

GLADSTONE CITY COUNCIL MEETING
CITY HALL COUNCIL CHAMBERS
June 1, 2016 – 5:30 PM

5:30 p.m.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

AGENDA ADDITIONS OR CORRECTIONS

BUSINESS FROM THE AUDIENCE

Visitors: Presentations not scheduled on the Agenda are limited to three (3) minutes. Longer presentations should be submitted to the Assistant City Administrator two weeks prior to the Tuesday City Council meeting. Cards are available in the back of the room for anyone who wishes to comment on an item on the Regular Agenda.

CONSENT AGENDA - None

CORRESPONDENCE – None

REGULAR AGENDA

1. Joint City Council/Charter Commission Work Study Session

BUSINESS CARRIED FORWARD – Update

BUSINESS FROM THE AUDIENCE – This is the second opportunity for the Audience to address Council on any item not on the Agenda.

BUSINESS FROM THE COUNCIL

ADJOURN



MEMORANDUM

TO: Gladstone City Council and Charter Review Commission
FROM: Chad A. Jacobs and David F. Doughman, City Attorney's Office
SUBJECT: Draft New City Charter
DATE: May 24, 2016

Please find enclosed a draft of a new city charter, which is the result of numerous meetings of the Gladstone Charter Review Commission. Members of the commission will present this draft to the council for its consideration during a special joint meeting to be held on Wednesday, June 1, 2016 at 5:30 p.m.

Background

The draft charter would repeal and replace the current Gladstone charter. The draft is based on the model charter from the League of Oregon Cities. It simplifies and modernizes the language and procedures set forth in the charter, while still maintaining some of the unique provisions of the existing Gladstone charter such as requiring councilors to run for specific council positions.

Significant to the model charter is the distinction in how the council conducts business. The model charter expressly sets forth that the council conducts legislative business by ordinance, administrative business through resolutions and quasi-judicial business through orders. This distinction is important in that only legislative matters are subject to a referendum petition. The lack of such clarity in previous model charters led to confusion and litigation over this issue, and cities that have followed the new model charter and provided for these distinctions have had much less controversy to deal with on such issues.

The Charter Review Commission reviewed and discussed each section of the proposed charter. Members of the Commission will be available to answer questions at the upcoming joint meeting about each section, but below is an overview of some of the more significant proposals found in the draft charter (in order of section number – not based on any opinion of significance):

- §13 adds a provision to permit the council to use preferential voting when confronted with two or more choices on an issue;

- §25 changes the mayoral term to two years so that the mayor is elected at the same time councilors are on the ballot – because the council is elected in staggered terms, currently only half of the council positions ever appear on the same ballot as the mayor;
- §31 clarifies when vacancies occur and requires a council declaration before vacancies occur for reasons other than death, adjudication for incompetence or recall, thereby providing some additional discretion on the part of the council to determine when a vacancy occurs – of particular interest and discussion by the commission was the ability to create a vacancy for the conviction of a public offense punishable by loss of liberty;
- §32 sets forth two processes for filling vacancies – (1) by council appointment if less than 17 months remain in the vacated term, which avoids the need to hold an election to fill the vacated seat when only two months would be left in the term at the time of the election, and (2) by election at the next available November election if more than 17 months remain in the vacated term – the council would fill the vacancy by appointment for an interim period until a special election may be held to fill the remainder of the unexpired term;
- §33 – changes the city administrator position to city manager and expressly sets forth the duties and powers of the city manager – in essence it is formalizing the practice currently followed by the city, but it does provide that the city manager has exclusive authority over most personnel decisions subject only to the employment policies adopted by the council;
- §33(i) includes language from the model charter, which is also found in many charters across the state, that precludes the mayor or councilors from attempting to coerce the city manager into taking certain administrative actions related to personnel issues and contracting – the language proposed by the committee attempts to clarify what constitutes coercion and what actions are otherwise permitted – some of this language is based on an amendment to a similar section recently approved by the voters in Troutdale;¹
- §40(b) – carries over the debt limitations that were recently added to the charter through the initiative process;
- §41 – carries over the voter approval requirement for the construction of certain public building that was recently added to the charter through the initiative process; and
- §46 – creates the requirement for a charter review commission every eight years.

¹ At its last meeting on May 18, 2016, the committee voted to propose the same language that was enacted by the voters in Troutdale. After having had more time to review the actual language, the City Attorney's Office believes the language from Troutdale creates additional ambiguities, and would recommend a revision to address the concerns identified by the commission without creating such ambiguities. To that end, we recommend changing replacing the last three sentences of section 33(i) with the following: *Nothing in this section prohibits the mayor or a councilor from discussing or suggesting anything with the manager relating to city business in council meetings or at any other time, provided that such discussions or suggestions are made in a non-coercive manner and are otherwise made in conformance with the requirements of law.* After discussion with Councilor Johnson, it was decided not to make this change without first presenting the actual language adopted by the commission.

Next Steps

A new charter such as the one being proposed must be approved by the voters before it may take effect. Accordingly, after receiving the presentation from the commission on June 1, 2016, the council will have the opportunity to deliberate whether to refer the proposed charter to the voters as presented, with amendments or not at all.

One issue the council may want to consider is whether to propose a new charter and separate amendments to the new charter, which contain more controversial changes, at the same time. For example, under the existing charter, the mayor serves a four year term. The commission has proposed a two-year term for the mayor. The council could keep the existing four-year mayoral term in the new charter proposed to the voters and propose a separate amendment to the new charter at the same time, which would change the mayoral term to two years. This process may be used for any provision of the proposed new charter that the council believes would be controversial, and is a process used by cities so as not to defeat the entire proposal due to one controversial issue.

If the council decides to propose a new charter (with or without amendments), the council would need to take action to do so no later than August 19, 2016 in order to meet state election filing deadlines.

Please let us know if you have any questions regarding this memorandum, the commission's work and/or if there is anything else we can do to be of assistance with this project.

C.A.J./D.F.D.

CITY OF
GLADSTONE
DRAFT 2016
CHARTER

June 1, 2016 Update

PREAMBLE

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

Chapter I

NAMES AND BOUNDARIES

Section 1. Title. This charter may be referred to as the 2016 Gladstone City Charter, which must be made available to the public online and at City Hall.

Section 2. Name. The City of Gladstone, Oregon, continues as a municipal corporation with the name City of Gladstone.

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

Chapter II

POWERS

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

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

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

Chapter III

COUNCIL

Section 7. Council. The council consists of a mayor and six councilors. The council appoints members of commissions and committees that are established by ordinance or resolution. Such appointments must be made in a manner prescribed by council rules.

Section 8. Mayor. The mayor presides over and facilitates council meetings, preserves order, enforces council rules, and determines the order of business under council rules. The mayor is a

voting member of the council and has no veto authority. The mayor appoints members of council committees established by council rules. Unless the council or this charter provides otherwise, the mayor must sign all records of council decisions. The mayor serves as the political head of the city government.

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

Section 10. Rules. In every odd-numbered year, the council must adopt rules to govern its meetings. The rules must be made available to the public online and at City Hall.

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

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

Section 13. Vote Required. The express approval of a majority of a quorum of the council is necessary for any council decision, except when this charter requires approval by a majority of the council. If more than two options are available to the council in any single vote, the council may use preferential voting to achieve the required majority. The council must prescribe procedures for using preferential voting in the council rules.

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

Chapter IV

LEGISLATIVE AUTHORITY

Section 15. Ordinances. The council will exercise its legislative authority by adopting ordinances. The enacting clause for all ordinances must state “The City of Gladstone ordains as follows:”.

Section 16. Ordinance Adoption.

(a) Except as authorized by subsection (b), adoption of an ordinance requires approval by a majority of the council at two meetings.

(b) The council may adopt an ordinance at a single meeting by the unanimous approval of at least a quorum of the council, provided the proposed ordinance is available in writing to the public at least one week before the meeting.

(c) Any substantive amendment to a proposed ordinance must be read aloud or made available in writing to the public before the council adopts the ordinance at that meeting.

(d) After the adoption of an ordinance, the vote of each member must be entered into the council minutes.

(e) After adoption of an ordinance, the designated city custodian of records must endorse it with the date of adoption and the custodian's name and title.

Section 17. Effective Date of Ordinances. Ordinances take effect 30 days after adoption, or on a later day provided in the ordinance. An ordinance may take effect as soon as adopted or on another date less than 30 days after adoption if it contains an emergency clause.

Chapter V

ADMINISTRATIVE AUTHORITY

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

Section 19. Resolution Approval.

(a) Approval of a resolution or any other council administrative decision requires approval by the council at one meeting.

(b) Any substantive amendment to a resolution must be read aloud or made available in writing to the public before the council adopts the resolution at that meeting.

(c) After approval of a resolution or other administrative decision, the vote of each member must be entered into the council minutes.

(d) After approval of a resolution, the designated city custodian of records must endorse it with the date of approval and the custodian's name and title.

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

Chapter VI

QUASI-JUDICIAL AUTHORITY

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

Section 22. Order Approval.

(a) Approval of an order or any other council quasi-judicial decision requires approval by the council at one meeting.

(b) Any substantive amendment to an order must be read aloud or made available in writing to the public at the meeting before the council adopts the order.

(c) After approval of an order or other council quasi-judicial decision, the vote of each member must be entered in the council minutes.

(d) After approval of an order, the designated city custodian of records must endorse it with the date of approval and the custodian's name and title.

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

Chapter VII ELECTIONS

Section 24. Councilors.

(a) Councilors are elected from the city at large, provided that each council position bears a number from one through six, and all candidates for council must be nominated for a specific council position. Candidates for council must designate on their nomination petition the number of the council position to which they seek election. No candidate may run for more than one council position at an election.

(b) The term of a councilor in office when this charter takes effect is the term for which the councilor was elected. Council position numbers 1, 3 and 5 will be elected at the general election in 2018 and every four years thereafter for a four year term. Council positions 2, 4 and 6 will be elected at the general election in 2020 and every four years thereafter for a four year term.

Section 25. Mayor. The Mayor is nominated and elected from the city at large. The mayor will be elected at the general election in 2018 and at every general election thereafter for a two-year term. The term of the mayor in office when this charter takes effect continues until the first council meeting in January 2019 at which time the mayor elected at the general election in 2018 shall assume office.

Section 26. State Law. City elections must conform to state law except as this charter or ordinances provide otherwise. All elections for city offices must be nonpartisan.

Section 27. Qualifications.

(a) The mayor and each councilor must be a qualified elector under state law, reside within the city for at least one year immediately before election or appointment to office and remain a resident of the city during their entire term of office.

(b) No person may be a candidate at a single election for more than one city office.

(c) Neither the mayor nor a councilor may be employed by the city.

(d) The council is the final judge of the election and qualifications of its members based upon this charter.

Section 28. Nominations. The council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city council position, provided that any such ordinance must require that all nominating petitions be signed by at least 25 city electors.

Section 29. Terms. The term of an officer elected at a general election begins at the first council meeting of the year immediately after the election, and continues until the successor qualifies and assumes the office.

Section 30. Oath. The mayor and each councilor must swear or affirm to faithfully perform the duties of the office and support the constitutions and laws of the United States, Oregon and the City of Gladstone.

Section 31. Vacancies: The mayor or a council office becomes vacant:

(a) Upon the incumbent's:

- (1) Death,
- (2) Adjudicated incompetence, or
- (3) Recall from the office.

(b) Upon declaration by the council after the incumbent's:

- (1) Failure to qualify for the office within 10 days of the time the term of office is to begin,
- (2) Absence from the city for 45 days without council consent,
- (3) Absence from all council meetings within a 60-day period without council consent,
- (4) Ceasing to reside in the city,
- (5) Ceasing to be a qualified elector under state law,
- (6) Conviction of a public offense punishable by loss of liberty,
- (7) Conviction of the offense of unlawful destruction of public records;
- (8) Resignation from the office, or
- (9) Removal under Section 33(i).

Section 32. Filling Vacancies. A mayor or councilor vacancy will be filled as follows:

(a) If less than seventeen months remains in the term of the person who held that vacant office, the vacancy shall be filled by appointment by a majority vote of the remaining council members. The appointee shall serve the remainder of the unexpired term.

(b) If more than seventeen months remain in the term of the person who held that vacant office, the vacancy shall be filled at the next available November election. The person elected shall serve the remainder of the unexpired term. A majority of the remaining council members must fill the vacancy by appointment for an interim period until a special election may be held to fill the remainder of the unexpired term.

(c) If a disability prevents a council member from attending council meetings or a member is absent from the city, a majority of the council may appoint a councilor pro tem.

Chapter VIII

APPOINTIVE OFFICERS

Section 33. City Manager.

(a) The office of city manager is established as the administrative head of the city government. The city manager is responsible to the mayor and council for the proper administration of all city business. The city manager will assist the mayor and council in the development of city policies, and carry out policies established by ordinances and resolutions.

(b) The council must appoint and may remove the manager. The appointment must be made without regard to political considerations and solely on the basis of education and experience in competencies and practices of local government management.

(c) The manager need not reside in the city.

(d) The manager may be appointed for a definite or an indefinite term, and may be removed at any time by a majority of the council.

(e) The manager must:

- (1) Attend all council meetings unless excused in the manner provided for by council rule;
- (2) Make reports and recommendations to the mayor and council about the needs of the city;
- (3) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits, and other city decisions;
- (4) Appoint, supervise and remove city employees;
- (5) Organize city departments and administrative structure;
- (6) Prepare and administer the annual city budget;
- (7) Administer city utilities and property;
- (8) Encourage regional and intergovernmental cooperation;
- (9) Promote cooperation and transparency among the council, staff and citizens in developing city policies,
- (10) Encourage building a sense of community;
- (11) Perform other duties as directed by the council;
- (12) Delegate duties, but remain responsible for acts of all subordinates.

(f) The manager has no authority over the council or over the judicial functions of the municipal judge.

(g) The manager and other employees designated by the council may sit at council meetings but have no vote. The manager may take part in all council discussions.

(h) When the manager is temporarily disabled from acting as manager or when the office of manager becomes vacant, the council must appoint a manager pro tem. The manager pro tem

has the authority and duties of manager, except that a pro tem manager may appoint or remove employees only with council approval. No manager pro tem may serve for more than six months unless reappointed by the council.

(i) No council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in the appointment or removal of any city employee, or in administrative decisions regarding city property or contracts. For the purposes of this subsection the term coerce means an attempt to influence the manager or a candidate for the office of manager in the appointment or removal of any city employee, or in administrative decisions regarding city property or contracts through the use of force or threats. Violation of this prohibition is grounds for removal from office by a majority of the council after a public hearing. In council meetings, councilors may discuss or suggest anything with the manager relating to city business. Nothing in this charter restricts the authority of the mayor or any councilor to discuss the strengths, weaknesses, or need for city staff, nor to discuss any city contract or property that either exists or is contemplated, with the manager. Such discussions may be held privately, at the discretion of the participants, but shall conform to the requirements of law.

Section 34. City Attorney. The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney. The city attorney must be a member in good standing of the Oregon State Bar. Notwithstanding Section 33(e)(4), the attorney must appoint and supervise, and may remove any employees of the office of the city attorney.

Section 35. Municipal Court and Judge.

(a) A majority of the council may appoint and remove a municipal judge. The municipal judge must be a member in good standing of the Oregon State Bar. The municipal judge will hold court in the city at such place as the council directs. The court will be known as the Municipal Court.

(b) All proceedings of this court will conform to state laws governing justices of the peace and justice courts.

(c) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court.

(d) The municipal court has jurisdiction over every offense created by city ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court also has jurisdiction under state law unless limited by city ordinance.

(e) The municipal judge may:

- (1) Render judgments and impose sanctions on persons and property;
- (2) Order the arrest of anyone accused of an offense against the city;
- (3) Commit to jail or admit to bail anyone accused of a city offense;
- (4) Issue and compel obedience to subpoenas;
- (5) Compel witnesses to appear and testify and jurors to serve for trials before the court;

- (6) Penalize contempt of court;
- (7) Issue processes necessary to enforce judgments and orders of the court;
- (8) Issue search warrants; and
- (9) Perform other judicial and quasi-judicial functions assigned by ordinance.

(f) The council may appoint and may remove municipal judges pro tem. Municipal judges pro tem must be members in good standing of the Oregon State Bar.

(g) The council may transfer some or all of the functions of the municipal court to an appropriate state court.

Chapter IX PERSONNEL

Section 36. Compensation. The council must authorize the compensation of city officers and employees as part of its approval of the annual city budget.

Section 37. Merit Systems. The council, by resolution and after consultation with the city manager and city attorney, will determine the rules governing recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees based on merit and fitness.

Chapter X MISCELLANEOUS PROVISIONS

Section 40. Debt.

(a) City indebtedness may not exceed debt limits imposed by state law. A charter amendment is not required to authorize city indebtedness.

(b) The City shall incur no debt in financing any public project except through the issuance of municipal bonds by bond measure duly approved by a majority of voters in a regularly scheduled election set forth in ORS 221.230 or special election.

Section 41. Construction of Public Buildings. Unless approved by a majority of voters in a regularly schedule election set forth in ORS 221.230, or special election, no public building shall be constructed by or for the City if such construction will require the actual or reasonably projected expenditure of \$1,000,000, or more, from existing City funds or current or future City revenues, including those of any of its departments, service districts or agencies. In calculating whether the project will involve the actual or reasonably projected expenditure of \$1,000,000 or more, the calculation shall include the fair market value of any real estate to be utilized or committed to the project, based on current market appraisal performed by a certified real estate appraiser.

Section 42. Ordinance Continuation. All ordinances consistent with this charter in force when it takes effect remain in effect until amended or repealed.

Section 43. Repeal. All charter provisions adopted before this charter takes effect are repealed.

Section 44. Severability. The terms of this charter are severable. If any provision is held invalid by a court, the invalidity does not affect any other part of the charter.

Section 45. Amendments and Revisions. No amendment, revision or repeal of this Charter shall take effect unless approved by City voters. Either the council by a majority vote or City voters by an initiative petition may refer an amendment of this Charter to the City voters. Only the Council, by a majority vote, may refer a revision or repeal of this Charter to the City voters.

Section 46. Charter Review Commission. A charter review commission must be convened in 2024 and at least once every eight years thereafter to review and recommend, if necessary, updates to this charter. The council establishes membership of and makes appointments to the charter review commission, provided that every charter review commission must contain at least two members who are residents of the City and who are not elected or appointed city officials.

Section 47. Time of Effect. This charter takes effect January 15, 2017.