

# City Council Action Item Cover Sheet

DATE: January 2, 2019

**Agenda Item:**

Yachats City Charter

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**Question Before Council:**

Discussion of potential updates to the Yachats City Charter

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**Person/Group Initiating Request:**

Council

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**Item Summary/Background:**

The 2018 Council made recommendations to the charter for the 2019 Council to discuss. The relevant dates for the May 2019 election are also included.

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The City Manager recommends, after discussion, that the Council consider the following motion:

I move that the City Manager make the recommended changes discussed at the January 2, 2019 meeting and bring a draft to the Council at the January 9 meeting for final Council Action.

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DATE: December 3, 2018

TO: Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: May 2019 Election Deadlines – For Potential Charter Revisions

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Dear Mayor and City Council,

Here are the relevant dates for including an item in the May 2019 election:

- February 1, 2019 Resolution to Include in the Election
- February 2, 2019 Notice of Receipt of Ballot Title
- February 3, 2019 Explanatory Statement for County Voters Pamphlet
- March 4, 2019 Ballot Title
- June 5, 2019 Results. Do a Resolution of votes

## **Chapter 99.01 - Charter**

### **Section 99.01.010 Charter.**

#### **Preamble**

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

#### **Chapter I - Names And Boundaries**

Section 1. Title. This charter may be referred to as the 2005 Yachats Charter, as amended.

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

Section 3. Boundaries. The city includes all territory within its boundaries as they now exist or are legally modified by a majority of the voters of the City of Yachats at an election, or as otherwise legally modified. The city will maintain as a public record an accurate and current description of the boundaries.

#### **Chapter II - Powers**

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

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

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

#### **Chapter III - Council**

Section 7. Council. The council consists of a mayor and four councilors nominated and elected from the city at large.

Section 8. Mayor. The mayor presides over and facilitates council meetings, preserves order, enforces council rules, and determines the order of business under council rules. The mayor is a voting member of the council and has no veto authority. With the consent of council, the mayor appoints members of commissions and committees established by ordinance or resolution. The mayor must sign all records of council decisions. The mayor serves as the political head of the city government.

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

Section 10. Rules. The council must by resolution adopt rules to govern its meetings.

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

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

Section 13. Vote Required. The express approval of a majority of a quorum of the council is necessary for any council ~~decision, except~~decision, except when this charter requires approval by a majority of the council.

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

#### **Chapter IV - Legislative Authority**

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

Section 16. Ordinance Adoption.

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

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

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

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

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

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

#### **Chapter V - Administrative Authority**

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

Section 19. Resolution Approval.

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

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

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

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

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

## **Chapter VI - Quasi-Judicial Authority**

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

Section 22. Order Approval.

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

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

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

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

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

## Section VIII APPOINTIVE OFFICERS

### Section 8.1. City Manager.

a) The office of city manager is established as the administrative head of the city government.<sup>1</sup> The city manager is responsible to the mayor and council for the proper administration of all city business. The city manager will assist the mayor and council in the

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<sup>1</sup> The city manager exercises the administrative authority delegated by the city charter and the city council. The manager and the council both exercise administrative authority. Only the council may exercise legislative authority.<sup>52</sup> This gives the manager a role in policy development consistent with the 8th edition of the NCL Model Charter (2011). It makes the manager responsible for carrying out city policy adopted by council resolution or ordinance.<sup>53</sup> This section adds more specific qualifications for city manager consistent with the 8th edition of the NCL Model Charter (2011).

development of city policies, and carry out policies established by ordinances and resolutions.<sup>52</sup>

b) A majority of the council must appoint and may remove the manager. The appointment must be made without regard to political considerations and solely on the basis of education and experience in competencies and practices of local government management.<sup>53</sup>

c) The manager need not reside in the city.<sup>2</sup>

d) The manager may be appointed for a definite or an indefinite term, and may be removed at any time by a majority of the council. The council must fill the office by appointment as soon as practicable after the vacancy occurs.

e) The manager must:

1) Attend all council meetings unless excused by the mayor or council;

2) Make reports and recommendations to the mayor and council about the needs of the city;

3) Administer and enforce all city ordinances, resolutions, franchises, leases, contracts, permits and other city decisions;

4) Appoint, supervise and remove city employees;<sup>3</sup>

5) Organize city departments and administrative structure;

6) Prepare and administer the annual city budget;

7) Administer city utilities and property;

8) Encourage and support regional and intergovernmental cooperation;

9) Promote cooperation among the council, staff and citizens in developing city policies and building a sense of community;<sup>4</sup>

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<sup>2</sup> If the city wants the charter to require the manager to live in the city, the following may be added: “but must become and remain a resident of the city while manager.” In the alternative, if a residency requirement is desired but is not practicable due to a housing shortage or other condition, the following may be added: “but must live within 30 miles of the city.” Either requirement can be imposed more flexibly by ordinance or contract.

<sup>3</sup> Note that the manager appoints, supervises and removes city employees. The council appoints, supervises and removes city officers.

<sup>4</sup> Subsections (8) and (9) of this section add provisions that update the charter by recognizing the increasing importance of regional and intergovernmental issues, and the participatory nature of policy development. They are consistent with the 8th edition of the NCL Model Charter (2011).

10) Perform other duties as directed by the council; and

11) Delegate duties, but remain responsible for actions of all subordinates.

f) The manger has no authority over the council or over the judicial functions of the municipal judge.<sup>5</sup>

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

h) When the manger is temporarily disabled from acting as manager or when the office of the manager becomes vacant, the council must appoint a manager pro tem. The manager pro tem has the authority and duties of manger, except that a pro tem manager may appoint or remove employees only with council approval.

i) No council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in the appointment or removal of any city employee, or in administrative decisions regarding city property or contracts.<sup>6</sup> Violation of this prohibition is grounds for removal from office by a majority of the council after a public hearing. In council meetings, councilors may discuss or suggest anything with the manager relating to city business.<sup>7</sup>

Section 8.2. City Attorney. The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney. The attorney may appoint, supervise, and may remove any employees who work in and for the city attorney’s office.<sup>8</sup>

Section 8.3. Municipal Court and Judge. *(Do we want to keep in the Attorney & Judge)*

a) A majority of the council may appoint and remove a municipal judge. A municipal judge will hold court in the city at such place as the council directs. The court will be known as the Municipal Court.

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<sup>5</sup> Municipal judges have administrative duties incidental to their judicial functions such as record keeping and accounting for certain funds. These administrative duties may be supervised by the city manager.

<sup>6</sup> A similar charter restriction was the basis for damages in *Still v. Benton*, 251 Or 463, 445 P2d 492 (1968). The court found that the mayor did not act within the scope of his authority in pressuring the manager to discharge the police chief. The chief was awarded punitive as well as general damages.

<sup>7</sup> This does not affect the ability of a council member to obtain information from the manager or other city employees. Council members also have at least as much right to public records as other members of the public under the Oregon Public Records Law, ORS 192.410 to 192.505.

<sup>8</sup> If a city attorney office is established by the charter, it is independent of the wishes of the council or manager. This language places office employees under the supervision of the attorney rather than the manager. The charter could establish the office and provide for appointment by the manager. If not created by charter, the city attorney office may

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

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

d) The municipal court has jurisdiction over every offense created by city ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court also has jurisdiction under state law unless limited by city ordinance.<sup>61</sup>

e) The municipal judge may:

1) Render judgments and impose sanctions on persons and property;

2) Order the arrest of anyone accused of an offense against the city;

3) Commit to jail or admit to bail anyone accused of a city offense;

4) Issue and compel obedience to subpoenas;

5) Compel witnesses to appear and testify and jurors to serve for trials before the court;

6) Penalize contempt of court;

7) Issue processes necessary to enforce judgments and orders of the court;

8) Issue search warrants; and

9) Perform other judicial and quasi-judicial functions assigned by ordinance.

f) The council may appoint and may remove municipal judges pro tem.

g) The council may transfer some or all of the functions of the municipal court to an appropriate state court.<sup>62</sup>

be created by ordinance. The ordinance may provide for city attorney appointment by the council or manager. Attorney duties may be assigned by ordinance and contract.

<sup>61</sup> ORS 221.339 gives municipal courts jurisdiction over violations and misdemeanors committed or triable in the city. Municipal courts do not have jurisdiction over felonies or designated drug-related misdemeanors as defined in ORS 423.478. The section provides that jurisdiction over misdemeanors may be limited by city ordinance. <sup>62</sup> ORS 51.035.

## Chapter VII - Elections

Section 24. Councilors. The term of a councilor in office when this charter is adopted is the term for which the councilor was elected. At each general election after the adoption, two councilors will be elected for ~~four~~two - year terms.

Section 25. Mayor. The term of the mayor in office when this charter is adopted continues until the beginning of the first odd- numbered year after adoption. At each general election after the adoption, a mayor will be elected for a two-year term.

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

Section 27. Qualifications.

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

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

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

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

Section 28. Nominations. The council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city councilor position.

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

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

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

(a) Upon the incumbent's:

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

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

- (1) Failure to qualify for the office within 10 days of the time the term of office is to begin,
- (2) Absence from the city for 30 days without council consent, or from all council meetings within a 60-day period,
- (3) Ceasing to reside in the city,
- (4) Ceasing to be a qualified elector under state law,
- (5) Conviction of a public offense punishable by loss of liberty, or
- (6) Resignation from the office,

Section 32. Filling Vacancies. A mayor or councilor vacancy will be filled by appointment by a majority

of the remaining council members. The appointee’s term of office runs from appointment until expiration of the term of office of the last person elected to that office. If a disability prevents a council member from attending council meetings or a member is absent from the city, a majority of the council may appoint a councilor pro tem.

### **Chapter VIII - Personnel**

Section 33. Appointive Officers. Additional officers as the Council deems necessary shall be appointed and may be removed by a majority vote of the entire Council.

Section 34. Compensation. The council must authorize the compensation of city officers and employees as part of its approval of the annual city budget.

Section 35. Merit Systems. The council by resolution will determine the rules governing recruitment, selection, promotion, transfer, demotion, suspension, layoff, and dismissal of city employees based on merit and fitness.

### **Chapter IX - Public Improvements**

Section 36 Procedure. The council may by ordinance provide for procedures governing the making, altering, vacating, or abandoning of a public improvement. A proposed public improvement may be suspended for six months upon remonstrance by owners of the real property to be specially assessed for the improvement. The number of owners necessary to suspend the action will be determined by ordinance.

Section 37. Special Assessments. The procedure for levying, collecting and enforcing special assessments for public improvements or other services charged against real property will be governed by ordinance.

### **Chapter X - Miscellaneous Provisions**

Section 38. Debt. City indebtedness may not exceed debt limits imposed by state law. A charter amendment is not required to authorize city indebtedness.

~~Section 39. Purchase and Sale of City Real Property. No fee simple title to real property shall be purchased nor shall fee simple title to property owned by the City be sold or otherwise transferred in its entirety without prior voter approval at an election.~~

Section ~~40~~39. Ordinance Continuation. All ordinances consistent with this charter in force when it takes effect remain in effect until amended or repealed.

Section ~~41~~40. Repeal. All charter provisions adopted before this charter takes effect are repealed.

Section ~~42~~41. Severability. The terms of this charter are severable. If any provision is held invalid by a court, the invalidity does not affect any other part of the charter.

Section ~~43~~42. Time of Effect. This charter takes effect ~~February 1, 2005~~January 1, 2013.