

**A MODEL CHARTER
FOR
MISSOURI
CITIES**

**A GUIDE FOR
CITY CHARTER COMMISSIONS
IN
MISSOURI**

By James E. Westbrook

\$20.00

**MISSOURI MUNICIPAL LEAGUE
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FOREWORD

In 1875, Missouri became the first state to adopt a constitutional home rule provision. The prime purpose of the provision was to overcome the traditional "delegation of powers" theory. However, the Constitution stated that any charter adopted must be "consistent with and subject to the Constitution and the laws of the State." Subsequently, 15 Missouri municipalities operated under home rule charters.

The Missouri Municipal League supported the idea of maximizing local self-determination through the extension of municipal home rule to allow smaller cities to benefit from the advantages of home rule in the solution of their local problems. Because of the restrictions and limitations that evolved during the first half of this century, the League believed it should be the prerogative of municipal governments of the State to have control and full responsibility for local concerns without undue interference by the state.

On October 5, 1971, the voters of Missouri overwhelmingly adopted a proposed amendment to the Constitution that broadened the home rule provision of Article VI, Section 19. It now authorizes cities of 5,000 or more population to adopt or frame a charter, and the powers of a constitutional charter city now are defined as "all powers which the general assembly of the State of Missouri has authority to confer upon any city, provided such powers are consistent with the Constitution of this State, and are not limited or denied either by the charter as adopted, or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law."

With the passage of the 1971 home rule amendment, many of the prior inadequacies and restrictions no longer hold true. Now that we have a clearer grant of home rule power, many more Missouri cities have shown interest in becoming constitutional charter cities. In 1994, there are 32 home rule cities, and several cities currently are in various stages of preparing charters for voter approval.

Realizing the importance of providing assistance to city charter commissions and local home rule study groups, the Board of Directors of the Missouri Municipal League authorized the staff to undertake preparation of so-called model charters for the two most common forms of government in Missouri, mayor-council and council-manager.

The League was fortunate in being able to secure the services of James E. Westbrook, Professor of Law at the University of Missouri-Columbia, in drafting the model charters. Professor Westbrook is eminently qualified to undertake this task, both in terms of training and experience in this field.

This edition includes not only suggested charter provisions, with options, but also detailed commentary by the author that describes the alternatives and options available in many of the subject areas charter commissions must consider. Obviously, questions of policy are involved in the drafting of charter provisions and the author has included a discussion of many of these issues. As Professor Westbrook has stated in the Introduction, "the use of the word model is inappropriate because this work is intended to be used as a guide..."

While members of the League staff have coordinated the project and, on a number of occasions, have had the opportunity to discuss the content, this publication reflects the author's judgment or opinion and does not represent an official position of the Missouri Municipal League or necessarily the views of the staff on any one of the provisions. It is hoped that this guide will serve equally well for charters incorporating the mayor-council or council-manager form of government or the many modifications

possible in either form. As a matter of long-established policy, the League has not nor does it endorse one particular form of government as superior to another. Realizing that each municipality is unique, with its own traditions, problems and administrative needs, the form of government adopted should be the one best suited to a municipality's particular needs and conditions.

The League objective in the preparation of this publication is to provide a guide for charter commissions in drafting a workable legal document which will clearly set forth the powers, duties and responsibilities of the citizens and municipal officials and employees. The adoption, by the citizens, of a good city charter should not only help achieve a good government, but it also will provide the legal framework within which a truly effective government may be maintained.

Gary S. Markenson
Executive Director

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INTRODUCTION

Important changes were made in Missouri's constitutional home rule provisions by an amendment adopted October 5, 1971. The amendment represented an important step forward for Missouri municipalities. But as is true of all important changes in the law, the adoption of the amendment caused many questions to be asked. One of the most persistent and important questions is whether the provisions of the new amendment make it either desirable or necessary to draft the home rule charter differently. This question is especially important because the amendment made more cities eligible for home rule status by reducing the required population from ten to five thousand,¹ and several cities now are either considering the calling of an election on choosing a charter commission or actually drafting a charter. This situation, coupled with the fact that a model charter has never been prepared for Missouri cities, prompted the preparation of this model charter.

A Summary of the Legal Status of Constitutional Charter Cities

In order to understand the legal consequences of adopting a constitutional charter, one must understand the basic principles incorporated in Article VI, Sections 19, 20, 21 and 22 of the Missouri Constitution, especially the changes made by the 1971 amendment. It already has been pointed out that the amendment lowered the population requirement. The other changes can best be described by considering three basic issues: (1) the scope of power of home rule cities in the absence of an express constitutional or statutory prohibition or authorization; (2) whether statutes or local enactments prevail when there is a conflict; and (3) the legal status of the home rule charter. In seeking answers to the questions raised by these three issues, the best indication of the intent of those who drafted the amendment and of the General Assembly in submitting the amendment to the electorate is the *Report of the Governor's Advisory Council on Local Government Law*.² The amendment was drafted by the home rule subcommittee of the Governor's Advisory Council. That section of the REPORT dealing with the home rule amendment was distributed to all members of the General Assembly by the Missouri Municipal League at the time the amendment was being considered. It is reasonable to assume, therefore, that the REPORT will be an important aid in the construction of the new amendment.³

The first issue is the scope of power of home rule cities in the absence of an express constitutional or statutory prohibition or authorization. The first goal of the original proponents of home rule was to alter the traditional rule that municipalities have no power except that which is delegated to them by the state legislature. They wanted to secure a broad grant of power directly from the Constitution to municipalities. As the Missouri home rule provisions were construed through the years, the scope of home rule power became clouded. The courts stated that home rule cities had powers related to proprietary functions and to governmental functions that paramountly concern local matters. The problem with these terms was that they did not indicate clearly what was and what was not a

¹ V.A.M.S. Const. Art. VI, Section 19.

² *Missouri Local Government at the Crossroads: Report of the Governor's Advisory Council on Local Government Law*, 1968. (Distributed by the Missouri Department of Community Affairs and hereinafter referred to as REPORT.) The REPORT prompted the introduction of the amendment in the General Assembly.

A March 25, 1986, decision of the Missouri Supreme Court en banc, in *Cape Motor Lodge, Inc., et al. v. City of Cape Girardeau*, 706 S.W. 2d 208 is a ringing endorsement of the authority of home rule cities to act unless the city is limited by a specific state statute. Missouri city attorneys representing home rule cities are delighted with this decision. Those who seek to claim that a home rule city does not have the authority to do some act will be severely challenged to overcome the language of this decision. The opinion in *Cape Girardeau* is reprinted as Appendix II, infra.

³ It was stated in *Rathjen v. Reorganized school Dist. R-11 of Shelby County*, 365 Mo. 518, 284, S.W. 2d 516 (1955), that the fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of the framers and of the people who adopted it.

permissible exercise of power in the absence of express statutory authorization. The courts in Missouri and other states were unable to draw a clear line between local matters and matters of statewide concern. The amendment dealt with this problem by eschewing the effort to delineate separate areas of municipal activity and state activity. It provided that constitutional charter cities have "all powers which the General Assembly of the State of Missouri has authority to confer upon any city,"⁴ The result of this change should be clarification of the scope of home rule power. In the absence of a constitutional or statutory prohibition or limitation, a constitutional charter city should have the power to levy an earnings tax, enter the community television antennae business, or build and shoot a rocket to the moon. The role of the courts in defining municipal power should be lessened.⁵

The second issue is whether statutes or local enactments prevail when there is a conflict.⁶ Another way of stating this issue is to ask whether there are limits in the home rule provisions of the Missouri Constitution on the power of the General Assembly to override or restrict the exercise of power by constitutional charter cities. Prior to the amendment, state legislative enactments dealing with matters of "purely municipal concern" could be overridden by conflicting ordinances or charter amendments. But this is no longer true. The same problem existed regarding this issue as existed with respect to the first issue. It was impossible to ascertain with any precision what was a matter of "purely municipal concern" and what was a matter of "statewide concern." The tendency was to label most matters as being of statewide concern whenever there was a conflict. The framers of the amendment decided to give up the illusory advantage in areas of conflict in exchange for a broad grant of power in the absence of constitutional or statutory prohibition or limitation.⁷ The *Report of the Governor's Advisory Council on Local Government Law* put it this way:

"Under the proposed amendment, conflicts between local enactments and state statutes would become a matter of statutory construction, since it would be assumed that the legislature could override any substantive provision in a charter or ordinance. The emphasis, therefore, would be on whether a conflict actually existed, and what was intended by the legislature, rather than whether a given function was of local or statewide concern."⁸

It seems likely that the most difficult and persistent legal issues in the future will revolve around this issue. It is here that the courts will continue to play an important role.⁹

The third issue, the legal status of the charter, probably is the most important for purposes of deciding upon the appropriate form of the charter under the new amendment. This issue is discussed in some detail in the Commentary on Article II. Briefly, however, the amendment changed Missouri charters from instruments of grant to instruments of limitation. Before the amendment, constitutional charter cities were required to specify their powers in the charter. As a result of the amendment, there is no need to specify powers in the charter, because the city has all powers not limited or denied by the Constitution, the statutes, or the charter itself. For example, prior to the amendment the

⁴ V.A.M.S. Const. Art. VI, Section 19(a).

⁵ A more detailed discussion of the matters dealt with in this paragraph can be found in REPORT pages 1-2, and Westbrook, "Municipal Home Rule: An Evaluation of the Missouri Experience," 33 Mo. L. Rev. 45 (1968).

⁶ For a more detailed discussion of the matters covered in this paragraph, see Westbrook, *supra* note 5, at 59-66, 74-79.

⁷ REPORT, p. 3.

⁸ *Ibid.*

⁹ In *Frech v. City of Columbia*, 693 S.W. 2d 813 (Mo. banc 1985) the Supreme Court held that a home rule city could by ordinance authorize its municipal court to issue administrative search warrants. Plaintiffs claimed that extensive state statutes and court rules regulated issuance of search warrants and thereby excluded other types of search warrants. The court disagreed because state statutes and court rules "neither expressly nor implicitly prohibit what the city sought to do."

Missouri Supreme Court held in *Carter Carburetor Corp. v. City of St. Louis*,¹⁰ that any taxes levied by a constitutional charter city had to be specifically named in the charter. The *Report of the Governor's Advisory Council on Local Government Law* stated expressly that the amendment would overrule cases such as *Carter Carburetor Corp.*¹¹ It now is possible for a constitutional charter city to levy a tax without specific authorization in its charter. The changed status of the charter makes it possible to draft charters that are less detailed than some of those previously in use in Missouri. Indeed, one purpose of the research that led to the drafting of a model charter was to ascertain what parts of typical Missouri charters are no longer necessary.

Principal Differences Between Missouri Model and Pre-1971 Missouri Charters

The most obvious difference between pre-1971 charters and the Missouri model is in Article II. While Section 2.1 deals with the powers of the city in one sentence, the current Kansas City charter lists 65 categories of powers. These provisions and the case annotations construing them take up 183 pages in the Kansas City charter. This change is a direct result of the new legal status of charters. The principal advantage of the new approach is that there is no danger of losing a particular power by failing to specifically list it in the charter. Concomitantly, the addition of a power in a charter presumably will not strengthen the city's claim that it has that particular power.

Section 3.1 deals with the powers of the city council in two sentences. In contrast, many charters presently in use in Missouri list council powers in detail.¹²

Section 5.1 provides that the administrative organization of the city shall be set out in an administrative code adopted by the council. Pre-1971 charters devoted a great deal of space to the various departments of the city and the powers and duties of their directors.¹³ Because there is no legal reason a city must deal with these matters in detail, the decision on whether such matters are dealt with in the charter or by ordinance can be made on the basis of policy consideration. The assumption underlying the Missouri model is that details of administrative organization should be subject to change by the city council rather than charter amendment.

Section 5.2 provides for the adoption by the council of a personnel code providing a comprehensive personnel system for the city. Although the typical charter in most Missouri cities goes into detail on the personnel system,¹⁴ the only substantive requirement stated in Section 5.2 is that the personnel code shall provide that all appointments and promotions shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence. Again, the decision was to opt for flexibility rather than comprehensiveness.

Article VI deals with financial procedures. While it goes into some detail, it is considerably more concise, and consequently more flexible, than the comparable provisions in use in pre-1971 charters.

The differences summarized above result in a charter that is shorter than many currently in use. A workable charter could be drafted, however, that would be even more concise than the Missouri model. Some provisions were included as a means of calling certain issues to the attention of charter draftsmen. Whether or not they are included, they should at least be considered. Of course, the charter commission's goal is not to see how short it can make the charter. Its goal is to draft a workable document that strikes a balance between the need for flexibility and the sometimes competing need for enough detail to deal with all matters most appropriately handled in the charter.

¹⁰ 356 Mo. 646, 203 S.W. 2d 438 (1947).

¹¹ REPORT, p. 3.

¹² See the Commentary on Section 3.1.

¹³ See the Commentary on Article V.

¹⁴ Ibid.

Some Reflections on Charter Drafting

Any person or group charged with the responsibility of drafting a charter should try to obtain a clear understanding of the place of the charter in the total legal framework within which cities operate before dealing with the details of various provisions. Not only must a decision be made as to whether the city can or should deal with a particular matter, but a decision must be made as to whether this matter is most appropriately dealt with in the charter or in an ordinance. Two basic assumptions guided the drafting of the Missouri model: (1) the municipality should have all powers available to constitutional charter cities under Missouri law, and (2) the charter should include only the essential provisions necessary to effective and responsive municipal government; unnecessary detail and matters subject to relatively frequent change should be dealt with by ordinance where possible.¹⁵ It is important to remember that while charter provisions can be changed only by a vote of the electorate, ordinances can be changed by a vote of the council. It can be difficult and expensive to amend a charter. On the other hand, some decisions about municipal government involve fundamental policy matters that should be decided by the people as a whole rather than their elected representatives on the council. It is the unenviable job of the charter commission to decide which issues should be decided by the electorate and which issues should be decided by the council. There is no quick, easy formula that can be relied upon. It would be useful, however, to ask the following questions before putting a charter in final form:

(1) What charter provisions are absolutely necessary? Included in this category would be provisions that are necessary in order to obtain home rule powers, provisions necessary to have a corporate existence as a municipality, and provisions that provide the basic ground rules necessary to operate as a governmental entity. It seems probable that no particular provision is necessary to obtain home rule powers. These powers come to the city as a result of the adoption of the charter.¹⁶ An example of a provision that is necessary in order to have a corporate existence as a municipality would be Article I, which deals with incorporation, name and boundaries.¹⁷ An example of a provision that provides one of the basic ground rules necessary to operate as a governmental entity would be Section 3.2, which establishes the number of councilmen on the city council. It would be impossible to arrange an election for the city council without knowing the number of councilmen. In point of fact, however, most of the provisions in a charter are not absolutely necessary.

(2) What provisions are very desirable in order to prevent abuse, ease difficult situations which may arise, divide internally the city's powers, and prevent problems from arising by providing answers in advance to questions that inevitably arise in all municipalities? Section 3.11, which deals with legislative proceedings, seeks to prevent abuse and to insure that interested and affected citizens have an opportunity to make an input prior to council action. This is accomplished by requiring such things as a hearing and a convenient means by which citizens can familiarize themselves with pending ordinances.¹⁸ Section 4.2 (Option A), which deals with removal of the city manager, is an example of an effort to provide in advance a procedure that may ease the difficult situation that exists when a city manager and council cannot work together. Section 3.1 and Article IV, taken together, divide powers and responsibilities between the council and the chief executive of the city. The various provisions that fall into this category raise some of the most difficult policy issues that face the charter commission.

¹⁵ Compare the more detailed description of assumptions that underlie the provisions of Haag and Snyder, *Guidelines for Charter Drafting* (Bureau of Public Administration, University of Maine at Orono, 1971) on pages 1 and 2 of that work.

¹⁶ See the discussion in the Commentary on Article II.

¹⁷ See the quotation from *Hannibal v. Winchester*, 391 S.W. 2d 279 (Mo. 1965), in the Commentary on Article I.

¹⁸ See the Commentary on Section 3.11.

(3) What provisions are not only unnecessary but would create problems for the city if included? Provisions in this category would be those that impose rigidity where flexibility is needed, those that conflict with statutory and constitutional provisions, and those that impose unrealistic requirements in light of the particular circumstances of the city. Of course, it often will be difficult to achieve a consensus on whether a particular provision falls into this category or category 2 above. An example of a provision that has proven unrealistic for some cities is the requirement that the city attorney shall have resided in the city for a specified number of years. In some cities, the supply of attorneys willing to accept the position of city attorney has been such that it was necessary to bring someone in from another city.

(4) What provisions are unnecessary but would not create problems if included? Provisions falling into this category do no harm. At most, they lengthen the charter unnecessarily. The decision whether to include such a provision often will depend upon considerations of convenience and public relations. For example, the procedure for charter amendment is set out in the Constitution.¹⁹ The same procedure must be followed whether or not it is set out in the charter. On the other hand, there are those who believe it is useful to provide information on the procedure for charter amendment in the charter itself.

Comments on the Format of the Model Charter and the Sources Relied on in its Preparation

The model charter that follows is more a synthesis of many charters than an original creative work. Although it is not exactly like any presently existing model or municipal charter, it makes use of provisions from many sources. Whenever it was thought it would be helpful, the source of the recommended provision was given in the Commentary.²⁰ The sources used most often were the *Model City Charter* of the National Municipal League and charters presently in use in Missouri constitutional charter cities.

The basic format of the model is to set out one or more option provisions and follow the recommended provision or provisions with commentary. An effort is made throughout the model to indicate the range of choices open to the charter commission, either by providing option provisions or by describing in the commentary the option approaches that are available. In deciding whether to deal with options by charter provisions or commentary, the choice was made by deciding which approach would be most convenient to the reader. In a very real sense, the use of the word model is inappropriate because this work is intended to be used as a guide rather than as something to be copied verbatim. The word model was used because the other titles that came to mind were even less descriptive. It is important to remember, however, that the appropriateness of any particular provision will depend upon a number of variables, including the unique problems and resources of the city for which a charter is being drafted.

In addition to giving the source of the provision, the commentary deals with some of the policy issues involved in drafting the section in question. It often describes the existing practice in Missouri and points out how the recommended provision either follows or departs from the existing practice. It also refers to cases or statutes that should be considered in drafting the provision in question. The material included in the commentary is selective rather than exhaustive. It should not be considered an adequate substitute for competent legal advice in the drafting and passage of the charter.

Appendix I is an outline of the decisions that must be made by the charter commission before the process of drafting begins. Throughout the commentary, there are references to model charters and the charters of cities both in and out of Missouri. The charter draftsman would do well to make full use of other charters because it would be a mistake to rely solely on this model in drafting a

¹⁹ Article VI, Section 20, Constitution of Missouri.

²⁰ All references in the Commentary to Sections of the *Model City Charter* are to the Sixth edition, published in 1964.

charter. The best results will be obtained by examining and comparing several charters. Since each city is somewhat unique, the ideal charter for each city will be different from that of every other city. While certain fundamentals should remain the same, each city's charter should be tailored to deal with its own particular situation.

Appendix II is the Missouri Supreme Court decision in *Cape Motor Lodge v. Cape Girardeau* 706 S.W. 2d 208 (Mo. banc 1986) in which the Court endorsed the concept of broad authority for home rule cities.

ARTICLE I

INCORPORATION, NAME AND BOUNDARIES

CHARTER OF THE CITY OF _____, MISSOURI

(Date)

In order to provide for the government of the City of _____, and secure the benefits and advantages of constitutional home rule under the Constitution of the State of Missouri, the people of _____ adopt the following charter:

Article I

INCORPORATION, NAME AND BOUNDARIES

Section 1.1. Incorporation, Name and Boundaries.

The inhabitants of the City of _____, within the corporate limits as now established or as hereafter established in the manner then provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of the City of _____.

COMMENTARY ON ARTICLE I

The language of Section 1.1 was approved in *City of Hannibal v. Winchester*, 391 S.W. 2d 279 (1965). In that case the Missouri Supreme Court stated that "no valid city government could be created or valid charter adopted if the city's territorial limits existing at the time were not specifically defined and delineated somewhere; ... " (emphasis included in the court's opinion). The court made it clear, however, that the existing boundaries could be incorporated by reference rather than described in the charter itself. The court approved the language used in the Hannibal charter to incorporate existing boundaries by reference.

The language approved in *City of Hannibal v. Winchester* has been widely used by Missouri constitutional charter cities. (See, for example, Section 1.1 of the Webster Groves charter, Section 1 of the University City charter, and Section 1.1 of the Springfield charter.) An acceptable option would be to include a metes and bounds description of the boundaries of the city in Section 1.1. Section 1 of the Columbia charter and the transitional provisions of the St. Louis charter take this approach. The provision recommended was chosen because of its brevity and because it has been specifically approved by the Missouri Supreme Court. Moreover, detailed boundary descriptions in the charter increase the possibility of errors.

Although the recommended provision does not contain a comprehensive description of the municipal boundaries, such a description should be kept by some municipal official and made available for public inspection during regular office hours. Any city that wishes to include a charter requirement that the description be kept by a particular official and made available for public inspection can find a sample provision in Section 3 of the *Model Charter for Oregon Cities, Council-Manager Form of Government* (Bureau of Municipal Research and Service, University of Oregon, Eugene, 3rd rev., 1967).

Article VI, Section 19 of the Missouri Constitution requires the filing of a copy of the charter with the Secretary of State. Section 71.040, RSMo 1986, requires notification of the Secretary of State whenever a city changes its name.

ARTICLE II

POWERS

Section 2.1. Powers.

The city shall have all powers the General Assembly of the State of Missouri has authority to confer upon any city, provided such powers are consistent with the Constitution of this State and are not limited or denied either by this charter or by statute. The city shall, in addition to its home rule powers, have all powers conferred by law.

Section 2.2. Construction.

The powers of the city shall be liberally construed. The specific mention of a particular power in this charter shall not be construed as limiting the powers of the city.

COMMENTARY ON ARTICLE II

This article, which simply repeats the language of the home rule provision in the State Constitution with slight changes necessary to fit it into the charter context, may strike one as being entirely too brief. There is no mention, for example, of the power to tax or, indeed, of any specific power. In light of what many perceive as a reluctance on the part of the courts to uphold the power to tax as one of the powers obtained through the constitutional home rule provision, one might ask whether it would not be desirable to specifically provide in the charter that the city has the power to tax. In this situation, however, the strongest provision is a simple provision. If the Missouri Supreme Court construes the amendment adopted October 5, 1971, so as to carry out the intent of its framers, the provision recommended is all that will be needed to exercise a broad range of powers, including the power to levy any tax not limited or denied by the statutes or the State Constitution. Although Section 2.1 is very brief, it accurately expresses the home rule philosophy which permeates the amendment adopted October 5, 1971. For an example of an equally brief powers provision in a charter in a state with a constitutional provision similar to that of Missouri, See Article II of the Juneau, Alaska, charter.

Prior to the adoption of the new amendment, the Missouri Supreme Court had held that a city could not exercise a particular power unless authorization to do so was contained in the charter. (*Kansas City v. Frogge*, 352 Mo. 233, 241, 176 S.W. 2d 498, 501 [1943].) In the case of taxes, the Missouri Supreme Court held in *Carter Carburetor Corp. v. City of St. Louis*, 356 Mo. 646, 203 S.W. 2d 438 (1947), that a city could not levy a particular tax unless it was specifically authorized by the charter. A general authorization to "assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation" was not considered sufficient to authorize the levy of an earnings tax. These and other similar decisions made it necessary to specify powers in detail in the charter.

The framers of the new amendment sought to change this situation by providing that constitutional charter cities shall have all powers that are not "limited or denied either by the charter so adopted or by statute of the State of Missouri." Their intent is shown by the following excerpt from the *Report of the Governor's Advisory Council on Local Government Law*, page 3, of the chapter on constitutional charter cities:

"Not only would cases such as *Carter Carburetor Corp. v. City of St. Louis* be overruled, but the whole concept of the legal role of the charter would be changed. Charters would become instruments which limit power rather than instruments which grant power. Under the proposed amendment, the responsibility of the charter draftsmen would be to draft limits designed to protect against the possible abuse of municipal power rather than to attempt to list every possible power the municipality might need to exercise in future years."

It is clear that the intent was to devolve power directly from the Constitution to the city. The city has the power unless it is limited or taken away by statute or by the charter. It is no longer the function of the charter to grant power to the city.

For a discussion of the sentence in the amendment granting all powers conferred by law, see Opinion No. 219 issued by Attorney General Danforth on October 27, 1972.

The legal concept of the charter, which was written into the Constitution by the amendment adopted October 5, 1971, has been adopted in other states. The Supreme Court of Alaska held that a provision in the Anchorage charter stating that the city could "exercise all legislative powers not prohibited by law or by charter" was enough to uphold a tax on leasehold interests. (*City of Anchorage v. Baker*, 376 P. 2d 482, Fn. 7 [1962].) In *West Coast Advertising Co. v. City and County, Etc.*, 95 P. 2d 138, at 142 (1939), the Supreme Court of California stated that:

"The foregoing cited cases leave no doubt that such a charter is no longer a grant of powers, but is rather an instrument which accepts the privilege granted by the Constitution..., and which otherwise serves merely to specify the limitations and restrictions upon the exercise of the powers so granted and accepted. Therefore, any such power not expressly forbidden may be exercised by the municipality,..."

In discussing the power to tax, the Supreme Court of California stated in *In re Galusha*, 184 Cal. 697, 700, 195 P. 406, 407 (1921), that, "The question, then, is not whether the charter grants the power to impose the tax, but whether it prohibits the tax,..."

Actually, Section 2.1 could be omitted from the charter without depriving the city of the broad powers granted by the Constitution. These powers are there unless they are denied by the Constitution, statutes or the charter itself. Section 2.1 serves a useful purpose, however, by expressing in a few words the legal status of Missouri constitutional charters. Charters serve a public information purpose as well as a legal purpose. In addition, power provisions are like a security blanket for municipal attorneys. If municipal powers were not mentioned in the charter, great numbers of municipal attorneys would go into shock. Preventing such a catastrophe also is a useful purpose.

Section 2.2 is designed to encourage a liberal construction of Section 2.1 and to avoid the use of the canon of construction, which provides that the expression of some powers implies the exclusion of others (expressio unius est exclusio alterius). Although Section 2.1 does not mention any specific power, such a reference to a specific power may be included in other sections of the city's charter. There is considerable doubt that provisions such as this influence the courts in any significant way. They do no harm, however, and they are routinely included in city charters. If they help only in a small percentage of cases, they should be included.

Section 1.03 of the *Model City Charter* specifically authorizes the city to exercise its powers jointly or in cooperation with other entities of government. Such a section was omitted from this charter because it is believed that it is unnecessary under Missouri law. A constitutional charter city has all powers not denied to it. It already has been pointed out that charters no longer need to specify particular powers. Specifications of the power to engage in intergovernmental relations would conflict

with this concept of the charter and would seem to suggest by the special treatment that there is some doubt about the exercise of such powers. Moreover, Missouri municipalities are specifically authorized to engage in certain intergovernmental relations by Article VI, Section 16, of the Constitution. (See also Chapter 70, RSMo 1986). Even without such constitutional authorization, it seems probable that Missouri constitutional charter cities would have the power under the new amendment to engage in joint and cooperative efforts with other entities of government.

ARTICLE III

THE COUNCIL

Section 3.1. Where Powers Vested.

Except as this charter provides otherwise, all powers of the city shall be vested in the council. The council shall provide for the exercise of these powers and for the performance of all duties and obligations imposed on the city by law.

Section 3.2. Composition, Eligibility, Election and Terms.

(a) Composition.

Option A: Election at Large.

There shall be a city council of _____ members nominated and elected by the qualified voters of the city at-large.

Option B: Election by Districts.

There shall be a city council of _____ members nominated and elected by the qualified voters of their respective districts, as provided in Article VII.

Option C: Combination District and At-Large.

There shall be a city council of _____ members. _____, to be known as councilmen at-large, shall be nominated and elected by the qualified voters of the city at-large. The other _____ shall be known as district councilmen; they shall be nominated and elected by the qualified voters of their respective districts, as provided in Article VII.

(b) Eligibility.

Option A

Only qualified voters of the city shall be eligible to hold the office of councilman.

Option B

A councilman shall be a qualified voter of the city and shall have been a resident of the city for at least _____ years prior to his election.

Option C

A councilman shall be a qualified voter of the city. The councilmen elected by districts shall be residents of the respective districts from which they are elected.

(c) Election and Terms.

Option A: Election at-large, combines standard council term of four years with possibility of altering council majority every two years.

At the first election under this charter seven councilmen shall be elected; the three candidates receiving the greatest number of votes shall serve for terms of four years, and the four candidates receiving the next greatest number of votes shall serve for terms of two years. Commencing at the next regular election and at all subsequent regular elections, four councilmen shall be elected; each of the three candidates receiving the greatest number of votes shall serve for a four-year term, and the one receiving the fourth greatest number of votes shall serve for a two-year term.

Option B: Two-year term; entire council elected every two years.

Councilmen shall be elected at each regular election to serve concurrent two-year terms.

Option C: Staggered terms; terms of councilmen elected chosen by lot.

Councilmen shall be elected to serve staggered four-year terms. At the first election under this charter, seven councilmen shall be elected. Three of the councilmen elected at the first such election shall serve only two-year terms, they being determined by lot at the first meeting of the council. At each regular municipal election thereafter, councilmen shall be elected to fill the positions of those whose terms expire and shall serve full four-year terms.

Option D: Staggered terms; terms of councilmen elected at first election designated by district.

Councilmen shall be elected to serve staggered four-year terms. At the first election under this charter seven councilmen shall be elected. The councilmen from districts 1, 3, and 5 shall serve two-year terms and the councilmen from districts 2, 4, 6, and 7 shall serve four-year terms. At each regular municipal election thereafter, councilmen shall be elected to fill the positions of those whose terms expire and shall serve full four-year terms.

Option E: Staggered terms; provision in transition section for first election under charter.

Councilmen shall be elected to serve staggered four-year terms. At each regular municipal election councilmen shall be elected to fill the positions of those whose terms expire.

Section 3.3. Compensation; Expenses.

Option A

Except as provided in Article XIII, the council may determine the annual compensation of councilmen by ordinance, but no ordinance increasing such compensation shall become effective for a councilman until the commencement of a new term of office. Councilmen shall receive their actual and necessary expenses incurred in the performance of their duties of office.

Option B

The councilmen and mayor shall receive no salary, but shall be reimbursed for such actual and necessary expenses incurred in the performance of their duties of office as are authorized and itemized.

Option C

Each councilman shall receive _____ dollars for each regular or special session of the council attended, but no councilman shall receive more than _____ dollars in any one year of service. In addition to his compensation as a councilman, the Mayor shall receive _____ dollars annually.

Section 3.4. Mayor.

Option A: Election by Council.

The council shall elect from among its members officers of the city who shall have the titles of mayor and deputy mayor, each of whom shall serve at the pleasure of the council. The mayor shall preside at meetings of the council, shall have the right to vote, and shall be recognized as head of the city government for all legal and ceremonial purposes and by the governor for purposes of military law. The mayor shall have no administrative duties and shall have no veto power. The deputy mayor shall act as mayor during the absence or disability of the mayor.

Option B: Election at-large; weak mayor.

A mayor shall be elected at each regular election for a term of four years. He shall be a member of the council and shall have the same qualifications as are required for other councilmen. The mayor shall preside at meetings of the council, shall have the right to vote, and shall be recognized as head of the city government for all legal and ceremonial purposes and by the governor for purposes of military law. The mayor shall have no administrative duties and shall have no veto power. The council shall elect from among its members a deputy mayor who shall act as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become mayor for the remainder of the unexpired term.

Section 3.5. Prohibitions.

(a) Holding Other Office. Except where authorized by law, or pursuant to an agreement between the city and another entity of government, no councilman shall hold any other city office or employment during the term for which he was elected to the council, and no former councilman shall hold any compensated appointive city office or employment until one year after the expiration of the term for which he was elected to the council.

(b) Appointments and Removals. Neither the council nor any of its members shall in any manner dictate the appointment or removal of any city administrative officers or employees whom the manager or any of his subordinates are empowered to appoint, but the council as a group may express its views and fully and freely discuss with the manager anything pertaining to appointment and removal of such officers and employees.

(c) Interference with Administration. Except for the purpose of inquiries and investigations under Section 3.9, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the manager solely through the manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

Section 3.6. Vacancies; Forfeiture of Office; Filling of Vacancies.

(a) Vacancies. The office of a councilman shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.

(b) Forfeiture of Office. A councilman shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by this charter or by law, (2) violates any prohibition of this charter, (3) is convicted of a crime involving moral turpitude, (4) is in default to the city, or (5) fails to attend three consecutive regular meetings of the council without being excused by the council.

(c) Filling of Vacancies.

Option A

A vacancy in the council shall be filled for the remainder of the unexpired term, if any, at the next regular municipal election, but the council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office.

Option B

A vacancy in the council shall be filled by the council by a majority vote of all its remaining members for a period running to the next regular municipal election unless such period exceeds one year. In the latter case, the council shall make arrangements for a special election to fill such vacancy for the unexpired term.

Option C

In case of vacancy in the council, the council shall make arrangements for a special election to fill such vacancy for the unexpired term, except that if a vacancy occurs within 120 days immediately prior to the next regular municipal election, a successor shall be elected at such regular election.

Section 3.7. Judge of Qualifications.

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand. Decisions made by the council under this section shall be subject to review by the courts.

Section 3.8. City Clerk.

The council shall appoint an officer who shall have the title of City Clerk. He shall keep the journal of council proceedings, authenticate by his signature all ordinances and resolutions, and record them in full in a book kept for that purpose. He shall perform such other duties as may be required by law, by this charter, or by the council. The city clerk shall hold office at the pleasure of the council.

Section 3.9. Investigations.

The council may make investigations into the affairs of the city and the conduct of any city department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Any person who fails or refuses to obey a subpoena issued in the exercise of these powers by the council shall be guilty of a misdemeanor and punishable by a fine of not more than \$ _____ or by imprisonment for not more than _____ or both.

Section 3.10. Independent Audit.

The council shall provide for an independent audit of all city accounts at least once a year. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the city government or any of its officers. A copy of the report prepared by the certified public accountant or firm of such accountants shall be kept in the city clerk's office and shall be open to public inspection.

Section 3.11. Legislative Proceedings.

(a) Meetings. The council shall meet regularly at least once each month at such times and places as the council may prescribe. The mayor upon his own motion may, or at the request of three members of the council shall, call a special meeting of the council for a time not earlier than 24 hours after notice is given to all members of the council then in the city.

(b) Rules and Journals. The council shall determine its own rules and order of business. It shall cause a journal of its proceedings to be kept and this journal shall be open to public inspection. A separate journal shall be kept of executive sessions, which journal shall remain closed to public inspection or to legal process.

(c) Voting. Voting shall be by roll call except on procedural motions, and the ayes and nays shall be recorded in the journal. In all roll call votes the names of the members of the council shall be called in alphabetical order and the name to be called first shall be advanced one position alphabetically in each successive roll call vote. A majority of members of the council shall constitute a quorum for its business, but a smaller number may meet and compel the attendance of absent members in the manner and subject to the penalties prescribed by ordinance. Except as otherwise provided in this charter, the affirmative vote of a majority of the entire council shall be necessary to adopt any ordinance.

(d) Form of Ordinances. Proposed ordinances and resolutions shall be introduced in the council only in written or printed form. The enacting clause of all ordinances shall be:

Be It Ordained By the Council of the City of _____.

The enacting clause of all ordinances submitted by initiative shall be:

Be It Ordained By the People of the City of _____.

(e) Procedure. Except in the case of emergency ordinances, every proposed ordinance shall be read by title in open council meeting two times before final passage, and at least one week shall elapse between introduction and final passage. A copy of each proposed ordinance shall be provided for each council member at the time of its introduction, and at least three copies shall be provided for public inspection in the office of the city clerk until it is finally adopted or fails of adoption.

Persons interested in a proposed ordinance shall be given an opportunity to be heard before the council in accordance with such rules and regulations as the council may adopt. If the council adopts an amendment to a proposed ordinance that constitutes a change in substance, any member of the council may require that the proposed ordinance as amended be placed on file for public inspection in the office of city clerk for an additional one week before final passage. In the absence of such a request, the council may consider the amended ordinance at the same meeting.

(f) Emergency Ordinances. An ordinance may be passed as an emergency measure on the day of its introduction if it contains a declaration describing in clear and specific terms the facts and reasons constituting the emergency and receives the vote of two-thirds of the members of the council.

An ordinance granting, reviewing or extending a franchise shall not be passed as an emergency ordinance.

(g) Effective Date. Every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein. Emergency ordinances shall become effective upon adoption or at any later date specified therein.

(h) Authentication and Recording. All ordinances and resolutions adopted by the council shall be authenticated by the signature of the mayor and city clerk. The city clerk shall record in a properly indexed book kept for the purpose of all ordinances and resolutions adopted by the council.

Section 3.12. Revision of Ordinances.

Within three years after adoption of this charter, all ordinances and resolutions of the city of a general and permanent nature shall be revised, codified, and promulgated according to a system of continuous numbering and revision as specified by ordinance.

COMMENTARY ON ARTICLE III

Section 3.1. Where Powers Vested.

This provision is a departure from a provision found in several existing Missouri charters that lists the council's powers in some detail. Examples of provisions that list council powers in detail are Section 15 of the Clayton charter, Section 18 of the Columbia charter, and Section 2.16 of the Springfield charter. Article II, Section 6, of the Kansas City charter and Article IV, Section 1, of the St. Louis charter take an approach that is similar to this provision.

It was pointed out in the commentary on Article II that the 1971 amendment changed the legal status of the charter. The recommended provision is consistent with this new concept of the charter. Just as it is not necessary to list in detail the powers of the city, it is not necessary to list in detail the powers of the council. The basic purpose of the recommended provision is to distribute internally the powers the city received from the Constitution. It is appropriate that all powers be vested in the council, the elected legislative body, unless the charter provides otherwise.

Section 3.2. Composition, Eligibility, Election and Terms.

A municipal council may be constituted in a variety of ways. Because the needs and problems of cities vary widely, it was thought that it would be more helpful to provide a number of possible provisions than to recommend one particular arrangement.

The charter commission must make a number of decisions before Section 3.2 is drafted. It will be necessary to decide upon the number of councilmen, whether the mayor is elected at-large by the electorate or by the council, whether councilmen will be elected at-large, by districts, or by combination of the two, what qualifications must be possessed by councilmen, what the term of office will be, and if terms are to be staggered, how this will be accomplished. Care must be taken in the use of the various options since they do not all fit together. The provisions of Section 3.2 also must be drafted so that they dovetail with other articles of the charter. For example, consideration must be given to the terms of councilmen serving at the time the charter is submitted to the electorate. The various option provisions are drafted on the assumption that existing councilmen will be dealt with in the schedule. In a charter that provides for staggered terms, the means by which the initial staggering

is achieved can be dealt with in Section 3.2, as in Option A, or can be dealt with in the transitional provisions, as would be necessary if Option E were used.

Article VI, Section 10, of the Missouri Constitution states that the terms of city offices cannot exceed four years.

Many cities provide that a councilman may not be elected who is in arrears on unpaid city taxes.

(a) Composition.

It is asserted in the Commentary of the *Model City Charter* that there is general agreement that smaller city councils are more effective. Seven is suggested as the optimum number of councilmen, five is suggested as the minimum that should be considered, and more than nine is suggested as appropriate only in the largest cities. *Model City Charter*, page 14.

The drafters of the *Model City Charter* reject the idea of electing a council entirely by wards. They believe that this has a tendency to encourage log-rolling and a narrow view of the city's problems. When there is a need for geographical representation because of diversity of interests, they believe that district representation should be combined with at-large representation. The following table indicates that existing Missouri charters vary considerably in the provision made for composition of the council. When reference is made to Mayor, this indicates that the Mayor is considered to be a member of the council:

Berkeley	7 members; Mayor and 1 councilman elected at-large, and 5 councilmen elected by wards.
Bridgeton	8 members; four elected from each ward.
Clayton	7 members; Mayor elected at-large, and 6 aldermen elected by wards.
Columbia	7 members; Mayor elected at-large, and 6 councilmen elected by wards.
Ferguson	7 members; Mayor elected at-large, and 6 councilmen elected by wards.
Florissant	9 members; all elected at-large.
Hannibal	9 members; 6 councilmen elected by wards, and 3 elected at-large.
Hazelwood	7 members; Mayor elected at-large, and 6 councilmen elected by wards.
Independence and	7 members; Mayor and 2 councilmen elected at-large, 4 councilmen elected by districts.
Joplin	9 members elected at-large.

Kansas City	13 members; Mayor elected at-large; 12 councilmen elected at-large, but 6 councilmen must reside in districts.
St. Louis	29 members; President elected at-large, and 28 aldermen elected by wards.
Springfield	9 members; 9 elected at-large, but 4 must reside in zones.
University City	7 members; Mayor elected at-large, and 6 councilmen elected by wards.
Webster Groves	7 members; Mayor and 6 councilmen elected at-large.

(b) Eligibility.

The *Model City Charter* recommends against residence requirements for councilmen because "... in this era of highly mobile population and frequent disparity between place of work and place of residence, residence requirements lose what little validity they may once have had."

Article VII, Section 9, of the Missouri Constitution provides that no person shall be elected or appointed to any civil office in this state who is not a citizen of the United States and who has not resided in the state for one year. However, the residence requirement does not apply in cases of appointment to administrative positions requiring technical or specialized skill or knowledge.

Constitutional challenges to residency requirements for holding office are being made with increasing frequency. Although it is impossible to tell at this time what limitations ultimately will be placed on residency requirements, it is clear that this issue will be litigated in the years ahead.

Section 71.150, RSMo 1986, states that no property qualification shall be required for holding office in any city.

(c) Election and Terms.

The usual term of office is from two to four years. The appropriate term of office for councilmen will depend in part on whether terms are staggered. Article VI, Section 10, of the Missouri Constitution prohibits terms of more than four years.

Option A, taken from the *Model City Charter*, is designed to "combine the advantage of a standard council term of four years with the possibility of altering the council majority every two years."

Among the means available to achieve a staggering of terms are designation of initial terms in the charter, longer terms to those receiving more votes, and designation of initial terms by lot. Each option is encompassed within at least one of the provisions set out above.

Section 3.3. Compensation; Expenses.

The prevailing practice in cities adopting the council-manager plan has been to provide only nominal salaries or no salary at all for city council members. This evidently is based on a belief that large salaries attract candidates who are more interested in money than public service. (Childs, *The First 50 Years of the Council-Manager Plan of Municipal Government*, 1965.) The Commentary on Section 2.02 of the *Model City Charter* states that the mayor should receive extra compensation because of the extra time spent in discharging his ceremonial functions. Cities adopting a strong

mayor form of government should deal with the mayor's salary in Article IV. (See Option B.)

Article VII, Section 13 of the Missouri Constitution states that the compensation of municipal officers shall not be increased during the term of office.

If the charter commission decides to authorize the council to set the amount of compensation, as in Option A, the amount of compensation for the first council after the charter goes into effect probably should be established in the schedule.

Section 3.4. Mayor.

A charter commission that decides to assign administrative responsibilities to the mayor should deal with the office of mayor in Article IV. (See Option B) In this event, Section 3.4 still should provide for the election of a deputy mayor from among the members of the council, and provision for the deputy mayor's taking over in case of a vacancy should be dealt with in Section 4.3. The options provided in Section 3.4 are typical of the provisions used by cities adopting the council-manager form of government. If Option A is adopted, Section 3.2(a) should provide for an odd number of councilmen. If Option B is adopted, an even number of councilmen should be provided for in Section 3.2(a).

Section 3.5. Prohibitions.

This provision is identical to Section 2.05 of the *Model City Charter* except for the language, "or pursuant to an agreement between the city and another entity of government..." This language seeks to make it clear that councilmen may hold offices set up under an agreement pursuant either to Article VI, Section 16, of the Constitution, which authorizes cooperation by local governments with other units of government, or the city's home rule powers. (See the discussion in the Commentary on Article II.)

It should be noted that Section 3.6 provides for forfeiture of office if a councilman violates any express prohibition of this charter. Thus the combined effect of Sections 3.5 and 3.6 is similar to that of provisions such as Section 2.8 of the Springfield charter, which provides for forfeiture of office if councilmen seek to deal with administrative officers other than through the city manager. Changes in a few words would make these provisions appropriate for cities that have a mayor as chief administrative officer. Whether a city adopting a mayor-council form of government would want to include such provisions is another matter. Section 21(f) of the *Model Charter for Oregon Cities, Council-Manager Form of Government* includes a prohibition against interference with administration, but the *Model Charter for Oregon Cities, Mayor-Council Form of Government* does not include a comparable provision. (Published by Bureau of Municipal Research and Service, University of Oregon, Eugene, 3rd rev. 1967.)

Section 3.6. Vacancies; Forfeiture of Office; Filling of Vacancies.

The provision dealing with forfeiture of office is identical to Section 2.06(b) of the *Model City Charter* except for the inclusion of language providing for forfeiture when the councilman is in default to the city. The charter commission may wish to add to or delete from Section 3.6(b). The fifth contingency resulting in forfeiture--failure to attend three consecutive regular meetings without excuse--could be redrawn in a number of ways. For example, Section 32 of the *Model Charters for Oregon Cities* provides that a vacancy is created "upon his absence from the city for 30 days without the consent of the council or upon his absence from meetings of the council for 60 days without like consent,..."

Section 106.220, RSMo 1986, sets out statutory grounds for removal of a city official by

impeachment. Article VII, Section 6, of the Missouri Constitution provides for forfeiture of office of "Any public officer or employee in this state...by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity,..."

The three options under Section 3.6(c) deal only with vacancies in the council. If the charter is drafted to provide for an elected mayor who is not considered to be a member of the council, a vacancy in this office should be dealt with in Article IV. (See Option B) The three options under Section 3.6(c) do not exhaust the possible methods of filling vacancies.

Section 3.7. Judge of Qualifications.

The recommended provision is a modified version of Section 2.07 of the *Model City Charter*. The provision should not be included in the charter without careful consideration of each sentence. The first point to note is that the council is made the judge of the grounds for forfeiture as well as the election and qualifications of its members. Since Section 106.270, RSMo 1986, provides that the Circuit Court shall remove municipal officers who forfeit their office for the reasons set out in Section 106.220, RSMo 1986, the question arises whether giving the council this power conflicts with the statutes. Although it is impossible to speak with complete assurance in the absence of a court decision, it seems probable that this provision could stand as a procedure that supplements the statutes.

Many presently existing charters in Missouri authorize the council to subpoena witnesses, administer oaths and require the production of evidence in the lengthy list of council powers, which is omitted in this charter. (See, for example, Section 2.16(24) of the Springfield charter and Section 15(23) of the Clayton charter.) It was pointed out in the Commentary on Section 3.1 that such an enumeration of council powers is no longer necessary. It seems probable that the council would have the power to subpoena witnesses, etc., even if this language were not included in Section 3.7. It serves a useful purpose, however, to describe succinctly in one place the means by which questions concerning election, qualifications and forfeitures will be considered and disposed of.

The recommended provision states expressly that decisions made by the council shall be subject to review by the courts. Typical existing charters in Missouri provide that the council shall be the judge of election returns and qualifications of its members, but do not state that decisions of the council shall be subject to court review. (See, for example, Section 24 of the Springfield charter, Section 6 of the Clayton charter and Section 8 of the Columbia charter.) Both of the *Model Charters for Oregon Cities* state in Section 12 that the council shall be the final judge of the qualifications and election of its own members. It is doubtful that language making the council the final judge of the election of its members could prevent a court test in Missouri, however, since the circuit courts have jurisdiction in cases of contested elections for municipal offices. (See also *State v. Goodman*, 263 S.W. 2d 409 [Mo. Sup. Ct. En Banc 1954], and Article VII, Section 5, of the Missouri Constitution.)

Although the recommended provision provides for review by the courts of council decisions on forfeitures, a provision in several existing Missouri charters provides that the council decision on certain types of forfeiture shall be final. (See, for example, Section 13 of the Clayton charter and Section 2.8 of the Springfield charter.) On the other hand, Section 2.8 of the Webster Groves charter provides that if the council determines that a member has forfeited his office, the councilman "shall have the right of appeal if the same be provided by law to the Circuit Court of the County of St. Louis."

If the charter provides for an elected mayor who is not a member of the council (See Article IV, Option B), Section 3.7 should be changed to make the council the judge of the election and qualifications of "all officers elected by the voters under this charter and of the grounds for forfeiture of their office."

Section 3.8. City Clerk.

The first and last sentences of this section make it clear that the city clerk is directly responsible to the council rather than the city manager or mayor.

The Missouri *Model* is different from some existing Missouri charters in not including a provision dealing with the law department and the municipal court. (See, for example, Articles VII and XV of the Columbia charter, Articles VII and XII of the Springfield charter, and Articles 8 and 9 of the Webster Groves charter.) One might ask why the office of city clerk is dealt with in the charter when the law department and municipal court are not. The reason for dealing specifically with the city clerk in the charter is to make it clear that the city clerk is to be chosen by and work under the supervision of the city council. Without some indication to the contrary, Section 4.4 would give the city manager the power to appoint and remove the city clerk. If a charter commission believes that the city clerk should be supervised by the city manager, Section 3.8 could be omitted and provision made in the administrative code for the office of city clerk. The law department is not specifically mentioned in the charter because of a belief that the city attorney and any other attorneys in the law department should be subject to the supervision of the city manager as are other departments and department heads. It could create problems if the city attorney occupies a special status in which he is subject to supervision and control only by the city council. There is no reason, of course, why the city attorney cannot give legal advice to the city council while under the supervision of the city manager. If the charter commission believes the city attorney should have special status, it can deal with this office in the charter. Otherwise, the law department can be dealt with in the administrative code. The municipal court also could be provided for in the administrative code or in a separate ordinance. One could argue that the municipal court is sufficiently unique to require treatment in the charter. It is questionable whether this is required by law. Any charter commission desiring to include provisions dealing with the law department or the municipal court will find that the provisions referred to above are quite satisfactory.

Section 3.9. Investigations.

This provision is based upon Section 2.09 of the *Model City Charter*. A number of existing Missouri charters include such powers in the lengthy list of powers that was typical prior to the adoption of the 1971 amendment. (See, for example, Section 2.13(22) of the Webster Groves charter.) While the council presumably would have these powers without such a provision, this is a sensitive area and it is at least arguable that the council is in a better position to discharge its investigative responsibilities when it has a direct mandate from the voters in the charter. A provision such as this also makes it clear that Section 3.5(c) does not prevent council investigations. On the other hand, the deletion of a provision such as this from a charter probably would not create serious problems.

Section 3.10. Independent Audit.

The council would have power to provide for audits in the absence of a provision such as this. It would have the power to provide for audits more often than once a year if a provision such as this were included in the charter. The purpose of this provision is to require an independent audit at least once a year and to require that it be open to public inspection. Although such a requirement is not included in all charters, a requirement of an annual audit is included in Section 2.10 of the *Model City Charter* and a number of existing Missouri charters. (See, for example, Clayton, Section 10; Columbia, Section 17; Independence, Section 2.23; Springfield, Section 2.14; University City, Section 31; and Webster Groves, Section 5.6.) Rather than specifically providing the means by which the public can gain access to the report of the certified public accountant, many presently existing Missouri charters state that "the results of such audit shall be made public in such manner as the council may determine."

Article II, Section 13, of the Kansas City charter provides for a permanent auditor.

Section 3.11. Legislative Proceedings.

Both the organization and substance of Section 3.11 are an amalgam of similar provisions of many different charters. It is not exactly like a comparable provision in any other charter. Its various parts should be examined carefully and compared with similar provisions from other charters before inclusion in a charter, because there are many ways to deal with the matters covered in this Section. The recommended provision seeks to strike a balance between the flexibility of a very short provision and the protection against abuse that can be accomplished in a very detailed provision.

An effort was made to insure that interested citizens are guaranteed an opportunity to ascertain what the council is considering and to express their views. This is accomplished by requiring the keeping of adequate records open to the public, by requiring the passage of at least one week between introduction and adoption of an ordinance except where there is an emergency, by requiring a larger vote to pass an emergency ordinance without this lapse of time, by giving interested citizens a convenient means by which they can familiarize themselves with pending ordinances, and by requiring additional time for public scrutiny when substantive changes are made in a pending ordinance.

Section 3.12. Revision of Ordinances.

This provision is patterned after Section 9 of the Clayton charter and Section 16 of the Columbia charter. Section 2.16(a) of the *Model City Charter* and Section 16 of the Kansas City charter specifically require a general codification or revision every ten years. Section 22 of the St. Louis charter requires a revision of the general ordinances every five years. This provision in the charter must be drafted so as to deal with the particular situation that exists in the subject community.

For example, if the ordinances and resolutions have been codified recently, there may not be a pressing need to place a deadline for codification in the charter.

ARTICLE IV

CITY MANAGER OR ADMINISTRATOR (MAYOR)

Option A: City Manager.

Section 4.1. Appointment; Qualifications; Compensation.

The council shall appoint a city manager for an indefinite term (or for a term not to exceed _____ year[s]) and shall fix his compensation (and conditions of employment). The manager shall be appointed solely on the basis of his executive and administrative qualifications. He need not be a resident of the city or state at the time of his appointment. He must reside inside the city within six months of appointment, unless an extension is granted by the council.

Section 4.2. Removal.

The council may remove the manager from office in accordance with the following procedures:

(1) The council shall adopt by affirmative vote of a majority of all its members a preliminary resolution that must state the reasons for removal and may suspend the manager from duty for a period not to exceed 45 days. A copy of the resolution shall be delivered promptly to the manager.

(2) Within five days after a copy of the resolution is delivered to the manager, he may file with the council a written request for a public hearing. This hearing shall be held at a council meeting not earlier than fifteen days nor later than thirty days after the request is filed. The manager may file with the council a written reply not later than five days before the hearing.

(3) The council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members at any time after five days from the date when a copy of the preliminary resolution was delivered to the manager, if he has not requested a public hearing, or at any time after the public hearing if he has requested one. The manager shall continue to receive his salary until the effective date of a final resolution of removal.

Section 4.3. Acting City Manager.

By letter filed with the city clerk the manager shall designate, subject to approval of the council, a qualified city administrative officer to exercise the powers and perform the duties of manager during his temporary absence or disability. During such absence or disability, the council may revoke such designation at any time and appoint another officer of the city to serve until the manager shall return or his disability shall cease.

Section 4.4. Powers and Duties of the City Manager.

The city manager shall be the chief administrative officer of the city. He shall be responsible to the council for the administration of all city affairs placed in his charge by or under this charter. He shall have the following powers and duties:

(a) He shall appoint and, when he deems it necessary for the good of the service, suspend or remove all city employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant to this charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.

(b) He shall direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law.

(c) He shall attend all council meetings and shall have the right to take part in discussion but may not vote. He shall receive notice of all special meetings.

(d) He shall see that all laws, provisions of this charter and acts of the council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.

(e) He shall prepare and submit the annual budget and capital program to the council.

(f) He shall submit to the council and make available to the public a complete report on the finances and administrative activities of the city at the end of each fiscal year.

(g) He shall make such other reports as the council may require concerning the operations of city departments, offices and agencies subject to his direction and supervision.

(h) He shall keep the council fully advised as to the financial condition and future needs of the city and make such recommendations to the council concerning the affairs of the city as he deems desirable.

(i) He shall perform such other duties as are specified in this charter or may be required by the council.

Option B: Mayor.

Section 4.1. Election, Term; Qualifications.

The mayor shall be elected by the qualified voters of the city at-large at the regular municipal election. He shall hold his office for a term of two (four) years. The mayor shall be a qualified voter of the city (and shall have been a resident of the city for at least two years prior to his election).

Section 4.2. Salary.

Except as provided in Article XIII, the salary of the mayor shall be established by ordinance. The council shall not change the salary of any mayor, except prior to the election of the mayor, to take effect at the beginning of the next term of office for mayor.

Section 4.3. Vacancy; Forfeiture of Office; Filling of Vacancies.

The office of mayor shall be deemed vacant or forfeit for the same reason that the councilman's office shall be deemed vacant or forfeit under Section 3.6(a) and 3.6(b). If a vacancy occurs in the office of mayor, the deputy mayor shall have all the powers and perform all the duties of the office until a special municipal election is called for the purpose of electing a mayor. Said election shall be called within _____ days of the occurrence of the vacancy, except when the vacancy occurs within the six months immediately preceding the expiration of the mayor's term, the deputy mayor shall continue to sit as mayor until a mayor is elected at the regular election. As acting mayor, the deputy mayor shall continue to have a vote in the council, but he shall not have the veto power.

Section 4.4. Mayor's Powers and Duties.

The mayor shall be the chief executive and chief administrator of the city. He shall have the following powers and duties:

(a) He shall preside at meetings of the council, but he shall have the right to vote only in case of a tie. He may call special meetings of the council as provided in Section 3.11(a).

(b) He shall at the beginning of each fiscal year and may at any other time give the council information as to the affairs of the city and any recommendations he may have.

(c) An ordinance or resolution adopted by the council shall be presented to the mayor for his approval. The mayor shall either sign the same, or within seven days of receipt of the ordinance or resolution, return it with a written statement of his reasons for disapproval. Ordinances or resolutions vetoed by the mayor shall be considered at the next regular meeting of the council, and the council may pass the ordinance over the veto by an affirmative vote of two-thirds of its members. The effective date of an ordinance passed over the mayor's veto shall be not less than 30 days after the date of final passage.

(d) He shall see that all laws, provisions of the charter and acts of the council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.

(e) He shall appoint and, when he deems it necessary for the good of the service, suspend or remove all city employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, by this charter or by personnel rules adopted pursuant to this charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to that officer's subordinates.

(f) He shall direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law.

(g) He shall prepare and submit the annual budget and capital program to the council.

(h) He shall exercise such other powers and perform such other duties as may be prescribed by this charter, by ordinance or by law.

Section 4.5. Administrative Assistant to the Mayor.

There shall be an administrative assistant who shall be appointed by the mayor solely on the basis of his executive and administrative qualifications and who may be removed by the mayor without cause. He shall be the principal managerial aide to the mayor and shall perform such duties as may be assigned to him by the mayor. The administrative assistant shall be paid a salary of an amount to be fixed by the mayor with the approval of the council. The council shall not decrease the salary of any incumbent administrative assistant.

Option C: City Administrator

Section 4.1. City Administrator.

There shall be a city administrator nominated by the mayor and appointed by the mayor with the advice and consent of a majority of the council. The person appointed shall serve for an indefinite term. The city administrator may be removed on recommendation of the mayor with the consent of a majority of the council, or by a two-thirds vote of the council on its own initiative. The city

administrator shall be paid a salary of an amount established by the mayor, with the approval of a majority of the council. The person appointed to the office of city administrator shall possess qualifications provided by ordinance.

Section 4.2. Duties and Powers.

The city administrator shall be responsible to the mayor and the council for the administration of all city affairs placed in his charge by or under this charter. He shall have the following powers and duties:

(a) Except as otherwise specified by ordinance, or by state law, the city administrator shall coordinate and generally supervise the operation of all departments, both line and staff.

(b) The city administrator shall make recommendations of appointment and removal of department heads and division supervisors for the approval of the mayor and council. The city administrator shall have the power to appoint and remove all other subordinate employees of the city.

(c) The city administrator shall prepare and submit a recommended annual budget and five-year capital improvements program to the mayor.

COMMENTARY ON ARTICLE IV

Option A. City Manager.

Option A sets forth appropriate provisions for use if the charter commission decides to provide for a city manager. Option B sets forth appropriate provisions for use if the charter commission decides to provide for a mayor-council form of government.

The recommended provisions on the city manager were taken almost verbatim from the *Model City Charter* except for the language in parentheses in the first sentence. This language is suggested as an alternative in the event the charter commission believes it would be desirable to provide for a contract for the city manager. Some of these contracts provide for an indefinite term but provide for compensation for a definite term even if the manager's services are terminated. A comparison of the *Model City Charter* with presently existing provisions in Missouri charters indicates that most of the Missouri charter provisions dealing with the city manager are similar to those in the *Model City Charter*. Charter commissions considering the adoption of the council-manager plan would find it helpful to read Childs, *The First 50 Years of the Council-Manager Plan of Municipal Government* (1965).

Absent a limitation in the charter, the council would have the power to remove the city manager even if Section 4.2 were not included. The existence of such a provision provides an orderly procedure for removal, however, and this could be quite useful in a controversial situation. Although the basic purpose of Section 4.2 is not the protection of the city manager, it does provide a means by which unjust charges can be answered.

Option B. Mayor.

Much of Article IV, Option B, was taken from Article III-B of Haag and Snyder, *Guidelines for Charter Drafting* (Bureau of Public Administration, University of Maine at Orono, 1971).

It would be useful to compare the powers and duties of the mayor in 3rd and 4th class cities in Missouri. These can be found in Sections 77.260-77.360, 79.110, 79.120, 79.140 and 79.180-79.220, RSMo 1986.

The powers of the city manager or mayor are set out specifically in Article IV because Section 3.1 provides that all powers are vested in the council except as the charter provides otherwise. Thus, Section 4.4 in both Option A and Option B operates as an exception to Section 3.1.

The veto power provided in Section 4.4(c) is one major difference between the powers granted an elected mayor and an appointed city manager. It clearly would be inappropriate to vest a veto power in a city manager. He is an appointed official, and one of the basic principles of council-manager government is the assignment of the policy making function to an elected council.

It would be a simple matter to weaken the position of the mayor under the mayor-council form of government if a charter commission for a smaller city decides that it does not wish to provide for a strong mayor. Removal of the veto power would significantly change the balance of power between mayor and council. Another means of significantly weakening the power of the mayor would be a provision requiring that the mayor's appointments be subject to the "advice and consent" of the council.

Option C. City Administrator.

The city administrator form has grown rapidly throughout Missouri and blends features of the council-manager and mayor-council forms.

ARTICLE V

ADMINISTRATIVE ORGANIZATION AND PERSONNEL SYSTEM

Section 5.1. Administrative Organization.

Option A

Within _____ months after the adoption of this charter, the council shall adopt by ordinance an administrative code providing a complete plan of organization and structure for the city government. The administrative code may authorize the city manager (mayor) to promulgate regulations dealing with questions of organization and structure. The administrative code and any regulations promulgated pursuant thereto shall be consistent with this charter. Unless otherwise required by law, all boards and commissions provided for in the administrative code shall be appointed by the council (or by the mayor with the consent of the council).

Option B

Within _____ months after the adoption of this charter, the council shall adopt by ordinance an administrative code providing a complete plan of organization and structure for the city government. The administrative code may authorize the city manager (mayor) to promulgate regulations dealing with questions of organization and structure. The administrative code and any regulations promulgated pursuant thereto shall be consistent with this charter. Unless otherwise required by law, all boards and commissions provided for in the administrative code shall be appointed by the council (or by the mayor with the consent of the council).

The administrative code shall provide for at least the following departments, boards and commissions: finance department, public works department, fire department, police department, board of adjustment, planning commission, library board, parks and recreation commission and board of trustees of the police and firemen's retirement fund. Additional departments, boards and commissions may be created by ordinance. Two or more departments may be headed by the same person, directors of departments may serve as chiefs of divisions, and the city manager may head one or more departments.

Option C

Within _____ months after the adoption of this charter, the council shall adopt by ordinance an administrative code providing a complete plan of organization and structure for the city government. The administrative code may authorize the city manager (mayor) to promulgate regulations dealing with questions of organization and structure. The administrative code and any regulations promulgated pursuant thereto shall be consistent with this charter. Unless otherwise required by law, all boards and commissions provided for in the administrative code shall be appointed by the council (or by the mayor with the consent of the council).

The administrative code shall provide for the following departments, boards and commissions: finance department, public works department, fire department, police department, board of adjustment, planning commission, library board, parks and recreation commission and board of trustees of the police and firemen's retirement fund. The council may not create any department, board or commission, other than those provided for in this charter, to administer any activity, department or agency of the city government except any activity which by statute is required to be so administered. The council may, however, establish (a) quasi-judicial appeal boards and (b) boards or commissions to serve solely in an advisory capacity. Two or more departments may be headed by the same person,

directors of departments may serve as chiefs of divisions, and the city manager may head one or more departments.

Section 5.2. Personnel System.

Within _____ months after the adoption of this charter, the council shall adopt by ordinance a personnel code providing a comprehensive personnel system for city officers and employees. The personnel code shall provide that all appointments and promotions of city officers and employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence. The personnel code may authorize the city manager (mayor) or a personnel board, if one be established, to promulgate regulations dealing with personnel matters. The personnel code and any regulations promulgated pursuant thereto shall be consistent with this charter.

COMMENTARY ON ARTICLE V

Section 5.1 is significantly different from the typical provisions in presently existing Missouri charters, which deal with the administrative organization of city government. Section 5.1 provides for the establishment of departments, boards and commissions by ordinance. The typical Missouri charter deals specifically with these matters in the charter itself. (See, for example, Articles IV, V, VI, VII, VIII, IX and XI of the Springfield charter and Articles III, IV, V and XIV of the Kansas City charter.) Although the *Model City Charter* is less detailed than the typical Missouri charter, it deals specifically with the departments and boards that are responsible for planning and land-use control. Some cities set out the details of administrative organization in the charter and then provide that the council may by ordinance consolidate or transfer functions to other boards or departments as long as no function or duty provided for by the charter is discontinued. (See, for example, Section 4.1 of the Springfield charter.) This approach could result in a charter giving a misleading picture of the actual administrative organization of a city.

The advantage of a provision such as Section 5.1 is that administrative reorganization can be accomplished by ordinance rather than charter amendment. Moreover, it is questionable whether the details of administrative organization raise the sort of fundamental policy issues that necessarily must be submitted to the electorate of the city. In view of the very real limits on expansion of municipal government imposed by fiscal reality and legal limitations on taxation and debt, it is not necessary to impose further limits by specifying administrative organization in detail in the charter. The flexibility that could be achieved by omitting these matters from the charter would seem to outweigh the questionable advantages gained from detailed elaboration.

Options B and C are designed to deal with situations in which charter commissions decide that policy considerations or political realities require that the departments, boards and commissions be listed in the charter. Option B is designed to be open ended. Option C is designed to impose limits on the creation of additional departments, boards and commissions. The list of departments, boards and commissions was taken from Article IV, Section 1, of the Clayton charter. Presumably, the list would vary from city to city.

For discussion of the special considerations involving the law department and the municipal court, see the Commentary on Section 3.8.

Charter commissions desiring to deal with planning in the charter should consider the excellent monograph by Glenn E. Varenhorst, *A Study of Planning Provisions of Smaller Constitutional Charter Cities in Missouri* (Department of Regional and Community Affairs, University of Missouri-

Columbia Extension Division, March 1972).

The same emphasis on brevity and flexibility is carried into Section 5.2, which deals with personnel systems. The recommended provision is less detailed than the comparable provision in many existing Missouri charters (See, for example, Article VI of the Columbia charter or Section 4.02 of the *Model City Charter*). Section 5.2 does, however, incorporate the merit principle into the charter. Flexibility with respect to the personnel system would seem to be particularly important. Unionization of municipal employees is proceeding at a rapid pace and proposals for statewide legislation dealing with local government employees are offered at each session of the legislature. There is little that can be done in a charter to influence the course of events in this field. Thus the appropriate stance would seem to be one of keeping various options open to the council so that it can respond to changing circumstances quickly and in the way that is best calculated to advance the overall interests of the city, city employees and the electorate.

ARTICLE VI

FINANCIAL PROCEDURES

Section 6.1. Fiscal Year.

The council shall determine the fiscal year of the city.

Section 6.2. Submission of Budget and Budget Message.

On or before the _____ day preceding the beginning of the fiscal year, the manager (mayor) shall submit to the council a budget for the ensuing fiscal year and an accompanying message.

Section 6.3. Budget.

The budget shall provide a complete financial plan of all city funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the manager (mayor) deems desirable or the council may require.

Section 6.4. Capital Program.

(a) Submission to Council. The manager (mayor) shall prepare and submit to the council a five-year capital program at least six months prior to the final date for submission of the budget.

(b) Contents. The capital program shall include:

- (1) A clear general summary of its contents;
- (2) A list of all capital improvements that are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
- (3) Cost estimates, method of financing and recommended time schedules for each such improvement; and
- (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

Section 6.5. Council Action on Budget.

(a) Notice and Hearing. The council shall publish in one or more newspapers of general circulation in the city a general summary of the budget and a notice stating:

- (1) The times and places where copies of the message and budget are available for inspection by the public, and
- (2) The time and place, not less than two weeks after such publication, for a public hearing on the budget.

(b) Amendment Before Adoption. After the public hearing, the council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for estimated cash deficit.

(c) Adoption. The council by ordinance shall adopt the budget on or before the _____ day of the _____ month of the fiscal year currently ending. If it fails to adopt the budget by this date, the amounts appropriated for current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it prorated accordingly, until such time as the council adopts a budget for the ensuing fiscal year. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated.

Section 6.6. Council Action on Capital Program.

(a) Notice and Hearing. The council shall publish in one or more newspapers of general circulation in the city a general summary of the capital program and a notice stating:

(1) The times and places where copies of the capital program are available for inspection by the public, and

(2) The time and place, not less than two weeks after such publication, for a public hearing on the capital program.

(b) Adoption. The council by resolution shall adopt the capital program with or without amendment after the public hearing and on or before the _____ day of the _____ month of the current fiscal year.

Section 6.7. Public Records.

Copies of the budget and the capital program as adopted shall be public records and shall be made available to the public at suitable places in the city.

Section 6.8. Amendment After Adoption.

(a) Supplemental Appropriations. If during the fiscal year the manager (mayor) certifies that there are available for appropriation revenues in excess of those estimated in the budget, the council by ordinance may make supplemental appropriations for the year up to the amount of such excess.

(b) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the manager (mayor) that the revenues available will be insufficient to meet the amount appropriated, he shall report to the council without delay, indicating the estimated amount of the deficit, any remedial action taken by him and his recommendations as to any other steps to be taken. The council then shall take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may by ordinance reduce one or more appropriations.

(c) Transfer of Appropriations. At any time during the fiscal year the manager (mayor) may transfer part or all of any unencumbered appropriation balance among programs within a department, office or agency and, upon written request by the manager (mayor), the council may by ordinance transfer part or all of any unencumbered appropriation balance from one department, office or agency to another.

(d) Emergency Appropriations; Effective Date. The supplemental appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption and may be made by emergency ordinance in accordance with the provisions of Section 3.11(f).

Section 6.9. Administration of Budget.

(a) Work Programs and Allotments. At such time as the manager (mayor) shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The manager (mayor) shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He may revise such allotments during the year if he deems it desirable and shall revise them to accord with any supplemental, reduced or transferred appropriations made pursuant to Section 6.8.

(b) Payments and Obligations Prohibited. No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the manager (mayor) or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this charter shall be void and payment so made illegal; such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and he also shall be liable to the city for any amount so paid. However, except where prohibited by law, nothing in this charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.

Section 6.10. Tax Rates and Tax Rolls.

After the budget is finally adopted, the council shall by ordinance set the tax rates and levy on the various classes of property, and the levy so established shall be certified by the city clerk to the appropriate official, who shall compute the taxes and extend them upon the tax rolls.

COMMENTARY ON ARTICLE VI

The recommended provision is a shortened version of Article V of the *Model City Charter*. It does not attempt to impose requirements as to the nature of the budget. Typical existing provisions in Missouri charters are more detailed than the recommended provisions. Among other things, they cover the organization of the Department of Finance and the powers and duties of its director, list purposes for which bonds may be issued, and set out at least some of the procedural steps that must be taken before bonds are issued. (See, for example, Article V of the Columbia charter and Article IV of the Kansas City charter.) The organization of departments and duties of various officials would be covered in the Administrative Code provided for in Section 5.1 under the arrangements recommended herein. As a result of the 1971 amendment, there is no need to list the purposes for which bonds may be issued. Since the required procedures followed in issuing bonds normally are set out in the statutes and the Constitution of Missouri, there is no real need to include them in the charter.

It is true, of course, that particular problems in some cities may indicate the desirability of more detailed provisions dealing with financial matters. An excellent case can be made for the proposition that a short financial article is preferable. Adoption of a short version would necessitate adoption of more detailed financial procedures by the council.

Although the *Model City Charter* provides that adoption of the budget constitutes both an appropriation of the amounts specified as expenditures and a levy of the tax rates proposed therein, the recommended provision follows the typical Missouri practice of providing for a separate ordinance establishing the tax rate and levying taxes. (See, for example, Section 11 of the Clayton charter and Section 5.16 of the Springfield charter.)

There are several ways of dealing with a situation in which the council fails to adopt the budget on or before the required date. Section 6.5(c) continues appropriations at the level provided in the budget for the preceding fiscal year. Section 5.11 of the Springfield charter provides that the budget as submitted shall be effective without council action. Other possibilities are discussed in the Commentary on Section 5.06 of the *Model City Charter*.

The requirement of a five-year capital program is one that not all municipal officials would endorse. Interviews with city officials indicate that some believe the council would not take such a program seriously and that in many cases it would be a waste of time. The provisions requiring a five-year capital program were included, however, so that the charter commission would at least have the opportunity to consider the desirability of such provisions.

The requirement that the capital program be submitted six months before the final date for submission of the budget is based on the assumption that city officials will be busy preparing the budget in the last few months prior to its submission. By separating the capital program from the budget in this fashion, the tendency to ignore the capital program because of work on the budget can be minimized.

Section 6.9(a), entitled Work Programs and Allotments, may not be necessary. This is the sort of thing that is done as a matter of course simply because it makes good sense to do so. As such, it probably is an example of a provision that is unnecessary but does no real harm.

ARTICLE VII

NOMINATION AND ELECTIONS

Section 7.1. City Elections.

- (a) Regular Elections. The regular city election shall be held on the first Tuesday in April in each odd- (even-) numbered year.
- (b) Special Elections. The council may by resolution order special elections, fix the time for such elections, and provide for holding such elections.
- (c) Conduct of Elections. All city elections shall be governed by the provisions of this charter and of applicable state law. The council by ordinance may further regulate elections, subject to the provisions of the charter and applicable state law.

Section 7.2. Nominations.

- (a) Declaration of Candidacy. Nomination of candidates for election to elective city offices shall be made by declaration of candidacy filed with the clerk in the form and manner prescribed by ordinance.
- (b) Primary Elections. A primary election shall be held if there are two or more candidates for nomination to a city office. (Optional provision.)
- (c) Regulation by Council. Nothing contained in this charter shall prevent the council from further regulating the conduct of nominations and elections consistent with the provisions of this charter and applicable state laws.

Section 7.3. Determination of Election Results.

- (a) Number of Votes. Every voter shall be entitled to vote for as many candidates for councilmen at-large as there are members at-large to be elected to the council and to vote for one candidate for district councilman to represent the district in which the voter resides.
- (b) Returns; Canvass. The council shall canvass the election returns and declare the results of any municipal election, regular or special, at a meeting to be held not later than one week following such election. The candidate receiving the highest number of votes for each office shall be declared elected and inducted into office at that time.

Section 7.4. City Council Districts.

There shall be _____ city council districts, bounded and numbered the same as the wards that exist at the time of adoption of this charter. District boundaries shall be established by ordinance following each decennial census. Districts shall comprise compact and contiguous territory and shall contain, as nearly as possible, an equal number of inhabitants.

COMMENTARY ON ARTICLE VII

Section 7.1(a). Regular Elections.

The Commentary on Article VII of the *Model City Charter* asserts that it is desirable to separate municipal from state and national elections. This approach has been taken by Missouri constitutional charter cities. The regular election normally is held on the first Tuesday in April. Third and fourth class cities also hold their regular municipal elections on the first Tuesday in April. The presently existing constitutional charter cities differ on whether the election is held in even or odd numbered years. State statutes require that all elections be held in February or March, April, June, August or November.

Section 7.1(c). Conduct of Elections.

Several of the presently existing charters in Missouri provide that municipal elections shall be conducted by the city clerk but most charters provide that the election will be conducted by the county clerk. In St. Louis County, Jackson County and Clay County the municipal elections are conducted by the county Board of Election Commissioners. It was thought the assignment of responsibility for conduct of the election could best be dealt with by ordinance, thus making it possible to easily comply with any changes in state law.

Section 7.2. Nominations.

Some charters provide for nomination by petitions, rather than a mere declaration of candidacy. Presently existing Missouri charters require varying numbers of signatures on the nominating petition. For example, Section 122 of the Columbia charter requires not less than 50 signatures on petitions for ward councilmen and not less than 100 signatures on petitions for officials elected by the entire city. Section 418 of the Kansas City charter requires not less than 300 signatures on petitions for district councilmen and not less than 500 signatures on petitions for councilmen from the city at-large.

Many presently existing Missouri charters provide petition and acceptance forms in the text of the charter itself. (See, for example, Section 122 of the Columbia charter and Section 14.4 of the St. Joseph charter.) Since there may be good reason to modify these from time to time, it would seem preferable to designate the forms by ordinance. The forms that are set out in the charters of Columbia and St. Joseph are as follows:

Section 7.3. Determination of Election Results.

Section 7.3(a) assumes a council made up of councilmen at-large and district councilmen and would have to be redrafted if the charter provides otherwise.

Section 7.3(b) provides that the candidate or candidates receiving the highest number of votes shall be declared elected. This means that one could be elected with a plurality rather than a majority.

Section 7.4. City Council Districts.

This section assumes a council that includes some district councilmen. Further, it is worded as though the city adopting the charter is a third or fourth class city at the time the charter is submitted to the electorate. The reference to existing wards is necessary because Sections 77.030, RSMo 1986 (third class cities) and 79.060, RSMo 1986 (fourth class cities) provide for the division of such cities into wards. The language would have to be changed if the council is elected at-large, if the number and boundaries of districts are to be changed, or if the city does not have wards at the time the charter is submitted to the electorate. In Section 7.09, the *Model City Charter* requires the establishment of a Districting Commission to assist in adjusting district boundaries. The recommended provision, which is similar to Section 4 of the Columbia charter, would not preclude the establishment by the city council of an advisory group to assist in adjusting district boundaries.

ARTICLE VIII

INITIATIVE AND REFERENDUM

Section 8.1. General Authority.

(a) Initiative. The qualified voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes, zoning or salaries of city officers or employees. No proposed initiative ordinance shall contain more than one subject, which shall be clearly expressed in its title.

(b) Referendum. The qualified voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program, any emergency ordinance, any ordinance levying a special assessment or providing for the issuance of special tax bills, or any ordinance relating to zoning, appropriation of money or levy of taxes or salaries of city officers and employees.

Section 8.2. Commencement of Proceedings; Petitioners' Committee; Affidavit.

Any five qualified voters may commence initiative or referendum proceedings by filing with the city clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.

Not less than three days after the affidavit of the petitioners' committee is filed, the clerk shall issue the appropriate petition blanks to the petitioners' committee.

Section 8.3. Petitions.

(a) Number of Signatures. Initiative and referendum petitions must be signed by qualified voters of the city equal in number to at least 15 percent of the total number of qualified voters registered to vote at the last regular city election.

(b) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

(c) Affidavit of Circulator. When filed, each paper of a petition shall have attached to it an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(d) Time for Filing Petitions. Referendum petitions must be filed within 30 days after adoption by the council of the ordinance sought to be reconsidered.

Initiative petitions must be filed within 60 days of the issuance of the appropriate petition forms

to the petitioner's committee.

Section 8.4. Procedure After Filing.

(a) Certificate of Clerk; Amendment. Within twenty days after the petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (b) and (c) of Section 8.3, and within five days after it is filed, the clerk shall complete a certificate as to the sufficiency of the petitions as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under subsection (b) of this section within the time required, the clerk shall promptly present his certificate to the council, and the certificate then shall be a final determination as to the sufficiency of the petition.

(b) Council Review. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination then shall be a final determination as to the sufficiency of the petition.

(c) Court Review; New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

Section 8.5. Referendum Petitions; Suspension of Effect of Ordinance.

When a referendum petition is filed with the city clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (1) There is a final determination of insufficiency of the petition, or
- (2) The petitioners' committee withdraws the petition, or
- (3) The council repeals the ordinance, or
- (4) Thirty days have elapsed after a vote of the city on the ordinance.

Section 8.6. Action on Petitions.

(a) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner provided in Article III or reconsider the referred ordinance by voting its repeal. If the council fails to adopt a proposed initiative ordinance without any change in substance within 60 days or fails to repeal the referred ordinance within 30 days after the date of the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the city.

(b) Submission to Voters. The vote of the city on a proposed or referred ordinance shall be held not less than 60 days and not later than one year from the date of the final council vote thereon. If no regular city election is to be held within the period prescribed in this subsection, the council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

(c) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the thirtieth day preceding the day scheduled for a vote of the city by filing with the city clerk a request for withdrawal signed by at least four members of the petitioners' committee. Upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Section 8.7. Results of Election.

(a) Initiative. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(b) Referendum. If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

COMMENTARY ON ARTICLE VIII

The recommended provision was taken from Article VII of the *Model City Charter*. More items were excepted from initiative and referendum than are excepted in the *Model City Charter*. For the most part, the substantive provisions are quite similar to the typical provisions in presently existing Missouri charters although the organization and language are different. The most common initiative and referendum article in Missouri charters is that found in the charters of the following cities: Columbia (Article XVII), Clayton (Article XII), St. Joseph (Article XV), Springfield (Article XIV), University City (Article X) and Webster Groves (Article 14). The primary reason for recommending the provisions of the *Model City Charter* is the existence of an express provision for a petitioners' committee. Not only does this clearly designate the group responsible for the petition, but it provides a mechanism for withdrawing an initiative or referendum petition if those originating the petition change their minds. If the charter commission does not consider such a committee either desirable or necessary, it will find that the provisions referred to in existing charters are quite satisfactory.

Perhaps the chief substantive difference between the recommended provision and those found in most Missouri charters is the lack of a recall provision in the recommended version. The *Model City Charter* also does not include provision for recall. Certainly there is room for disagreement on whether a recall provision should be included. It was decided, however, that the recommended charter, taken as a whole, contains sufficient protection against abuse and provision for public input to make a recall provision unnecessary. In deciding whether to include a recall provision, the charter commission will want to consider the arrangements made in Article III. For example, Option A in Section 3.2(c) provides for the election of a council majority every two years, thus giving the voters an opportunity to bring about major change at each regular municipal election.

Several different formulas are used in presently existing Missouri charters to describe the required number of signatures on petitions. The following are illustrative:

Columbia	Initiative: 20% of votes cast for councilman-at-large at last regular election, but at least 400 signatures; Referendum: 25% of votes cast for councilman-at-large at last regular election, but at least 500 signatures.
Clayton	Initiative and Referendum: 10% of votes cast for mayor at last election.
St. Joseph and Springfield	Initiative and Referendum: 10% of highest number of votes received by any candidate at last regular city election.
University City	Initiative: 10% of registered voters at last regular city election; Referendum: 15% of registered voters at last regular city election.

Close attention should be paid to the matters excepted from initiative and referendum in Section 8.1. Some charters except only appropriations from the initiative. (See, for example, Section 14.1 of the Springfield charter and Section 15.1 of the St. Joseph charter.) Section 15.2 of the St. Joseph charter and Section 14.2 of the Springfield charter are examples of charter provisions that except special tax bill ordinances from the referendum provision.

As pointed out in the Commentary on Article VIII of the *Model City Charter*, the article on initiative and referendum should be completely self-executing. Since the purpose of these provisions is to guard against city council inadequacies, the council should not be relied upon to fill in details.

ARTICLE IX

FRANCHISES

Section 9.1. Granting of Franchises.

All public utility franchises and all renewals, extensions and amendments thereof shall be granted only by ordinance. No such ordinance shall be adopted within less than thirty days after application therefor has been filed with the council, nor until a full public hearing has been held thereon. No exclusive franchises shall ever be granted, and no franchise shall be granted for a longer term than 20 years. No such franchise shall be transferable directly or indirectly, except with the approval of the council expressed by ordinance after a full public hearing.

Section 9.2. Right of Regulation.

All public utility franchises, whether they be so provided in the ordinance or not, shall be subject to the right of the council to:

(a) Repeal the same for misuse or nonuse, or for failure to comply therewith; or shorten the term thereof for failure to comply with the provisions of this section (and regulations adopted in accordance with this section) or with the provisions of the franchise ordinance.

(b) Require proper and adequate extension of plant and service and the maintenance thereof at the highest practicable standards of efficiency.

(c) Establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.

(d) Make an independent audit and examination of accounts at any time and require reports annually.

(e) Require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof.

(f) Control and regulate the use of the city streets, alleys, bridges and public places, and the space above and beneath them.

(g) Regulate rates, fares and charges and make readjustments thereof from time to time if the same are not regulated by the state.

(h) Impose such other regulations from time to time as it may determine to be conducive to the safety, welfare and accommodation of the public.

Section 9.3. Revocable Permits.

Temporary permits for the operation of public utilities or like permits for a period not to exceed two years but subject to being renewed for a period not to exceed one year and subject to amendment, alteration, or revocation at any time at the will of the council may be granted only by ordinance on such terms and conditions as the council shall determine. Such permits shall in no event be construed to be franchises or extensions or amendments of franchises.

Section 9.4. Operation Beyond Franchise Period.

Any operation of a public utility by a franchise holder, with the tacit permission of the city, beyond the period for which the franchise was granted, shall under no circumstances be construed as a renewal or extension of such franchise. Any such operation shall at most be regarded as a mere temporary permit subject, like other permits, to amendment, alteration or revocation at any time at the will of the council.

COMMENTARY ON ARTICLE IX

The recommended provision is similar to Article X of the Columbia charter, Article XVII of the St. Joseph charter, and Article XVII of the Springfield charter. The recommended provision does not require an election prior to the granting of a franchise. While the Columbia and Springfield charters require such an election, the St. Joseph charter does not.

An article dealing with franchises was included for two reasons. First, several protections against abuse are included in the recommended provision. Second, it is at least possible that Section 82.230, RSMo 1986 could be construed to require a charter provision in order to regulate and control public utility franchises. That section, which is found in the chapter dealing specifically with constitutional charter cities, reads as follows:

"It shall be lawful for any such city in such charter, or by amendment thereof, to provide for regulating and controlling the exercise by any person or corporation of any public franchise or privilege in any of the streets or public places of such city, whether such franchises or privileges have been granted by said city, or by or under the State of Missouri, or any other authority." (emphasis supplied)

Although it would be unfortunate if Section 82.230 were construed so as to require a charter provision in order to regulate and control public utility franchises, the inclusion of the recommended provision would eliminate any doubt as to the city's power. The construction adverted to would not be based upon the theory that a constitutional charter city would not have this power in the absence of statutory authorization. This, clearly, would be incorrect. It would be based, instead, upon the fact that the legislature specifically dealt with the matter and in doing so stated that it would be lawful to regulate and control "in such charter, or by amendment thereof." Thus, it could (but should not) be construed as imposing a specific requirement. The most logical explanation of the inclusion of words referring to the charter is that it was assumed by the draftsman that such matters customarily are dealt with in the charter. Actually, although franchises are dealt with in many charters, not all charters provide the kinds of limitations included in the Columbia, St. Joseph and Springfield charters.

With the possible exception of the field of cable television, there is some question as to the contemporary importance of the kind of regulation pursuant to the granting of franchises provided for in Section 9.2. The Missouri Public Service Commission deals with such matters. Presumably, its regulations will prevail in the event of a conflict with local regulation.

ARTICLE X

LICENSING, TAXATION AND REGULATION OF BUSINESSES, OCCUPATIONS, PROFESSIONS, VOCATIONS AND OTHER ACTIVITIES OR THINGS

Section 10.1. Objects of Licensing, Taxation and Regulation.

The council shall have power by ordinance to license, tax and regulate all businesses, occupations, professions, vocations, activities or things whatsoever set forth and enumerated by the statutes of this state now or hereafter applicable to constitutional charter cities, or cities of the third or fourth class, or of any population group, and which any such cities are now or may hereafter be permitted by law to license, tax and regulate.

COMMENTARY ON ARTICLE X

This article, by authorizing the exercise of certain powers, appears on its face to be inconsistent with the concept of the charter embodied in the amendment adopted in 1971. It should be included, however, in order to satisfy Section 71.610, RSMo 1986, which prohibits any municipal corporation in Missouri from imposing a license tax on any business avocation, pursuit or calling, unless "such business avocation, pursuit or calling is specially named as taxable in the charter of such municipal corporation, or unless such power be conferred by statute." (emphasis supplied) In *General Installation Co. v. University City*, 379 S.W. 2d 601 (Mo. 1964), it was held that a provision such as the one recommended would satisfy the statutory requirement. The provision recommended is based upon Section 17(20) of the University City charter so as to take advantage of the holding in this case.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1. Personal Financial Interest.

Any city officer or employee who has any financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the city or in the sale of any land, material, supplies or services to the city or to a contractor supplying the city shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as a city officer or employee in the making of such sale or in the making or performance of such contract. Any city officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge express or implied of the person or corporation contracting with or making a sale to the city shall render the contract or sale voidable by the city manager (mayor) or the city council.

Section 11.2. Prohibitions.

(a) Activities Prohibited.

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, sex, political or religious opinions or affiliations.

(2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the personnel provisions of this charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

(3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.

(b) Penalties. Any person who by himself or with others willfully violates any of the provisions of paragraphs (1) through (3) shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than _____ dollars (\$_____) or by imprisonment for not more than _____ or both.

Section 11.3. Notice of Suits.

No action shall be maintained against the city for or on account of any injury growing out of alleged negligence of the city unless notice shall first have been given in writing to the city manager (mayor) within ninety days of the occurrence for which said damage is claimed, stating the place, time, character and circumstances of the injury, and that the person so injured will claim damages therefor from the city.

Section 11.4. Official Bonds.

All officers and employees of the city who receive, disburse, or are responsible for city funds and such other officers and employees as the council by ordinance may designate, shall, within such time after election or appointment as may be fixed by ordinance, and before entering upon the discharge of their duties, give bond to the city in such sums and with such sureties as shall be prescribed by ordinance, and subject to approval by the council, conditioned upon the faithful and proper performance of their duties and for the prompt accounting for and paying over to the city of all moneys belonging to the city that may come into their hands. The city shall pay the premiums on all such bonds.

Section 11.5. Charter Amendment.

Amendments to this charter may be framed and submitted to the electors by a commission in the manner provided by law and the Constitution for framing and submitting a complete charter. Amendments also may be proposed by the council or by petition of not less than ten percent of the registered qualified electors of the city, filed with the city clerk, setting forth the proposed amendment. The council shall at once provide by ordinance that any amendment so proposed shall be submitted to the electors at the next election held in the city not less than sixty days after its passage, or at a special election held as provided by law and the Constitution for a charter. Any amendment approved by a majority of the qualified electors voting thereon shall become a part of the charter at the time and under the conditions fixed in the amendment; sections or articles may be submitted separately or in the alternative and determined as provided by law and the Constitution for a complete charter.

Section 11.6. Public Improvements and Special Assessments.

(a) Improvements. The procedure for making, altering, vacating or abandoning a public improvement shall be governed by general ordinance, consistent with applicable state law.

(b) Special Assessments. The procedure for levying, collecting and enforcing the payment of special assessments for public improvements or special tax bills evidencing such assessments shall be governed by general ordinance, consistent with applicable state law.

Section 11.7. Proof of Ordinance.

Any ordinance may be proved by a copy thereof certified by the city clerk under the seal of the city; or, when printed and published by authority of the city, it shall be received in evidence in all courts, or other places, without further proof of authenticity.

Section 11.8. Separability.

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby. If the application of the charter or any of its provisions to any person or circumstances is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected thereby.

COMMENTARY ON ARTICLE XI

Article XI contains the various miscellaneous provisions that do not fit into the articles organized around a single subject. This is the place where various loose ends are tied up.

Sections 11.1 and 11.2 are based on Sections 9.01 and 9.02 of the *Model City Charter*, although Section 11.2 omits some provisions contained in Section 9.02. Section 11.1 does not flatly prohibit having a financial interest. Instead, it requires that the officer or employee disclose his interest and refrain from participating in situations where a conflict of interest is involved. The Commentary on Article IX of the *Model City Charter* points out that this represents a change from the fifth edition of the *Model*, which prohibited outright any financial interest. The change is based on the fear that a strict interpretation of such a prohibition would exclude a great many persons from municipal office or employment.

Section 11.3 was taken from Section 19.10 of the Springfield charter. Such a provision imposes the same sort of prerequisite to suit that exists in cities of 100,000 population by reason of Section 82.210, RSMo 1986. Actually, the recommended provision is broader than Section 82.210, which applies only to injuries growing out of any defect in the condition of any bridge, boulevard, street, sidewalk or thoroughfare. Absent a statutory prohibition, Section 11.3 could be enacted by ordinance. However, inasmuch as it involves a limitation on the citizen's right to sue, it is perhaps the sort of policy question on which the entire electorate should vote.

Section 11.5 simply summarizes the constitutional provisions on charter amendment. It is based on Section 19.28 of the Springfield charter.

Section 11.8, the separability clause, was taken from Section 9.04 of the *Model City Charter*. It is designed to prevent the invalidity of one provision from carrying over to the entire charter.

ARTICLE XII

TRANSITIONAL PROVISIONS

Section 12.1. Personnel System.

An employee holding a city position at the time this charter takes full effect, who was serving in that same or a comparable position at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position but in all other respects shall be subject to the personnel system established pursuant to Section 5.2.

Section 12.2. Ordinances to Remain in Force.

All ordinances, regulations and resolutions in force at the time this charter takes effect, which are not inconsistent with the provisions of this charter, shall remain and be in force until altered, modified or repealed by or under authority of this charter or ordinance.

Section 12.3. Pending Actions and Proceedings.

No action or proceeding, civil or criminal, pending at the time this charter shall take effect, brought by or against the city or any office, department, agency or officer thereof, shall be affected or abated by the adoption of this charter or by anything herein contained.

Section 12.4. Continuance of Contracts, Public Improvements and Taxes.

All contracts entered into by the city, or for its benefit, prior to the taking effect of this charter, shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws existing at the time this charter takes effect may be carried to completion as nearly as practicable in accordance with the provisions of such existing laws. All taxes and assessments levied or assessed, all fines and penalties imposed and all other obligations owing to the city that are uncollected at the time this charter becomes effective, shall continue in full force and effect and shall be collected as if no change had been made.

ARTICLE XIII

SCHEDULE

Section 13.1. Election to Adopt Charter.

This charter shall be submitted to a vote of the electors of the City of _____ at a (special or regular) election to be held on the _____ of _____, 19____. The election shall be administered by the officials now charged with the responsibility for the conduct of city elections.

Section 13.2. First Election.

At the time of its adoption, this charter shall be in effect to the extent necessary in order that the first election of members of the city council (and the mayor) may be conducted in accordance with the provisions of this charter. The first election shall be held on the _____ of _____, 19_____.

Section 13.3. Time of Taking Full Effect.

This charter shall be in full effect for all purposes on and after the date and time of the first meeting of the newly elected council.

Section 13.4. Incumbent Councilmen; First Meeting of Newly Elected Council.

All councilmen (the mayor and councilmen) in office at the date this charter is adopted shall continue in office until after the election of _____, 19____, and within one week thereafter, shall canvass the returns of said election, declare the results thereof, and induct into office the councilmen (mayor and councilmen) declared elected. Thereupon the newly elected councilmen (mayor and councilmen) shall forthwith become the official governing body of the city and shall conduct the first meeting of the newly elected council.

Section 13.5. Temporary Ordinances.

At its first meeting or at any meeting held within 60 days thereafter, the council may adopt temporary ordinances to deal with cases in which there is an urgent need for prompt action in connection with the transition of government and in which the delay incident to the appropriate ordinance procedure probably would cause serious hardship or impairment of effective city government. Every temporary ordinance shall be plainly labeled as such but shall be introduced in the form and manner prescribed for ordinances generally. A temporary ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. A temporary ordinance shall become effective upon adoption or at such later time preceding automatic repeal under this subsection as it may specify, and the referendum power shall not extend to any such ordinance. Every temporary ordinance, including any amendments made thereto after adoption, shall automatically stand repealed as of the 91st day following the date on which it was adopted, and it shall not be readopted, renewed or otherwise continued except by adoption in the manner prescribed in Section 3.11 for ordinances of the kind concerned.

Section 13.6. Initial Salary of Councilmen.

Members of the council shall receive an annual salary in the amount of \$_____ until such amount is changed by the council in accordance with the provisions of this charter.

Section 13.7. Purpose of Schedule.

The purpose of the foregoing provisions is to provide a transition from the present government of the City of _____, Missouri, to the new government provided for in this charter and to inaugurate the new government under the provision of this charter. They shall constitute a part of this charter only to the extent and for the time required to accomplish that aim.

COMMENTARY ON ARTICLES XII AND XIII

Both of these articles should be designed to ease the transition from an old to a new form of government and to allay some of the fears that arise during such a transition. Articles XII and XIII could be merged into one article. They were placed in two articles because the schedule deals with one-time matters, such as the date of the first election, while the transitional provisions are designed to carry beyond this initial phase.

This part of the charter must be carefully tailored to fit the particular situation with which the charter commission is dealing. The recommended provisions are designed to call attention to matters that should be considered. The charter commission should not adopt them verbatim, however, without careful consideration of the situation in their city. Not only can careful drafting of this part of the charter allay many fears that may arise in the campaign for adoption of the charter, but it also can prevent confusion and perhaps even litigation.

APPENDIX I

OUTLINE OF DECISIONS THAT MUST BE MADE BY CHARTER COMMISSION

The outline that follows is designed to be helpful to members of the charter commission as they do the necessary homework in preparing for commission meetings and for use as an agenda at commission meetings. Although questions will arise that are not included in the outline, most of the major decisions that must be made are referred to somewhere in the outline.

I. Powers

- A. Should the city assume the broadest scope of powers possible? If not, what powers are to be denied the city?

II. The Council

- A. Number of councilmen

- B. Election at large, by districts, or by a combination of the two

- C. Qualifications of councilmen

- D. Terms of office for councilmen; staggered or concurrent terms; method of staggering terms

- E. Compensation; expenses

- F. Will the mayor be elected at large or by the members of the council?

- G. Will the mayor have a right to vote? Will he be given any administrative duties? Will he be given a veto?

- H. What prohibitions will be written into the charter?

- I. Under what circumstances will a councilman forfeit his office?

- J. How will council vacancies be filled?

- K. Will the city clerk answer solely to the council or work under the supervision of the city manager or mayor?

- L. Under what circumstances can special meetings be called?

- M. Will the order in which votes are cast be rotated each time there is a roll call vote?

- N. What procedure will be required for the adoption of an ordinance?

- O. What requirements for adoption of an emergency ordinance?

- P. How often and how will the ordinances be codified and kept up to date?

III. City Manager (Mayor)

- A. Will the charter provide for an appointed city manager or an elected mayor as the chief executive of the city?
- B. If there is to be a city manager,
 - 1. Will he be given a contract setting forth compensation, term of office or conditions of employment?
 - 2. Should the charter provide an express procedure for his removal?
 - 3. Powers and duties
- C. If there is to be a strong mayor,
 - 1. Term of office
 - 2. Qualifications
 - 3. Salary
 - 4. Under what circumstances would the mayor forfeit his office?
 - 5. Filling of vacancies
 - 6. Powers and duties, especially whether he will be given a veto
 - 7. Administrative Assistant to the Mayor
 - a) How chosen
 - b) Relationship with mayor
 - c) Salary

IV. Administrative Organization and Personnel System

- A. Will the details of administrative organization be dealt with in the charter or in an administrative code?
- B. Will the departments, boards and commissions be listed in the charter? If so, will the creation of other departments, boards and commissions be limited except as required by law?
- C. Will the details of the personnel system be dealt with in the charter or in a personnel code?

V. Financial Procedures

- A. How far in advance of the new fiscal year should the budget be submitted?
- B. To what extent should the charter specify what must be contained in the budget?
- C. Should the charter require the development of a capital program? If so, when should it be submitted and what should it contain?
- D. What requirements are necessary to provide citizens with information about the proposed budget? How can the views of interested citizens best be obtained?
- E. Should the charter require that all sales of bonds be by sealed bids?

VI. Nomination and Election

- A. When should the regular city election be held?
- B. What requirements should be satisfied by those desiring to run for the city council and other elective offices?
- C. Should elections be nonpartisan?
- D. Is the city to be divided into wards and districts? If so, the number and boundaries must be agreed upon. What provisions should be made for changes in district or ward boundaries?

VII. Initiative and Referendum

- A. Will provision be made for initiative, referendum and recall?
- B. What procedure should be required for the collection, filing and checking of signatures?
- C. What subjects should be excluded from initiative and referendum?
- D. How many signatures should be required in order to initiate or refer a measure or bring about a recall election?
- E. How much time should be given to file a referendum petition after adoption of an ordinance?
- F. Should provision be made for withdrawal of an initiative, referendum or recall petition?

VIII. Franchises

- A. What limitations on franchises should be written into the charter?
- B. Should the question of issuing franchises be submitted to the voters?

IX. General Provisions (Article XI in the Missouri Model)

- A. What activities should be prohibited?
- B. Should the charter require the giving of notice within a specified period of time as a prerequisite to suit against the city because of negligence?

X. Transitional Provisions and Schedule (Articles XII and XIII in the Missouri Model)

- A. What provisions are necessary or desirable to ease the transition to the constitutional charter form of government?

INSERT -- APPENDIX II -- Supreme Court Decision -- Cape Motor Lodge etc.

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APPENDIX III

HOME RULE TRENDS IN MISSOURI

In 1971, the voters of Missouri approved an amendment to the State Constitution to permit more municipalities to adopt home rule charters and to expand the powers of all home rule municipalities. First, the amendment lowered the population requirement for home rule status from 10,000 to 5,000 in order to permit more cities to adopt charters. Second, the amendment expanded home rule powers by adding that home rule cities will have all powers the General Assembly has authority to confer upon any city provided such powers are consistent with the State Constitution and are not limited or denied by the city charter or state statute. In short, home rule cities would have all powers that are not specifically denied or limited by the city charter, state statutes or the Constitution.

It was expected that the new home rule amendment would encourage many municipalities to adopt home rule charters, but relatively few had done so until the last few years. This article will examine the background and advantages of home rule and offer suggestions concerning the new interest in securing home rule status.

Background of Home Rule

Municipal home rule, or local autonomy and self-determination, has been a legal issue in our courts almost from the beginning of our nation, which was founded on the principle of federalism--a sharing of powers between the federal, state and local levels of government. At first the courts wavered in their decisions, resulting in a conflicting body of law on the issue. Finally, in the early 1870s, the courts were in agreement that the state legislatures had complete authority over municipalities. The state legislatures had the power to define the powers and functions that may (or must) be exercised by municipalities. The prevailing rule perpetuated by the courts for local governments would be "everything not permitted by state law is prohibited."

As a response to this restrictive judicial doctrine, several states adopted municipal home rule provisions to increase the powers and flexibility of municipal governments and to minimize state interference in local affairs. Ironically, in 1875, Missouri was the first state to adopt a constitutional provision on municipal home rule.

Missouri Experience

The Missouri Constitution of 1875 included a unique and innovative municipal home rule provision that applied only to cities over 100,000 population. Kansas City was the only municipality to use this provision when it adopted a home rule charter in 1889. The 1945 Constitution reduced the population requirement from 100,000 to 10,000 in order to permit more cities to attain home rule status.

By 1971, 16 municipalities had adopted home rule charters. However, the courts continued to frustrate non-home rule cities in their efforts to solve local problems and even restricted the powers of the home rule cities. Thus, many other municipalities were experiencing problems they could not alleviate at the local level without specific authorization by the General Assembly.

The 1971 Home Rule Amendment was an attempt to expand and clarify the home rule powers of cities and to permit even more municipalities to adopt home rule charters. With this amendment, the general home rule principle became "everything not specifically prohibited is permitted." In the 23 years since the passage of the 1971 amendment, 16 additional municipalities have adopted home rule charters.

Home rule charters have been rejected by the voters in only a few Missouri cities, such as Lee's Summit, Sedalia, Rolla and Normandy. Recently, municipal officials and citizens have expressed

interest in home rule in several more cities.

Advantages of Home Rule

Home rule status has numerous theoretical and practical advantages. Some of the theoretical advantages of municipal home rule are as follows:

1. Government is as close to the citizens as possible, and the city charter is adjusted to local conditions.
2. Municipal officials have greater flexibility in responding to citizen needs for public services without waiting for state legislative authorization.
3. Home rule cities have greater choice over governmental organization and more control over officials and employees.
4. Home rule cities can develop more efficient administration because they are not bound by many state restrictions.
5. Home rule tends to lighten the burden of the General Assembly by reducing the number of bills directly affecting cities.

There also are a number of practical advantages of home rule, including the following:

1. Increased flexibility because each home rule city may determine:
 - a. Number of councilmen and terms of office.
 - b. Ward or at-large elections.
 - c. Number of elective and appointive officials.
 - d. Combination of city officials, such as combining collector, treasurer and auditor.
 - e. Form of government--city manager, administrator or mayor-council. Duties of mayor may be increased or decreased.
 - f. Duties of elective officials may be increased or decreased.
 - g. Powers, responsibilities and membership of various city boards, such as the park board, may be modified.
 - h. Combining functions, i.e, police and fire.
2. Increased powers because a home rule city does not need to rely on the state legislature to grant them powers and authority in areas such as:
 - a. Taxation, perhaps even for an earnings tax.
 - b. Business licenses, such as on real estate agents, mobile home parks or rental apartments.
 - c. More flexible procedures for hiring and dismissing personnel.

- d. Regulations, such as regulations on mining and quarry operations.
- e. Provide for initiative, referendum and recall.
- f. Conduct own local elections.
- g. Establish conditions under which elective offices are vacated, including excessive absenteeism.
- h. Emergency powers, for example, to permit the mayor to declare a curfew during times of natural disaster or riots.
- i. Flexibility in establishing fiscal procedures to conform to local tradition and preference.
- j. Provision for capital improvements budget.
- k. Conditions and terms of granting utility franchises.

In summary, a home rule city has more choice in its governmental organization and likely will develop a more efficient administration because of the absence of state restrictions or inattention to new municipal responsibilities.

Why So Little Interest?

It was expected that the 1971 Home Rule Amendment with all the obvious advantages of home rule status would stimulate many municipalities to draft charters and become home rule cities. However, the response really has not been overwhelming, with only ten new home rule cities since 1971. Although most municipal officials are well aware of the restrictive, archaic statutes pertaining to third and fourth class cities and villages, there really has not been widespread interest in avoiding these statutes by adopting a home rule charter.

We can only speculate on the relatively low level of interest in home rule (until recently) among municipal officials.

1. The issue of home rule has not received much publicity from the news media and the universities. Perhaps, if more municipal officials were aware of the advantages of home rule, the issue would be brought before the voters in more municipalities.

2. Municipal officials and citizens may be unwilling to tamper with the status quo. After operating under one structure of government for a considerable time, they may be unwilling to consider the adoption of new structures and procedures.

3. It is not prohibitively difficult to operate under the statutory provisions pertaining to villages and third and fourth class cities. Because of the legislative efforts of municipal officials through the Missouri Municipal League, many new state laws have been passed to increase the powers of the statutory (or non-home rule) cities. Perhaps these legislative successes have made home rule status less important to municipal officials.

4. Home rule is a complex subject involving extensive study, careful charter drafting and a campaign of public education. Municipal officials have a high turnover rate and their generally short terms in office are spent "putting out fires." When one is concerned with municipal finance problems,

labor troubles, solid waste management, crucial bond issues, governmental liability, etc., it is difficult to focus time and attention on the concept of municipal home rule.

Recent Renewed Interest

In recent years, municipal officials, civic groups and citizens have expressed increasing interest in home rule. Richmond Heights has elected a charter commission, which is in the process of drafting a home rule charter, and we have received numerous requests at League headquarters in recent months from municipal officials who are considering home rule. We suspect that this renewed interest in home rule can be explained by a number of factors.

1. In recent years, home rule charter elections almost always have been successful, with home rule charters having been adopted by the voters in Blue Springs, Carthage and Ellisville. Favorable publicity and information on home rule has spread among city officials in formal and informal meetings.

2. City officials and the general public realize that a home rule charter does not necessarily change the existing structure of government. In the past, some people erroneously thought that a home rule charter automatically brought certain changes, such as council-manager form of government, nonpartisan elections ar at-large (rather than ward) councilmen. Now, it generally is understood that these issues are determined by the particular city charter to conform with the desires and needs of the community.

3. In March, 1986, the Missouri Supreme Court issued a decision in *Cape Motor Lodge v. City of Cape Girardeau* that codified the broad interpretation of home rule powers. For the first time, the Court specifically ruled that home rule cities have all powers except those that conflict with the Missouri Constitution, state statutes or the city charter itself. The Missouri Supreme Court's clarification of and broad interpretation of home rule powers make the procedure more attractive to municipal and community leaders.

4. The cutback in federal grant programs have forced some city officials to search for more economy and efficiency in municipal government. Home rule allows municipalities to avoid many archaic state statutes that hinder flexibility and innovation in municipal operations.

MML Assistance

The Missouri Municipal League supported the 1971 Home Rule Amendment in the General Assembly, and municipal officials throughout the state campaigned for voter approval of this important amendment. Since voter approval of the amendment, the League has monitored home rule developments in Missouri and provided assistance to municipalities that were considering home rule status. MML technical assistance includes providing information and speakers to municipal officials considering home rule, advising the charter commissions, and distributing our recently revised *Model Charter for Missouri Cities* (available at no charge to member municipal officials).

In recent months, many city officials have discussed the possibility of home rule. It is quite likely that home rule will be considered by many other municipalities in the near future. If you would like any further information or a copy of the *Model Charter*, please contact League headquarters.

APPENDIX IV

How to Adopt a Home Rule Charter

The provisions governing the adoption of a home rule charter are set forth in Article 6, Section 19, of the State Constitution:

1. City must have more than 5,000 inhabitants.
2. City legislative body may submit an ordinance to the voters on the question: "Shall a commission be chosen to frame a charter?"
3. A petition signed by 10% of the qualified electors of the city, filed with the City Council, then the Council must submit the question in 2, above.
4. Election to be held in conjunction with next city election if more than 60 days after effective date of ordinance, or at next general election. If the petition calls for a special election and is signed by 20% of qualified voters, then at a special election to be held not less than 60 nor more than 90 days after filing of petition.
5. The number of electors required to sign any petition shall be based on the total number of electors voting at the last general municipal election.
6. Candidates for commission are nominated by petitions signed by not less than two percent of the qualified voters (1,000 signatures are sufficient for nomination), and candidates stand for election together with the proposition. Candidates' names appear on the ballot without party designation.
7. If election is affirmative by a simple majority, the 13 candidates receiving the most votes constitute the commission. Members of the commission fill any vacancies that might occur.
8. All necessary expenses of commission shall be paid by the city.
9. The charter framed by the commission shall be submitted to the electors at an election held at a time fixed by the commission, but not less than 30 days subsequent to completion of the charter nor more than one year from the date of the election of the commission.
10. The charter may be submitted to the voters as a unit or in alternative parts.
11. The charter is adopted if approved by a simple majority, and the alternative parts that receive the highest vote are adopted.
12. Amendments to an adopted charter may be submitted by:
 - a. A commission as provided for the adoption of a charter;
 - b. The city Council;
 - c. By a petition of not less than 10% of the qualified electors, filed with the City Council.