



**CITY CHARTER REVIEW AD-HOC MEETING MINUTES**  
**April 15, 2021**

The scheduled meeting of the Ontario City Charter Review Ad-Hoc Committee was called to order by Chairman Ken Hart at 6:00 p.m. on Thursday, April 15, 2021, in the Council Chambers of City Hall. Committee members present were Ken Hart, John Kirby, Sam Baker, Susann Mills, Jaime Taylor, and Robert Wheatley. Michael Miller arrived at 6:22 p.m.

Members of staff present were Adam Brown, Peter Hall, Tori Barnett, and Larry Sullivan.

The meeting was recorded, and copies are available at City Hall.

Ken Hart led everyone in the Pledge of Allegiance.

**ADOPTION OF MINUTES**

KIRBY moved, MILLS seconded, to adopt the minutes of the April 1, 2021, Charter Review Committee Meeting. Roll call vote: Hart-yes; Kirby-yes; Baker-yes; Miller-out; Mills-yes; Taylor-offline; Wheatley-yes. Motion carried 5/0/2.

**CHARTER REVIEW**

Chairman Hart stated he had asked Jackson Fox to appear to discuss the proposal he made to the Council regarding the sales tax.

Jackson Fox, Ontario, stated: *I have no prepared comments, thanks. My whole issue was with the 1% sales tax, and I went to the Council and asked them to look at the City Charter and I would like to see it to where any sales tax that is proposed for the City of Ontario should go in front of the voters. And the reason was seven people on the former Council did that, just seven people. I'm really happy to see now a committee that this current Council is reaching out to the community because it was really a hard thing. We had to gather money, form a non-profit PAC, and gather enough signatures in order to get it in front of the voters and it did get in front of the voters and everyone knows, it got voted down as soon as the people got their voice heard. I even had to sue the City of Ontario. That's not enjoyable at all. It's the second time I've had to do that, and I don't like doing it. But I won each time. So, anyway, like I say, I'm really happy that this Council is reaching out to the community, formed a committee of community members, and is asking for input.*

Member Mills stated she agreed that it should go out for a vote, and she was hearing that from a lot of people in the community. Any type of sales tax, if ever brought back on the agenda to be voted on, that it definitely go to the city for a vote, not just the Council.

**DISCUSSION ITEM**

**Charter Matrix Review**

Chairman Hart expressed his appreciation for the hard work that had gone into pulling the information together for their side-by-side. He noted there were some additional hand-outs with notes on them and asked if they were already incorporated into the matrix or were they additional items.

Adam Brown, City Manager, stated staff had received comments through that day, so everything should be included in the new set of sheets except for the last hand-out, with the highlighted portion. The two-page document he had tried to incorporate into the matrix, but there were some questions and commentary included, so it was easier to print that out for them to read as opposed to putting it on the matrix. On the matrix, where committee members wanted to discuss a section, he had highlighted those rows in yellow.



Chairman Hart suggested they all just begin reviewing it line by line and stop at the areas that there were suggestions made for a particular section.

### **3.1 through 3.3: Council Membership, Council Election, Mayor Election**

Chairman Hart stated this section discussed districts in the city versus being elected at large.

Mr. Brown presented some information for the different routes to go with elections. There was "at large", but there were two variations of that. For the city currently, the top votes for the number of seats open were declared the winner. The other "at large" forum was where the seats were numbered, so a particular person or a seat would be challenged. Voting by wards, districts, or however it was established, there were single seat wards or multi seat wards. For those, by ward, the seat was only elected by members in that ward. There were also at large elected by wards. For example, running for a seat in the third ward, but would still be voted on by the entire city.

Chairman Hart stated this was his proposal. He had heard two views in the community: one, this might be a way for the city to get more regional diversity on the Council. In the past there were areas in the community that had not had representation on the Council for at least the past ten years. Secondly, however, he had heard concerns about the size of this community, being small, and districts would be fairly small. Ontario might not be the right size yet to implement something like this.

Member Kirby stated he had heard from three people on this subject, and they all felt Ontario hadn't grown into that position yet. As the city population increased, it might be an idea to consider, but not yet. All were against the suggestion.

Member Mills asked how the candidates were selected now? And what if no one was qualified or stepped up from a particular district, then what?

Chairman Hart stated that in looking at past elections, different members who won from the most recent election, were from different zones in the city. Clearly, not everyone voted the same. The concept he had was that in the next cycle, there would be different zones, so zone one and zone three would be electing a Councilor, with one voted on at large. A person would have to pick if they were running in a zone or at large. For example, he and Councilor Braden would have had an issue because they lived near each other. They'd either run against each other, or one or both could run at large. The first few elections could cause issues because there would be incumbents that could be in one area. But, a few years later, different zones would be voting for their member with one at large. The Mayor would remain at large. Given Ontario's population of voters, around 5-6,000, there would only be 1,500 in a district, and there would have to be someone from that district. If no one ran from a specific area, the Council would have to appoint someone, but it would have to be an appointment from that area. It could get complicated fairly fast. Historically, the city could get candidates running from all areas of the community, but they were not winning the position.

Mr. Brown stated Member Taylor was having difficulty hearing the meeting, so she was writing comments in the chat section. Mr. Hall would be reading those as they came in.

Peter Hall, Assistant City Manager, stated: *Jaime says – I believe where we are at is too far ahead to break it into districts. I do think it is a good idea for the future as we are growing quickly. I think a little much right now, though. I also believe that might limit the amount of good candidates that might live in the same area to run for office at this time. We need more people engaged to get this going.*

Member Kirby asked if they were going to have a motion per section, and then move on to the next section?

Chairman Hart wasn't quite sure how they wanted to process that. However, he knew they needed to change Section 1.1 to read: This Charter would now be referred to as the 2021 Ontario Charter. His concern was that, because there were more meetings to be held, if something came at him, he wanted to be able to address it. He wanted to vote on each item and move it over. He didn't want to have to reverse a vote at the next meeting.

Member Kirby stated until this was passed by this Committee and the City Council, that could happen.

Chairman Hart stated he wanted to rescind his idea about forming districts. He appreciated all the comments and input, but it appeared he didn't have the votes and he wasn't sure if the city was ready to do that.



**Section 3.5: Council Quorum**

Member Kirby stated this section discussed the quorum requirements. Because they held virtual meetings now, he wanted it mentioned in the Charter how they would accept a quorum. Currently, it required four to have a quorum, but if others participated virtually, was that a legal quorum.

Larry Sullivan, City Attorney, stated the Oregon Public Meetings Law authorized cities to achieve a quorum through virtual meetings as long as everyone could communicate with each other at the same time. He didn't disagree with having that in the Charter as long as it didn't create the impression that if at some time Oregon law changed, the city might not have to follow that law anymore. Over the past year, everyone recognized that for health and safety, there were good reasons everyone was not gathering live for every meeting. He didn't see that changing. Having it in the Charter may lay to rest questions about the appropriateness without having to ask the City Attorney every time if it was alright. The language would read something like meetings could be held electronically and or telephonically, or any means that allowed immediate communication between the Council members and the ability to record minutes and record votes.

Member Kirby stated he would feel better about the recording of votes and authorizing the city to move forward on projects. It had been 35 years since the Charter was written and that capability hadn't existed then.

Mr. Sullivan stated focusing on the word "meeting" could create the impression that a meeting was someplace that people actually "met" in the same location, but the definition of "meeting" had been expanded so that it no longer had the common meaning of the phrase. If the Committee believed it would be beneficial to have it spelled out in the Charter, there was nothing wrong with doing that.

Member Kirby stated he'd like to ensure people were aware it was a legal meeting and could not be challenged in court.

Mr. Sullivan stated they could write it to read that a meeting may be held by any means that was legal under Oregon law, or something similar, and they wouldn't have to go into much more detail than that. He wasn't sure if there was anything in the Charter that would force anyone to conclude that they had to have a meeting in one location only, or that they couldn't have people participating electronically.

Chairman Hart asked Mr. Brown if he had seen any examples from the other Charters that might have addressed the issue?

Mr. Brown stated he would research that.

**Section 3.7: Mayor Functions**

Mr. Brown stated multiple people had asked for the same change, both at the previous meeting and in the comments that had been received.

Member Mills stated this was presented to her by a citizen to eliminate the Mayor appoints and has the consensus of the Council for committees.

Chairman Hart stated an issue he noted that when trying to align with the model charter, the way the city had it structured mirrored the LOC model, in that the Mayor appointed committee members and the Council then provided consensus.

Mr. Brown stated there was one issue that could be broken into two discussion. First, there were comments about wanting the Mayor and Council to appoint committee members by consensus, not just a Mayoral appointment. The other issue was the ability to remove committee members by a majority vote. Same for the Council President. Based on his research of over 60 Charters, he hadn't found many that had the Council and the Mayor approving Committees; almost all had the Mayor appoint with Council ratification.

Mr. Sullivan stated 3.7 as it currently stood under the Charter, the Council had no say in overruling the Mayor's decision, whereas under the model rule, the Mayor still had to have a majority of the Council supporting someone he was appointing. Under the proposed change, the Mayor would have no priority in appointing, and it would have to be a consensus of the Council. There was a shift in power between those three models.



Chairman Hart stated taking no action would leave the Section as it stood.

### **Section 3.8: Council President**

Chairman Hart stated it had been suggested that the Council have the ability to change the Council President at any time during the year.

Member Mills stated she had that comment made to her, too, but added it also indicated that the Council shall have the ability to appoint and remove the President from that position, but not remove the Council President from the Council itself.

Member Kirby asked if they had requested cause for removal?

Member Mills stated yes, within reason.

Member Kirby asked if cause would go back towards 6.5 or 6.6, etc., regarding turbidity and that type of thing. Did they have to have an established cause, or could it be for just whatever?

Member Mills believed the discussion was that it would have to be for cause, and not something that a committee would have to bring forward. It was a discussion within the Council itself if something came about that the Council President was not deemed suitable or if something occurred that would cause that person to not hold that position. She assumed it was that they wanted the Council to have that power if a situation arose, how it would be determined what the issue was, how it would be voted on.

Member Kirby stated he was just seeking anything constructive on this issue. It was saying a majority vote, or a super majority, but he was looking to see if there had to be cause. The way it was now, the Council President was elected for two years. If the change were done, would there be cause associated with it.

Member Wheatley stated his agreement with Member Kirby. Without pinning it down more specifically, they would need to see the legal aspects of it. The Council could be setting themselves up for a lawsuit unless they addressed the legal side of the issue and make sure the specifics were in place to make sure that didn't happen.

Mr. Hall read Member Taylor's comment: *Adding Section 6.5(1)(c) leave moral turpitude in the language.* He asked her if she was speaking specifically for Section 3.8 or if she meant 6.5.

Chairman Hart stated this would be related to the appointed role as Council President, not their Council seat.

Mr. Sullivan stated if a majority of the Council had the right to appoint, the cleanest language would be language that gave a majority of Council the right to revoke. If the Council got into a discussion where they had to have an objective standard to remove a Councilor authority as Council President, they also had the possibility of that being challenged through something like a Writ of Review. Anytime there was a decision based upon criteria that was established by the city, that decision could be challenged in court. For that reason, it would be less controversial if there was no cause language in the Charter. It could still be challenged, but there would have to be proof.

Mr. Hall read Member Taylor's comment: *Just not taking out 6.5 and it would lead to help with any concerns with 3.8 as evidenced by what is currently going on.*

Mr. Brown stated he had not seen any examples in his research.

Chairman Hart stated they now just had an idea. Would the Committee like staff to draft legal language that they could potentially vote on, or did they even want to spend the time on it? Was there a desire to move forward on this?

Mr. Sullivan stated another possibility was that the Council President might exercise no authority during their term if the Mayor was present at all the meetings. There might be situations where the Mayor had to recuse himself, then the Council President would sit in his place. The Council didn't even have to have the Council President be a Charter position. Just have an ordinance that read that in the absence of the Mayor, the Council may appoint a Council President to preside at any meeting.

Member Wheatley liked that idea. That was something they should consider. He didn't see the necessity of it.

Chairman Hart stated where it did come up when the Mayor had to step down because of a conflict. Every time the Mayor had to step down, the Council would need to determine who would be the acting Mayor during that time. He saw value in having a designated person lined up when the Mayor couldn't preside over a meeting.

Member Mills stated when the Mayor was absent and the Council President couldn't preside, then who followed that.

Tori Barnett, City Recorder, stated the City Recorder would step in at that point, open the meeting, and the first action item would be to appoint a Councilor to run the meeting on behalf of the Mayor.

Mr. Brown stated he believed there was an item in the Charter about the Councilor President becoming the Mayor pro tem should the Mayor leave before his term was completed.

Member Kirby stated this was a time when the city voters were involved in the Council's decisions, especially due to the issues surrounding Councilor Rodriguez, so in looking at the issue as it currently stood, the Charter would be a living document that stood for another 35 years. This wouldn't be voted on until the end of the year, so it shouldn't be looked at as a "now" issue.

Chairman Hart stated Mayor Hill made a comment at the previous meeting about the research he had done reviewing other Charters, and it was obvious what the hot button of the day was based on the Charter at the time. He hoped the Ontario Charter revisions would stand the test of time and it wasn't obvious that "something" was going on. He'd like to move forward on this with one of three options: 1) Leave it as it was; 2) Amend it to read a majority would allow for removal; or 3) To remove the Council President position.

Mr. Sullivan reiterated there would be nothing wrong with removing the Council President position in the Charter and having it as an ordinance so there would be authority to appoint somebody as the Council President in the Municipal Code Book, or to remove them by an amendment to the Code. The advantage of having it done by ordinance was that it would only take a majority of the Council to make a change to an ordinance. Ordinances were more capable of responding to immediate circumstances, which could be good or bad.

Peter Hall, on behalf of Member Taylor: *I would like language added to 3.8 about the Council having the ability to revoke the President if a scenario necessary were to arise. She then added: Amend it so majority would allow for removal is my vote.*

Chairman Hart stated if everyone agreed, they'd hold this over to next meeting where they would vote on one of the three options: Leave it; Allow removal by majority; or Remove the position.

#### **Section 4.1: City Manager – Appointment and Qualifications**

Chairman Hart stated in the current Charter, it read the City Manager could be removed by a 2/3 vote of the entire Council, and he proposed that they align Ontario's Charter with the LOC model, which read a simple majority was required if a decision was needed to remove the City Manager.

Member Kirby stated where they had been trying to get department heads as residents in the city, he wanted to remove....

Chairman Hart stated this was not about the residency issue. He was focusing on removal of the City Manager by majority vote, not the 2/3 vote. He wanted to do the sections one at a time.

Mr. Brown stated based on his review of the various Charters, the majority was standard language.

Mr. Hall for Member Taylor: *I agree with Ken's approach.*

MILLER moved, MILLS seconded, **TO AMEND SECTION 4.1 TO READ THAT THE REMOVAL OF THE CITY MANAGER WOULD BE DONE BY MAJORITY VOTE.** Roll call vote: Hart-yes; Kirby-yes; Baker-yes; Miller-yes; Mills-yes; Taylor-yes; Wheatley-yes. Motion carried 7/0/0.

Chairman Hart stated currently, the City Manager promptly had to reside within the city. He was proposing here, and not just for the City Manager position but for all department heads, which had been noted earlier there was an ordinance now (sic/resolution) already on the books that all department heads must reside in the city or the 8C School district.

Mr. Brown stated as written now was that department heads live in the city, and everyone else within the 8C School District boundaries.

Chairman Hart stated that whatever residency they agreed to would be aligned so the City Manager and the department heads, by Charter, all would have that requirement. Was the city the 97914 zip code, or the 8C School District boundary.

Member Wheatley asked if the police and fire personnel were required to live within the City of Ontario? Not department heads, but the actual officers and firemen.

Mr. Brown stated it was a requirement that the department heads lived within the city, but all other employees lived within the school district boundaries. The thinking behind that was that there were those who enjoyed living the county lifestyle, but they still had the 97914 zip code.

Member Miller verified an employee for the police or fire departments couldn't live in Fruitland.

Mr. Brown stated as of 2018 and moving forward, no. There were legacy employees. While he would probably have staff that would disagree with his next comment, he did think the City Manager should live in the city. He also agreed the department heads should live within the city. Overall, he wanted all the city employees to live in Oregon. The Oregon laws and statutes that set the compensation and benefits of the employees, so if the employees were going to benefit from those laws, with the city having to compare themselves with other cities across the state for collective bargaining issues, they should be required to live in the state.

Member Mills read a comment from one statement she had received: *I believe that all our staff that we hire should live in the city. This should be set forward and not required for employees that area already on the payroll.* This person also believed it should be from now on. Did all the department heads and employees currently live within the city limits?

Mr. Brown stated all the department heads lived within the city. Any other employees hired after 2018 were required to live within the city.

Member Mills continued with the citizen comment: *I do not know the legalities of the unions and their present contracts and how that would work, but it should be all staff and not just for some, so if a contract can't be changed then I do not think it should be enforced for any staff with the exception of department heads. All department heads should be required to live within the city.*

Chairman Hart stated currently in the Charter the only person who had to live in the city was the City Manager, and by ordinance (sic/resolution) that was passed in 2018, department heads had to live in the city, and staff had to live within the 8C School District. It also allowed the City Manager to appear before Council if a staff member wanted an exception. Reading from the resolution, it stated: *"...any hiring of a Department Head position not living in the 97914 zip code or who is unable or unwilling to obtain residency may be hired only upon approval by the City Council at the request of the City Manager."*

Mr. Brown asked which resolution Chairman Hart was referencing.

Chairman Hart stated it was #2018-112.

Mr. Brown stated that was the most recent resolution about residency. It had been added to the union contracts, and while painful during the process, it had been accepted.

Member Wheatley asked if they could put that in there as a condition of employment for any applicant? If they wanted to work for the city, they had to live in the city. Was that legal?

Mr. Sullivan stated the residency requirement could be imposed.



Mr. Brown stated he did not know if the Charter was the appropriate place to have that language, but that was their decision.

Mr. Sullivan stated having it in the Charter gave the least amount of flexibility. Did they want to remove the ability and discretion of the Council to modify it? There could be those who would want it to be a rule that every City Manager had to live within the city limits, and anyone who applied would know that and they shouldn't apply for the position if they weren't willing to abide by that rule.

Mr. Brown stated in looking at city management as a whole, Ontario was large enough community to attract and demand that the City Manager live in the community.

Member Wheatley asked for verification – it was his understanding that the current situation required the City Manager and department heads to live within the city; all other employees had to live within the 8C School District boundaries.

Chairman Hart stated there was one caveat. The City Manager's requirement was in the Charter; everyone else was an ordinance (sic/resolution). The ordinance (sic/resolution) could be changed by a majority vote of the Council at any time; the Charter was a big deal to change.

Member Wheatley stated he saw no reason to change the status of what was there.

Member Miller stated his agreement with Member Wheatley. The way it was structured currently seemed the right way to go. Changing it would create more issues as opposed to solving anything.

Member Baker asked if there had been a City Manager in recent history who had not lived in the city limits?

Member Mills stated that Henry Lawrence had not lived in the city limits.

Member Kirby stated there had also been a case many years ago where the home of the City Manager was a flag lot. It was surrounded by property that was in the city limits, but that particular parcel had not been annexed. That piece had to be rezoned and annexed so he could meet the requirement for residency.

Chairman Hart stated his suggestion was that the City Manager need not be a resident of the city or state at the time of appointment, but promptly thereafter shall become and remain a resident of the 8C School District while in office. That would broaden it. The current language was that they had to live in the city.

**KIRBY moved THAT THE LANGUAGE INDICATE THE CITY MANAGER MUST LIVE WITHIN THE CITY LIMITS.**

Chairman Hart stated that was the current language. Motion died for lack of second, so the language remained as currently written.

#### **Section 4.2: City Manager - Vacancy**

Mr. Brown stated this issue arose based on a comment Member Mills had received, as well as a comment made in a Council meeting a few meetings back. The LOC Model Charter explained the intent of it. The way it was currently written was that if the City Manager left town, the Council had to establish a City Manager pro tem. As noted in the model charter, that was not what was intended. If the City Manager left or had an extended period of absence, or the Council was seeking another Manager, that was when the Council would appoint a City Manager pro tem. The practice in his profession was that if the City Manager left town, he would appoint an acting City Manager. In the case here, it depended upon how long he was going to be gone, and what might arise. He liked to give the other department heads an opportunity to sit in his shoes for a day or two. He had rotated around the with the Fire Chief, the Police Chief, the City Recorder, the Community Development Director, to give them experience. He'd like to continue that practice. He had never heard anything like it had been interpreted in the current Charter.



Chairman Hart stated the current city Charter noted that if the City Manager was absent. The model charter did not speak to that. It was more centered on the City Manager becoming disabled or if the position became vacant. It was more permanent. Ontario's also currently read that the pro tem Manager could only remove a department head with a 2/3 vote of the entire Council; however, the model Charter read that the Manager may appoint or remove employees only with Council approval. He assumed that meant a simply majority.

Mr. Brown stated that section was in the model charter, just located in another area, 8.1(h). It was pretty standard that only the Council could approve removal of a department head when operating under a Manager pro tem.

Chairman Hart stated the city's Charter currently read it would take a 2/3 vote of the entire Council, so there was a difference.

Member Kirby stated because this was for a more permanent change in the position, if they were going to have something that addressed a temporary absence, it should be placed in 4.2(5), an addendum for a temporary absence for things like vacations, attendance at trainings, that type of thing. Put that in a separate paragraph.

Chairman Hart asked if Member Kirby was suggesting the City Manager would need to bring that to the Council for approval? Currently, he did that, but it was just to make them aware and then naming who would be in charge in his absence.

Member Kirby agreed, but this question had been raised before because of that existing paragraph. Did they want to leave it in the existing paragraph or set it out.

Mr. Brown stated that would depend on if they wanted to bifurcate the issues or were okay with the model charter. One challenge he was aware of was in announcing his absence. That had resulted in homes being robbed because people knew he was out of town. That had not happened to him personally. The intent of the model charter was that if the City Manager left, the Council would choose the Manager pro tem. He didn't get top appoint it as he walked out the door.

Chairman Hart stated he had not issue with the City Manager temporarily appointing a pro tem manager. If he made a wrong choice, he'd be held accountable.

Mr. Sullivan stated the problem with the current draft was the language that read "...is absent from the city." Physically absent could mean in Fruitland, or anywhere outside of the city. The narrow reading of that phrase was giving rise to a lot of the questions. What did it mean to be absent from the city? Many people were able to function well because it was easy to communicate. If someone was gone for a week, but were still able to monitor what was going on at City Hall, it might be possible to not have anybody officially appointed if the Manager was still able to carry on his day-to-day functions even without being in town. There might be a way to address that ambiguity. Maybe by stated "...is absent from the city and is unable to perform the day-to-day functions of the City Manager", something like that. Define it more carefully to eliminate some of the ambiguity.

Mr. Brown state had been gone last year at a state campground, and he was out of cell phone range. However, he was confident that being gone on Thursday through Saturday hadn't been an issue and he hadn't been worried. Most times he was within cell range.

Member Wheatley stated he agreement with Chairman Hart and Member Kirby. With Member Kirby's point of being absent for vacation or trainings was a separate issue from what 8.1 was addressing. And, Chairman Hart was on point when he stated what they should be looking at was if they wanted to change from a 2/3 vote to a majority vote. They seemed to be discussing two different issues and it was becoming confusing.





Chairman Hart stated it made sense for the committee to adopt the model charter in this case, which would remove that ambiguity related to temporary absences. It read "...*When the manager is temporarily disabled from acting as manger or when the office of the manger 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 manger may appoint or remove employees only with Council approval.*" That removed the super-majority and it removed the absence language.

Mr. Brown stated it would also remove that 2/3 requirement.

Member Mills stated she liked the LOC model charter definition, but maybe keep the last sentence from the current Ontario Charter. Keep "*the term of office of the city manager pro tem ends when the city manager returns to the city or takes office.*" That piece should stay.

Mr. Hall for Member Taylor: *I move with that change.* She clarified the change Chairman Hart just spoke of.

Chairman Hart stated Member Mills had brought up a sentence that would add to the model charter, the term of office of the city manager pro tem ends when the city manager returns to the city. Was that due to a vacation or was it more towards an actual absence. If they were temporarily disabled or vacated the position, they would not be returning.

Mr. Sullivan suggested changing it to read the term of the office of the City Manager pro tem ends when the City Manager resumes office; just take out some of those words.

Chairman Hart stated "...or was replaced by an appointed City Manager?"

Mr. Sullivan stated then the former City Manager would have had to be officially terminated.

Chairman Hart suggested "...the term of the office of the City Manager pro tem ends when the City Manager resumes their duties."

Mr. Sullivan agreed, the City Manager's duties.

Chairman Hart stated the two big changes they were making would be, if they agreed, would be getting rid of the temporary absence for vacation and the 2/3 majority vote to concur with removal of employees during that time. *When the Manager was temporarily disabled from acting as Manager, or when the office of the Manager becomes vacant, the Council must appoint a Manager pro tem. The Manager pro tem has the authority and duties of the Manager except that a pro tem Manager may appoint or remove employees only with Council approval. The term of the office of the City Manager pro tem ends when the City Manager resumes the City Manager duties.* Thoughts?

Member Baker asked if that verbiage cover the City Manager quitting?

Chairman Hart stated he believed so. If the City Manager resigned, the Council would be required to appoint a Manager pro tem and that person would be in that slot until...the other difference maybe was that the LOC model charter referred to the Manager and the city said City Manager. When the *City Manger* was temporarily disabled. Wherever it read Manager, they should say City Manager.

Member Mills verified they were removing the word "temporarily", correct?

Chairman Hart said no, it would be "temporarily disabled" so that would remain. He reminded the Committee there was a motion on the floor. Was there anything further from Member Taylor?

Mr. Hall for Member Taylor: *No changes.*

Chairman Hart asked if Member Taylor was okay with the friendly amendments to her motion.



Mr. Hall for Member Taylor: *Yes please. Thanks!*

BAKER seconded the motion.

Mr. Sullivan stated if they read the first sentence of the model charter, it dealt with two separate situations. One, temporary disability; second, where the office of the Manager became vacant. If the office of the Manager became vacant, the Manager was never going to be coming back again. If they added the second sentence, the one being taken from the current Charter, that needed to be changed to read that when the City Manager resumed taking office or a new City Manager was appointed. That would deal with both situations where the city might need a pro tem. If the Committee read the first sentence of the model Charter, there were two

Chairman Hart asked for clarification on that statement.

Mr. Sullivan stated if the Committee read the first sentence of the model Charter, there were two circumstances in which a pro tem could be appointed. One, where the City Manager was temporarily disabled, or second, where the office of the Manager became vacant. The office of the Manager was going to become vacant only if there was no longer a City Manager. The City Manager had quit or been fired. That had happened before, and that's when the city appointed a City Manager pro tem. It might be alright to have that language in there as discussed, but the last sentence of the current Charter except that only dealt with the situation in which the city had the City Manager temporarily disabled. It didn't deal with the situation where a new City Manager was being hired. The question was if they wanted to have that added to that last sentence, so they were dealing with the same two situations in which the pro tem was originally appointed. Either the City Manager has come back permanently, or the City Manager was gone, and a new City Manager was appointed.

Member Mills asked if it could read "when or if the City Manager returns?"

Mr. Sullivan stated there were many ways to deal with it. He was just raising the issue that the first sentence in the model charter had two distinct situations in which the pro tem could be appointed. If they wanted to deal with those two situations with the last sentence.

Chairman Hart stated Member Baker had an idea. If the Motion (by Member Taylor) and the second (by Member Baker) would rescind the action, then the Committee could ask staff to draft what he believed was the consensus by the Committee for review. At the next meeting, similar to what they were going to do with regard to the Council President section, they'd be ready for a vote on it.

Mr. Hall for Member Taylor: *I withdraw my motion.*

Member Baker withdrew his second to the motion.

Mr. Sullivan stated he would be able to draft the language they were asking for.

### **Section 5.2: Municipal Judge: Appointment**

Chairman Hart asked who brought this Section forward? The question was should the selection of the municipal judge stay the same? Term of four years and number of terms limited, such as two years maximum.

Member Mills stated the person who presented the question to her wondered since the Mayor and Council had terms, should the Municipal Judge also have terms. Was it the county or the state who dictated when the Judge's term was expired?

Mr. Sullivan stated cities had the authority to determine whether or not they wanted a Municipal Judge or what their terms would be. That was not done by state law.



Member Mills stated the comment to here was "*should selection of the Municipal Judge stay the same? Term of four years, review and reelect, and number of terms limited, like two terms maximum.* They were seeking more clarity on how long the Judge was in that position.

Member Kirby stated Mel Walters, a local attorney, had served in that capacity for a number of years. He had the credentials to perform the duties. The term "Municipal Judge" challenged him, and the scope of practice should be of concern. The city would expect a lot from that individual. They had solved that dilemma by giving the authority to the Justice Court, who worked on the city's behalf. However, the current Justice refused to hear some of the city's cases. It was the overall process that he questioned.

Mr. Sullivan stated the current Charter language made it discretionary with the Council as to whether or not to appoint a Municipal Judge. That was also outlined in the LOC model charter. It was not mandated that there even be a Municipal Judge.

Chairman Hart asked Member Kirby what he was asking the Committee to do.

Member Kirby stated he wasn't sure. The present way it was being operated, didn't fit the current description. In his opinion, the city didn't currently have a Municipal Judge, and hadn't since Mel Walters.

Chairman Hart suggested skipping it. He hadn't heard any comments about terms. If the city had a Municipal Judge, it would be appointed by the Council, and the Council would also remove them.

Member Wheatley asked what the alternative would be to having a Municipal Judge.

Mr. Sullivan stated there was currently an attorney challenging the city's ability to have Hearing's Officers because that attorney was claiming that only Municipal Judge's could impose fines. He personally disagreed with that, but that was an issue that was going to be before the Circuit Court. The language in the current Charter allowed a Municipal Judge to be appointed, but it did not require it. Traffic citations went to the Justice Court, and there was a contract that had been signed in the early 2000s with a former Justice of the Peace that was approved by the county, to allow city citations to go through Justice Court and when that happened, the Justice of the Peace was acting at the Municipal Judge. That had been in place since 2002. There was a Municipal Judge that handled citations on behalf of the city under this long-standing contract between the county and the city.

Chairman Hart asked if that was covered under Section 5.4: Municipal Court, Transfer of Power? It read *the Council, by majority vote, may provide for the transfer of powers and duties of the Municipal Court to the appropriate court for the State of Oregon.* Had that been done by a past Council?

Mr. Sullivan stated it was reading that it could be transferred to another court, so yes, that was what happened. The duties of the Municipal Court had been transferred to the Justice Court with respect to traffic citations.

Member Wheatley asked if the city currently had a Municipal Judge?

Mr. Sullivan stated the Justice of the Peace was performing the duties of Municipal Judge. The city also had Hearings Offices who handled some types of cases that could result in the imposition of fines. Those were not handled through the Justice of the Peace.

Chairman Hart stated the current language didn't preclude the city from bringing on a Municipal Judge. It read that if the city had a Municipal Judge, the Council would appoint them.

Member Wheatley stated that was a good idea. Maybe they'd get some things done in the city that needed to be done.

Riley Hill asked Mr. Sullivan if there wouldn't be a differentiation between a land use decision, which Mike Pratt was handling before, as opposed to a violation? Land use decisions were a completely different area. That clarification needed to be made.

Mr. Sullivan stated that was correct. Many cities, even those who had Municipal Courts, had Hearings Officers as for land use issues. Those were complex enough that a lot of lawyers wouldn't be able to perform that function. The city often used Dan Cummings as the Hearings Officer even though he was also head of the Planning Department because he was the person in the city who knew the most about land use issues. However, he had made decisions that had been challenged in court. It wouldn't make sense to have a Municipal Judge be the Hearings Officer for most planning and zoning cases because they wouldn't normally have the credentials to be making those type of decision. It was pretty specialized law.

Chairman Hart stated the issue that had been raised by Member Mills on behalf of a citizen, it didn't appear to be an issue, so he'd suggest removing that. Was Member Kirby advocating to strip it out from the Charter, leave it as it stood, or to make changes to the existing language?

Member Kirby stated he was trying to move from where the city currently was and into the future. Trying to see if they could clean up the Charter and make it better for the city. It wasn't going to change anything that was occurring currently. He was looking to the professionals to see if the LOC addressed it differently. Maybe there was clearer thinking somewhere.

Chairman Hart stated at the next meeting, the Committee would address the two issues discussed earlier: clarification on Council President and the issue related to the temporary vacancy of the City Manager position. Then they'd start on the matrix with the discussion on the City Attorney.

#### **ADJOURN**

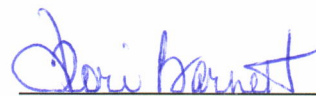
MILLS moved, MILLER seconded, **THAT THE MEETING BE ADJOURNED.** Roll call vote: Hart-yes; Kirby-yes; Baker-yes; Miller-yes; Mills-yes; Taylor-yes; Wheatley-yes. Motion carried 7/0/0.

#### **ACCEPTED:**



Ken Hart, Chairman

#### **ATTEST:**



Tori Barnett, MMC, City Recorder