

CITY OF PORTLAND

DRAFT HOME RULE CHARTER WITH LEGAL ANNOTATIONS

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PREAMBLE

We, the voters of Portland, Oregon exercise our power to the fullest extent possible under the Oregon Constitution and laws of the state, and enact this Home Rule Charter.¹

Chapter I

NAMES AND BOUNDARIES

Section 1. Title. This charter may be referred to as the 20__ City of Portland Charter.²

Section 2. Name. The City of Portland, Multnomah County, Oregon, continues as a municipal corporation with the name City of Portland (city).³

Section 3. Boundaries. The city includes all territory within its boundaries as they now exist or are legally modified. The city will maintain as a public record an accurate and current description of its boundaries.⁴

Chapter II

POWERS

Section 4. Powers. The city has all powers that the constitutions, statutes and common law of the United States and State of Oregon expressly or impliedly grant⁵ or allow⁶ the city, as fully as though this charter specifically enumerated each of those powers.

Section 5. Construction. This charter will be liberally construed⁷ so that the city may exercise fully all powers possible under this charter and under United States and Oregon law.

Section 6. Distribution. The Oregon Constitution reserves initiative and referendum powers as to all municipal legislation to city voters.⁸ This charter vests all other city powers in the council except as this charter otherwise provides.⁹ The council has legislative,¹⁰ administrative and quasi-judicial authority. The council exercises legislative authority by ordinance, administrative authority by resolution, and quasi-judicial authority by order. The council may not delegate its authority to adopt ordinances.¹¹

Chapter III

COUNCIL

Section 7. Council. The council consists of a mayor¹² and four commissioners.¹³

Section 8. Mayor.

- (a) The mayor presides over and facilitates council meetings, preserves order, enforces council rules, and determines the order of business under council rules.
- (b) The mayor is a voting member of the council.
- (c) The mayor, with the consent of council, appoints members of boards, commissions and committees established by ordinance or resolution.¹⁴
- (d) The mayor must sign all records of council decisions.¹⁵

Section 9. Council President. At its first meeting each year, the council must elect a president from its membership. The president presides in the absence of the mayor and acts as mayor when the mayor is unable to perform duties.¹⁶

Section 10. Rules. The council must by resolution adopt rules to govern its meetings.¹⁷

Section 11. Meetings. The council must meet at least once each week at a time and place designated by its rules, and may meet at other times in accordance with its rules.¹⁸

Section 12. Quorum. A majority of the council members is a quorum to conduct business,¹⁹ but a smaller number may meet and compel attendance of absent members as prescribed by council rules.²⁰

Section 13. Vote Required. The express²¹ approval of a majority of a quorum of the council is necessary for any council decision,²² except when this charter requires approval by a majority of the council.²³

Section 14. Record. A record of council meetings must be kept in a manner prescribed by the council rules.²⁴

Chapter IV

LEGISLATIVE AUTHORITY²⁵

Section 15. Ordinances. The council will exercise its legislative authority by adopting ordinances. The enacting clause for all ordinances must state "The City of Portland ordains:"²⁶

Section 16. Ordinance Enactment.

- (a) Except as authorized by subsection (b), enactment of an ordinance requires approval by a majority of the council at two meetings.²⁷
- (b) The council may enact an ordinance at a single meeting by the unanimous approval of at least three members,²⁸ provided the proposed ordinance is available to the public at least seven days before the meeting as prescribed by council rules.
- (c) Any substantive amendment to a proposed ordinance must be read aloud or made available in writing to the public before the council enacts the ordinance.
- (d) After enactment of an ordinance, the vote of each member must be entered into the council minutes.
- (e) After enactment of an ordinance, the city auditor²⁹ must endorse it with the date of enactment and the auditor's name and title.
- (f) Within 10 days of enactment of any ordinance without an emergency clause, any member may file written objections to the ordinance with the auditor. The council will consider the objections at its next regular meeting. If a majority of the council votes against the ordinance, it does not take effect. If a majority of the council does not vote against the ordinance, it takes effect on the date set by its original enactment.³⁰

Section 17. Effective Date of Ordinances. Ordinances normally take effect on the 30th day after enactment, or on a later day provided in the ordinance. An ordinance may take effect as soon as adopted or other date less than 30 days after adoption if it contains an emergency clause and is unanimously approved by at least four members.³¹

Chapter V

COUNCIL ADMINISTRATIVE AUTHORITY³²

Section 18. Resolutions. The council will normally exercise its administrative authority by approving resolutions.³³ The approving clause for resolutions may state "The City of Portland resolves:"

Section 19. Resolution Approval.

- (a) Approval of a resolution or any other council administrative decision requires approval by the council at one meeting.³⁴
- (b) Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the council adopts the resolution.
- (c) After approval of a resolution or other administrative decision, the vote of each member must be entered into the council minutes.
- (d) After approval of a resolution, the city auditor must endorse it with the date of approval and the auditor's name and title.

Section 20. Effective Date of Resolutions. Resolutions and other administrative decisions take effect on the date of approval, or on a later day stated in the resolution.³⁵

Chapter VI

QUASI-JUDICIAL AUTHORITY³⁶

Section 21. Orders. The council will normally exercise its quasi-judicial authority by approving orders. The approving clause for orders may state "The City of Portland orders:"

Section 22. Order Approval.

- (a) Approval of an order or any other council quasi-judicial decision requires approval by the council at one meeting.³⁷
- (b) Any substantive amendment to an order must be read aloud or made available in writing to the public at the meeting before the council adopts the order.

- (c) After approval of an order or other council quasi-judicial decision, the vote of each member must be entered in the council minutes.
- (d) After approval of an order, the city auditor must endorse it with the date of approval and the auditor's name and title.

Section 23. Effective Date of Orders. Orders and other quasi-judicial decisions take effect on the date of final approval, or on a later day provided in the order.

Chapter VII

ELECTIONS

Section 24. Elected Officers. The city elective officers are the mayor, four commissioners and the auditor. Officers are nominated and elected by the city voters at large for terms of four years.³⁸ Officers in office when this charter is adopted will serve the term for which they were elected.³⁹ At each general election after the adoption, two commissioners will be elected by position⁴⁰ for four-year terms.⁴¹ At the first general election after the adoption, a mayor will be elected for a four-year term.⁴² At the second general election after the adoption, an auditor will be elected for a four-year term.

Section 25. State Law. City elections must conform to state law except as this charter or ordinances provide otherwise. All elections for city offices must be nonpartisan.⁴³

Section 26. Qualifications.

- (a) The mayor, each commissioner and the auditor must be a qualified elector under state law, and reside within the city for at least one year immediately before election or appointment to office.⁴⁴
- (b) No person may be a candidate at a single election for more than one city office.
- (c) The council is the final judge of the election and qualifications of city elected officers.

(d) To hold the office of auditor, a person must be a certified public accountant, certified internal auditor or a certified management accountant.⁴⁵

Section 27. Nominations. The council must adopt an ordinance prescribing the manner for a person to be nominated to run for the office of mayor, commissioner or auditor.⁴⁶

Section 28. Terms. The term of an officer elected at a primary or general election begins on January 1 of the year immediately after the election, and continues until the successor qualifies and assumes the office.⁴⁷

Section 29. Oath. The mayor, each commissioner and the auditor must swear or affirm to faithfully perform the duties of the office and support the constitutions and laws of the United States and Oregon, and the charter, ordinances and resolutions of the city.⁴⁸

Section 30. Vacancies. The mayor, commissioner or auditor office becomes vacant:⁴⁹

- (a) Upon the incumbent's:
 - (1) Death;
 - (2) Adjudicated incompetence;⁵⁰ or
 - (3) Recall from the office.⁵¹

- (b) Upon declaration by the council after the incumbent's:
 - (1) Failure to qualify for the office within 10 days of the time the term of office is to begin;
 - (2) Absence from the city for 30 days without council consent;
 - (3) Ceasing to reside in the city;⁵²
 - (4) Ceasing to be a qualified elector under state law;
 - (5) Conviction of a public offense punishable by loss of liberty;⁵³
 - (6) Election or appointment to another public office;⁵⁴ or
 - (7) Resignation from the office.

Section 31. Filling Vacancies. A mayor, commissioner or auditor vacancy will be filled by election at the next available primary or general election. The council must by ordinance prescribe the manner and process for a person to run to fill a vacant position. The majority of the remaining council members may appoint a person to serve in the vacant position until a replacement is elected and assumes office. An appointee term of office runs from appointment until the start of the term of office of the next person elected to that office.

Chapter VIII

ADMINISTRATIVE OFFICERS

Section 32. Mayor.

- (a) The mayor must exercise careful supervision over the general affairs of the city.⁵⁵ The city will have at least five departments created by ordinance and bureaus will be created and their functions fixed by ordinance. The mayor will assign work among departments and bureaus and may from time to time change such assignments. The mayor may assign matters relating to any bureau to any department.⁵⁶ The mayor will assist the council in the development of city policies, and carry out policies established by ordinances and resolutions.⁵⁷
- (b) At the first council meeting after election of any council member, the mayor must designate each council member as commissioner in charge of a department. The mayor may change and transfer commissioners from one department to another whenever it appears that the public service would benefit from such transfer.⁵⁸
- (c) The mayor must appoint and may remove the chief of police.⁵⁹

Section 33. City Commissioners. Each commissioner must act as commissioner in charge of a department as designated by the mayor. Each commissioner in charge has administrative authority over the affairs and property of the designated department subject to this charter and ordinances. Each commissioner in charge must appoint heads of offices and bureaus for the assigned department.⁶⁰ Each commissioner will assist the council in the development of city policies, and carry out policies established by ordinances and resolutions.⁶¹

Section 34. City Auditor. The auditor will administer the office of city auditor and is responsible for the following activities:⁶²

- (a) Perform financial and performance audits of the city, including audits of its boards and commissions, franchises and contracts;
- (b) Supervise city elections;
- (c) Serve as clerk of the council, maintain a journal of proceedings, agendas, minutes and all council records;⁶³

- (d) Serve as custodian of city records, including maintenance of the city charter, city code and city seal;⁶⁴
- (e) Make changes to correct clerical errors and omissions in the charter and to insert captions and corrected names and titles;⁶⁵
- (f) Administer oaths and acknowledgements, and provide city certifications;
- (g) Perform other duties assigned by the council with consent of the auditor; and
- (h) Delegate duties, but remain responsible for acts of all subordinates.

Section 35. City Attorney. The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney.⁶⁶ The attorney must appoint and supervise, and may remove any office employees.

Chapter IX

PERSONNEL

Section 36. Officers and Employees. The council must by ordinance prescribe the authority and duties of officers and employees. It may assign officers to one or more departments and may require an officer or employee to perform duties in two or more departments.⁶⁷

Section 37. Compensation. The council must authorize the compensation of officers and employees as part of its approval of the annual city budget.⁶⁸

Section 38. Civil Service.

- (a) All appointments and promotions in the classified service must be based on merit and fitness. Appointments and promotions must be made without regard to race, religion, gender, marital and family status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income and other criteria determined by ordinance.⁶⁹
- (b) The council by ordinance must establish, regulate and maintain a merit system governing personnel policies and rules for effective administration

of city employees. This includes classification and pay plans, recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees based on merit and fitness.⁷⁰

- (c) The city will have a classified service for all positions except elected officers, and officers and employees directly appointed by the council, mayor, commissioners in charge, auditor or city attorney. The council may by ordinance exclude other positions that have major roles in policy formulation that require the exercise of independent judgment.⁷¹
- (d) The city has a civil service board (board) with three members appointed by the mayor and confirmed by the council. Appointments must reflect the perspectives of labor, management and the general public. The mayor may remove any member at any time and within five days of the removal must notify the council of the reasons for removal. The term of each member is three years with the term of one member expires each year. Members may be reappointed for up to two additional terms. Each member must be a city resident. The board has authority to review classification actions, suspensions, appointments and promotions within the classified service under rules and procedures adopted by ordinance.⁷²

Chapter X

FIRE & POLICE DISABILITY AND RETIREMENT

Section 39. Fund. The city has a Fire and Police Disability and Retirement Fund (fund) for the benefit of sworn employees of the Bureaus of Fire and Police and their surviving spouses and dependent minor children.⁷³ The council has authority to levy a property tax not to exceed 2.5 mills on each dollar valuation to pay and discharge all requirements of the fund. This authority is in addition to all other authority to levy property taxes under state law.⁷⁴ The provisions of sections 5-101, 5-102, 5-103, 5-104, 5-105 and 5-106 of the previous charter continue in effect as ordinances.

Section 40. Trustees. The fund is administered by a five member Board of Trustees. One member is the mayor or the mayor's designee as approved by the council who acts as chairperson, one active member of the Bureau of Fire elected by active members of that bureau, one active member of the Bureau of Police elected by active members of that bureau, and two city residents, with relevant experience in pension or disability matters, nominated by the mayor and approved by the council.⁷⁵

Section 41. Administration & Benefits. The provisions of sections 5-113, 5-114, 5-115, 5-116, 5-117, 5-118, 5-119, 5-120, 5-121, 5-122, 5-123, 5-126, 5-201, 5-202, 5-203, 5-204, 5-205, 5-206, 5-207, 5-208, 5-301, 5-302, 5-303, 5-304, 5-305, 5-306, 5-307, 5-308, 5-309, 5-310, 5-311, 5-312, 5-313, 5-314, 5-401, 5-402, 5-403, 5-404, 5-405 and 5-406 of the previous charter continue in effect as ordinances.

Chapter XI

EXPOSITION - RECREATION COMMISSION

Section 42. Commission. There is an Exposition - Recreation Commission (commission) with five members appointed by the mayor, subject to the approval of the council. Member terms are five years or until the appointment of a successor with the term of one member expiring yearly. Vacancies occur from the death, resignation, inability to serve, removal by a vote of the council or failure of a member to attend three consecutive meetings without cause.⁷⁶ Successors are appointed by the mayor and confirmed by the council for the unexpired term. Members serve without compensation. The commission must hold regular meetings at fixed times and must adopt rules to govern its meetings. The commission may delegate authority to one or more of its members, subject to this chapter.

Section 43. Authority and Duties. The commission has the following authority and duties:⁷⁷

- (a) To construct, erect, equip, maintain and repair buildings and facilities for a multi-purpose coliseum stadium; playfield; exposition, exhibition center and war memorial for conventions, expositions, sports events, concerts, shows of all kinds including livestock shows, automobile shows, housing shows and ice shows, meetings of all kinds including patriotic, educational and fraternal, church conventions, and any other types of entertainment and recreational events, including educational exhibits and park and recreational facilities, together with facilities for veterans' organizations;
- (b) To acquire real property by gift, grant, purchase, condemnation or otherwise; to drain, fill and otherwise improve sites and access adjacent property, and to sell, lease for a term not exceeding 99 years, rent or otherwise dispose of excess property for private industrial or commercial development;
- (c) To purchase and install equipment and facilities and to purchase

materials and supplies, and to maintain and repair equipment and facilities;

- (d) To provide additional facilities for sports, recreation and entertainment purposes and for the convenience of persons using the same;
- (e) To operate exposition and recreation centers and facilities;
- (f) To lease such facilities for periodic exhibitions or shows for a term not exceeding 20 years plus renewal option; to rent such facilities, or to provide such facilities without charge for civic or charitable events and to fix the terms and conditions of such lease, rental or provision; to fix fees and charges relating to the use of such buildings, structures or facilities; and to make and enforce regulations concerning the use;
- (g) To employ professional and technical assistance including managerial and promotional services, legal services, engineering, auditing, architect's preparation of plans and all other special assistance, and to employ clerical assistance and labor and fix the rates of compensation;
- (h) To make contracts, incur obligations and do all other acts and things necessary or convenient to carry out the purposes of providing exposition and recreation center services;
- (i) To accept gifts and donations and to contract for and receive state and federal assistance; and
- (j) To adopt administrative rules as commission resolutions to carry out the authority granted the commission and submit certified copies to the auditor. Commission resolutions are subject to amendment or repeal by council resolution. The council will by resolution provide a procedure for council review of commission actions.

Section 44. Fiscal Matters. Commission revenues from rental or other agreements will be paid into the Exposition - Recreation Fund (ER fund) administered by the city. The commission is authorized to make payments from this ER fund and the mayor and auditor are authorized to administer such payments. The commission may make payments to the city. The accounts of the commission will be kept in conformity with city accounting practices and audited yearly. The commission will prepare an annual budget in accordance with state law and submit it to the council for inclusion in the city budget. After adoption of the commission budget, transfers of appropriations may be made by the council as permitted by law.⁷⁸

Section 45. City Facilities. The commission may obtain the advice, recommendation and assistance of any officer, board or commission of the city. The city attorney will provide legal assistance and advice. The commission will reimburse the city for legal services and other services by city departments, offices or officers. Purchases may be made by the city purchasing agent or the commission may make purchases in compliance with state law without using such agent.⁷⁹

Chapter XII

PORTLAND DEVELOPMENT COMMISSION

Section 46. Commission. There is a five member Portland Development Commission (PDC) appointed by the mayor and confirmed by the council. Member terms are three years or until the appointment of a successor with the term of one member expiring yearly. Vacancies occur by death, resignation, removal by a vote of the council, inability to serve, or failure of a member to attend three successive regular meetings without cause. Successors are appointed by the mayor and confirmed by the council for the unexpired term. PDC members serve without compensation. The PDC must hold regular meetings at fixed times and must adopt rules to govern its meetings. The PDC may delegate authority to one or more of its members, subject to this chapter.⁸⁰

Section 47. Authority and Duties. The PDC must implement city goals adopted by the council relating to urban renewal, economic development and affordable housing. The PDC will advance social equity and involve city constituencies to create, maintain and promote a diverse, sustainable community to make economic prosperity, quality housing and employment opportunities available to all residents.

The PDC serves as the urban renewal and redevelopment agency for the city under ORS Chapter 457, as amended. In carrying out these duties, the PDC has all the powers and authority to perform any act or carry out any function authorized or permitted by ORS Chapter 457, subject to the authority of the council to approve and make substantial amendments to urban renewal plans and other powers granted the city by ORS chapter 457. The PDC also serves as the local public agency and performs the functions prescribed in Title 42 U.S. Code, relating to slum clearance, urban renewal and urban development and redevelopment within city boundaries or within five miles of city boundaries. The PDC has authority to enter agreements with public bodies, city departments and bureaus, and other contracts to carry out its urban

renewal and redevelopment functions. The PDC may impose conditions or restrictions by deed or lease upon the use of land or property within an urban renewal area. Works carrying out urban renewal plans or redevelopment plans are public projects.

As part of its economic development duties, the PDC must promote business and industrial recruitment, expansion and location within or near the city. It may acquire, improve, lease or exchange real or personal property. The council retains authority to make appropriations and expenditures from the city general fund for advertising the advantages of the city.

As part of its affordable housing duties, the PDC must promote home ownership, the creation and retention of multifamily housing, and implement other housing policies adopted by the council. It may acquire real or personal property, provide financial and technical assistance to private and nonprofit housing developments and organizations, renters, homeowners and homebuyers, and use other mechanisms authorized by the council.⁸¹

Section 48. Administrative Authority. The PDC has authority to:⁸²

- (a) Make rules by resolution to carry out the authority granted by this chapter. It must file certified copies with the auditor. An affirmative vote of three members is required to approve a resolution and it takes effect on the date set forth in the resolution;⁸³
- (b) Appoint, employ and discharge such officers, employees and agents as the PDC finds necessary or convenient for the efficient and economical performance of its duties, and to fix and provide for their compensation. The PDC must administer a merit based personnel system that provides all persons with a fair and equal opportunity for public service; establishes conditions of service that attract and retain officers and employees of good character, technical knowledge, skill and ability; and improves the efficiency and economy of the agency. The merit based personnel system must include the opportunity for employee appeals consistent with the city civil service system;
- (c) Obtain the advice, services, recommendations and assistance of any officer, board or commission of the city. The city attorney will provide legal services for the agency. The agency will reimburse city departments, bureaus and offices for services provided. The PDC may contract for technical assistance and special legal counsel. Purchases need not be made through the city purchasing agent but must comply with state law;

- (d) Establish offices within city boundaries, as space may be available or convenient;
- (e) Incur expenses for administration, equipment and facilities as the PDC finds convenient. All property must be acquired in the name of the city. The PDC may purchase materials and supplies, make disbursements and incur expenses as it finds appropriate to carry out the purposes of this chapter. The PDC may control and manage properties placed under its administration by the council for development and redevelopment purposes, and may improve any property it acquires or controls to make it available or suitable for such purposes;
- (f) Borrow money; negotiate federal advances of funds and execute notes as evidence of obligations; accept gifts, federal grants-in-aid, advances or other moneys; negotiate loans and advances; pledge property acquired; and receive loans the council may make to the PDC from any city fund;
- (g) Deposit moneys received with the city treasurer and maintain them in distinct funds in the name of the city for the use of the PDC. All moneys received in connection with an urban renewal plan or property must be maintained in separate funds as urban redevelopment funds. The PDC may establish reserve funds, special funds or sinking funds for the payment of indebtedness, obligations or interest as permitted by law. The PDC may transfer money from its general fund to its special or reserve funds and may transfer surplus money to its general fund. It may transfer surplus money to the city general fund. Disbursements must be made from city treasurer accounts on checks signed by the PDC chair or designee and PDC secretary or designee. The PDC may maintain a separate account for employee compensation and current expenses. Such account will be designated as a revolving fund and may be drawn upon for such purposes by officials designated by the PDC;
- (h) Design, install and maintain an accounting system that conforms to generally accepted accounting principles, state laws and this charter for budgeting, expenditure, receipt and custody of public funds; and
- (i) Have conducted an annual comprehensive independent audit of all funds and accounts of the PDC by qualified professional accountants selected by the PDC with the approval of the auditor. The PDC and agency are subject to performance audits by the auditor as determined by the auditor. The PDC will pay the cost of performance audits and the annual comprehensive independent audit. Copies of each audit must be filed with the council and the auditor.

Section 49. Budget and Reports. The PDC must annually prepare and adopt a budget that incorporates the city goals adopted by the council. The budget must comply with state law and conform to the city budget process. It must be submitted to the council for inclusion as part of the total city budget. As soon as possible after the close of each fiscal year, the PDC must prepare and present a comprehensive annual report to the council that evaluates the activities of the PDC with respect to city goals adopted by the council.⁸⁴

Section 50. Revenue Bonds. Upon request of the PDC, the council will issue revenue bonds, certificates or debentures to be repaid solely from revenues from an urban renewal and redevelopment or sales of property involved in an urban renewal and redevelopment, tax revenues attributable to improvements existing or subsequently constructed on property in an urban renewal and redevelopment project, or tax revenues exceeding a specified level within such project. The PDC, with the concurrence of the council, may pledge revenues. Such bonds or other indebtedness must be issued by the council in accordance with state law and city ordinances, bear the facsimile signatures of the mayor and auditor and will be known as "Urban Renewal and Redevelopment Bonds, Series"⁸⁵

Chapter XIII

MISCELLANEOUS PROVISIONS

Section 51. Debt. City indebtedness may not exceed debt limits imposed by state law.⁸⁶ A charter amendment is not required to authorize city indebtedness.

Section 52. Ordinance Continuation. All ordinances consistent with this charter and in force when this charter takes effect remain in effect until amended or repealed.⁸⁷

Section 53. Repeal. All charter provisions adopted before this charter takes effect are repealed. Provisions of the previous charter continue in effect as ordinances under sections 39 and 41 of this charter.

Section 54. Charter Review Commission.

- (a) At least every 10 years, the council must convene a charter review commission (CRC) to review and recommend amendments to this charter. The CRC must reflect the racial and ethnic diversity, age and geography of

the city. Its membership will be 20 city residents. Each council member will nominate four CRC members who are subject to council confirmation and once confirmed remain on the CRC until completion of its review process. Vacancies occurring by death, resignation, removal by a vote of the council, inability to serve or failure to attend three successive regular meetings without cause will be replaced by a nominee of the same council member which nominated the vacating member and then confirmed by the council. The CRC will make its own rules of procedure. No member of the CRC may hold a city elective office while on the CRC. The mayor or council may request that the CRC review specific sections of the charter, but the work and recommendations of the CRC are not limited to those specific sections. The CRC will submit a written report of its findings and recommendations to the council.⁸⁸

- (b) All charter amendments proposed by the CRC that are approved by a vote of at least 15 members, after a public hearing process prescribed by the council, must be submitted to the city voters at the next primary or general election that is at least 120 days after the date the proposed amendments are submitted to the council to refer such proposed amendments to city voters. All charter amendments proposed by the CRC that are supported by a majority vote less than 15 members must be considered by the council as recommendations. The council may, but is not required to, refer such proposed amendments to city voters.⁸⁹

Section 55. Severability. The terms of this charter are severable. If any provision is held invalid by a court, the invalidity does not affect any other part of this charter.

Section 56. Time of Effect. This charter takes effect _____, 20____.

NOTES

¹ This uses the “voters” language of Article XI, section 2 of the Oregon Constitution and makes clear the intent to use all the home rule power.

² Insert the year a new Portland city charter is approved by voters. For convenience, this may be used as the charter’s short title.

³ This continues section 1-101 of the 1903 charter. City existence is not broken by the adoption of a new charter.

⁴ This continues section 1-201 of the 1903 charter.

⁵ This continues section 1-102 of the 1903 charter. The city home rule amendments to the Oregon Constitution reserve powers to city voters. Oregon Constitution, Article XI, section 2 (1906, 1910). The Oregon Supreme Court has said that the amendments are a “continuous offer” of “all powers properly belonging to municipal government.” *Robertson v. City of Portland*, 77 Or. 121, 127 (1915). The offer is conditional. City voters may accept the offer by adopting charter terms. This general grant of power accepts the offer completely.

⁶ The US Constitution does not mention cities, but does not restrict city actions. The Oregon Constitution imposes some restrictions, but also authorizes city actions. Federal and state statutes impose many requirements and restrictions on cities, but still authorize or allow them a wide range of action. “Allow” in this section is intended to provide a basis for city authority to act even though the city cannot identify clear statutory authority for the city action. It assumes the authority is municipal in nature and not prohibited by federal or state law.

⁷ This requirement that the charter be liberally construed is intended to negate the effect of a rule of strict construction of city charters known as Dillon’s Rule that was followed at the time of the 1903 and 1913 charters.

⁸ This continues section 3-201 of the 1913 charter and is based on Article IV, section 1, subsection (5) of the Oregon Constitution.

⁹ This continues sections 2-101 and 2-104 of the 1913 charter.

¹⁰ City council members are immune from suit under 42 USC § 1983 for their legislative activities. *Bogan v. Scott-Harris*, 523 US 44 (1998).

¹¹ While part of federal and state government structures, separation of powers is rarely found in cities. The council has powers analogous to those of the three branches of the federal government and the three departments of the Oregon government. The context, substance and form of council decisions determine the nature of the power exercised. Only the council may adopt ordinances and exercise its legislative authority. Only city legislative authority is subject to voter initiative and referendum. The council may by ordinance delegate its administrative and quasi-judicial authority.

¹² The mayor is a member of the council and participates in and votes on matters before the council along with the commissioners. Section 8 restates that the mayor is a voting member of the council.

¹³ This continues section 2-102 of the former charter and refers to the four council members as commissioners rather than councilors.

¹⁴ This continues section 2-103 and the second sentence of section 2-601 of the 1913 charter.

¹⁵ The council may assign by ordinance or council rules additional duties to the mayor for authenticating ordinances, resolutions, orders, and other council documents.

¹⁶ This continues section 2-110 of the 1913 charter.

¹⁷ This continues section 2-111 of the 1913 charter. Council meetings must comply with the Oregon Public Meetings Law. ORS 192.610 – 192.710. Council rules should be considered administrative and adopted by resolution. They are easier to keep updated and less formal than if adopted by ordinance. Also, they are not subject to initiative and referendum.

¹⁸ This continues section 2-112 of the 1913 charter.

¹⁹ This continues section 2-114 of the 1913 charter. A majority is more than half of the council. For the five member council, a quorum is three. If there is one vacancy, the quorum is still three. If there are two vacancies, the quorum is two, the same as for a three member council. If through resignation or other events, the number of councilors is reduced to two or one, the quorum is also reduced to two or one.

²⁰ For example, council rules may state that the members present may order a city police officer to find and bring an absent member to the meeting. The rules may also provide a penalty for the absent member.

²¹ "Express" is used here to clarify the effect of abstention from voting. At common law, abstention from voting was regarded as concurrence with the decision made by the votes cast. Thus, the concurrence could be either affirmative or negative depending on how the majority voted on a decision. "Express" is intended to make clear that an abstention from voting on a question may not contribute to answering the question affirmatively; it amounts to a "no" vote. Use of the word "express" means that no vote less than a majority of a quorum may decide affirmatively a question before the council.

²² A "decision" is any action taken by council vote. This includes votes on formal documents such as ordinances, resolutions, orders and contracts. It also includes votes to direct city staff and other questions and motions before the council. Unless the charter provides otherwise, the council may act affirmatively through less than a majority of its positions. A five member council may act through two members; its quorum is three. A question may be decided negatively by fewer council members than required to decide it affirmatively. For example, a 2 to 1 vote when the quorum is three council members and two council members are absent.

²³ Some charter sections require a vote of a majority of the council to make certain decisions. In this charter, they are sections 16(a) and 31. Section 16(b) requires a unanimous vote of at least a council quorum to adopt an ordinance at one meeting.

²⁴ This continues section 2-112 of the 1913 charter. The Oregon Public Meetings Law, ORS 192.650, requires written minutes.

²⁵ The most significant power granted to cities is the authority to adopt legislation. Legislation is local law that applies throughout a city. Legislative authority is properly exercised in the form of ordinances. City charters historically prescribed specific requirements for adoption of ordinances but no provisions for approval of resolutions (administrative) or orders (quasi-judicial). Use of ordinances only for legislation and use of other forms for non-legislative decisions makes clear which council actions are subject to referendum. Oregon Constitution, Article IV, section 1, subsection (5) gives voters' initiative and referendum powers over "municipal legislation."

²⁶ This continues section 2-119 of the 1913 charter.

²⁷ This continues sections 2-117 and 2-120 of the 1913 charter.

²⁸ This section requires the presence of at least three members and a unanimous vote to adopt an ordinance at one meeting.

²⁹ This continues section 2-122 of the 1913 charter.

³⁰ This continues section 2-124 of the 1913 charter.

³¹ This continues section 2-123 of the 1913 charter. Ordinances containing an emergency clause take effect immediately and are not subject to referendum. Legislation may not take effect when it is subject to a referendum petition. Procedures for city initiative and referendum and how they interplay with city ordinances are found in ORS 250.255 to 250.355. Emergency clauses are legislative and not subject to judicial review. *Kadderly v. City of Portland*, 44 Or 118 (1903). City use of an emergency clause preventing a referendum on the ordinance is not subject to federal court review as a violation of civil rights. *Stone v. City of Prescott*, 173 F.3d 1172 (9th Cir. 1999).

³² Councils formally exercise their administrative authority in the form of resolutions. Administrative decisions normally implement requirements of city ordinances and state statutes. Examples include city budgets, budget amendments, financial transfers, public contracts, fees and charges, council rules, and city personnel rules. Administrative decisions often are "internal" and relate to the city government. City charters traditionally prescribe specific requirements for adoption of ordinances (legislative) and include no provisions for approval of resolutions (administrative). This charter recognizes council resolutions as the proper form for the exercise of its administrative authority. Use of this form for non-legislative decisions makes clear which council actions are not subject to referendum. Oregon Constitution, Article IV, section 1, subsection (5) gives voters' initiative and referendum powers over "municipal legislation", but not municipal administration.

³³ The preferred method for the council to exercise its administrative authority is by resolution. However, “normally” is used in this sentence to allow the council to approve contracts and other documents, give direction to city officials and city employees, and make other administrative decisions by approving a motion without adopting a resolution.

³⁴ Under section 12, the majority of the council membership must be present at the time a decision is made. If there is one or more council vacancy, the majority is of the temporarily diminished membership. Action by a majority of a quorum (e.g. two votes when quorum of three is present) is sufficient to approve a resolution under this section.

³⁵ ORS 221.310(3) applies to cities of 2,000 or more. It provides that a resolution may take effect any time after passage by the city council. The resolution must state the resolution effective date in a separate section.

³⁶ Quasi-judicial authority is normally exercised in the form of orders. Under this authority, the council holds hearings and is required to make decisions. The most common examples are land use matters and nuisance proceedings. City charters traditionally prescribe specific requirements for adoption of ordinances (legislative) and include no provisions for adoption of orders (quasi-judicial). This charter recognizes council orders as the proper form for the exercise of quasi-judicial authority. Use of this form for non-legislative decisions helps make clear which council actions are not subject to referendum. Oregon Constitution, Article IV, section 1, subsection (5) gives voters’ initiative and referendum powers over “municipal legislation,” but not municipal quasi-judicial decisions.

³⁷ Under section 12, the majority of the council membership must be present at the time a decision is made. If there is one or more council vacancy, the majority is of the temporarily diminished membership. Action by a majority of a quorum (e.g. two votes when quorum of three is present) is sufficient to approve an order under this section.

³⁸ This continues section 2-201 of the 1913 charter and section 2-501 of the 1903 charter.

³⁹ This sentence anticipates the charter vote at a primary or special election. If the charter vote is at a general election, the words “or is elected at the time of adoption” should be added.

⁴⁰ Oregon Constitution, Article II, section 14a 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.

⁴¹ This provides a transition from the city government under the former charter and city government under this charter.

⁴² A four-year term for the mayor and four-year staggered terms for an even number of councilors gives the voters an opportunity to vote for a majority of the council positions at every other general election. It may also be necessary to change “first” to “second” in this sentence. A mayor elected to a four year term when this charter provision is adopted would serve until the beginning of the second odd-numbered year after adoption.

⁴³ This continues sections 3-105 and 3-106 of the 1913 charter.

⁴⁴ This continues section 2-202 of the 1913 charter.

⁴⁵ This sentence continues section 2-501 of the 1903 charter.

⁴⁶ This continues section 3-201 of the 1913 charter.

⁴⁷ These words allow for a successor to be appointed as well as elected, and require that the successor meet the necessary qualifications for the office at the time of election or appointment.

⁴⁸ This continues section 2-205 of the 1913 charter.

⁴⁹ This continues section 2-206(a) of the 1913 charter.

⁵⁰ "Adjudicated incompetence" means inability or unfitness to manage one's affairs because of mental condition determined in a court proceeding.

⁵¹ Recall of elective officers is governed by Oregon Constitution, Article II, section 18, and ORS 249.865 to 249.877.

⁵² Section 26 requires each member to be a qualified voter and resident of the city. Under subsections (3) and (4) of section 30(b), moving outside the city or allowing voter registration to lapse permits the council to declare a commission office vacant.

⁵³ Note the use of "punishable" rather than punished. "Loss of liberty" is used because the legislature often describes public offenses with other than criminal terms.

⁵⁴ This continues section 2-204 of the 1913 charter.

⁵⁵ This sentence continues section 2-401 of the 1903 charter.

⁵⁶ These provisions continue section 2-301 of the 1913 charter with the exception of the department names.

⁵⁷ This gives the mayor specific responsibility to the council for city administration. It states the role of the mayor and commissioners in policy development. It makes the mayor and commissioners responsible for carrying out city policy adopted by ordinances and resolutions.

⁵⁸ This continues section 2-302 of the 1913 charter.

⁵⁹ This continues section 4-301 of the current charter.

⁶⁰ This continues the third sentence of section 2-601 of the 1913 charter.

⁶¹ This continues section 2-302 of the 1913 charter.

⁶² This continues section 2-504 of the 1903 charter.

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- ⁶³ This continues section 2-506 of the 1903 charter.
- ⁶⁴ This continues sections 2-506 and 2-509 of the previous charter.
- ⁶⁵ This continues section 2-507 of the previous charter.
- ⁶⁶ This continues the first sentence of section 2-601 of the 1913 charter.
- ⁶⁷ This sentence continues section 2-303 of the 1913 charter.
- ⁶⁸ ORS 294.352(5) requires that the budget list the salary for each officer and employee.
- ⁶⁹ This continues section 4-101 of the former charter.
- ⁷⁰ This continues section 4-201 of the former charter.
- ⁷¹ This continues section 4-301 of the former charter.
- ⁷² This continues sections 4-401 and 4-402 of the former charter.
- ⁷³ This continues section 5-101 of the former charter.
- ⁷⁴ This continues section 5-103(b) of the former charter.
- ⁷⁵ This continues section 5-201 of the former charter.
- ⁷⁶ This continues section 14-102 of the former charter.
- ⁷⁷ This continues section 14-103 of the former charter.
- ⁷⁸ This continues section 14-105 of the former charter.
- ⁷⁹ This continues section 14-106 of the former charter.
- ⁸⁰ This continues section 15-102 of the former charter.
- ⁸¹ This continues section 15-103 of the former charter.
- ⁸² This continues section 15-104 of the former charter.
- ⁸³ Section 15-104 of the former charter provides that PDC resolutions are subject to referendum and initiative powers. Under Oregon Constitution Art. IV, sec. 1, these powers only apply to municipal legislation. The PDC does not have legislative authority so the charter provision was deleted.
- ⁸⁴ This continues section 15-105 of the former charter.
- ⁸⁵ This continues section 15-106 of the former charter.

calculated under ORS 308.207. This limitation does not apply to general obligation bonds issued to finance local improvements paid in installments or capital constructions or improvements for water supply or treatment, sanitary or storm systems, hospitals, gas, power or lighting, or off-street parking facilities. Under ORS 223.295 Bancroft bonds may not exceed 0.03 of the latest real market valuation of the city.

⁸⁷ This continues section 2-125 of the 1903 charter.

⁸⁸ This continues section 13-301 of the former charter.

⁸⁹ This continues section 13-302 of the former charter.