

Beery, Elsner & Hammond, LLP

City Charters 101

Basics of Drafting Home Rule Charters in Oregon

City of Hermiston – May 19, 2014

I. Background

- A. A charter provides the foundation for a city government – it is the City’s constitution.
 - (i). A city is a municipal corporation. Like any corporation, its authority to act must be derived from some form of governing document. The Oregon Constitution provides voters of a city with the authority to create such a document through the adoption of a city charter.
- B. A charter should reflect the will of the local community.
 - (i). City charters were originally approved by the legislature.
 - (ii). 1906 home rule amendments to Oregon Constitution empower “the legal voters of every city . . . to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State.” Or. Const. art XI, sec. 2. Legislative approval is no longer necessary (or permitted) – but voter approval is required.
- C. Charters implement “home rule” authority, but they are generally subject to preemption (except possibly form of government), and they must comply with federal and state constitutional limitations.
- D. A charter should generally deal with only the basic, broad fundamentals of city government. A charter should be as concise as possible, and adaptable to changing conditions to avoid the need for frequent amendment.

II. Every charter should contain four general categories: (1) a general grant of power; (2) the form of government; (3) the distribution of duties/authority; and (4) housekeeping issues.

- A. General Grant of Power. A charter should provide broad authority for a city to act. Arguably, if a city were to enact a charter with limited municipal powers, municipal action that falls outside those limited powers would be *ultra vires*.
 - (i). General grant of authority avoids reliance on legislature.
 - (ii). Also avoids any concern regarding possible “Dillon’s Rule” issues.
 - (iii). See sections 4 and 5 of LOC model charter.
- B. Form of Government. A charter must set forth the basic form of government (manager/council, strong mayor, commission, etc...), as well as how the position of each officer is filled (appointed, elected, etc...).
 - (i). Arguably most fundamental purpose of a charter is to establish a form of government. May be unique to each local jurisdiction. Constitution likely prohibits legislature from preempting a City’s form of government.
 - (ii). Must comply with constitutional limitations – most common, reservation of initiative and referendum powers to the voters.
 - (iii). Should set forth number and title of officers, how position(s) filled (initially and vacancies), terms of office (if any), removal/declaration of vacancy process (if any).

- C. Distribution of Duties/Authority. A charter must set forth which positions within a city have authority to act on behalf of the city on any given matter. This is generally done by setting forth duties of officers. This is also generally the bulk of what is contained in a charter.
- (i). Typically reserves all powers to council unless given to someone else.
 - (ii). Best practice is to dictate how council exercises its authority (legislative, administrative and quasi-judicial) as well as voting, quorum, and other meeting requirements.
 - (iii). Should set forth role of Mayor (assuming one exists in the form of government) and his/her powers, which may be separate and distinct from individual councilors.
 - (iv). Should set forth powers of other officers (city manager, municipal court judge, city attorney, etc...) as well as any other special duties delegated to individual councilors (i.e., council president).
 - (v). May place limitations on authority (i.e., non-interference clause for councilors/mayor).
 - (vi). Should expressly reserve initiative and referendum rights to city voters.
 - (vii). May split powers on same subject matter between different officers – i.e., city manager vested with authority to appoint, supervise and remove employees, but council charged with duty to approve personnel policies for recruitment, selection, promotion, transfer, discipline and termination of employees – See sections 33(e)(4) and 37 of LOC model charter.
 - (viii). May add other specific duties/mandates or limitations – i.e., city indebtedness may not exceed debt limits imposed by state law; annexations must be approved by city voters, council may not delegate its authority to adopt ordinances, etc...
- D. Housekeeping Issues. A charter must also address general “housekeeping” issues including:
- ✓ Preamble
 - ✓ Title
 - ✓ Name
 - ✓ Boundaries (general not specific)
 - ✓ Ordinance Continuation
 - ✓ Repeal of Previous Charter Provisions
 - ✓ Severability
 - ✓ Effective Date
 - ✓ Amendment & Revision Process

III. Hermiston Charter – Ideas for Review/Clean-Up (non-policy)

- A. Specific Sections.
- (i). Section 1 – No need to continue approval of issuance of bonds if fully repaid; if desire to keep other provisions (i.e., Section 134 – limits on city water and sewer funds), they should be moved to specific sections of charter, not simply continued forward.
 - (ii). Section 3 – Boundaries. No need to list specific boundaries as they become out of date with any annexations. Rather use more general language, which permits changes without need for charter amendment – See Section 3 of LOC model charter.
 - (iii). Section 7 – Wards. May want to consider permitting creation by ordinance, which will allow for adjustment as necessary. Could still require voter approval and/or supermajority council approval to limit political games.

- (iv). Section 11 – Other Officers. May want to consider need to classify all positions as “officers” rather than employees – as officers arguably position must exist.
 - (v). Section 13 – Qualifications. May want to consider revising language related to “taxpayer and freeholder upon property located within city of Hermiston.”
 - (vi). Section 17 – President of Council. May want to consider addressing ambiguities regarding Council President’s authority. Does the Council President still vote when presiding over a meeting in the Mayor’s absence? Any limits on authority when acting as Mayor?
 - (vi). Section 20a – City Manager – May want to consider resolving potential conflict in manager’s financial duties and yet his/her lack of control over treasurer.
 - (vii). Section 21 – Municipal Judge – May want to add additional powers – See Section 35 of the LOC model charter.
 - (viii). Elections – May want to consider revising elections provisions to provide more flexibility – See Section 26 of LOC model charter.
 - (ix). Section 30 – Nominations – may want to provide more general language and not refer to a specific statute in the Charter – See Section 28 of LOC model charter.
 - (x). Chapter VIII – May want to consider breaking up into legislative, administrative and quasi-judicial procedures like LOC model charter.
 - (xi). May want to delete provisions that are covered by general grant of authority and/or preempted by state law or might be better dealt with by ordinance (Section 36, Condemnation; Section 37, Procedure for Making Local Improvements, Section 38, Special Assessments; Section 39 Bids; Section 41, Torts)
- B. General Clean-Up. May want to consider general clean-up issues such as adding gender neutral language, deleting undefined terms (i.e, bona fide in Section 8), and adding subsection numbers in sections with multiple paragraphs (i.e., Section 20a – City Manager).

IV. Next Steps – Best Practices in Moving Forward

- A. Below is a model process the Council may wish to consider as it moves forward:
- ✓ Step 1. Hold a Council work shop/study session regarding charter and have a discussion regarding the issues that council as a body wants to address (will provide staff with direction regarding issues that should be researched and analyzed in order to bring additional information back to Council for its consideration). The Council should consider taking public comment at such meeting to receive input from citizens about their ideas for necessary changes.
 - ✓ Step 2. Staff should then create a schedule for bringing issues back to Council in work shops/study sessions that are grouped together based on topic. Staff’s schedule should also provide adequate opportunities for public input/participation. Staff will be able to create schedule based on other Council commitments as well as election calendar.
 - ✓ Step 3. Hold work shops/study sessions based on staff schedule.
 - ✓ Step 4. Hold a public meeting to formally determine which changes Council desires to present to voters – this will help dictate whether to propose an entirely new charter, a charter revision or simply various charter amendments.

- ✓ Step 5. Hold public meeting to vote on proposed new charter language, placing such language on the ballot, approving ballot title(s) and explanatory statements (if required) and receive final public comment.
- B. Timing Issues – Because any amendments to the Charter must be approved by the voters (whether it is an amendment, a revision or an entirely new charter), the City must keep in mind the state’s election calendar and applicable deadlines. The two most important dates for the City to keep in mind if the Council desires to place any charter amendments before city voters at the November 4, 2014 election are:
 - ✓ **August 15, 2014**, which is the last day for the city council to file with the city elections official the text of the referral or if the governing body prepared a title, the complete ballot title, in order for the ballot title process to be complete by the filing deadline for the general election; and
 - ✓ **September 4, 2014**, which is the last day for the city elections official to give notice of a measure election to the county clerk.

V. Questions?