

MEMORANDUM

TO: Gary Blackmer, Auditor
City of Portland

FROM: Thomas Sponsler, Special Counsel
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SUBJECT: Portland City Charter

DATE: May 6, 2009

**Introduction**

The Oregon Constitution gives city voters the right to adopt and amend home rule charters. A charter grants legal authority to a city government. It determines the form of city government and assigns duties to city officials. The current City of Portland (city) Charter is outdated and, at 152 pages, very long. It was enacted by the Oregon Legislature in 1903. The commission form of government and other provisions were added by voters in 1913. Many sections of the current charter provide legal detail inconsistent with state laws or better adopted by city ordinance. It is a special powers charter that creates needless limitations or questions concerning city legal authority.

By contrast, the new draft Home Rule Charter is a general powers charter. It continues fundamental Portland charter structure and policies. It retains the commission form of government and the duties assigned to six elected officials – mayor, four commissioners and auditor. It more clearly defines city council authority. It continues provisions unique and important to Portland. At 13 pages it is much shorter and easier to read and use than the current legislative charter. The draft Home Rule Charter is consistent with state law.

Portland Charter History

The city was incorporated in 1851 by the Oregon Territory, eight years before Oregon became a state. In 1903 the Oregon Legislature granted a new charter to the city. City voters in 1913 approved extensive revisions to that charter and adopted the commission form of government. Since then voters have rejected eight attempts to change the city form of government, the most recent vote occurred in May 2007.

The current city charter has 278 sections (65,809 words). Sixty of the sections (21.6% of the current charter) originated with the 1903 legislative charter. The 1913 amendments added 124 sections (44.6% of the current charter) to the charter. Thus, over two-thirds of the current charter was adopted about a century ago. Thirty-four charter sections (12.2% of the current charter) were added by voters in 1966. The remaining 60 sections (21.6% of the current charter) were adopted by voters in elections held in 23 different years.

In 1906 state voters amended the Oregon Constitution to prohibit the legislature from enacting, amending and repealing city charters. The amendment authorized city voters to adopt municipal charters. This voter authority is subject to the Oregon Constitution and state criminal laws. Oregon Constitution Article XI, section 2.¹ A second 1906 amendment delegated the initiative and referendum powers to city voters for city legislation. Oregon Constitution Article IV, section 1(5).² Since then, the primary purpose of city charters has been for city voters to accept the powers granted to them by the Oregon Constitution to enact a Home Rule Charter, grant all power legally available to the city, and vest the powers in the city council, subject to other charter provisions and the initiative and

¹ "The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon. . ."

² "(5) The initiative and referendum powers reserved to the people by subsections (2) and (3) of this section are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district." *Adopted in 1906 as Section 1a.*

referendum powers of city voters. The remaining function of a charter is to direct that general authority, provide requirements for its exercise and delegate duties to city officers and commissions.

In 1913 Portland voters exercised their new powers to revise and amend the 1903 legislative charter. City voters did not use their constitutional powers to adopt a new charter. Since home rule authority has existed, city voters have amended the Portland legislative charter over 25 times, but have not repealed the 1903 charter and replaced it with a home rule charter. As a result, Portland voters have not yet accepted and used all the home rule authority granted them in 1906.

Like other legislative charters, the 1903 Portland charter granted a list of specific authorities to the city. Those powers continue today listed in section 2-105 as 65 specific powers filling nine charter pages. The legislature did not have legal authority to grant general powers to the city governments; it could only grant enumerated authority. Under the Oregon Constitution, city voters have had the authority to grant general powers since 1906. However, over the years Portland voters have only approved amendments that added specific authorities to those granted by the legislature. Additions have included authority over street grades (1922), sewage disposal (1938), interim borrowing (1942), special tax levies (1962), streets and improvements (1966), sewer improvements (1966), assessments and collections (1966), local improvements financing (1966), water works (1966), public facilities and works (1966), and transient lodging tax (1971).

General Powers Charter History

In 1934 the Oregon Bureau of Municipal Research and Service (Bureau) assisted officials of the City of Huntington with financial problems related to a new water supply source. Restrictions in the Huntington city charter presented obstacles that seemed insurmountable. A new charter was needed and the Bureau drafted its provisions. This was the first general powers charter in the state.

The Bureau charter followed a new approach. It contained a general grant of powers rather than an enumeration of specific powers. It omitted references to subjects covered by the state constitution and general state

statutes. It also omitted detailed procedures that could be adopted by ordinance to allow greater flexibility to meet changing conditions and technology. It was a short document compared to charters of other Oregon cities then in effect. It was the first "streamlined" charter.

The new Huntington charter was adopted by city voters on December 27, 1934. It later served as a guide for other new city charters. In following years the charter needs of Oregon cities under home rule received intensive study. New charters prepared with Bureau assistance were adopted by the cities of Bandon, Union, Silverton and Independence in 1940; Reedsport in 1942; Freewater and Sweet Home in 1943; West Linn, Molalla, Coos Bay and Beaverton in 1944; Nehalem, La Grande, Astoria and Pendleton in 1946; and Sheridan and Madras in 1947.

All of these charters followed the same general pattern. The basic concepts developed by the Bureau were incorporated into a *Model Charter for Oregon Cities* published in 1947. Since then model charters have been used as a guide by Oregon cities. Almost all Oregon cities now have general powers charters. Subsequent model charters incorporated improvements and made changes based on constitutional amendments, new statutes and court decisions.

Contemporary charters confer powers from city voters in general terms rather than by detailed enumeration of specific powers. City powers are stated in general comprehensive terms. Most charters state the basic and broad fundamentals of city government. New charters are as concise as possible, and their provisions adaptable to changing conditions to avoid the need for frequent amendment.

Draft Portland Home Rule Charter

The attached draft Portland Home Rule City Charter has 56 sections (5,085 words). Ten sections (17.9%) are modern versions of sections in the 1903 legislative charter. Twenty-six sections (46.4%) are based on sections added by the 1913 amendments. The remaining 20 sections (35.7%) carry forward sections added by charter amendments in other years. The draft charter continues the legal structure of the current city government including the commission form of government approved by voters in 1913.

The draft charter contains the same elected officials – mayor, four commissioners and auditor – with the same roles and authority previously delegated by city voters.

The Home Rule Charter specifically identifies the legislative, administrative and quasi-judicial authority of the city council. It contains requirements for ordinance enactment, resolution approval and order approval. It continues civil service provisions, the fire and police disability and retirement provisions, the exposition-recreation commission, the development commission and the charter review commission.

The Home Rule Charter omits many provisions contained in the current legislative charter. A general grant of powers replaces the specific grants of authority. Subjects and procedures covered by state statutes are not included in the home rule charter. The home rule charter omits many provisions better left to enactment by ordinance. Detailed annotations accompany each section with the reasons, derivation, context and legal basis for the revisions.

Conclusion

Portland voters have not yet used all the home rule powers granted them by the Oregon Constitution. This draft Home Rule Charter shows how the powers may be used to adopt a much shorter, understandable and useful city charter. The draft charter continues the existing structure of Portland government and the political decisions made by city voters over the 106 year existence of the current legislative charter.

This draft Home Rule Charter is offered to the City Charter Review Commission for its consideration. The draft with its brevity, clarity and simplicity is at the opposite pole from the 152 page current charter, by far the longest in the state. The Charter Commission may wish to revisit both the legal basis and political structure of the current city charter. The draft charter shows that a new approach may facilitate voter adoption of a new charter that honors the fundamentals of city government and better meets current and future city needs.

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