



# **MAYOR-COUNCIL CHARTER DRAFT**

**FOR TENNESSEE CITIES AND TOWNS**

**JUNE 1962**



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by the staff of the  
Municipal Technical Advisory Service

Municipal Technical Advisory Service  
Division of University Extension  
and  
The Bureau of Public Administration  
The University of Tennessee

in cooperation with the  
Tennessee Municipal League

June 1962

## FOREWORD

This charter draft has been prepared primarily as a guide for city officials who desire a partial or comprehensive revision of city charters enacted as private acts. If a city so requests, MTAS will provide staff assistance for making revisions, with respect to organizational or other matters. We will also be glad to answer any questions and to supply additional information.

Since the mayor and aldermen form predominates in Tennessee, the organizational framework selected for this draft was the mayor-council form. The term "council" was selected because of its brevity and because it is widely used nationally; it is synonymous with "board of aldermen" or "board of mayor and aldermen." However, if it is felt that tradition makes it desirable to continue usage of "alderman, board of mayor and aldermen, etc.," the appropriate word changes could be easily made in this draft. The only precautionary note to sound is that this should be done carefully to assure that the changes are made in all parts of the charter where "council, councilman, councilmen, member of council, etc." appear.

It is also emphasized that selection of the mayor-council form for this draft does not reflect a judgment or opinion that this is the "best" form. We selected this form simply because it comes closer to conforming to the organization of most Tennessee cities.

A large number of small cities are organized under the so-called "weak mayor-council" form, the "weak" referring to limitations on the mayor's powers because nearly all decisions must be made by the governing body as a group--hiring personnel, approving bills for payment, directing the work of department heads and other personnel, etc. This may be satisfactory for a small city, and if it is desired to retain this feature those provisions defining the powers of the mayor and the council should be appropriately modified.

Similarly, we feel that this draft provides a basis for a charter to continue or to establish the commission form or the council-manager

form. Appropriate revisions and additions can be readily made to accomplish such a change of organizational structure.

We have excluded those matters adequately covered by the general laws of Tennessee, such as authority to issue bonds, operation of electric systems, waterworks and other utilities, planning and zoning, and special assessments. School provisions have also been omitted because many cities do not operate schools and in those that do the current organization and operations would most likely be retained. A city may secure from MTAS assistance in drafting provisions on any of these matters.

This draft is truly a staff product. An initial draft was prepared by Edwin D. Martin; subsequently four drafts have been prepared, reflecting the comments and criticisms of other members of the MTAS consulting staff. Many valuable suggestions and criticisms were received from Dr. Lee S. Greene, Head of the Department of Political Science, The University of Tennessee, and Herbert J. Bingham, Executive Secretary, Tennessee Municipal League. The draft was also sent to several mayors, commissioners and city managers for their review, and they likewise were very helpful with their criticisms and comments.

We have used many references in drafting this document, including a recently-completed preliminary revision of the Model City Charter by the National Municipal League, several other model charters, and actual charters of cities. We have also borrowed from the two drafts prepared by MTAS in 1950 (no longer in print) and from the Sample Council-Manager Law for Tennessee, published by The Bureau of Public Administration in 1954. However, this draft is more of a comprehensive "new look" than a revision of those earlier efforts. We hope that this will be helpful to those considering charter revision or amendments, and we will appreciate constructive criticism and comments.

Victor C. Hobday  
Executive Director  
Municipal Technical Advisory Service

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AN ACT continuing the corporate existence of the City  
(Town)<sup>1</sup> of \_\_\_\_\_, Tennessee, pro-  
viding a complete new charter for said corpo-  
ration, and repealing certain acts<sup>2</sup>

## ARTICLE I

### CHARTER, DEFINITIONS, CITY LIMITS, AND CORPORATE POWERS

Section 1.01. Act constitutes city charter. Be it enacted by  
the General Assembly of the State of Tennessee, That the City (Town)  
of \_\_\_\_\_, Tennessee, shall continue as a body politic and  
corporate by the name and style of \_\_\_\_\_, Tennessee, and  
this Act shall constitute its complete charter. The City (Town) of  
\_\_\_\_\_ shall have perpetual succession, may sue and be sued,  
plead and be impleaded, in all the courts of law and equity, and in all  
actions whatsoever, and may have and use a common seal and change it  
at pleasure.

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<sup>1</sup>The term "city" is used in this draft. If the municipal cor-  
poration is a "town" it may be desirable to make this change in the  
many places where "city" appears. However, the definition in §1.02(a)  
should make such changes unnecessary.

<sup>2</sup>It is recommended that previous acts constituting the city's  
charter, with some exceptions, be repealed, and that any provisions  
which the city desires to have continued should be incorporated in the  
new charter act. The repeal of "all acts in conflict herewith" is not  
recommended, because such a provision inevitably creates questions  
as to whether provisions in fact do conflict and the extent of such con-  
flicts is indefinite. See also the footnote to §7.03.

Section 1.02. Definitions. Be it further enacted, That as used in this Charter the following words and terms shall have the following meanings:

(a) "City" shall mean the (name and style as in §1.01).

(b) "Council" and "city council" shall mean the legislative body of the city, which shall be composed of the mayor and four councilmen elected as provided in this Charter, and any incumbent (councilmen, aldermen, commissioners, etc.) until the expiration of their current terms of office.

(c) "Councilman" and "member of council" shall mean a person elected to the office of councilman as provided in this Charter, and shall include the mayor.

(d) "Nonpartisan" shall mean without any designation of candidates as members or candidates of any state or national political party or organization.

(e) "At large" shall mean the entire city, as distinguished from representation by wards or other districts.

(f) "Code" shall mean any publication or compilation of rules, regulations, specifications, standards, limitations, or requirements relating to any aspect of municipal affairs, prepared or recommended by an agency of the federal or state government, or by a trade association or other organization generally recognized as an authority in its field of activity.

(g) "Elector" shall mean a qualified voter residing within the city.

(h) The masculine shall include the feminine, and the singular shall include the plural and vice versa, except when the contrary intention is manifest.

Section 1.03. City limits. Be it further enacted, That the boundaries of the city shall be those fixed by Chapter \_\_\_\_\_, Private Acts of \_\_\_\_\_, [if originally fixed by private act] all Acts amendatory thereof, and annexations made pursuant to general law.

(Alternate) Section 1.03. City limits. Be it further enacted, That the boundaries of the city are as follows: (detailed description of present boundaries, which must be the same as present boundaries; the Tennessee Constitution prohibits any change by private act).

Section 1.04. Corporate powers. Be it further enacted, That the city shall have power:

(a) To assess property for taxation, and to levy and provide for the collection of taxes on all property subject to taxation.

(b) To levy and collect privilege taxes on businesses, privileges, occupations, trades, and professions, and to levy and collect any other kind of tax not prohibited to cities by the Constitution or general law. A collection fee of \$1.00 may be added to each such privilege tax.

(c) To levy and collect registration fees on motor vehicles operated within the city. Such registration fees may be graduated according to the tonnage capacities, weight, or horsepower of motor vehicles.

(d) To appropriate and borrow money as authorized in this Charter, and to authorize the expenditure of money for any municipal purpose.

(e) To acquire land, including improvements thereon, easements, or limited property rights thereto, by purchase, gift, or condemnation, for public use, for present or future use by the city, to reserve industrial sites, to provide open spaces, to encourage proper development of the community, or for the general welfare of the community. Such acquisitions may be within or outside the city.

(f) To grant franchises or make contracts for public utilities and public services, not to exceed a period of 20 years. Such franchises and contracts may provide for rates, fares, charges, regulations, and standards and conditions of service, subject to regulation by the Tennessee Public Service Commission or other state or federal agency having jurisdiction in such matters.

(g) To provide for the acquisition, construction, building, operation, and maintenance of: public ways, parks, public grounds, cemeteries, markets and market houses, public buildings, libraries, sewers, drains, sewage treatment plants, airports, hospitals, water works, docks, gas works, marinas, city forests, tree and shrub nurseries, heliports, terminals, parking garages and lots, industrial sites and buildings; charitable, educational, recreational, sporting, cultural, curative, corrective, detentional, penal, and medical institutions, agencies, and facilities; and any other public improvements; inside or outside the city; and to regulate the use thereof; and for such

purposes property may be either acquired or taken under §§6-1007 through 6-1011 and 23-1401 through 23-1541, Tennessee Code Annotated, or under other applicable laws.

(h) To require property owners to repair and maintain in a safe condition the sidewalks adjoining their lots or lands, including removal of snow, debris or other materials.

(i) To make regulations to secure the general health of the inhabitants and to prevent, abate, and remove nuisances, including but not limited to old or dilapidated buildings which are so out of repair as to be unsafe, unsanitary or unsightly. The city shall have the power to abate and remove nuisances at the expense of the owner or owners, and the expense, including fines, penalties, and interest, shall be secured by lien upon the property for which the expenditure is made.

(j) To prescribe standards of health and sanitation and to provide for the enforcement of such standards.

(k) To provide for the collection and disposal of garbage, rubbish and refuse. Charges may be imposed to cover the costs of such service which, if unpaid, shall be collectible in the same manner as taxes or other debts. City council by ordinance may prescribe penalties and interest for delinquency.

(l) To define, regulate, and prohibit any act, practice, conduct, or use of property, that would be detrimental, or likely to be detrimental, to the health, morals, safety, security, peace, or general welfare of inhabitants of the city.

(m) To establish minimum standards for and to regulate building construction and repair, electrical wiring and equipment, gas

installations and equipment, fixed mechanical equipment, plumbing, and housing, for the health, sanitation, cleanliness, safety and comfort of the inhabitants of the city, and to provide for the enforcement of such standards.

(n) To provide regulations establishing standards of weights and measures and to enforce compliance with such standards.

(o) To regulate, license and prohibit the keeping or running at large of animals and fowls, and to provide for the impoundment of same in violation of any ordinance or lawful order, and to provide for their disposition by sale, gift, or humane killing when not redeemed as provided by ordinance.

(p) To regulate and license vehicles operated for hire in the city, to limit the number of such vehicles, to license the operators thereof, to require public liability insurance on such vehicles, and to regulate and rent parking spaces in public ways for the use of such vehicles.

(q) To provide that the violation of any ordinance, rule, regulation, or order shall be punishable by fine, penalty or forfeiture not to exceed \$50 and costs.

(r) To plan for the orderly development of the community, including economic, physical, educational and cultural aspects, and to institute programs to effectuate such plans.

(s) To exercise and have all other powers, functions, rights, privileges, and immunities granted by general law or necessary or desirable to promote or protect the safety, health, peace, security,

good order, comfort, convenience, morals, and general welfare of the city and its inhabitants, and all implied powers necessary to carry into execution all powers granted in this Charter as fully and completely as if such powers were fully enumerated herein. No enumeration of particular powers in this Charter shall be held to be exclusive of others nor restrictive of general words and phrases granting powers, but shall be held to be in addition to such powers unless expressly prohibited to cities by the constitution or general laws of the state.

## ARTICLE II CITY COUNCIL

Section 2.01. Election of mayor and councilmen. Be it 3  
further enacted, That (a) On the \_\_\_\_\_  
 a nonpartisan election shall be conducted by the county commissioners of elections, at the same hours and places for holding general elections and under the general election laws of the state, to elect a mayor and four councilmen from the city at large. Any elector who has been a resident of the city for at least two years may be qualified as a candidate by a nominating petition submitted to the county commissioners of elections not less than 30 days prior to the election, signed by at least

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<sup>3</sup>Here insert the date desired for the election, such as "fourth Thursday in October, 19\_\_."



intervals thereafter. Each elector shall be entitled to vote for four candidates for councilman in the first election, and for two candidates for councilman in subsequent biennial elections. In the first election the two candidates for councilman receiving the highest number of votes and the mayor shall be elected for terms of four years, and the two candidates for councilman receiving the next highest number of votes shall be elected for terms of two years. Thereafter biennial elections shall be held on the (same numbered week day of same month as first election) in each (odd or even) numbered year to elect in the same manner two councilmen for four-year terms. The terms of office of the mayor and councilmen shall begin at 12:01 p. m. on the \_\_\_\_\_<sup>5</sup> next following their election, and they shall serve until their successors have been elected and qualified. No informality shall invalidate such an election, providing it is conducted fairly and in substantial conformity with the requirements of this Charter and the general election laws of the state.

Section 2.02 Restrictions on candidates and their supporters.  
Be it further enacted, That giving or promising to any person or persons any office, employment, money, benefit, or anything of value, by or on behalf of any candidate, shall be deemed to be a violation of \_\_\_\_\_

<sup>5</sup>Specify the day, such as the "first Monday." Because of the constitutional prohibition against abridging the term of any officer, the day selected should coincide with the expiration of the term of the incumbent mayor. Members of the governing body elected for terms extending beyond this date would be retained as members of the city council until their terms expire (see definition of "Council" in §1.02).

TCA 2-2212, and any person convicted thereof shall be ineligible to hold an office or position of employment in the city government for a period of five years.

Section 2.03. City Council. Be it further enacted, That:

(a) The mayor and four councilmen elected under this Charter [ , and the incumbent (councilmen, aldermen, commissioners, etc.) until the expiration of their current terms of office, ]<sup>6</sup> shall compose the city council, in which is vested all corporate, legislative and other powers of the city, except as otherwise provided in this Charter.

(b) The salary of the mayor shall be \$\_\_\_\_\_ per month, and each councilman shall receive a salary of \$\_\_\_\_\_ per month. They shall also be reimbursed for actual and necessary expenses incurred in the conduct of their official duties.

(c) The council shall meet regularly at least once every month at the times and places prescribed by ordinance. The council

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<sup>6</sup>This clause may be necessary for the transition from an existing governing body. This will generally be a problem when members of the governing body have been elected for overlapping terms, because the Tennessee Constitution (Amendment No. 6, adopted in 1953) prohibits the abridgement of an officer's term of office. If all members of an existing governing body go out of office at the same time, it will only be necessary to fix the same time for the mayor and councilmen elected under the new charter to take office. The facts of each case involving overlapping terms should be considered in drafting the transitional provisions. For example, if the terms of the mayor and three aldermen are about to expire, and three aldermen will continue in office for another two years, at the first election only the mayor and one councilman should be elected, but at subsequent elections councilmen (and mayor) would be elected as provided in §2.01. The draft of any bill should be carefully reviewed from this viewpoint, as the provisions of this section, §2.01, and possibly other sections will be affected.

shall meet in special session on written notice of the mayor or any two councilmen and served on the other members of council personally at least 12 hours in advance of the meeting. Only the business stated in the written call may be transacted at a special meeting. Informal meetings of the council may be held for the purpose of receiving information, exchanging ideas, and conducting investigations; however, there shall be no official action taken by the council in such meetings. The council shall exercise its powers only in public meetings.

(d) A majority of the council shall constitute a quorum. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. The council may by ordinance adopt rules and by-laws to govern the conduct of its business, including procedures and penalties for compelling the attendance of absent members. The council may subpoena and examine witnesses and order the production of books and papers.

Section 2.04. Mayor as presiding officer. Be it further enacted, That the mayor shall preside at meetings of the council, and shall have a vote on all matters but no veto power. He shall be recognized as the ceremonial head of the city. He shall be the officer to accept process against the city, and shall perform other duties imposed by this Charter and by ordinances not inconsistent with this Charter.

Section 2.05. Vice-mayor. Be it further enacted, That the council, at the first regular meeting after the newly elected councilmen have taken office following each biennial election, shall elect from its membership a vice-mayor for a term of two years. The vice-mayor

shall perform the duties of the mayor during his absence or inability to act, and shall fill out any unexpired term in the office of mayor, in which case a councilman shall be selected by majority vote of the council to serve the unexpired term as vice-mayor.

Section 2.06. Vacancy in office of mayor or councilman. Be it further enacted, That a vacancy shall exist if the mayor or a councilman resigns, dies, moves his residence from the city, is convicted of malfeasance or misfeasance in office, a felony, a violation of this charter or election laws of the state, or a crime involving moral turpitude, fails to attend any meetings of the council for a period of 90 days with no extenuating circumstances, or has been continuously disabled for a period of six months [or "90 days"] so as to prevent him from discharging the duties of his office. The council shall by resolution declare a vacancy to exist for any of these reasons, and such finding shall be final.

Any person convicted of malfeasance or misfeasance in office, a felony, or a crime involving moral turpitude shall be prohibited from holding office or employment with the city for a period of 10 years thereafter.

The remaining councilmen shall appoint a qualified person to fill a vacancy in the office of councilman for the remainder of the unexpired term. If the vacancy is not so filled within 15 days, the mayor shall appoint a qualified person to fill the vacancy.

At no time shall there be more than two members of council appointed to fill vacancies. If a vacancy occurs more than six months prior to a regular election and while two appointed members are on the

council, a special election shall be held by the county commissioners of elections on the eighth Thursday [or other specified day] following occurrence of the vacancy, at which election a councilman shall be elected to serve the unexpired term of the vacant office. The provisions in this article for regular elections shall govern special elections.

Section 2.07. Restrictions on councilmen. Be it further enacted, That the council shall act in all matters as a body, and no member shall seek individually to influence the official acts of the mayor or any other officer or employee of the city, or to direct or request the appointment of any person to, or his removal from, any office or position of employment, or to interfere in any way with the performance of duties by the mayor or any other officer or employee. The council shall deal with the various agencies, officers and employees of the city, except boards or commissions authorized by this Charter, solely through the mayor, and shall not give orders to any subordinates of the mayor, either publicly or privately. Nothing herein contained shall prevent the council from conducting such inquiries into the operation of the city government and the conduct of the city's affairs as it may deem necessary. The office of any councilman violating any provision of this section shall immediately become vacant upon his conviction in a court of competent jurisdiction.

Section 2.08. Designation of official newspaper. Be it further enacted, That the council by resolution shall designate a newspaper of general circulation in the city as the official city newspaper for publication of official notices of the city.

Section 2.09. City legislation. Be it further enacted, That:

(a) Any action of council having a regulatory or penal effect, relating to revenue or appropriation of money, awarding franchises or contracts over \$500, authorizing the borrowing of money, conveying or leasing or authorizing conveyance or lease of any lands of the city, or required to be done by ordinance under this Charter or the general laws of the state, shall be done only by ordinance. Other actions of council may be accomplished by resolutions or motions. Ordinances and resolutions shall be in written form before being introduced, and a copy shall be furnished to each member of council in advance of the meeting at which introduced. The enacting clause of ordinances shall be "Be it ordained by the Council of the City (Town) of \_\_\_\_\_:". No action of council shall be valid or binding unless approved by the affirmative vote of at least three members of council. Any ordinance which repeals or amends existing ordinances shall set forth at length the sections or subsections repealed or as amended. Every ordinance except an emergency ordinance must be approved on two readings not less than one week apart, and shall become effective 20 days after final approval unless its terms provide a later effective date. Every ordinance, except codes adopted by reference as provided in subsection (c) below, shall be read in full on the first reading; the second reading may be by title only except that any amended provisions shall be read in full. Each resolution shall be read in full one time and shall become effective when adopted unless its terms provide otherwise. To meet a public emergency affecting life, health or property, an emergency ordinance

may be adopted on two readings on separate days and become effective immediately, by the affirmative votes of four members of council, if the ordinance contains a full statement of the facts creating the emergency, but any emergency ordinance shall be effective for only 90 days.<sup>7</sup> Appropriations, revenues, franchises, contracts, levy of taxes, borrowing money, or special privileges shall not be passed as emergency ordinances.

(b) The council shall have the general and continuing ordinances of the city assembled into an official code of the city, a copy of which shall be kept currently up to date by the city clerk and shall be available to the public. After adoption of the official code all ordinances shall be adopted as additions to, deletions from, or amendments to the code.

(c) Standard codes, as defined in §1.02(g), may be adopted by ordinances which contain only references to titles, dates, issuing organizations, and such changes to the standard codes as the council may deem desirable. Procedures prescribed by general law shall be followed when adopting such standard codes. Copies of the official code and any standard codes so adopted by reference shall be available to the public at prices fixed by the council.

(d) The original copies of ordinances, resolutions, contracts, and other documents shall be filed and preserved by the city clerk. The

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<sup>7</sup> This 90-day limitation is taken from a draft prepared by the National Municipal League. During this period the provisions of such an ordinance may be extended by an ordinance regularly adopted.

title and a brief summary of each ordinance and resolution shall be published in the official city newspaper within 10 days after its final approval.

Section 2.10. Donations to private organizations. Be it further enacted, That taxes and other city revenues are levied and collected for public purposes, and the use of such funds as donations or contributions to nongovernmental agencies or for private purposes is prohibited, but the council may contract with nongovernmental agencies for materials and services necessary to effectuate public purposes authorized by law.

### ARTICLE III

#### ORGANIZATION AND PERSONNEL

Section 3.01. Organization of city government. Be it further enacted, That the city government shall be organized into a department of finance, police department, fire department, and department of public works and utilities, unless otherwise provided by ordinance. The council shall determine by ordinance the functions and duties of all departments and offices. The council by ordinance may establish, abolish, merge, or consolidate offices, positions of employment, departments, and agencies of the city, may provide that the same person shall fill any number of offices and positions of employment, and may transfer or change the functions and duties of offices, positions of employment, departments, and agencies of the city, subject to the

following limitations: (a) the number of members and authority of the council, as provided in this Charter, shall not be changed, (b) all officers and employees of the city, except as otherwise specifically provided in this Charter, shall be appointed and removed by and shall be under the direction and control of the mayor, (c) the office of mayor shall not be abolished, nor shall his powers, as provided in this Charter, be reduced, (d) except as provided in subsection 3.05(a), the city judge shall not hold any other city office or position of employment, nor shall this office be abolished or its powers diminished.

Section 3.02. Administrative duties of mayor. Be it further enacted, That the mayor shall be the executive head of the city government, responsible for the efficient and orderly administration of the affairs of the city. He shall be responsible for the enforcement of laws, rules and regulations, ordinances, and franchises of the city, and the city attorney shall take such legal actions as the mayor may direct for such purposes. He may conduct inquiries and investigations into the affairs of the city and shall have such other powers and duties as may be provided by ordinance not inconsistent with this Charter.

Section 3.03. City clerk. Be it further enacted, That the mayor shall appoint a city clerk, who shall have the following powers and duties:

(a) To keep and preserve the city seal and all official records not required by law or ordinance to be filed elsewhere.

(b) To attend all meetings of the council and to maintain a journal showing the proceedings of all such meetings, the councilmen

present and absent, each motion considered, the title of each resolution and ordinance considered, and the vote of each councilman on each question. This journal shall be open to the public during regular office hours of the city, subject to reasonable restrictions exercised by the city clerk.

(c) To prepare and certify copies of official records in his office. Fees for such services may be established by ordinance, to be deposited into the city treasury.

(d) To serve as head of the department of finance if appointed to this position by the mayor.

(e) To perform such other duties as may be required by the council or by the mayor.

Section 3.04. City attorney. Be it further enacted, That the council shall appoint a city attorney, and such assistant city attorneys as may be authorized by ordinance. The city attorney, or an assistant city attorney designated by him, shall be responsible for representing and defending the city in all litigation in which the city is a party; prosecuting cases in the city court; attending all meetings of the council; advising the council, mayor and other officers and employees of the city concerning legal aspects of their duties and responsibilities; approving as to form and legality all contracts, deeds, bonds, ordinances, resolutions, motions, and other official documents; and performing such other duties as may be prescribed by the council or mayor.

Section 3.05. City court. Be it further enacted, That:

(a) City judge--appointment, term. A city judge who shall

constitute the city court may be appointed by the council to serve at the will of the council or for a term to be fixed by ordinance. He shall be not less than 25 years of age. The mayor or other person designated by the council shall serve in the absence or incapacity of the city judge. At any time the office of city judge is left unfilled by the council the mayor shall serve as city judge.

(b) Jurisdiction, powers, compensation. The jurisdiction of the city judge shall extend to the trial of all offenses against the ordinances of the city, and costs in such trials shall be fixed by ordinance.<sup>8</sup> The city judge shall have power to levy fines, penalties, forfeitures and costs, to issue all necessary process, to administer oaths, and to maintain order including the power which justices of the peace have to fine for contempt. The sole compensation for serving as city judge shall be a salary fixed by the council, and all fees for actions or cases in his court shall belong to the city and shall be paid into the city treasury. The compensation of the mayor for serving as city judge shall be fixed by the affirmative vote of not less than four members of council.

(c) Bail. The bail of persons arrested and awaiting trial and persons appealing a decision of the city judge shall be fixed by the city judge, upon such security as in his discretion he deems necessary or as may otherwise be provided by ordinance. Cash bail of persons arrested may be accepted at such times and by officers or employees

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<sup>8</sup>If it is desired to give the city judge concurrent jurisdiction with justices of the peace for trial of offenses against state laws, appropriate language should be added here.

other than the city judge as provided by ordinance; such ordinance shall require that the person arrested be given a receipt for cash bail which shall explain the nature of the deposit. The receipt shall be in triplicate: original to the depositor, duplicate and money to the city clerk, and triplicate to the city judge within 24 hours after the arrest.

(d) Fines and costs. Fines and costs may be paid by installments to be fixed and security determined as provided by ordinance. Upon failure to pay fines and costs or to furnish security, the city judge shall commit the offender to the city jail or workhouse until such fines and costs have been paid at a daily rate of commutation fixed by ordinance, but no person shall be continuously confined in excess of 60 days. Receipts of the city court shall be deposited daily with the city clerk and the city judge shall make monthly reports thereof to the council.

(e) Docket. The city judge shall keep a docket of all cases handled by him.

(f) Separation of powers. The city judge shall be exclusive judge of the law and the facts in every case before him, and no officer or employee of the city shall attempt to influence his decision except through pertinent facts presented in open court.

Section 3.06. Officers and employees. Be it further enacted, That only the offices and positions of employment provided for in the annual budget, as approved by the council, shall be filled. Salaries for all positions shall be in accordance with a pay plan adopted by ordinance. In determining salaries, due consideration shall be given to duties,

responsibilities, technical knowledge and skill required to satisfactorily perform the work, and availability of persons having the qualifications desired.

Section 3.07. Personnel actions. Be it further enacted, That the appointment and promotion of employees of the city shall be on a basis of merit, considering technical knowledge required to perform satisfactorily the work, experience in the particular or similar line of work, and administrative or supervisory qualifications. Unless otherwise provided by this Charter, the mayor shall have authority to make appointments, promotions and transfers, and to make demotions, suspensions and removals of employees for reasonable cause, and may delegate such authority to department heads. Before removal, or suspension for more than 15 days, an employee shall be given a written notice of intention to suspend or remove him, containing a clear statement of the grounds for such proposed action and notification that he may appeal to the city council by filing, within 10 days, with the city clerk written notice of his intention to do so. After receipt of such notice the council shall set a time and place for a public hearing on the matter, to be held within 20 days thereafter. The votes of three councilmen, excluding the mayor's vote, shall be required to override the suspension or removal, and the action of the council shall be a final determination of the matter. A suspension may be with partial or entire loss of salary, but if the suspension is overruled by the council any loss of salary shall be paid to the employee.

Section 3.08. Personnel rules. Be it further enacted, That the council may by ordinance adopt supplementary rules and regulations governing employment by the city, not inconsistent with the provisions of this Charter.

Section 3.09. Oath of office. Be it further enacted, That before a person takes any office in the city government, he shall subscribe to the following oath or affirmation, administered by the city clerk or any justice of the peace:

"I solemnly swear (or affirm) that I will support the constitution and will obey the laws of the United States and of the State of Tennessee, that I will, in all respects, observe the provisions of the Charter and ordinances of the city (town) of \_\_\_\_\_, and that I will faithfully discharge the duties of the office of \_\_\_\_\_."

Section 3.10. Official bonds. Be it further enacted, That the mayor and every officer, agent, and employee of the city having duties embracing the receipt, disbursement, custody, or handling of money, and other officers and employees designated by council, shall give a fidelity bond or faithful performance bond, as determined by council, with some surety company authorized to do business in the State of Tennessee as surety, in such amount as shall be prescribed by council. All such bonds and sureties thereto shall be subject to approval by the council. The cost of such bonds shall be paid by the city. Such bonds shall be blanket bonds covering offices and positions to be bonded, and individual bonds may be secured only when blanket bonds are not obtainable.

Section 3.11. Political activity prohibited. Be it further enacted, That no employee of the city shall continue in the employment of the city after becoming a candidate for nomination or election to any public office, but this provision shall not apply to the mayor, councilmen,

members of boards or commissions, the city attorney, or other officers of the city. No person shall directly or indirectly give, render or pay any money, service or other valuable consideration to any person for or on account of or in connection with employment by the city government. No person shall orally, by letter or otherwise solicit or be in any manner concerned in soliciting any assessment, subscription or contribution from any employee of the city in connection with any city election. An officer or employee of the city, other than the mayor or a member of council, shall not make any contribution to the campaign funds of any candidate in any city election. Any person who by himself or with others willfully or corruptly violates any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof he shall immediately forfeit and vacate the office or position he holds and be ineligible to hold any office or position of employment in the city government for a period of five years thereafter.

Section 3.12. Personal financial interest. Be it further enacted, That any officer or employee of the city shall not profit personally, directly or indirectly, from any business transacted with the city government,<sup>9</sup> nor shall any officer or employee accept any free

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<sup>9</sup>This provision conforms substantially with the general law of Tennessee. If it is desired to make it less restrictive, the following section from a draft prepared by the National Municipal League may be considered:

Any city officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the city or in the sale of any land,

or preferred service, benefits or concessions from any person, company or firm regulated by or doing business with the city.

#### ARTICLE IV

#### FISCAL ADMINISTRATION

Section 4.01. Fiscal year. Be it further enacted, That the fiscal year of the city government shall begin on the 1st day of July and shall end on the 30th day of June of the succeeding year, unless otherwise provided by ordinance.

Section 4.02. Mayor to submit annual budget. Be it further enacted, That not later than 45 days prior to the beginning of each fiscal year, the mayor shall submit to the council a proposed budget for the next fiscal year, showing separately for the general fund, each utility, the school system (if there is a separate city school system), and each other fund the following: (a) revenue and expenditures during the preceding year, (b) estimated revenue and expenditures for the current fiscal year, (c) estimated revenue and recommended expenditures for the next

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

fiscal year, not to exceed the amount of estimated revenue, (d) a comparative statement of the cash surplus (or deficit) at the end of the preceding year and the estimated surplus (or deficit) at the end of the current fiscal year, and (e) any other information and data, such as work programs and unit costs, in justification of recommended expenditures that may be considered necessary by the mayor or requested by the council. The mayor may recommend and estimate receipts from additional revenue measures, providing such estimates are separated clearly from normal revenue estimates. The budget shall be accompanied by a message from the mayor containing a statement of the general fiscal policies of the city, the important features of the budget, explanations of major changes recommended for the next fiscal year as compared with the current fiscal year, a general summary of the budget, and such other comments and information as he may deem pertinent. A sufficient number of copies of the mayor's message shall be reproduced to furnish a copy to any person desiring one. A copy of the budget in full shall be filed with the city clerk for public inspection and a copy shall be furnished to each councilman.

Section 4.03. Capital improvement budget. Be it further enacted, That a capital improvement budget may also be prepared to include a description of projects recommended for the ensuing fiscal year and the five fiscal years thereafter, the estimated cost of each project, and the recommendations of the mayor for financing the projects proposed for the ensuing year. The capital improvement budget shall be prepared by or reviewed by the local planning commission, and the

recommendations of the planning commission shall be submitted by the mayor to the council concurrently with the annual budget. The council may accept, reject or revise the capital improvement budget as it deems desirable.

Section 4.04. Public hearing. Be it further enacted, That after receiving the mayor's proposed budget, the council shall fix a time and place for a public hearing thereon, and shall cause a public notice thereof and an announcement of where and when the full budget may be examined to be published two times in the official city newspaper, the last such publication to be at least 10 days in advance of the date of the hearing. The public hearing shall be held before the council at the stated time and place, and all persons present shall be given a reasonable opportunity to be heard.

Section 4.05. Action by council on budget. Be it further enacted, That after the public hearing and before the beginning of the ensuing fiscal year the council shall adopt an appropriation ordinance, based on the mayor's proposed budget with such modifications as the council considers necessary or desirable. Appropriations need not be in more detail than a lump sum for each department or agency. The council shall not make any appropriations in excess of estimated revenue, except to provide for an actual emergency threatening the health, property or lives of the inhabitants of the city declared by a vote of all members of council. If emergency conditions prevent the adoption of an appropriation ordinance before the beginning of the new fiscal year, the appropriations for the last fiscal year shall become

the appropriations for the new fiscal year, subject to amendment as provided in this section.<sup>10</sup> Amendments may be made to the original appropriation ordinance at any time during a current fiscal year after 10-days notice published in the newspaper and a public hearing before the council. Appropriations, except emergency appropriations as provided above, may be increased during the year only after the mayor certifies in writing that a sufficient amount of unappropriated revenue will be available. Any portion of an annual budget remaining unexpended and unencumbered at the close of a fiscal year shall lapse and be subject to appropriation for the following year. Any balance remaining in any fund other than the general fund at the end of a fiscal year may remain to the credit of such fund and be subject to further appropriation. At the end of each month the mayor shall submit to the council a budget report showing revenue receipts, encumbrances and expenditures for that month and for the fiscal year to the end of that month.

Section 4.06. Control of expenditures. Be it further enacted, That the mayor shall be responsible for controlling expenditures of the various agencies of the city government to accomplish maximum efficiency and economy. No expenditures shall be made in excess of appropriations.

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<sup>10</sup> A city may prefer to omit this sentence, relying on the dire consequences of a year with no appropriations as a powerful pressure on the council to perform this duty in the time limits prescribed.

Section 4.07. Centralized purchasing. Be it further enacted,  
That:

(a) All contracts and purchases, except those reserved to the council by ordinance [and those of the city school system], shall be made by the purchasing agent appointed by the mayor, or by the mayor acting as purchasing agent. The purchasing agent may prescribe rules for emergency purchases to be made by department heads. Departments shall estimate their future needs and requisition items so that purchases in maximum quantities may be made. The purchasing agent shall prepare standard specifications for supplies and equipment and enforce such specifications, dispose of surplus or worn out supplies and equipment, store and maintain records of materials and supplies, and maintain records of city property.

(b) Purchases or contracts of more than \$500 shall require approval of the council. All purchases and contracts, except for minor items used infrequently or items which must be obtained immediately to avoid disruption of services, shall be by competition, subject to such regulations as may be provided by ordinance. Any expenditure or contract for more than \$500 shall be made only after sealed bids have been invited by notices published at least two times in the official city newspaper and at the city hall, the last such notice to be published not less than 15 days in advance of the date set for receiving bids. Purchases and contracts shall be awarded to the lowest responsible bidder, but all published notices shall state that the city reserves the right to reject any and all bids. The council may waive the requirement

to obtain bids when there is only one source of supply or when such action is in the best interest of the city, providing the reasons for any such waiver are made a matter of record. Bid records shall be preserved for a period of not less than two years. Bids need not be taken for professional services and services for which the rates or prices are regulated by public authority, nor shall competitive bidding be required for purchases from other governmental agencies.

Section 4.08. Unauthorized contract or expenditure. Be it further enacted, That any contract or agreement made in violation of the provisions of this Charter or ordinances of the city shall be void and no expenditure shall be made thereunder. Every officer and employee who shall knowingly make or participate in any such contract or agreement, or authorize or make any expenditure thereunder, and their sureties on their official bonds, and every person who shall knowingly receive such a payment, shall be jointly and severally liable to the city for the full amount so paid or received. A violation of this section by any officer or employee shall be cause for his removal.

Section 4.09. Sale of city property. Be it further enacted, That the mayor may sell city property which is obsolete, surplus or unusable, after advertisement as provided in §4.07(b), by sealed bids or at public auction; provided, however, that any sale for more than \$500 or any sale of real estate shall be subject to approval by the council. The mayor may sell any item valued at less than \$50 without taking bids, but each such sale shall be reported to the council at its next meeting.

Section 4.10. Annual audit. Be it further enacted, That within 30 days after the beginning of each fiscal year the council shall employ an independent, certified public accountant to make an audit of all financial records of the city for that year.<sup>11</sup> The auditor shall perform adequate sampling to determine validity of the records. Each such audit shall include determination of legality of transactions, mathematical accuracy of records, complete accountability, and application of accepted municipal accounting principles. It shall be made in accordance with generally accepted auditing standards and in conformity with generally accepted accounting principles. The audit shall be completed and a report, including a summary for publication, shall be submitted

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<sup>11</sup>Note that this provision requires selection of the auditor at the beginning of the year for which he is to make the audit. The following is from a 1960 report of a committee formed by the League of California Cities and the California Society of Certified Public Accountants:

It is recommended that the contract for audit be entered into during the early part of the fiscal year to be examined. As a result, the auditor will be enabled to:

- (a) Complete a substantial portion of the field work prior to the close of the year.
- (b) Properly arrange for auditing procedures to be followed at the end of the year, such as verification of inventories, cash counts, confirmations of accounts receivable, etc.
- (c) Expedite the completion of his examination and the rendering of his audit report as a result of the preliminary field work completed before the end of the year.

The above recommendation does not preclude contracts for more frequent audits, nor does it preclude audit contracts extending over more than one year, in which cases the same principles will apply.

to council within 90 days after end of the fiscal year.<sup>12</sup>

Section 4.11. Bonds for public works contracts. Be it further enacted, That each bid on a contract for any public works or improvement shall be accompanied by a cash or surety company bid bond in the amount of five per cent of the amount of the bid. Before any contract is awarded, the contractor shall give a bond for the faithful performance of the contract, with a surety company authorized to transact business in Tennessee, in an amount equal to 100 per cent of the contract price. The council may waive these requirements for contracts under \$5,000.

Section 4.12. Property taxes. Be it further enacted, That all property subject to taxation shall be subject to the property tax levied by the city. The council may elect to use county assessments, or may appoint a city assessor to assess all property subject to taxation except property assessed by the State Public Service Commission. If assessments are made by a city assessor, the council by ordinance shall provide for a city board of equalization and the procedure for appeals of assessments thereto.

Section 4.13. Omitted property. Be it further enacted, That if county assessments are used the city clerk shall add to the assessment rolls any taxable property that may have been omitted by the county assessor. Such property shall be appraised and assessed at

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<sup>12</sup>The National Municipal League suggests another provision which may be added: "The same auditor shall not be engaged for more than three consecutive years." The possible advantages of a "fresh look" resulting from such a provision should be balanced against a probable increase in the audit expense.

the same ratio as other property of the same class located in the city.

Section 4.14. Tax levy. Be it further enacted, That the council shall make a tax levy, expressed as a fixed rate per \$100 of assessed valuation, not later than 90 days prior to the tax due date. In event of council's failure to do so, the prior year's tax rate shall continue in effect.<sup>13</sup>

Section 4.15. Tax due dates and tax bills. Be it further enacted, That the due dates of property taxes shall be fixed by ordinance and provision may be made for equal semi-annual installments. The city shall send tax bills to taxpayers, showing the assessed valuations, amounts of taxes due, tax due dates, and information as to delinquency dates and penalties. Failure to send tax bills shall not, however, invalidate any tax, penalty, or interest thereon. Property taxes shall become delinquent 30 days after a due date, at which time a penalty of five per cent shall be added and thereafter such taxes shall be subject to interest at the rate of one-half of one per cent for each month or fraction thereof until paid. On and after the date when such taxes become delinquent, the tax records of the city shall have the force and effect of a judgment of a court of record.

Section 4.16. Delinquent taxes. Be it further enacted, That the council may provide by ordinance for the collection of delinquent taxes by distress warrants issued by the mayor for the sale of goods and chattels to be executed by any police officer of the city under the laws governing execution of such process from a justice of the peace; or by the county

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<sup>13</sup>This sentence may be omitted, for the same reason mentioned in §4.05 with respect to appropriations.

trustee as provided by general law; or by the city attorney acting in accordance with general laws providing for the collection of delinquent city or county taxes; by garnishment; by suits in chancery; or by any two or more of the foregoing methods, or by the use of any other available legal processes and remedies. If not otherwise collected, the city attorney, or other attorney designated by the council, shall file suit for collection of all delinquent taxes not later than 18 months following date of delinquency.

Section 4.17. County may collect taxes. Be it further enacted, That the city may contract with the county for the collection of city taxes. The contract may provide for reasonable fees to be paid to the county for this service.

Section 4.18. Taxes not to be excused. Be it further enacted, That no officer or employee of the city shall have the authority to excuse taxes, penalties, interest, special assessments, or other charges due the city, but errors may be corrected when authorized by council.

Section 4.19. Disbursements by checks. Be it further enacted, That all disbursements, except for any agency of the city administered by a board or commission, shall be made by checks signed by the city clerk and countersigned by the mayor. The council may by resolution designate other officers to sign such checks in the absence or disability of the mayor or city clerk.

Section 4.20. Official depository. Be it further enacted, That the council shall designate an official depository or depositories for deposit and safekeeping of funds of the city, with such collateral security as may be deemed necessary by the council.

Section 4.21. Accounting. Be it further enacted, That the financial records of the city shall be established and maintained in general conformity with the accounts and procedures recommended by the Municipal Finance Officers Association or other nationally recognized authority on municipal accounting.

Section 4.22. Tax anticipation borrowing. Be it further enacted, That the council may borrow money in anticipation of taxes, for payment of current and necessary expenses, which shall be repaid in the same fiscal year.

## ARTICLE V

### PUBLIC SCHOOLS

(Provisions have not been drafted for this Article because many cities do not operate schools and in those that do the variations in organization, etc., are numerous. It is likely that a city utilizing this charter draft would want to continue its present charter provisions, if any, governing the schools; these may be incorporated under this Article with whatever changes may be desired.)

## ARTICLE VI

### INTERGOVERNMENTAL COOPERATION AND CONTRACTING

Section 6.01. Intergovernmental cooperation and contracts. Be it further enacted, That in addition to other powers granted in this Charter,

the city council shall have power to contract and cooperate with any other municipality or other political subdivision of the state, or with an elective or appointive official thereof, or with any duly authorized agency of the federal or state government, for the exercise of any power or function which the city is authorized to undertake by this Charter.

Section 6.02. Execution of such powers. Be it further enacted, That the city council may exercise the powers conferred in this article by ordinance or resolution setting out the terms to be included in any such contract or cooperative action. The parties to such a contract or cooperative action, or any of them, may acquire, by gift or purchase, or by the power of eminent domain exercised by one or more of the parties, the lands, buildings, and other property necessary or useful for the purposes of the contract or cooperative action, either within or without the corporate limits of one or more of the contracting parties, and shall have the power to hold or acquire such property jointly. The city may provide for the financing of its share or portion of the cost or expenses of such a contract or cooperative action in the same manner as if it were acting alone and on its own behalf.

Such a contract also may provide for the establishment and selection of a joint commission, officer or officers to supervise, manage, and have charge of a joint service or project, and may provide for the powers and duties, terms of office, compensation, if any, and other provisions relating to the members of such joint commission, officer or officers. Such contract may include and specify terms and

provisions relative to the termination or cancellation of the contract or cooperative action by ordinance or resolution, and the notice, if any, to be given of such termination or cancellation. Such cancellation or termination shall not relieve any party participating in such contract or cooperative action from any obligation or liability for its share of the cost or expense incurred prior to the effective date of any such cancellation or termination.

Section 6.03. Immunities and liabilities of officers. Be it further enacted, That all public officers acting under the authority of a contract or undertaking cooperative action under the provisions of this article shall enjoy the same immunities and be subject to the same liabilities as if they were acting entirely within the territorial limits of their respective governmental units.

Section 6.04. Handling of funds. Be it further enacted, That all money received pursuant to any such contract or cooperative action, under the provisions of this article, unless otherwise provided by law, shall be deposited and disbursed in accordance with the provisions of such contract or cooperative action.

## ARTICLE VII

### MISCELLANEOUS PROVISIONS

Section 7.01. Other general laws may be used by city. Be it further enacted, That notwithstanding any provision of this Charter, the city council may elect to operate under or adopt any general law or public

act available to municipalities of the state, in lieu of or in addition to provisions of this Charter.

Section 7.02. Penalties. Be it further enacted, That the violation of any provision of this Charter, for which a penalty is not specifically provided herein, is hereby declared to be a misdemeanor, and persons guilty of such violations shall be fined not more than \$50. Any person failing to pay a fine and costs shall be committed to the workhouse to work out the fine and costs at the rate of \$2 per day.

Section 7.03. Repeal of Acts. Be it further enacted, That when this Act becomes applicable as the Charter of the City (Town) of \_\_\_\_\_, Tennessee, the following Acts shall be repealed: Chapter \_\_\_\_\_, Private Acts of \_\_\_\_\_; Chapter \_\_\_\_\_, Private Acts of \_\_\_\_\_; etc.<sup>14</sup>

Section 7.04. Severability. Be it further enacted, That if any article, section, subsection, paragraph, sentence, or part of this Charter shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair any other parts of this Charter unless it clearly appears that such other parts are necessarily dependent upon the part or parts held to be invalid or unconstitutional. It is the legislative intent in enacting this Charter that each article, section, subsection, paragraph, sentence, or part be enacted separately and independently of each other.

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<sup>14</sup>It is strongly recommended that all previous private acts, not already specifically repealed, be included in this section, except acts or parts of acts fixing city limits and those of one-time application such as authorization to issue bonds for a specific purpose.

Section 7.05. Applicability. Be it further enacted, That to be applicable as the Charter of the City (Town) of \_\_\_\_\_, this Act must be approved by

(alternate #1) a majority of those voting in an election thereon, to be held not less than 60 nor more than 120 days after passage of this Act. The mayor shall, within 10 days thereafter, certify to the Secretary of State the results of the election.

(alternate #2) a two-thirds vote of the governing body, said vote to be taken not less than 60 nor more than 120 days after passage of this Act. The mayor shall, within 10 days thereafter, certify to the Secretary of State the results of said vote.

Section 7.06. Effective date. Be it further enacted, That this Act shall take effect from and after its passage, the public welfare requiring it.