



1015 Cultural Park Blvd.  
Cape Coral, FL

## **AGENDA**

### **CHARTER REVIEW COMMISSION**

**March 15, 2018**

**3:00 PM**

**Conference Room 220A**

**1. Call to Order**

A. Chair Peterson

**2. Roll Call**

A. Bennie, Jenkins, Kitchen, McNamara, Peterson, Robinson, Sund,  
and Alternate Stewart

**3. Public Input**

**4. Business**

- A. Approval of the Agenda
- B. Approval of Minutes - February 15, 2018 Meeting
- C. Continue Discussion on Article IV, Section 4.06, Mayor and Mayor Pro Tem
- D. Continue Discussion on Article IV, Section 4.07, Council Vacancies in conjunction with Article IV, Section 4.11 - Vacancies; Forfeiture of Office; Filling of Vacancies
- E. Continue Discussion on Article IV, Section 4.09 - General Powers and Duties
- F. Article IV, Section 4.10 - Prohibitions

**5. Commissioner Comments**

**6. Date and Time of Next Meeting:**

A. Thursday, April 19, 2018, at 3:00 p.m. in Conference Room 220A

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of

the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

If a person decides to appeal any decision made by the Board/Commission/Committee with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

**SPECIAL NOTE:** This is not a meeting of the Cape Coral City Council. However, two or more Council Members may be in attendance and may participate at this workshop/meeting.

<b>Item Number:</b>	<b>4.B.</b>
<b>Meeting Date:</b>	<b>3/15/2018</b>
<b>Item Type:</b>	<b>Business</b>

## AGENDA REQUEST FORM

CITY OF CAPE CORAL



### TITLE:

Approval of Minutes - February 15, 2018 Meeting

### SUMMARY:

### ADDITIONAL INFORMATION:

### ATTACHMENTS:

<b>Description</b>	<b>Type</b>
▢ Approval of Minutes - February 15, 2018 meeting	Backup Material

**MINUTES FOR THE MEETING OF THE CITY OF CAPE CORAL  
CHARTER REVIEW COMMISSION**

**THURSDAY, FEBRUARY 15, 2018**

**Conference Room 220A**

**3:00 P.M.**

Chair Peterson called the meeting to order at 3:02 p.m.

Roll Call: Kitchen, McNamara, Peterson, and Sund were present. Robinson was excused. Jenkins arrived at 3:03 p.m. Bennie arrived at 3:04 p.m. Stewart was absent.

Also Present: Dolores Menendez, City Attorney arrived at 3:05 p.m.  
Mark Moriarty, Assistant City Attorney  
Marilyn Stout, Council Liaison arrived at 3:06 p.m.  
Jay Murphy, CT Business Manager arrived at 3:57 p.m.

**Public Input**

No speakers

**BUSINESS**

**Approval of the Agenda**

No action taken.

**Approval of Minutes – December 21, 2017 meeting**

Chair Peterson stated the minutes of the December 21, 2017 meeting were presented for approval.

***Commissioner Sund moved, seconded by Vice Chair Kitchen, to approve the minutes of the December 21, 2017 meeting as presented.***

***Commission polled as follows: Kitchen, McNamara, Peterson, and Sund voted "aye." Four "ayes." Motion carried 4-0.***

**CRC Member Bennie's Resignation Offer**

Chair Peterson discussed the email Commissioner Bennie sent to all regarding the offer of his resignation.

Commissioner Jenkins arrived at 3:03 p.m.

Discussion held to put this email behind and allow Commissioner Bennie to continue as a member.

***Consensus agreed to allow Commissioner Bennie to continue on the Commission.***

Commissioner Bennie arrived at 3:04 p.m.

Chair Peterson informed Commissioner Bennie that the Commission was not interested in pursuing his offer of a resignation.

**Continue Discussion on Article IV, Section 4.01, Mayor and City Council,  
Specifically the number of Council people**

Chair Peterson reminded the Commission that the previous discussion focused on the possibility of a tie when voting.

Vice Chair Kitchen stated he was in favor of a weak Mayor, one who would cast a tie vote and not have a vote in other issues before City Council.

Discussion held regarding:

- Strong Mayor, Weak Mayor, Tie-Breaking Mayor

Council Liaison Stout arrived at 3:06 p.m.

Vice Chair Kitchen discussed the time commitment given by Council people is significant. He favored having an even number of members on City Council with the Mayor being the tie-breaker vote.

Council Liaison Stout explained that the position as Council Member is part-time. According to the Charter, the only requirement is to attend Council meetings. She questioned when the Mayor would vote with only seven Council people. Chair Peterson stated only to break a tie.

Discussion held regarding having six Council people along with the Mayor for a total of seven.

Council Liaison Stout explained how she struggled with eight on Council in the early 90's. She mentioned that this was never meant to be a full-time job.

Vice Chair Kitchen stated it was worthy of further investigation and consideration.

Discussion held regarding whether to add or subtract Council people.

City Attorney Menendez explained how nothing can be passed without an affirmative vote of four. There are eight members on Council. If all the members vote with no one abstaining and no one absent, then 4-4 will give you a tie. If somebody is absent, then an affirmative vote of four will carry. If you only have five councilmembers present and the vote is 3-2, under the Charter four is needed to approve. If there is a 4-4, the motion fails. She explained a denial vote of 4-4 and how the motion would be denied. To approve, it would take an affirmative vote; you cannot approve something just by failing to have a majority. In the very early years of the City, there was a seven-member Council, and they picked a Mayor amongst themselves. She explained there would be ripple effects if the Commission wanted to go to six.

Discussion held regarding the following:

- Redistricting in 2020
- How often Council has a failed motion and how another motion can be made to try to pass it
- 4-4 votes included the golf course property and a recent rezoning
- What problem would be solved with reduction of Council seats
- Changing to a strong Mayor form of government

**Continue Discussion on Article IV, Section 4.02, Eligibility,  
add sentence from Section 4.05**

City Attorney Menendez stated under 4.05 candidates for specific districts show proof of residence by a valid voter's registration card. The City Clerk currently asks for proof. It does not say that specifically in terms of the Mayor. It could potentially be repeated so that it would be clear for the Mayor as well, not just for the districts. If that were the case, it could probably be added under 4.05 (a). It is already in 4.05 (b). Some of the language has had changes back to the original way. When you make changes, there tends to be ripple effects. She stated it could be put in 4.02 eligibility.

Chair Peterson asked if there was a benefit to one or the other.

Vice Chair Kitchen stated it covers them all in 4.02.

City Attorney Menendez confirmed that.

***Vice Chair Kitchen moved, seconded by Commissioner McNamara, to add that section from 4.05 (b) proof of residence shall be established by voter's registration card and add it to 4.02 eligibility.***

***Commission polled as follows: Bennie, Jenkins, Kitchen, McNamara, Peterson, and Sund voted "aye." Six "ayes." Motion carried 6-0.***

**Continue Discussion on Article IV, Section 4.05, Candidate Qualifications and  
Election, specifically on partisan and non-partisan elections**

Chair Peterson noted that the discussion on this topic at the last meeting was cut short.

Assistant City Attorney Moriarty stated he could not find any municipality in the State of Florida that is partisan. He noted municipalities have the option of setting their own election code. There are provisions in our Charter that make it illegal to discriminate on viewpoint, race, religion, etc. He mentioned changing this would have ripple effects throughout the Charter.

Discussion held regarding the following:

- Voting by party affiliation
- People who care would find out about the candidates.
- Productivity comes down to the difference between national and local issues.
- Public information is available regarding a candidate's party affiliation by calling the Elections Office.
- Not much difference between political candidates at the municipal level

***Commissioner Bennie moved that as a Commission we continue the tradition as said in the Charter for non-partisan elections.***

Chair Peterson stated a motion was not needed to change anything whereas a motion would be needed to make any changes.

***The motion was withdrawn.***

***Commissioner Sund moved, seconded by Vice Chair Kitchen, that we begin the process of drafting language to amend the City of Cape Coral elections from non-partisan to partisan elections.***

***Commission polled as follows: Kitchen and Sund voted "aye." Bennie, Jenkins, McNamara, and Peterson voted "nay." Two "ayes." Four "nays." Motion failed 2-4.***

#### **Article IV, Section 4.06, Mayor and Mayor Pro Tem**

Chair Peterson led the discussion on this item.

City Attorney Menendez discussed the line item veto in the City budget.

Discussion held regarding the following:

- Why the Mayor has veto powers
- Change to a strong Mayor as an Executive

CT Business Manager Murphy arrived at 3:57 p.m.

Discussion continued with the following:

- Council as a whole should approve the City Manager's Budget without any veto power from one person.
- How Council can override the Mayor's veto, two-thirds of seven plus one
- Holding off on this discussion until the Mayor Executive role

Chair Peterson proposed cutting out in 4.06 (a) for budget only "and shall have the power to veto line items."

Discussion held regarding two-thirds plus one vote.

Discussion held regarding bringing back this section after the section on the City Manager.

Chair Peterson explained how it seemed like it would take more than two-thirds to override a line item veto.

***Consensus agreed to bring this back.***

Commissioner Jenkins suggested if language could be constructed that says once it is vetoed and it needed to be passed with two-thirds, that the Mayor does not get a vote in the two-thirds.

Chair Peterson stated that could be considered.

Discussion held regarding:

- Taking away a vote from an elected official who is elected to cast votes
- What constitutes the two-thirds
- All Councilmembers must be able to vote on the final budget.

Assistant City Attorney Moriarty distributed a copy of F.S. 200.065 – method of fixing millage and F.S. 129.03 – preparation and adoption of budget.

Chair Peterson stated he would like this to be put on the next meeting agenda.

***Commissioner Sund moved, seconded by Commissioner Bennie, to put Article IV, section 4.06 on the next meeting agenda.***

***Commission polled as follows: Bennie, Jenkins, Kitchen, McNamara, Peterson, and Sund voted "aye." Six "ayes." Motion carried 6-0.***

#### **Article IV, Section 4.07, Council, vacancies**

Chair Peterson led the discussion on this item.



Discussion held regarding the following:

- Section 4.07 works with Section 4.11, almost impossible to change one part of it without triggering changes in other places

***Vice Chair Kitchen moved, seconded by Commissioner Sund, to move 4.07 vacancies to the next meeting and combine it with discussion of 4.11.***

***Commission polled as follows: Bennie, Jenkins, Kitchen, McNamara, Peterson, and Sund voted "aye." Six "ayes." Motion carried 6-0.***

#### **Article IV, Section 4.08, Council and Mayor, Compensation, Expenses**

Chair Peterson led the discussion on this item.

Discussion held regarding Council Liaison Stout's statement in the last meeting regarding some residents in her district and how she could not support their request for an oversized rental sign.

Discussion held regarding the following:

- How much time City Councilmembers devote to City business and whether it should be changed to a full-time position versus a part-time position
- How their time at home is not on schedule
- What is not getting done that we are trying to fix?
- The salary increase was passed for Councilmembers two years ago.
- How you cannot count hours of time they spend on everything that they handle.

CT Business Manager Murphy mentioned an article from Google that showed the 2017 salaries for City Managers and Councils in other cities such as Coral Springs and Pembroke Pines (Mayor \$45,000 and Council \$23,000). Plantation which has a Council/Strong Mayor pays their Mayor \$120,000.

Council Liaison Stout mentioned that Fort Myers used to have a Strong Mayor form of government and it put them in such debt that they changed to a City Manager form of government about eight years ago.

Discussion held regarding:

- Elected does not always mean qualified.
- How to increase qualified applicants as the demands change significantly with the growth of the City
- Do we have a problem attracting people to run for Council?
- The current salary of the City Manager and term of contract
- Lack of respect given to elected officials
- Administrative support in the Council Office
- Council would make the change from actual and necessary to reasonable
- Compensation and travel reimbursement

- Waiving of medical coverage of council persons
- State Statute that controls the expenses

#### **Article IV, Section 4.09, General Powers and Duties**

Chair Peterson stated his interpretation of this was that the only changes we could propose would be to remove some of the duties from the City that are not covered by law away from City Council.

Discussion held regarding the difference between a department and an office such as the City Attorney's Office.

Discussion held regarding moving to a strong Mayor form of government; what duties would fall to Council and what would fall to the Mayor's Office.

Chair Peterson asked if changing the form of government should be an agenda item for the next meeting.

Council Liaison Stout left at 5:32 p.m.

Chair Peterson discussed putting the following agenda items for the next meeting:

- **Carryover of Section 4.06**
- **Sections 4.07 along with 4.11**
- **Start with Section 4.10 - New Business**
- **Form of Government - Section 4.09**
- **Section 4.12 and above for a future meeting**

Chair Peterson asked for a consensus on where to draw the line. He suggested just having 4.10 as New Business and stop there.

Discussion held regarding having Section 4.12 and above for a future meeting after March.

CT Business Manager Murphy asked the Commission if they were interested in having a speaker come to the meeting to discuss changing the form of government. He stated he would provide some backup documents.

Discussion held regarding adding an agenda item to have a speaker come to the next meeting to talk about changing the form of government.

Chair Peterson stated it would be respectful for the speaker's time to have him first on the agenda.

CT Business Manager Murphy stated he will follow up on this and let the Recording Secretary know the status of the speaker coming.

Chair Peterson reviewed the agenda items for the next meeting: Speaker, sections 4.06, 4.07 with 4.11, 4.09 (placeholder for the form of government), and 4.10 would be the only piece of New Business. He asked for a motion on whether the Commission wanted to hear the speaker.

***Commissioner Bennie moved, seconded by Commissioner Jenkins, to not have the speaker present at the next meeting.***

***Commission polled as follows: Bennie and Peterson voted "aye." Jenkins, Kitchen, McNamara, and Sund voted "nay." Two "ayes." Four "nays." Motion failed 2-4.***

Chair Peterson announced the vote approved to have the speaker.

#### **Commissioner Comments**

None

#### **Date and Time of Next Meeting**

The next meeting would be held on Thursday, March 15, 2018, at 3:00 p.m. in Conference Room 220 A.

#### **Adjournment**

There being no further business, the meeting was adjourned at 5:43 p.m.

Submitted by,

Barbara Kerr  
Recording Secretary

<b>Item Number:</b>	<b>4.C.</b>
<b>Meeting Date:</b>	<b>3/15/2018</b>
<b>Item Type:</b>	<b>Business</b>

## AGENDA REQUEST FORM

CITY OF CAPE CORAL



### TITLE:

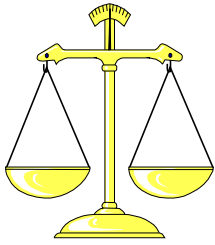
Continue Discussion on Article IV, Section 4.06, Mayor and Mayor Pro Tem

### SUMMARY:

### ADDITIONAL INFORMATION:

### ATTACHMENTS:

<b>Description</b>	<b>Type</b>
▣ Memo from City Attorney's Office - 3 8 2018	Backup Material
▣ Appendix from the National Civic League's Model City Charter 8th Edition	Backup Material
▣ Article IV, Section 4.06	Backup Material



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## CITY ATTORNEY'S OFFICE MEMORANDUM

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**TO:** Charter Review Commission

**FROM:** Dolores D. Menendez, City Attorney  
Mark Moriarty, Assistant City Attorney

**DATE:** March 8, 2018

**SUBJECT:** Additional back up materials for the Charter Review Commission's  
March 15th meeting.

- I. Agenda Item: *Continue Discussion on Article IV, Sections 4.06 - Mayor and Mayor Pro Tem, and Section 4.09 -General Powers and Duties*
- II. Agenda Item: *Continue Discussion on Article IV, Section 4.07, Council Vacancies in conjunction with Article IV, Section 4.11 - Vacancies; Forfeiture of Office; Filling of Vacancies.*

- I. **Agenda Item: Continue Discussion on Article IV, Sections 4.06 - Mayor and Mayor Pro Tem, and Section 4.09 -General Powers and Duties.**

Attached for informational purposes is the Appendix taken from the National Civic League's Model City Charter 8<sup>th</sup> Edition. The appendix illustrates and compares various Mayor – Council forms of governments.

- II. **Agenda Item: Continue Discussion on Article IV, Section 4.07, Council Vacancies in conjunction with Article IV, Section 4.11 - Vacancies; Forfeiture of Office; Filling of Vacancies.**

The City has experienced issues with this section when sitting Council Members have resigned to run for other political offices.

The State's "Resign to Run" law is codified in State Statutes § 99.012 (3). It provides in relevant part:

- (3)(a) No officer may qualify as a candidate for another state, district, county, or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office he or she presently holds.
- (b) The resignation is irrevocable.
- (c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.
- (d) The resignation must be effective no later than the earlier of the following dates:
  - 1. The date the officer would take office, if elected; or
  - 2. The date the officer's successor is required to take office.
- (f)1. With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer's term were otherwise scheduled to expire.
- 2. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

# **Eighth Edition**

## **Model City Charter**

**A Publication of the  
National Civic League**

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## OPTIONS FOR MAYOR-COUNCIL CITIES

Since 1915, the *Model City Charter* has been based on the council-manager form of government. Some cities have a tradition of using or prefer to use the mayor-council form, and in some states the adoption of council-manager government may be limited by state statutes.<sup>1</sup> Cities that use the mayor-council form can make choices to “reform” their city government within the framework of this form of government. There are structural approaches that can clarify the structure and improve the performance of the mayor-council city government.

The mayor-council form of government is based on principles of separation of powers and checks and balances similar to those found in American national and state governments. Certain powers are assigned to the mayor and others to the council in cities that use this form. In addition, some mayor-council charters provide for other officials such as appointed boards or administrators who have independent authority to make specified decisions. It was common in the nineteenth century for cities to divide authority among many officials in the belief that the more power was divided and the more officials were directly elected, the more democratic the process of city government would be. In practice, complex structures with highly fragmented authority created ineffective government in which it was difficult to hold anyone responsible for the failure of city government as a whole. In certain cities, the fragmented structure created a vacuum that party organizations filled with unified control. In other cities—probably more numerous than those with control by party organizations—the prevailing structure simply contributed to a lack of competent and farsighted leadership and contributed to city governments that were neither effective nor efficient in their delivery of services to citizens. Some cities still retain these features in their charter.

The first *Model City Charter* proposed replacing the fragmented authority and confused assignment of responsibility of existing nineteenth century city governments with simplified and centralized executive authority exercised by an elected mayor. After the first edition, the model charter assigned this centralized executive authority to an appointed city manager. From the second through the fourth editions of the charter, no provisions were proposed for mayor-council cities. With the fifth edition, the strong mayor-council form from the first edition reappeared as an alternative for those cities that chose not to use the preferred council-manager form with the suggestion that a “vice mayor” or what would later often be called a chief administrative officer (CAO) might be appointed by the mayor. These recommendations appeared in the sixth and seventh editions as well.

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<sup>1</sup> Two examples illustrate how state statutes can affect the choice of form of government. Indiana law prescribes that all cities use the mayor-council form; small *towns* have an option in the choice of form. In Wisconsin, state statute specifies that the “council-manager” optional charter have a council president rather than mayor and gives the manager unusual powers such as the authority to appoint council committees. **Only ten of 190 cities in Wisconsin operate under the council-manager form.** In Dale Krane, Platon Rigos, and Melvin Hill, Jr., Eds., *Home Rule in America: A Fifty-State Handbook* (Washington: CQ Press, 2001), see chapters on Indiana by William Blomquist and on Wisconsin by Stephen E. C. Hintz.



The approach taken in this edition is different. Officials and citizens who are reviewing a mayor- council charter are given analytical questions to guide their assessment of the governmental structure. In contrast to exclusive reliance on the strong mayor alternative, two options for organizing the mayor-council form are now proposed.

### Analytical Questions about Mayor-Council Governments

For cities that prefer to use the mayor-council form of government, there are two questions to answer in designing a charter.

- o *First, how should authority be divided between the mayor and the council?* The Model Charter Committee recommends two options for the division of authority: the first option is to provide for a blend of separation and sharing of authority between the mayor and the council; the second option is the classic strong mayor-council approach.
- o *Second, should a chief administrative officer be appointed?* The Model Charter Committee recommends the addition of a CAO to all types of mayor-council governments. How the CAO is appointed and the responsibilities of the position are determined by which of the two optional approaches is taken to dividing authority between the mayor and council.

To provide background information, each of these questions is discussed in more detail. Then the optional approaches and an assessment of them are presented.

#### A. How is authority divided between the mayor and the council?

There are several broad patterns of dividing authority in mayor-council cities. Although these cities are commonly divided into “strong mayor” and “weak mayor” variations, this two-way division is misleading. Some cities have a strong executive and clearly separated powers, and some have true “weak” mayor governments in which the authority is extensively fragmented and assigned to the mayor, council, and other officials. Most cities, however, have both separated and shared powers between the mayor and the council. Thus, distinctions can be made between the strong mayor, the “standard” mayor-council, and the weak mayor subtypes of the mayor-council form. Each of these patterns has a different internal logic.

The first pattern is the original reform ideal of a strong elected executive with centralized authority. In this approach, the mayor is a strong chief executive officer who provides the functions filled by the city manager in the council-manager form of government. This “pure” strong mayor approach clearly divides powers between the mayor and the council. If there is a CAO, this official is an extension of the mayor’s office. This approach is used in approximately one-quarter of the mayor- council cities.<sup>2</sup> For simplicity, this subtype of the mayor-council form is called the *strong mayor- council* or *strong mayor-CAO-council form*, depending on whether a CAO is present. In the latter label, the CAO is placed next to the mayor to signify the close connection between the mayor and the CAO. In sum, the strong mayor type is characterized by clear separation of powers and substantial independent authority for the mayor.

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The second pattern is based on separated and shared authority between the mayor and the council. This is the standard mayor-council pattern in the sense that it is used by a large majority of mayor- council cities.<sup>2</sup> The mayor has separate executive authority but major decisions are either proposed by the mayor and approved by the council or made jointly by the mayor and council. When the mayor proposes and the council approves, the approach is similar to the “advice and consent” authority of the Senate in handling nominations by the President for Supreme Court judges or cabinet secretaries. In other cities in this pattern, the mayor and council make major decisions jointly. If there is a CAO in these cities, this official is nominated by the mayor and approved by the council or chosen jointly. Potentially, this official serves as a bridge between the mayor and the council. For simplicity, this subtype of the mayor-council form is called the *mayor-council* or *mayor-council-CAO form*. In the latter label, the CAO is placed after both mayor and council to signify the mutual responsibility the CAO has to both sets of officials.<sup>3</sup> In sum, the standard mayor- council form is characterized by a combination of separated and shared powers. Commonly, the staff support and organizational authority of the mayor and the high visibility of the office make the mayor the recognized leader of city government. Still there is less independent authority concentrated in the mayor’s office than in the strong mayor type.

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<sup>2</sup> According to the 2001 Form of Government (FOG) Survey of the International City Management Association, thirty-eight percent of cities over 2,500 in population use the mayor-council form. Of these, the mayor has separate authority for appointing department heads and preparing the budget in fifteen percent of the cities and controls one function and shares the other in another eight percent. Thus, twenty-three percent of the cities have more or less strong mayors. Using somewhat different criteria, Steve Leach and Donald F. Norris, “Elected Mayors in England: A Contribution to the Debate,” Public Policy and Administration, 17 (Spring, 2002), pp. 30-31, report similar findings based on 1996 data—twenty-seven percent have budget and staff appointment authority alone or shared with a CAO as well as veto authority. Only 1.8% of mayor- council cities have “very strong mayors.”

<sup>1</sup> In the 2001 FOG Survey, the mayor shares the exercise of authority for appointing department heads and preparing the budget with the city council in forty-three percent of the mayor-council cities. Finally, in thirty- three percent of the cities, the council or other officials are responsible and the mayor has no separate authority.

<sup>2</sup> In cities that have a CAO in 2001, the mayor and council appointed the CAO in forty-four percent of the cities and by the council in thirty-nine percent. The mayor alone appoints the CAO in only sixteen percent of the cities. Although appointment by the mayor is much more common in cities over 100,000 in population, even in these cities the mayor has sole appointment authority in less than half the cases.

The term *weak mayor-council* is reserved for cities in which there is substantial fragmentation of authority. Beyond separated and shared authority between the mayor and the council, there are other features that divide authority widely. These include direct election of certain department heads or commissions and the assignment of independent policy-making authority to some commissions. A committee that is controlled by neither the mayor nor the council may formulate the budget. This is the kind of structure that was common in the late nineteenth century. The early municipal reformers sought to overcome the extreme decentralization that characterizes it. Although it is based on the premise that extensive checks will prevent excessive concentration of power and direct election of many offices will promote democratic control, in practice many weak mayor cities functioned poorly and it was difficult to pin down who was responsible for problems in performance. It is difficult to estimate how many cities still use these approaches, but the proportion is fairly small.<sup>4</sup>

#### B. Should the mayor-council city have a CAO?

An increasing proportion of cities have added a central administrative position occupied by a CAO to their governmental structure.<sup>5</sup> Experience has demonstrated that it is beneficial for cities to have an administrative officer. This officer can offer assistance to the mayor in filling the executive responsibilities such as preparing the budget. The officer will provide central coordination of administrative functions and may also assist the council in handling its policy-making authority. Adding a chief administrative officer to city government is consistent with the longstanding reform principle of providing for both political and professional leadership. A central administrative official is able to contribute to sound governance as well as directing service delivery. Professional managers serving elected officials and the public bring distinctive values that enrich and elevate the governmental process in both policymaking and service delivery. These professional values include the commitment to basing policy and service delivery on need rather than demand, to stressing the long-term interests of the community as a whole, to promoting equity and fairness, to recognizing the interconnection among policies, and to advancing citizen participation that is broad and inclusive. There are benefits from having a professional chief administrator who channels these values into the governmental process at the highest and most general level through interactions with both the mayor and the council.

There are other advantages as well. It is difficult to find candidates for mayors who are equally adept at providing both political and also administrative leadership to city government. It is also hard for voters to assess the administrative capabilities of candidates before they have served in the mayor's office. Mayors (except in the largest cities), unlike new presidents and governors, are not supported by large transition teams. Nor can they persuade prominent leaders from the public and private sectors to accept key appointments for the duration of that executive's administration. Adding administrative assistance through a CAO helps to solve these problems. The office of CAO builds into the charter a support position for the mayor and institutionalizes the professional coordination of the departments of city government.

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<sup>3</sup> In 2001, fourteen percent of mayor-council cities elected some or all department heads. A finance committee for formulating the budget appears to be used by approximately three percent of cities.

<sup>4</sup> In 2001, fifty-six percent of the mayor-council cities over 2,500 in population have a CAO or equivalent position. City administrator is another common title.

## Recommended Structures in Mayor-Council Cities

To clarify responsibility and clarify the governmental process, mayor-council cities should assign policy making, executive, and oversight authority to the mayor, council, and CAO. Practices associated with traditional weak-mayor forms should be eliminated. These practices include direct election of department heads and commissions, appointment of administrative officials by commissions, having a body other than the mayor and council formulate the budget (e.g., a board of finance), and assigning other policy-making authority to commissions.

The preferred approach in mayor-council cities is to promote shared authority between the mayor and the council along with the separation of powers that defines the mayor-council form. In the shared authority mayor-council cities, both the mayor and the council play an active role. The alternative approach is to have a strong mayor with greater separation of powers between the mayor and the council. In the strong mayor-council cities, leadership is concentrated in the mayor's office and council reviews and approves the mayor's recommendations.

In both options, it is recommended that provisions be made for the appointment of a CAO in a manner consistent with the overall division of authority between the mayor and the council. In the shared authority mayor-council cities, the CAO is nominated by the mayor and approved by the council. This official serves as a bridge between the two sets of officials and is assigned administrative responsibilities. In the strong mayor-council cities, the CAO is appointed by the mayor and provides professional assistance to the mayor.

### Option 1: Mayor-Council-CAO government

This option is based on the combination of separated and shared powers between the mayor and the council found in most mayor-council cities. Some modifications will need to be made to the *Model City Charter* by charter drafters to accommodate this approach. The mayor is the chief executive officer who oversees the work of the CAO. The CAO is nominated by the mayor and approved by the council (a corresponding change to §§ 2.03 and 3.01 of the *Model City Charter* should be made). The mayor may remove the CAO (change §§ 2.03 and 3.01). The charter should provide for the CAO to have the same professional qualifications as the city manager (as described in § 3.01). The CAO formulates the budget and the capital program for the mayor (change §§ 2.03, 3.04(5),

5.2, 5.03, 5.04, 5.05(c), and 5.09), and the mayor presents the budget and capital program to the council with his or her own recommendations added to those of the CAO (change §§ 2.03, 5.02,

5.3, 5.04, 5.05(c), and 5.09). The CAO recommends major personnel appointments to the mayor who presents them to the council for approval (change §§ 2.03 and 3.04(1)). The mayor may remove department heads (change § 2.03).<sup>6</sup> Other changes should be made in accordance with the General Provisions, see below.

When appointed in this way, the CAO helps to link the mayor and council and promotes communication between them. The CAO serves as a bridge to span the separation of powers between the mayor and the

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<sup>5</sup> Some cities, particularly smaller ones, prefer to have even greater shared authority with the mayor and the council acting together on most decisions. Under this approach, the mayor and council jointly appoint the CAO. The council approves the removal of the CAO. The CAO formulates the budget for the mayor and council as a whole, and recommends major personnel appointments to the mayor and council for approval. Governments operating in this way share many characteristics with the council-manager form.

council. The CAO provides professional advice and detached assessment regarding key decisions to both the mayor and the council. The CAO can promote a higher level of performance and shared information by both sets of officials. The CAO assists the mayor in preparing policy recommendations to the council but is cognizant of his or her responsibility to provide information that the council needs to make policy decisions.<sup>7</sup> The CAO is responsible directly to the mayor for administrative matters and to the council for providing information to support their oversight function, i.e., the assessment of how well policies are working and how well services are being delivered. It should be acknowledged that the position occupied by the CAO can be difficult if there is conflict between the mayor and council. The CAO can get caught in the middle. Still, the presence of a CAO who feels a sense of accountability to both the mayor and the council can reduce the level of conflict compared to conditions in mayor- council cities without a CAO.

The mayor-council-CAO government is not a “weak” mayor structure but rather one in which the mayor and council share authority in a number of areas. On the other hand, this option is also not a “strong” mayor structure. That approach is described in the next option.

#### Option 2: Strong Mayor-Council or Strong Mayor-CAO-Council government

This is the approach recommended in the first *Model City Charter*, and it is the basis for the commentary that appeared in the seventh edition. Under this option the city government is organized around the mayor as the central force. As stated in the seventh edition, “in the strong mayor and council form, the mayor must have sufficient authority to operate as a genuinely responsible executive.” There are no provisions for having major appointments be subject to the “advice and consent” of the council. In this view, it is important that the mayor be left relatively free to provide leadership subject to the final approval of the city council. Essentially, the mayor in this type of mayor-council city assumes the authority assigned to the city manager in the model charter. It is possible to change the word “city manager” to “mayor” throughout the charter, except in Article III, which must be substantially altered to provide for election of the mayor. (See General Provisions below.)<sup>8</sup>

There is value to having a CAO in the strong mayor-council form. Consistent with the principle of promoting a strong central executive in this option, the CAO should serve the mayor and be appointed and removed by the mayor alone. The seventh edition recommends, “The mayor should be solely responsible

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<sup>6</sup> A survey of CAOs indicates that with nomination by the mayor and approval by the council, the CAO is likely to simultaneously see himself or herself as the agent of the mayor and also as being accountable to both the mayor and the council. Seven in ten CAOs agree with these positions. If the mayor does not nominate the CAO, only thirty-seven percent of the CAOs see themselves as the mayor’s agent. If the council does not approve the appointment, only twenty-eight percent of the CAOs see themselves as accountable to the council. See James H. Svara, “Do We Still Need Model Charters? The Meaning and Relevance of Reform in the Twenty-First Century,” National Civic Review, 90 (Spring, 2001), pp. 19-33.

<sup>7</sup> It should be noted that giving the mayor the same powers as the city manager (plus the veto power as well) does not make the offices comparable as to the centralized executives. The strong mayor is not accountable to the council in the exercise of his or her powers. The mayor is not selected by the council and subject to removal by the council as the city manager is.

for the appointment and removal of the administrator without any requirement of approval by the council.” A CAO appointed under this option would be strictly accountable to the mayor. The mayor has maximum flexibility in making the appointment and deciding what tasks to delegate to the CAO. Consistent with the strong-mayor principle of undiluted mayoral power, the CAO’s duties under this option are not specified in the charter.

### Assessment of the two mayor-council options

The first option of mayor-council-CAO government combines separation of powers with shared powers, particularly “advice and consent” provisions for top appointments or joint authority for appointments. The mayor and top administrators are made more accountable to the council by shared powers, and the council has a greater opportunity to shape mayoral decisions and oversee administrative performance. Shared power provisions may serve to knit the separate branches more closely together. The CAO, although ultimately accountable to the mayor, serves both sets of officials and can promote closer interaction between them. The option promotes leadership by both the mayor and council and provides for both political and professional leadership.

This approach to appointing the CAO makes this official responsive to both the mayor and the council, since both are involved in the hiring decision. Furthermore, the CAO is given a formal role in budget preparation and appointment of department heads. This approach is advantageous for several reasons. First, accountability is broadened to include the council. Second, the professional qualifications of the person selected may be higher if the council has to approve the choice. The mayor is not free to simply choose a person to advance his or her electoral interests. Third, the professional contributions of the CAO to both the mayor and the council are assured when the CAO fills specified duties. The CAO is involved in important administrative matters.

The pure strong-mayor approach concentrates a substantial amount of authority in one office. The approach also limits the contribution of the council to accepting or rejecting policy and budget proposals from the mayor and overriding the mayor’s veto. Although the council has a general oversight role, the fact that the mayor appoints all top administrators may limit the flow of information to the council to support its exercise of this role. There is concentrated power with limited checks on the exercise of the power.

The case for the strong mayor option is based on the need for strong centralized leadership. The mayor-council-CAO option with more shared powers can be criticized on the grounds that it creates confusion over who is responsible for exercise of powers between the mayor and the council when they are both involved in certain key areas of decision-making. Additionally, the mayor’s ability to recruit administrative staff may be reduced if the appointees have to be approved by the council. In view of the tendency for separation of powers to generate conflict between branches, having more actions that must be carried out by the mayor and council simply creates additional opportunities for conflict.

### General Provisions

There are certain provisions that would be common to all mayor-council cities. Election of the mayor and veto are found in both options of the mayor-council form.

### Election of the mayor and chair of the council

The provisions in the *Model City Charter* for direct election of the mayor should be used in mayor- council cities (§ 2.03, Alternative I). The council chair and presiding officer should be elected by the council from among its members.<sup>8</sup>

### Veto

One basic difference between the mayor-council and council-manager forms of government is the “veto” power for the mayor. This power is not consistent with the basic principle of the council- manager form that all powers are assigned to the council. In the mayor-council form, the mayor has an assigned role in the legislative process and must make a decision on each ordinance to sign it, veto it, or let it become law without signature. The veto should be included in the legislative article of a mayor-council charter and listed among the mayor’s powers in the executive article (Article II of the *Model City Charter*, § 2.03). The council may override the veto by a two-thirds vote of its members.

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<sup>8</sup> This would not be the case in cities where the mayor and council jointly exercise authority. In these cities, the mayor presides in the council.





§ 4.06.- Mayor; mayor pro tem.

(a) The Mayor shall be the chief elected officer of the city, preside at all council meetings, be responsible for the orderly conduct of business, have the same powers as a council member, sign

all documents as required by the City Council and shall have the power to veto line items in the City budget, provided that such veto is exercised in writing to the City Clerk, with immediate notification to the other members of the City Council at least fourteen (14) days prior to the date of the Final Public Hearing on the budget. The City Council may override such veto with a two-thirds vote of its members as provided in Section 4.16(d).

(b) A council member shall be elected by the majority vote of the Council to serve as Mayor ProTem. Such election shall be held at the first Council meeting following each City General Election, except that in the years in which there is no City General Election, such election shall take place at the first regular City Council meeting on or after the anniversary of the previous City General Election. The Mayor ProTem shall be responsible for the orderly conduct of business in the Mayor's absence, shall not have the power to veto and shall serve for a period of one year. (Ord. 125-02, 12-9-2002, Approved by referendum vote on April 8, 2003; Ord. 73-07, 6-11-7, Approved by referendum vote on November 6, 2007)

<b>Item Number:</b>	<b>4.D.</b>
<b>Meeting Date:</b>	<b>3/15/2018</b>
<b>Item Type:</b>	<b>Business</b>

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Continue Discussion on Article IV, Section 4.07, Council Vacancies in conjunction with Article IV, Section 4.11 - Vacancies; Forfeiture of Office; Filling of Vacancies

**SUMMARY:**

**ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Article IV, Section 4.07	Backup Material
▣ Article IV, Section 4.11	Backup Material
▣ Memo from City Attorney's Office - 3 8 2018	Backup Material

§ 4.07.- Council; vacancies.

A vacancy in the office of the city councilmember or mayor shall be filled by majority vote of the remaining councilmembers according to Section 4.11, to serve until the next City general election only. The vacancy must be filled by an \_\_\_\_\_ individual who is an eligible person, as defined in Section 4.02, and residing within the district in which the vacancy occurs. (Ord. 71-07, 6-11-07, Approved by referendum vote on November 6, 2007)

- **4.11. - Vacancies; forfeiture of office; filling of vacancies.**

(a)

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

(b)

*Forfeiture of office* . The Mayor, or a Council member shall forfeit his or her office if he or she:

(1)

Lacks at any time during the term of office any qualification for the office prescribed by this Charter or by applicable law;

(2)

Violates any express prohibition of this Charter;

(3)

Is convicted of a felony; or

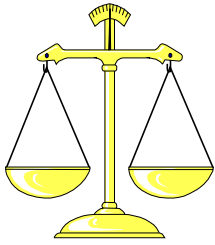
(4)

Fails to attend three (3) consecutive regular meetings of the Council without being excused by the Council.

(c)

*Filling of vacancies* . A vacancy in the Council shall be filled for the remainder of the unexpired term, if any, at the next City general election following not less than sixty (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 terms takes office. If the Council fails to do so within thirty (30) days following the occurrence of the vacancy, the Council shall call a special election to fill the vacancy, to be held not sooner than ninety (90) days and not later than one hundred twenty (120) days following the occurrence of the vacancy and to be otherwise governed by the provisions of Article VIII.

Notwithstanding any requirement for a quorum of the Council, if at any time the membership of the Council is reduced to less than a quorum, the remaining members may by majority action appoint additional members to raise the membership to meet the requirements of a quorum. (Ord. 71-07, 6-11-07, Approved by referendum vote on November 6, 2007)



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## CITY ATTORNEY'S OFFICE MEMORANDUM

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**TO:** Charter Review Commission

**FROM:** Dolores D. Menendez, City Attorney  
Mark Moriarty, Assistant City Attorney

**DATE:** March 8, 2018

**SUBJECT:** Additional back up materials for the Charter Review Commission's  
March 15th meeting.

- I. Agenda Item: *Continue Discussion on Article IV, Sections 4.06 - Mayor and Mayor Pro Tem, and Section 4.09 -General Powers and Duties*
- II. Agenda Item: *Continue Discussion on Article IV, Section 4.07, Council Vacancies in conjunction with Article IV, Section 4.11 - Vacancies; Forfeiture of Office; Filling of Vacancies.*

I. **Agenda Item: Continue Discussion on Article IV, Sections 4.06 - Mayor and Mayor Pro Tem, and Section 4.09 -General Powers and Duties.**

Attached for informational purposes is the Appendix taken from the National Civic League's Model City Charter 8<sup>th</sup> Edition. The appendix illustrates and compares various Mayor – Council forms of governments.

II. **Agenda Item: Continue Discussion on Article IV, Section 4.07, Council Vacancies in conjunction with Article IV, Section 4.11 - Vacancies; Forfeiture of Office; Filling of Vacancies.**

The City has experienced issues with this section when sitting Council Members have resigned to run for other political offices.

The State's "Resign to Run" law is codified in State Statutes § 99.012 (3). It provides in relevant part:

- (3)(a) No officer may qualify as a candidate for another state, district, county, or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office he or she presently holds.
- (b) The resignation is irrevocable.
- (c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.
- (d) The resignation must be effective no later than the earlier of the following dates:
  - 1. The date the officer would take office, if elected; or
  - 2. The date the officer's successor is required to take office.
- (f)1. With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer's term were otherwise scheduled to expire.
- 2. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

<b>Item Number:</b>	<b>4.E.</b>
<b>Meeting Date:</b>	<b>3/15/2018</b>
<b>Item Type:</b>	<b>Business</b>

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Continue Discussion on Article IV, Section 4.09 - General Powers and Duties

**SUMMARY:**

**ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Article IV, Section 4.09	Backup Material
▣ Appendix from the National Civic League's Model City Charter 8th Edition	Backup Material
▣ Memo from City Attorney's Office - 3 8 2018	Backup Material

§ 4.09. - General powers and duties.

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



# **Eighth Edition**

## **Model City Charter**

**A Publication of the  
National Civic League**

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## OPTIONS FOR MAYOR-COUNCIL CITIES

Since 1915, the *Model City Charter* has been based on the council-manager form of government. Some cities have a tradition of using or prefer to use the mayor-council form, and in some states the adoption of council-manager government may be limited by state statutes.<sup>1</sup> Cities that use the mayor-council form can make choices to “reform” their city government within the framework of this form of government. There are structural approaches that can clarify the structure and improve the performance of the mayor-council city government.

The mayor-council form of government is based on principles of separation of powers and checks and balances similar to those found in American national and state governments. Certain powers are assigned to the mayor and others to the council in cities that use this form. In addition, some mayor-council charters provide for other officials such as appointed boards or administrators who have independent authority to make specified decisions. It was common in the nineteenth century for cities to divide authority among many officials in the belief that the more power was divided and the more officials were directly elected, the more democratic the process of city government would be. In practice, complex structures with highly fragmented authority created ineffective government in which it was difficult to hold anyone responsible for the failure of city government as a whole. In certain cities, the fragmented structure created a vacuum that party organizations filled with unified control. In other cities—probably more numerous than those with control by party organizations—the prevailing structure simply contributed to a lack of competent and farsighted leadership and contributed to city governments that were neither effective nor efficient in their delivery of services to citizens. Some cities still retain these features in their charter.

The first *Model City Charter* proposed replacing the fragmented authority and confused assignment of responsibility of existing nineteenth century city governments with simplified and centralized executive authority exercised by an elected mayor. After the first edition, the model charter assigned this centralized executive authority to an appointed city manager. From the second through the fourth editions of the charter, no provisions were proposed for mayor-council cities. With the fifth edition, the strong mayor-council form from the first edition reappeared as an alternative for those cities that chose not to use the preferred council-manager form with the suggestion that a “vice mayor” or what would later often be called a chief administrative officer (CAO) might be appointed by the mayor. These recommendations appeared in the sixth and seventh editions as well.

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<sup>1</sup> Two examples illustrate how state statutes can affect the choice of form of government. Indiana law prescribes that all cities use the mayor-council form; small *towns* have an option in the choice of form. In Wisconsin, state statute specifies that the “council-manager” optional charter have a council president rather than mayor and gives the manager unusual powers such as the authority to appoint council committees. **Only ten of 190 cities in Wisconsin operate under the council-manager form.** In Dale Krane, Platon Rigos, and Melvin Hill, Jr., Eds., *Home Rule in America: A Fifty-State Handbook* (Washington: CQ Press, 2001), see chapters on Indiana by William Blomquist and on Wisconsin by Stephen E. C. Hintz.

The approach taken in this edition is different. Officials and citizens who are reviewing a mayor- council charter are given analytical questions to guide their assessment of the governmental structure. In contrast to exclusive reliance on the strong mayor alternative, two options for organizing the mayor-council form are now proposed.

### Analytical Questions about Mayor-Council Governments

For cities that prefer to use the mayor-council form of government, there are two questions to answer in designing a charter.

- o *First, how should authority be divided between the mayor and the council?* The Model Charter Committee recommends two options for the division of authority: the first option is to provide for a blend of separation and sharing of authority between the mayor and the council; the second option is the classic strong mayor-council approach.
- o *Second, should a chief administrative officer be appointed?* The Model Charter Committee recommends the addition of a CAO to all types of mayor-council governments. How the CAO is appointed and the responsibilities of the position are determined by which of the two optional approaches is taken to dividing authority between the mayor and council.

To provide background information, each of these questions is discussed in more detail. Then the optional approaches and an assessment of them are presented.

#### A. How is authority divided between the mayor and the council?

There are several broad patterns of dividing authority in mayor-council cities. Although these cities are commonly divided into “strong mayor” and “weak mayor” variations, this two-way division is misleading. Some cities have a strong executive and clearly separated powers, and some have true “weak” mayor governments in which the authority is extensively fragmented and assigned to the mayor, council, and other officials. Most cities, however, have both separated and shared powers between the mayor and the council. Thus, distinctions can be made between the strong mayor, the “standard” mayor-council, and the weak mayor subtypes of the mayor-council form. Each of these patterns has a different internal logic.

The first pattern is the original reform ideal of a strong elected executive with centralized authority. In this approach, the mayor is a strong chief executive officer who provides the functions filled by the city manager in the council-manager form of government. This “pure” strong mayor approach clearly divides powers between the mayor and the council. If there is a CAO, this official is an extension of the mayor’s office. This approach is used in approximately one-quarter of the mayor- council cities.<sup>2</sup> For simplicity, this subtype of the mayor-council form is called the *strong mayor- council* or *strong mayor-CAO-council form*, depending on whether a CAO is present. In the latter label, the CAO is placed next to the mayor to signify the close connection between the mayor and the CAO. In sum, the strong mayor type is characterized by clear separation of powers and substantial independent authority for the mayor.

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The second pattern is based on separated and shared authority between the mayor and the council. This is the standard mayor-council pattern in the sense that it is used by a large majority of mayor- council cities.<sup>2</sup> The mayor has separate executive authority but major decisions are either proposed by the mayor and approved by the council or made jointly by the mayor and council. When the mayor proposes and the council approves, the approach is similar to the “advice and consent” authority of the Senate in handling nominations by the President for Supreme Court judges or cabinet secretaries. In other cities in this pattern, the mayor and council make major decisions jointly. If there is a CAO in these cities, this official is nominated by the mayor and approved by the council or chosen jointly. Potentially, this official serves as a bridge between the mayor and the council. For simplicity, this subtype of the mayor-council form is called the *mayor-council* or *mayor-council-CAO form*. In the latter label, the CAO is placed after both mayor and council to signify the mutual responsibility the CAO has to both sets of officials.<sup>3</sup> In sum, the standard mayor- council form is characterized by a combination of separated and shared powers. Commonly, the staff support and organizational authority of the mayor and the high visibility of the office make the mayor the recognized leader of city government. Still there is less independent authority concentrated in the mayor’s office than in the strong mayor type.

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<sup>2</sup> According to the 2001 Form of Government (FOG) Survey of the International City Management Association, thirty-eight percent of cities over 2,500 in population use the mayor-council form. Of these, the mayor has separate authority for appointing department heads and preparing the budget in fifteen percent of the cities and controls one function and shares the other in another eight percent. Thus, twenty-three percent of the cities have more or less strong mayors. Using somewhat different criteria, Steve Leach and Donald F. Norris, “Elected Mayors in England: A Contribution to the Debate,” Public Policy and Administration, 17 (Spring, 2002), pp. 30-31, report similar findings based on 1996 data—twenty-seven percent have budget and staff appointment authority alone or shared with a CAO as well as veto authority. Only 1.8% of mayor- council cities have “very strong mayors.”

<sup>1</sup> In the 2001 FOG Survey, the mayor shares the exercise of authority for appointing department heads and preparing the budget with the city council in forty-three percent of the mayor-council cities. Finally, in thirty- three percent of the cities, the council or other officials are responsible and the mayor has no separate authority.

<sup>2</sup> In cities that have a CAO in 2001, the mayor and council appointed the CAO in forty-four percent of the cities and by the council in thirty-nine percent. The mayor alone appoints the CAO in only sixteen percent of the cities. Although appointment by the mayor is much more common in cities over 100,000 in population, even in these cities the mayor has sole appointment authority in less than half the cases.

The term *weak mayor-council* is reserved for cities in which there is substantial fragmentation of authority. Beyond separated and shared authority between the mayor and the council, there are other features that divide authority widely. These include direct election of certain department heads or commissions and the assignment of independent policy-making authority to some commissions. A committee that is controlled by neither the mayor nor the council may formulate the budget. This is the kind of structure that was common in the late nineteenth century. The early municipal reformers sought to overcome the extreme decentralization that characterizes it. Although it is based on the premise that extensive checks will prevent excessive concentration of power and direct election of many offices will promote democratic control, in practice many weak mayor cities functioned poorly and it was difficult to pin down who was responsible for problems in performance. It is difficult to estimate how many cities still use these approaches, but the proportion is fairly small.<sup>4</sup>

#### B. Should the mayor-council city have a CAO?

An increasing proportion of cities have added a central administrative position occupied by a CAO to their governmental structure.<sup>5</sup> Experience has demonstrated that it is beneficial for cities to have an administrative officer. This officer can offer assistance to the mayor in filling the executive responsibilities such as preparing the budget. The officer will provide central coordination of administrative functions and may also assist the council in handling its policy-making authority. Adding a chief administrative officer to city government is consistent with the longstanding reform principle of providing for both political and professional leadership. A central administrative official is able to contribute to sound governance as well as directing service delivery. Professional managers serving elected officials and the public bring distinctive values that enrich and elevate the governmental process in both policymaking and service delivery. These professional values include the commitment to basing policy and service delivery on need rather than demand, to stressing the long-term interests of the community as a whole, to promoting equity and fairness, to recognizing the interconnection among policies, and to advancing citizen participation that is broad and inclusive. There are benefits from having a professional chief administrator who channels these values into the governmental process at the highest and most general level through interactions with both the mayor and the council.

There are other advantages as well. It is difficult to find candidates for mayors who are equally adept at providing both political and also administrative leadership to city government. It is also hard for voters to assess the administrative capabilities of candidates before they have served in the mayor's office. Mayors (except in the largest cities), unlike new presidents and governors, are not supported by large transition teams. Nor can they persuade prominent leaders from the public and private sectors to accept key appointments for the duration of that executive's administration. Adding administrative assistance through a CAO helps to solve these problems. The office of CAO builds into the charter a support position for the mayor and institutionalizes the professional coordination of the departments of city government.

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<sup>3</sup> In 2001, fourteen percent of mayor-council cities elected some or all department heads. A finance committee for formulating the budget appears to be used by approximately three percent of cities.

<sup>4</sup> In 2001, fifty-six percent of the mayor-council cities over 2,500 in population have a CAO or equivalent position. City administrator is another common title.

## Recommended Structures in Mayor-Council Cities

To clarify responsibility and clarify the governmental process, mayor-council cities should assign policy making, executive, and oversight authority to the mayor, council, and CAO. Practices associated with traditional weak-mayor forms should be eliminated. These practices include direct election of department heads and commissions, appointment of administrative officials by commissions, having a body other than the mayor and council formulate the budget (e.g., a board of finance), and assigning other policy-making authority to commissions.

The preferred approach in mayor-council cities is to promote shared authority between the mayor and the council along with the separation of powers that defines the mayor-council form. In the shared authority mayor-council cities, both the mayor and the council play an active role. The alternative approach is to have a strong mayor with greater separation of powers between the mayor and the council. In the strong mayor-council cities, leadership is concentrated in the mayor's office and council reviews and approves the mayor's recommendations.

In both options, it is recommended that provisions be made for the appointment of a CAO in a manner consistent with the overall division of authority between the mayor and the council. In the shared authority mayor-council cities, the CAO is nominated by the mayor and approved by the council. This official serves as a bridge between the two sets of officials and is assigned administrative responsibilities. In the strong mayor-council cities, the CAO is appointed by the mayor and provides professional assistance to the mayor.

### Option 1: Mayor-Council-CAO government

This option is based on the combination of separated and shared powers between the mayor and the council found in most mayor-council cities. Some modifications will need to be made to the *Model City Charter* by charter drafters to accommodate this approach. The mayor is the chief executive officer who oversees the work of the CAO. The CAO is nominated by the mayor and approved by the council (a corresponding change to §§ 2.03 and 3.01 of the *Model City Charter* should be made). The mayor may remove the CAO (change §§ 2.03 and 3.01). The charter should provide for the CAO to have the same professional qualifications as the city manager (as described in § 3.01) The CAO formulates the budget and the capital program for the mayor (change §§ 2.03, 3.04(5),

5.2, 5.03, 5.04, 5.05(c), and 5.09), and the mayor presents the budget and capital program to the council with his or her own recommendations added to those of the CAO (change §§ 2.03, 5.02,

5.3, 5.04, 5.05(c), and 5.09). The CAO recommends major personnel appointments to the mayor who presents them to the council for approval (change §§ 2.03 and 3.04(1)). The mayor may remove department heads (change § 2.03).<sup>6</sup> Other changes should be made in accordance with the General Provisions, see below.

When appointed in this way, the CAO helps to link the mayor and council and promotes communication between them. The CAO serves as a bridge to span the separation of powers between the mayor and the

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<sup>5</sup> Some cities, particularly smaller ones, prefer to have even greater shared authority with the mayor and the council acting together on most decisions. Under this approach, the mayor and council jointly appoint the CAO. The council approves the removal of the CAO. The CAO formulates the budget for the mayor and council as a whole, and recommends major personnel appointments to the mayor and council for approval. Governments operating in this way share many characteristics with the council-manager form.

council. The CAO provides professional advice and detached assessment regarding key decisions to both the mayor and the council. The CAO can promote a higher level of performance and shared information by both sets of officials. The CAO assists the mayor in preparing policy recommendations to the council but is cognizant of his or her responsibility to provide information that the council needs to make policy decisions.<sup>7</sup> The CAO is responsible directly to the mayor for administrative matters and to the council for providing information to support their oversight function, i.e., the assessment of how well policies are working and how well services are being delivered. It should be acknowledged that the position occupied by the CAO can be difficult if there is conflict between the mayor and council. The CAO can get caught in the middle. Still, the presence of a CAO who feels a sense of accountability to both the mayor and the council can reduce the level of conflict compared to conditions in mayor- council cities without a CAO.

The mayor-council-CAO government is not a “weak” mayor structure but rather one in which the mayor and council share authority in a number of areas. On the other hand, this option is also not a “strong” mayor structure. That approach is described in the next option.

#### Option 2: Strong Mayor-Council or Strong Mayor-CAO-Council government

This is the approach recommended in the first *Model City Charter*, and it is the basis for the commentary that appeared in the seventh edition. Under this option the city government is organized around the mayor as the central force. As stated in the seventh edition, “in the strong mayor and council form, the mayor must have sufficient authority to operate as a genuinely responsible executive.” There are no provisions for having major appointments be subject to the “advice and consent” of the council. In this view, it is important that the mayor be left relatively free to provide leadership subject to the final approval of the city council. Essentially, the mayor in this type of mayor-council city assumes the authority assigned to the city manager in the model charter. It is possible to change the word “city manager” to “mayor” throughout the charter, except in Article III, which must be substantially altered to provide for election of the mayor. (See General Provisions below.)<sup>8</sup>

There is value to having a CAO in the strong mayor-council form. Consistent with the principle of promoting a strong central executive in this option, the CAO should serve the mayor and be appointed and removed by the mayor alone. The seventh edition recommends, “The mayor should be solely responsible

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<sup>6</sup> A survey of CAOs indicates that with nomination by the mayor and approval by the council, the CAO is likely to simultaneously see himself or herself as the agent of the mayor and also as being accountable to both the mayor and the council. Seven in ten CAOs agree with these positions. If the mayor does not nominate the CAO, only thirty-seven percent of the CAOs see themselves as the mayor’s agent. If the council does not approve the appointment, only twenty-eight percent of the CAOs see themselves as accountable to the council. See James H. Svara, “Do We Still Need Model Charters? The Meaning and Relevance of Reform in the Twenty-First Century,” National Civic Review, 90 (Spring, 2001), pp. 19-33.

<sup>7</sup> It should be noted that giving the mayor the same powers as the city manager (plus the veto power as well) does not make the offices comparable as to the centralized executives. The strong mayor is not accountable to the council in the exercise of his or her powers. The mayor is not selected by the council and subject to removal by the council as the city manager is.

for the appointment and removal of the administrator without any requirement of approval by the council.” A CAO appointed under this option would be strictly accountable to the mayor. The mayor has maximum flexibility in making the appointment and deciding what tasks to delegate to the CAO. Consistent with the strong-mayor principle of undiluted mayoral power, the CAO’s duties under this option are not specified in the charter.

### Assessment of the two mayor-council options

The first option of mayor-council-CAO government combines separation of powers with shared powers, particularly “advice and consent” provisions for top appointments or joint authority for appointments. The mayor and top administrators are made more accountable to the council by shared powers, and the council has a greater opportunity to shape mayoral decisions and oversee administrative performance. Shared power provisions may serve to knit the separate branches more closely together. The CAO, although ultimately accountable to the mayor, serves both sets of officials and can promote closer interaction between them. The option promotes leadership by both the mayor and council and provides for both political and professional leadership.

This approach to appointing the CAO makes this official responsive to both the mayor and the council, since both are involved in the hiring decision. Furthermore, the CAO is given a formal role in budget preparation and appointment of department heads. This approach is advantageous for several reasons. First, accountability is broadened to include the council. Second, the professional qualifications of the person selected may be higher if the council has to approve the choice. The mayor is not free to simply choose a person to advance his or her electoral interests. Third, the professional contributions of the CAO to both the mayor and the council are assured when the CAO fills specified duties. The CAO is involved in important administrative matters.

The pure strong-mayor approach concentrates a substantial amount of authority in one office. The approach also limits the contribution of the council to accepting or rejecting policy and budget proposals from the mayor and overriding the mayor’s veto. Although the council has a general oversight role, the fact that the mayor appoints all top administrators may limit the flow of information to the council to support its exercise of this role. There is concentrated power with limited checks on the exercise of the power.

The case for the strong mayor option is based on the need for strong centralized leadership. The mayor-council-CAO option with more shared powers can be criticized on the grounds that it creates confusion over who is responsible for exercise of powers between the mayor and the council when they are both involved in certain key areas of decision-making. Additionally, the mayor’s ability to recruit administrative staff may be reduced if the appointees have to be approved by the council. In view of the tendency for separation of powers to generate conflict between branches, having more actions that must be carried out by the mayor and council simply creates additional opportunities for conflict.

### General Provisions

There are certain provisions that would be common to all mayor-council cities. Election of the mayor and veto are found in both options of the mayor-council form.



### Election of the mayor and chair of the council

The provisions in the *Model City Charter* for direct election of the mayor should be used in mayor- council cities (§ 2.03, Alternative I). The council chair and presiding officer should be elected by the council from among its members.<sup>8</sup>

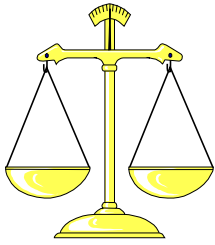
### Veto

One basic difference between the mayor-council and council-manager forms of government is the “veto” power for the mayor. This power is not consistent with the basic principle of the council- manager form that all powers are assigned to the council. In the mayor-council form, the mayor has an assigned role in the legislative process and must make a decision on each ordinance to sign it, veto it, or let it become law without signature. The veto should be included in the legislative article of a mayor-council charter and listed among the mayor’s powers in the executive article (Article II of the *Model City Charter*, § 2.03). The council may override the veto by a two-thirds vote of its members.

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<sup>8</sup> This would not be the case in cities where the mayor and council jointly exercise authority. In these cities, the mayor presides in the council.





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## CITY ATTORNEY'S OFFICE MEMORANDUM

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**TO:** Charter Review Commission

**FROM:** Dolores D. Menendez, City Attorney  
Mark Moriarty, Assistant City Attorney

**DATE:** March 8, 2018

**SUBJECT:** Additional back up materials for the Charter Review Commission's  
March 15th meeting.

- I. Agenda Item: *Continue Discussion on Article IV, Sections 4.06 - Mayor and Mayor Pro Tem, and Section 4.09 -General Powers and Duties*
- II. Agenda Item: *Continue Discussion on Article IV, Section 4.07, Council Vacancies in conjunction with Article IV, Section 4.11 - Vacancies; Forfeiture of Office; Filling of Vacancies.*

I. **Agenda Item: Continue Discussion on Article IV, Sections 4.06 - Mayor and Mayor Pro Tem, and Section 4.09 -General Powers and Duties.**

Attached for informational purposes is the Appendix taken from the National Civic League's Model City Charter 8<sup>th</sup> Edition. The appendix illustrates and compares various Mayor – Council forms of governments.

II. **Agenda Item: Continue Discussion on Article IV, Section 4.07, Council Vacancies in conjunction with Article IV, Section 4.11 - Vacancies; Forfeiture of Office; Filling of Vacancies.**

The City has experienced issues with this section when sitting Council Members have resigned to run for other political offices.

The State's "Resign to Run" law is codified in State Statutes § 99.012 (3). It provides in relevant part:

- (3)(a) No officer may qualify as a candidate for another state, district, county, or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office he or she presently holds.
- (b) The resignation is irrevocable.
- (c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.
- (d) The resignation must be effective no later than the earlier of the following dates:
  - 1. The date the officer would take office, if elected; or
  - 2. The date the officer's successor is required to take office.
- (f)1. With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer's term were otherwise scheduled to expire.
- 2. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

<b>Item Number:</b>	<b>4.F.</b>
<b>Meeting Date:</b>	<b>3/15/2018</b>
<b>Item Type:</b>	<b>Business</b>

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Article IV, Section 4.10 - Prohibitions

**SUMMARY:**

**ADDITIONAL INFORMATION:**

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▣ Article IV, Section 4.10	Backup Material

- **4.10. - Prohibitions.**

(a)

Holding other office. Except where authorized by law, neither the Mayor nor any Council member shall hold any other City office or employment during the term for which he or she was elected to the Council, and neither a former Mayor nor former Council member shall hold any compensated appointive City office or employment until one (1) year after the expiration of the last term for which he or she was elected as Mayor or Council member. Neither the Mayor nor any Council member, either directly or indirectly, may be a contractor to the City.

(b)

Appointments and removals. Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any City administrative officers or employees whom the city manager or any of the city manager subordinates is empowered to appoint, but the Council may express its views and fully and freely discuss with the city manager anything pertaining to appointment and removal of such officers and employees.

(c)

Interference with administration. Except for the purpose of inquiries and investigations, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately.

(Ord. 125-02, 12-9-2002, Approved by referendum vote on April 8, 2003)