

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Review of the Beaverton Charter
of 1981

FOR AGENDA OF: 12-17-19 **BILL NO:** 19310

MAYOR'S APPROVAL: *Dennis*

DEPARTMENT OF ORIGIN: City Attorney *W. B. Key*

DATE SUBMITTED: 12-12-19

CLEARANCES: Mayor's Office *[Signature]*

PROCEEDING: Work Session

EXHIBITS: Draft Charter

BUDGET IMPACT

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

This charter review work session will be facilitated by Jim Johnson, Senior Project Manager with the National Policy Consensus Center of Portland State University. The meeting's focus will be on the draft charter prepared by staff following the council's last work session on December 3, 2019. Background materials were previously included as exhibits to Agenda Bill 19300 (December 3 council meeting), Agenda Bill 19266 (September 3 council meeting), Agenda Bill 19232 (September 10 council meeting), and Agenda Bill 19242 (October 1 council meeting).

The Beaverton Charter of 20__

PREAMBLE

We, the voters of the City of Beaverton, Oregon, exercise our power to the fullest extent possible under the constitution and laws of the State of Oregon and enact this home rule charter.

Article 1¹

Names and Boundaries

1.1 **Titles.** This enactment may be referred to as the Beaverton Charter of 20__.

1.2 **Name.** The City of Beaverton, Oregon, continues as a municipal corporation with the name City of Beaverton.²

1.3 **Boundaries.** The city includes all territory within its boundaries as they now exist or are legally modified in the future.

Article 2³

Powers

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

2.2 **Construction.** This charter is liberally construed so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.

2.3 **Where Powers Vest.**⁴ All powers of the city are vested in the city council, except as otherwise provided by law⁵ or this charter.

Article 3⁶

Form of Government

[This Article Intentionally Left Blank]

¹ Editorial changes were made to Article 1, but no substantive changes.

² The continuation of the city as the city of Beaverton is intended to assign all rights and delegate all duties by operation of law from the old to the new. Specific transitional matters are also addressed in Article 10 of this charter.

³ Editorial changes were made to Article 2, but no substantive changes.

⁴ Revised and relocated; formerly found at Chapter III, section 6.

⁵ The phrase “by law” includes the Oregon Constitution. No mention is made in this charter of the initiative or referendum powers reserved to the qualified voters of every city in Article IV, section 1(5) of the Oregon Constitution, or the recall power held by electors over every public officer under Article II, section 18 of the Oregon Constitution. No city charter can deny these powers to city electors.

⁶ Revised and relocated all sections formerly found in Chapter III. Article III remains in this draft to preserve continuity of section numbering between discussion drafts. The final version of a proposed charter will not have any article intentionally left blank.

Article 4⁷

Council

4.1 **Council Composition and Powers.**⁸ The council is comprised of a mayor and six councilors nominated and elected from the city at large.

- (a) A majority of the council must appoint and may remove the manager. The council may appoint a manager for a definite or an indefinite term. The council must fill the office of city manager by appointment as soon as practicable after a vacancy occurs.
- (b) The council's appointment or removal of the manager must be made without regard to political considerations and solely on the basis of matters relating to or arising out of the manager's demonstrated skill, knowledge, experience, performance, and conduct in local government management.
- (c) When the manager is temporarily disabled from acting as manager or when the office of the manager becomes vacant, the council must appoint a manager pro tempore. The manager pro tempore has the authority and duties of manager, except that a pro tempore manager may appoint or remove employees only with council approval.⁹

COMMENT: Is the restriction on the authority of the manager pro tempore only to appoint or remove employees subject to council approval practical?

- (d) The council may determine the compensation of the mayor and councilors, but no change in compensation is effective for the mayor or councilors in office when the decision is made. Changes to compensation will be phased in as the mayor and each councilor's current term in office expires.
- (e) A majority of the council must appoint and may remove the city attorney.
- (f) A majority of the council must appoint and remove a municipal judge and designate one municipal judge to serve as the court's presiding judge.
- (g) A majority of the council must appoint and may remove the city auditor.

4.2 **Council President.**¹⁰ At its first meeting each calendar year, the council must elect a councilor to serve as the council president. The president presides in the absence of the mayor and acts as mayor when the mayor is unable to perform duties.

4.3 **Mayor.** Except as otherwise provided in this charter, the mayor is the official head of the city for political, ceremonial, emergency management, and military purposes. The mayor is a voting member of the council and has no veto authority. In exercising the powers of the mayor, the mayor must:

- (a) Attend all meetings of the council, except when circumstances necessitate otherwise.¹¹

⁷ Removed section 15 (Proceedings to be Public) as redundant. The subject matter of that section is fully addressed by state law.

⁸ Title changed to reflect the listed powers of the council. The listed powers were scattered throughout earlier versions of the draft charter.

⁹ Is the exception on the power of the manager pro tempore relating to appointing or removing employees truly intended?

¹⁰ Moved and renumbered. Text remains the same.

¹¹ Outside employment of the mayor now separately addressed in subsection (i) of this section.

- (b) Preside over and facilitate council meetings, preserve order, enforce council rules, and determine the order of business under council rules.
- (c) Sign the authorized writings and records of council decisions.
- (d) Join the council in the annual review of the performance of the city manager.
- (e) Work with the city manager to lead the council in the development and implementation of short and long-term goals for the city.
- (f) Consistent with council direction, lead, represent, encourage, and support federal, state, and local intergovernmental cooperation, partnerships, and collaborations while not excluding councilor participation.
- (g) Annually report to the council as to the affairs and needs of the city and such legislation, policies, or measures the mayor deems necessary or desirable.
- (h) With the consent of the council, appoint and remove members of boards, commissions, and committees established by ordinance or resolution. An appointment or removal made by the mayor to any board, commission, or committee does not take effect unless a majority of the members of the entire council confirm the appointment or removal or the council fails to act upon an appointment or removal within 15 calendar days after the council's notice of the mayor's action.¹²
- (i) The mayor may engage in other employment, business, or activities unless the council determines that the outside employment, business, or activities interfere with the mayor's performance or ability to meet the needs of the city, in which instance the mayor must terminate or curtail the outside employment, business, or activities.¹³
- (j) Have such other lawful powers and duties as may be conferred or imposed by ordinance or resolution of the city, provided that the mayor may not direct or order any employee or official of the city, including the city manager, and must act with council, as a body, to direct the city manager.

4.4 No Interference. No council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in executing the manager's powers and duties. Violation of this prohibition is grounds for removal from office by a majority of the council after a duly noticed public hearing. In council meetings, councilors may discuss or suggest anything with the manager relating to city business.

4.5 Rules and Meetings. The council must determine its own rules and order of business. The council must meet at least once a month at a time and place designated by its rules, and it may meet at other times in accordance with its rules and Oregon law.

¹² This sentence was deleted, but it can be added back through an ordinance: "Unless waived by a majority vote of the entire council, a member of any committee, board, or commission must be a resident of the city."

¹³ Earlier drafts proposed that the mayor devote full time to the discharge of the mayor's official duties, which excluded the possibility of outside employment. This version allows for outside employment, provided it does not interfere with mayor's work for the city. Council may order the mayor to terminate or reduce outside work if the outside work does interfere. If mayor does not follow the order, the remedy is likely for the voters to determine unless section 7.1 (Vacancies in Office) is amended to allow for council-mandated removal of the mayor from office.

4.6 **Quorum.** A majority of the members of the council 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. In the event of a vacancy due to death, resignation, loss of contact during a state or federal state of emergency within the city, the quorum is reduced accordingly. Every member of the council who is present must be counted for the purpose of constituting a quorum, even if the member does not vote on one or more issues.¹⁴

4.7 **Record.** A record of council meetings must be kept in a manner prescribed by the council rules and Oregon law.

4.8 **Voting.** Except as otherwise provided in this charter, the express approval of a majority of the members of the council present and voting is necessary for any council decision.

4.9 **Compensation.** The council may determine the compensation of the mayor and councilors, but no change¹⁵ in compensation is effective for the mayor or councilors in office when the decision is made. The changes in compensation take effect¹⁶ as the mayor and each councilor's current term in office expires.¹⁷

OPTION: Could amend the language to provide the mayor with veto power or the ability to force reconsideration by the council. Hillsboro grants the mayor reconsideration authority, but it has not been used once since 2007. Should the charter include reconsideration language similar to Hillsboro's?

Under description of mayor:

(c) The mayor has no vote on council matters unless there is a tie vote. The mayor has authority to require the council to reconsider legislation.

Under description of ordinance adoption:

(f) If the mayor requires reconsideration of the ordinance, the mayor must return it to the recorder with written reasons for reconsideration within ten days of receipt of the ordinance. If the ordinance is not so returned, it takes effect as if approved.

(g) At the first council meeting after demand for reconsideration by the mayor, the councilors will consider the reasons of the mayor and again vote on the ordinance. If at least four councilors vote to adopt the ordinance, it will take effect.

¹⁴ The abstention or recusal of the mayor or a councilor on a particular matter does not result in a reduced quorum.

¹⁵ "Change" includes increases and decreases in compensation – *i.e.*, whether to the private financial benefit or detriment of the public official.

¹⁶ Changes in compensation "will take effect" on different dates on account that councilors have staggered terms. The change in compensation could take effect two years later for some councilors compared to other councilors.

¹⁷ Consistent with Oregon Government Ethics Commission staff advisory opinions 14S-002 and 19-001 and similar to the twenty-seventh amendment to the US Constitution ("No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened"). The section could be revised to require the mayor to refrain from participating in matters related to mayor compensation to avoid conflicts of interest and allow the change in mayor compensation to take effect during the mayor's current term in office.

OPTIONS To address Councilor San Soucie's issues: : Add the following?:

4.10 Staffing for Mayor and Council. *If the adopted city budget includes staff positions to assist the mayor and councilors in fulfilling their official duties, then the mayor and each councilor will have the authority to appoint, suspend, remove, and discipline the employee or employees who assist them. The administrative details related to these staff positions must be described in a resolution drafted by the city manager and adopted by council.*

4.XX Remedies for Misconduct and for the Willful Neglect in the Performance of Duties. *When the council determines that a council member committed misconduct or willfully neglected the duties of office, council has the right, through adoption of a Resolution, to some or all of the following remedies: council support of citizen recall under state law, public censure of the council member, reduction of pay, removal from committee assignments, and the removal of any travel or educational opportunity afforded council member.*

4.XX Representing the City. *When taking a position on a city issue outside of a council meeting, a council member must express the majority position of the city council, but may also at the same time, express the council member's personal opinion on the issue.*

In Article 4, the following changes were made:

1. Listed council powers in 4.1.
2. Moved council president provision to new 4.2 (formerly 4.3).
3. In new 4.3, changed the recognition to the Option 3 language.
4. Separated old 4.2(a) relating to meeting attendance and outside employment so that meeting attendance dealt with in new 4.3(a) and employment is dealt with separately in new 4.3(i); renumbered remaining paragraph.
5. In new 4.3(e), changed the wording and made it consistent with city manager duties.
6. In 4.3(h), removed the residency requirement. Added footnote 12.
7. Added paragraph 4.4 on non-interference; renumbered the remaining paragraphs.
8. In new 4.9 (Compensation) edited for clarity.
9. Spelled out "pro tempore" throughout the draft, consistent with the Oregon Revised Statutes.

Article 5

Powers and Duties of City Officers

5.1 City Manager. The office of city manager is established as the administrative head of the city government. The city manager is responsible to the council for the proper administration of all city business. The city manager will assist the council in the development of city policies and carry out policies established by ordinances, resolutions, and orders.¹⁸

- (a) A majority of the council must appoint and may remove the manager. The council may appoint a manager for a definite or an indefinite term. The council must fill the office of city manager by appointment as soon as practicable after a vacancy occurs.

¹⁸ This makes the manager responsible for carrying out city policy adopted by council ordinance, resolution, or order.

- (b) without regard to political considerations and solely on the basis of education and demonstrated skill and experience in competencies and practices of local government management.
- (c) The manager has no authority over the mayor, councilors, city attorney, auditor, or municipal judges, or over the judicial functions of the municipal judges or the legal services functions of the city attorneys. The manager must:
 - 1. Provide high quality professional management and leadership to city government.
 - 2. Attend all council meetings unless excused by the council president.
 - 3. Make reports and recommendations to the council about the needs of the city.
 - 4. Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits, codes, and other city decisions.
 - 5. Determine the personnel rules and practices of the city and appoint, supervise, and remove all city employees, except for the mayor, councilors, city attorney, auditor, and municipal judges.
 - 6. Organize city departments and administrative structure, other than the legal services function of the office of the city attorney.
 - 7. Prepare and administer the annual city budget.
 - 8. Administer city utilities and property.
 - 9. Consistent with council direction and in cooperation with the mayor, encourage regional and intergovernmental cooperation.
 - 10. Work with the mayor to lead the council in the development and implementation of short and long-term goals for the city.
 - 11. Promote cooperation among the mayor, council, staff, and residents in developing city policies and building a sense of community.
 - 12. Perform other duties as directed by the council.
 - 13. Delegate duties but remain responsible for actions of all subordinates.
- (d) When the manager is temporarily disabled from acting as manager or when the office of the manager becomes vacant, the council must appoint a manager pro tempore. The manager pro tempore has the authority and duties of manager, except that a pro tempore manager may appoint or remove employees only with council approval.

OPTION: To address Councilor San Soucie's issues: Should these two new paragraphs be included in 5.1(c):

14. Involve the mayor and council in the development of the short and long-range council agenda process and in the development of budget principles and priorities.

15. Encourage conversation between council members and city staff, to include suggestions, opinions, and information, with the understanding that no individual council member shall give orders to the city manager or to any city staff member.

5.2 **City Attorney.**¹⁹ The office of city attorney is established and remains and continues as the chief legal officer of the city government. The city attorney appoints, supervises, and may remove any employees who work in and for the city attorney's office. The city attorney must be a member in good standing of the bar of the state of Oregon.

5.3 **Municipal Court and Judges.** The municipal court of the City of Beaverton, Washington County, Oregon, is established to operate as a municipal court.

- (a) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court. The municipal court has subject matter jurisdiction over every offense created by city ordinance and to the fullest extent allowed by law over all misdemeanors and violations defined and made punishable under state law, unless limited by city ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court shall be open for the transaction of business at times and locations specified by council resolution.
- (b) All municipal judges must be a member in good standing of the bar of the state of Oregon. The presiding judge exercises general supervision over the judicial functions of the municipal court and its judges and has authority over the dockets and assignment of cases. The court administrator may contract for judicial services provided by judges pro tempore. A municipal judge may render judgments and impose sanctions on persons and property; order the arrest of anyone accused of an offense against the city; commit to jail or admit to bail anyone accused of a city offense; issue and compel obedience to subpoenas; compel witnesses to appear and testify and jurors to serve for trials before the court; penalize contempt of court; issue processes necessary to enforce judgments and orders of the court; issue search warrants; and perform other judicial and quasi-judicial functions as allowed by law.²⁰

5.4 **Auditor.** The city council must provide for an independent annual audit of all city accounts and may provide for more frequent audits and such other audit duties as the council deems necessary. The auditor must be duly licensed to practice as an auditor under the state municipal audit law.²¹

5.5 **Compensation.** The council must authorize the compensation of city officers and employees as part of its approval of the annual city budget.

¹⁹ This section modified to read "is established and remains and continues" thus incorporating provisions of old section 10.3 (Offices) stating that that the office of city attorney "remains and continues." Similar change is made below regarding municipal court. Thus, no need for old section 10.3. Section also modified to move the provision about council appointing the city attorney to section 4.2 (Council Composition and Powers).

²⁰ This section modified to read "is established and remains and continues" thus incorporating provisions of old section 10.3 (Offices) stating that that the municipal court "remains and continues." Similar change is made above regarding the office of city attorney. This eliminates the need for old section 10.3. Section also modified to move the provision about council appointing municipal court judges and a presiding judge to section 4.2 (Council Composition and Powers). Changes also made to clarify the role of the presiding judge and authorizing the court administrator to contract with individuals to serve as municipal court judges pro tempore.

²¹ Similar to existing city charter; updated consistent with NCL model charter section 5.11.

In Article 5, the following changes were made:

1. Deleted subparagraph 5.1(c), “The manager need not reside in the city.” Likely to be addressed through an employment agreement.
2. Added paragraph 5.1(c)1 and renumbered the rest.
3. Reworded paragraph (c)9 to make it consistent with the mayor’s duties.
4. Reworded paragraph (c)11 by adding mayor and changing citizens to residents.
5. Modified paragraph 5.2 (City Attorney) as explained in the relevant footnote.
6. Modified paragraph 5.3 (Municipal Court and Judges) as explained in the relevant footnote.

Article 6 Elections

6.1 **City Elections.** City elections must conform to state law, unless this charter or city ordinances provide otherwise.²² All elections for city offices must be nonpartisan.

6.2 **Qualification of Electors.** Every person who is a resident of the city and who qualifies as a legal voter under state law may vote in city elections.²³

6.3 **Eligibility.** The mayor and each councilor must be a qualified elector under state law and reside within the city for at least six months immediately before election or appointment to office. A person, after taking office, must remain a resident of the city and qualified elector of the state to continue to hold office. No person may be a candidate at a single election for more than one city office. The council is the final judge of the election and eligibility of its members.

OPTION: Should 6 months or one year of city residency be required to hold office?

Many cities have 6 month requirements, but Bend, Eugene, Gresham, Hillsboro, and Salem are examples of cities that have one year requirements.

COMMENT: Urban Reserve 6B and the unique configuration of the City’s boundaries make it worth considering whether residents of newly annexed areas should be immediately eligible to run for office if they have lived in the area for six months or a year, or have a waiting period.

OPTION: Should this language be added? *“If the person is a resident of an area annexed less than [six months/one year] prior to election, total continuous residency in the area annexed shall be counted towards the [6-months/one year] requirement.”*

²² Oregon Constitution, Article II, section 14a (“Time of holding elections in incorporated cities and towns”) requires cities to hold their regular elections for officers at the same time as the general biennial elections for state and county officers are held. ORS 254.035 implements this provision. ORS 254.056 states that general elections are held on the first Tuesday after the first Monday in November of even-numbered years. It further states that primary elections may be held on the third Tuesday in May of even-numbered years.

²³ The State of Oregon defines a legal voter as an “elector.” See ORS chapter 247. An elector is “an individual qualified to vote under Article II, section 2, Oregon Constitution” (which provides in relevant part: “Every citizen of the United States is entitled to vote in all elections not otherwise provided for by this Constitution if such citizen: (a) Is 18 years of age or older; (b) Has resided in this state during the six months immediately preceding the election, except that provision may be made by law to permit a person who has resided in this state less than 30 days immediately preceding the election, but who is otherwise qualified under this subsection, to vote in the election for candidates for nomination or election for President or Vice President of the United States or elector of President and Vice President of the United States; and (c) Is registered not less than 20 calendar days immediately preceding any election in the manner provided by law.”)

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

6.5 **Voters' Pamphlet.** All candidacies and measures submitted to the voters of the city in a primary, general, or special election must be publicized by a voters' pamphlet published by the city in accordance with city ordinance. No voters' pamphlet will be prepared for any election for which no city measure is submitted to the voters and not more than one person has filed or been nominated for any city office.²⁴

6.6 **Oath.** The mayor and each councilor must subscribe and swear or affirm an oath to the effect that the person will faithfully discharge to the best of the person's ability the duties of the office being assumed and will support the constitutions and laws of the United States and the State of Oregon and the charter and ordinances of the City of Beaverton.²⁵ The oath must be administered and attested to by a notary public or other person duly authorized to administer oaths.²⁶ The oath may be taken up to ten days prior to the scheduled date of assuming office.²⁷

6.7 **Terms.** After January 1, 2020, council positions one, two, and five will be elected every four years starting with the 2022 general election and the mayor and council positions three, four, and six will be elected every four years starting at the 2024 general election.²⁸ The mayor and each councilor's term of office is four years and commences on the first day of January after the election to office.²⁹ A mayor may serve no more than three consecutively-elected four-year terms.³⁰ A councilor may serve no more than three consecutively-elected four-year terms; the limit applies even if one or more of the consecutive terms is served in different numbered council positions.³¹ If a mayor or a councilor is appointed or elected for a term that is less than four years, the partial term does not count as a term; in addition to the partial term, a mayor or a councilor may also serve three consecutively-elected four-year terms.

²⁴ No substantive changes compared to existing section 30 A of current city charter.

²⁵ Oregon does not require public employees or elected officials to take an oath before assuming office. This section could be omitted from the charter in whole or in part or relocated to a city ordinance.

²⁶ In addition to a notary public, ORS 44.320, authorizes the following persons to administer an oath of office: judge, justice of the peace, court clerk, and certified shorthand reporter.

²⁷ The ten-day grace period is borrowed from the Washington State, but may be unnecessary. If a person fails to take a required oath, Oregon recognizes the "*de facto* officer" doctrine. A *de facto* officer is one who "has the possession of an office and performs the duties thereof under color of right, without being actually qualified in law so to act." *Smith v. City of Jefferson*, 75 Or. 179, 187 (1915). The official actions of a *de facto* officer have the same legal effect as the official actions of a duly qualified officer.

²⁸ The general election is the election held "on the first Tuesday after the first Monday in November of each even-numbered year." ORS 254.056(1).

²⁹ The wording makes it irrelevant whether the person is elected at the primary or general election. Special elections to fill vacancies are dealt with specifically under section 7.2.

³⁰ Time in office as an appointed mayor is not included in the term limit calculation.

³¹ As drafted, a councilor who holds a numbered council position cannot run for another numbered council position and avoid application of the three consecutively-elected four-year term limit. Time in office as an appointed councilor is not included in the term limit calculation. Also, as currently drafted, any gap in service would allow the termed-out councilor or mayor to be appointed.

COMMENT: Hillsboro limits the mayor and councilors to “two consecutive elected four year terms.” Bend, Eugene, Gresham, Medford, and Salem do not have term limits.

OPTION: Should this language be added? “A mayor or councilor that is termed out of office is not eligible to hold another elected city position until at least [two-years/four-years] after the mayor or councilor leaves office.”

In Article 6, the following changes were made:

1. Modified 6.3 by exchanging “qualifications of its members” to “eligibility of its members” in the last sentence.
2. Added the last sentence to 6.7 to clarify that partial terms do not count towards the term limit.

Article 7³²

Vacancies in Office

7.1 **Vacancies.**³³ The mayor or a council office becomes vacant:

(a) Upon the incumbent's:³⁴

- (1) Death;
- (2) Resignation from the office;
- (3) Recall from office;
- (4) Assuming another elected office;
- (5) Ceasing to reside in the city;
- (6) Ceasing to be a qualified elector under state law; or³⁵
- (7) Conviction of a felony.³⁶

(b) Upon declaration by the council after the incumbent's:³⁷

- (1) Incarceration;

³² Article 7 should be merged into Article 6.

³³ This section modifies section 7.8 of the LOC Model Charter. Subsection (a) are automatic grounds for declaring an office vacant. The events are intended to be easily established, without much opportunity for factual disputes. The events could equally justify the removal of either a councilor or a mayor. Subsection (b) are discretionary grounds for declaring an office vacant. Whether the authority of a council to declare the office of an elected mayor vacant is appropriate should be considered once a preferred form of government and official roles and responsibilities are settled. The section should also be reviewed if councilors are elected in districts rather than at large to resolve what consequence moving from a district has on continuing in office.

³⁴ Use of the term “upon” in subsection (a) means the vacancy occurs on the day of the listed event. The use of “...the incumbent's...” includes both mayor and councilors.

³⁵ See note 3 for a full definition of “a qualified elector under state law.” Essentially, a person who is age 18 or older, duly registered to vote, and an Oregon resident during the six months immediately preceding the election.

³⁶ Further discussion about the practical application of this standard is needed. Alternatives may be to include misdemeanors or limit to the conviction of a criminal statutory offense which involved abuse of one's official position.

³⁷ Similar to subsection (a), use of the term “upon” in subsection (b) means the vacancy occurs on the day of the council declaration. Declaration would be made upon majority vote of council. Does the person who is subject of the declaration vote? This construction does not address the issue. If subsection (b) is to only apply to councilors, the use of “...the incumbent's...” should be changed to “...a councilor's....”

(2) Failing to participate in all council meetings within a 60-day period without the council's consent;³⁸

(3) Failing to qualify for the office within 10 days of the scheduled date of assuming office;³⁹

(4) Removal under Section 4.4.⁴⁰

OPTIONS: Should the following language be added under Section 7.1(b): "Conviction of a public offense punishable by loss of liberty;"

OPTION: Should one or more of the following be added as a reason for removal: A mayor or councilor may be removed from office after a public hearing and a finding by at least four councilors that the mayor or councilor:

(a) "Directly or indirectly attempted to coerce or influence the city manager or a candidate for the office of city manager in the appointment, removal, or discipline of any city employee or in an administrative decision."

(b) "Violated the Oregon Government Ethics standards regarding potential and actual conflicts of interest."

7.2 Filling Vacancies.⁴¹ Vacancies must be filled as follows:

(a) If less than one year⁴² remains in the term of the person who held that vacant office, the vacancy must be filled by majority vote of the remaining members of the council, and the appointee will serve the unexpired term of the predecessor to the office; or

(b) If one year⁴³ or more remains in the term of the person who held the vacant office or if for any reason the office is not filled and no person takes office when the term of office otherwise would have commenced, the vacancy must be filled by majority vote of the remaining members of the council, and the appointee will serve as an interim city councilor until a successor to the office is duly elected and is qualified to take office.⁴⁴

(c) The election to fill the vacancy for the unexpired term of office must be held at the election that is next available pursuant to state law which occurs no sooner than the one hundred twentieth day after the date upon which the vacancy occurred. At the election, the person elected must receive a majority of the votes cast for all candidates for the office. If no candidate receives a majority, then a run-off election between the two candidates receiving the highest number of votes must be held at the election that is next available pursuant to

³⁸ If there were circumstances that precluded a councilor from participating for a period of time, such as for a reason that would be covered by protected leave, the council would give consent for the absence. The council can further specify in its rules circumstances for granting consent if it chooses to.

³⁹ Text amended slightly to parallel related text in section 6.6 (Oath).

⁴⁰ Section 4.4 is modeled after a section of the LOC Model Charter. Section 4.4 reads: "No council member [includes each councilor and the mayor] may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in executing the manager's powers and duties. Violation of this prohibition is grounds for removal from office by a majority of the council after a duly noticed public hearing."

⁴¹ This section is derived from the city's existing charter.

⁴² Could be reduced to 8 months, but probably not less.

⁴³ Could be reduced to 8 months, but probably not less. Confirm subsections (a) and (b) complement each other.

⁴⁴ The office could remain vacant instead of appointing a short-term interim councilor.

state law. The term of office for a person elected to fill a vacancy for an unexpired term of office commences upon the certification of the election.

In Article 7, the following changes were made:

1. Modified 7.1(b)(2) by exchanging “Absence” for “Failing to participate” and adding “without the council’s consent.”
2. Modified 7.7.(b)(2) to parallel related text in 6.6 (Oath).
3. Identified section 4.4 (Interference) as the section authorizing council-mandated removal from office for interference with city manager operations.

Article 8

Ordinances

8.1 Ordaining Clause. The council exercises its legislative authority by adopting ordinances. The enacting clause for all ordinances must state “The City of Beaverton ordains as follows:”.

8.2 Adoption. Except as otherwise provided in this charter, the council must do the following to adopt an ordinance:

- (a) conduct first reading of the ordinance by reading only the title of the ordinance at a council meeting;
- (b) after first reading is complete:
 1. publish, in accordance with applicable law, the title of the ordinance in a written meeting agenda for a second council meeting to consider adopting the ordinance;
 2. provide a draft of the proposed ordinance for public inspection at least 48 hours before the meeting to consider adopting the proposed ordinance;
 3. hold a public hearing if one is required by law; and
 4. conduct second reading of the ordinance by reading only the title of the ordinance at the council meeting.

COMMENTS: Ordinance adoption processes in the Charter can be general; the Beaverton Code and the Council Rules can include additional specificity regarding the publication, public hearing, and modification requirements. Here is an example from Salem that is straight forward.

1. Except as subsection 2 of this section allows adoption at a single meeting, an ordinance shall be read by title in open council meeting on two different days before being passed by council.
2. A council may pass an ordinance at a single meeting by the express unanimous votes of all council members present.
3. At least five affirmative votes shall be necessary to pass an ordinance bill.
4. Upon the passage of an ordinance, the ayes and nays of the council members shall be entered in the record of council proceedings.
5. After passage of an ordinance, the custodian of city records shall attest it with its date of passage and the custodian's name and title of office.

OPTION provided by Councilor San Soucie: Specific questions or comments are provided in blue under applicable subsections.

8.2 Adoption by Council. Except as this charter otherwise provides, the council must do the following to adopt an ordinance:

(a) Publish for general availability a draft of the proposed ordinance.

(b) Read the ordinance by title at a Council meeting, and announce the date of the first public hearing for the ordinance, which can be no sooner than 7 days after the announcement.

Is a public announcement at the Council meeting all that is required? If publication of the agenda or a revised draft of the ordinance is required this would likely increase the time required to get an ordinance adopted because staff would have to publish the ordinance and agenda for the next meeting the day after the council meeting.

(c) Hold a public hearing. If another public hearing is needed, continue the matter and announce the date of the next hearing.

Under state law a hearing is not required for all ordinances. Does the City want to provide for public hearings in the charter or in the Beaverton Code instead?

(d) Consider adoption by vote after the last public hearing.

(e) Minor changes may be made to the ordinance between the public hearing and the vote. Substantive changes to the ordinance require another public hearing, and must be published as a revised draft no less than 3 days before that public hearing. **Selection between previously published options in a draft ordinance is considered a minor change.**

The highlighted sentence could be located in the Beaverton Code or in Section 8.4 below instead.

8.3 Immediate Adoption. The council may adopt an ordinance at a single meeting by the unanimous approval of the members of the council present and voting on the matter, provided the proposed ordinance is available in writing to the public at least five days before the meeting, unless there is an emergency. With the consent of the councilors present, the council may adopt an ordinance to address the emergency with such abbreviated notice of the ordinance and council meeting as the council determines to be necessary under the circumstances.

OPTION: Does the Council wish to always require a public hearing?

Issue to consider: There are a variety of council actions that take place by ordinance and most of them do not require a public hearing, but the council always has the authority to require one, even if it is not in the charter.

OPTION: Does the Council wish to require publication of ordinances 7 days prior to the meeting?

Issue to consider: Currently the city recorder publishes the council packet 5 days prior to the meeting. This would create a different publication protocol for ordinances.

8.4 Amendment to Proposed Ordinance. Any substantive amendment to a proposed ordinance must be read aloud or made available in writing to the public before the council adopts the ordinance at that meeting.

8.5 Record of Vote. After the adoption of an ordinance:

(a) the mayor must sign the ordinance.⁴⁵

⁴⁵ In lieu of giving the mayor veto power over legislation, some council-city manager forms of government allow the mayor the power to require the council to reconsider an ordinance if the mayor does not endorse it. That process is described in these steps: If the mayor approves the ordinance, the mayor must sign and date it. If the

(b) the city recorder must attest to the adoption and date of adoption of the ordinance and enter into the council minutes the vote of each member of the council regarding the adoption of the ordinance.

8.6 Effective Date of Ordinances. Ordinances normally take effect on the 30th day after adoption, or on a later day provided in the ordinance. An ordinance may take effect as soon as adopted or on another date less than 30 days after adoption if it contains an emergency clause.⁴⁶

In Article 8, the following changes were made:

1. Rewrote 8.2 (Adoption) stating the requirements to adopt an ordinance in clear language to provide a checklist of what is required.
2. Added language in 8.3 (Immediate Adoption) to allow for an emergency ordinance.

Article 9⁴⁷

Public Improvements; Urban Renewal; Debt

9.1 Public Improvements. The council must order the making of a public improvement upon petition of the owners of 60% of the area of the real property that would be subject to special assessments for the cost of the improvement.⁴⁸

9.2 Urban Renewal. The council shall not approve any urban renewal plan unless approved by a majority vote in the City of Beaverton at a general or primary election. Further, any urban renewal agency shall not be comprised exclusively of members of the council.⁴⁹

9.3 Debt. City indebtedness may not exceed debt limits imposed by state law.⁵⁰

mayor requires reconsideration of the ordinance, the mayor must return it to the recorder with written reasons for reconsideration within ten days of receipt of the ordinance. If the ordinance is not so returned, it takes effect as if approved. At the first council meeting after demand for reconsideration by the mayor, the councilors will consider the reasons of the mayor and again vote on the ordinance. If at least a majority of all councilors vote to adopt the ordinance, it will take effect. (Note: the number of votes comprised of “a majority of all councilors” is not necessarily the same number of votes as “a majority of those councilors present and voting.”)

⁴⁶ If the mayor is given veto or reconsideration powers over ordinances, this section would need to be revised to accommodate the change. Sherwood and Hillsboro charters provide examples.

⁴⁷ Relocated existing section 40 (Limitation on Indebtedness) and section 44 (Limitations on Powers of the Governing Body of the City of Beaverton in Regards to Urban Renewal) to this Article. Removed section 39 (Bids for Public Contracts) because the subject matter of that section is fully addressed by state law.

⁴⁸ As written, this section is not required but may be an appropriate policy to include in a charter. Hillsboro has a similar provision. The balance of Beaverton’s existing charter provision on public improvements is not required. Two of the existing provisions provide that ordinances will address certain matters. There’s little value in such provisions being in a charter, other than to direct readers to look at city ordinances for information about a given topic. The other provision allows residents a limited ability to remonstrate against some public improvements. There is no requirement to include such a provision in a city charter in Oregon. The provision has been included in the Beaverton Charter for decades and has seldom, if ever, been exercised.

⁴⁹ This section’s wording is consistent with the current charter provision but is not identical to it.

⁵⁰ This section is based on the LOC model charter. The LOC model charter also recommends a statement that “a charter amendment is not required to authorize city indebtedness.” Gresham’s charter includes a variation of this: “Approval by the voters of city indebtedness need not be in the form of a charter amendment.” Subject to reconsideration in later drafts based on further research, the provision is being omitted from this draft of the charter.

Article 10⁵¹
General Provisions⁵²

10.1 **Ordinance Continuation.** All ordinances and other enactments consistent with this charter and in force when this charter takes effect remain in effect until amended or repealed.

10.2 **Pending Matters.** All rights, claims, causes of actions, duties, contracts, and legal administrative proceedings that exist when this charter takes effect continue and are unimpaired by this charter, 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.

10.3 **Severability.** The terms of this charter are severable. If any provision of this charter is held invalid by a court, the invalidity does not affect the validity of the remaining parts of the charter.

10.4 **Time of Effect.** This charter takes effect 30 days after the day on which it is approved by a majority of voters, and except as otherwise provided is operative January 1, 2021. The city may take any action before this charter’s operative date that is necessary to enable the city on or after the operative date to exercise all duties, functions, and powers conferred on the city by this charter.

10.5 **Saving Clause.** All charter provisions adopted before this charter takes effect continue in force and effect until repealed.

10.6 **Repeal.** All charter provisions adopted before this charter takes effect are repealed when this charter becomes operative on January 1, 2021.

In Article 10, the following changes were made:

1. Retitled Article 10 “General Provisions.”
2. Retained sections 10.1 and 10.2.
3. Deleted section 10.3 (Offices) after incorporating the substance of the section into 5.2 (City Attorney) and 5.3 (Municipal Court and Judges).
4. Moved the remaining sections (10.4, 10.5, and 10.6) outside of the charter.

[END OF CHARTER]

In a separate section of the measure proposing the adoption of a new charter, effective upon passage but not to be codified:

⁵¹ Removed sections 42 (Initiative and Referendum) and 43 (Zone Changes) as redundant. The subject matter of those sections is fully addressed by state law.

⁵² Retitled Article 10 “General Provisions.” Retained sections 10.1 and 10.2. Deleted section 10.3 because the substance of that section is now captured in sections 5.2 (city attorney) and 5.3 (municipal court and judges). Moved the remaining sections (10.4, 10.5, and 10.6) outside of the charter, yet still included in the measure proposing the adoption of a new charter. If the measure passes and the charter is adopted, the transitional sections will be effective but will not be codified.

A. **Terms.** For the mayor and any councilor elected prior to January 1, 2019, the mayor and councilor will complete the four-year term for which the mayor or councilor was elected.⁵³ The term of the mayor or any councilor elected to a four-year term of office to begin on the first day of January 2021 is four years. The mayor and every councilor in office on the first day of January 2021 is deemed to have been elected to a first term of office⁵⁴ for purposes of calculating any applicable term limit pursuant to this charter.

OPTION 1: Replace the last sentence with the following language: *“Each councilor or mayor in office on January 1, 2021, that was elected to one or more four-year terms of office prior to January 1, 2020, will be deemed as having completed one four-year term for purposes of calculating any applicable term limit pursuant to this charter.”*

Option 2: Replace the last sentence with the following language: *“Each councilor or mayor in office on January 1, 2021, that was elected one or more four-year terms of office prior to January 1, 2021, will be deemed as having completed the same number of four-year terms for purposes of calculating any applicable term limit pursuant to this charter. For example, a mayor or councilor that has completed three four-year terms prior to January 1, 2021, will be deemed as having completed three four-year terms resulting in the mayor or councilor being termed out.*

B. **Compensation.** The compensation of the mayor and each councilor when this charter takes effect must continue in effect until changed in accordance with the provisions of this charter.

C. **New Council Position.** The city must hold an election the same day as the 2020 general election to fill the sixth councilor position. The person elected to council position six will serve a four-year term of office to begin on the first day of January following the election and receive the same compensation as other councilors.⁵⁵

In this section, the following changes were made:

1. Removed Article 11 from the charter.
2. Reworded new A (formerly 10.4) to make it easier to read and correct the dates.
3. Renumbered former 10.5 and 10.6 to new B and new C, respectively.

⁵³ Assumes charter adopted in 2020 at the primary election. The effective date of the charter would then be 30 days after the primary election date. The operative date of the charter would be January 1, 2021. Thus, if the charter is adopted, the mayor and councilors in office in 2020 finish out their terms they were elected to under the current charter. If election date is not the 2020 primary, revisit the timing set out in this section.

⁵⁴ The number of deemed-served terms-of-office can be adjusted by position, if desired.

⁵⁵ Assumes adoption of the charter in May 2020. If a city holds a special election on a date other than the primary election or general election, it must bear the expense of the election. ORS 254.046.