

REVISED EDITION

MODEL COUNTY CHARTER

National Civic League
1889 York Street, Denver, CO 80206

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TABLE OF CONTENTS

FOREWORD.

INTRODUCTIONxi

Article I - POWERS OF THE COUNTY

Section 1.01. Powers of the County 1
Section 1.02. Construction 1
Section 1.03. Intergovernmental Relations 1

Commentary on Article I

Article 11 - COUNTY COUNCIL

Section 2.01. General Powers and Duties 5
Section 2.02. Composition, Eligibility, Election and Terms...5
Section 2.03. Chairman of the Council 8
Section 2.04. Compensation; Expenses 9
Section 2.05. Prohibitions 10
Section 2.06. Vacancies; Forfeiture of Office;
Filling of Vacancies 10
Section 2.07. Judge of Qualifications 11
Section 2.08. County Clerk 11
Section 2.09. Investigations 12
Section 2. 10. Independent Audit 12
Section 2.11. Procedure 12
Section 2.12. Action Requiring an Ordinance 13
Section 2.13. Ordinances in General 13
Section 2.14. Emergency Ordinances 14
Section 2.15. Codes of Technical Regulations 15
Section 2.16. Authentication and Recording; Codification;
Printing...15

Commentary on Article **II**

Article III - COUNTY MANAGER

Section 3.01. Appointment; Qualifications; Compensation...27
Section 3.02. Removal27
Section 3.03. Acting County Manager27
Section 3.04. Powers and Duties of the County Manager ...28

Commentary on Article III 29

Article IV - DEPARTMENTS, OFFICES AND AGENCIES

Section 4.01. General Provisions.....33
Section 4.02. Personnel System.....33

Section 4.03. Legal Officer 34
Section 4.04. Planning 34

Commentary on Article IV 35

Article V - FINANCIAL PROCEDURES

Section 5.0 1. Fiscal Year 39
Section 5.02. Submission of Budget and Budget Message....39
Section 5.03. Budget Message 39
Section 5.04. Budget 39
Section 5.05. County Council Action on Budget..40
Section 5.06. Appropriation and Revenue Ordinances ...41
Section 5.07. Amendments after Adoption 41
Section 5.08. Lapse of Appropriations 42
Section 5.09. Administration of the Budget 42
Section 5. 10. Overspending of Appropriations
Prohibited 43
Section.5.11. Capital Program 43
Section 5.12. County Council Action on Capital
Program 44
Section 5.13. Public Records 44
Commentary on Article V44

x / MODEL COUNTY CHARTER

Article VI - COUNTY ELECTIONS

a 4- 02 All 0 Vi 4

Section 6.01. County Elections 49
Section 6.02. Council Districts; Adjustments
of Districts 49
Section 6.03. Initiative and Referendum 52

Commentary on Article VI.....53

Article VII - GENERAL PROVISIONS

Section 7.01. Conflicts of Interest;
Board of Ethics57

Section 7.02. Prohibitions58

Commentary on Article VII 59

Article VIII - CHARTER AMENDMENT

Section 8.01. Proposal of Amendment61
Section 8.02. Election62
Section 8.03. Adoption of Amendment62

Commentary on Article VIII 62

Article XI - TRANSITION/SEPARABILITY PROVISIONS

Section 9.01. Officers and Employees65
Section 9.02. Departments, Offices
and Agencies65
Section 9.03. Pending Matters66
Section 9.04. Laws in Force66
Section 9.05. Schedule67
Section 9.06. Separability68

Commentary on Article IX. 69

APPENDIX

AN ELECTED COUNTY EXECUTIVE 71

INITIATIVE AND REFERENDUM 76

Commentary on Initiative and Referendum ... 82

INTRODUCTION

Publication of the Revised Edition of the *Model County Charter* reaffirms the long held commitment of the National Civic League the increasing importance of county government in the American federal system. During the last half of the twentieth century, counties have experienced significant changes in both their role and structure, but they must continue the process of adjustment as they are required to cope with critical social, economic and environmental problems in urban, suburban and rural areas.

Considering the enormous diversity of counties, it may be considered presumptuous to present a "model" form which obviously will not fit all or even a majority of American counties. Repeated is an assertion made in the introduction to the 1956 edition of the *Model County Charter*:

No model charter or law can be drafted which should be adopted anywhere without change. The vast differences in the size, resources and problems of the 3,000-plus organized counties would in themselves make it impossible to prescribe a single basic law or charter equally applicable to all. When to these differences are added the differences in constitutional and legal provisions for county government and differences in political habits and traditions, it is clear that there can be no single neatly packaged answer to the whole problem of governmental organization and power for every county. ...The Model is offered, therefore, not as a panacea but as a resource, seeking to embody as much as possible of the best and most up-to-date thinking on the basic structure of county government ... goals for drafting home rule or special county charters ... for the preparation of optional county charter laws or for amendments of provisions of state constitutions and laws where those provisions prevent or impede the modernization of county government.

The revised *Model County Charter* continues to endorse a structure in which all the powers of the county are vested in the elected governing body which appoints as the county's chief executive a professional manager who is continuously responsible to and removable by the elected governing body.

As was indicated in the earlier edition, the *Model* must be modified to fit local circumstances. Some alternatives are provided in the model text, others suggested in the commentary, and a basic departure from the endorsed form is covered in an appendix dealing with an elected chief executive structure.

Prospects for Progress

Critics of county government have subjected it to more political invective than any other level of government. It has been described as clumsy, antiquated, ramshackle, headless, crooked, and, of course, inefficient and expensive. It was called the "dark continent" of American politics and "the courthouse gang" was the label given to what some considered the "last ditch" stand of the old-fashioned political system.

While the name-calling was going on, leaders of the National Municipal League (now the National Civic League) were urging that the same approach they were proposing for the reform of municipal government was applicable to counties. As early as 1913 the council manager plan based upon the "short ballot" principle was seen as the way to simplify county government. Unfortunately, most people didn't read beyond the title page of the National Short Ballot Organization's little 1917 book, *The County: The Dark Continent of American Politics*. It was a plea for reconstruction of county government. It lauded California's 1911 County Home Rule Constitutional Amendment and the Los Angeles County Charter adopted in 1912.

At the same time Reformer Richard S. Childs, leader in both the Short Ballot Organization (which he and Woodrow Wilson had founded a few years earlier) and the National Municipal League, had launched the campaign for council-manager government in cities. He also was talking about the "prospect for progress" in county government and stated the essentials of county reform:

A satisfactory solution of the many problems can be worked out only by a steady process of evolution, under conditions that give scope for experiment, free from needless Constitutional restrictions. The counties must be free to advance individually and not be in perpetual lock step. Let the more progressive counties feel their way cautiously forward, to be followed by others when the value of a given step is clearly proved by experience.

The path of progress will surely be in the general direction of unification and simplification. Some of the elective officers must be transferred to the appointive list, and those, who remain elective must be built up in power, influence, and conspicuousness until they command the discriminating attention of the electorate. The ballot must not continue to be too long to remember, but must be shortened sufficiently to come within the complete oversight of the voters. Responsibility must be clearly located. The county must be given a definite head. The limbs and body must be joined together and put under the easy control of a brain. Not otherwise can the people of a county secure an organism that will be an effective and efficient servant.

Principles of a Model

By 1930 Mr. Childs and the other reformers in the National Municipal League, seeing the success of the *Model City Charter* in fostering adoption of the council manager plan by cities, were confident enough to prescribe the "Principles of a Model County Government":

- Provision of a wieldy but representative policy-determining body, elected by the people and responsible to them for the conduct of county government.
- Creation of a single responsible executive head chosen by the policy-determining body and accountable to it for the administration of county services and operations (i.e., a manager).
- Appointment of administrative officers by the chief executive, providing a short ballot and centralized administrative control.
- Concentration of activities in a few departments on the basis of function.
- Provision of a substantial degree of flexibility to permit adjustment to varying local situations.

Subject to state constitutional requirements, the proposed plan is suitable for embodiment either in a county government law of statewide application or in an individual county charter (see NATIONAL MUNICIPAL REVIEW, August 1930, p. 565, and September 1933, p. 456).

In 1930 the League published *A Model County Manager Law* based on these principles. This was almost an act of faith on the part of the reformers. There was little enthusiasm among incumbent county officeholders to undertake change, and very little civic support for doing so, due to lack of confidence in the capacity of counties to emerge from long-held practices. Also, many citizens considered the county an extraneous, unnecessary layer of government, and saw no reason to improve it. For local government services they looked to "city hall." Some residents of incorporated municipalities just didn't think they needed the county. "Give its state functions to the state and its local functions to the city," they said with a closed mind to the possibilities of a greater role for counties.

Moreover, state constitutions presented formidable obstacles to county reform. Often a uniform system of county government was prescribed in the constitution for counties large and small. The idea of a chief executive, appointed or elected, had very limited appeal. There was, however, some pioneering experience in a number of counties. By 1933, nine California counties had taken advantage of the county home rule amendment and had adopted charters. Most of these had appointed administrators. An appointed administrator for a non-charter county had been originated in North Carolina. Three Virginia counties already had managers following the lead of Virginia cities. The first two elected county chief executives were created when Nassau and Westchester counties in New York adopted charters in the mid-1930s.

Regional Potential

At the same time the National Municipal League issued its pioneering report on government in metropolitan areas in the United States. It made a strong statement on the potential of county government for meeting metropolitan problems:

Where county boundary lines coincide with those of the region, the county government, revamped and modernized, may serve as the foundation on which to build a regional organization. In other cases, in which the region covers two or more counties, the county may be preserved as a constituent part of a federated government, its historic role being modified in accordance with the demands of a new situation. (see National Municipal League, *The Government of Metropolitan Areas*, 1930, p.388).

During the New Deal era, World War II, and the years immediately following, relatively little happened on the county reorganization front, and (in general) little was done to reduce constitutional obstacles. Missouri, the state which originated the municipal home rule charter concept in the 19th century, adopted a new constitution in 1945 which extended the opportunity to adopt home rule charters to the state's largest counties. St. Louis County was quick to take advantage of this, approving its own charter in 1950. Montgomery County, Maryland had begun to operate under a charter in 1948.

Meanwhile, the logic of making counties responsible for area wide functions caught on, partly because hard-pressed cities wanted the suburban areas out in the county to share the burden of functions serving more than city residents. As the principle subdivisions of the state, counties long had the major responsibility for performing services which are provided statewide (e.g., judicial administration, elections, detention, and roads). But they became increasingly involved in operating parks, libraries, hospitals, airports, health and welfare, waste disposal- indeed every "municipal-type" service. Counties, notably Los

Angeles County, became wholesalers of services to municipalities.

Form Follows Function

Forward-looking county officials welcomed the new responsibilities, but some accepted this new role reluctantly. It became evident that the traditional rural forms were inadequate. The fundamental architectural principle of *form follows function* describes the evolution of county government in the last three decades and is a precept which can guide its future.

In the early 1950s, the National Association of County Officials (NACO) was a sleepy organization, an "old boy" network with only a part-time staff. Beginning in the late 1950s, it accepted the responsibility for providing leadership in building an agenda to strengthen the organizational, functional and financial base of county government. NACO was renamed the National Association of Counties WACO. In 1959 it held the first Urban County Congress and made a strong case for the important role of counties in providing urban services and their great potential for dealing with substate regional problems, particularly in metropolitan areas. Later NACO's New Counties U.S.A. Center gave special attention to county reorganization.

The 1955 report of the Commission on Intergovernmental Relations (the Kestnbaum Commission) pointed out that the evolution of intergovernmental relations in the United States had enhanced the importance of counties as a part of the decentralized element of the American federal system:

The intermediate position of the county between the state and municipal governments in some areas, and its position as the primary area of local government or administration in others, have steadily enlarged its importance in intergovernmental relations. It continues to serve in its traditional role as an agent of the state for law enforcement, judicial administration, the conduct of elections and other important functions. At the same time, county governments have gradually been acquiring functions and powers of a municipal character, some of them transferred from municipalities with inadequate area and resources. The result is that in most states the responsibilities of local government are increasingly being divided between municipalities and counties. This movement has been accelerated in recent years by the fact that the national government has found the county more convenient than the municipality as a base for a number of grant-aided programs.

The county seat is commonly the headquarters for officials administering certain federal programs, and the county government is often the only available local unit with which the national government may cooperate. In three fields where federal grants-in-aid directly affect large numbers of people, welfare, health, agriculture-the county is involved in varying degrees as counties assume more and more responsibility for carrying out programs for the state government, or for the national-state governments, the need for improved county government becomes more urgent.

Unquestionably, a major, if not the most important, item on the NACO agenda from the early 1960s on was to mobilize the political power of counties as a lobbying force in Washington. The expansion of county eligibility for federal grants of an urban character attested to NACO's effectiveness. In one five-year period counties' direct federal aid increased by over 800 percent. There is no question that this effort moved county governments into the major league of lobbyists alongside the cities. This direct aid which bypassed the states supported many enormously important programs but some have suggested that it let state government off the hook. Now, with federal aid diminishing will state responsibility be ready to fill fiscal gaps? County government has assumed a conspicuous place in intergovernmental relations. County officials are full partners in the Advisory Commission on Intergovernmental Relations.

Flexibility and Adapatability

NACO in 1959 at that first Urban County Congress not only emphasized the functional dynamics of counties but also the importance of new and stronger structures. Metropolitan Dade County, city-county consolidation in Baton Rouge, and Los Angeles County's Lakewood Plan were showcased along with attention to city-county and county-state cooperation. In the 1960s and 1970s counties achieved some important progress in state constitutional change, which opened up opportunities for greater organizational flexibility. Both Alaska and Hawaii came into the union with well conceived home rule provisions in their constitutions. New constitutions in Pennsylvania and Montana set in motion significant reviews of local government and the opportunity for counties to adopt charters with the same home rule status as municipalities. Amendments to the Arkansas and Tennessee constitutions mandated elected executives for all counties. Illinois, Iowa, Louisiana, South Dakota and Utah have new constitutional provisions which expand local discretion at the county level. Statutory provisions for alternative forms have been adopted in many states with a new emphasis upon flexibility in non-charter counties. With the great expansion of the functional importance of counties it was apparent that their form had to change.

Change was not as drastic or as rapid as some reformers might have wanted, but it came. Today there are almost 700 counties with appointed administrators. Their National Association of County

Administrators has close ties with the International City Management Association, which has brought a high level of professionalism to local government administration. By a recent count there are 375 elected county executives. To be sure the mandated executives in Arkansas, Tennessee and Kentucky account for well over half of these but there are over 100 in other charter and non-charter counties. Whether elected or appointed the executive is a well established feature of modern county government.

The policy-making side of county government has also experienced change. In some places, the county commission has been converted into a legislative body, turning administration over to the professional administrator. In others, under the one man-one vote judicial mandate, single-member district legislative bodies have replaced less representative systems.

The guidelines of the reformers, particularly those contained in the *Model County Charter*, provide a point of departure for those designing reorganization proposals for specific counties. Present day model-builders are by no means as doctrinaire as the reformers of 50 years ago. They know that there are no absolutes, that flexibility and adaptability are required. Fortunately, increasing numbers of incumbent officeholders are also demonstrating their recognition of the importance of flexibility and the need to adjust to change.

There has not been a rush to take advantage of the increasing legal availability of county home rule charters, but of the 85 home rule county charters adopted to date, 68 have been put in place since the 1959 Urban County Congress. Significantly, the overwhelming majority of the changes providing for professional administrators in non-charter counties have occurred in the last two decades.

What about consolidations? There has been an inclination to dismiss city-county consolidation as a futile approach to local government reorganization because so many attempts have failed. It is more appropriate to note, however, that since New Orleans and Orleans Parish in Louisiana were merged in 1805, there have been 27 successful consolidations. Of these, 15 have taken place since 1960 and all but one were adopted by referendum. The consolidations in Nashville/ Davidson County, Jacksonville/Duval County and Indianapolis/Marion County Unigov have been especially noteworthy, but it is important to note that some recent consolidations have been in smaller places (e.g., Anaconda/Deer Lodge County and Butte/Silver Bow County in Montana). While there has been a significant amount of functional consolidation within the framework of county government. There has been very little interest in consolidation among smaller counties, the question is being raised where drastic declines in population have occurred.

It is clear that demands upon counties will continue to increase. Pressures to preserve open space and provide environmentally sensitive services (e.g., waste disposal, water supply) increasingly must be addressed by counties because the problem can seldom be solved by individual municipalities. More municipalities are recognizing that solutions cannot be achieved if they act alone. Some say that this is because official pressures and the fact that the elimination of general revenue sharing means that every unit can no longer expect a check from Washington.

Counties and other local governments are due some support, fiscal and otherwise, from the federal government, but it is clear that such support will increasingly be targeted to deal with problems of particular severity, and that the days of "something for everybody" are over. It is essential that joint action be encouraged and counties must be equipped to play a central role in cooperative undertakings, some of which may be mandated as a condition to the limited federal assistance made available. County-municipal relationships vary greatly, but there is no doubt that both levels of local government will be involved in an increasing number of interlocal agreements, joint exercise-of-powers relationships, service contracts, and technical assistance.

County-state relationships have certainly improved but the record is uneven and again the state can and should provide support in various forms and should remove constraints which stifle innovation at the local level. Indeed, states should provide incentives for structural improvements in county government and functional consolidation and the use of the county as a vehicle for meeting substate regional problems.

The theme of this introduction is an assertion of the principle "form follows function." It is when the function of county government changes that its form adjusts to accommodate that change. In the closing decades of the twentieth century county government in the United States is experiencing more significant changes than at any time since counties were established on the North American continent in the seventeenth century.

"County government is the product of a thousand years of piecemeal growth. Its foundations were laid in medieval England, and the superstructure has slowly risen through the intervening centuries. Like some old sprawling castle, it bears the imprints of many a builder and its rambling arrangement betrays the utter absence of consistent

INTRODUCTION / xxi

plan." (Introduction to 1956 edition of the *Model County Charter*.) Where uniformity has been imposed on county government it has lost the vibrance which has sustained it over the centuries; the source of its durability has been adaptation to change.

The revised edition of the *Model County Charter* is designed to assist in the process by which county government continuously adapts its form and structure to meet new and changing demands.

THE MODEL CHARTER: A GUIDE

It must be emphasized repeatedly that the *Model County Charter* is not a panacea, nor should any county adopt it without modifications necessary under state law, taking into account local traditions and practices. Counties vary greatly in size, in the number of functions they perform, and in their relationships with the state and other units of local government. These differences must be considered as a home rule charter is drafted for a particular county. The *Model* serves as a guide.

The *Model* applies to the county some 75 years of experience in local government and provides for:

1. A substantially integrated county government in place of the collection of loosely connected independent officers and agencies that comprise the typical county government today.
2. A representative policy-determining body (or council) of manageable proportions, elected by the voters and responsible to them for the general conduct of county affairs.
3. A single administrative head or manager (chief executive officer) chosen by the council and accountable to it for the effective administration of county services.
4. The choice of principal administrative officers by appointment by the chief executive, thereby achieving a short ballot, unified administrative control, and fixed responsibility for county administration.
5. A substantial degree of flexibility in the administrative structure to permit its adjustment to changing local needs and conditions.
6. Modern procedures for fiscal management.

Powers

This *Model*, as all of the League's model charters, is designed to enable a local government to make full use of home rule powers as the constitution and laws of the state permit. In the first place, it assumes that a county has wide discretion with respect to the form and structure of its government, including the method of selection of the principal county officials. Secondly, the model "powers" provision claims all powers available to the county including the authority to provide municipal-type services. The difficult problem of adjusting home rule claims of the county and municipalities within it is recognized, and broad authority is given for joint exercise of powers and cooperative intergovernmental relationships.

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.

Organization and Procedures

The *Model* provides for the establishment of county departments, offices and agencies by the county council. It does not provide a model scheme of departmental organization because of the great variety in county functional responsibilities. Although some charters may appropriately provide for specific departments, care should be taken to avoid freezing into a charter any departmental scheme making adaptation to changing conditions difficult. The *Model* does provide for a legal officer with alternative methods of appointment included.

Previous model charters have included detailed provisions for personnel administration and planning. This *Model* recognizes that to an increasing extent, state statutes control both. The *Model* places with the council the responsibility for establishing a personnel system based on the merit principle and the organization and procedures for planning.

The *Model's* financial procedures, as in the previous edition, are relatively simple with clarification of procedures for the adoption of the budget, capital program, and appropriation and revenue ordinances.

Unlike earlier models, this edition does not include detailed election procedures, recognizing that state election laws apply to all counties whether or not they operate with local charters. The *Model* includes as an option a basic provision for using the initiative and referendum, if they are authorized by state law, and includes procedures for their use in an appendix.

An Elected County Executive

Although the *Model* provides for an appointed executive, it recognizes that some counties are operating effectively with elected chief executives. Therefore, an appendix supplies examples of key provisions in charters providing for an elected chief executive, including those which define the duties of professional administrators appointed by the elected executive.

Repeated as equally appropriate in 1989 is the concluding paragraph of the introduction to the 1956 *Model County Charter* by John E. Bebout:

It has already been observed that there is evidence of a mounting belief in the American County and a growing interest in preparing county governments to meet greater responsibilities. One of the most encouraging factors in the situation is the new faith that county officials themselves are displaying in the importance of their place in our governmental system. The National Association of County Officials [now the National Association of Counties] is taking an active part ... in the effort to strengthen and justify that faith. The *Model County Charter* is offered as a contribution to the same cause.

Terrell Blodgett William N. Cassella, Jr.
May 1990

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Article I POWERS OF THE COUNTY

Section 1.01. Powers of the County.

The county shall have all powers possible for a county to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter.

Section 1.02. Construction.

The powers of the county under this charter shall be construed liberally in favor of the county, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this article.

Section 1.03. Intergovernmental Relations.

The county may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or any state civil division or agency, or the United States or any of its agencies.

COMMENTARY ON ARTICLE I

§1.01. Powers of the County.

The powers provision is based on the principle that the county should lay claim to all powers it may legally exercise under the state's constitution and laws. Restrictions may be made: (1) by specific provisions in the appropriate parts of the charter; (2) by ordinance, since the section does not require that the powers claimed be exercised; (3) by inaction - that is, failure to exercise powers; or (4) by decisions of state and federal courts.

The section simply assures that the county has accepted the total grant of authority available to it. It eliminates the possibility that the general powers provision of the charter would itself limit the maximum power by, for example, embracing less in its terms than the constitutional home rule grant or by inadvertent omission or ambiguity that could open the door to restrictive judicial interpretation. This is the most that the charter can do, for the extent of the powers available to the county will depend on the state's constitution, statutes and judicial decisions. For example, no reference is made in this section to contracting with private vendors for the provision of public services; unless prohibited by law, this is an accepted method for providing a service.

It cannot be overemphasized that the general powers provision of a charter must be tailored to the law of each state. The courts of some states do not give effect to a charter statement of powers expressed in general terms but require that the charter specifically enumerate all of the powers claimed. The words "as fully and completely as though they were specifically enumerated in this charter" at the end of §1.01 are designed to preclude such a view but will not in states requiring an enumeration. The *Model* section cannot be used in these states.

Those drafting charters are cautioned to make a careful study of the state's law on local government powers before using the *Model* provision. As to restrictive approaches by the courts to the interpretation of county powers provisions, the charter can do no more than include directions designed to reverse the court's approach such as those contained in §1.02.

Questions of restrictive court interpretation aside and assuming that a state's law does not require an enumeration, §1.01 is so drawn that it may be utilized effectively under any of the existing types of home rule grant as well as that of the National Municipal League's *Model State Constitution* (6th Edition) and regardless of whether the grant is contained in a constitution, optional charter law or other general enabling act. It must be recognized that as primary subdivisions of states, counties to a very large extent are mandated by state law to exercise specific powers and fulfill certain responsibilities.

§1.02 Construction.

It is desirable to include this section as a declaration of intention even though there may be doubt as to how much effect the courts will give it. It is designed to avoid a restrictive interpretation of the general powers statement in §1.01 and application of the restrictive technique of judicial construction which relies upon the mention of specific powers as evidencing an intention to exclude other or broader powers (*expressio unius est exclusio alterius*).

§1.03. Intergovernmental Relations.

This section provides a clear statement of the county's power to participate in intergovernmental

relationships - to receive assistance from the federal, state and other local governments, to be represented in regional agencies established under federal or state law or intergovernmental agreements, and to perform jointly with any other governmental jurisdiction any function it may perform alone.

The difficulties of drafting an intergovernmental relations provision are similar to those of drafting a general powers provision. The subject is generally governed by superior state statutes which cannot be altered by a charter provision. These state statutes are usually enacted on an *ad hoc* basis, each dealing with a particular project, program, or regional or metropolitan agency. Where more general authorizing statutes or constitutional provisions exist, there is scant judicial interpretation of their effect. Because specific projects are so commonly authorized and governed by specific legislation, there has been very little litigation concerning the extent of a county's power to cooperate with other governments in the absence of such enabling legislation.

There is no need to examine in detail the reasons for the extensive utilization of specific legislation. Important political questions are often involved and state constitutional and statutory limitations on a local government's financial and borrowing powers must be considered. State legislative control over local government powers, coupled with restrictive judicial doctrines, have generally necessitated specific state legislative approval when large sums are spent on joint federal-local government projects.

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.

Section 2.02. Composition, Eligibility, Election and Terms.

Alternative I: Election At Large

(a) **Composition.** There shall be a county council of [odd-number] members elected by the voters of the county at large.

(b) **Eligibility.** Only registered voters of the county shall be eligible to hold the office of council member.

(e) **Election and Terms.** The regular election of council members shall be held on the - of in each odd- [even-] numbered year, in the manner provided by law. At the first election under this charter council members shall be elected; the _ [one-half plus one] candidates receiving the greatest number of votes shall serve for terms of four years, and the _ [remainder of the council] candidates receiving the next greatest number of votes shall serve for terms of two years. Commencing at the next regular election and at subsequent elections, all council members shall be elected for four-year terms. The terms of council members shall begin the ___ day of _____ after their election.

NOTE: If staggered terms are not desired, use the following section:

[(c) Election and Terms. The regular election of council members shall be held on the - day of - every - years beginning in _ . The terms of council members shall be years beginning the - day of - after their election.f-

Alternative II: Election At Large with District Residency Requirement

(a) **Composition.** There shall be a county council of [odd-number] members; not more than one shall reside in each of the [odd-number] districts provided for in Article VI. All shall be nominated and elected by the voters of the county at large.

(b) **Eligibility.** Only registered voters of the county shall be eligible to hold the office of council member.

(c) **Election and Terms.** The regular election of council members shall be held on the ___ of ___ in each odd- [even-] numbered year, in the manner provided by law. At the first election under this charter ___ council members shall be elected; the ___ candidates receiving the greatest number of votes shall serve for terms of four years, and the ___ candidates receiving the next greatest number of votes shall serve for terms of two years. Thereafter, all council members shall be elected for four-year terms. The terms of council members shall begin the ___ day of ___ after their election.

NOTE: If staggered terms are not desired, use the following section.

[(c) Election and Terms. The regular election of council members shall be held on the - day of - every - years beginning in . The terms of council members shall be ___ years beginning the ___ day of ___ after their election.]

Alternative III: Mixed At-Large and Single Member District System

(a) **Composition.** There shall be a county council of [odd-number] members. _____ shall be nominated and elected by the voters of the county at large, and shall be nominated and elected by the voters of each of the _____ council districts, as provided in Article VI.

(b) **Eligibility.** Only registered voters of the county shall be eligible to hold the office of council member.

(c) **Election and Terms.** The terms of council members shall be _____ years beginning the ____ day of _____ after their election.

Alternative IV. Single-Member District System

(a) **Composition.** There shall be a county council composed of [odd-number] members. One council member shall be nominated and elected by the voters in each of [odd-number] council districts, as provided in Article VI.

(b) **Eligibility.** Only registered voters of the county shall be eligible to hold the office of council member.

(c) **Election and Terms.** The regular election of council members shall be held on the - of in each odd- [even-] numbered year, in the manner provided by law. At the first election under this charter - council members shall be elected; council members from odd-numbered districts shall serve for terms of two-years, and council members from even-numbered districts shall serve for terms of four years. Thereafter, all council members shall serve for terms of four years. The terms of council members shall begin the _____ day of _____ after their election.

NOTE: If staggered terms are not desired, use the following section.

[(c) **Election and Terms.** The regular election of council members shall be held on the - day of - every - years beginning in _____. The terms of council members shall be _____ years beginning the ____ day of _____ after their election]

Alternative V (Proportional Representation)

(a) **Composition and Terms.** There shall be a county council of [odd-number] members elected by the registered voters of the county at large for a term of _____ years.

(b) **Eligibility.** Only registered voters of the county shall be eligible to hold the office of council member.

(c) **Election.** The regular election of council members shall be held on the _____ of _____ in each odd- [even] numbered years. The Council shall be elected by proportional representation by the method of the single transferable vote.

Section 2.03. Chairman of the Council.

Alternative I

The county council shall elect from among its members officers of the county who shall have the titles of chairman and vice chairman of the council, each of whom shall serve at the pleasure of the council. The chairman shall preside at meetings of the council, represent the county 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 county message, and perform other duties specified by the council. The chairman shall be recognized as head of the county government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. The vice chairman shall act as chairman during the absence or disability of the chairman.

Alternative II

NOTE: If Alternative H is used, Section 2.02(a) should be modified to read as follows: "There shall be a county council composed of the chairman of the council and [even-number] councilmembers elected as provided in Section 2.02(c); the chairman shall be elected as provided in Section 2.03." Section 2.02(c) should be modified to provide for election of an even number of council members by whichever method is used.

At each regular election a Chairman of the Council shall be elected for a term of _____ [the same term as other councilmembers] years. The chairman shall be a member of the county council and shall preside at meetings of the council, represent the county 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 county message, and perform other duties specified by the council. The chairman shall be recognized as head of the county government for all ceremonial purposes and by the governor for purposes of military law but shall have no administrative duties. The council shall elect from among its members a vice chairman who shall act as chairman during the absence or disability of the chairman and, if a vacancy occurs, shall become chairman for the remainder of the unexpired term.

Section 2.04. Compensation; Expenses.

The county council may determine the annual salary of the council members by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of council members elected at the next regular election. The council members shall receive their actual and necessary expenses incurred in the performance of their duties of office.

Section 2.05. Prohibitions.

(a) **Holding Other Office.** Except where authorized by law, no council member shall hold any other elected public office during the term for which the member was elected to the council. No council member shall hold any other county office or employment during the terms for which the member was elected to the council. No former council member shall hold any compensated appointive office or employment with the county until one year after the expiration of the term for which the member was elected to the council. Nothing in this section shall be construed to prohibit the council from selecting any current or former council member to represent the county on the governing board of any regional or other intergovernmental agency.

(b) **Appointments and Removals.** Neither the county council nor any of its members shall in any manner control or demand the appointment or removal of any county administrative officer or employee whom the county manager or any subordinate of the county manager is empowered to appoint, but the council may express its views and fully and freely discuss with the county manager anything pertaining to appointment and removal of such officers and employees.

(c) **Interference with Administration.** Except for the purpose of inquiries and investigations under §2.09, the council or its members shall deal with county officers and employees who are subject to the direction and supervision of the county manager solely through the county manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

Section 2.06. Vacancies; Forfeiture of Office; Filling of Vacancies.

(a) **Vacancies.** The office of a council member shall become vacant upon the member's death, resignation, removal from office or forfeiture of office in any manner authorized by law.

(b) **Forfeiture of Office.** A council member shall forfeit that office if the council member

- (1) lacks at any time during the term of office for which elected any qualification for the office prescribed by this charter or by law,
- (2) violates any express prohibition of this charter,
- (3) is convicted of a crime involving moral turpitude, or
- (4) fails to attend three consecutive regular meetings of the council without being excused by the council.

(c) **Filling of Vacancies.** A vacancy in the county council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than 60 days upon the occurrence of the vacancy, but the council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. If the council fails to do so within 30 days following the occurrence of the vacancy, the election authorities shall call a special election to fill the vacancy, to be held not sooner than 90 days and not after than 120 days following the occurrence of the vacancy, and to be otherwise governed by law. Notwithstanding the requirement in §2.11, if at any time the membership of the council is reduced to less than __, the remaining members may by majority action appoint additional members to raise the membership to __.

Section 2.07. Judge of Qualifications.

The county council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office. The council shall have the power to set additional standards of conduct for its members beyond those specified in the charter and may provide for such penalties as it deems appropriate, including forfeiture of office. In order to exercise these powers, the council shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the county at least one week in advance of the hearing. Decisions made by the council under this section shall be subject to judicial review.

Section 2.08. County Clerk.

The county council shall appoint an officer of the county who shall have the title of county clerk. The county clerk shall give notice of council meetings to its members and the public, keep the journal of its proceedings and perform such other duties as are assigned by this charter or by the council or by state law.

Section 2.09. Investigations.

The county council may make investigations into the affairs of the county and the conduct of any county department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Failure or refusal to obey a lawful order issued in the exercise of these powers by the council shall be a misdemeanor punishable by a fine of not more than \$-, or by imprisonment for not more than -, or both.

Section 2.10. Independent Audit.

The county council shall provide for an independent annual audit of all county accounts and may provide

for more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the county government or any of its officers. The council may, without requiring competitive bids, designate such accountant or firm annually or for a period not exceeding three years, but the designation for any particular fiscal year shall be made no later than 30 days after the beginning of such fiscal year. If the state makes such an audit, the council may accept it as satisfying the requirements of this section.

Section 2.11. Procedure.

(a) Meetings. The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the chairman or of –or more members and, whenever practicable, upon no less than twelve hours notice to each member. Except as allowed by state law, all meetings shall be public; however, the council may recess for the purpose of discussing in a closed or executive session limited to its own membership any matter which would tend to defame or prejudice the character or reputation of any person, if the general subject matter for consideration is expressed in the motion calling for such session and final action on such motion is not taken by the council until the matter is placed on the agenda.

(b) Rules and Journal. The county council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal.

members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council, except as otherwise provided in the preceding sentence and in §2.06, shall be valid or binding unless adopted by the affirmative vote of _ or more members of the council.

Section 2.12. Action Requiring an Ordinance.

In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of the county council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter, or abolish any county department, office or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Levy taxes;
- (4) Grant, renew or extend a franchise;
- (5) Regulate the rate charged for its services by a public utility;
- (6) Authorize the borrowing of money;
- (7) Convey or lease or authorize the conveyance or lease of any lands of the county;
- (8) Regulate land use and development; and
- (9) Amend or repeal any ordinance previously adopted.

Acts other than those referred to in the preceding sentence may be (lone either by ordinance or by resolution.

Section 2.13. Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The county of-hereby ordains..." Any ordinance which repeals or amends an existing ordinance or part of the county code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matters by underscoring or by italics.

(b) Procedure. An ordinance may be introduced by any member at any regular or special meeting of the council. Upon introduction of any ordinance, the county clerk shall distribute a copy to each council member and to the county manager, shall file a reasonable number of copies in the office of the county clerk and such other public places as the council may designate, and shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the council. The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing the council may adopt the ordinance with or without amendment or reject it, but if it is amended as to any matter of substance, the council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures herein before required in the case of a newly introduced ordinance. As soon as practicable after adoption, the clerk shall have the ordinance and a notice of its adoption published and available at a reasonable price.

(c) Effective Date. Except as otherwise provided in this charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

(d) "Publish" Defined. As used in this section, the term "publish" means to print in one or more newspapers of general circulation in the county: (1) The ordinance or a brief summary thereof, and (2) the places where copies of it have been filed and the times when they are available for public inspection and purchase at a reasonable price.

Section 2.14. Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the county council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in §5.07(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least members shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to §5.07(b) shall automatically stand repealed as of the 6 1st (lay following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Section 2.15. Codes of Technical Regulations.

The county council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be its prescribed for ordinances generally except that:

- (1) The requirements of §2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and
- (2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the county clerk pursuant to §2.16(a).

Copies of any adopted code of technical regulations shall be made available by the county clerk for distribution or for purchase at a reasonable price.

Section 2.16. Authentication and Recording-, Codification; Printing.

(a) Authentication and Recording. The county clerk shall authenticate by signing and shall record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the county council.

(b) Codification. Within three years after adoption of this charter and at least every ten years thereafter, the county council shall provide for the preparation of a general codification of all county ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published promptly in bound or loose-leaf form, together with this charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of _____, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the county code. Copies of the code shall be furnished to county officers, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

(c) Printing of Ordinances and Resolutions. The county council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the council. Following publication of the first - County Code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the state of or the codes of technical regulations and other rules and regulations included in the code.

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 ensure 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.

The Model does not list as charter agencies any citizen advisory boards and commissions. The council has the power to establish such agencies. As the body charged with making county policy, the council can

create all appropriate mechanisms, permanent or ad hoc, to assist in that process (e.g., planning board, recreation board, study committees). Likewise it can create agencies with quasi-legislative or quasi-judicial status (e.g., human lights commission, zoning appeals board).

The *Model* does provide that the chairman of the council shall be the presiding officer and a voting member of the council and shall perform certain specific duties which will enhance the chairman's role as policy leader.

§2.01. General Powers and Duties.

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

§2.02. Composition, Eligibility, Election and Terms

In all but a few states the county governing bodies are small. The most common size is three, the next most common number of members is five. The *Model* does not specify the exact number of council members. It considers three too small to provide adequate representation, but does recommend that the council be relatively small - an odd number ranging from five to nine 111Prabers. Although in the largest counties a greater number of council members may be necessary to assure equitable representation, there is wide agreement that smaller councils are more effective instruments for the (development of programs and conduct of legislative business than large local governing bodies. In the United States there have been exceptional situations where a large council, broken into many committees handling specific subjects, has been able to discharge its responsibilities promptly and effectively. Large councils usually have been elected from relatively small districts with die frequent result that parochialism and "log-rolling" distract attention from the problems of the whole county. Some contend, however, that members of larger governing bodies more clearly perceive their role as legislators (i.e., policy makers) and are less inclined to become involved in management of operations than members of small governing bodies who may be inclined to perform in the historic role of county commissioners with administrative responsibilities.

In determining the size of and method of electing the council, consideration should be given to the diversity of population and geographical elements to be represented as well as to the size of the county and the municipal subdivisions within the county.

Alternative I: Nomination and Election At Large

(a) The *Model* recognizes the value of the at-large principle in designing the composition of a council, while recognizing the necessity of providing for representation of geographical areas under certain circumstances. The at large system has allowed citizens to choose council members best qualified to represent the interests of the county as a whole. In larger counties, however, citizens may feel isolated from and unconnected with their government without some geographical basis of representation. This may be true particularly when a county has both urban and rural areas. In considering the appropriateness of using the at-large system, each county must assess its own situation. Counties with significant differences in or conflicts among ethnic, racial or economic groups may wish to consider whether one of the alternative systems may achieve more equitable representation of the county's population and avoid legal challenges under the Voting Rights Act without sacrificing council effectiveness.

(b) No special requirements on length of residence are included because in this era of highly mobile population and frequent disparity between place of work and place of residence, length of residence requirements lose what little validity they may once have had. The simple eligibility requirement is being a registered voter of the county.

(c) It is recommended that, where state election law allows it, elections should be scheduled in odd-numbered years to avoid confusion with state and national elections. The *Model* recommends four-year terms. If staggered terms are used, elections of council members would be held every two years. Model language for both staggered and non-staggered term provisions is included. There are two basic questions which must be raised when staggered terms are under consideration. First, is it desirable to maintain continuity and avoid radical swings in council composition? Second, should citizens be able to change the direction of their government at any election, not wait another two years to complete the change? The issue of whether staggered terms have a discriminatory effect continues to be litigated.

Alternative II: Nomination and Election At-Large with District Residence Requirement

(a) A complaint frequently lodged against the all at-large council system is that a majority of the council may live in the same **area** of the county. This may give rise to questions concerning the equitable distribution of services with allegations that particular sections receive partial treatment. This objection can be met while still maintaining a council elected at large by establishing districts of equal population and requiring that one council member be resident in each district.

Although this alternative does build geographical representation into an at-large system, depending upon the local situation, it may be subject to the same objections under §2 and §5 of the Voting Rights Act as Alternative I.

(b) and (c): See comments under Alternative I.

Alternative IH: Mixed At-Large and

Single-Member District System

(a) The mixed system for a council with members elected at large and members elected by and from districts has become increasingly popular in recent years. One reason for this is the approval it has received from the United States Department of Justice as a method of electing the county council which complies with the requirements of the Voting Rights Act in places where the at-large system has been challenged and where change to a single-member district system is opposed.

The mixed system combines the wide perspective of the at-large council members with the local concerns and accountability of district council members. It can allow in minorities who live in concentrated areas to influence or even determine the outcome of elections in their districts.

A problem can arise when at-large council members consider their position to be superior in importance to district members. It is essential that at-large and district council members have equal status with respect to offices and services, and that there be no difference in length of terms.

There is disagreement as to the correct ratio of at-large to district members. Opinion ranges from favoring a majority being elected at large to a majority being elected by and from districts. This is a matter of local preference. It should be noted, however, that for jurisdictions concerned about scrutiny by the U. S. Department of Justice or the courts under either §2 or §5 of the Voting Rights Act, a clear preference has been indicated for the formulation where a majority of the council is elected by and from districts.

(b) and (c): See comments under Alternative 1. Note that staggered terms are not recommended for the mixed system.

Alternative IV. Single-Member District System

(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.

Whenever districts are used, the drawing of district lines to provide "fair and equal" districts is of utmost importance. Article VI of the *Model* provides districting procedures and criteria designed to prevent gerrymandering and unequal districts, which are unconstitutional under the one person-one vote doctrine.

(b) and (c): See comments under Alternative I.

Alternative V: Proportional Representation

The first edition of the *Model County Charter* and the first five editions of the *Model City Charter* recommended the Hare system of proportional representation (PR) as the preferred method of electing councils. It had been used in 22 American cities but by the early **1960s had been discarded** in all but one of them. It was never used by an American county. Unquestionably, it can be shown that PR can provide the greatest equity in representing all sectors of the community. However, the complexity of PR and the long and expensive counting system confused the voters where it was used and prevented it from becoming a widespread reform measure.

PR is included as an alternative method for electing the council. There is a renewed interest in PR because of its potential usefulness as a means to assure representation of minority populations. Technological developments hold out the prospect for development of a computerized voting and counting system which eliminates some of the objections to PR. A complete explanation of the PR system of voting is available in the fifth edition of the *Model City Charter* (New York- National Municipal League, 1941).

When considering the PR Alternative, charter reviewers may also wish to investigate the so-called "semi-proportional" representation systems - the limited vote and cumulative vote -both of which are designed to assure minority representation.

§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 councilmembers 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.

The *Model* provides two alternative methods for electing the chairman.

Which one is used will depend on local preference and tradition. In most counties the chairman is chosen by and from the governing body. In some counties it is believed that the direct election method increases the potential for leadership by giving the chairman a county-wide popular support base. This is particularly important when all or most of the council members are elected from districts. A disadvantage of this method is the possibility that the chairman will be at variance with the council majority on some important issues. When the chairman is elected by and from the council, the possibility of conflict between the chairman and the council majority is avoided. Some counties follow practices which may diminish the prospect of effective leadership. For example, rotation of the office of chairman among members may preclude the emergence of a respected leader who will be able to acquire experience and increase his or her competence in the exercise of leadership skills. An awkward alternative is to automatically designate as chairman the council member who receives the largest number of votes. In councils elected from districts, council selection of the chairman may present the chairman with conflicting roles - district and countywide.

Whatever the method of election or the strength of the chairman's leadership role, the chairman is preeminently a legislator, a member and leader of the council - not an executive. However, the office does require some special staff support, which generally can be provided by the manager. This can often be arranged as part of a system whereby the chairman and the manager function as a team. An extensive independent staff could lead to the chairman's encroachment on the executive responsibilities of the manager.

There is no structural arrangement for government which will assure effective leadership. The person who occupies the chairman's office must understand the nature of the job - its possibilities, interdependencies and limitations - and have the personal inclination, energy, and talent to exercise necessary leadership. Without that, no amount of structural support will produce a leader. However, the method of selection and the statement of responsibilities provided in the charter should be designed to help assure the selection of a capable person with recognized leadership abilities who could make a significant contribution to the operation of the county.

§2.04. Compensation; Expenses.

In general, salaries of council members should not be substantial but sufficient to permit individuals with limited means to serve. It is assumed that council members will earn their major income from private employment. In determining the compensation of council members, it should be recognized that under this charter they are part-time officials and are not involved in day-to-day management as is the case when commissioners (or council members) under the commission plan actually direct the operation of departments. A salary too close to a full-time salary could encourage council members to think of their positions as managerial and thus detract from their role as legislators or policy-makers. It is important, however, that council members be compensated for expenses incurred in performing their duties (p.g., travel to the state capital to testify on behalf of the county).

The *Model* rejects the setting of the actual amount of compensation in the charter except for the salary of the first council after the charter goes into effect (see §9.05(f)). The delay in the effective date of any salary increases provides ample protection. In some counties, the delay is only to the beginning of the next fiscal year after the increase was voted.

Extra compensation should be provided for the chairman because, in addition to regular responsibilities as a council member, time is spent on Intergovernmental matters, special promotional and other responsibilities and at ceremonial occasions requiring the chairman's presence.

§2.05. Prohibitions.

(a) This provision prohibits council members from holding other elective office (e.g., as occurs in some states, serving in the state legislature and the council concurrently). Also prohibited is holding any other county office or employment during one's council term or for one year after leaving office. These provisions are designed to avoid conflict of interest situations. The charter is specific, however, that these prohibitions do not restrict any current or former officeholder from service on the boards of regional or other intergovernmental agencies. Such service is particularly valuable in accomplishing the objectives of intergovernmental cooperation.

(b) and (c) The prohibition against interference by council members in the appointment and removal of employees and the administration of county programs does not include the broad language of earlier models because it was considered too rigid and unrealistic. This provision, while expressing the general

policy of noninterference, does not exclude communication between council members and the manager on questions of appointment and removal. The manager may seek advice from the council regarding appointments.

Council members are strictly prohibited from giving orders to county officers or employees. However, the prohibition against interference with administration does not prevent council members from making inquiries of department heads or employees for the purpose of obtaining information needed by them in the discharge of their duties including response to constituent requests. In some counties, automated information systems make information on aspects of departmental operations readily available to council members on computer terminals.

§2.06. Vacancies; Forfeiture of Office; Filling of Vacancies.

The events or conditions which create a vacancy are specified in this action, as are the grounds for forfeiture of office. Vacancies are to be filled temporarily by the council and then by the voters for the remainder of the term at the next regular election unless that election occurs within 60 days, in a period being necessary to allow time for candidates to file. Failure of the council to fill a vacancy within 30 days will result in the calling of a special election. This provision should assure that the council will act, but in the event of a deadlock, a special election will resolve it. Finally, the section provides for filling vacancies by council action even if the membership falls below the quorum otherwise required for council action by §2.11.

§2.07. Judge of Qualifications.

Making the council judge of the grounds for forfeiture as well as the qualifications of its members is new to this edition. There are procedural safeguards to protect a member charged with conduct constituting grounds for forfeiture. The provision authorizing the council to set additional standards for the conduct of its members is added to empower the council to impose on itself the highest possible ethical standards.

§2.08. County Clerk.

See §§2.15 to 2.16 for other duties assigned to the county clerk. In a number of states, certain statutory duties may be assigned to the county clerk in all counties, even those operating with their own charters. In some states, the county clerk is a constitutional or state statutory officer whose method of selection and duties may not be altered by a locally adopted charter. If the clerk is not a constitutional or state statutory officer and does perform extensive administrative duties, the office may be, in fact, a regular operating department, in which case appointment by the manager would be appropriate.

§2.09. Investigations.

The power to make investigations is given to council but not, as was done in some earlier models, to the manager. The manager has the power to appoint, remove and suspend officers but it is considered inappropriate for the manager to have the power to subpoena witnesses and compel production of evidence.

§2.10. Independent Audit.

The necessity for annual independent audits of the county's financial affairs has long been accepted. Since the value of such audits is directly related to the caliber of those who conduct them, it is provided that certified public accountants be retained. Selection of a professional accountant or firm does not lend itself to the usual requirement, however, of choosing the "lowest responsible bidder." While the council should not disregard cost, this is a case where the factors of competence, reliability and reputation are more significant. For an audit to be most beneficial, some of it must extend over the entire year, which necessitates designation of the auditor during the first month. If the state conducts periodic audits of the county's finances that meet council established requirements, the state audit may be an acceptable and moneysaving substitute for an audit by a private firm. While the major emphasis is on financial audits, the council also has a responsibility to institute management audits to evaluate the implementation of work programs.

§2.11. Procedure.

This section sets forth what are for the most part standardized and well accepted procedural rules to govern the official action of the council. The frequency of meetings can, of course, be suited to the needs of the particular county.

The section contains the usual protection that meetings must be public and that a journal of proceedings be kept as a public record. Most states have open meeting laws which specify the circumstances when closed or executive sessions may be held; such meetings are sometimes necessary for effective council functioning and may require attendance of the manager, attorney, or other officials or invited participants.

A majority vote is required for all council actions except actions to adjourn, to compel attendance of members in the absence of a quorum, and to appoint additional members if the membership falls below a majority of the total authorized membership as provided in §2.06(c).

§2.12. Action Requiring an Ordinance.

This section assures that the enumerated types of council action be taken only after compliance with all the procedural safeguards required for passage of an ordinance by the succeeding sections. The term "ordinance" is used in the *Model* to specify a procedural standard. In some states the same procedural safeguards may apply to the adoption of "resolutions" or "local laws." Those drafting charters should use the legal terminology appropriate in the particular state.

Other subjects requiring an ordinance are not mentioned here because the requirement is specifically stated elsewhere in the charter. These include adoption of codes of technical regulations (§2.15), appropriation and revenue ordinances (§5.06) supplemental and emergency appropriations and reduction of appropriations (§5.07), and creation of a charter commission or proposal of charter amendments (§9.03).

If the initiative is authorized by the charter or state law, the following should be added to the list of actions requiring an ordinance:

(10) adopt with or without amendment ordinances proposed under the initiative power.

Pursuant to subsection (b), acts other than those enumerated in this section or required by law or by specific provision in the charter to be by ordinance may be done at the council's option either by ordinance or by an action involving a less formal procedure. Motions relating to matters of council procedure may involve even less formality. A roll call vote on a procedural motion does not need to be recorded in the journal in the case of such motions (§2.11(c)).

§2.13. Ordinances in General.

This section embodies a midway approach between the detailed ordinance procedure contained in the earlier models and the extremely spare procedures in some recent charters.

By dispensing with the requirements of full reading of all ordinances and publication of their full text both before and after adoption, it eliminates features of earlier models that had been criticized as unnecessary and cumbersome. Distribution of a copy to each council member obviates the need for a full reading. Publication is simplified by permitting the printing of a brief summary together with notice of the times and places where copies are available for public inspection. Further simplification is effected by adding, as in §§2.14 and 2.15, special provisions for expeditious handling of emergency ordinances and for adoption by reference of standard codes of technical regulations.

The section retains the basic safeguards of a public hearing following notice by publication and a second publication with notice of adoption. It does not go so far as charters that dispense with publication or permit adoption at the same meeting at which a non-emergency ordinance is introduced. The protective features it retains are those deemed necessary for full and careful consideration. Sufficient leeway for emergency situations is provided by §2.14.

§2.14. Emergency Ordinances.

Although early models contained no provision for emergency ordinances, such a provision is common in existing charters and of undoubted usefulness. Speed is achieved by permitting introduction and adoption at the same meeting by an extraordinary majority and an immediate effective date.

§2.15. Codes of Technical Regulations.

This provision permits adoption of standard and often lengthy, detailed and technical regulations, such as building and sanitary codes, by an ordinance which simply incorporates and adopts the code by reference. Publication requirements are satisfied by publication of the adopting ordinance, which should indicate the nature of the code, and the council is not required to include all such technical codes in the general county code pursuant to §2.16. Burden and expense are minimized and at the same time the essential safeguards of the general ordinance procedure of §2.13 are preserved.

It provides an increasingly valuable method whereby counties may draw on the latest scientific and technological advances.

§2.16. Authentication and Recording; Codification; Printing.

Subsections (a) and (c) of this section state essential procedures for maintaining legally authenticated records of all ordinances and resolutions and for making them available to the public.

The merits of the general codification provided for in subsection (b) speak for themselves. The *Model* provides for inclusion of pertinent parts of the constitution and state statutes, thus envisioning a county code to which people may turn for all state and local legislation governing the county. This is in marked contrast to the situation still existing in many counties where much of this legislation and particularly state laws of limited application are nowhere collected and are often out of print, unavailable, or difficult to find.

Article III COUNTY MANAGER

Section 3.01. Appointment; Qualifications; Compensation.

The county council by a majority vote of its total membership shall appoint a county manager for an indefinite term and fix the manager's compensation. The county manager shall be appointed solely on the basis of executive and administrative qualifications. The manager need not be a resident of the county or state at the time of appointment, but may reside outside the county while in office only with the approval of the council.

Section 3.02. Removal.

The county manager may be suspended by a resolution approved by the majority of the total membership of the county council which shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the county manager. The county manager shall have fifteen days in which to reply thereto in writing, and upon request, shall be afforded a public hearing, which shall occur not earlier than ten days nor later than fifteen days after such hearing is requested. After the public hearing, if one is requested, and after full consideration, the county council by a majority vote of its total membership may adopt a final resolution of removal. The county manager shall continue to receive full salary until the effective date of a final resolution of removal.

Section 3.03. Acting County Manager.

By letter filed with the county clerk, the county manager shall designate a county officer or employee to exercise the powers and perform the duties of county manager during the manager's temporary absence or disability, the county council may revoke such designation at any time and appoint another officer of the county to serve until the county manager returns.

Section 3.04.

Powers and Duties of the 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 character, 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, New York, 1919, p. 37f.

§3.01. Appointment and Qualifications.

Appointment of the manager by majority vote of the entire membership of the council, not simply a majority of a quorum, assures undisputed support for the appointee. Stating that appointment is 'for an indefinite term' is essential to avoid contracting for a specified term or an arrangement which would reduce the discretion of the council to remove a manager.

The phrase, "with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office hereinafter set forth," used in earlier editions, has been eliminated as superfluous because it is clearly implied in the general phrase, "on the basis of executive and administrative qualifications." This stresses the basic principle of the council-manager form that the manager is a qualified professional administrator.

The provision that the manager need not reside within the county when appointed and may, with approval of the council, live outside the county while in office, is desirable today because of the problem of housing availability and cost. This provision also enables two or more jurisdictions to employ a single manager.

Increasingly, appointment of the manager involves an employment agreement between the county or municipality and the manager. These agreements can cover all aspects of the manager's job, from salary to other forms of compensation, from duties to performance standards and evaluation, to severance procedures. An employment agreement provides mutual protection for the manager and the local government. It should be noted, however, that they are not tenure agreements and do not impede the council's power to remove the manager.

§3.02. Removal.

This section is designed to provide an orderly removal procedure when a manager declines to submit his resignation at the request of the council. While this section is not designed to protect the manager's tenure, the provision for inclusion of a statement of reasons for removal in the preliminary resolution, presentation of it to the manager and the opportunity for the manager to be heard if he or she so requests assures that any unjust charges will come to light and be answered. The requirement of a vote of a majority of all the members prevents a minority acting as the majority in a quorum to pass a removal resolution.

The council may delay the effective date of the final removal resolution in order to provide for termination pay. In cases where there is an employment agreement between the county and the manager, the issue of termination pay is likely to be covered in that agreement.

§3.03. Acting County Manager.

In order to remove any doubt as to the identity of the acting county manager, the manager is required to designate a county officer or employee to serve as acting county manager during the temporary absence or disability of the manager. The council is free, of course, to replace the acting county manager if it is dissatisfied with performance, and the acting manager is not entitled to the protection of the removal procedure afforded the manager by §3.02.

§3.04. Powers and Duties of the County Manager.

Although this section equips the manager with the necessary legal authority to discharge administrative responsibilities, the manager's authority may be subject to limitation 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 county'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 county's finances, administrative activities, departmental operations and future needs, and to make recommendations on county affairs. The duty to provide staff support for the council member includes providing information on policy issues before the council.

In some charter counties, when the appointed executive is titled "county administrative officer" (CAO) or "county administrator," the legally prescribed powers and duties of the office may differ from those provided in this section (e.g., appointment of department heads may require council approval). Often, in fact, there is no essential difference in actual operations. This pattern is common in non-charter counties which have adopted structures providing for appointed professional administrators.

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Article IV DEPARTMENTS, OFFICES AND AGENCIES

Section 4.01. General Provisions.

(a) Creation of Departments. The county council may establish county departments, offices or agencies in addition to those created by this charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this charter to a particular department, office or agency may be discontinued or, unless this charter specifically so provides, assigned to any other.

(b) Direction by County Manager. All departments, offices and agencies under the direction and supervision of the county manager shall be administered by an officer appointed by and subject to the direction and supervision of the manager. With the consent of council, the county manager may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.

Section 4.02. Personnel System.

(a) Merit Principle. AN appointments and promotions of county officers and employees shall be made solely on the basis of merit and fitness demonstrated by a valid and reliable examination or other evidence of competence.

(b) Merit System. Consistent with all applicable federal and state laws the county council shall provide by ordinance for the establishment, regulation and maintenance of a merit system governing personnel policies necessary to effective administration of the employees of the county's departments, offices and agencies, including but not limited to classification and pay plans, examinations, force reduction, removals, working conditions, provisional and exempt appointments, in-service training, grievances and relationships with employee organizations.

Section 4.03. Legal Officer.

Alternative I

There shall be a legal officer of the county appointed by the county manager as provided in §4.01(b). The legal officer shall serve as chief legal adviser to the county council, the manager and all county departments, offices and agencies, shall represent the county in all legal proceedings and shall perform any other duties prescribed by state law, by this charter or by ordinance.

Alternative II

There shall be a legal officer of the county appointed by the county manager subject to confirmation by the county council. The legal officer shall serve as chief legal adviser to the council, the manager and all county departments, offices and agencies, shall represent the county in all legal proceedings and shall perform any other duties prescribed by state law, by this charter or by ordinance.

Alternative III

There shall be a legal officer of the county appointed by the county council. The legal officer shall serve as chief legal adviser to the council, the county manager and all county departments, offices and agencies, shall represent the county in all legal proceedings and shall perform any other duties prescribed by state law, by this charter or by ordinance.

Section 4.04. Planning.

Consistent with all applicable federal and state laws with respect to land use, development and environmental protection, the county council shall:

- (1) Designate an agency or agencies to carry out the planning function and such decision-making responsibilities as maybe specified by ordinance;
- (2) Adopt a comprehensive plan and determine to what extent zoning and other land use control ordinances must be consistent with the plan; and
- (3) Adopt development regulations, to be specified by ordinance, to implement the plan.

COMMENTARY ON ARTICLE IV

§4.01. General Administration.

This section authorizes the establishment of county departments, offices and agencies. It does not enumerate the specific operating departments or detail their internal organization but does provide that they be administered by an officer appointed by and subject to the direction and supervision of the manager, thus forbidding administration by a board or commission. The number of departments will vary in accordance with local needs as well as the distribution of functions among units of local government (e.g., in some

cases, municipal services are consolidated under the county; in other cases, cities or special districts will be responsible for services elsewhere performed by counties).

An administrative code adopted by the council is the appropriate place for the details of departmental organization and operating rules and regulations; this allows for change without necessitating a charter amendment. In addition, many aspects of the internal organization of specific departments should be governed by administrative order rather than by council action. This may be particularly appropriate in smaller counties where the manager may be required to discharge directly a wider range of operating responsibilities.

In a full service county, line or operating departments typically will include public works, parks and recreation, police, fire, health, library, water and other utilities. In large counties public works maybe subdivided into separate departments such as roads and streets, buildings and sanitation. The organizational arrangement for housing and urban renewal functions generally will be prescribed by state law.

The staff departments - finance, personnel, planning and law - likewise should be covered by the administrative code. To varying degrees their organization may also be dependent upon state law. For example, it may not be possible to provide for an integrated finance department which includes all aspects of finance administration, but rather it may be necessary to provide for an assessor and tax collector. Although earlier models provided for purchasing agent, it is now felt that the organization and procedures for municipal purchasing should be covered in the administrative code.

§4.02. Personnel System.

The personnel provisions are designed to provide a flexible system which will encourage the development of competent staff. The more detailed provisions of earlier models have been rejected.

Historically the National Municipal League models were used as guides for installing the merit system in local government when it was felt necessary to spell out detailed organization and procedure in the charter subject to change only by referendum to avoid distortion by patronage-minded local governing bodies. Beginning in 1927, League models rejected the independent civil service commission concept and called for the appointment of the personnel director by the manager and for a personnel board with largely advisory powers.

With personnel systems increasingly controlled by state law and subject to certain federal regulatory authority, the charter should not impose additional constraints as to details in personnel administration. It should, however, strongly state the commitment to the merit principle. The *Model* states that commitment and calls on the council to provide by ordinance for the organization and procedures of the personnel system. It lists subjects to be covered by personnel policies governing the administration of the merit system. It should be noted that some of these may be covered adequately by state law and that their inclusion in the local ordinance could be unnecessary, particularly in smaller jurisdictions.

§4.03. Legal Officer.

Every county must have either a full-time or part-time legal officer, depending on the size of the county and the volume of legal problems. This officer normally will head the county's law department. Both the title and the precise nature of the legal officer's duties will depend on state law, local practice and the organization of the court systems. The title may be county counselor, county counsel or county attorney. Because of wide variations in local practice and state law, three alternatives are provided for this section. Strong arguments can be made for Alternatives I and II. In support of Alternative I it can be pointed out that the legal officer, as a county department head, should have the same relationship to the manager as other department heads. The manager and his top staff members all are, in fact, advisors to the council. Implicit in the council's power to make investigations of the conduct of a county department is the power to engage special counsel (§2.09). This would be the appropriate procedure in the unusual circumstances in which the council requires independent legal assistance.

Alternative II which requires confirmation by the council is justified because the legal officer is the county's attorney and thus must provide legal advice to the council and represents the council in various legal proceedings. This means that the legal officer has a different relationship to the council than other department heads. Alternative III is included because in some states law requires appointment of the legal officer by the governing body.

§4.04. Planning.

Treatment of planning in this *Model* differs significantly from the earlier models where planning was the subject of a separate article. This edition covers planning in the article on departments, offices and agencies which places responsibility in the council for establishing detailed structure and procedures. In concept, planning, like personnel, is preeminently a staff function tied directly to the county's executive with adoption and implementation of plans and development policies the responsibility of the council.

In recent years federal and state laws on land use, development and environmental protection have imposed not only increased regulation but in some cases specific procedures on local governments. The model provision provides the needed flexibility for the county to establish workable structures and procedures for exercising the planning function within the context of constraints imposed by higher levels of government.

Article V FINANCIAL PROCEDURES

Section 5.01. Fiscal Year.

The fiscal year of the county shall begin on the first day of _____ and end on the last day of _.

Section 5.02. Submission of Budget and Budget Message.

On or before the _____ day ___ of each year, the county manager shall submit to the county council a budget for the ensuing fiscal year and an accompanying message.

Section 5.03. Budget Message.

The county manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the county for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the county's debt position and include such other material as the county manager deems desirable.

Section 5.04. Budget.

The budget shall provide a complete financial plan of all county funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the county manager deems desirable or the county council may require. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

- (1) The proposed goals and objectives and expenditures for current operations during the ensuing fiscal year, detailed for each fund by organization unit, and program, purpose or activity, and the method of financing such expenditures;
- (2) Proposed capital expenditures during the ensuing fiscal year, detailed for each fund by organization unit when practicable, and the proposed method of financing each such capital expenditure; and
- (3) The anticipated income and expense and profit and loss for the ensuing year for each utility or other enterprise fund operated by the county.

For any fund, the total of proposed expenditures shall not exceed the total of estimated income plus carried forward fund balance, exclusive of reserves.

Section 5.05. County Council Action on Budget.

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

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

(b) Amendment Before Adoption. After the public hearing, the county council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for an estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than total estimated income.

(c) Adoption. The county council shall adopt the budget on or before the - day of the - month of the fiscal year currently ending. If it fails to adopt the budget by this date, the budget proposed by the county manager shall go into effect.

Section 5.06. Appropriation and Revenue Ordinances.

To implement the adopted budget, the county council shall adopt, prior to the beginning of the ensuing fiscal year:

- (a) an appropriation ordinance making appropriations by department or major organizational unit and authorizing a single appropriation for each program or activity;
- (b) a tax levy ordinance authorizing the property tax levy or levies and setting the tax rate or rates; and
- (c) any other ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

Section 5.07. Amendments after Adoption.

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

(b) Emergency Appropriations. To meet a public emergency affecting life, health, property or the public peace, the county council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of §2.14. To the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time

to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

(c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the county manager that the revenues or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the manager shall report to the county council without delay, indicating the estimated amount of the deficit, any remedial action taken by the manager and recommendations as to any other steps to be taken. The council shall then take such further action as it deems necessary to prevent or reduce any deficit and for that purpose it may by ordinance reduce one or more appropriations.

(d) Transfer of Appropriations. At any time during the fiscal year the county council may by resolution transfer part or all of the unencumbered appropriation balance from one department or major organizational unit to the appropriation for other departments or major organizational units. The manager may transfer part or all of any unencumbered appropriation balances among programs within a department or organizational unit and shall report such transfers to the council in writing in a timely manner.

(e) Limitation; Effective Date. No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

Section 5.08. Lapse of Appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent, that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until expended, revised or repealed; the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

Section 5.09. Administration of the Budget.

The county council shall provide by ordinance the procedures for administering the budget.

Section 5.10. Overspending of Appropriations Prohibited.

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the county manager or the manager's designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds there from are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this charter shall be void and any payment so made illegal. A violation of this provision shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation. Such officer may also be liable to the county for any amount so paid. Except where prohibited by law, however, nothing in this charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, but only if such action is made or approved by ordinance.

Section 5.11. Capital Program.

(a) Submission to County Council. The county manager shall prepare and submit to the county council a five- [six-] year capital program no later than three months prior to the final date for submission of the budget.

(b) Contents. The capital program shall include: (1) A clear general summary of its contents; (2) A list of all capital improvements and other capital expenditures which are proposed to be undertaken during the five [six] fiscal years next ensuing, with appropriate supporting information as to the necessity for each;

- (3) Cost estimates and recommended time schedules for each improvement or other capital expenditure;
- (4) Method of financing upon which each capital expenditure is to be reliant; and
- (5) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

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

Section 5.12. County Council Action on Capital Program.

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

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

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

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

Section 5.13. Public Records.

Copies of the budget, capital program and appropriation and revenue ordinances shall be public records and shall be made available to the public at suitable places in the county.

COMMENTARY ON ARTICLE V

This article provides for the development of a comprehensive financial program, allowing maximum flexibility within the boundaries of sound fiscal practices.

The complete financial plan involves two major elements: 1) the current annual budget, and 2) the multi-year capital program which is coordinated with the annual budget.

§5.01. Fiscal Year.

It is strongly recommended that the fiscal year be set so that fiscally sound jurisdictions will not have to borrow for short terms in anticipation of taxes except in emergency situations. It is recognized, however, that before changes in the fiscal year can be made consideration must be given to the fiscal patterns of the other taxing jurisdictions affecting the county. The dates when the state usually pays significant amounts of grants in aid to the county should be considered in developing an advantageous fiscal calendar.

§5.02. Submission of Budget and Budget Message.

The specific submission date will depend upon the fiscal year but in any case it is suggested that it be at least 45 days prior to the beginning of the fiscal year.

§5.03. Budget Message.

The budget message should clearly present the manager's program for the coming year translated into financial terms. Programs of the various county departments should be explained and the county's debt position summarized. From a careful reading of the budget message, members of the council citizens should be able to obtain a clear and concise picture of what div manager expects to accomplish in the coming year, the estimated cost, sources of revenue and changes in the county's debt.

§5.04. Budget.

The budget, a complete financial plan for all funds and activities, includes both revenues and expenditures. Expenditures for current operations and capital outlays should be shown separately with the source of financing indicated.

A detailed classification of revenues, expenditures and specific funds is not set forth in the *Model* because classifications will be developed by ordinance or administrative order if they are not established by state agencies concerned with local finance as part of a uniform accounting system. Proposed current expenditures are to be presented in terms of the programs of the respective offices, departments and agencies, the fundamental feature of program or performance budgeting.

§5.05. Council Action on Budget.

The only restrictions placed on the council with respect to action on the budget are those governing the adoption procedure, the requirement that certain mandatory expenditures may not be decreased or deleted, and the requirement that total authorized expenditures may not exceed the total of estimated income.

No specific date as the deadline for adoption of the budget has been included. Setting a deadline for adoption does not preclude the earlier completion of action on the budget with ample time for public hearings and council consideration of the budget, if it is submitted early enough by the manager.

The *Model* includes one of several possibilities for dealing with failure of the council to adopt the budget by the prescribed deadline. It provides for the budget as submitted by the manager to be deemed adopted. Among other possibilities in such a situation are: (1) for the amounts appropriated for operations in the current fiscal year to be deemed adopted; (2) for the manager's budget to be deemed adopted but permitting amendments by the council during the first month of the new fiscal year, (3) to authorize the council to make temporary appropriations for a period not exceeding one month, during which time it would presumably complete adoption of the budget for the remainder of the fiscal year; or (4) to provide that the budget of the preceding fiscal year should be applicable automatically for the first month of the ensuing year, with the presumption that action will be completed during that time.

§5.06. Appropriations and Revenue Ordinances.

Earlier models in the adoption subsection provided: "Adoption of the budget shall constitute appropriations of amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed." It took note that some states required that appropriations and the tax levy be by ordinance. Alternative language to cover that requirement was included. This edition specifically calls for appropriation ordinances and revenue ordinances and that appropriations be by department or major organizational unit within each fund. The appropriations for each department or unit would not be broken down in the same detail as the budget. There would be a property tax levy ordinance and other revenue ordinances authorizing revenues from non-property taxes.

§5.07. Amendments After Adoption.

Supplemental appropriations, which can be the bane of any good budget procedure, are restricted to situations in which the manager certifies to council the availability of money in excess of the total revenues estimated in the budget. Another possibility for use of such "windfall" sums is to require their use in the

succeeding year's budget as a revenue which would have the effect of reducing the tax levy. Supplemental appropriations may be made only by ordinance and all the provisions regarding publication, notice of hearing, etc., applicable to other ordinances must be followed. Emergency appropriations may be budgeted in accordance with the procedure for emergency ordinances.

Provision is made for reduction of appropriations when the manager believes available revenues will not cover appropriations and a deficit is likely. The primary responsibility is clearly the manager's, with the duty to inform council and then implement any ordinances or resolutions council may enact.

With appropriations being made by departments and major organizational units and not by objects, the manager has freedom to make transfers from unencumbered balances within departments of units, and must notify the council of transfers. When an unencumbered balance exists in one department or unit, all or part of it may be transferred to the appropriation of another department or unit by council resolution.

§5.08. Lapse of Appropriations

This provision simply requires that amounts not needed or not used for whatever reason in the current year must be returned for reappropriation in the following year. The important exception is that an appropriation for a capital expenditure shall not lapse until the project is completed and paid for, or the project has been terminated for some other reason or three years have passed without any positive action on the project. Without such a requirement, accounts of the county would be cluttered with balances to which the appropriation in each succeeding year would be added. Such a practice would increase the problem of administrative control by encouraging the building of surpluses within departments.

§5.09. Administration of the Budget.

The council will by ordinance establish the procedures and controls for implementation of the budget. Proposed work programs and requested allotments should be submitted to the manager by department heads following adoption of the budget. The manager should review the programs and allot portions of the total appropriation based upon the work expected to be performed during a particular period of time, usually three months. As chief administrator, the manager must have the authority to revise the allotments at any time during the year and for any reason.

§5.10. Overspending of Appropriations Prohibited.

Before any order may be placed or any payment may be made from an appropriation, it must be ascertained that an unencumbered balance of adequate amount is available. This provision prevents making expenditures or incurring obligations above the total appropriated amount. Since it often is necessary to make contracts extending into the future beyond the period of annual appropriations, council is granted the power to do so. All such transactions become matters of public record and expenditures required because of them must be included in the capital program and in the annual budget.

§5.11. Capital Program.

Provisions for the five-year or six-year capital program are designed to compel long-range planning of capital improvements and a meaningful relationship between capital and current operating expenditures, and to provide adequate time for systematic consideration of capital projects by the council.

The requirement that the capital program be submitted three months prior to the final date for submission of the budget gives the council an opportunity to review the proposed projects, their cost, and methods of finance before the annual budget is submitted. Actual capital expenditures are carried each year as the capital outlay section of the current budget. These expenditures may be in the form of direct capital outlays from current revenues or debt service payments.

An innovation introduced as a part of the League's model financial procedures in 1964 - and continued in this *Model* - is the requirement that the capital program include estimated operating and maintenance costs of proposed capital facilities. This forces more realistic projections of expenditures because sometimes the operating cost of a facility will exceed the amortized annual capital charge. It also sounds a warning that maintenance should not be neglected.

§5.12. Council Action on Capital Program.

The capital program's adoption, which must be preceded by required publication, notice and hearing, means a positive commitment by the council to undertake a scheduled five-year or six-year capital improvement program. The methods of financing the improvements will be detailed. Major improvements will be financed by bond issues authorized by either a bond ordinance or by a popular referendum. Most projects requiring bond issues will extend over a period of more than one year. Other projects, to be financed from current income, also may extend over more than one year and will normally involve construction contracts with adequate safeguards for both parties. Still other capital projects may be completed within a single fiscal period as part of the work program of the department of public works. In all cases, actual disbursements for capital items during a single fiscal year, whether in the form of debt service or direct outlays, are carried as the capital outlay section of the budget for that year.

The requirement that the capital program each year be submitted well in advance of the budget enables the council to consider the proposed improvements, the methods for financing them and the recommended priorities in sufficient time to make decisions on capital items which will be subsequently reflected in the budget. The fact that most capital improvement decisions must be made well in advance of actual disbursements means that the bulk of the capital items in a particular budget will be the result of decisions made several years earlier. Changes, often of a relatively minor nature, may be made each year.

Because all states regulate borrowing for capital improvements by general legislation, no article on this subject is included.

§5.13. Public Records.

In addition to compliance with the formal legal requirement that copies of the budget document and capital program be made available, many counties prepare popular summaries which are given wide distribution and which provide citizens with essential general information.

Article VI **COUNTY ELECTIONS**

Section 6.01. County Elections.

(a) Regular Elections. The regular county election shall be held at the time established by state law.

(b) Registered Voter defined. All citizens legally registered under the constitution and laws of the state of _____ to vote in the _____ county shall be registered voters of the county within the meaning of this charter.

(c) Conduct of Elections. The provisions of the general election laws of the state of _____ shall apply to elections held under this charter. All elections provided for by the charter shall be conducted by the election authorities established by law. For the conduct of county elections, for the prevention of fraud in such elections and for the recount of ballots in cases of doubt or fraud, the county council shall **adopt ordinances** consistent with law and this charter, and the election authorities may adopt further regulations consistent **with law and this charter and** the ordinances of the council. Such ordinances and regulations pertaining to elections shall be publicized in the manner of county ordinances generally.

Section 6.02. Council Districts; Adjustment of Districts. (for use with alternatives II, HI and IV of §2.01)

(a) **Number of Districts.** There shall be _____ county council districts.

(b) **Districting Commission; Composition; Appointment; Terms; Vacancies; Compensation.**

(1) There shall be a districting commission consisting of five members. No more than two commission members may belong to the same political party. The county council shall appoint four members. These four members shall, with the affirmative vote of at least three, choose the fifth member who shall be chairman.

(2) No member of the commission shall be employed by the county or any political subdivision of the county, or hold any other elected or appointed position in the county or any political subdivision of the county.

(3) The county council shall appoint the commission no later than one year and five months before the first general election of the county council after each federal decennial census. The commission's term shall end upon adoption of a districting plan, as set forth in §6.02(c).

(4) In the event of a vacancy on the Commission by death, resignation or otherwise, the county council shall appoint a new member enrolled in the same political party from which his or her predecessor was selected, to serve the balance of the term remaining.

(5) No member of the districting commission shall be removed from office by the county council except for cause and upon notice and hearing.

(6) The members of the commission shall serve without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other county charges.

(7) The commission may hire or contract for necessary staff assistance and may require agencies of county government to provide technical assistance. The commission shall have a budget as provided by the county council.

(c) **Powers and Duties of the Commission; Hearings, Submissions and Approval of Plan.**

(1) Following each decennial census, the commission shall consult the county council and shall prepare a plan for dividing the county into districts for the election of council members. In preparing the plan, the commission shall be guided by the criteria set forth in §6.02(d). The report on the plan shall include a map and description of districts recommended.

(2) The commission shall hold one or more public hearings not less than one month before it submits the plan to the county council. The commission shall make its plan available to the public for inspection and comment not less than one month before its public hearing.

(3) The commission shall submit its plan to the county council not less than one year before the first general election of the county council after each decennial census.

(4) The plan shall be deemed adopted by the county council unless disapproved within three weeks by the vote of the majority of all members of the county council. If the county council fails to adopt the plan, it shall return the plan to the commission with its objections, and with the objections of individual members of the council.

(5) Upon rejection of its plan, the commission shall prepare a revised plan and shall submit such revised plan to the county council no later than nine months before the first general election of the county council after the decennial census. Such revised plan shall be deemed adopted by the county council unless disapproved within two weeks by the vote of two-thirds of all of the members of the county council and unless, by a vote of two-thirds of all of its members, the county council votes to file a petition in the _____ Court, _____ County, for a determination that the plan fails to meet the requirements of this charter. The county council shall file its petition no later than ten days after its

disapproval of the plan. Upon a final determination upon appeal, if any, that the plan meets the requirements of this charter, the plan shall be deemed adopted by the county council and the commission shall deliver the plan to the county clerk. The plan delivered to the county clerk shall include a map and description of the districts.

(6) If in any year population figures are not available at least one year and five months before the first general election following the decennial census, the county council may by ordinance shorten the time periods provided for districting commission action in subsections (2), (3), (4) and (5) of this section.

(d) Districting Plan; Criteria. In preparation of its plan for dividing the county into districts for the election of council members, the commission shall apply the following criteria which, to the extent practicable, shall be applied and given priority in the order in which they are herein set forth.

(1) Districts shall be equal in population except where deviations from equality result from the application of the provisions hereinafter set forth, but no such deviation may exceed five percent of the average population for all county council districts according to the figures available from the most recent census.

(2) Districts shall consist of contiguous territory; but land areas separated by waterways shall not be included in the same district unless said waterways are traversed by highway bridges, tunnels or regularly scheduled ferry services both termini of which are within the district, except that, population permitting, islands not connected to the mainland or to other islands by bridge, tunnel or regular ferry services shall be included in the same district as the nearest land area within the county and, where such subdivisions exist, within the same ward or equivalent subdivision as described in subsection (5), below.

(3) No city block shall be divided in the formation of districts. (4) A municipality within a county shall be divided among as few districts as possible.

(5) In the establishment of districts within counties whose territory is divided into wards or equivalent subdivisions whose boundaries have remained substantially unaltered for at least fifteen years, the number of such wards or equivalent subdivisions whose territory is divided among more than one district shall be as small as possible.

(6) Consistent with the foregoing provisions, the aggregate length of all district boundaries shall be as short as possible.

(e) Effect of Enactment. The new county council districts and boundaries as of the date of enactment shall supersede previous council districts and boundaries for all purposes of the next regular county election, including nominations. The new districts and boundaries shall supersede previous districts and boundaries for all other purposes as of the date on which all council members elected at that regular county election take office.

[Section 6.03. Initiative and Referendum

The powers of initiative and referendum are hereby reserved to the electors of the county. The provisions of the election law of the state of _____ as they currently exist or may hereafter be amended or superseded, shall govern the exercise of the powers of initiative and referendum under this charter.]

NOTE: Section 6.03 is in brackets because not all states provide for the initiative and referendum and it is possible that not all counties within the states that do provide for it will choose to include the option in their charters.

COMMENTARY ON ARTICLE VI

In previous League models, detailed provisions on the nomination and election process were included. This edition recognizes that the election laws of each state apply to counties whether or not they operate with a local charter. Areas of local discretion are few. Among those discretionary areas may be the provision of nonpartisan elections and the timing of elections. Operating within the limitations imposed by state law, the county may by ordinance adopt regulations deemed desirable.

§6.01. County Elections.

Although in most states local elections are regulated entirely or to a very substantial extent by state statutes, certain variations may be provided by local charter; for example, home rule charters may provide for nonpartisan local elections. When possible, it is particularly desirable to separate local from state and national elections. Therefore, local elections are frequently scheduled in the fall of odd-numbered years or in the spring of the year -both as a result of state election laws and of city and county charters. It is recommended that such timing be specified in the charter if it permissible under the state election laws.

§6.02. Council Districts; Adjustment of Districts.

With three of the five alternatives provided for the election of the county council involving districts, the provision for drawing and redrawing district lines assumes particular importance.

This section is a substantial departure from that of previous models because of the need to comply with such legal mandates as *Baker v. Carr*, *Avery v. Midland County, Texas*, and the Voting Rights Act and its amendments. Rather than a two-part process with an advisory commission recommending a plan, followed by city council passage of a plan (which might or might not resemble that of the advisory commission), the *Model* provides for a more direct process –redistricting by an independent commission. The lead time for redistricting has been expanded to provide sufficient time to resolve some of the increasing number of local government redistricting suits as well as to provide for sufficient time to comply with the requirements of

§5 of the Voting Rights Act where that is applicable. In addition, the *Model* provides for ordered, specific criteria for redistricting based on population.

The *Model* provides for a bi-partisan commission. The fact that the four council appointees (or at least three of the four) must be able to agree on the choice of chairman should facilitate the commission being able to work together.

To avoid the conflict of interest created when council members must consider new districts whose lines may materially affect their political futures, the council can neither approve nor veto the result. The council may, however, prevent implementation of the plan if it finds the plan in violation of the charter and files with the courts for such a determination.

The criteria mandated in this section are designed to preclude gerrymandering either to protect or punish incumbents or to prevent particular voting groups from gaining power. The criteria are unquestionably the most important part of the section. It has been suggested that with the proper ordered criteria, the redistricting process is less open to manipulation and flagrant gerrymandering will be almost impossible without a clear violation of the mandated criteria. The criteria concerning waterways and islands should be included in charters where appropriate. The exact terminology for election administration subdivisions (e.g., "wards or equivalent subdivisions) should be adjusted to conform to state law.

There are counties which prefer to have redistricting done by the county council either because of a belief that the redistricting process essentially involves a series of political decisions and that attempts to separate the process from the politics is futile and foolish or because redistricting in the past has been satisfactorily accomplished by the council and that there is no need for change. Where a county opts for redistricting by the council, the following provisions should be substituted in §6.02:

(b) Council to Redistrict. Following each decennial census, the county council shall, by ordinance, adjust the boundaries of the county council districts using the criteria set forth in §6.02(e).

(c) Procedures.

(1) The county council shall hold one or more public hearings prior to bringing any proposed plan to a vote. Proposed plans must be available to the public for inspection and comment not less than one month before the first public hearing on said plan. The plan shall include a map and description of the districts recommended.

(2) The county council shall approve a districting plan no later than 10 months (300 days) prior to the first regular county election following the decennial census.

(d) Failure to Enact Ordinance. If the county council fails to enact a redistricting plan within the required time, the county attorney shall, the following business day, inform the Court, _ County, and ask that a special master be appointed to do the redistricting. The special master shall, within 60 days, provide the Court with a plan drawn in accordance with the criteria set forth in §6.02(e). That plan shall have the force of law unless the court finds it does not comply with said criteria. The court shall cause an approved plan to go into effect no later than 210 days prior to the first regular county election after the decennial census. The county shall be liable for all reasonable costs incurred by the special master in preparing the plan for the court.

Subsections 6.02(d) and (e) of the *Model* should be relettered (e) and (f) and the words "county council" should be substituted for "commission."

§6.02(d) of the substitute language (*Failure to Enact Ordinance*), is particularly important because it is designed to be an incentive for the council to get redistricting completed on time. Failure to redistrict will not result in just another election with the same old districts as was provided in the previous edition. Even the most divided of councils would probably prefer to get down to the business of compromise than have a special master redistrict for them - and few would want to explain the additional cost of paying someone else to draw up a plan that probably would not be anymore satisfactory than their own compromise.

Article VII GENERAL PROVISIONS

Section 7.01. Conflicts of Interest; Board of Ethics.

(a) Conflicts of Inter-est. The use of public office for private gain is prohibited. The county council shall implement this prohibition by ordinance. Regulations to this end shall include but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official, the use of confidential information; and appearances by county officials before other county agencies on behalf of private interests. This ordinance shall provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations.

(b) Board of Ethics. The county council shall, by ordinance, establish an independent board of ethics to administer and enforce the conflict of interest and financial disclosure ordinances. No member of the board may hold elective or appointive office under the county or any other government or hold any political party office. Insofar as possible under state law, the county council shall authorize the board to issue binding

advisory opinions, conduct investigations on its own initiative and on referral or complaint, refer cases for prosecution, impose administrative fines, and to hire independent counsel. The county council shall appropriate sufficient funds to the board of ethics to enable it to perform the duties assigned to it.

Section 7.02. Prohibitions.

(a) Activities Prohibited.

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any county position or appointive county administrative office because of race, gender, age, handicap, religion, country of origin or political affiliation.

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

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

(4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any county election from any county employee.

(5) No county employee shall knowingly or willfully make, solicit or receive any contribution to the campaign funds of any political party or committee to be used in a county election or to campaign funds to be used in support of or opposition to any candidate for election to county office or county ballot issue. Further, no county employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for county office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.

(b) Penalties. Any person convicted of a violation of this section shall be ineligible for a period of five years following such conviction to hold any county office or position and, if an officer or employee of the county, shall immediately forfeit his or her office or position. The county council shall establish by ordinance such further penalties as it may deem appropriate.

COMMENTARY ON ARTICLE VII

§7.01. Conflicts of Interest, Board of Ethics.

Many states have state conflict of interest and financial disclosure laws which include local officials as well as state officials. Counties in these states may wish to modify this section accordingly by either eliminating duplication with state law or providing for local filing of state forms to provide local access to the information.

The language of this section differs drastically from the treatment of this subject in earlier models. Instead of providing what was essentially statutory language, this section mandates council passage of ordinances covering certain basic subjects and which provide for a specific mechanism to administer and enforce the law. This will permit amendment as may be required without a referendum which would be necessary if the charter covered the subject in detail.

This provision is intended to show that the charter is serious about the need for dealing with ethics problems but at the same time leaves it to the county council to adopt the formulation most appropriate for the specific situation. It does make provision for a Board of Ethics but leaves details on the board's composition and procedure to the council.

§7.02. Prohibitions.

The activities prohibited by this section are antithetical to the maintenance of a sound, permanent county public service. The prohibition against discrimination states basic county policy which applies to all personnel relationships. Prohibiting fraud or attempted fraud and bribery in connection with appointments and promotions by charter provision stresses the importance of maintaining the integrity of the public service. Prohibitions against political solicitation and participation in political campaigns afford protection for the employee as well as the integrity of the system.

State law of general application may be sufficiently comprehensive to cover the activities prohibited by this section. If so, it is not necessary for the charter to contain these provisions except to give confirmation of public acceptance of these policies.

Article VIII CHARTER AMENDMENT

Section 8.01. Proposal of Amendment.

Amendments to this charter may be framed and proposed:

- (a) In the manner provided by law, or
- (b) By ordinance of the county council containing the full text of the proposed amendment and effective upon adoption, or (c) By report of a charter commission created by ordinance; or
- (d) By the voters of the county.

When any five qualified voters initiate proceedings to amend the charter by filing with the county clerk an affidavit stating they will constitute the petitioner's committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed charter amendment. Promptly after the affidavit of the petitioners' committee is filed the clerk shall issue the appropriate petition blanks to the petitioners' committee. The petitions shall contain or have attached thereto throughout their circulation the full text of the proposed charter amendment and must be signed by registered voters of the county in the number of at least twenty percent of the total number of registered voters at the last regular county election. The petitioners committee may withdraw the petition at any time before the fifteenth day immediately preceding the day scheduled for the county vote on the amendment.

Section 8.02 Election.

Upon delivery to the county election authorities of the report of a charter commission or delivery by the county clerk of an adopted ordinance proposing an amendment pursuant to §8.01(b) or a petition finally determined sufficient proposing an amendment pursuant to §8.01(d), the election authorities shall submit the proposed amendment to the voters of the county at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the county at least 30 days prior to the date of the election. If the amendment is proposed by petition, the amendment may be withdrawn at any time prior to the fifteenth day preceding the day scheduled for the election by filing with the county clerk a request for withdrawal signed by at least four members of the petitioners' committee. The election shall be held not less than 60 and not more than 120 days after the adoption of the ordinance or report, or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the county council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be as specified in the state election law.

Section 8.03. Adoption of Amendment.

If a majority of the registered voters of the county voting upon a proposed charter amendment vote in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, 30 days after its adoption by the voters.

COMMENTARY ON ARTICLE VIII

All Charters require modification from time to time. In states where the constitution or statutes prohibit counties from adopting their own methods of charter revision, this article could not be used.

This article lists four methods for proposing charter amendments. The first references any methods which are provided by state law and the second is by the council itself. The third is by a charter commission which in many states may be created by the council. In some states the charter commission method is provided by the constitution, in others by statute. Often this includes a procedure whereby the formation of a charter commission may be initiated by petition or by ordinance. The final method is by a voter initiated petition. It is important that the number of signatures required be substantial. It should be relatively difficult to amend the charter and charter amendments should not be used to harass officials.

Article IX TRANSITION/SEPARABILITY PROVISIONS

Section 9.01. Officers and Employees.

(a) Rights and Privileges Preserved. Nothing in this charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are county officers or employees at the time of its adoption.

(b) Continuance of Office or Employment. Except as specifically provided by this charter, if at the time this charter takes full effect a county administrative officer or employee holds any office or position which is or can be abolished by or under this charter, he or she shall continue in such office or position until the taking effect of some specific provision under this charter directing that he or she vacate the office or position.

(c) Personnel System. An employee holding a county position at the time this charter takes full effect, who was serving in that same or a comparable position at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position but in all other respects shall be subject to the personnel system provided for in §4.02.

Section 9.02. Departments, Offices and Agencies.

(a) Transfer of Powers. If a county department, office or agency is abolished by this charter, the powers

and duties given it by law shall be transferred to the county department, office or agency designated in this charter or, if the charter makes no provision, designated by the county council.

(b) Property and Records. All property, records and equipment of any department, office or agency existing when this charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the county council in accordance with this charter.

Section 9.03. Pending Matters.

All rights, claims, actions, orders, contracts and legal administrative proceedings shall continue except as modified pursuant to the provisions of this charter and in each case shall be maintained, carried on or dealt with by the county department, office or agency appropriate under this charter.

Section 9.04. Laws in Force.

(a) In General. All county ordinances, resolutions, orders and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto. To the extent that the constitution and laws of the state of _ permit, all laws relating to or affecting this county or its agencies, officers or employees which are in force when this charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto.

(b) Specific Provisions. Without limitation of the general operation of subsection (a) or of the number or nature of the provisions to which it applies:

- (1) The following laws and parts of laws generally affecting counties or county agencies, officers or employees are inapplicable to the county of - or its agencies, officers or employees: [enumeration]
- (2) The following public local laws relating to the county of - are superseded: [enumeration] (3) The following ordinances, resolutions, orders and regulations of _ [former county governing body] are repealed: [enumeration]

Section 9.05. Schedule.

(a) First Election. At the time of its adoption, this charter shall be in effect to the extent necessary in order that the first election of members of the county council may be conducted in accordance with the provisions of this charter. The first election shall be held on the of . The -[county officials to be designated] shall prepare and adopt temporary regulations applicable only to the first election and designed to insure its proper conduct and to prevent fraud and provide for recount of ballots in cases of doubt or fraud.

(b) Time of Taking full Effect. The charter shall be in full effect for all purposes on and after the date and time of the first meeting of the newly elected county council provided in §9.05(c).

(c) First Council Meeting. On the _ of _ following the first election of county council members under this charter, the newly elected members of the council shall meet at - [time] at [place]:

- (1) For the purpose of electing the [chairman and] vice chairman, appointing or considering the appointment of a county manager or acting county manager, and choosing, if it so desires, one of its members to act as temporary clerk pending appointment of a county clerk pursuant to §2.08; and Note: Omit bracketed words if Section 2.03, Alternative 11 is used.
- (2) For the purpose of adopting ordinances and resolutions necessary to effect the transition of government under this charter and to maintain effective county government during that transition.

(d) Temporary Ordinances. In adopting ordinances as provided in §9.05(c), the county council shall follow the procedures prescribed in Article 11, except that at its first meeting or any meeting held within 60 days thereafter, the council may adopt temporary ordinances to deal with cases in which there is an urgent need for prompt action in connection with the transition of government and in which the delay incident to the appropriate ordinance procedure would probably cause serious hardship or impairment of effective county government. Every temporary ordinance shall be plainly labeled as such but shall be introduced in the form and manner prescribed for ordinances generally. A temporary ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption of a temporary ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances. A temporary ordinance shall become effective upon adoption or at such later time preceding automatic repeal under this subsection as it may specify [, and the referendum power shall not extend to any such ordinance]. Every temporary ordinance, including any amendments made thereto after adoption, shall automatically stand repealed as of the 91st day following the date on which it was adopted, renewed or otherwise continued except by adoption in the manner prescribed in Article 11 for ordinances of the kind concerned.

(e) Initial Expenses. The initial expenses of the county council, including the expense of recruiting a county manager, shall be paid by the county on vouchers signed by the council chairman.

(f) Initial Salary of Council Chairman and Council members. The chairman of the council shall receive an annual salary in the amount of \$_ and each other council member in the amount of \$-, until such amount is changed by the council in accordance with the provisions of this charter.

Section 9.06. Separability.

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

COMMENTARY ON ARTICLE IX

Many charters are weak in the provisions designed to facilitate transition from an old to a new basis of government. More than almost any other part of the charter, the article containing transitional provisions needs to be tailored to existing law and organization. The *Model* makes no claim to being complete in this regard but is designed to call attention to matters that must be considered and provide a basic pattern for a transition article. Extreme care in the preparation of this article will pay off in many ways, including disarming of arguments against a new charter based upon fears of its immediate effects upon personnel and the processes of the government. It may also save the county from costly litigation and administrative confusion.

The bracketed clause in §9.05(d) should be included only if the referendum is provided.

§9.06. Separability.

A separability clause is a necessary precaution and should be included in every charter.

APPENDIX

AN ELECTED COUNTY EXECUTIVE

Although since 1915 the League's model charters have embodied the council-manager plan (appointed executive plan), it has always recognized that some cities and counties, if properly organized, can strengthen their operations with a strong elected executive form. In fact the first edition (1900) of the *Model City Charter* endorsed the elected chief executive. However, because this was such a drastic departure from prevailing practice the recommendation gained relatively little acceptance. Municipal government at the time was extremely fragmented by a number of separately elected department heads often providing fiefdoms for powerful politicians. Some departments were headed by separate commissions designed to insulate departments (e.g., public works) from political patronage and scandal. The early *Model* specifically eliminated all popularly elected officials except the mayor and council and made no provision for council approval of mayoral appointments. The mayor was to be a truly strong executive.

County government has continued to be characterized by a structure which includes a number of separately elected administrative officers, some of whom are mandated by state constitutional provisions; others are provided for by statutes applicable statewide. This situation has made it difficult to establish a county chief executive with authority over the full range of county operations. In a substantial number of counties, however (mostly large urban and suburban counties), elected chief executive systems are in place. Where they have performed well, the elected executives have been able to emerge as effective governmental leaders, overcoming by political strength competition from other specialized officers elected county-wide. In some cases, charters have been able to change these officers from elective to appointive positions making them responsible to elected executive.

The elected county executive can be viewed as somewhat comparable to a state governor. The authority of governors has expanded as the state ballot has been shortened and separately elected statewide administrative officials have been replaced by department heads appointed by the governor. Shortening the ballot at the county level is important to the achievement of a truly effective elected county executive.

When an elected executive system is used, the executive must have sufficient authority to operate as a genuinely responsible executive. The executive's authority should not be diluted by assigning any executive operations to independently elected department heads or to boards and commissions, nor should it be nullified by the requirement that major appointments be subject to the "advice and consent" of the council. Advice and consent can interfere with an executive's attempts to recruit department heads and other personnel from outside the county on the basis of professional competence because of provincialism and political pressures put on the council by local residents. An argument can be made for council advice and consent in the appointment of certain boards and commissions, such as the board of ethics, where it is important that both the executive and legislative arms of the government be committed to the successful work of the body.

A full text providing for an elected chief executive is not provided here because the basic council-manager (appointed executive) charter can be adapted readily for this purpose. To a considerable extent, this can be done simply by changing the word "county manager" to "county executive," except in Article III which must be substantially altered to provide for election rather than appointment. Also, the provision for the powers of the council and the chairman of the council in the basic *Model* 0§2.01 and 2.03) should be modified. Language similar to that used in the *Model State Constitution* for the governor is presented as a tentative text of the basic provision for the elected executive:

(a) Executive Power. The executive power of the county shall be vested in a county executive.

(b) Election of the County Executive. The county executive shall be elected for a term of four years by a direct vote of the people at the regular county election. The first such election shall be in -, 19 . The county executive's terms shall begin on the - da~-of _ after his or her election and shall continue until his or her successor has been elected and has taken office.

(c) County Executives messages to the Council. The county executive shall, at the beginning of each calendar year, and may at other times give the council information as to the affbLirs of the county and recommend measures he or she considers necessary and desirable.

One basic difference between the County Council-Manager and Elected Executive plans is the "veto" power. This power has no place in a Council-Manager government because it distorts the basic principle of the form - that the council is assigned all powers of the county. The significant difference in the elected executive form is that the elected executive has an assigned role in the legislative process, and must make a decision on each ordinance - sign it, veto it or let it become law without signature. The veto should be included in the legislative article of an elected executive charter and listed among the executive's powers in the executive article.

The veto provisions of two county charters provide illustrations:

Prince George's County, Maryland

EXECUTIVE VETO. Upon the enactment of any bill by the

Council, with the exception of such measures made expressly exempt from the executive veto by this Charter, it shall be presented to the County Executive within five days for his approval or disapproval. Within ten days after such presentation, he shall return any such bill to the Council with his approval endorsed thereon or with a statement, in writing, of his reasons for not approving the same. Upon approval by the County Executive, any such bill shall become law. Upon veto by the County Executive, his veto message shall be entered in the Journal of the Council, and, not later than at its next legislative session-day, the Council may reconsider the bill. If, upon reconsideration, two-thirds of the members of the full Council vote in the affirmative, the bill shall become law. Whenever the County Executive shall fail to return any such bill within ten days after the date of its presentation to him, the Clerk of the Council shall forthwith record the fact of such failure in the Journal, and such bill shall thereupon become law. In case of budget and appropriation bills, the County Executive may disapprove or reduce individual items in such bills, except where precluded by State law. Each item or items not disapproved or reduced in a budget and appropriation bill shall be subject to the same procedure as any other bill vetoed by the County Executive.

King County, Washington

EXECUTIVE VETO. Except as otherwise provided in this charter, the county executive shall have the right to veto any ordinance or any object of expense of an appropriation ordinance. Every ordinance shall be presented to the county executive within five days after its adoption or enactment by the county council. Within ten days after its presentation, the county executive shall either sign the ordinance and return it to the county council, veto the ordinance and return it to the county council with a written and signed statement of the reasons for his veto, or sign and partially veto an appropriation ordinance and return it to the county council with a written and signed statement of the reasons for his partial veto. If an ordinance is not returned by the county executive within ten days after its presentation, it shall be deemed enacted without his signature. Within thirty days after an ordinance has been vetoed and returned or partially vetoed and returned, the county council may override the veto or partial veto by enacting the ordinance by a minimum of six affirmative votes.

Another important consideration in drafting an elected executive charter is the extent to which the charter should make provision for professional managerial assistance for the county executive, in the form of an aide having the same basic professional qualifications as a county manager. Various names and duties have been assigned -county administrator, chief administrative officer, administrative assistant, executive officer, or deputy county executive. Although there is growing experience with such arrangements, there clearly is no "model" formulation and apparently no feasible way to discourage the tendency to appoint persons qualified politically rather than professionally. The managerial assistant to the county executive, no matter what the title, should not be assigned charter powers independent of those of the county executive, but should be able to perform any administrative duties of the executive if instructed by the executive to do so. The working relationship of the administrator and the county executive may well be compared to that of the executive officer of a naval vessel and his commanding officer. The county executive should be solely responsible for the appointment and removal of the administrator without any requirement of approval by the Council.

The basic *Model* has stressed the desirability of keeping charter provisions as simple as possible, leaving details for inclusion in the administrative code. In line with this, an elected county executive charter should limit treatment of the executive's managerial aide to a very brief provision. The following contains the essentials of an adequate provision:

There shall be county administrator [or other title] who shall be appointed by and may be removed by the county executive. Appointment shall be on the basis of executive and administrative qualifications. The administrator shall be the principal managerial aide to the county executive and shall perform such duties as may be assigned to him or her by the county executive.

Three illustrations of the administrative officer provision follow:

King County, Washington

COUNTY ADMINISTRATIVE OFFICER. The county executive shall appoint the county administrative officer, who, under the general supervision of the county executive, shall assist him, shall supervise the administrative offices and shall perform such other duties as are delegated to him by the county executive.

Montgomery County, Maryland

CHIEF ADMINISTRATIVE OFFICER The County Executive shall appoint a Chief Administrative Officer subject to confirmation by the Council. The Chief Administrative Officer shall be a professionally qualified administrator who shall serve at the pleasure of the County Executive, with compensation determined by the County Executive subject to the approval of the County Council.

DUTIES OF THE CHIEF ADMINISTRATIVE OFFICER. The Chief Administrative Officer shall, subject to the direction of the County Executive, supervise all departments, offices, and agencies of the

Executive Branch, advise the County Executive on all administrative matters and perform such other duties as maybe assigned by the County Executive, or by this Charter.

Prince George's County, Maryland

CHIEF ADMINISTRATIVE OFFICER. The County Executive shall appoint a Chief Administrative Officer. He shall be appointed on the basis of his qualifications as a professional administrator and shall serve at the discretion of the County Executive. The Chief Administrative Officer shall perform such administrative duties and exercise such general supervision over the agencies of the executive branch as the County Executive may direct.

INITIATIVE AND REFERENDUM

In states where the initiative and referendum procedures are not provided by state law but maybe provided in local charters, the model provisions maybe adopted. It is also possible that a county may choose to provide for the initiative and not the referendum. In that case the model provisions should be modified accordingly.

Article INITIATIVE AND REFERENDUM

Section -.01. General Authority.

(a) Initiative. The registered voters of the county shall have power to propose ordinances to the Council and, if the Council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a county election, but such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of county officers or employees.

(b) Referendum. The registered voters of the county shall have power to require reconsideration by the Council of any adopted ordinance and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a county election, but such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money, levy of taxes, or salaries of county officers or employees.

Section __.02. Commencement of Proceeding; Petitioners' Committee; Affidavit.

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

Promptly after the affidavit of the petitioners' committee is filed the clerk shall issue the appropriate petition blanks to the petitioners' committee.

Section -.03. Petitions.

(a) Number of Signatures. Initiative and Referendum petitions must be signed by registered voters of the county equal in number to at least 15 per cent of the total number of registered voters registered to vote at the last regular election.

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

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

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

Section .04. Procedure after Filing.

(a) Certificate of Clerk; Amendment. Within twenty days after the petition is filed, the county clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of his or her certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (b) and (c) of §_03, and within five days after it is filed the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to

the petitioners committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section within the time required, the clerk shall promptly present his or her certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

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

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

Section -.05. Referendum Petitions; Suspension of Effect of Ordinance.

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

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

Section 06. Action on Petitions.

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

(b) Submission to Voters. The vote of the county on a proposed or referred ordinance shall be held not less than 30 days and not later than one year from the date of the final Council vote thereon. If no regular county election is to be held within the period prescribed in this subsection, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

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

Section 07. Results of Election.

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

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

Where the Article on Initiative and Referendum is used, the following language shall be used in §2.12.:

- (10) Adopt with or without amendment ordinances proposed under the initiative power.

Where the Article on Initiative and Referendum is used the following language shall be used for the Charter Amendment Article:

ARTICLE VIII CHARTER AMENDMENT

Section 8.01. Proposal of Amendment.

Amendments to this charter may be framed and proposed:

- (a) In the manner provided by law, or
- (b) By ordinance of the Council containing the full text of the proposed amendment and effective upon adoption, or
- (c) By report of a charter commission created by ordinance, or
- (d) By the voters of the county. Proposal of an amendment by the voters of the county shall be by petition containing the full text of the proposed amendment and shall be governed by the same procedures and requirements prescribed in Article _ for initiative petitions until such time as a final determination as to the sufficiency of the petition is made, except that there shall be no limitation as to subject matter and that the petition must be signed by registered voters of the county equal in number to at least 20 per cent of the total number of those registered to vote at the last regular county election. The petitioners' committee may withdraw the petition at any time before the fifteenth day immediately preceding the day scheduled for the county vote on the amendment.

Section 8.02. Election.

Upon delivery to the county election authorities of the report of a charter commission or delivery by the county clerk of an adopted ordinance or a petition finally determined sufficient, proposing an amendment pursuant to §8.01(d), the election authorities shall submit the proposed amendment to the voters of the county at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the county at least 30 days prior to the date of the election. The election shall be held not less than 60 and not more than 120 days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the Council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be as specified in state law.

Section 8.03. Adoption of Amendment.

If a majority of the registered voters of the county voting upon a proposed charter amendment vote in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, 30 days after its adoption by the voters.

COMMENTARY ON INITIATIVE AND REFERENDUM

§.01. General Authority.

Since the initiative and referendum are more valuable in their availability than in their use, this model provision sets up an exacting procedure. Unlike other provisions, this article must be completely self-executing. Detail cannot be filled in by the council because it is the possible inadequacies of council against which these devices guard.

Neither the initiative nor the referendum should be applicable to the budget, capital program, any ordinance relating to the appropriation of money or the levy of taxes, or, of course, to salaries of county officers or employees, for this would interfere with responsible officials striving to achieve a properly balanced long-range fiscal program.

§.02. Commencement of Proceedings: Petitioners' Committee; Affidavit.

Requiring a petitioners' committee places clear responsibility for the undertaking of initiative or referendum proceedings.

§.03. Petitions

The number of signatures required for initiative and referendum petitions is 15 per cent of the total number registered to vote at the last regular county election. This is a more exacting requirement than "10 percent of the total number of persons who voted in the county for the office of governor in the last gubernatorial election" as in earlier model provisions.

Limiting the period for filing a referendum petition to 30 days after passage assures that the effective date of an ordinance will not be delayed unless the referendum effort is of serious proportions.

§.04. Procedures After Filing

The mandatory language prevents the county clerk from delaying certification of the sufficiency or insufficiency of petitions beyond the twenty days specified.

§.05. Referendum Petitions; Suspension of Effect of Ordinance.

The fact that filing a referendum petition with the county clerk suspends the effective date of an ordinance will spur the clerk and the council into prompt action on the question of sufficiency. When an ordinance is subjected to a referendum vote and the council's action is sustained, termination of the suspension must be delayed until sufficient time has passed for official determination of the election results. This will vary with local practice. The 30 days indicated in §-.05, paragraph (4), is arbitrary. If there is a definite provision for the official reporting of election results, the lifting of the suspension should probably coincide with the reporting.

§-.06. Action on Petitions.

The initiative and referendum make mandatory council consideration of the proposed "initiative ordinance" and reconsideration of the "referred ordinance.* The words, "adopt a proposed initiative ordinance without any change in substance,* are designed to permit correction of technical imperfections.

Provisions for submitting a proposed or referred ordinance to the voters permit considerable latitude as to the election date to encourage holding the vote at a regular election if possible.

One of the most important reasons for requiring a petitioners' committee is to provide a mechanism for withdrawing an initiative or referendum petition if those originating the proceedings change their minds or feel that action of the council satisfies the need which prompted the petition.

§.07. Results of Election.

Initiative ordinances approved by the electorate become effective, just as is the case with an ordinance passed by council, in 30 days or at whatever later date is specified.