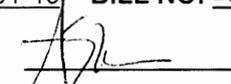


AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

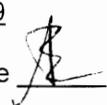
SUBJECT: Review of the Beaverton Charter
of 1981

FOR AGENDA OF: 10-01-19 **BILL NO:** 19242

MAYOR'S APPROVAL: 

DEPARTMENT OF ORIGIN: City Attorney 

DATE SUBMITTED: 09-25-19

CLEARANCES: Mayor's Office 

PROCEEDING: Work Session

EXHIBITS: Draft Charter Provisions
Unrelated to Form of Government

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$0	BUDGETED \$0	REQUIRED \$0

RECOMMENDED ACTION:

Hold a work session to continue to review the Beaverton Charter of 1981.

HISTORICAL PERSPECTIVE:

A city charter is like a constitution. Both are foundational documents that set out the principles, structures, and process of government. Article XI, section 2, of the Oregon Constitution grants "the legal voters of every city and town ... [the] power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon." Beaverton voters enacted the city's current charter in November 1980 and subsequently amended the charter once, in 2008, when voters amended section 44 the charter relating to urban renewal.

The Beaverton Charter provides for a mayor-council form of government. The system is characterized by having an executive mayor who is elected by the voters, and a separately elected legislative city council. The mayor has substantial administrative authority over the city and its departments. To assist in managing the city, the Beaverton Charter requires the mayor to appoint a chief administrative officer who "is the principle managerial aide to the mayor and shall perform such duties as may be assigned by the mayor."

INFORMATION FOR CONSIDERATION:

To assist in the Council's review, attached is a spreadsheet showing 13 provisions of the Beaverton Charter that are unlikely to be affected by any decision regarding Beaverton's form of government and which council should discuss regarding whether to keep the provision as is, amend it, or remove it all together from a new or revised city charter.

	A	B	C	D	F
1	Beaverton Charter 1981		Section		Proposed Revision
31	Quorum	A majority of the incumbent members of the council shall constitute a quorum to do business, but a smaller number may meet and compel attendance of the absent members in a manner provided by ordinance. Every member of the council who is present shall be counted for the purpose of constituting a quorum, even if the member does not vote on one or more issues.	13	Quorum	Leave as is, amend, or take out? Recommendation is to amend to read: "A majority of the council members is a quorum to conduct business, but a smaller number may meet and compel attendance of the absent members in a manner provided by ordinance. <i>In the event of a vacancy due to death, resignation, loss of contact during a state or federal state of emergency within the city, or other events, the quorum is reduced accordingly.</i> Every member of the council who is present shall be counted for the purpose of constituting a quorum, even if the member does not vote on one or more issues." Italicized text would help council function in the aftermath of a disaster.
32	Proceeding to be public		15		
35		Except as state law may provide otherwise, the deliberations and proceedings of the council and other deliberative bodies of the city shall be public.			Leave as is, amend, or take out? Covered by Oregon's public meeting and record laws. Neither LOC nor NCL Model Charter contain a similar provision. LOC Model Code states the omission of any provisions relating to public meetins and records is intentional because those matters are covered by state law.
36	COMMENCEMENT OF TERMS OF OFFICE.		27	Terms	
74		The term of office of a person elected at a November general biennial election shall commence on the first day of January following the election.			Leave as is, amend, or take out? Recommendation is to amend slightly to refer to "a general election" rather than "a November general biennial election." The section would then read: "The term of office of a person elected at a general election commences on the first day of January following the election."
75	Voters Pamphlet	A. All candidacies and measures submitted to the voters of the city in a primary, special, or general election shall be publicized by voter's pamphlet, in accordance with city ordinance. No voter's pamphlet shall be prepared for any election for which no city measures are submitted to the voters and not more than one person has filed or been nominated for any city office.	30		Leave as is, amend, or take out? Covered by Oregon's Election Code (ORS chapter 254). LOC Model Code states all general sections relating to elections are intentionally omitted because those matters are covered by state law. Subsection A of Beaverton Code in effect mandates preparation of a city voters' pamphlet.
86		B. If the council finds that there was a material misstatement of fact published in the city voter's pamphlet which was submitted by or in behalf of a person nominated or elected to the council, the nomination or election of that person is nullified.			Leave as is, amend, or take out? Similar to provisions in city ordinance (BC 2.06.445 and 2.06.450) and state law (ORS 260.532 and 260.715). The provision as stated grants greater powers to council than state law without describing the process council is to follow to conduct a hearing and decide whether to nullify a nomination or election.
87					

	A	B	C	D	F
1		Beaverton Charter 1981	Section		Proposed Revision
90	VACANCIES IN OFFICE.		32	Vacancies	
91		A. An office becomes vacant:			Leave as is, amend, or take out? See earlier spreadsheets for LOC and NCL model text.
92		1. Upon the incumbent's death; adjudicated incompetence; conviction of a crime pertaining to the office or unlawful destruction of public records; resignation; recall from office; or ceasing to possess the qualifications for the office;			
93		2. Upon the failure of the person elected or appointed to the office to qualify therefor within ten (10) days after the time for the term of office to commence; or			
94		3. In the case of a councilor, upon that person's absence from meetings of the council held within any consecutive sixty (60) days period without the consent of the council, and upon a declaration by the council of the vacancy.			
95		B. Upon request of a majority of the members of the council, the municipal judge shall determine and find in writing whether under the provisions of this section a vacancy exists in the office of mayor.			
96	FILLING OF VACANCIES IN ELECTIVE OFFICES.		33	Filling Vacancies	
97		Vacancies shall be filled as follows:			Leave as is, amend, or take out? See earlier spreadsheets for LOC and NCL model text.
98		A. If less than one year remains in the term of the person who held that vacant office, the vacancy shall be filled by majority vote of the remaining members of the council. The appointee shall serve the unexpired term of the predecessor to the office; or			
99		B. If one year or more remains in the term of the person who held the vacant office or if the office is not filled and no person takes office under Section 27 of this charter for any reason, the vacancy shall be filled at a special election called and provided for by resolution of the council. The resolution of the council shall provide that the person: (1) Shall be elected at the first election date that meets all requirements of state and city election laws; (2) Shall serve the unexpired term of office of the predecessor to the office, or if no person has taken office, then the remaining term of office; (3) Is required to receive a majority of the votes cast for candidates for the office at the election at which the office is filled; if no candidate receives a majority at the first election, then a run-off election shall be held between the two candidates receiving the highest number of votes at the first state election date available thereafter; and (4) Shall serve until a successor to the office is duly elected and qualified therefor.			
100		C. Until a vacancy is filled by the special election and a person takes office in accordance with subsection B of this Section, the remaining members of the council shall appoint a person to fill the vacancy for the interim period of time.			

	A	B	C	D	F
1	Beaverton Charter 1981		Section	Proposed Revision	
102	Adoption		35 A. Ordinance Adoption		
103	<p>A. Adoption. 1. Except as provided to the contrary in subsections 2., 3., and 4. of this section, every ordinance of the council, before being finally adopted, shall be read fully and distinctly in open council meeting on two different days, provided that the second reading must be at least six days after the first reading.</p>				<p>Leave as is, amend, or take out? Recommendation is to amend Subesction A. See earlier spreadsheets for LOC and NCL model text. May wish to defer discussion on subsection A as subsections B, C, and D concern roles and responsibilities of mayor.</p>
104	<p>2. Both readings may be by title only by unanimous vote of all councilors present and voting on the question, provided that, prior to first reading, a copy of the ordinance is provided for each councilor and three copies are filed for public inspection at the repository for city records.</p>				
105	<p>3. An ordinance adopted after being read by title alone has no legal effect if it differs substantially from its terms as it was thus filed prior to such reading, unless each section incorporating such a difference is read fully and distinctly in open council meeting as finally amended prior to being adopted by the council.</p>				
106	<p>4. An ordinance may be adopted at a single meeting of the council by unanimous vote of all councilors present and voting on the question upon being first read in full and then by title.</p>				
115	Condemnation		37		
116	<p>The necessity for taking property by condemnation shall be determined by the council and declared by a resolution describing the property and stating the use to which it is to be devoted.</p>				<p>Leave as is, amend or take out? Covered by Oregon law (ORS chapter 35 etc). LOC Model Code states its omission of provisions relating to condemnation is intentional because the matter is covered by state law. The provision as stated is not inconsistent with state law.</p>
117	PUBLIC IMPROVEMENTS AND SPECIAL ASSESSMENTS.		38 Procedure & Special Assessments		
118	<p>The procedures for making, altering, vacating or abandoning a public improvement, and levying, collecting and enforcing the payment of special assessments for public improvements or other services to be charged against real property, shall be governed by ordinance or, to the extent not so governed, by the applicable state laws. Action on any proposed public improvement, except a water or sewer improvement declared by the council to be needed at once because of an emergency, shall be abandoned and not reinitiated for six (6) months upon a remonstrance thereto by the owners of land which bears sixty percent (60%) of the estimated assessed cost of the improvement. In this section "owner" means the record holder of legal title or, where land is being purchased under a land sale contract recorded or verified in writing by the record holder of legal title to the land, the purchaser is deemed the "owner."</p>				<p>Leave as is, amend, or take out? Recommendation is to amend. See earlier spreadsheets for LOC and NCL model text. Existing text comes largely from an earlier version of LOC Model Charter.</p>
119	BIDS FOR PUBLIC CONTRACTS		39		
120	<p>As defined and except as otherwise provided, governed or exempted by ordinance, any public contract in excess of \$5,000.00 may be let only to the lowest responsible bidder.</p>				<p>Leave as is, amend, or take out? Covered by Oregon law (ORS chapter 279 A, 279B, & 279C). LOC Model Code states its omission of provisions relating to public contracting is intentional because the matter is covered by state law. BC 2.03.214 is the city ordinance that allows the city's local contract review board to adopt by resolution local rules of procedure for public contracting.</p>

A	B	C	D	F
1	Beaverton Charter 1981	Section		Proposed Revision
121	<p>LIMITATION ON INDEBTEDNESS.</p> <p>A. Voluntary Floating Indebtedness. Except by consent of a majority of the voters at an election, the city's voluntary floating indebtedness shall not exceed \$25,000.00 at any one time. For purposes of calculating the limitation, the legally authorized debt in existence at the time this charter takes effect shall not be considered. All city officials and employees who create or officially approve any indebtedness in excess of this limitation shall be jointly and severally liable for the excess.</p>	40	Debt	<p>Leave as is, amend, or take out? Recommendation is to omit subsection A.. This debt limitation causes the city to pay higher interest rates to borrow money compared to cities without it. Floating indebtedness is "that mass of lawful and valid claims against the corporation for the payment of which there is no money in the corporate treasury specifically designated, nor any taxation nor other means of providing money to pay particularly provided. The limitation is intended to prevent the accumulation of a large nonbonded debt due to the over estimation of, or failure to receive, anticipated and budgeted revenue." LOC Model Charter (1967 ed.). A city can avoid the application of this debt limitation by use of the special fund doctrine. See Or. Op. Att'y Gen. OP-5640 (1984) citing DeFazio v. WPPSS, 296 Or 550 (1984), which held that charter debt limitations refer only to commitments of tax revenues; commitments of utility or 'special fund' revenues take such commitments outside of debt limitations. Too, a city can avoid the application of this debt limitation by making its debt repayments subject to annual appropriations. The use of the special fund doctrine or a non-appropriation clause reduces certainty of repayment and results in higher interest rates compared to borrowers who pledge full faith and credit for repayment without a floating indebtedness limitation.</p>
122				
123	<p>B. Bonded Indebtedness. Except as authorized by state law, the city shall not issue and sell general obligation or revenue bonds unless authorized by the consent of a majority of the voters at an election.</p>			<p>Leave as is, amend, or take out? Recommendation is to amend subsection B consistent with LOC Model Charter: "City indebtedness may not exceed debt limits imposed by state law. A charter amendment is not required to authorize city indebtedness."</p>
126	<p>INITIATIVE AND REFERENDUM.</p> <p>The Initiative and Referendum powers, which are reserved to the qualified voters of each municipality, shall be exercised under Article IV, Section 1(5) of the Oregon Constitution.</p>	42	INITIATIVE AND REFERENDUM.	<p>Leave as is, amend or take out? The provision is not inconsistent with state law. Could amend to: The Oregon Constitution reserves the powers of initiative, referendum, and recall to city voters. Complete removal of the provision would not diminish the rights of city voters.</p>
127				
128	<p>ZONE CHANGE NOTICE.</p> <p>Before initially hearing any proposed quasi-judicial amendment to the zoning map (hereafter "zone change") pursuant to the Zoning Ordinance of the City of Beaverton, the council, or any board, commission or person delegated by the council to conduct the initial evidentiary hearing, shall cause the owners of record of the real property which is the subject of the proposed zone change to be notified of the date, time and place of the initial hearing. The notice shall be in writing, sent by certified mail, postmarked at least thirty (30) days before the date of the initial hearing, and shall inform the property owner of the right to testify for or against the proposed zone change.</p>	43		<p>Leave as is, amend, or take out? Covered by Oregon law (ORS chapters 92, 197, 197A, 227 etc.). LOC Model Code states its omission of provisions relating to land use planning and regulation is intentional because those matters are covered by state law. The provision as stated is not inconsistent with state law.</p>
129				