

## Provisions from the 8th Edition, NCL MODEL CITY CHARTER

### Section 2.01. General Powers and Duties.

All powers of the city shall be vested in the city council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.

#### Commentary.

This section does not specifically enumerate the powers of the council. An enumeration of specific powers in this article will not enlarge the powers of the council and may operate to diminish them if utilized by the courts to support restrictive interpretations (see commentary to § 1.02).

In his commentary on the first *Model City Charter* endorsing the council-manager plan ("The City Council" in *The New Municipal Program, 1919*), William Bennet Munro noted that So far as the composition and powers of the city council are concerned the plan set forth in the *Model City Charter* rests upon the conviction that there should be a place in the municipal framework for a body which will be avowedly deliberative, supervisory, and policy-determining, which will be wieldy enough to perform these functions properly and yet large enough to be truly representative of the community's options. . . . The *Model City Charter* accordingly provides for a council with a membership which can be enlarged or contracted according to the varying size and needs of different cities. This council is to be the pivot of the municipal system. It is to be the final source of local authority, not sharing its powers but delegating some of them. That is to say, to a city manager chosen by the council and holding office during the council's pleasure, it assigns the entire charge of administrative affairs . . . As for the powers of the city council . . . It is designed to embody, as it were, the sovereignty of the community. It is the legislative organ of the city exercising all the authority which the municipal corporation possesses—with one important exception only. This restriction is that the city council, once it selects a city manager, devolves all direct administrative authority upon him.

Recognizing that all of the powers that can be exercised by the city rest in the popularly elected city council, the charter must provide for a council, which is truly representative of the community.

Therefore, the *Model* presents several alternatives without expressing an absolute preference for any one, which was done in earlier editions. Each city's population pattern—economic level, racial, geographical, etc.—has implication for the method of electing the council to assure equitable representation. While the Voting Rights Act governs all jurisdictions, in some cities the problem of compliance with its provisions and avoidance of court challenges is a matter of particular concern.

Just as there is no absolute model for providing competent and effective legislators, there is no absolute pattern which will assure equitable representation.

As the body charged with making municipal policy, the council can create permanent or *ad hoc*

mechanisms to assist in that process. For example, it can create planning and recreation boards or study committees. Likewise it can create agencies with quasi-legislative or quasi-judicial status, such as a human rights commission or a zoning appeals board.

The *Model* makes no provision for specific instrumentalities designed to provide input at the neighborhood level for policy-making or service delivery evaluation. Nor does it list as charter agencies any advisory boards and commissions. The council has the power to establish such agencies.

The *Model* provides that the mayor, however elected, shall be the presiding officer and a voting member of the council and shall perform certain specific duties which will enhance the mayor's role as policy leader.

### **Section 2.03. Mayor.**

**(a) Powers and Duties.** The mayor shall be a voting member of the city council and shall attend and preside at meetings of the council, represent the city in intergovernmental relationships, appoint with the advice and consent of the council the members of citizen advisory boards and commissions, present an annual state of the city message, appoint the members and officers of council committees, assign subject to the consent of council agenda items to committees, and perform other duties specified by the council. The mayor shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties.

**(b) Election: Mayor Elected by the Council.** The city 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 deputy mayor shall act as mayor during the absence or disability of the mayor.

### **Commentary.**

(a) The office of mayor in cities having the council-manager form assumes a different character from city to city depending upon local political, economic, and social conditions. This variation has meant that the office is not well understood, and its potential has too often gone unrecognized.

While the mayor of a council-manager city is not an executive as in the mayor-council form, he or she is uniquely positioned to be the political and policy leader of the city. As the presiding officer of the council and ceremonial head of the city, the mayor is the most conspicuous official of the city.

Freedom from executive responsibilities for the day-to-day municipal operations allows the mayor to focus attention on major policy issues and important facilitative activities. The mayor fills three facilitative roles that offer enormous leadership opportunities. First, the mayor may coordinate the activities of other officials by providing liaison between the city

manager and the council, fostering a sense of cohesion among council members, and educating the public about the needs and prospects of the city. Second, the mayor may facilitate policy guidance through setting goals for the council and advocating the adoption of policies that address the city's problems.

Third, the mayor is an ambassador who promotes the city and represents it in dealing with other governments as well as the public.

The specific responsibilities of the mayor listed in the *Model* enhance the mayor's leadership position. The traditional responsibility of presiding at council meetings allows the mayor to set the tone for city government and help the council make decisions. Designation of the mayor as intergovernmental representative reflects the increased importance of relationships with other local governments as well as with the state and federal governments. Mayoral appointment of boards and commissions with council advice and consent, and of the membership of council committees, creates the opportunity for purposeful balanced representation and can be used to forge coalitions and tap into networks of community activity.

Finally, the mayor delivers the state of the city message. When the state of the city message includes the setting out of needs and goals for the city, it should reflect the thinking of the council and information provided by the staff, as well as the mayor's own priorities. In presenting the state of the city message, the mayor acts as spokesperson, educator, team leader, goal setter, and policy advocate. To avoid confusion, the time of delivery of the message should be sufficiently distanced from the presentation of the budget by the manager.

(b) As with mayoral responsibilities, the method of election of the mayor has implications for office effectiveness. The *Model* provides two alternative methods for electing the mayor. A community's choice of election method depends on local preference and tradition and to some extent on the method chosen to elect the council (see Article VI).

Many communities feel that local policy leadership can best function when a cohesive team of council members chooses its leader as mayor. Election of the mayor by and from the council, and thus avoid the possibility of conflict between the mayor and the council majority. Such an approach may be best suited for cities with at-large council elections. In cities with councils elected from districts, council selection of the mayor presents the mayor with conflicting roles—district and citywide.

### **Section 3.04. Powers and Duties of the City Manager.**

The city manager shall be the chief executive officer of the city, responsible to the council for the management of all city affairs placed in the manager's charge by or under this charter. The city manager shall:

(1) Appoint and 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. The city manager may authorize any administrative officer

subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;

(2) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;

(3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;

(4) See that all laws, provisions of this charter and acts of the city council, subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;

(5) Prepare and submit the annual budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;

(6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;

(7) Make such other reports as the city council may require concerning operations;

(8) Keep the city council fully advised as to the financial condition and future needs of the city;

(9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;

(10) Provide staff support services for the mayor and council members;

(11) Assist the council to develop long term goals for the city and strategies to implement these goals;

(12) Encourage and provide staff support for regional and intergovernmental cooperation;

(13) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community; and

(14) Perform such other duties as are specified in this charter or may be required by the city council.

**Commentary.**

Although this section equips the manager with the necessary legal authority to discharge

administrative responsibilities, the manager's authority may be limited in some states by provisions of state constitutions or laws. The listing of the manager's powers and duties assumes that the manager will not only perform managerial duties in the city's operations but will also have a significant role in the development of policy. There are important policy implications in the manager's duties to prepare and submit the budget; to report on the city's finances, administrative activities, departmental operations and future needs; and to make recommendations on city affairs.

The duty to provide staff support for the mayor and council members includes providing information on policy issues before the council.

The expanded duties listed in items 9, 11, and 13 of the eighth edition reflect the complex responsibilities assigned to managers to make the processes of governance work in the community.

Constructive interactions among the local government, businesses, non-profits, faith-based and special interest organizations and neighborhood groups define a successful community. In a similar manner, the responsibilities anticipated in item 12 charge the manager with placing each community in the context of its region and promoting both community and regional interests.

## Provisions taken from the National Association of Counties Model County Charter

### Some General Comments on the "Model"

#### The Council

In a true sense the county council provided by the Model is the governing body with general control over county affairs. All powers of the county except as otherwise provided by law are assigned to the council. The name "county council" is used rather than "county board" or "county commission" to emphasize the policy-making role of the council. Board or commission carries the connotation of an essentially administrative rather than a legislative role. It should be noted, however, that the name given to the governing body will be determined by local preference and that many county boards and commissions are in fact legislative in character.

The importance of the representativeness of the council cannot be over-emphasized. This is a particularly sensitive issue when counties have urban, suburban and rural areas. The Model assumes that it is necessary to tailor provisions for the composition and method of electing the council to the needs of each county.

There is no universally acceptable method. Therefore, model provisions for several alternatives are provided. In all cases the "equal protection" constitutional requirement (i.e., "one person-one vote") must be honored. When districts are used, special attention must be given to the redistricting process, including districting criteria. Guidance on this is provided in the elections article of the Model.

Two alternative methods are provided for the election of the county council chairman and stress is placed upon the leadership potential of this office. The chairman may be comparable to the non-executive mayor in council-manager cities, serving as chief legislator and leader of the policy-making team, as well as the ceremonial head of the county, and - very importantly - its intergovernmental representative.

#### Manager

A fundamental feature of the Model is the provision for centering responsibility for the administration of county services in a single professional administrator, the county manager, subject to appointment, removal and general supervision by the council.

The council-manager form seems particularly appropriate for county government. Unlike cities, counties have not had the tradition of an elected chief executive, a mayor, based upon the "separation of powers" principle. The administration of county affairs has generally been by a number of separately elected officials with the central core of county government, both legislative and administrative, in the county board or commission. The council-manager plan is a direct and logical evolution from government by commission. It preserves and strengthens the unity in policy making which the commission was supposed to provide, and achieves unity and responsibility in administration, which commission government did not provide. Thus the council-manager plan is not so drastic a break with the tradition of county government as an elected executive plan, because it continues to vest overall responsibility in a representative body rather than dividing it between an elected council and an elected chief executive. The members of the county council continue to be the responsible parties so far as the

electorate is concerned, though they exercise their responsibility for administration through their appointed agent, the manager.

The really big break with tradition comes when a reorganized county government brings under council control (and administration by the appointed manager) functions previously performed by independently elected officers or substantially independent boards and commissions. Legal and political considerations may limit the extent to which this can be done. Indeed, most counties operating with appointed administrators represent some degree of compromise. Some separately elected officers are continued, but various arrangements are made particularly in the budget process to give a greater degree of centralized policy and management coordination. The manager may perform some services, particularly of a housekeeping nature, for independent officers and agencies. The existence of responsible professional management at the core of county operations tends inevitably to improve the tone of the entire county government.

One of the most important developments in county government has been the strengthening of professional management in counties which do not operate under their own charters. In some states this is accomplished by state enabling statutes providing optional forms of county government. In other places, non-charter counties adopt resolutions, ordinances or local laws which put in place effective systems providing for professional administrators. Provisions of the Model, particularly the article on the manager, can be used as a point of departure for those drafting such legal instruments. However, the Model will be supplemented by a separate publication designed specially to assist non-charter counties in strengthening the legal basis for professional management.

## Article II COUNTY COUNCIL

### Section 2.01. General Powers and Duties.

All powers of the county shall be vested in the county council, except its otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the county by law.

*Commentary on §2.01. General Powers and Duties.*

*This section does not specifically enumerate the powers of the council. An enumeration of specific powers in this article will not enlarge the powers of the council and may operate to diminish them if utilized by the courts to support restrictive interpretations (see note to §1.02).*

### COMMENTARY ON ARTICLE II

*The Model recommends the county council-manager form in which the council, elected by, representative of, and responsible to the citizens of the county is the fundamental democratic element.*

*Recognizing that all of the powers that can be exercised by the county rest in the popularly elected county council, the charter must provide for a council which is truly representative of the county's citizens. Therefore, the Model presents several alternatives without expressing an absolute preference for any one. Each county's population pattern - economic level, racial, geographical, etc. - has*

*implications for the method of electing the council to unsure equitable representation. While all jurisdictions are governed by the Voting Rights Act, in some counties the problem of compliance with its provisions and avoidance of court challenges is a matter of particular concern. Just as there is no absolute model for providing competent and effective legislators, there is no absolute pattern which will assure equitable representation.*

#### *Comments on the METHOD OF ELECTING COUNCIL MEMBERS from Single-Member Districts*

*(a) The Model includes an alternative providing the single-member district system for electing the council. The growing recognition that membership on councils should represent all racial and ethnic groups more adequately has spurred increased use of the single-member district system. With racial minorities concentrated in particular sections of a city or county, it is easier to elect minority council members when single-member districts are used. In addition, single-member districts can open the way for greater diversity among candidates because the costs of running a district campaign are so much less than those of running at-large. Citizens feel closer to district elected council members, whom they can hold responsible for addressing their community concerns.*

*In places where the at-large method of electing the council has been ruled in violation of the Voting Rights Act, the single-member district system has regularly received approval from the courts and the Justice Department as a replacement system.*

*The single-member system does have its drawbacks. An inherent problem is the danger that parochial problems of district elected members will mean that inadequate attention is given to countywide concerns. The potential for the classic problem of "log-rolling" or vote swapping is ever-present.*

#### *COMMENTS CONCERNING THE ROLE OF THE PRESIDING OFFICER OF THE LEGISLATIVE BRANCH*

##### *§2.03. Chairman of the Council.*

*The office of council chairman assumes a different character from county to county depending upon local political, economic and social conditions. He or she is uniquely positioned to be the political and policy leader of the county. As the presiding officer of the council and ceremonial head of the county, the chairman of the council is the most conspicuous county official. Not being the executive responsible for the day-to-day county operations allows the chairman to focus attention on major policy issues, an important facilitative activity. The chairman can function in the same manner as the mayor in a council-manager plan city, and may even be given the title of mayor.*

*The chairman fills three facilitative roles that offer enormous leadership opportunities. First, the chairman can coordinate the activities of other officials by providing liaison between the manager and the council, fostering a sense of cohesion among council members and educating the public about the needs and prospects of the county. Second, the chairman can provide policy guidance through setting goals for the council and advocating the adoption of policies that address the county's problems. Third, the chairman is an ambassador who promotes the county and represents it in dealing with other governments as well as the public.*

*The specific responsibilities of the chairman listed in the Model enhance the chairman's leadership*

*position. Presiding at council meetings is a traditional responsibility with great potential impact on setting the tone for county government and helping the council make decisions. Designation as intergovernmental representative reflects the increased importance of relationships with other local governments as well as the state and federal governments. Appointment of boards and commissions with council advice and consent creates the opportunity for purposeful balanced representation and can be used to forge coalitions and tap into networks of community activity. When the state of the county message includes the setting out of needs and goals for the county, it should reflect the thinking of the council and information provided by the staff as well as the chairman's own priorities. In presenting the state of the county message, the chairman can act as spokesperson, educator, team leader, goal setter, and policy advocate. It is important that the timing of the message be such that it will not be confused with the presentation of the budget by the manager.*

#### PROVISIONS RELATING TO THE APPOINTMENT AND POWERS OF A COUNTY MANAGER.

The county manager shall be the chief administrative officer of the county, responsible to the Council for the administration of all county affairs placed in the manager's charge by or under this charter. The county manager shall:

- (1) Appoint and, when necessary for the good of the service, suspend or remove all county 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. The county manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (2) Direct and supervise the administration of all departments, offices and agencies of the county, except as otherwise provided by this charter or by law;
- (3) Attend all county council meetings. The county manager shall have the right to take part in discussion but shall not vote;
- (4) See that all laws, provisions of this charter and acts of the county council, subject to enforcement by the county manager or by officers subject to the manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual budget and capital program to the county council;
- (6) Submit to the county council and make available to the public a complete report on the finances and administrative activities of the county as of the end of each fiscal year;
- (7) Make such other reports as the county council may require concerning the operations of county departments, offices and agencies subject to the county manager's direction and supervision;
- (8) Keep the county council fully advised as to the financial condition and future needs of the county;
- (9) Make recommendations to the county council concerning the affairs of the county;

(10) Provide staff support services for the council members; and

(11) Perform such other duties as are specified in this charter or may be required by the county council.

### COMMENTARY ON ARTICLE III

*In the plan recommended in the Model, the county manager is continuously responsible to the county council, the elected representatives of the people. It is significant that 6 of the 12 items in the code of ethics for members of the local government management profession refer to the manager's relationships to the popularly elected officials:*

*Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional management is essential to the achievement of this objective.*

*Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.*

*Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.*

*Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with members of the government management profession.*

*Refrain from participation in the election of the members of the employing legislative body, and from all partisan political activities which would impair performance as a professional administrator.*

*Keep the community informed on county affairs; encourage communication between citizens and all county officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.*

*(The other items in the code refer to the manager's personal and professional beliefs and conduct.)*

*As a professional administrator, the manager must be trained and experienced in the processes of the effective management of public service delivery, and utilizing this expertise execute efficiently the policies adopted by the elected county council. The manager however, because of breadth of knowledge and experience in the increasingly complex areas of local government operations has a duty and responsibility to assist the elected council in the policy-making process. Although in recent years the policy role of managers in counties and cities has been given greater recognition, those who first endorsed the council-manager plan as the form recommended by the National Municipal League's Model City Charter were well aware of the "double function" of the manager:*

.In every form of administration, and especially in a democracy, both expert and lay elements are indispensable for the best results; the expert for his knowledge of the most effective means of attaining the results desired; the layman to keep the expert in touch with public opinion, to preserve him from falling into ruts, to prevent the trees from obscuring his view of the forest. They are not two antagonistic elements each seeking to enlarge its sphere of action at the expense of the other. They are not even independent powers in the government each working in a distinct field, performing its appropriate acts and having for these purposes any authority of its own. On the contrary, they are two parts of the same mechanism, or we may liken them to two elements in one chemical compound whose combined qualities give the character to the substance. In a sense, they take part jointly in every act performed. On everything that is done the expert should be consulted, and every act, however minute, technical or in the nature of routine, should be done with the approval, express or implied of the lay controlling body which must assume to the public the responsibility therefor. The lay body must never cast the blame upon the expert. If convinced he is unfit for his position it may remove him; for permanence does not mean incompetence in office. But a removal must only mean a search for a better man to hold permanently, that is by a tenure dependent only upon his professional work. The expert, on the other hand, must realize that he is not the ultimate authority; that everything which ought in his opinion to be done cannot be accomplished; that he has a double function, the conduct of current administration, and persuading the representatives of the public so far as he can that his plans are wise.'

*'A. Lawrence Lowell, "Expeds in Municipal Government and the New Model City Charter" in The New Municipal Program, National Municipal League Series, A. Appleton and Company, NewYork, 1919, p. 37f.*