

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Draft Beaverton Charter of 2021

FOR AGENDA OF: 1-28-20 **BILL NO:** 20023

MAYOR'S APPROVAL: *Pro Lane*

DEPARTMENT OF ORIGIN: City Attorney *W. Key*

DATE SUBMITTED: 1-21-20

CLEARANCES: Mayor's Office *PAH*

PROCEEDING: Public Hearing

EXHIBITS: 1. Draft Charter
2. PowerPoint Presentation

BUDGET IMPACT

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

Hold a public hearing regarding the attached draft city charter, which--if approved by city voters--would replace Beaverton's current charter starting January 1, 2021.

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.

Beaverton's current 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."

A series of council work sessions held during public meetings over the past months has resulted in the attached draft of a new city charter (Exhibit 1), which--if approved by city voters--would replace Beaverton's current charter. The city has scheduled two public hearing regarding the draft charter. The first hearing was held on January 14 and the second is scheduled for January 28, 2020.

The public hearings provide community members an opportunity to comment and make suggestions about the draft charter. Comments and suggestions can be made in person at a council meeting or in writing, submitted in person, by mail or electronically.

INFORMATION FOR CONSIDERATION:

At the public hearing held January 14, staff provided an orientation regarding the draft charter. The slides used in that presentation are attached as Exhibit 2. At the conclusion of the January 14 public hearing, council requested that the draft charter be modified in two regards; in addition, two other sections were modified, for a total of four substantive amendments.

The first modification relates to section 3.3(a)(9) concerning the number of council members who must vote to confirm an appointment or removal of a person to a city board, commission or committee. The attached draft charter provides that a majority of those council members present and voting is required to confirm the appointment or removal. The provision had required a majority of the entire council to vote to confirm the recommendation.

The second requested modification relates to section 3.10 concerning grounds for a council member's removal from office. The attached draft charter provides that a council member may be removed from office for violation of any applicable rule of governmental ethics. Section 3.10 originally had no provision allowing the council to remove a mayor or councilor from office for an ethical violation.

The third modification is to section 3.3(a)(4) regarding the mayor's duty to act with the council to direct the city manager. After the January 14 meeting, section 3.3(a)(4) was identified as unnecessary because section 3.3(c) already specifies that the mayor is prohibited from directing the city manager, and the council is given authority to appoint, remove, and supervise the city manager in section 3.1.

The fourth modification is to section 3.3(a)(5), which specifies the mayor participates in the review of the city manager. Given that section 3.1(b) requires the council to conduct an annual review of the manager, and the mayor is a member of the council, this provision was deleted as redundant.

Highlights of what the draft charter would change include:

The City's Form of Government.

The city's form of government would change from the present mayor-council form to a council-manager form. The council would be the governing body of the city, responsible for legislative functions, and elected by the public. The council would consist of seven members: six part-time city councilors and one full-time mayor. All council positions would be non-partisan and elected at-large. The council would appoint a full-time professional city manager to oversee the city's day-to-day administrative operations, implement its policies, and advise it. The city manager would serve at the pleasure of the council. The mayor would serve as a full-time elected official and the political head of the city.

Term Limits.

The councilors and the mayor would be limited to three four-year terms in office for their respective positions. In other words, the term limit would not prohibit an incumbent mayor from seeking election to office as a councilor, or an incumbent councilor seeking election to office as a mayor, after reaching the term limit for their incumbent position.

Gender Neutral Language

Many of the provisions of the Beaverton Charter of 1981 are carried over from similar provisions originally found in the Beaverton Charter of 1944. Consequently, the Beaverton Charter of 1981 contains several outdated, gender-exclusive references. The draft charter contains no gender-exclusive references.

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The Beaverton Charter of 2021¹

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 1²

Names and Boundaries

- 1.1 **Titles.** This enactment may be referred to as the Beaverton Charter of 2021.
- 1.2 **Name.** The City of Beaverton, Oregon, continues as a municipal corporation with the name City of Beaverton.³
- 1.3 **Boundaries.** The city includes all territory within its boundaries as they now exist or are legally modified in the future.

Article 2⁴

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.

¹ 2021 would be the year the charter becomes operative if approved by voters at the May 2020 Primary Election.

² Compared to the city's current charter, editorial changes were made to Article 1, but no substantive changes.

³ 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 would be addressed separately in any measure referred to voters asking whether to adopt this charter.

⁴ Compared to the city's current charter, editorial changes were made to Article 2 of B, but no substantive changes.

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

Article 3

Council

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

- (a) A majority of the entire council must appoint and remove the city manager. The council may appoint a city 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 must conduct an annual review of the performance of the city manager.
- (c) The council's appointment or removal of the city manager must be made without regard to political considerations and solely on the basis of matters relating to or arising out of the city manager's demonstrated skill, knowledge, experience, performance, and conduct in local government management.
- (d) When the city manager is temporarily disabled from acting as city manager or when the office of the city manager becomes vacant, the council must appoint a city manager pro tempore. The city manager pro tempore has the authority and duties of city manager, except that a pro tempore city manager may appoint or remove direct reports to the city manager only with council approval.⁶
- (e) A majority of the entire council must appoint and remove the city attorney.⁷
- (f) A majority of the entire council must appoint and remove a municipal judge and designate one municipal judge to serve as the court's presiding judge.⁸
- (g) A majority of the entire council must appoint and remove the city auditor.⁹
- (h) A minimum of five affirmative votes is required to censure or discipline a council member.

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 The exception on the power of the city manager pro tempore relating to appointing or removing employees essentially would limit the city manager pro tempore's authority relating to hiring or firing department heads.

⁷ The title "city attorney" can apply to a natural person or an entity, such as a firm.

⁸ This language does not require the council to appoint pro-tempore judges.

⁹ The title "city auditor" can apply to a natural person or an entity, such as a firm.

- (i) A minimum number of five affirmative votes is required to remove a council member pursuant to 3.10.
- (j) A majority of the entire council may appoint and remove council support staff.
- (k) The council must determine the compensation¹⁰ of the mayor and councilors, but no change¹¹ in compensation is effective for the mayor or councilors in office when the decision is made. The changes in compensation take effect¹² at the start of the term following the end of the term of each council member in office when the determination was made.¹³

3.2 Council President. 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 or unavailable to perform duties.¹⁴

3.3 Mayor. Except as otherwise provided in this charter, the mayor is the full-time official head of the city for political, ceremonial, emergency management, and military purposes. The mayor is a voting council member and has no veto authority.

- (a) In exercising the powers of the mayor, the mayor must:
 - (1) Attend all meetings of the council, except when circumstances necessitate otherwise.¹⁵
 - (2) Preside over and facilitate council meetings, preserve order, enforce council rules, and determine the order of business under council rules.
 - (3) Sign the authorized writings and records of council decisions.¹⁶
 - (4) Work with the city manager and councilors to develop and implement short and long-term goals for the city.
 - (5) Work with the city manager and councilors to define roles and responsibilities of individual councilors on intergovernmental issues.

¹⁰ "Compensation" includes base salary and any other benefits.

¹¹ "Change" includes increases and decreases in compensation – *i.e.*, whether to the private financial benefit or detriment of the public official.

¹² Since council members have staggered terms, changes in compensation "will take effect" on different dates. The change in compensation could take effect two years later for some council members compared to others.

¹³ 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").

¹⁴ At its December 17 work session, the council discussed adding a provision to allow the council president to sign in the mayor's absence; however, this sentence already allows the council president to complete all enumerated duties when the mayor is absent.

¹⁵ Outside employment of the mayor is addressed in subsection (b)(1) of this section.

¹⁶ If the mayor is unable or unavailable to sign, the council president is authorized to sign in lieu of the mayor. See Section 3.2.

- (6) Annually report to the community, and as needed to council, as to the affairs and needs of the city and such legislation, policies, or measures the mayor deems necessary or desirable.
 - (7) 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 the council confirms 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.¹⁷
- (b) In exercising the powers of the mayor, the mayor may:¹⁸
- (1) 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.¹⁹
 - (2) Hire support staff.
 - (3) Have other lawful powers and duties that are conferred or imposed by ordinance or resolution of the city.
- (c) The mayor must not direct or order any employee or official of the city, including the city manager.

3.4 No Interference. No council member may directly or indirectly attempt to coerce the city manager or a candidate for the office of city manager in executing the city manager's powers and duties. In council meetings, council members may discuss or suggest anything with the city manager relating to city business.

3.5 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.

3.6 Quorum. A majority of the council members is a quorum to conduct business, but a smaller number may meet and compel attendance of the absent council members in a manner provided by law. In the event of a vacancy due to death, resignation, or loss of contact during a state or federal state of emergency within the city, the quorum is reduced accordingly. Every

¹⁷ A majority of the council members present and voting is sufficient to confirm the appointment or removal of a board, commission, or committee member. The mayor is a council member and is allowed to vote on the matter.

¹⁸ After the December 17 work session, former subsections (i) and (j) were moved to create a new subsection for actions the mayor "may" take.

¹⁹ This charter allows for the mayor's 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 could entail council censure or other discipline of the mayor.

council member who is present must be counted for the purpose of constituting a quorum, even if the council member does not vote on one or more issues.²⁰

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

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

3.9 **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 express the individual's personal opinion on the issue.²¹

3.10 **Removal from Office.** In addition to censure and discipline, the council may remove a council member, after notice and an opportunity to be heard, if a minimum of five members of the council determines that the council member:

- (a) Is convicted of a crime punishable by a term of imprisonment;
- (b) Has violated any applicable rule of governmental ethics;²²
- (c) Fails to participate in at least one council meeting within a 60-day period without notifying the council;²³
- (d) Fails to qualify for the office within 30 days of the scheduled date of assuming office;
- (e) Coerces the city manager in violation of Section 3.4.

Article 4

Powers and Duties of City Officers

4.1 **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.

- (a) The city manager has no authority over:

²⁰ The abstention or recusal of the mayor or a councilor on a particular matter does not result in a reduced quorum.

²¹ This option was added at the request of the council at the December 17 work session, and a similar provision was added to the City Manager's obligations.

²²At the January 14 council meeting, council requested the draft charter include a provision to this effect. Presently, ORS chapter 244 relating to government ethics applies to the mayor and each councilor. Among other things, the chapter regulates how public officials lobby, receive gifts, use their office, hire or work alongside relatives, and resolve conflicts of interests.

²³ If there were circumstances that precluded a council member from participating for a period of time, such as for a reason that would be covered by protected leave, notifying the council likely would allow for the absence. The council can further specify in its rules situations that require notice if it chooses to.

- (1) The mayor,
- (2) The councilors,
- (3) The support staff of the mayor or council,
- (4) The city attorney,
- (5) The auditor,
- (6) The municipal judges,
- (7) The judicial functions of the municipal judges, or
- (8) The legal services functions of the city attorneys.

(b) The city manager must:

- (1) Provide high quality professional management and leadership to city government.
- (2) Assist the council in the development of city policies and carry out policies established by ordinances, resolutions, and orders.²⁴
- (3) Attend all council meetings unless excused by the mayor.
- (4) Make reports and recommendations to the council about the needs of the city.
- (5) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits, codes, and other city decisions.
- (6) Determine the personnel rules and practices of the city and appoint, supervise, and remove all city employees over which the city manager has authority.
- (7) Organize departments and administrative structure over which the city manager has authority.
- (8) Propose and administer the city budget.
- (9) Administer city utilities and property.
- (10) Consistent with council direction and in cooperation with the mayor, encourage regional and intergovernmental cooperation.
- (11) Involve the council in the development and implementation of short and long-term goals for the city; the short and long-term agenda process; and the development of budget principles and priorities.
- (12) Promote cooperation among the mayor, council, staff, and residents in developing city policies and building a sense of community.
- (13) Perform other duties as directed by the council.
- (14) Delegate duties but remain responsible for actions of all subordinates.
- (15) Permit 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.

²⁴ This makes the city manager responsible for carrying out city policy adopted by council ordinance, resolution, or order.

- (16) Express the majority position of the city council when taking a position on a city issue, but may at the same time, express the city manager's personal opinion on the issue.²⁵

4.2 City Attorney. 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.

4.3 Municipal Court and Judges. The Municipal Court of the City of Beaverton, Washington County, Oregon, is established and remains and continues 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.
- (b) All municipal judges must be members 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 council may assign other duties to the presiding judge.²⁶
- (c) 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.

4.4 Auditor. The city council must provide for an independent, annual financial audit of all city accounts and may provide for more frequent audits and such other audits and studies as the council deems appropriate. The auditor or firm conducting a financial audit must be duly licensed to practice as an auditor under state law.

²⁵ This option was added at the request of the council at the December 17 work session.

²⁶ At the December 17 work session, the Council discussed the possibility of granting some authority to the presiding judge to participate in the selection and supervision of pro tempore judges. This language allows the council to assign any additional duties through any mechanism it deems appropriate. For example, the Council could approve a job description for the presiding judge that includes supervision of pro tempore judges or any other duties it chooses.

4.5 **Compensation.** The council must authorize the compensation²⁷ of city officers and employees pursuant to the city budget process.²⁸

Article 5

Elections

5.1 **City Elections.** City elections must conform to state law, unless this charter or city ordinances provide otherwise.²⁹ All elections for city offices are nonpartisan.

5.2 **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 a city election.³⁰

5.3 **Eligibility.** Each council member 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.³¹ 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. Except when a state trial court has jurisdiction over the matter, the council is the final judge of the election and eligibility of its members.³²

5.4 **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.

²⁷ Compensation includes base salary and any other benefits. See footnote 10.

²⁸ As part of the budget process, council would continue to approve FTE counts and pay classifications. Council would not participate in hiring or managing employees other than those who by charter report directly to council.

²⁹ 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.

³⁰ 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.”)

³¹ At its December 17 work session, the council asked staff to consider specifying when the residency requirement is measured for state officials. Article IV, Section 8, of the Oregon Constitution states that: “a person may not be a Senator or Representative if the person at the time of election: (A) Is not a citizen of the United States; and (B) Has not been for one year next preceding the election an inhabitant of the district from which the Senator or Representative may be chosen.”

³² Election disputes that can be addressed by a trial court under state law would not be handled by the council.

5.5 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.³³

5.6 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.³⁴ The oath must be administered and attested to by a notary public or other person duly authorized to administer oaths.³⁵ The oath may be taken up to 30 days prior to the scheduled date of assuming office.³⁶

5.7 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.³⁷ 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.³⁸ A mayor may serve no more than three consecutively-elected four-year terms.³⁹ 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.⁴⁰ If a mayor or a councilor is appointed or elected for a

³³ If, for example, three council members stood for re-election unopposed, no city voters' pamphlet would be prepared on account of the three races.

³⁴ 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.

³⁵ 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.

³⁶ The 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.

³⁷ 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).

³⁸ 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 5.9.

³⁹ Time in office as an appointed mayor or councilor is included in the term limit calculation if the time in office following the appointment is three years or more.

⁴⁰ 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. Also, as currently drafted, any gap in service would allow the termed-out councilor or mayor to be appointed. Moreover, a termed out mayor may immediately run for a councilor position, and a termed out councilor may immediately run for mayor.

term that is less than three 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.

5.8 Vacancies in Office.⁴¹ The mayor or a council office becomes vacant upon the mayor or councilor's:⁴²

- (a) Death;
- (b) Resignation from the office;
- (c) Recall from office;
- (d) Ceasing to reside in the city;
- (e) Ceasing to be a qualified elector under state law; or⁴³
- (f) Removal from office pursuant to Section 3.10.

5.9 Filling Vacancies.⁴⁴ Vacancies must be filled as follows:

- (a) If less than one year⁴⁵ remains in the term of the person who held that vacant office, the council may fill the vacancy by majority vote of the remaining council members, and the appointee will serve the unexpired term of the predecessor to the office; or
- (b) If one year⁴⁶ 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, council may fill the vacancy by majority vote of the remaining council members, 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.⁴⁷
- (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

⁴¹ Grounds listed in 5.8 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.

⁴² Use of the term "upon" in subsection (a) means the vacancy occurs on the day of the listed event.

⁴³ See note 30 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.

⁴⁴ This section is derived from the city's existing charter.

⁴⁵ Could be reduced to 8 months, but probably not less.

⁴⁶ Could be reduced to 8 months, but probably not less.

⁴⁷ The office could remain vacant instead of appointing a short-term interim councilor.

number of votes must be held at the election that is next available pursuant to 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.

Article 6

Ordinances

6.1 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:”.

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

- (a) Publish a draft of the proposed ordinance for public inspection at least seven days before a public hearing on the proposed ordinance;
- (b) Read the ordinance by title only and announce the public hearing date at a council meeting;
- (c) Publish, in accordance with applicable law, the title of the ordinance in a written meeting agenda for a subsequent meeting;
- (d) Hold a public hearing at a subsequent meeting;
- (e) Move to adopt the ordinance at the same meeting the public hearing is held or at a subsequent meeting; and
- (f) Vote whether to adopt the ordinance.

6.3 Immediate Adoption. The council may adopt an ordinance at a single meeting by the unanimous approval of the council members present and voting on the matter, provided the proposed ordinance is available in writing to the public at least seven 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 and process as the council determines to be necessary under the circumstances.

6.4 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.

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

- (a) the mayor must sign the ordinance.^{48 49}

⁴⁸ Pursuant to Section 3.2, the council president can sign ordinances when the mayor is unable or unavailable.

⁴⁹ 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 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

- (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 council member regarding the adoption of the ordinance.

6.6 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.⁵⁰

Article 7

Public Improvements; Urban Renewal; Debt

7.1 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.⁵¹

7.2 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 board shall not be comprised exclusively of council members.⁵²

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

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.”)

⁵⁰ 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.

⁵¹ 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.

⁵² This section’s wording is consistent with the current charter provision but is not identical to it.

Article 8

General Provisions⁵³

8.1 **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.

8.2 **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.

8.3 **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.

8.4 **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.

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

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

[END OF CHARTER]

⁵³ Retitled Article 8 "General Provisions." Retained sections 8.1 and 8.2. Deleted section 8.3 because the substance of that section is now captured in sections 4.2 (city attorney) and 4.3 (municipal court and judges). Moved the remaining sections (8.4, 8.5, and 8.6) outside of the charter, yet still included in the measure that would propose 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.

The following three provisions that relate to the transition from the old charter to a new charter would be placed in a separate section of the measure proposing adoption of a new charter:

A. **Terms.**

NOTE: The language for this section is to be determined. Four options have been identified for consideration regarding how term limits could be implemented.

Option 1 – The charter does not impose term limits. To implement this option Section 5.7 in the charter is removed.

Option 2 – The charter does impose term limits in Section 5.7. All elected officials currently in office would be treated as having served up to two terms towards the maximum of three terms allowed under the new charter. However, regardless of the number of prior terms served, an elected official that runs for office in 2020 and wins the 2020 election will be able to take office and serve the complete term.

Option 3 – The charter does impose term limits in Section 5.7. All elected officials currently in office would have all previous terms served apply towards the maximum of three terms allowed under the new charter. Any elected official that has served three terms or more as either a mayor or a councilor by the end of 2020 will be term limited out for that office. However, regardless of the number of prior terms served, an elected official that runs for office in 2020 and wins the 2020 election will be able to take office and serve the complete term, ending on December 31, 2024.

Option 4 – The charter does impose term limits in Section 5.7. All elected officials currently in office would have all previous terms served apply towards the maximum of three terms allowed under the new charter. Any elected official that has served three terms or more as either a mayor or a councilor by the end of 2020 will be term limited out for that office. However, if an elected official that runs for office in 2020 and wins the 2020 election has already served three terms or more, the elected official will be prohibited from taking office on January 1, 2021. To prohibit an elected official that runs for office in 2020 from taking office on January 1, 2021, a prohibition must be added to the charter, and the charter must state that term limits are applied retroactively.

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.⁵⁴

⁵⁴ 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.

EXHIBIT 2

GOVERNING BEAVERTON: THE CITY'S NEW DRAFT CHARTER

January, 2020

 **Portland State**
UNIVERSITY
National Policy Consensus Center
College of Urban and Public Affairs | Hatfield School of Government

 **Beaverton**
O R E G O N



SOME QUESTIONS ABOUT THE NEW DRAFT CITY CHARTER:

- What is a city charter?
- Why does Beaverton need a new city charter?
- What are the common forms of government in Oregon?
- What forms of government were studied by the Beaverton mayor and council?
- What tentative decision has been made by the council for form of government?
- What is the role of elected officials under the new draft charter?
- What is the role of the city officers under the new draft charter?
- What other major changes have been made in the new draft charter?
- What issues are the mayor and council especially interested in hearing about related to the new draft charter?
- What are the next steps?



WHAT IS A CITY CHARTER?

- The U.S. federal government and the state of Oregon each have **constitutions**, while cities in Oregon have **charters**.
- Constitutions and charters are foundational documents describing how the government is organized and how it will govern itself.
- They are the legal documents that define the **organization, powers, functions, and essential procedures of the government**.
 - The U.S. constitution describes the roles and powers of the President, Congress, and the Supreme Court.
 - The Oregon constitution describes the roles and powers of the Governor, Legislature, and the state Supreme Court.
 - The City of Beaverton charter describes the roles and powers of the mayor, city council, and city officers. The charter describes the basic framework within which the city conducts its business.



WHY DOES BEAVERTON NEED A NEW CITY CHARTER?

- It is common for cities and counties to periodically review their charters to make sure they are up-to-date and describe what the city needs for governing the city into the future.
- The current city charter has been in place since 1981—for 39 years, without a review and without any changes.
- The city continues to grow and the city council wants to make sure that the charter language and form of government in Beaverton work well for residents for the next 39 years—or longer.



WHAT ARE THE COMMON FORMS OF GOVERNMENT IN OREGON?

- There are 241 cities in Oregon. They are organized into four basic forms of government:
- **1. Mayor/Council.** Smaller Oregon cities typically have the mayor-council form, in which the legislative and policymaking body is through a popularly elected mayor and council.
- **2. Commission.** Portland is the only city in the state with the commission form of government, where the elected commissioners function collectively as the city council and serve as administrators of city departments.
- **3. Strong Mayor.** Beaverton is the only city in the state with the strong mayor form, in which the mayor, serving as the chief executive officer, has the authority to appoint city staff, is responsible for city administration, and serves as the presiding officer at council meetings.
- **4. Council/Manager.** Most Oregon cities with populations over 2,500 have the council-manager or council-administrator form, in which the council hires (and can fire) a chief executive officer to be responsible for the daily supervision of city affairs.

Adapted from information on the Oregon Secretary of State's website.



WHAT FORMS OF GOVERNMENT WERE STUDIED BY THE MAYOR AND COUNCIL

- As they considered the form of government for the future, the council focused on two of the four methods of governance:
 - 1) the current strong mayor form; and,
 - 2) the council-manager form of government.
- They studied arguments pro and con of these two forms of government.
- They looked at model charters for cities from the National Civic League and the League of Oregon cities.
- They reviewed charter language from a variety of cities in Oregon and around the country.



TENTATIVE DECISION ON FORM OF GOVERNMENT

After considerable review, analysis, and discussion, the council tentatively decided that:

- The best form of government to serve the city into the future is the council-manager form of government.
 - But, the council wants to vary from the “typical” council-manager form by continuing with a full-time mayor who would be the official head of the city for “political, ceremonial, emergency management, and military purposes”.
 - The mayor would continue to chair council meetings and be the political head of city government, but the new draft charter would also give the mayor a major role in the development and implementation of short and long-term goals for the city and in working on intergovernmental issues.
 - The council believes this change reflects the city’s special history, character, and individuality.
- 

WHAT IS THE ROLE OF ELECTED OFFICIALS UNDER THE NEW DRAFT CHARTER?

- Under the new draft charter, the mayor and council—the elected officials—are the legislative body and the city’s policy makers. The power to govern is centralized with them:
 - They approve the city’s budget and adopt city laws and regulations.
 - They identify and then focus on the city’s short and long-range goals and objectives, such as community growth, sustainability, delivering cost-effective services to city residents, cooperative efforts with other agencies, and ensuring long-term financial stability.
 - They hire a professional city manager based on that person’s education, experience, skills, and abilities.
 - They then supervise the manager’s performance and oversee the achievement of city goals and objectives. If that person is not responsive and effective in their role, the elected officials have the authority to remove the city manager at any time, consistent with an employment agreement.
- 

WHAT IS THE ROLE OF THE CITY MANAGER UNDER THE NEW DRAFT CHARTER?

- The city manager is an at-will employee who can be fired by a majority of the elected officials, consistent with local laws and their employment agreement. The city manager:
 - Proposes the city budget for consideration by the budget committee and then by the mayor and council.
 - Recruits, hires, supervises, and may terminate city staff.
 - Serves as the mayor and council's chief advisor by providing complete and objective information about city operations, providing options for their consideration, offering an assessment of the long-term consequences of decisions, and making recommendations on how best to manage the city and deliver services.
 - Carries out the policies established by the mayor and council, enforces laws and regulations, and implements short and long-range city goals and objectives.



WHAT OTHER MAJOR CHANGES HAVE BEEN MADE IN THE NEW DRAFT CHARTER?

- The new draft charter adds one additional position to the city council--from five councilors to six councilors. With the mayor, that means there will be seven people voting on issues that come before them.
- Salaries for the mayor and councilors are set by council in the draft charter, but no change is effective for the mayor and councilors in office when the decision is made. They would go into effect in the next term of office. Under the current charter, compensation for mayor is set at 80% of the salary of a District Court Judge for the State of Oregon.
- Term limits for the mayor and councilors are established at 12 years (three terms).
- The process for amending and adopting ordinances for the city is simplified and a public hearing is always required before an ordinance is amended or added.



PUBLIC HEARING COMMENTS

- The council is especially interested in hearing comments from the public on two issues:
 - **1. Form of Government.** The new draft charter changes the form of government from a strong mayor form to a council-manager form; that is, moving from a full-time mayor as an elected chief executive of the city to a full-time city manager hired as chief executive.
 - The city would continue to have a full-time mayor and would add a full time city manager.
 - What is your opinion of this change to the city's form of government?
 - **2. Term Limits.** Should the new draft charter have term limits which restrict the mayor and councilors from serving beyond a certain number of years?
 - If there are term limits, how many terms should there be? The draft says 3 terms, or 12 years.
 - If there are term limits, how should they affect the mayor and councilors in office today?



WHAT ARE THE NEXT STEPS?

- The council will hold two public hearings to receive resident comments on the new draft charter.
- The council will make any final changes to the draft.
- The council will direct staff to prepare the agenda materials to place the new charter before the voters for final approval.

