on their own, so to speak, and have some room for initiative, is the place to be.

O'Neill: As you [talk] about your work in ethics, those of us who are city managers now and who are members of ICMA have benefited greatly from the generation that your father represented. [Members of his generation] were committed to the principles of ethics that created the ICMA Code of Ethics, and now we have both the [ethics] training program and enforcement program. It wouldn't have been there without their strong commitment to it.

Volcker: Well, I would be very disappointed on behalf of my father if that was not the case! But. . . I am delighted to have you say that because it was so much of his life and, I'm delighted to have the opportunity to talk to you. I didn't know that anybody remembered that!

Volcker had more to say about his father's tenure as a manager; leadership and management in government; the importance of ethics; and how strong professional management is the "antithesis of the corrupt and politicized environment." To view the entire 13-minute interview, go to <http://video.google.com> and enter "Bob O'Neill interviews Paul Volcker" in the search box.

ICMA

Benefits of Professional Local Government Management

Elected officials can better fulfill their policy-making roles by delegating daily oversight of a local government to a professional manager or administrator.

More than 73 percent of cities, towns, and counties throughout the United States with populations of 2,500 or more have established the position of professional local government manager. These individuals

- Are charged with carrying out the policies established by elected officials and with delivering public services efficiently, effectively, and equitably. The elected officials, in turn, have more time to concentrate on creating a vision for the community's future.
- Bring to the table technical knowledge, experience, academic training, management expertise, a community-wide perspective toward policies and programs, cost-effective service delivery techniques, and a dedication to public service.
- Translate policy and visionary ideas into real results by developing sound approaches to community challenges.
- Maintain political neutrality and put the overall welfare of the community first.
- Align the local government's administrative systems with the values, mission, and policy goals defined by the community and elected officials.

Appointed professional local government managers are involved in thousands of individual decisions, large and small, that define our communities and affect our quality of life.

How Elected Officials and Managers Work Together

The power and authority to set policy rests with elected officials, such as a mayor or board chairperson and members of a community's council, commission, or board. The mayor or governing body, in turn, appoints a nonpartisan, nonpolitical professional manager to oversee the day-to-day operations of the city, town, or county.

Like a sports team coach, elected officials establish a vision for their communities and "call the plays" that need to be implemented. And like a sports team quarterback, a

professional city, town, or county manager--in collaboration with the teams that they lead--uses his/her strengths in leadership, management, and ethics to go out on the field and make the vision of the elected officials a reality.

Responsiveness to residents is enhanced by centralizing administrative accountability in a single, appointed individual. Professional local government managers or administrators generally do not have guaranteed terms of office or tenure, and they are evaluated based on their responsiveness to the elected legislative body and community and their ability to provide efficient and effective services. If the professional manager or administrator is not responsive to elected officials, she or he may be terminated at any time. In that sense, the manager's or administrator's responsiveness is tested daily.

Professional Local Government Management Makes a Difference

Professionally-Managed Communities are Ranked Among America's Best Places to Live

Since 2008, the majority of communities recognized with the National Civic League's coveted All-America City Award are run by professional local government managers.

Communities That Have Professional Local Government Managers Are More Efficient

A [February 2011 study](#) by IBM Global Business Services found that municipalities that operate under the council-manager form of government are nearly 10 percent more efficient than those that operate under the mayor-council form.

Professional Local Government Managers Who Are Members of ICMA Adhere to a Stringently Enforced Code of Ethics

ICMA members are committed to standards of honesty and integrity that go beyond those required by law. Professional local government managers or administrators who are members of ICMA agree to abide by its [Code of Ethics](#), which specifies 12 principles of personal and professional conduct, including dedication to the cause of good government. ICMA members believe in the effectiveness of representative democracy and the value of government services provided equitably to all community residents. The ICMA Code is enforceable by [a confidential peer review process](#).

Source: ICMA - International City/County Management Association
<https://icma.org/benefits-professional-local-government-management>
8-22-2024

Published in Western City 8-1-2016

Navigating the Ups and Downs of the Council-Manager Relationship

Most California cities use the council-manager form of government. In this model, the city council sets policy, passes ordinances, approves new projects and programs and ratifies the annual budget. The city manager implements the policies, advises the council, makes recommendations on council decisions, formulates the budget and oversees the administration and management of staff and resources.

Having the city manager oversee the agency's day-to-day operations allows the council members to focus on big-picture policy issues without the distraction of administrative tasks, such as managing personnel. It also enables the council to hold one individual accountable for the city's administration.

First and foremost, the relationship between the city council and the city manager is a partnership that serves the community. This partnership benefits immensely from a council that sees itself as a team. While council members can and do disagree on various issues, they can nevertheless function as a team if all members can agree that their shared goal is to make the best decisions possible for the community they serve. It can be helpful to frame this as a collaborative effort in which all members bring something of value to the task at hand.

BUILDING A POSITIVE, CONSTRUCTIVE RELATIONSHIP

Civility and communication are key elements of an effective council-manager partnership. Respectful discussions that incorporate civility set a positive tone for council meetings and council-manager interactions and help foster a welcoming environment for community members who attend council meetings.

Communicating clearly is essential to a positive, productive relationship between the council and the city manager. When dealing with a controversial or emotionally charged issue, it's critically important to listen carefully and, in many cases, repeat or paraphrase what you just heard to ensure that you fully comprehend and acknowledge what has been said.

A respectful exchange also involves giving your complete attention to the discussion. This means eliminating distractions to the extent possible, which may include turning off cellphones as a courtesy until the discussion or meeting has concluded.

Separating the people from the problems is another helpful strategy. Emotions can make problem-solving more difficult when people feel passionately about an issue. But attacking the problem — instead of each other — offers a more effective approach and a better way to preserve an important working relationship. It's OK to disagree, but it's not OK to be disagreeable.

When communication falters, problems occur. Avoiding conflict, which is human nature, can be a barrier to progress on tough issues. Address issues directly as they arise by communicating clearly and respectfully. Bear in mind that conflict can play a constructive role in problem solving. Complacency can be a red flag. A complacent council and city manager may be avoiding dealing with controversial or thorny problems. Such avoidance can ultimately make the problem much harder to address.

Complaining is another red flag. When one team member complains to another about the performance or approach of a third team member, this generally indicates significant frustration. If a fellow council member complains to you about the city manager or another council member, gently redirect the focus and explore possible ways to address the problem. It may be helpful to say, "I hear you are frustrated. What might we do differently to address this issue? What positive steps can we take to change this dynamic?"

DEALING WITH CHALLENGES

Difficulties can arise in numerous situations related to the council-manager relationship. One challenge involves council members who don't see themselves as part of a team — first, as part of the council team, and second, as part of the larger team comprising the council, the entire city organization and the community, including both residents and local businesses. It may be helpful to have a skilled, neutral, third-party facilitator lead the council and manager in discussions and team-building exercises to help nurture a culture of teamwork. Another useful tool is to "think greatness." Former City Manager Gary O'Connell

described this in a 2007 article titled “Council-Manager Relations: Finding Respectable Ground” in *Public Management* magazine:

If you have [a] theme to help emphasize excellence and high performance (such as building a world-class community), it goes a long way to help staff and employees understand that goal. This kind of thinking appeals to many councils and helps them think about the larger, difficult and more strategic issues in the community.

Another pitfall occurs when a council member doesn’t have a clear understanding of the council’s role. For example, when a council member bypasses the city manager and gives direction to city staff, it puts the staff in an awkward position and can undermine the city manager’s position. In my city, the city manager welcomes council members talking to city department heads but not front-line staff — and only in the context of having a discussion, *not* giving direction, which is the city manager’s responsibility.

The council member who treats council meetings as an opportunity to grandstand creates yet another type of challenge. A 2002 *Western City* “Everyday Ethics” article titled “Dealing With a Grandstander” explores this issue in-depth:

The dictionary defines “grandstanding” as “playing or acting so as to impress onlookers.” Public meetings were not created as opportunities for elected officials (or wannabe elected officials) to impress each other, the media or the public. The purpose of a public meeting is to accomplish the public’s business in the most productive, efficient and professional manner possible.

The article explains that grandstanding wastes the time of the public, staff and council.

... There are likely to be individuals in the audience who are waiting for an opportunity to speak or for later items on the agenda. They will be frustrated and resentful of an elected official who is prolonging the meeting in a self-serving and unproductive manner — particularly when the audience members have taken the time to come and participate in the agency’s business. ... The sense that public meetings are unnecessarily long may ultimately discourage the public from attending the meetings in the long run and alienate them from civic affairs.

... some agencies have adopted codes of ethics and values that address these kinds of issues. For example, the City of Sunnyvale’s code of conduct specifically says that city council members should “[b]e respectful of other people’s time. Stay focused and act efficiently during public meetings.” It also says council members should “[f]ully participate in city council meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others.” In a similar vein, the City of Santa Clara’s Ethics and Values Statement emphasizes the importance of communication, particularly effective two-way communication that involves listening carefully and adding value to conversation.

In its *Attributes of Effective Councils* publication, the Institute for Local Government offers these best practice tips:

Build capacity to create a more effective team. The governance team (mayor, council members and city manager) should get to know each other — how each person approaches issues, decision-making and so on. This can be accomplished at annual meetings or workshops throughout the year. In the event that council members disagree, clear ground rules (norms of behavior and practice) can help quell acrimony before it becomes a problem. It’s important to remember that trust is built around understanding and respect, not necessarily agreement.

SUPPORTING THE CITY MANAGER’S ROLE

The council can support the city manager in many ways, such as giving him or her permission to take risks and act in an entrepreneurial manner, and providing clear directions with a unified voice. See “Council-Manager Relations: How We Work Together” below for additional tips.

ACCEPTING RESPONSIBILITY

Everyone makes mistakes. It’s part of the human condition. If you have mistakenly asserted something that you subsequently discover was inaccurate or wrong, share that information and take responsibility for your error. If you have contributed to difficulties in communication, apologize and agree to move on. Don’t allow your mistakes to cast a long shadow — address them promptly.

Doing so also helps to build bridges with your colleagues on the council and your community and ultimately improves your ability to serve the public.

COUNCIL-MANAGER RELATIONS: HOW WE WORK TOGETHER

by Debra Figone

Debra Figone is former city manager of San José. This information was presented at the League's 2011 City Managers' Department Meeting.

What your city manager wants from the council to be optimally effective:

- Respect that we have a council-manager form of government;
- Allow me to assist in translating your policy interests and priorities to the organization to achieve action;
- Give clear direction as a council;
- Feel free to interact directly with department heads on city matters. They are instructed to keep me informed of such contacts, and I ask that you do the same. Please do not direct them. Department heads are agents of the city manager, not free agents;
- Fix the problem, not the blame. Help create a no-blame culture. If you acknowledge disappointment in public, do so constructively. Scolding should be done privately;
- Be sensitive about the need to pace the organization and to manage priorities, workload and expectations. Use city processes and protocols to add issues and interests to the workload; and
- Help me understand how best to communicate with you both as a team and as individuals. These methods must be compatible.

What you, the council, can count on me to do as your city manager:

- Treat you with respect;
- Tell you the unvarnished truth;
- Treat you as partners as well as my employers;

- Establish individual relationships with you to help *each of you* be effective council members;
- Help you to be effective *collectively* as a city council;
- Act within my comfort zone on council requests and advise you when a request should go to the entire council;
- Communicate with you to keep you as equally informed as possible;
- Listen to you and seek to understand you, your role and your needs;
- Do my personal and professional best;
- Respect your council-to-council and council-to-constituent relationships; and
- Be politically astute but not political.
- Remember, I am human. If you don't see these actions, please give me the benefit of the doubt, and then talk to me about it.