

# Code City Handbook

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**Municipal Research and Services Center**

# **Code City Handbook**

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# Preface

In order to meet the needs of officials in Optional Municipal Code cities and assist them in the performance of their responsibilities, this *Code City Handbook* has been prepared, updating Report No. 37, published in March 1997. This report has been prepared to provide essential information for code city officials and to indicate their powers and duties and alternatives that are available under the applicable forms of municipal government.

While every attempt has been made to make this publication comprehensive and understandable, we recognize that additional detail or clarification will be required periodically. Requests for information or comments on this publication are accordingly invited.

Information on other specific municipal topics that are relevant to code cities, is available in the following publications: *Local Ordinances* (Report No. 50); *The New Bidding Book for Washington Cities and Towns* (Report No. 52); *Knowing the Territory: Basic Legal Guidelines for City, County and Special District Officials* (Report No. 47); *The Appearance of Fairness Doctrine in Washington State* (Report No. 32); and *Public Records Act for Washington Cities and Counties* (Report No. 61). Copies of these and other publications are available from the Municipal Research and Services Center.

We are grateful to Paul Sullivan, Legal Consultant, who has prepared this revision of the Handbook. Appreciation is also given to Holly Stewart, Desktop Publishing Specialist, for her work in designing the format and preparing the document for publication. Special thanks goes especially to Bob Meinig, Legal Consultant, who offered both substantive additions for the update and editorial review.

Richard Yukubousky  
Executive Director

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# Chapter I

## Introduction

### I. Municipal Corporations in Washington

The Washington State Constitution, adopted at the time of Washington's entry into the Union in 1889, directed the state legislature to provide by general law for the incorporation, organization and classification of cities and towns in Washington on the basis of population. The constitution also authorized the reincorporation of cities and towns previously organized or incorporated and provided that cities and towns having a population of 20,000 or more inhabitants could frame a charter for their own government.<sup>1</sup>

In 1890, the legislature enacted the required legislation, establishing four classes of municipal corporations: first, second, and third class cities, and fourth class municipalities (towns).<sup>2</sup> In the same year, the legislature also made statutory provision for municipal incorporation, reincorporation, advancement of classification and annexation, and enacted statutes covering the organization, powers and duties of municipal government.<sup>3</sup>

Municipal corporations existing at the time of the adoption of the constitution were given the option of continuing to operate under their territorial charters or of reincorporating under the general laws provided by the legislation of 1890.

The classification scheme provided by the 1890 legislation granted "home rule" powers only to first class cities. A city could become a first class city only when it had at least 20,000 inhabitants and adopted a charter.<sup>4</sup> The courts have held that first class cities have broad legislative powers in the performance of some municipal functions.<sup>5</sup> Such broad construction of municipal powers is known as the "Cooley Rule" of local federalism. Under the Cooley

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<sup>1</sup>Wash. Const., Art. XI, Sec. 10. This constitutional provision was amended by Amendment 40 in 1964 to permit any city containing 10,000 or more inhabitants to frame a charter, subject to the general laws.

<sup>2</sup>Ch. VII, Laws 1889-1890, pp. 131-132 (Chs. 35.22, 35.23, 35.24 and 35.27 RCW).

<sup>3</sup>Ch. VII, Secs. 11-12, Laws 1889-1890, p. 140.

<sup>4</sup>RCW 35.01.010 and the general provisions for adoption of a charter by a first class city, RCW 35.22.010-.190.

<sup>5</sup>In *Winkenwerder v. City of Yakima*, 52 Wn.2d 617, 328 P.2d 873 (1958), the Washington State Supreme Court considered the power of the City of Yakima to enact a certain ordinance. Instead of looking for a specific constitutional or statutory authorization for the city's exercise of power, the court considered whether the power to pass such an ordinance was denied by the state constitution, an act of the legislature or the city's charter. Finding no such limitation, the ordinance was sustained.

Rule, a municipality has the same power to legislate with respect to local matters within its corporate limits as does the state itself, except where that power is retained by the state or is expressly prohibited by the state constitution or by general law.<sup>6</sup> In addition, both statutory and case law have held that statutes relating to first class cities are to be liberally interpreted.<sup>7</sup>

In contrast with first class cities, the courts have viewed other classes of municipalities as having much more limited powers.<sup>8</sup> Since municipalities are creatures of the state, they have only the powers specifically provided by the state legislature, except for the police powers derived directly from the state constitution (Art. XI, Sec. 11) and the constitutionally granted authority of charter cities (Art. XI, Sec. 10).<sup>9</sup> The traditional view of municipal authority, reflected in numerous state supreme court decisions, is often referred to as the “Dillon Rule,” named after a leading authority on municipal law and prominent judge writing in the mid to late 1800s.<sup>10</sup> Under the Dillon Rule municipalities have only those powers expressly enumerated by statute and those which are necessarily implied from the powers expressly

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<sup>6</sup>The Cooley Rule takes its name from Judge Thomas M. Cooley, a Michigan State Supreme Court Justice and Professor of Law at the University of Michigan in the mid-to late-1800's. A general discussion of the law relating to the powers of home rule municipalities can be found in McQuillin, *Municipal Corporations*, §10.25, and 10.13-10.16 (2008). The classic expression of the broad home rule powers available to first class cities is found in *Winkenwerder v. City of Yakima*, 52 Wn.2d 617, 622, 328 P.2d 873 (1958); See also, *Nelson v. City of Seattle*, 64 Wn.2d 862, 395 P.2d 82 (1964), and *City of Seattle v. Rogers*, 6 Wn.2d 31, 106 P.2d 598 (1940). While the powers of a first class city are broad, they are not unlimited. First class cities are not exempt from legislative control. The court in *Massie v. Brown*, 84 Wn.2d 490, 492, 527 P.2d 476 (1979), states as follows:

[W]hen the interest of the state is paramount to or joint with that of a municipal corporation, the municipal corporation has no power to act absent a delegation from the legislature.

See also, Trautman, “Legislative Control of Municipal Corporations in Washington,” 38 Wash. L. Rev. 743, 772 (1963). This limitation on first class cities would apply to the “broad powers” of code cities as well. See *Chemical Bank v. Washington Public Power Supply System*, 99 Wn.2d 772, 792-794, 666 P.2d 329 (1983).

In addition, see *Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 692 P.2d (1987), wherein the Washington State Supreme Court recently cited a narrower rule, the “Dillon Rule” as having some possible application to the exercise of “governmental” powers by a first class city. Accordingly, “home rule” in Washington State appears to be a modified form.

<sup>7</sup>RCW 35.22.900. See, e.g., *Ayers v. Tacoma*, 6 Wn.2d 545, 108 P.2d 348 (1940), and *State ex rel. Ennis v. Superior Court*, 153 Wash. 139, 279 Pac. 601 (1929).

<sup>8</sup>For a general discussion of the powers of municipalities, see Trautman, “Legislative Control of Municipal Corporations in Washington,” 38 Wash. L. Rev. 743, 772-775 (1963).

<sup>9</sup>The legislature has described in considerable detail the powers of each class of municipality: Ch. 35.23 RCW, relating to second class cities; and Ch. 35.27 RCW, relating to towns. Regardless of classification, cities organized under the statutory commission form of government have all the powers of cities of the second class to the extent to which they are appropriate and not in conflict with provisions specifically applicable to cities organized under the commission form. See RCW 35.17.030.

<sup>10</sup>The Dillon Rule takes its name from John F. Dillon, a jurist and leading authority on municipal law who originally formulated the view. A general discussion of this traditional “strict construction rule” of municipal powers can be found in McQuillin, *Municipal Corporations*, §10.18a (2008). The Washington State Supreme Court applies these traditional rules of delegated power to second class cities and towns and what formerly were third class cities. See, e.g., *Town of Othello v. Harder*, 46 Wn.2d 747, 752, 284 P.2d 1099 (1955); *Lauterbach v. Centralia*, 49 Wn.2d 550, 554-555, 304 P.2d 656 (1956); and *State ex rel. Winsor v. Mayor and Common Council of Ballard*, 10 Wash. 4, 7, 38 Pac. 761 (1894); see also, *Nelson v. City of Seattle*, 64 Wn.2d 862, 395 P.2d 82 (1964).

granted. A further restriction on municipal powers is the doctrine that statutory grants of powers are to be strictly construed, with any ambiguity or doubt arising out of the terms used in a grant of power to be resolved against the municipality.<sup>11</sup>

As the state has urbanized, there has been a trend toward greater local self-government and a growing sentiment that municipal government needs greater powers to fulfill its new role and to tailor its governmental structure to meet local needs. While attempts were made, proposals for a constitutional amendment providing for municipal home rule for second, third, and fourth class municipalities consistently failed to obtain the support of two-thirds of the legislature necessary for submission of a constitutional amendment to the voters.

Eventually, the press for home rule led to passage of a constitutional amendment in 1964 which lowered the population requirement for adoption of a city charter from 20,000 to 10,000 inhabitants. Amendment 40, Wash. Const., Art. XI, Sec. 10. Sentiment was still strong, however, for either a constitutional amendment or statute permitting municipalities of any population, including cities of less than 10,000 inhabitants, to exercise more flexible home rule powers. Finally, in 1994, the legislature revised the classification scheme for municipal corporations and lowered the population requirement for first class cities to a population of 10,000 or more at the time of organization or reorganization. RCW 35.01.010. The legislature also redefined second class cities, eliminated third class cities, and changed the title of fourth class municipalities to towns. RCW 35.01.040.

## **II. The Optional Municipal Code**

In 1965 an effort was begun to provide for a statutory form of municipal home rule after repeated efforts to achieve a constitutional home rule proved unsuccessful. The 1965 legislature established a temporary committee, known as the "Municipal Code Committee," charged with the duty to "prepare and submit to the fortieth legislature, in bill form, a code of laws for the government of cities and towns which shall include a form of statutory home rule."<sup>12</sup>

The Municipal Code Committee decided that it would not attempt to revise or amend the existing law pertaining to the various classes of municipalities (codified in Title 35 RCW), but rather would provide an alternative scheme of classification and government of Washington cities, embodying statutory home rule and establishing only two new classes of cities: charter code cities and noncharter code cities.

The new municipal code was presented to the legislature by the Municipal Code Committee during the 1967 legislative session. The code was enacted at the 1967 extraordinary session of the state legislature (Ch. 119, Laws of 1967, Ex. Sess.) and became effective on July 1, 1969.

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<sup>11</sup>See, e.g., *State ex rel. Hill v. Bridges*, 87 Wash. 260, 151 Pac. 490 (1915); *State ex rel. Hill v. Port of Seattle*, 104 Wash. 634, 177 Pac. 671, 180 Pac. 137 (1919); *Griggs v. Port of Tacoma*, 150 Wash. 402, 273 Pac. 521 (1928); *Pacific First Fed. Sav. & Loan Ass'n. v. Pierce County*, 27 Wn.2d 347, 178 P.2d 351 (1947); *Town of Othello v. Harder*, 46 Wn.2d 747, 284 P.2d 1099 (1955); and *Lauterbach v. Centralia*, 49 Wn.2d 550, 304 P.2d 656 (1956). See also, McQuillin, *Municipal Corporations*, §10.19 (2008).

<sup>12</sup>Ch. 115, Laws of 1965, Ex. Sess. "Statutory" home rule because "constitutional" home rule powers under Article XI, Section 10 (Amendment 40) of the Washington State Constitution are available only to cities with a population of 10,000 or more. See *Winkenwerder v. Yakima*, 52 Wn.2d 617, 328 P.2d 873 (1958).

Cities and towns were given the option of electing to come under the provisions of this municipal code (codified in Title 35A RCW) or continuing to be governed by the existing statutory structure.

### **III. Purpose of the Optional Municipal Code**

The Optional Municipal Code was devised as a straightforward alternative to the existing statutory system of municipal government in Washington. The basic objective of the Code was to increase the ability of cities to cope with complex urban problems by providing broad statutory home rule authority in matters of local concern to all municipalities, regardless of population.

Under the code, cities may take any action on matters of local concern so long as that action is neither prohibited by the state constitution nor in conflict with the state general law. Because this "broad powers" philosophy was a marked departure from prior law (except for first class cities), the legislature repeated it three times.<sup>13</sup> The powers granted to code cities include all the powers granted to any class of city in any existing or future legislative enactment unless the legislature specifically makes a statute inapplicable to code cities.<sup>14</sup>

### **IV. Advantages of the Optional Municipal Code**

The major "home rule" provisions of the Code are contained in RCW 35A.01.010, 35A.11.020, 35A.11.050 and 35A.21.160. In general, these provisions provide code cities with: (1) broad powers of local self-government, (2) a judicial rule of liberal construction of code city powers, (3) freedom from the limiting doctrine of *eiusdem generis*, and (4) a grant of "omnibus authority."

#### **A. Broad Powers of Local Self-Government Granted**

The chief advantage of the code lies in its local home rule premise which reverses the traditional view of the powers of municipal government in Washington. The Optional Municipal Code provides for broad statutory home rule authority in all matters of local concern, regardless of the size of the municipality, whereas other municipalities (other than first class cities) have only those powers expressly granted to them by the state legislature.<sup>15</sup>

The Washington State Supreme Court has recognized the ramifications of such a grant of home rule power and upheld the authority of code cities to take unusual steps to respond to local needs. For example, in the early 1970's plans were made requiring most of the City of North Bonneville to be relocated to permit construction of a power house on the Columbia River by the United States Army Corps of Engineers. The City of North Bonneville, a code city, entered into contracts with the Corps to purchase land to be used

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<sup>13</sup>RCW 35A.01.010, 35A.11.020, and 35A.11.050.

<sup>14</sup>RCW 35A.01.050 and 35A.11.030 (defining "the general law," for the purposes of the Optional Municipal Code, to be any provision of state law enacted before or after the enactment of the Optional Municipal Code).

<sup>15</sup>RCW 35A.01.010, 35A.11.020 and 35A.11.050.

for both public and private purposes in relocating the city's residents and businesses. In a suit challenging the authority of the city to take such action, the Washington State Supreme Court, citing the broad powers enjoyed by code cities, found no general prohibitions against the land transactions and held that North Bonneville had the authority to enter into the contracts.<sup>16</sup>

## B. Grant of "Omnibus Authority"

A second general advantage to the Optional Municipal Code is its grant of "omnibus authority" to code cities. The Optional Municipal Code provides that code cities have all the powers which any city or any class may have consistent with the state constitution and not specifically denied to code cities by law.<sup>17</sup>

## C. Rule of Liberal Construction of Powers

A third general advantage of the Optional Municipal Code is that the Code includes a rule of liberal construction of the powers granted to code cities.<sup>18</sup>

## D. Doctrine of *Ejusdem Generis* Inapplicable

Finally, a fourth general advantage of the Optional Municipal Code is that it has been drafted to avoid the application of the *ejusdem generis* doctrine of statutory construction.<sup>19</sup> The doctrine of *ejusdem generis* (Latin for "of the same kind") provides that when general words follow particular and specific words in a statute, the general words must be construed to include only things of the same kind of class as those indicated by the particular and specific words.<sup>20</sup> Application of the *ejusdem generis* doctrine can result in narrow reading of statutory delegations of power, further limiting the powers of municipal corporations.

In the Optional Municipal Code, however, powers are stated in the broadest general terms to achieve a maximum of statutory home rule. The Code states that:

Any specific enumeration of municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general

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<sup>16</sup>*U.S. v. Town of Bonneville*, 94 Wn.2d 827, 621 P.2d 127 (1980). Under less urgent circumstances, the State Supreme Court in *Issaquah v. Teleprompter Corp.*, 93 Wn.2d 567, 575, 611 P.2d 741 (1980), similarly concluded that, absent any statute preventing a municipality from engaging in cable television activity, acquisition, ownership, and operation of a cable television system by a municipality does not exceed the broad powers granted to code cities by the Optional Municipal Code.

<sup>17</sup>RCW 35A.11.020 and 35A.21.160. See also AGO 1974 No. 2 in which it was concluded that code cities may avail themselves of the first class city statute which authorizes the deferral of collection of assessments for economically disadvantaged persons, namely RCW 35.43.250.

<sup>18</sup>RCW 35A.01.010 and 35A.11.050.

<sup>19</sup>RCW 35A.01.010, 35A.01.050 and 35A.11.050.

<sup>20</sup>McQuillin, *Municipal Corporations*, §10.24 (2008).

description of power contained in this title, and any such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title.<sup>21</sup>

As a result, generally the rule of *ejusdem generis* will not be applied by the courts to limit the powers of code cities.

## **E. Local Government Administration under the Optional Municipal Code**

The Optional Municipal Code provides for flexibility in the administration of municipal government, thus permitting code cities to adjust their procedures and programs to meet individual needs. While the Code provides cities with the ability to exercise broad municipal powers, code city officials and agencies themselves do not automatically have such power. The Code itself establishes the powers and responsibilities of some officials, such as councilmembers, the mayor, and the city manager; other city officials have only such powers as the city council vest in them.<sup>22</sup> The result is to increase the administrative choices available to code cities and to provide an organizational flexibility unavailable to second class municipalities and towns.

## **F. Specific Statutory Advantages**

In addition to the analytical differences in the scope of code city powers, there are a number of specific advantages of the Optional Municipal Code:

### **1. Annexation Petitions for Election Method, Initiated by Ten Percent Petition<sup>23</sup>**

Under the petition for election method of annexation in code cities, the signatures of qualified electors equal to only *ten percent* of the votes cast at the last state general election are required for a petition to annex territory. RCW 35A.14.020. In all other classes of cities, the petition for election method requires the signatures of qualified voters equal to *twenty percent* of the votes cast in the last state general election. RCW 35.13.020.

### **2. Appointive Positions**

Except for the city manager under the council-manager plan, the only appointive officers required by statute in a code city are the clerk and chief law enforcement officer. All other appointive officers are to be provided for by local charter or ordinance. RCW 35A.12.020 and 35A.13.090.

### **3. Board of Park Commissioners**

The restrictions placed on the establishment of a board of park commissioners in

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<sup>21</sup>RCW 35A.01.010.

<sup>22</sup>RCW 35A.11.020. The powers of some officials, of course, such as councilmembers, mayors, clerks, and city managers, are defined, at least in part, by the Optional Municipal Code itself.

<sup>23</sup>Note that code cities that plan under the Growth Management Act may only annex property that is located within their identified urban growth area. RCW 35A.14.005.

second class cities and towns by RCW 35.23.170 are not applicable to code cities, thus allowing a code city to establish a board with whatever number of members it may desire. RCW 35A.11.020, 35A.12.020, and 35A.13.080.

#### **4. Codification of Governing Statutes**

The Optional Municipal Code contains a complete compilation or reference to all general state laws applicable to code cities. Many of the statutes relating to cities and towns scattered through the 91 titles of the Revised Code of Washington (RCW) are included by reference in Title 35A, making them more readily available and discernible.

#### **5. Compensation for First Elective Officers of a Newly-Incorporated City**

The Code provides for interim compensation for the first elective officials of a newly-incorporated code city. The compensation set out by the Code is to be paid until a salary ordinance is passed and becomes effective. RCW 35A.12.070 and 35A.13.040. These interim salary provisions overcome the prohibition contained in Art. XI, Sec. 8 of the state constitution that the salary of municipal officers may not be increased or diminished after their election or during their term of office. Other classes of cities have no similar provision for the interim compensation of their first elected officials.

#### **6. Elective Positions**

The code limits the required elective positions of the city to those of the city's legislative body and that of mayor, if the city operates under the mayor-council plan. RCW 35A.12.010 and 35A.13.010. Under the council-manager plan, the mayor is chosen by and from among the city's elected councilmembers or, at the option of the voters, the mayor's position on the council may be designated as "position one" and thereafter the person elected to that position assumes the title of mayor. RCW 35A.13.033. The Code eliminates the need for electing an attorney, city clerk or treasurer, as may be required by general law in some other classes of cities.

#### **7. Initiative and Referendum**

The voters or the city council of a noncharter code city can, under RCW 35A.11.080, provide for the exercise in their city of the powers of initiative and referendum. Acquisition of such powers is not automatic, however, either upon the incorporation or reclassification of a city as a noncharter code city. The process to acquire the powers can be initiated either by council resolution or by a petition of the voters with the issue then decided by election. For example, if the voters petition to obtain the powers of initiative and referendum, an election must first be held to determine whether those powers should be made available. Only if a majority of the votes cast favor the grant of such powers are the voters in a position to later exercise the powers of initiative and referendum on specific issues. In non-code cities the powers of initiative and referendum are also available if the city operates under a commission form of government; such powers are not available in second class cities and towns.

#### **8. L.I.D. Assessment Collection Deferral**

Code cities may utilize RCW 35.43.250 to provide for the deferral of collection of special assessments on property, such as L.I.D. assessments, from economically

disadvantaged persons. The authority to defer collection of assessments from economically disadvantaged persons is not available to second class cities or towns at this time.

## 9. Planning<sup>24</sup>

In code cities, city planning and zoning activities are conducted independent of the 1935 Planning Commissions Act (Ch. 35.63 RCW), and pursuant to Ch. 35A.63 RCW and Ch. 36.70A RCW (the Growth Management Act). As a result, code cities benefit from more flexible procedural requirements and have a wider range of choices in determining the form planning is to take within their city.

Second class cities and towns generally operate under the 1935 Planning Commissions Act, although Ch. 36.70 also authorizes cities to participate in regional planning.<sup>25</sup> The Planning Commissions Act requires such cities to have a planning commission. In contrast, a code city may establish a "planning agency" which may be a planning department, a person, staff or body, rather than a planning commission. RCW 35A.63.010(8). Like other cities, a code city may also provide for a hearing examiner, thus enabling the city's planning agency to better concentrate its efforts on planning and long-range goals. RCW 35A.63.170; see also RCW 35.63.130.

## 10. Procedural Matters in Planning Actions<sup>26</sup>

Some procedural requirements, such as holding public hearings on comprehensive zoning plans before both the planning agency and the city council, have been modified or eliminated in the Optional Municipal Code. See RCW 35A.63.070, .072, .080, .100, and .150. The Code also provides that no procedural irregularity or informality in the consideration, hearing, and development of a comprehensive plan or any of its elements will affect the validity of any zoning ordinance or amendment to a zoning ordinance enacted by a code city after approval of the comprehensive plan. RCW 35A.63.080. This provision removes some of the bases used to invalidate zoning ordinances in other cities under the Planning Commissions Act, Ch. 35.63 RCW.

Procedural requirements for code cities required to plan under the Growth Management Act are set out in Ch. 36.70A RCW.

## 11. Pro Tempore Appointments

The Code makes provisions for appointment of a mayor pro tempore or deputy mayor to serve in the absence or temporary disability of the mayor. RCW 35A.12.065 and 35A.13.035. The Code also provides for the appointment of a councilmember pro

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<sup>24</sup>See Chapter VIII of this publication for more complete information on planning and zoning in code cities.

<sup>25</sup>The power to zone is derived either from state statute or directly from the Constitution itself. Many cities and towns of the state are governed by the Planning Commissions Act, Ch. 35.63 RCW. Once a city or town chooses to zone pursuant to Ch. 35.63 RCW, it must thereafter (unless it becomes a code city) abide by the terms of the act. See *Lauterbach v. Centralia*, 49 Wn.2d 550, 304 P.2d 656 (1956). Some cities, however, have opted to zone pursuant to the police powers granted by Article XI, Section 11 of the state constitution. See, e.g., *Nelson v. City of Seattle*, 64 Wn.2d 862, 867-868, 395 P.2d 82 (1964). Cities and towns may participate in regional planning pursuant to Ch. 36.70 RCW, the Planning Enabling Act.

<sup>26</sup>See Chapter VIII of this publication for a more complete discussion of planning in code cities.

tempore to serve during the extended excused absence or disability of a councilmember. The second class city and the town statutes make no provision for appointment of a councilmember pro tempore.

## 12. Restrictions on Land Area

The restrictions on the area which may be included within the corporate limits of a town (RCW 35.21.010) are inapplicable to code cities.

## 13. Size of City Council

Code cities have greater flexibility than non-code cities in determining the size of their city council. See RCW 35A.12.010 and 35A.13.010. When an existing city or town elects to reclassify as a noncharter code city, the size of the city council of the new code city is determined by the Optional Municipal Code. For municipalities of less than 2,500 inhabitants, the size of the council is fixed at five. For municipalities of 2,500 or more inhabitants, the size of the council is fixed at seven. When an existing code city's population increases to 2,500 or more, however, the code city council has the option to retain its five-member council or to provide for a seven-member council. The council size does not mandatorily increase to seven members until the code city reaches a population of 5,000 or more inhabitants. If an existing code city's population decreases from 2,500 or more to less than 2,500, the city continues to have a seven-member council. By contrast, the size of the council in non-code cities is dictated by statute. See RCW 35.23.021, 35.27.070, and 35.18.020.

A city with seven councilmembers and having a population of less than 5,000 which reclassifies under the Optional Municipal Code may reduce its number of councilmembers from seven to five members. See RCW 35A.12.010 and 35A.13.010.

## 14. Division of City into Wards

The Code provides for the optional division of a code city into wards without restriction on the number of wards into which it may be divided. RCW 35A.12.180 and 35A.13.220. While the city council of a second class city may also divide the city into wards, there is a restriction upon the number of wards permitted. See RCW 35.23.850. The town statutes make no provision for division of a town into wards.

Adoption of the Code in no way diminishes the powers a city possessed under its prior classification, but the adoption instead provides the city with a variety of powers previously enjoyed only by first class cities. At its inception the Code was forward looking. A number of provisions of the Optional Municipal Code have subsequently been enacted into the state general law and thereby made available to other classes of municipalities. For example, the budget law enacted in 1969, applicable to all cities and towns with a population of under 300,000, first appeared in the Optional Municipal Code.<sup>27</sup>

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<sup>27</sup>Ch. 35.33 RCW (Ch. 95, Laws of 1969, Ex. Sess.) was modeled after the provisions of the Optional Municipal Code, Ch. 35A.33 RCW.

## Chapter II

# Adoption of the Code City Classification by Incorporated Municipalities

### I. Classification of Code Cities

The Optional Municipal Code creates two new classes of cities: “charter code cities” and “noncharter code cities.” These are the only classifications which are applicable to municipalities choosing to operate under the Optional Municipal Code. A municipality which adopts either of those classifications abandons its former numerical classification and ceases to be governed by the laws of that numbered class (Title 35 RCW). Instead, a code city will be governed primarily by the Optional Municipal Code (Title 35A RCW).

The term “code city,” as used in the Title 35A RCW, generally refers to any “noncharter” or “charter” code city.<sup>28</sup> “The essential difference between a noncharter code city and a charter code city,” according to the State Attorney General, “relates to the unique ability of the charter code city to frame its own form of government by its charter, and not to the basic nature or source of its municipal powers.”<sup>29</sup> A charter code city can thus provide for an individualized plan of government with a unique administrative structure, whereas a noncharter code city must choose one of the plans of government provided and governed by statutory provisions. (Currently, there is only one charter code city, the city of Kelso.) The general provisions of the Optional Municipal Code, however, refer only to code cities and draw no distinction between cities with charters and those without. The basic nature and source of power granted to code cities by the Optional Municipal Code is the same regardless of whether a city is a noncharter or charter code city.

### II. Effect on Municipal Government upon Becoming a Code City and Selecting a Plan of Government

#### A. Municipal Powers

The Optional Municipal Code is intended to provide a “general law” framework within the meaning of Art. 11, Sec. 10 of the state constitution.<sup>30</sup> It is written as an enabling act designed to provide for statutory “home rule.”

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<sup>28</sup>RCW 35A.01.035.

<sup>29</sup>AGO 1972 No. 24, p. 5 and AGO 1970 No. 8.

<sup>30</sup>RCW 35A.21.020.

The legislative bodies of all code cities, with or without a charter and regardless of population, are given all powers of local self-government consistent with the state constitution and not specifically denied to code cities by law.<sup>31</sup> Code cities have any and all powers granted to any class of city or to all cities.<sup>32</sup>

Upon reclassification as a code city, an existing city abandons its classification as a numbered class of city along with the restrictions, limitations, duties, and obligations imposed by the statutes on that numbered class. However, any code city that retains its old plan of government is subject to the laws applicable to that old plan of government until the city changes its plan to the provisions of either Ch. 35A.12 or Ch. 35A.13 RCW.<sup>33</sup>

## **B. Plan of Government**

### **1. Plans of Government Available to Noncharter Code Cities**

Two plans of government are provided under the Optional Municipal Code: the mayor-council plan (Ch. 35A.12 RCW) and the council-manager plan (Ch. 35A.13 RCW). In substance, the chapter governing the council-manager plan differs very little from Ch. 35.18 RCW, the Council-Manager Enabling Act. The code city mayor-council plan provides for strong leadership by an elected mayor, whose executive and administrative powers and duties are very similar to those of a city manager. Alternatively, a city may choose under a "grandfather clause" to become a noncharter code city and retain the form of government it possessed under Title 35 RCW.<sup>34</sup>

### **2. Effect of Reclassification on Incumbent Elected Officials**

A municipality which "reclassifies" under the Optional Municipal Code is one which, upon becoming a code city, adopts the same general plan of government under which it operated prior to becoming a code city.<sup>35</sup> City officers are retained without the need for an election.

A municipality which "reorganizes" under the Code is one which changes the plan of government under which it operates to a different general plan. A reorganization occurs, for example, if a council-manager city adopts the mayor-council plan of government upon becoming a code city. A municipality does not "reorganize," however, simply because it changes the number of elective offices or the terms of offices, or because an office becomes appointive rather than elective.<sup>36</sup> If the city reorganizes, an election of new officers is required.<sup>37</sup>

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<sup>31</sup>RCW 35A.21.020.

<sup>32</sup>RCW 35A.21.160.

<sup>33</sup>RCW 35A.06.020.

<sup>34</sup>RCW 35A.02.130 and 35A.02.030.

<sup>35</sup>RCW 35A.01.070(3) and 35A.02.055.

<sup>36</sup>RCW 35A.02.010.

<sup>37</sup>See RCW 35A.01.070(8) and 35A.02.050.

The only elected officials whose terms of office might be affected by adoption of the noncharter code city classification are those of an elected clerk, treasurer, or attorney in a second class mayor-council city or an elected treasurer in a mayor-council town. The Optional Municipal Code has no provision comparable to the second class city statute, RCW 35.23.021, which provides that if a treasurer's position is changed from an elective to an appointive office, the elected incumbent is to serve for the remainder of his or her unexpired term. Consequently, although the question has never been tested in the courts, it appears that upon reclassification as a noncharter code city, an elected treasurer, clerk, or attorney position becomes an appointive position and the elective office ceases.<sup>38</sup>

### 3. Note on Retaining the Title 35 RCW Version of the Mayor-Council or Council-Manager Plan of Government

The two plans of government authorized by the Optional Municipal Code are complete and separate plans of government.<sup>39</sup> Although a municipality has the option of becoming a noncharter code city while retaining its present plan of government under Title 35 RCW, some of the benefits of the Optional Municipal Code are found exclusively in those chapters establishing its two authorized plans. Those benefits, tied in with the Code-authorized plans of government, would not be available to municipalities using the grandfather clause to retain their existing Title 35 RCW plan of government.<sup>40</sup>

Retention of the former plan of government can also cause confusion as to what powers the city possesses. Reference in those instances must be made to both the Optional Municipal Code and to the governmental structure provided by Title 35 RCW to ascertain the extent of the city's powers. To avoid confusion, it is suggested that, unless a municipality desires to retain its commission plan of government, the grandfather clause provisions (RCW 35A.02.030 and 35A.02.130) be avoided.

If the Title 35 RCW form of government is retained upon reclassification, there is no change in governmental structure and no new election of officers.<sup>41</sup>

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<sup>38</sup>There appears to be no constitutional problem with such a reduction in the length of the term of office of an elected official. See *Bogue v. Seattle*, 19 Wash. 396, 53 Pac. 548 (1898).

<sup>39</sup>RCW 35A.06.010 and 35A.06.020.

<sup>40</sup>RCW 35A.12.190 and 35A.13.230 provide that the council of any code city organized under a Code-authorized plan of government shall have the powers and authority granted to the legislative bodies of cities governed by the Optional Municipal Code. In addition, provisions such as RCW 35A.12.065 and 35A.13.020 which authorize pro tempore appointments are found in the chapters establishing the mayor-council and council-manager plans of government (Chs. 35A.12 and 35A.13 RCW) and are not available to municipalities electing to retain the Title 35 RCW version of their plan of government.

<sup>41</sup>Some of the impetus behind retaining the old Title 35 RCW version of the mayor-council or council-manager plan of government was a desire on the part of a city or town to avoid a new election of officers. Prior to the 1979 amendments (Ch. 18, Laws of 1979, 1st Ex. Sess.), when adoption of the noncharter code city classification and Code-authorized plan of government resulted in an increase or decrease in the number of councilmembers, a new election of officers pursuant to RCW 35A.02.050 was required because that was considered a "reorganization" for which a new election of officers was required. The 1979 amendments make it clear that a "reorganization" is a change in the general plan of government (e.g., from the mayor-council plan to the council-manager plan) and not a change in administrative structure resulting from minor differences in the number of council positions or the terms of their offices. See RCW 35A.02.010.

#### 4. Plan of Government in Charter Code Cities

A city which has a charter may adopt the Optional Municipal Code and continue to be governed under that charter, except where a charter provision conflicts with the Code.<sup>42</sup> Even a conflicting charter provision may continue in effect, if the city council votes to retain it.<sup>43</sup>

Any city having a population of 10,000 may become a charter code city by adopting a charter in the manner prescribed by the Optional Municipal Code.<sup>44</sup> The charter may provide for any constitutional plan of government, including the two plans set forth in the Code, either with or without variations.<sup>45</sup> A noncharter code city can adopt a charter to devise its own plan of government pursuant to Ch. 35A.08 RCW. None of the restrictions in Ch. 35A.06 RCW, relating to changes in plan of government, apply when a noncharter code city adopts a charter to form its own plan of government.<sup>46</sup> The procedures to amend a charter are set out by Ch. 35A.09 RCW.

#### C. Organization of Code City Government

The legislative body of each code city is given the power to organize and regulate its internal affairs within the provisions of the Optional Municipal Code and its charter, if any.<sup>47</sup> As a body of general law, the Code prescribes only a minimum of governmental structure.

In the two Code-authorized plans of government, the mayor and the councilmembers are the only elected officials, although the mayor in a council-manager city can be either elected or appointed from among the councilmembers.<sup>48</sup> The number of council positions is determined by the city's population.<sup>49</sup> The positions of city clerk and chief law enforcement officer are the only two required appointive positions. Some provision must also be made for legal counsel, however, either by the appointment of a full-time or part-time city attorney, or by contracting for such professional services. All other offices are left to the discretion of the city council.

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<sup>42</sup>RCW 35A.10.010.

<sup>43</sup>RCW 35A.21.020.

<sup>44</sup>RCW 35A.08.010. The provisions for adopting a charter are found in Ch. 35A.08 RCW.

<sup>45</sup>RCW 35A.08.050. Note, however, that RCW 35A.12.010 and 35A.13.010 provide limitations on the size of the council which may be chosen when a city is incorporating one of the Code-authorized plans of government into its charter.

<sup>46</sup>RCW 35A.06.030.

<sup>47</sup>RCW 35A.11.020.

<sup>48</sup>RCW 35A.12.010 and 35A.13.010. The mayor in a *council-manager* noncharter code city is usually appointed by the council from among its members pursuant to RCW 35A.13.030. The city council may provide for the popular election of the mayor, however, by following the procedure set forth in RCW 35A.13.033.

<sup>49</sup>RCW 35A.12.010; 35A.13.010.

Creation of departments, offices, and positions and the compensation of appointive officers are to be provided by ordinance.<sup>50</sup> Upon classification as a code city, all existing municipal departments, offices, and positions continue unchanged until the city council amends or repeals the ordinances governing them.<sup>51</sup>

#### D. Existing Ordinances

All ordinances, resolutions, rules, regulations, or orders lawfully in force at the time a municipality becomes a code city, not in conflict with the Optional Municipal Code, continue in force until amended or repealed by the council of the new code city.<sup>52</sup> Although there is nothing in the Code requiring that a city exercise all available powers, a review of existing city ordinances would be beneficial to ensure that they do not unduly limit the powers of the city as a code city.

### III. Procedure for Adopting the Noncharter Code City Classification – Ch. 35A.02 RCW

#### A. Reclassification and Reorganization in General

This section describes the process of reclassification. Not all of the steps discussed, however, apply to each municipality electing to reclassify. For instance, seldom are referendum elections required on the question of whether or not to reclassify.

##### 1. Methods of Reclassification as a Noncharter Code City

There are four methods in Ch. 35A.02 RCW by which an incorporated municipality may become a noncharter code city. Two are “election methods”: the petition-for-election and the resolution-for-election methods. The other two methods provide for “direct” action, either by a direct petition or a direct resolution. These latter two methods are “direct” because the only possible election would be a referendum, pursuant to a separate petition. Accordingly, the expense of an election can be avoided under the direct methods if there is no significant opposition to the reclassification. Otherwise, under all four methods, the final decision can or does rest with the voters.

Of the municipalities which have reclassified and become noncharter code cities, the majority have used the direct resolution method. The petition-for-election method has been used several times and the resolution-for-election method at least once.

##### 2. Reorganization of Plan of Government upon Reclassification

“Reorganization” is a complete change in the general plan of government, such as a change from the commission plan to the mayor-council plan. A city or town may reorganize its plan of government in connection with any of the four methods of reclassification.

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<sup>50</sup>RCW 35A.12.020; 35A.13.090.

<sup>51</sup>RCW 35A.90.010.

<sup>52</sup>RCW 35A.90.010.

Reorganization can be approved along with the initial reclassification without an election. Unless there is a petition for a referendum election, both the reclassification and the reorganization may be authorized by ordinance. A subsequent reorganization pursuant to Ch. 35A.06 RCW, however, always requires an election and approval by the voters.<sup>53</sup> A new election of officers is always required whenever a municipality reclassifies and reorganizes its form of government.<sup>54</sup>

Overwhelmingly, cities electing to reclassify as code cities have favored their existing plan of government; and the vast majority have accordingly specified the governmental plan provided by the Optional Municipal Code that conforms to their own pre-existing plan.

## B. Outline of Reclassification Procedures

### 1. Direct Resolution Method (RCW 35A.02.030)

The direct resolution method, outlined below, has been by far the most used method of adopting the noncharter code city classification.

#### a. Decision to Reclassify as a Noncharter Code City (RCW 35A.02.030)

The reclassification process begins when the majority of the legislative body of an incorporated city or town determines that it would serve the best interests and general welfare of the municipality to change its classification to that of noncharter code city.<sup>55</sup> In reaching that determination, the effects of reclassification should be thoroughly understood, including the effect that the change would have on municipal powers, plan of government, administrative organization, and existing ordinances.

#### b. Resolution of Intent to Adopt Noncharter Code City Classification (RCW 35A.02.030)

If the legislative body decides to proceed, its decision to adopt the noncharter code city classification should be expressed in a resolution of intent, preceded by a finding that the reclassification will serve the best interests and general welfare of the municipality. If the legislative body also decides to reorganize, the resolution must also contain a declaration of intent to reorganize under one of the plans of government authorized by the Optional Municipal Code.

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<sup>53</sup>RCW 35A.02.050.

<sup>54</sup>See RCW 35A.02.050 for initial reorganization and reclassification. If the code city later reorganizes, its officers remain in office. RCW 35A.06.060. The election process is governed by RCW 35A.02.050.

<sup>55</sup>RCW 35A.02.140 places restrictions on the submission and filing of *additional* reclassification proposals during the pendency of any classification proceedings. First-in-time controls the order of disposition of the proposals. See AGO 1970 No. 5. While reclassification or reorganization proceedings are pending, no resolution can be passed for the purpose of initiating other such proceedings or for submitting them to the voters nor may a petition for reclassification or reorganization be accepted for filing (except that a timely and sufficient petition seeking to place a proposal for an alternative plan of government authorized by the Optional Municipal Code on the ballot may be filed and acted upon). RCW 35A.02.090 and 35A.02.140. A petition to become a charter code city may be filed as soon as reclassification proceedings are concluded. See RCW 35A.06.030.

Usually, though, the city or town simply elects to be governed by the Optional Municipal Code version of its pre-existing plan. That effect appears to be automatic unless the city affirmatively specifies either a different plan or to retain its own Title 35 plan. However, we suggest that the resolution of intent specifically provide that the pre-existing plan will be retained, if that is the intent.

c. Publication of Resolution within Ten Days (RCW 35A.02.030)

The resolution of intent must be published at least once in a newspaper of general circulation within the city or town not later than ten days after its passage.

d. 90-Day Referendum Period (RCW 35A.02.030)

A 90-day referendum period follows the publication of the resolution of intent. During that time, a referendum petition may be circulated to and signed by qualified electors. Once signed, the petition is filed with the city or town clerk in order to refer the resolution of intent to the voters for approval or disapproval at a subsequent election. The referendum period ends upon the expiration of the 90th day from, but excluding the date of, the first publication of the resolution.

e. Ordinance Adopting Classification of Noncharter Code City (RCW 35A.02.030)

If no timely and sufficient referendum petition is filed before the expiration of the 90-day referendum period, the legislative body, at its next regular meeting, passes an ordinance adopting the classification of noncharter code city, effecting the earlier resolution of intent.

Although the issue has not been tested in the courts, it appears that once a resolution of intent has been adopted, unless it is referred to the voters, an ordinance effecting the intent *must* be enacted. It does not appear that the legislative body may either disregard the resolution of intent or enact an ordinance embodying something different. The legislative body may subsequently decide to abandon the noncharter code city classification or to reorganize the plan of government, but to do so would require that it follow the procedure set forth in Ch. 35A.06 RCW for abandoning the code classification or reorganizing the city's plan of government.

If the resolution includes a declaration of intent to reorganize, the ordinance passed by the legislative body must also provide for that reorganization as well as for an election of new officers pursuant to RCW 35A.02.050. Any change in the number of council positions resulting from reclassification is governed by RCW 35A.02.055.

f. Transmittal of Certified Copy of Ordinance(s) to Secretary of State's Office (RCW 35A.02.040)

A certified copy of the ordinance adopting the classification of noncharter code city is to be forwarded to the office of the Secretary of State by the city or town clerk. If the government also reorganizes, a certified copy of the ordinance providing for reorganization must also be filed with the Secretary of State's office.

g. Effective Date of Reclassification as a Noncharter Code City (RCW 35A.02.040)

If no reorganization is sought, the city or town becomes classified as a noncharter code city upon the filing with the Secretary of State of the certified copy of the ordinance adopting the classification.

If reorganization is sought, neither the reclassification nor the reorganization is effective until the election, qualification, and assumption of office of at least a quorum of the new officers under the new plan of government. Until the reclassification becomes effective, the city or town continues to be governed by the statutes of its former numerical class. All incumbent officers continue in their positions until the new officers have assumed office.

h. Referendum Petition Filed (RCW 35A.02.025 or 35A.02.035)

Any referendum petition which has been circulated and signed is to be filed with the city or town clerk. To be sufficient, it must be signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general municipal election.

i. Determining the Sufficiency of the Referendum Petition (RCW 35A.29.170)

Referendum petitions must be filed with the city or town clerk, who transmits the petition to the county auditor, who determines the sufficiency of the referendum petition under the rules set out in RCW 35A.01.040. Until the petition's sufficiency is determined, the resolution sought to be referred to the voters is suspended from taking effect. The suspension terminates either upon a final determination of insufficiency or untimeliness or when the resolution is referred to and approved by the voters at a referendum election.<sup>56</sup>

If the referendum petition is found to be insufficient or untimely, the resolution of the legislative body continues in effect. If no other timely or sufficient referendum petition is filed during the 90-day referendum period, the process of adopting the classification of noncharter code city continues (see paragraph III.B.1.e., above).

j. Valid Referendum Petition: Resolution Referred to Voters (RCW 35A.02.025 or 35A.02.035)

If the referendum petition is found to be timely and sufficient, the resolution stating the intent to reclassify must be referred to the voters for approval or rejection at the next general municipal election, if one is to be held within 180 days from the date of filing of the referendum petition, or at a special election to be called for that purpose in accordance with RCW 29A.04.330.

k. Referendum Election

In the referendum election, the question of whether to adopt the classification of noncharter code city with or without reorganization is decided by the voters. In such elections the following provisions apply:

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<sup>56</sup>RCW 35A.02.140 and RCW 35A.29.170.

(1) *Ballot Titles (RCW 35A.02.060)*

Ballot titles are to be prepared by the city attorney.

(2) *Alternative Plans of Government (RCW 35A.02.090)*

Proposals for any alternative plan of government authorized by the Code can be placed on the ballot by a timely petition. If the ballot lists alternative plans of government, it must clearly state that voters may vote for only one plan.

l. **Resolution by Legislative Body of Intent Expressed in Referendum Election (RCW 35A.02.070)**

The city or town council must pass a resolution declaring that the inhabitants have decided to adopt the reclassification of noncharter code city (and reorganization, if that is the case) and then direct the clerk to forward a certified copy of the resolution to the Secretary of State.

m. **Effective Date of Reclassification and Reorganization after a Favorable Vote in a Referendum Election**

RCW 35A.02.040 controls the effective date of reclassification under either the direct petition or resolution methods. If there is no reorganization, the city or town becomes a noncharter code city upon the filing of a certified copy of the ordinance adopting the classification with the office of the Secretary of State.

If the ordinance provides for reorganization, the reclassification and reorganization is not effective until the election, qualification and assumption of office under RCW 35A.02.050 of at least a quorum of all new officers under the plan of government adopted.<sup>57</sup>

2. **Direct Petition Method (RCW 35A.02.020)**

The direct petition method, discussed below, has never been used as a method for adopting the noncharter code city classification, probably due to the difficulty of having to obtain signatures equal to one-half the number of votes cast at the last general municipal election.

a. **Petition Initiated (RCW 35A.02.020)**

An initiating petition conforming to the form and content requirements of RCW 35A.01.040 is to be circulated among the registered voters of an incorporated city or town. The petition must state that the petitioners seek the adoption by the city or town of the classification of noncharter code city, either under the city's or town's existing plan of government or under a different plan authorized for noncharter code cities. Registered voters representing not less than 50 percent of the votes cast at the last *general* municipal election must sign the petition.

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<sup>57</sup>RCW 35A.02.040.

b. Petition Filed (RCW 35A.02.020)

The initiating petition must be filed with the county auditor.

c. Certificate of Sufficiency of Petition Filed by the County Auditor with the Legislative Body (RCW 35A.02.020)

If the county auditor determines that the petition is insufficient, the process ends. If, however, the petition is sufficient, the auditor files a certificate of sufficiency with the legislative body.

d. Resolution by Legislative Body of Intent Expressed in Petition (RCW 35A.02.020)

The legislative body of the city or town must pass a resolution declaring that the inhabitants of the city or town have decided to adopt the classification of noncharter code city and to be governed by the provisions of Title 35A RCW. If the petition includes a proposal to reorganize the city or town plan of government, then the resolution must also declare that the inhabitants of the city or town have decided to reorganize under the plan of government specified in the petition.

e. Publication of Resolution within Ten Days (RCW 35A.02.020)

The legislative body must have the resolution published at least once in a newspaper of general circulation within the city or town not later than ten days after its passage.

f. 90-Day Referendum Period (RCW 35A.02.020)

The direct petition method of reclassification, like the resolution method, is subject to a 90-day referendum period. The referendum period similarly ends upon the expiration of the 90th day from, but excluding the date of, the first publication of the intent resolution. If a timely and sufficient referendum petition is filed, a referendum election is required. If no referendum petition is filed, the process of adopting the noncharter code city classification continues.

g. Ordinance Adopting Classification of Noncharter Code City (RCW 35A.02.020)

At the next regular session following the expiration of the 90-day referendum period, the legislative body carries out the decision of the petitioners, as expressed in the initiating petition, by passing an ordinance adopting the classification of noncharter code city.

If the petition also sought reorganization, the legislative body must also provide for such reorganization by ordinance and for an election of all new officers pursuant to RCW 35A.02.050. If no reorganization is sought, RCW 35A.02.050 does *not* apply. Any change required in the number of council positions is governed by RCW 35A.02.055.

h. A Certified Copy of Ordinance(s) is filed with the Office of the Secretary of State (RCW 35A.02.040)

See paragraph III.B.1.f., above.

- i. Effective Date of Reclassification as a Noncharter Code City (RCW 35A.02.040)

See paragraph III.B.1.g., above.

- j. Referendum Procedure (RCW 35A.02.025)

The procedures for a referendum election, if one is to be held, are the same as are used for the direct resolution method. See Section III.B.1.i *et seq.* of this chapter.

### 3. Resolution or Petition-For-Election Methods (RCW 35A.02.060 and 35A.02.070)

- a. Initiation of Election

The legislative body may, by resolution, submit to the voters a proposal that the city or town adopt the classification of noncharter code city at the next general election or at a special election.<sup>58</sup> The proposal must also name the plan under which the resulting noncharter code city would operate.

Such an election may also be initiated by a petition, signed by the qualified electors of the municipality, with signatures equal in number to at least ten percent of the votes cast in the last general municipal election.<sup>59</sup> The sufficiency of the petition is determined by the county auditor according to the rules set out in RCW 35A.01.040. If the petition is sufficient, the auditor files a certificate of sufficiency with the legislative body.

- b. Election on the Proposal to Adopt the Noncharter Code City Classification

If a sufficient direct petition is presented to the legislative body or if the legislative body passes a resolution itself, the legislative body must provide for an election on the reclassification issue. The proposal must be submitted to the voters at the next general municipal election, if one is to be held within 180 days after either the certification of the sufficiency of the petition or the passage of the resolution. If a general municipal election is not scheduled within that time, the legislative body must provide for a special election to be held not less than 90 days nor more than 180 days from the date of the certification of sufficiency or the passage of the resolution.

For information on the preparation of ballot titles and submission of alternative plans of government to the voters, and notice of elections, see paragraph III.B.1.k., (1) and (2), above.

- c. Effective Date of Reclassification and Reorganization

See paragraph III.B.1.m., above.

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<sup>58</sup>RCW 35A.02.070.

<sup>59</sup>RCW 35A.02.060.

## C. Election of Officers upon Reorganization (RCW 35A.02.050)

In the event a city or town reorganizes, an election of new officers is required. The election is governed by RCW 35A.02.050 and the process is the same whether the reorganization takes place along with the initial reclassification as a noncharter code city or later upon an independent reorganization. RCW 35A.02.050 provides for the timing and conduct of elections, declarations of candidacy, primary elections, the staggering of the terms of office of councilmembers, and for the assumption of office of the newly elected officers. These provisions also govern the first election of officers, notwithstanding any contrary provisions in other general law.

### 1. Timing of the Election of New Officers<sup>60</sup>

The election of new officers may take place as follows:

#### a. Next General Municipal Election (RCW 35A.02.050)

The first election of officers where required for reorganization must be at the next general municipal election, if one is to be held more than 90 days but not more than 180 days after certification of a reorganization ordinance or resolution. The election must be preceded by a primary election conducted pursuant to RCW 29A.52.210 and 29A.04.311.

#### b. Special Election

If the first election of officers cannot be not held in conjunction with the next general municipal election because no such election is scheduled during the prescribed period, a special election must be held for that purpose in accordance with RCW 29A.04.330. This special election must be preceded by a primary to be held on a date authorized by RCW 29A.04.321. All persons nominated at that primary will be voted upon at the next succeeding special election that is authorized by RCW 29A.04.321.

#### c. Concurrent with the State Primary and General Election (RCW 35A.02.050)

If the ordinances calling for reclassification and reorganization are filed with the Secretary of State pursuant to RCW 35A.02.040 in an even-numbered election year at least 90 days prior to a state general election, the election of new officers must take place concurrent with the state primary and general election. The election and primary are to be conducted according to general election law.

### 2. Initial Terms of Office (RCW 35A.02.050)

Councilmembers serve staggered, regular four-year terms of office. To accomplish staggered terms, the initial terms are determined as follows:

A simple majority of the persons who are elected as councilmembers receiving the greatest numbers of votes and the mayor in a city with a mayor-council plan of government are elected to four-year terms of office, if the election is held in an odd-

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<sup>60</sup>RCW 35A.02.050.

numbered year, or three-year terms if the election is held in an even-numbered year. RCW 35A.02.050(1).

The other persons who are elected as councilmembers are elected to two-year terms of office, if the election is held in an odd-numbered year, or one-year terms of office, if the election is held in an even-numbered year. RCW 35A.02.050(2).

The length of the terms of office is calculated from the first day of January in the year following the election. Thereafter, each person elected as a councilmember or mayor in a city with a mayor-council plan of government is elected to a four-year term of office. Each councilmember and mayor in a city with a mayor-council plan of government serves until a successor is elected and qualified and assumes office as provided in RCW 29A.20.040.

### 3. Assumption of Office of Newly Elected Officers (RCW 35A.02.050)

Upon the election and qualification of new officers, the former officers must deliver to the proper officers of the reorganized noncharter code city all books of record, documents, and papers in their possession that belonged to the city or town before reorganization. Officers elected at this first election of officers assume office as soon as the election returns have been certified.

## D. Adjustments to the Size of the Council

RCW 35A.02.055 establishes procedures for increasing or decreasing the number of councilmanic positions. The provisions have no effect on the current terms of office of incumbent councilmembers.

The following table summarizes the various statutory provisions that establish council sizes. In addition, the table identifies the situations where the council's size will need to be adjusted upon adoption of the noncharter code city reclassification.

### Mayor-Council Plan of Government

Class of Government	Council Size
Second Class City (RCW 35.23.021)	7
Town (RCW 35.27.070)	5
Noncharter Code City (RCW 35A.12.010)	
Population equal to or greater than 2,500	7
Population less than 2,500	5

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<sup>61</sup>In a second class city with fewer than 2,500 inhabitants, the number of councilmember positions decreases from seven to five. RCW 35A.12.010.

<sup>62</sup>In a town where the number of inhabitants is greater than or equal to 5,000, the number of councilmember positions increases from five to seven. RCW 35A.12.010.

## Council-Manager Plan of Government

Class of Government	Council Size
Title 35 RCW City or Town (RCW 35.18.020(1))	7
Population greater than 2,000	5
Population equal to or less than 2,000	
Noncharter Code City	
Population equal to or greater than 2,500	7
Population less than 2,500	5

### 1. Increases or Decreases in the Number of Council Positions Involving the Mayor-Council Plan of Government (RCW 35A.12.010)

The only situation requiring an increase in the number of councilmember positions is one in which a mayor-council town with a population equal to or greater than 2,500 becomes a mayor-council noncharter code city. A mayor-council town has a five-member council, but according to RCW 35A.12.010, a mayor-council noncharter code city with a population equal to or greater than 2,500 is required to have a seven-member council.

If after becoming a code city the population decreases from 2,500 or more to less than 2,500, the city continues to have a seven-member council. If after a city has become a code city, its population increases to 2,500 or more inhabitants, the number of councilmembers may increase from five to seven upon an affirmative vote of a majority of the existing council. When the population reaches 5,000 or more, the number of council positions *must increase* from five to seven. A noncharter code city with a population of less than 5,000 and a seven-member council may by ordinance provide for a reduction in the councilmanic offices to five. The reduction ordinance specifies which positions, with terms expiring at the next general election, are to be terminated.

Even if the number of council positions does increase, the terms of the incumbent councilmembers are not affected. The city council appoints two people, by majority vote, to serve until the next general municipal election.<sup>63</sup> At that election, one person is elected for a two-year term and the other for a four-year term.

The size of the council will decrease only if a mayor-council second class city with less than 2,500 inhabitants becomes a mayor-council noncharter code city.<sup>64</sup> The procedure for adjusting the size of the council from seven to five members is set forth in RCW 35A.02.055. The councilmembers determine by lot which two positions will be eliminated. The positions of the remaining councilmembers are not affected. The councilmembers whose positions are to be eliminated continue to serve out the remainder of their current terms. RCW 35A.02.055.

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<sup>63</sup>RCW 35A.02.055.

<sup>64</sup>RCW 35A.12.010.

## 2. Increases or Decreases in the Number of Councilmember Positions Involving the Council-Manager Plan of Government

The procedures for increasing or decreasing the size of the council at the time of reclassification are set out in RCW 35A.13.010 and are the same procedures described above for mayor-council noncharter code cities.

## 3. Effect of Subsequent Population Increases or Decreases upon the Size of the City Council (RCW 35A.12.010 and 35A.13.010)

If the population of a city after having become a code city decreases from 2,500 or more to less than 2,500, it continues to have a seven-member council.<sup>65</sup>

A subsequent increase in population may have an effect on council size. An increase in the number of council positions (from five to seven) is not mandatory when a noncharter code city's population increases to 2,500 or more, but a majority of the existing council may increase the number of council positions to seven. When the population increases to 5,000 or more, however, the number of council positions must be increased from five to seven.

The procedure for increasing the number of council positions is set out in RCW 35A.12.010, 35A.12.050, and 35A.13.020. The city council, by majority vote, must appoint two persons to serve in the two newly-created offices until the next general municipal election. At that election one person is to be elected for a two-year term and the other for a four-year term.

## IV. Procedure for Adopting the Charter Code City Classification

Any city which has an existing charter, or one with a population of 10,000 or more that adopts a charter pursuant to the provisions of the Optional Municipal Code, may become a charter code city.<sup>66</sup> To date, however, the only code city that has adopted a charter is the City of Kelso. The ten first class cities in Washington have charters, and one municipality, Waitsburg, operates under a territorial charter.

### A. Reclassification from First Class Charter City to Charter Code City (Ch. 35A.07 RCW)

Any city operating under a charter may adopt the classification of charter code city and be governed under the Optional Municipal Code while continuing to be governed by the provisions of its charter. Any charter provision that conflicts with provisions of the Optional Municipal Code, however, will be superseded by the Code unless specifically retained by the passage of an ordinance subject to referendum.<sup>67</sup>

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<sup>65</sup>RCW 35A.12.010 and 35A.13.010.

<sup>66</sup>RCW 35A.07.010; 35A.08.010.

<sup>67</sup>RCW 35A.21.020.

The procedures for an existing city operating under a charter to become a charter code city are set forth in Ch. 35A.07 RCW. The same four methods outlined for adopting the noncharter code city classification are provided for reclassification to charter code city, discussed previously.

## **B. Reclassification as a Charter Code City and Adoption of a Charter (Ch. 35A.08 RCW)**

Any city having a population of 10,000 or more inhabitants may become a charter code city by adopting a charter for its own government in the manner prescribed in the Optional Municipal Code.<sup>68</sup> The procedure is generally based on Article 11, Section 10, of the Washington State Constitution and RCW 35.22.060-.070. Once a city has adopted a charter, any subsequent decrease in population below 10,000 will not affect its status as a charter code city.<sup>69</sup>

### **1. Determining the Population (RCW 35A.08.020)**

The population of a city may be determined by reference to the most recent official state or federal census or by a population determination made under the direction of the state Office of Financial Management or through a city census conducted according to RCW 35A.08.020.

### **2. Resolution or Petition for Election on the Question of Whether to Adopt a Charter and Become a Charter Code City (RCW 35A.08.030)**

The process of adopting a charter can be initiated by either a resolution of the legislative body or by a petition of the qualified electors of the municipality. An initiating petition requires signatures of qualified electors equal in number to at least ten percent of the votes cast at the last general municipal election. The sufficiency of the petition is determined according to the procedure set forth in RCW 35A.01.040. An election is required regardless of whether the process is begun by petition or by resolution.

### **3. First Election: Election on the Question of Whether to Adopt a Charter and Become a Charter Code City and Election of Freeholders (RCW 35A.08.030 and 35A.08.040)**

The issue of whether to become a charter code city is to be submitted to the voters at the next general municipal election, if one is to be held within 180 days, or at a special election held for that purpose not less than 90 or more than 180 days after the passage of the resolution or the filing of the certificate of sufficiency of the petition. (If the issue was previously voted upon and failed, and if the vote in favor of adopting a charter received 40 percent or less of the total vote on the question of charter adoption, no new election on the question of charter adoption may be held for a period of two years from the date of the election in which the charter proposal failed. RCW 35A.08.030)

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<sup>68</sup>RCW 35A.08.010.

<sup>69</sup>RCW 35A.08.010.

In this initial election the voters are also to elect 15 "freeholders." If the vote on becoming a charter code city is favorable, the 15 freeholders elected become the charter commission and are given the task of framing a charter for the government of the city. The election of freeholders is governed by RCW 35A.08.040. Candidates for freeholder positions must be residents of the city for a period of at least two years prior to the election and must be nominated by a petition signed by ten registered voters of the city.

#### **4. Organizing the Charter Commission (RCW 35A.08.050 and 35A.08.060)**

RCW 35A.08.050 establishes rules for the organization, operation, and duties of the charter commission and provides for the filling of vacancies on the commission.

RCW 35A.08.050 directs the charter commission to study the plans of government available to the city. The commission must consider, but is not limited to, the plans of government set forth in the Optional Municipal Code. The commission may recommend any plan of government for the city and frame a charter for any plan it deems suitable so long as the charter provisions are not inconsistent with the constitution of the state, the provisions of the Optional Municipal Code, or the general laws of the state.

Members of the charter commission serve without compensation except for reimbursement of necessary expenses incurred in the performance of their duties. RCW 35A.08.060 gives the city discretion to appropriate city funds to provide for public information and to provide technical or clerical assistance to the commission in its work.

#### **5. Public Hearing by Charter Commission (RCW 35A.08.070)**

The charter commission must hold at least one public hearing in the course of its deliberations. The commission may also, however, hold committee meetings, sponsor public forums, and promote public education and discussion respecting its work.

#### **6. Submission of Proposed Charter to Legislative Body and to the Voters (RCW 35A.08.080)**

The charter commission has six months (180 days from the date of its first meeting) to frame and submit the charter to the city council. The city council must, within five days after receipt of the proposed charter, take steps for submission of the proposed charter to the voters of the city at the next general election, if one is to be held within 180 days, or at a special election to be held for that purpose not less than 90 nor more than 180 days after submission of the charter to the council.

#### **7. Publication of Proposed Charter and Notice of Election (RCW 35A.08.080)**

The city council is required to have the proposed charter published in a newspaper of general circulation in the city at least once each week for four weeks preceding the date on which the proposed charter is submitted to the electors for their approval.

Notice of the election is governed by RCW 29A.52.351: legal notice must be given not more than ten nor less than three days prior to the election by the county auditor or the officer conducting the election in one or more newspapers of general circulation within

the city. The notice must contain the title of each office to be filled, the names and addresses of all candidates for the offices, listed in alphabetical order and without party designation, the ballot titles of all measures to be voted upon at the election, the day and hours during which the polls will be open, and the addresses of each polling place in each precinct.

**8. Second Election: Election on Question of Whether to Adopt Proposed Charter and Election of Officers under New Charter (RCW 35A.08.090 and .100)**

If the election is from wards, the ward divisions specified in the proposed charter are to govern;<sup>70</sup> otherwise, the existing laws relating to such elections govern.<sup>71</sup> Ballot titles for all elections are to be prepared by the city attorney as provided in RCW 35A.29.120. The ballot statement in the election for adopting or rejecting the proposed charter must clearly state that, upon adoption of the proposed charter, the city will be governed by its charter and by the Optional Municipal Code.<sup>72</sup>

**9. Certificates of Election to Officers, Authentication of Charter, and Effective Date of Becoming a Charter Code City (RCW 35A.08.110)**

If a majority of the votes cast at the election favor the charter's adoption, certificates of election are to be issued to each officer elected at that election. Within ten days after the issuance of the certificates of election, the newly-elected officers must qualify as provided in the charter, and on the tenth day thereafter at 12:00 noon on that day or on the next business day, if the tenth day is a Saturday, Sunday, or holiday, the officers elected and qualified assume the duties of the offices to which they were elected.

As soon as the newly-elected officers assume the duties of their offices, the charter must be authenticated by certificate of the mayor in the manner provided for in RCW 35A.08.120. Immediately after authentication, the charter is recorded by the city clerk in a book provided for that purpose, known as the charter book of the city. After the charter is recorded, it must be attested by the clerk and mayor under the corporate seal of the city. All courts take judicial notice of a charter and all amendments when recorded and attested as required in RCW 35A.08.120.

As soon as the charter is authenticated, recorded, attested, and put into effect, the city becomes classified as a charter code city and the charter becomes the organic law of the city, superseding any existing charter and amendments and all special laws inconsistent with the new charter.

**C. Amending or Revising Charters of Charter Code Cities (Ch. 35A.09 RCW)**

**1. Charter Amendments**

Proposals to amend the charter of a charter code city may be initiated by resolution of

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<sup>70</sup>RCW 35A.08.080.

<sup>71</sup>RCW 35A.08.090 and 35A.08.080.

<sup>72</sup>RCW 35A.08.100.

the legislative body<sup>73</sup> or by petition of the registered voters of a charter code city.<sup>74</sup> The resolution or petition may specify a charter amendment providing for any matter within the realm of local affairs, or municipal business, or structure of municipal government, offices, and departments. Any proposed amendment must be submitted to the voters for approval or rejection.<sup>75</sup>

According to RCW 35A.09.050, the proposed charter amendment must be published in a newspaper having the largest general circulation within the city at least once each week for four weeks preceding the date of submission of the proposed charter amendment to the electors for their approval. Upon approval by a majority of those voting, the amendment becomes a part of the charter governing the charter code city.<sup>76</sup>

## 2. New or Revised Charters

Proposals for a new or revised charter of a charter code city may be initiated by resolution of the legislative body or by a petition of the qualified electors of a charter code city.<sup>77</sup> The procedure for preparing a new or revised charter is the same as that used for the initial adoption of a charter to become a charter code city.<sup>78</sup>

The proposed new, altered, or revised charter is to be published in the daily newspaper of largest general circulation published in the city. If no daily newspaper is published, then the proposed charter must be published in the newspaper having the largest general circulation within the city. The proposal must be published at least once each week for four weeks preceding the election.<sup>79</sup>

If a majority of the votes cast favor the adoption of the proposed amendments, the new charter becomes the charter and organic law of the charter code city, superseding any existing charter. If any offices are abolished or created by the new charter, the charter does not become effective until the election and qualification of such new officers at the next general municipal election, if one is to be held within 180 days, or at a special election to be held for that purpose not less than 90 days nor more than 180 days after approval of the charter by the voters.<sup>80</sup>

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<sup>73</sup>RCW 35A.09.010.

<sup>74</sup>RCW 35A.09.020.

<sup>75</sup>Any charter amendment initiated by resolution must be submitted to the voters at the next general municipal election. RCW 35A.09.010. An amendment initiated by petition is to be submitted to the voters at the next general municipal election, if one is to be held within 180 days, or otherwise at a special election held for that purpose and scheduled not less than 90 nor more than 180 days after filing of the certificate of sufficiency of the petition. RCW 35A.09.020.

<sup>76</sup>RCW 35A.09.010 and 35A.09.020.

<sup>77</sup>RCW 35A.09.030.

<sup>78</sup>RCW 35A.09.040. The process for the creation and operation of a charter commission and for the development of a new or revised charter is governed by Ch. 35A.08 RCW. For a discussion of that process, see paragraph IV.B. of this chapter.

<sup>79</sup>RCW 35A.09.050.

<sup>80</sup>RCW 35A.09.070.

## Chapter III

# Code City Government

### I. Plans of Government Available to Code Cities

The Optional Municipal Code specifically provides for two plans of government for noncharter code cities: the mayor-council plan and the council-manager plan.<sup>81</sup> The code also allows for the continuation of an existing plan of government by noncharter cities<sup>82</sup> (such as retention of commission plan) and for the adoption by charter of a new plan different from those set out by the Code, as long as the plan selected is not inconsistent with the state constitution or with the general laws of the state.

#### A. Mayor-Council Plan (Ch. 35A.12 RCW)

Under the code city mayor-council plan, pursuant to Ch. 35A.12 RCW, both the councilmembers' and mayor's positions are elective.<sup>83</sup> The number of councilmembers will vary according to population or, in a charter code city, according to its charter.<sup>84</sup>

#### B. Council-Manager Plan (Ch. 35A.13 RCW)

Another plan of government available to a code city is the council-manager plan. The only elected officials under the council-manager plan, with the possible exception of judges, are the councilmembers.

The city council may, by resolution, submit a proposition to the voters to designate the person elected to council position "one" as the chair of the council. If the proposition is approved, at all subsequent general elections the person elected to position one becomes the council chair and the city's mayor. Because the "mayor" continues to be a councilmember, however, the only elective position under a council-manager plan remains that of councilmember.

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<sup>81</sup>See Chs. 35A.12 and 35A.13 RCW.

<sup>82</sup>RCW 35A.02.020, 35A.02.030, and 35A.02.130.

<sup>83</sup>RCW 35A.12.010.

<sup>84</sup>*Ibid.*

Just as it is under the council-mayor plan, the number of councilmembers to be elected is dependent upon the population of the city, whether the city retains its previous plan of government under Title 35 RCW, and/or whether the city has a charter.

The council appoints a person to the position of “city manager.” The city manager is the chief executive officer and the head of the administrative branch of the city’s government.<sup>85</sup> Appointments of department heads, officers, and employees are made by the city manager, subject to any applicable law, rule, or regulation relating to civil service.<sup>86</sup>

### C. Retained Commission Plan

An incorporated city or town may become a code city while still *retaining* the same general plan of government that it operated under prior to reclassification. Thus it is possible for a city to reclassify as a code city while still retaining a commission form of government.

Under a commission plan of government, legislative powers and duties are exercised by a commission of three, consisting of a mayor, a commissioner of finance and accounting, and a commissioner of streets and public improvements.<sup>87</sup> The mayor, as the presiding officer of the commission,<sup>88</sup> has executive and administrative duties over the department of public safety.<sup>89</sup> The commissioner of finance and accounting is the vice-president of the commission and administers the department of finance and accounting. The commissioner of streets and public improvements administers the department of streets and public improvements.<sup>90</sup>

The commission, by majority vote, appoints the city clerk as well as such other officers and employees as are established by ordinance.<sup>91</sup> (There is only one city operating under the commission form of government, Shelton, and it is a code city.)

### D. Retained Mayor-Council or Council-Manager Plans

As was true with the commission plan of government (a plan not directly provided for by the Optional Municipal Code), a reclassifying city may choose to retain the Title 35 RCW mayor-council or council-manager plan of government under which it was organized prior to reclassification.<sup>92</sup> The plan thus retained may differ in some respects from the

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<sup>85</sup>RCW 35A.13.010.

<sup>86</sup>RCW 35A.13.080(2).

<sup>87</sup>RCW 35.17.010.

<sup>88</sup>RCW 35.17.060.

<sup>89</sup>RCW 35.17.010.

<sup>90</sup>*Ibid.*

<sup>91</sup>*Ibid.*

<sup>92</sup>RCW 35A.02.020, 35A.02.030, and 35A.02.130. Retention of its previously existing plan of government by a city after it has reclassified as a code city is possible in any one of six different ways:

(1) *Petition* (50%) of voters, passage of a resolution of intention by the city’s legislative body, *no referendum* petition filed, and passage of an ordinance of reclassification. RCW 35A.02.020.

similar plans authorized by the Optional Municipal Code. For example, under the Optional Municipal Code, a city electing to organize under a council-manager plan would have only five councilmembers if its population were 2,000<sup>93</sup> whereas under Title 35 RCW, there would be seven councilmembers.<sup>94</sup> Retention of a Title 35 RCW plan, however, can cause confusion as to what powers the city possesses. See Ch. 2, Sec. II.B.3.

### E. Individualized Plan of Government (Charter Code City)

A city having a population of not less than 10,000 may become a charter code city pursuant to Ch. 35A.08.<sup>95</sup> To become a charter code city, that issue along with a list of candidates for election to a 15-member charter commission is submitted to the electorate.

If the issue whether to adopt a charter receives an affirmative vote, those elected to the charter commission then meet to begin the process of drafting a charter. The charter may set out any plan of government deemed "suitable for the good government of the city."<sup>96</sup> The charter, once framed, is submitted to the city's legislative body which in turn submits the issue of the charter's adoption to the qualified electors of the city.<sup>97</sup> Under this process it is thus quite possible that the plan of government ultimately adopted by and for a charter code city will differ from the "pure" plans set out by the Optional Municipal Code or those that could be retained from Title 35 RCW.

(Provisions for the *retention* of a charter plan of government, following the reclassification of a charter city to that of charter code city, are set out under Ch. 35A.07 RCW.)

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(2) *Petition* (50%) of voters, passage of a resolution of intention by the City's legislative body, *referendum petition filed*, resolution confirmed by voters at election. RCW 35A.02.025.

(3) *Resolution by legislative body declaring intention to reclassify, no referendum petition filed*, and passage of an ordinance of reclassification. RCW 35A.02.030.

(4) *Resolution* by legislative body declaring intention to reclassify, *referendum petition filed*, resolution confirmed by voters at election. RCW 35A.02.035.

(5) *Petition* (10%) of voters, submitted to electorate by legislative body and approved by voters. RCW 35A.02.060 and 35A.02.130.

(6) *Resolution by legislative body directly submitting reclassification issue to electorate, confirmed by voters*. RCW 35A.02.070 and 35A.02.130.

<sup>93</sup>RCW 35A.13.010.

<sup>94</sup>RCW 35.18.020(1)(b).

<sup>95</sup>While the Optional Municipal Code provides a method for unincorporated areas to become noncharter code cities and already-existing cities to reclassify as charter code cities, there appears to be no way that an unincorporated area can initially incorporate as a charter code city.

<sup>96</sup>RCW 35A.08.050.

<sup>97</sup>RCW 35A.08.080.

## **II. Reorganization of Plan of Government and Abandonment of Noncharter Code City Classification**

The Optional Municipal Code establishes procedures by which a code city may either reorganize to a different authorized government plan or abandon its code city classification without reorganization.<sup>98</sup>

### **A. Process for Reorganization**

The following steps are required for the reorganization of a noncharter code city under a different authorized plan of government.

#### **1. Time Restrictions<sup>99</sup>**

A noncharter code city wishing to reorganize to a different authorized plan of government (without reclassification) must satisfy certain time requirements, namely:

- a. It must have operated for more than six consecutive years under one of the optional plans of government authorized under Title 35A RCW (either the mayor-council plan authorized by Ch. 35A.12 RCW or the council-manager plan authorized by Ch. 35A.13 RCW); or
- b. It must have operated for more than a combined total of six consecutive years under a particular plan of government, both as a code city and under the same general plan immediately prior to becoming a code city.

There is one exception to these time limit provisions. RCW 35A.06.030 provides that a city seeking to adopt a charter is not bound by the time limits set out above. Thus, for a city that did not initially organize as a charter code city, an “early” reorganization to become a charter city would be possible, once the original organization was complete.

If the city meets the time restrictions discussed above, it may proceed with the adoption of another plan of government.

#### **2. Initiation Process**

Abandonment of one plan of government and adoption of another plan authorized for noncharter code cities may be initiated in one of two ways: by resolution for election or by petition for election.<sup>100</sup>

The resolution for election process is begun by the passage of a resolution by the city council, proposing abandonment of its present plan of government and the adoption

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<sup>98</sup>See RCW 35A.06.030 et seq.

<sup>99</sup>RCW 35A.06.030 limits a noncharter code city's ability to abandon the plan of government under which it operates by establishing time restrictions on when a change may be initiated.

<sup>100</sup>RCW 35A.06.040.

of another named plan.<sup>101</sup> The petition for election method is begun by submitting the same proposals in petition form.<sup>102</sup> The petitions must be signed by registered voters in number equal to not less than ten percent of the votes cast at the last general municipal election.

If either the resolution or petition proposes a plan of government other than those authorized by Chs. 35A.12 RCW (mayor-council) and 35A.13 RCW (council-manager), the resolution or petition must specify the class under which the city is to be classified upon adoption of the plan.<sup>103</sup>

### 3. Plans Available for Selection without Reclassification

RCW 35A.06.030 provides in part that a qualifying noncharter code city “may abandon [its] organization and may reorganize and adopt another plan of government authorized for noncharter code cities,” that is, either the mayor-council plan (Ch. 35A.12 RCW), or the council-manager plan (Ch. 35A.13 RCW).

### 4. Plans Requiring Reclassification

While reorganization to another plan of government not set out by the Optional Municipal Code is possible, selection of such a plan would require the city to both reorganize *and* reclassify.<sup>104</sup> RCW 35A.06.030 provides in part as follows:

When a noncharter code city adopts a plan of government other than those authorized under Title 35A RCW, such city *ceases to be governed under this optional municipal code* and shall be classified as a city or town of the class selected in the proceeding for adoption of such new plan, with the powers granted to such class under the general law.

(Emphasis supplied.)

If a city proposes to proceed in that manner, the resolution or petition to reorganize must specify the class under which the city will be classified upon adoption of the plan.<sup>105</sup>

### 5. Election Required for Reorganization (RCW 35A.06.050)

Once a petition for reorganization has been determined to be sufficient, or a resolution proposing government plan abandonment and reorganization has been approved, the city council must provide for an election on the issue of reorganization.

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<sup>101</sup>*Ibid.*

<sup>102</sup>*Ibid.*

<sup>103</sup>RCW 35A.06.040.

<sup>104</sup>See RCW 35A.06.030.

<sup>105</sup>RCW 35A.06.040.

The election on the reorganization issue should be scheduled at the next general municipal election, in accordance with RCW 29A.04.330, or at a special election held prior the next general election in accordance with the resolution of the council. The ballot title and the statement of the proposition are to be prepared by the city attorney.<sup>106</sup>

#### 6. Effective Date of Reorganization (RCW 35A.06.060)

If a majority of the voters approve the reorganization, the city's reorganization will become effective upon the election, qualification, and assumption of office of the officers required under the new plan.<sup>107</sup> If the plan selected is *one not authorized* by the Optional Municipal Code, the city reverts to the classification selected and ceases to be a code city upon the election, qualification, and assumption of office by the officers required under the new, reorganized plan.<sup>108</sup>

If the reorganization is to a different general plan of government as a noncharter code city and one authorized by the Optional Municipal Code, the city's current officers serve the remainder of their terms. If a city with a mayor-council plan of government is reorganized with a council-manager plan of government, the mayor serves as a councilmember for the remainder of his or her term. If a city with a council-manager plan of government is reorganized with a mayor-council plan of government, the mayor is to be elected as provided in RCW 35A.02.050.<sup>109</sup>

#### B. Process for Reclassification (RCW 35A.06.070)

A noncharter code city may reclassify without reorganization. A noncharter code city that has been governed by the Optional Municipal Code for more than six years may abandon that classification. A city seeking reclassification may elect to be governed by the general law relating to cities or towns of the classification held by the city immediately prior to becoming a noncharter code city, if any, or under the general law relating to the cities or towns of the highest class for which it is qualified by population, with the powers conferred by law upon that class, while retaining the plan of government under which it is then organized.

The same general process outlined above for reorganization is used for reclassification. The change in classification, if approved by the voters, becomes effective upon filing the record of the election with the Secretary of State.

A noncharter code city seeking to adopt a plan of government not authorized by the Optional Municipal Code, as previously discussed, "automatically" is reclassified if its plan for reorganization is approved by the voters. See Sec. II.A., above.

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<sup>106</sup>See also, RCW 35A.29.120.

<sup>107</sup>RCW 35A.06.060.

<sup>108</sup>*Ibid.*

<sup>109</sup> RCW 35A.06.030

## Chapter IV

# Officials and Employees of Mayor-Council Noncharter Code Cities

### I. Elective Officials: Mayor and Councilmembers

#### A. Eligibility to Hold Elected Office (RCW 35A.12.030)

To hold office, a person must be a registered voter of the city at the time of filing his or her declaration of candidacy and must be a resident of the city for a period of at least one year prior to the election.<sup>110</sup> Residence and voting within the limits of any territory which has been included in, annexed to or consolidated with such city qualifies as city residency.<sup>111</sup>

#### B. Elections, Terms of Office, and Council Positions

##### 1. Elections (RCW 35A.12.040)

Elections for officers under a mayor-council plan are held biennially and are conducted pursuant to Ch. 35A.29 RCW and general election law.<sup>112</sup>

##### 2. Terms of Elected Offices (RCW 35A.12.040)

The mayor and councilmembers, except at the city's first election, are elected for four-year terms and until their successors are elected and qualified. Councilmembers are elected to two- or four-year terms at the first election to effect staggered four-year terms thereafter.

The first election for councilmembers in a city which has reorganized is governed by RCW 35A.02.050.

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<sup>110</sup>The state supreme court in *Lawrence v. Issaquah*, 84 Wn.2d 146, 524 P.2d 1347 (1974), upheld the one-year residency requirement, finding that it promoted a legitimate state interest (allows the candidate an opportunity to observe the problems, needs, and desires of the people and permits voters an opportunity to observe the candidate and gain knowledge of his or her habits and character). The court ruled that the residency requirement neither denied equal protection nor violated First Amendment rights of political association and freedom of expression.

<sup>111</sup>RCW 35A.12.030.

<sup>112</sup>See discussion of municipal elections in a code city pursuant to Ch. 35A.29 RCW, set out in Ch. X of this handbook entitled, "Elections."

### 3. Council Office (RCW 35A.12.040)

Council positions are to be designated by consecutive numbers (position one, position two, etc.) and are dealt with as separate offices for election purposes.

### 4. Election and Assumption of Office (RCW 35A.12.040)

Election to a position on a council is by majority vote from the city at large *unless* a ward system has been established by charter or ordinance.

Both the mayor and the councilmembers “qualify” for their respective positions by taking an oath or affirmation of office as provided by charter or ordinance. The oath or affirmation is to be filed with the county auditor.<sup>113</sup>

## C. Compensation (RCW 35A.12.070)

### 1. Generally

The salaries of the mayor and councilmembers are fixed by ordinance, and may be revised by ordinance. However, any increase in the compensation attaching to an office may not apply to the term of the incumbent either after his or her election or during the term of office, if the incumbent is a member of the city council that voted to fix the compensation.<sup>114</sup> This rule likewise applies to the mayor if the mayor casts a tie-breaking vote on the compensation-increasing ordinance. The prohibition does not apply to the mayor, however, if he or she did not cast a tie-breaking vote.<sup>115</sup> Salaries of elected officials cannot be decreased after their elections or during their terms of office.

### 2. Compensation of Officers in a Newly-Reorganized City Operating Under the Mayor-Council Plan (RCW 35A.12.070)

Until the first elective officers under a mayor-council plan are paid pursuant to a salary ordinance, they are entitled to be compensated in the same manner and in the same amount as the compensation paid to the officers of the city performing comparable services prior to the adoption of the mayor-council plan.

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<sup>113</sup>RCW 35A.12.080.

<sup>114</sup> There is one exception to the rule; if the city has established a salary commission, the salary of a councilmember can be increased mid-term, if the salary commission adopts an ordinance increasing the salary. See RCW 35.21.015.

<sup>115</sup>The limitations on compensation increases set out by RCW 35A.12.070 are consistent with the Washington Constitution, article 11, section 8, and article 30, section 1. Article 11, section 8 provides that a municipal officer's salary may not be increased, except as allowed by article 30, section 1, or diminished after the officer's election or during his or her term of office. Article 30, section 1 permits the compensation of an officer to be increased during the term of office if he or she does not fix the compensation. While the compensation paid to some officers who do not fix their own compensation level may be increased, nothing would appear to allow a decrease in compensation after election or during the term of office. Compensation can be increased immediately, if the city has a salary commission, and that commission has adopted an ordinance setting compensation. RCW 35.21.015.

3. **Compensation to be Paid to Officers in a Newly-Incorporated Code City (RCW 35A.12.070)**

Until a salary ordinance can be passed and becomes effective as to the officers in a newly incorporated code city, the officers are entitled to the following compensation:

**Salaries**

<b>City Population</b>	<b>Mayor</b>	<b>Councilmember</b>
Less than 5,00	\$150/month	\$20/meeting (not more than two meetings per month)
More than 5,000 (less than 15,000)	\$350/month	\$150/month
More than 15,000	\$1,250/month	\$400/month

The above salary levels are merely interim salaries and remain in effect only until a salary ordinance is passed and becomes effective. The amounts set out in the interim schedule are not to be construed as fixing the “usual” salary of the officers (a lower or higher salary could be established by ordinance).

The mayor and councilmembers are to be reimbursed for the actual and necessary expenses incurred in the performance of the duties of their office or, as an alternative, the council by ordinance may provide for a per diem allowance.<sup>116</sup>

**D. Vacancies<sup>117</sup>**

The office of mayor or councilmember becomes vacant if one of the following events occurs:

1. Failing to qualify for office;
2. Failing to enter upon the duties of the office at the date fixed by law without a justifiable reason;
3. With the exception of the office of mayor in a mayor-council code city, failing to attend three consecutive regular meetings without being excused by the council;<sup>118</sup>
4. Death;<sup>119</sup>

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<sup>116</sup>RCW 42.24.090.

<sup>117</sup>RCW 35A.12.050, RCW 35A.12.060, and RCW 42.12.010.

<sup>118</sup>RCW 35A.12.060.

<sup>119</sup>RCW 42.12.010.

5. Resignation (which is deemed to occur on the effective date of the resignation);<sup>120</sup>
6. Ceasing to be a legally registered voter of the city;<sup>121</sup>
7. Conviction of a felony;<sup>122</sup>
8. Conviction of any offense involving a violation of official oath;<sup>123</sup>
9. Refusal or neglect to take the oath of office, or to give or renew official bond, or deposit oath or bond within the time set by law;<sup>124</sup>
10. A decision by a competent tribunal that the election or appointment was void;<sup>125</sup>
11. A judgment is obtained against that incumbent for breach of the condition of his or her official bond.<sup>126</sup>

Vacancies are to be filled according to the provisions of RCW 42.12.070. That statute provides that where one position becomes vacant, the remaining councilmembers appoint a qualified person to fill the position. Where two or more council positions become vacant and two or more councilmembers remain in office, the remaining members appoint a qualified person to fill one of the vacant positions and then the remaining councilmembers and the newly appointed person appoint another qualified person to fill the other vacant position, and so on until each of the vacant positions is filled. In this manner, each of the new appointees participates in each appointment that is made after his or her appointment.

If less than two members of the council remain in office, the county legislative authority of the county in which all or the largest geographic portion of the city is located appoints a qualified person or persons to the council until the council has two members.

If the council fails to appoint a qualified person to fill a vacancy within 90 days of the occurrence of the vacancy, the council's authority to fill the vacancy ceases and the county in which all or the largest geographic portion of the city is located is to appoint a qualified person to fill the vacancy.

If the county legislative body fails to appoint a qualified person within 180 days of the occurrence of the vacancy, the county legislative body and the remaining city councilmembers may petition the governor to appoint a qualified person to fill the vacancy. The governor may appoint a qualified person to fill the vacancy after being petitioned if

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<sup>120</sup>*Ibid.*

<sup>121</sup>*Ibid.*

<sup>122</sup>*Ibid.*

<sup>123</sup>*Ibid.*

<sup>124</sup>*Ibid.*

<sup>125</sup>*Ibid.*

<sup>126</sup>*Ibid.*

at the time the governor fills the vacancy the county legislative authority has not appointed a qualified person to fill the vacancy.<sup>127</sup>

Each person who is appointed to a vacancy serves until a qualified person is elected at the next general municipal election that occurs 28 or more days after the occurrence of the vacancy. Special filing periods are authorized as provided in RCW 29A.24.170 and .180, if needed. If more than two candidates file for the vacant office and time permits, a primary may be held. Otherwise, a primary is held and the person receiving the greatest number of votes is elected. The elected person takes office immediately and serves the remainder of the unexpired term.

If, however, an election for the vacant position would otherwise have been held at this general election date, only one election to fill the position will be held and the person elected to fill the succeeding term takes office immediately when qualified as defined in RCW 29A.04.133 and serves both the remainder of the unexpired term and the succeeding term.<sup>128</sup>

#### **E. Removal from Office by Recall**

Under the state constitution, every elected public officer, except a judge of a court of record, is subject to recall. Accordingly, officers of a code city are subject to recall. The recall procedure is set out in article 1, sections 33-34 of the state constitution and in RCW 29A.56.110-.270.

#### **F. Pro Tempore Appointments (RCW 35A.12.065)**

Biennially at the first meeting of a new council, or periodically, the councilmembers by majority vote may designate one of their members as the mayor pro tempore (pro tem) or deputy mayor to serve in the absence or temporary disability of the mayor. The "term" of the pro tem appointment is for such period as the council specifies. As an alternative, the council may appoint any qualified person to serve as a mayor pro tem to serve in the absence or temporary disability of the mayor, as the need may arise.

In the event of an extended excused absence or disability of a councilmember, the remaining members by majority vote may appoint a councilmember pro tem to serve during the absence or disability.

#### **G. Councilmember May Serve as Volunteer Fire Fighter, Reserve Law Enforcement Officer, or Volunteer Ambulance Personnel (RCW 35A.11.110)**

The city council, by resolution adopted by a two-thirds vote of the full council, may authorize any of its members to serve as volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers, or two or more of such positions, and to receive the same compensation, insurance, and other benefits as are applicable to other volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers employed by the city.

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<sup>127</sup>RCW 42.12.070(5).

<sup>128</sup>RCW 42.12.070(6).

There is no similar provision made for the position of mayor, nor is there any authority for a councilmember to serve as *an officer* in a volunteer fire department.

## H. Incompatibility

Elective officers of the city should not assume additional municipal duties that are incompatible with those of their elective office. One practical test of incompatibility is whether one position is subordinate to the other in some of its important and principal duties. Under common law, one person cannot be both master and servant or principal and subordinate.<sup>129</sup> These principles and their application are illustrated in *Knowing the Territory*, Report No. 47 (2007), Municipal Research & Services Center.

## I. General Powers and Duties

### 1. Powers and Duties of the Mayor (RCW 35A.12.100)

The mayor is the chief executive and administrative officer and ceremonial head of the city. The mayor is in charge of all departments and employees and has authority to designate assistants and department heads. The mayor, in addition:

- a. May appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance;
- b. Sees that all laws and ordinances are faithfully enforced and that law and order is maintained in the city;
- c. Approves or disapproves, personally or through a designee, all official bonds and contractor's bonds;
- d. See that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed;
- e. May cause legal proceedings as to contracts and agreements to be instituted and prosecuted in the name of the city, subject to approval by a majority vote of all members of the council;
- f. Presides over all meetings of the city council, when he or she is present, but only votes if there is a tie in the votes of the councilmembers with respect to matters *other than* the passage of any ordinance, grant, or revocation of a franchise or license, or any resolution for the payment of money;
- g. Reports to the council concerning "the affairs of the city and its financial and other needs" and make recommendations for council consideration and action;
- h. Prepares and submits a proposed budget to the council;

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<sup>129</sup>See, generally, *Kennett v. Levine*, 50 Wn.2d 212, 310 P.2d 244 (1957); AGO 1971 No. 28; AGO 1978 No. 12; and RCW 35.12.030.

- i. May veto ordinances passed by the council and submitted to him or her pursuant to RCW 35A.12.130. The mayor's veto may be overridden by a majority vote plus one of the council;<sup>130</sup> and
- j. May call a special meeting of the city council by having written notice delivered to each member of the council at least 24 hours in advance of the time specified for the meeting.<sup>131</sup>

In addition, pursuant to RCW 35A.21.030, the mayor is to perform in the manner provided "all duties of his office which are imposed by state law on officers of every other class of city who occupy a like position and perform like functions."

## 2. Powers and Duties of the City Council

The powers and duties of the city council include the following:

- a. Organize and regulate its internal affairs (within the provisions of Title 35A RCW);
- b. Define the functions, powers, and duties of the city's officers and employees;
- c. Fix the compensation and working conditions of the city's officers and employees, and establish and maintain a civil service or merit systems, or retirement and pension systems not in conflict with Title 35A RCW or with existing charter provisions. Any merit or civil service system for police officers and fire fighters must substantially accomplish the same purpose as provided by Ch. 41.08 RCW for fire fighters and Ch. 41.12 RCW for police officers. A pension or retirement system for fire fighters or police officers may not provide different pension and retirement benefits than those provided by general law for those classes;
- d. Adopt and enforce ordinances of all kinds relating to and regulating local or municipal affairs and appropriate to the good government of the city. The council may provide penalties for violations of ordinances including a fine not to exceed \$5,000, or imprisonment not to exceed one year, or both. The punishment for any criminal ordinance must be the same as the punishment in state law for the same crime. Alternatively, the council may provide that the violation of an ordinance is a civil violation, subject to a monetary penalty, but no act which is a state crime may be made a civil violation;<sup>132</sup>
- e. Exercise all of the powers possible for a city or town to have under the state constitution not denied by law, including but not limited to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment, or beautification of public ways,

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<sup>130</sup>RCW 35A.12.100 and 35A.12.130. The veto power granted to a code city mayor is limited to that of ordinances *only*; the mayors are not given "item veto" power. The statutes granting the power are clear on their face and their terms are not subject to interpretation.

<sup>131</sup>RCW 35A.12.100 and 42.30.080.

<sup>132</sup>RCW 35.11.020.

real property of all kinds, water ways, structures, or any other improvement or use of real or personal property;

- f. Exercise powers in regard to all aspects of collective bargaining, as provided for and subject to the provisions of Ch. 41.56 RCW;
- g. Provide for the rendering of local social, cultural, recreational, educational, governmental, or corporate services including the operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns;
- h. Levy taxes for local purposes except those expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.010, and 48.14.080;
- i. Exercise the powers of eminent domain, borrowing, taxation, and the granting of franchises, in the manner provided by Title 35A RCW or the general law of the state where not inconsistent with Title 35A RCW;<sup>133</sup>
- j. Accept a gift or grant for any public purpose and carry out any conditions of the gift or grant not in conflict with state or federal law;<sup>134</sup>
- k. Participate in the programs set forth in the Economic Opportunity Act of 1964 (Public Law 88-452; 78 Stat. 508), as amended;<sup>135</sup>
- l. Expend moneys and conduct promotion of resources and facilities in the city, or general area, by advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion;<sup>136</sup>
- m. Supervise and control streets over tidelands or upon or across tide and shore lands of the first class within the city's corporate limits as provided in RCW 35.21.230, 35.21.240, and 35.21.250. The council exercises jurisdiction over adjacent waters as provided in RCW 35.21.160;<sup>137</sup>
- n. Perform, in the manner provided, all the duties of the office which are imposed by state law on officers of every other class of city who occupy a like position and perform a like function, except as otherwise provided by Title 35A RCW;<sup>138</sup>

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<sup>133</sup>RCW 35A.11.030.

<sup>134</sup>RCW 35A.11.040.

<sup>135</sup>RCW 35A.11.060.

<sup>136</sup>RCW 35A.11.070 and RCW 35.21.700.

<sup>137</sup>RCW 35A.21.090.

<sup>138</sup>RCW 35A.21.030.

- o. Construct, condemn and purchase, purchase, acquire, add to, alter, maintain and operates waterworks, within or without its limits. Such waterworks may include facilities for the generation of electricity as a by-product;<sup>139</sup>
- p. Engage in economic development programs and/or contracts with nonprofit corporations in furtherance of economic development;<sup>140</sup>
- q. Own or operate, individually or collectively with other cities or counties, a professional sports franchise, if the owners of the franchise announce their intention to sell or move the franchise.<sup>141</sup>

## II. Appointive Officials

### A. Appointment of Officers

#### 1. Mandatory Appointments (RCW 35A.12.020)

While other appointments can be required by ordinance, only two are *required* by the Optional Municipal Code: the city clerk and chief law enforcement officer. The position of city clerk may be merged with that of city treasurer, if that position exists. These appointments are to be made by the mayor, subject to confirmation by the city council, if confirmation has been required by ordinance.<sup>142</sup> Confirmation of a mayoral appointment by the city council may be required by the council in any instance where the qualifications for the office or position have not been established by ordinance.<sup>143</sup>

#### 2. Other Officials and Employees

Additional official and employee positions may be created by ordinance. Once created, appointments to such positions are to be made by the mayor, subject to confirmation by the city council, if confirmation has been required by ordinance. A confirmation may be required in any instance where the qualifications for the office or position have not been established by ordinance.

Provision must also be made for obtaining legal counsel for the city, either by appointment of a city attorney on a full-time or part-time basis, or by any reasonable contractual arrangement for such professional services.<sup>144</sup>

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<sup>139</sup>RCW 35.92.010.

<sup>140</sup>RCW 35.21.703.

<sup>141</sup>RCW 35.21.695.

<sup>142</sup>RCW 35A.12.090.

<sup>143</sup>*Ibid.*

<sup>144</sup> RCW 35A.12.030; see also AGO 1997 No. 7.

The head of a department or office of the city government may be authorized by the mayor to appoint and remove subordinates in such department or office, subject to any applicable civil service provisions.

## **B. Authority, Duties and Qualifications**

The authority, duties, and qualifications of an appointive position are those which have been established by ordinance.<sup>145</sup> Appointments are to be made, however, "on the basis of ability and training or experience of the appointees in the duties they are to perform," as may be prescribed by ordinance and in compliance with the provisions of any merit system applicable to the city.<sup>146</sup>

## **C. Compensation**

The compensation of an appointed official is to be set by ordinance.<sup>147</sup>

## **D. Oath and Bond of Officers (RCW 35A.12.080)**

Before entering upon the performance of his or her duties, any officer may be required to take an oath or affirmation for the faithful performance of the duties of the office as may be prescribed by ordinance. The oath or affirmation is filed with the county auditor.

The city's clerk, treasurer, if any, police chief and other officers or employees as designated by ordinance, are required to annually furnish an official bond conditioned on the honest and faithful performance of official duties. The terms and penalties of the official bonds, as well as the surety for the bond, are to be prescribed by ordinance. The bonds are to be approved by the chief administrative officer of the city (the mayor) with their premiums paid by the city. RCW 35A.12.080.

## **E. Removal of Officers (RCW 35A.12.090)**

The mayor has the power to remove any appointive official or employee, subject to any applicable law, rule, or regulation relating to civil service. A municipal judge may only be removed upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering him or her incapable of performing the duties of the office.<sup>148</sup>

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<sup>145</sup>RCW 35A.12.020; see also, RCW 35A.11.020.

<sup>146</sup>RCW 35A.12.090.

<sup>147</sup>RCW 35A.12.020, 35A.11.020, and 3.50.080 (municipal court judge).

<sup>148</sup>RCW 3.50.095.

## Chapter V

# Officials and Employees of Council-Manager Noncharter Code Cities

### I. Elective Officials – Councilmembers

As previously indicated, with the exception of municipal court judges, the only elected officials under a noncharter council-manager plan of government are the city councilmembers.

#### A. Eligibility to Hold Elective Office<sup>149</sup>

To hold office, as in the mayor-council form of government, a person must be a registered voter of the city at the time of filing his or her declaration of candidacy and must have been a resident of the city for a period of at least one year prior to the election.

#### B. Elections, Terms of Office, and Council Positions<sup>150</sup>

##### 1. Elections

Elections are held biennially as provided by Ch. 35A.29 RCW and general election law. At the first election following a city's reorganization, the election of officers is to be governed by the terms of RCW 35A.02.050.

##### 2. Terms of Office

Each councilmember's term is four years and until his or her successor is elected and qualified, except for the city's *first* election. At the first election, councilmembers are elected to two- and four-year terms to allow for subsequently staggered four-year terms.

##### 3. Council Positions

Council positions are to be designated by consecutive numbers (position one, position two, etc.) and are to be dealt with as separate offices.

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<sup>149</sup>RCW 35A.13.020 and 35A.12.030.

<sup>150</sup>RCW 35A.13.020 and 35A.12.040.

## C. Compensation<sup>151</sup>

For information on compensation revision and the compensation to be provided officers in newly-organized or newly-incorporated cities, see Chapter IV, Section I.C.

## D. Vacancies<sup>152</sup>

Vacancies are deemed to occur in council-manager cities for the same reasons as in mayor-council cities, see Chapter IV, Section I.D.<sup>153</sup>

## E. Removal from Office by Recall

Elective officers in a council-manager city are subject to removal from office by recall.<sup>154</sup> See Chapter IV, Section I.E.

## F. The Position of Mayor – Designation or Election<sup>155</sup>

Biennially at the first meeting of a new council, the councilmembers are to choose a chair from among their numbers who is given the title of “mayor” and who presides at all meetings of the council.

Alternatively, the council may by resolution place before the voters the proposition whether the councilmember elected to council “position one” should be designated as the chair of the council (and thus “mayor” of the city). If the majority of the voters cast a positive vote on the proposition, at all subsequent elections the person elected to “position one” becomes the chair of the council and “mayor” upon taking office.

## G. Pro Tempore Appointments<sup>156</sup>

Biennially at the first meeting of the new council, or periodically, the council by majority vote may designate one of its members to serve as mayor pro tempore (pro tem) or deputy mayor for a period specified by the council to serve in the absence or temporary disability of the mayor. As an alternative, the council may appoint a pro tem as the need arises.

In the event of an extended excused absence or disability of a councilmember, the remaining councilmembers may, by majority vote, appoint a councilmember pro tem to serve during the councilmember’s absence or disability.

A “pro tem” mayor or councilmember exercises the same power as the incumbent.

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<sup>151</sup>RCW 35A.13.040 and Wash. Const., Art. 11, Sec. 8, amended by Amend. 57.

<sup>152</sup>RCW 35A.13.020 and 35A.12.050.

<sup>153</sup>RCW 35A.12.060.

<sup>154</sup>See Wash. Const., Art. 1, Secs. 33-34, amended by Amend. 8; Ch. 29A.56 RCW, RCW 29A.56.110 and 29A.56.180.

<sup>155</sup>RCW 35A.13.030 and 35A.13.033.

<sup>156</sup>RCW 35A.13.035.

## H. Incompatibility

A mayor or councilmember is expressly forbidden from holding any other public office or employment within the city government "except as permitted under the provisions of Ch. 42.23 RCW."<sup>157</sup> No member of the city council is eligible for appointment as city manager until the lapse of one year from the time his or her term of office as councilmember expires.<sup>158</sup>

A councilmember may, however, if authorized by a resolution approved by a two-thirds vote of the full council, serve as a volunteer fire fighter, volunteer ambulance personnel, or reserve law enforcement officer, or two or more of such positions, and receive the same compensation, insurance, and other benefits as are provided to other volunteer fire fighters, volunteer ambulance personnel, or reserve law enforcement officers employed by the city.<sup>159</sup>

## I. General Powers and Duties<sup>160</sup>

The city council in a council-manager city is given the same duties and powers as given to councilmembers in a mayor-council city. See Chapter IV, Section I.I.2.

# II. Appointive Officials

## A. City Manager<sup>161</sup>

The city council is required to appoint an officer whose title is "city manager." The city manager is the city's chief executive officer and the head of the administrative branch of government.

Whether the manager is to devote his or her full time to one city is determined by the city council of that city. Unless otherwise determined, a city manager may serve in that capacity for two or more cities at the same time.<sup>162</sup>

### 1. Qualifications<sup>163</sup>

The city manager need not be a resident of the code city at the time of his or her appointment, but the manager must reside in the city after the appointment, unless such residency is waived by the council. The city manager is to be chosen solely on

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<sup>157</sup>RCW 35A.12.030.

<sup>158</sup>RCW 35A.13.050.

<sup>159</sup>RCW 35A.11.110.

<sup>160</sup>RCW 35A.13.230 and 35A.11.020.

<sup>161</sup>RCW 35A.13.010 and 35A.13.050.

<sup>162</sup>RCW 35A.13.060.

<sup>163</sup>RCW 35A.13.050.

the basis of his or her executive and administrative qualifications with special reference to actual experience or knowledge of accepted practices as to the duties of the office. The manager is required to take an oath or affirmation for faithful performance of duties and execute a surety bond in favor of the city.<sup>164</sup>

As previously indicated, no member of the city council is eligible for appointment as city manager until one year has lapsed following the expiration of the term for which he or she was elected.

## 2. Powers and Duties of a City Manager<sup>165</sup>

The city manager is the chief executive officer and head of the administrative branch of the city government. The manager is responsible to the city council for the proper administration of all affairs of the city. The manager's specific duties include the following:

- a. General supervision over the administrative affairs of the city;
- b. Appoints and removes all department heads, officers, and employees of the city, except councilmembers, subject to the provisions of applicable law, rule, or civil service regulation;

The manager's powers of appointment and removal of officers have some additional limitations: Appointments to the city planning commission and other committees, commissions, and boards advisory to the city council may be made by the mayor subject to confirmation by the council, if so provided by the council; appointment of a municipal judge, if the position is appointed, is made by the city manager, subject to confirmation by the city council (the judge's term of office is four years and removal from office is only allowed upon conviction of malfeasance or misconduct in office, or because of physical or mental disability rendering the judge incapable of performing the duties of the office).<sup>166</sup>

- c. Attends all meetings of the city council at which attendance is required by the council;
- d. Sees that all laws and ordinances are faithfully executed, subject to the authority to maintain law and order that may be granted to the mayor by the council for times of public danger or emergency;<sup>167</sup>
- e. Recommends for adoption by the council such measures as he or she deems necessary or expedient;
- f. Prepares and submits to the city council such reports as may be required by the council or as he or she may deem advisable to submit;

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<sup>164</sup>RCW 35A.13.070.

<sup>165</sup>RCW 35A.13.080 and 35A.13.010.

<sup>166</sup>RCW 3.50.095.

<sup>167</sup>See also RCW 35A.13.030.

- g. Keeps the council fully advised of the financial condition of the city and of its future needs;
- h. Prepares and submits a prepared budget to the city council, as required by Ch. 35A.33 RCW (or cC. 35A.34 RCW, as to biennial budgets) and be responsible for the budget's administration after its adoption;
- i. Performs such other duties as the city council may determine by ordinance or resolution;
- j. Recommends to the city council the creation of such departments, offices, and employments as he or she finds necessary or advisable. The compensation of an appointive office or employee is to be fixed by ordinance after a recommendation has been made by the city manager;<sup>168</sup> and
- k. Recommends to the city council how legal counsel should be obtained by the city, either by appointment of a city attorney or through a contractual arrangement for professional services.<sup>169</sup>

### 3. Removal of City Manager<sup>170</sup>

The city manager may be removed by majority vote of the city council. The process for the removal of a city manager is as follows:

- a. At least 30 days prior to the effective date of the city manager's removal, the city council furnishes the manager with a formal statement advising of the intention to remove him or her from office and of the reasons for such removal; the formal statement is in the form of a resolution, passed by majority vote of the city council;
- b. The city council, by majority vote, may suspend the city manager from duty. The manager's salary, however, is to continue until his or her removal becomes effective;
- c. The city manager may reply in writing within 30 days following the service of the intent-to-remove resolution;
- d. If a timely reply is not filed, the resolution, upon the 31st day after its service, constitutes the final resolution removing the manager from office. The manager's services terminate upon that day;
- e. If a reply is filed with the city clerk within 30 days of the resolution's service, the city council sets a time for a hearing on the question of the manager's removal; and

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<sup>168</sup>RCW 35A.13.090.

<sup>169</sup>RCW 35A.13.090.

<sup>170</sup>RCW 35A.13.130 and 35A.13.140.

- f. A final resolution removing the manager from office cannot be approved until the public hearing is held. The council's action on the removal is final.

#### 4. City Manager Substitute<sup>171</sup>

The city council may designate a qualified administrative officer of the city to perform the duties of manager:

- a. Upon the adoption of the council-manager plan, pending the selection and appointment of a manager;
- b. Upon the termination of the services of a manager, pending the selection and appointment of a new manager; or
- c. During the absence, disability, or suspension of a manager.

### B. Appointment of Officers by the City Manager

The city manager is authorized to appoint or remove all department heads, officers, and employees of the city, subject to the provisions of any civil service law, rule, or regulation.<sup>172</sup>

#### 1. Mandatory Appointments (RCW 35A.13.090)

There are only two "mandatory" offices subject to appointment in a noncharter code city operating under the council-manager plan: the city clerk and chief of police, or other chief law enforcement officer.

#### 2. Other Appointments

Positions other than city clerk or chief of police may be created by the city council, either after recommendation of the city manager or upon its own action.<sup>173</sup> Once a position is created, appointment to the position is to be made by the city manager.<sup>174</sup> There are, however, several limitations upon the manager's power of appointment:<sup>175</sup>

- a. Some appointments or removals may be subject to civil service laws, rules, or regulations.
- b. Appointments to the city planning commission or to other citizens' committees, commissions, and boards advisory to the city council, may be made by the mayor, subject to council confirmation, if so provided by the city council.

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<sup>171</sup>RCW 35A.13.150.

<sup>172</sup>RCW 35A.13.080(2).

<sup>173</sup>RCW 35A.13.090.

<sup>174</sup>RCW 35A.13.080(2).

<sup>175</sup>RCW 35A.13.080(2).

- c. Appointment of a municipal judge, if such officer is appointed, is made by the manager, subject to council confirmation.<sup>176</sup>

Upon the recommendation of the city manager, the council makes provision for obtaining legal counsel for the city, either by appointment of a city attorney on a full time or part time basis, or by any reasonable contractual arrangement for such professional services.<sup>177</sup>

The city manager may authorize the head of a department or office responsible to the manager to appoint and remove subordinates in such department or office.<sup>178</sup>

Neither the council, its committees, nor its members may direct the appointment of any person to office by the city manager or any of his or her subordinates.<sup>179</sup>

### 3. Qualifications, Authority and Duties of Appointive Officers

- a. Qualifications (RCW 35A.13.110)

Appointments are to be made upon the basis of ability and training or experience of the appointees in the duties which they are to perform, subject to any merit system applicable to the city. Residency is not a statutory requirement of employment. The council may, however, establish residency as a requirement for appointive officers or a preference in employment of employees.<sup>180</sup>

An officer before entering upon the performance of his or her duties may be required to take an oath or affirmation for the faithful performance of duties, if so required by ordinance.<sup>181</sup> In addition, an officer may be required by ordinance to furnish an official bond. If such a bond is required, compliance is an essential part of the qualification for office.<sup>182</sup>

- b. Authority and Duties (RCW 35A.13.090)

The duties and authority of an appointed official and employee are determined by ordinance. Except for purposes of inquiry, the city council and its members are to

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<sup>176</sup>See RCW 3.50.040 and 3.50.003 (while the appointment is to be made by the mayor, the term "mayor" is defined as the city's chief administrative officer).

<sup>177</sup> RCW 35A.13.090.

<sup>178</sup>RCW 35A.13.100.

<sup>179</sup>RCW 35A.13.120.

<sup>180</sup> RCW 35.21.200.

<sup>181</sup>RCW 35A.13.160. and 35A.12.080.

<sup>182</sup>*Id.*

deal with the administrative staff solely through the manager. Neither the council, its committees, nor its members are to give orders to any subordinate of the city manager, either publicly or privately.<sup>183</sup>

c. The duties of the *city clerk* are listed in RCW 35A.42.040. They include:

- (1) *Certification of city streets as part of the highway system;*
- (2) *Perform the functions of a member of the firemen's pension board;*
- (3) *Keep a record of ordinances of the city and provide copies as authorized;*
- (4) *Serve, as applicable, the trustees of any police relief and pension board; and*
- (5) *Serve as secretary-treasurer of any volunteer fire fighters' relief and pension boards.*

In addition, the clerk is to perform all of the duties of the office imposed by state law on officers of every other class of city who occupy a like position and perform like functions.<sup>184</sup>

d. The general authority and duties of the *city treasurer* are set out by RCW 35A.42.010.

#### 4. Compensation (RCW 35A.13.090)

The compensation of an appointive officer or employee is set by ordinance *after* recommendations are made by the city manager.

#### 5. Oath and Bond of Officers<sup>185</sup>

An appointive officer may be required by ordinance to take an oath or affirmation for the faithful performance of duties prior to entering upon the performance of those duties. The oath or affirmation is to be filed with the county auditor.

The clerk, treasurer (if there is one), chief of police, and any other designated officer or employee must annually furnish an official bond conditioned on the honest and faithful performance of his or her official duties. The terms, penalties, and sureties of the official bonds are to be prescribed by ordinance and each bond is to be approved by the city manager. Bond premiums are to be paid by the city.<sup>186</sup>

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<sup>183</sup>RCW 35A.13.120.

<sup>184</sup>RCW 35A.42.040 and 35A.21.030.

<sup>185</sup>RCW 35A.13.160 and 35A.12.080.

<sup>186</sup>RCW 35A.13.160 and 35A.12.080.

## Chapter VI

# Meetings and Committees

### I. Council Meetings

#### A. General Observations

The city council is required to meet regularly, at least once a month, at a place and time as designated by council ordinance or resolution.<sup>187</sup> All final actions on resolutions and ordinances must take place within the corporate limits of the city.<sup>188</sup> A special meeting may be called at any time by the mayor or by any three members of the council by delivering written notice to each member of the council at least 24 hours before the time specified for the proposed meeting.<sup>189</sup> All city council meetings must be open and public, with the exception of executive sessions.<sup>190</sup>

The Open Public Meetings Act specifies procedures for adjournments and continuances, executive (closed) sessions, and other procedures. For a more detailed analysis of the Washington Open Public Meetings Act, see AGO 1971 No. 3; MRSC Report No. 47, *Knowing the Territory: Basic Legal Guidelines for Municipal Officials*, pp. 28-35; and MRSC Report No. 60, *The Open Public Meetings Act*.

#### B. Mayor-Council Noncharter Code Cities

##### 1. Time, Number, and Notice Requirements

###### *Regular Meetings*

Regular meetings are required by law to be held at least once each month. The time and place of such meetings must be fixed by ordinance or rule.<sup>191</sup>

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<sup>187</sup>RCW 35A.12.110, 35A.13.170 and 42.30.070.

<sup>188</sup>RCW 35A.12.110 and 35A.13.170.

<sup>189</sup>RCW 35A.12.110 and 35A.13.170.

<sup>190</sup>Ch. 42.30 RCW, RCW 42.30.030, 42.30.060, 42.30.110, and 42.30.140.

<sup>191</sup>RCW 35A.12.110 and 42.30.060.

Provisions governing council meetings are set out in the Open Public Meetings Act (see Ch. 42.30 RCW) and apply to all classes of cities.

## 2. Voting Procedures

Although the city council determines its own rules of procedure,<sup>192</sup> certain statutory requirements regarding voting must be followed:

- a. The mayor has a vote only in the case of a tie in the votes of the councilmembers and only with respect to matters other than the passage of any ordinance, grant or revocation of franchise or license, or any resolution for the payment of money.<sup>193</sup>
- b. At the request of any member of the council, the ayes and nays are to be taken on any question, and the results entered in the journal.<sup>194</sup>

## 3. Presiding Officer and Clerk

### a. Presiding Officer

The mayor is the presiding officer for all meetings of the council. In his or her absence, the mayor *pro tempore* (pro tem) or deputy mayor, if one has been appointed, or a member of the council selected by a majority of the councilmembers, chairs the meeting.<sup>195</sup>

In mayor-council cities, a mayor pro tem or deputy mayor is chosen by majority vote of the council from its own membership either biennially at the first meeting of a new council, periodically, or as the need may arise. The mayor pro tem's authority continues for such period as the council may specify.<sup>196</sup> Appointment of a councilmember to preside over a meeting does not abridge the councilmember's right to vote on matters coming before that meeting.<sup>197</sup>

### b. Clerk

If the clerk is absent from a meeting of the council, a deputy clerk or other qualified person appointed by the clerk, the mayor, or the council is to perform the duties of clerk for that meeting.<sup>198</sup>

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<sup>192</sup>RCW 35A.12.120.

<sup>193</sup>RCW 35A.12.100.

<sup>194</sup>RCW 35A.12.120.

<sup>195</sup>RCW 35A.12.110.

<sup>196</sup>RCW 35A.12.065. In the event of a vacancy in the office of mayor, the vacancy is to be filled by the procedures described in RCW 42.12.070 with the person selected serving until a qualified person is elected.

<sup>197</sup>RCW 35A.12.110.

<sup>198</sup>RCW 35A.12.110.

#### 4. Parliamentary Procedure and Order of Business

##### a. Parliamentary Procedure

City councils establish rules for the conduct of their own proceedings,<sup>199</sup> and it is a good idea for the council to adopt, by resolution, recognized parliamentary procedures as an integral part of their rules. In addition to formally adopted rules, a standard work on parliamentary procedure, such as *Robert's Rules of Order, Newly Revised*, should be chosen as a guide to procedure for situations which are not covered by the adopted council rules.<sup>200</sup>

##### b. Order of Business

The sequence in which the items of business at meetings of the governing body are to be considered should be incorporated in the resolution establishing the rules of conduct. For example, the following sequence, or agenda format, might be used:

- (1) *Call to order;*
- (2) *Roll call;*
- (3) *Reading and approval of the minutes of the previous meetings;*
- (4) *Hearings on petitions, applications, complaints, appeals, communications, etc.,*<sup>201</sup>
- (5) *Consideration of bids, L.I.D.'s, and related matters;*
- (6) *Reports of standing committees;*
- (7) *Reports of special committees;*
- (8) *Reports of city officers;*
- (9) *Auditing of accounts;*
- (10) *Resolutions, ordinances, orders, and other business; and*
- (11) *Adjournment.*

The city clerk is generally responsible for preparing the agenda, or order of business for each meeting. This is normally done by conferring with department heads, others having business to be placed before the council, and with the mayor. When possible, copies of the agenda should be supplied to members of the

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<sup>199</sup>RCW 35A.12.120.

<sup>200</sup>See Appendix for a sample resolution.

<sup>201</sup>Hearings on the establishment of a local improvement district may be held before a committee of the council. RCW 35.43.140.

governing body in advance of the meeting so they will have an opportunity to review the subject matter to be considered. By statute, every city is required establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting.<sup>202</sup>

c. Call to Order – Quorum

Meetings are generally opened when the presiding officer calls the meeting to order. At all meetings of the council, a majority of the council members constitute a quorum for the transaction of city business. Less than a quorum of councilmembers may adjourn the meeting from time to time, and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.<sup>203</sup>

d. Roll Call

Generally, the presiding officer asks the clerk to call the roll, and the clerk enters into the minutes the names of members present at the meeting. There is no fixed order in which a roll should be called, so any reasonably impartial method may be used.

e. Minutes

Minutes of all meetings, except executive sessions, are to be taken and promptly recorded. See RCW 42.32.030. Although there is nothing in state statute that establishes a procedure for reading and approving minutes by the council as a whole, there is a requirement that the clerk keep a journal of all proceedings. Approval of the minutes is recorded in the journal of proceedings and constitutes a legally recognizable review and confirmation of the official record of proceedings of the council.<sup>204</sup> Consequently, it is both a good practice and a necessity that the council adopt a provision for the approval of minutes in its rules of procedure.

The minutes should be prepared by the clerk, on the basis of notes taken at the meeting, and they should contain:

- (1) *The type of meeting (regular or special) and whether it is an adjourned or recessed meeting which is being continued;*
- (2) *The date, time, and place of the meeting;*
- (3) *The names of the council members present and the name of the presiding officer;*
- (4) *All motions (except those withdrawn), whether sustained or not, the names of their maker and seconder; and*

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<sup>202</sup>RCW 35A.12.160.

<sup>203</sup>RCW 35A.12.120.

<sup>204</sup>RCW 35A.12.110 and 35A.39.010 and 6 McQuillin, *Municipal Corporations*, Section 22.30, pp. 369-371.

- (5) *A complete and objective account of all business discussed, actions taken, and the results of such actions.*

As a general rule, actual discussion or debate should not be reported, but the minutes should include such other matters as orders of the council, approval of the minutes of previous meetings, the results of votes, and summaries of reports (or full copies if so ordered by the council). If requested by councilmembers, the clerk must count and enter the ayes and nays on any question.

Notes of minutes should be kept in a special notebook and should not be discarded.<sup>205</sup> In some cities, the presiding officer and city clerk sign the meeting minutes after the council has approved them.

f. Reports

Reports of city officers, committees, citizen delegations, or other individuals or groups are not in order until called for by the presiding officer. Generally, council rules establish when required reports are to be given.

## C. Council-Manager Noncharter Code Cities

### 1. Time, Number, and Notice Requirements

Procedures and requirements for meetings in council-manager noncharter code cities are the same as for mayor-council noncharter code cities.<sup>206</sup> Reference should be made to the previous section of this chapter.

### 2. Voting Procedures

Although cities determine their own rules of procedure,<sup>207</sup> certain statutory requirements regarding voting must be followed. These requirements are the same in both mayor-council and council-manager forms of government, except that the mayor in a council-manager city is entitled to vote on all questions coming before the council.<sup>208</sup>

### 3. Presiding Officer and Clerk

a. Presiding Officer

The mayor is the presiding officer for all meetings of the council, and, in his or her

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<sup>205</sup>RCW 35A.12.110, 35A.39.010, and 42.32.030. Failure of the minutes to show the presentation of a motion and votes may invalidate action taken. *Finney v. Shannon*, 166 Wash. 28, 6 P.2d 360 (1931) - DO YOU THINK THAT WOULD BE THE RESULT NOW?.

<sup>206</sup>RCW 35A.13.170, 35A.12.110, and 42.30.080.

<sup>207</sup>RCW 35A.13.170 and 35A.12.120.

<sup>208</sup>RCW 35A.13.030.

absence, the mayor *pro tempore* (pro tem) serves as the chair.<sup>209</sup> The mayor pro tem is selected by the council from its membership in the event the mayor is absent or temporarily disabled.

b. Clerk<sup>210</sup>

For information on the procedures to be used during the absence of the clerk, see Section I.B.3.b. of this chapter.

#### 4. Parliamentary Procedure and Order of Business

Although the suggestions for procedure in mayor-council cities are equally applicable to council-manager cities, there is a difference regarding agenda preparation. In council-manager cities, the city manager usually assumes responsibility for the preparation of the council meeting agenda by either providing the clerk with necessary information or personally preparing the agenda.<sup>211</sup>

## II. Committees

### A. General Observations

Committees of legislative bodies are generally of two types, standing and special. Standing committees are permanent committees that can be appointed at any time by the council. They are usually selected at the beginning of the term and matters relating to the subjects over which they have cognizance are generally referred to them.<sup>212</sup>

Special committees are temporary and are established to report on some special subject. They are ordinarily discharged once reports have been made. Meetings of committees, like meetings of the council, may be governed by the Open Public Meetings Act. See RCW 42.30.020(2).

### B. Citizen Advisory Committees for Both Forms of Municipal Government

Citizen advisory committees are not technically a part of a legislative body, but their use is a recognized method of stimulating citizen participation.<sup>213</sup> Such committees provide valuable technical advice to the administration and often serve to transmit ideas from the public to the governmental body and vice versa.

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<sup>209</sup>RCW 35A.13.035, 35A.13.170 and 35A.12.110. As with the mayor, the mayor *pro tempore* continues to have all the rights, privileges, and immunities of a member of the council.

<sup>210</sup>RCW 35A.13.170 and 35A.12.110.

<sup>211</sup>See previous section of this chapter on parliamentary procedure and order of business in mayor-council cities.

<sup>212</sup>The rules of the city council generally describe the jurisdiction of each standing committee, but whether matters should be referred to a standing committee is always under control of the council.

<sup>213</sup>Statutory authority for the establishment of such committees may be found in RCW 35A.13.080(2).

Appointments to such committees are generally made by the mayor or city manager, and appointees serve at his or her pleasure. Under most circumstances an advisory committee's duties should be limited to a definite period of time. Necessary expenses incurred by the advisory committee are normally paid from appropriate funds pursuant to advance authorization.

### **C. Advisory Vote**

Some municipalities use an advisory vote for determining public opinion relative to controversial issues. Although such issues may be placed on the ballot at either a regular or special election, the results are not binding upon municipal officials, but rather serve as a statement of public sentiment relative to the voted-upon issue.

## Chapter VII

# **Abandonment of Code City Classification and Disincorporation**

### **I. Abandonment of Code City Classification – Ch. 35A.06 RCW**

A code city may either abandon its code city classification without reorganizing, or by reorganizing under a different plan of government.<sup>214</sup>

#### **A. Abandonment of Classification without Reorganization**

##### **1. Timing**

Any noncharter code city which has been governed under the Optional Municipal Code provisions for more than six consecutive years may abandon the classification of noncharter code city.<sup>215</sup>

##### **2. Procedure for Abandonment**

The procedure to be used for the abandonment of a city's classification without reorganization is set out in RCW 35A.06.070.

###### **a. Resolution or Petition – RCW 35A.06.040**

The process by which a city abandons its code city classification may be begun by either the passage of a resolution by its city council or by the filing of a petition with the county auditor. If the petition method is used, the petition must be signed by registered voters in number equal to not less than ten percent of the votes cast at the last general municipal election in the city.

###### **b. Election – RCW 35A.06.040 and RCW 35A.06.050**

Upon passage of a resolution or the filing of a sufficient petition proposing abandonment of the code city classification, an election must be ordered and

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<sup>214</sup>For an additional discussion of abandonment and reorganization, see Ch. III, Section II, Reorganization of Plan of Government and Abandonment of Noncharter Code City Classification.

<sup>215</sup>RCW 35A.06.030.

conducted on the issue. The election procedure follows the provisions of Ch. 35A.02 RCW, insofar as applicable.

The proposal to abandon the city's classification is voted upon at the next general municipal election, if one is to be held within 180 days, or otherwise at a special election called for such purpose in accordance with RCW 29A.04.330. The ballot title and statement of the proposition are to be prepared by the city attorney, pursuant to RCW 35A.29.120 and RCW 29A.36.071.

A change of classification approved by a majority of the voters becomes effective when the election record is filed with the office of the secretary of state.<sup>216</sup>

c. Effect of Reclassification – RCW 35A.06.060

Once a city has abandoned its code city classification, it becomes governed by general law relating to cities or towns of the classification it held prior to becoming a noncharter code city, if any, or by those general laws relating to cities and towns of the highest class for which it is qualified by population. The city retains its plan of government.

**B. Abandonment of Classification by Selection of a Plan of Government Not Authorized by Title 35A RCW (RCW 35A.06.030)**

When a city adopts a plan of government other than those authorized under Title 35A RCW, it ceases to be governed under the Optional Municipal Code and is classified as a city or town of the class selected in the proceeding for adoption of the new plan with the powers granted to such class under the general law.

1. Procedure for Abandonment

The procedure used for an abandonment of classification accompanied by reorganization is similar to the process outlined above for an abandonment of classification without reorganization.

a. Initiation by Petition or Resolution

The process is begun either by petition or resolution. The initiating document must specify what plan of government is sought for adoption and the class under which the city is to be classified.<sup>217</sup>

b. Election

If a sufficient petition is filed with the city clerk or if the abandonment process is begun by council resolution, an election must be ordered and conducted on the issue. The election must be held at the next general municipal election or otherwise at a special election, held prior to the next general election in accordance

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<sup>216</sup>RCW 35A.06.070.

<sup>217</sup>RCW 35A.06.040.

with the resolution of the council.<sup>218</sup>

c. Preparation of Ballot Title, Statement and Notice

A ballot title and statement of the proposition is to be prepared by the city attorney as provided in RCW 29A.36.071.<sup>219</sup>

d. Effective Date

The effective date of the abandonment and adoption of a new classification and government plan does not occur until after the election, qualification, and assumption of office by the new officers required by the reorganization.<sup>220</sup>

2. New Officers to be Elected

New officers, as required by the plan of government approved by the voters, are to be elected according to the terms of RCW 35A.02.050.

C. Abandonment of Charter Code City Classification (Ch. 35A.10 RCW)

Any city which has been classified as a charter code city for more than six years may abandon that classification and elect to be governed according to its charter under the general law relating to charter cities of the classification held by the city immediately prior to becoming a charter code city. Also, a city abandoning the charter code city classification may elect to be governed by general law relating to charter cities of the highest class for which it is qualified by population. The specific procedures for changing classification are set out in RCW 35A.10.030.

1. Procedure for Abandonment

a. *Resolution or Petition*

The abandonment process may be begun either by council resolution or by a sufficient petition filed with the county auditor signed by registered voters of the city in number equal to not less than ten percent of the votes cast at the last general municipal election.<sup>221</sup>

b. *Election – RCW 35A.10.030*

Upon council resolution or receipt of a sufficient petition, the council is required to submit the abandonment issue to the voters at the next general municipal election, if one is to be held within 180 days, or otherwise at a special election to be held for that purpose not less than 90 days nor more than 180 days after the resolution's passage or the filing of the certificate of sufficiency of the petition. Notice is to be

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<sup>218</sup>RCW 35A.06.040 and 35A.06.050.

<sup>219</sup>RCW 35A.02.100 and 35A.06.040.

<sup>220</sup>RCW 35A.06.060.

<sup>221</sup>RCW 35A.10.030.

given and the election conducted according to the terms of Ch. 35A.02 RCW, insofar as such provisions are applicable.

*c. Effect of Majority Vote Approving Classification Abandonment*

If a majority of the voters approve the classification abandonment, upon certification of the election record to the office of the Secretary of State, the charter city is then classified as a city of the class selected and is governed by the laws relating to such new classification.<sup>222</sup>

**2. Effect of Negative Vote**

Note that if a proposition for abandonment of the charter code city classification is rejected by a majority of voters, the city must wait at least six years before submitting another proposition for abandonment to the voters. RCW 35A.10.040.

**II. Disincorporation – Ch. 35A.15 RCW**

Any noncharter code city may be disincorporated. The process for disincorporation is begun by: (1) filing a petition signed by a majority of the registered voters resident in the city with the county auditor; or (2) a city council resolution for an election on the proposition of disincorporation. The election procedures are outlined in RCW 35A.15.020 and 35A.15.040. If the voters approve the dissolution, it becomes effective upon certification of the election results to the office of the Secretary of State. A receiver is then appointed to discharge the former city's indebtedness or outstanding liability, and to make a final accounting of funds to the county treasurer.

There are also provisions for involuntary dissolution of a noncharter code city by petition of the state auditor. The process for involuntary dissolution is outlined in RCW 35.07.230 through RCW 35.07.260.

**A. Voluntary Disincorporation**

**1. Initiation of Disincorporation Process – RCW 35A.15.010**

Initiation of disincorporation may be begun either by filing a petition for disincorporation with the county auditor, signed by a majority of the registered voters resident in the city, or by a resolution approved by the city council.

**2. Election to be Called – RCW 35A.15.020**

The disincorporation issue must be submitted to the voters at the next general municipal election, if one is to be held within 180 days, or otherwise at a special election called for such purpose and held not less than 90 days nor more than 180 days from the date of the petition's certification or the resolution's adoption.

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<sup>222</sup>*Id.*

### 3. Election of and Role of Receiver

If the city has any indebtedness or outstanding liabilities, it must provide for the election of a receiver at the same election as the disincorporation issue is decided.

a. *Qualifications of Receiver – RCW 35A.15.060 and RCW 35.07.120*

An elected receiver becomes qualified by filing a bond with the county auditor within ten days after he or she has been elected.

b. *The Receiver's Bond – RCW 35.07.120*

The receiver's bond must be equal in penalty to the audited indebtedness and the established liabilities of the city. The sureties for the bond must be approved by the board of county commissioners, or if the board is not in session, by a judge of the superior court of the county. The bond is to run to the state and is to be conditioned upon the faithful performance of the receiver's duties and for the prompt payment in the order of their priority of all lawful claims finally established.

c. *Duties and Authority of Receiver*

Once qualified, the receiver is required to take possession of all property, money, vouchers, records, and books of the former municipality. He or she has authority to pay:

- (1) *All outstanding warrants and bonds in the order of maturity with due regard to the fund on which they are properly charged;*
- (2) *All lawful claims against the city that have been audited and allowed by the council;*
- (3) *All lawful claims which may be presented within the time limited by law for the presentation of such claims (no claim may be allowed or paid unless it is presented within six months of the disincorporation election); and*
- (4) *All claims that by final adjudication may come to be established as lawful claims against the city.<sup>223</sup>*

The receiver may sue and be sued,<sup>224</sup> has the power to sell property,<sup>225</sup> and the power to levy taxes<sup>226</sup> to extinguish obligations of the former city.

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<sup>223</sup>RCW 35.07.150 and 35A.15.070.

<sup>224</sup>RCW 35.07.160 and 35A.15.070.

<sup>225</sup>RCW 35.07.170 and 35A.15.070.

<sup>226</sup>RCW 35.07.180 and 35A.15.070.

d. *Compensation of Receiver – RCW 35.07.190 and RCW 35A.15.080*

The receiver is entitled to deduct a commission from any funds coming into his or her hands in the amount of six percent of the first \$1,000, five percent of the second \$1,000, and four percent on any amount over \$2,000. This amount is the receiver's "full compensation" except for necessary travel expenses, and other necessary disbursements, but not exclusive of attorney's fees.

e. *Removal of Receiver-Successor*

A receiver may be removed for cause by the superior court. Cause includes negligence or misconduct.<sup>227</sup> If a receiver is removed, the court selects a person to succeed the receiver.<sup>228</sup>

f. *Final Accounting and Discharge – RCW 35A.15.100 and RCW 35.07.220*

When the final payment of all lawful demands against the former city has been made, the receiver files a final account, together with all vouchers, with the clerk of the superior court. Any funds remaining are to be paid to the county treasurer for the use of the school district in which the former city was situated. The receivership is then at an end.

#### 4. **Effect of Disincorporation**

Disincorporation becomes effective upon entry of the election's (affirmative) results. On disincorporation, the city's powers and privileges as a city are surrendered to the state. The city ceases to have further duties to the state or to the city's inhabitants, and all of the city's former offices cease to exist.<sup>229</sup>

Disincorporation does not impair the obligation of any contract, and any franchise that was granted but has not yet expired remains unimpaired.<sup>230</sup> Any streets and highways of the disincorporated city pass to the control of the state.<sup>231</sup>

### B. **Involuntary Disincorporation (RCW 35A.15.110)**

A noncharter code city may be involuntarily dissolved if it fails for two successive years to hold its regular municipal election or if the officers elected fail to qualify for two successive years. In either situation, the city ceases to function and the state auditor may petition the superior court of the county involved for an order dissolving the city.<sup>232</sup>

The procedures for an involuntary disincorporation, relating to notices, hearings, and forms of orders, are set out by RCW 35.07.240 through 35.07.260.

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<sup>227</sup>RCW 35A.15.090 and 35.07.200.

<sup>228</sup>RCW 35A.15.090 and 35.07.210.

<sup>229</sup>RCW 35A.15.050 and 35.07.090.

<sup>230</sup>RCW 35A.15.050 and 35.07.100.

<sup>231</sup>RCW 35A.15.050 and 35.07.110.

<sup>232</sup>RCW 35.07.230.

## Chapter VIII

# Planning and Zoning

Code cities are not controlled by the 1935 Planning Enabling Act (Ch. 35.63 RCW), but rather by the planning provisions set out by the Optional Municipal Code itself (Ch. 35A.63 RCW) and the Growth Management Act (Ch. 36.70A RCW). The Optional Municipal Code modernizes and adds flexibility to the planning process.

### A. Planning Agency – Organizations and Functions

Unlike other (non-code, non-first class) cities, code cities are not required to form a planning commission. Instead, code cities create a planning agency to serve in an advisory capacity to the chief administrative officer or the city council, or both.<sup>233</sup>

A planning agency can be any person, body, or organization designated by the council to perform a planning function, including any commission, department, or board, together with its staff members, employees, agents, and consultants.<sup>234</sup>

The planning agency is to be established by an ordinance that provides for the agency's membership, organization, expenses, powers, and duties. If a planning agency member has a disqualifying interest or an appearance of fairness problem in connection with a specific matter that is pending before the agency, he or she should abstain from both deliberation and the decision-making process on that matter. The city council may appoint an alternate to serve on that particular matter.

When authorized, planning agencies may conduct joint meetings and other cooperative efforts with one or more city or county planning agencies. City planning agencies may enter into an interlocal agreement with another municipality for planning services and may also cooperate with other local governments for the joint engagement of a planning director and the employment of a joint operating staff.<sup>235</sup>

Code cities may cooperate with other municipalities or the state governments to form,

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<sup>233</sup>RCW 35A.63.020.

<sup>234</sup>RCW 35A.63.010(8).

<sup>235</sup>RCW 35A.63.030.

organize, and administer a regional planning commission to prepare a comprehensive plan and perform other planning functions for the region. All costs associated with such efforts are to be shared on a pro rata basis among the various entities.<sup>236</sup>

## B. The Comprehensive Plan for Code Cities That Are Not Required to Plan under the Growth Management Act

The Optional Municipal Code provisions for a comprehensive plan are both more specific and more flexible than the comparable provisions that apply to non-code cities. In every code city the primary function of the planning agency is to prepare a comprehensive plan for anticipating and influencing the orderly development of land and building uses in the city and its environs. The comprehensive plan may be prepared as a whole or in successive parts.<sup>237</sup>

### 1. Required Elements – RCW 35A.63.061<sup>238</sup>

The comprehensive plan may consist of a map or maps, diagrams, charts, reports, descriptive, and explanatory text or other devices and materials to express, explain, or depict the elements of the comprehensive plan. Two elements are mandated by statute: (1) a land use element; and (2) a circulation element.

- a. The *land use element* designates the proposed general distribution, location, and extent of the uses of land. Such uses may include agricultural, residential, commercial, industrial, recreational, educational, public, and other categories of public and private uses. The land use element must include estimates of future population growth and recommended standards of population density and building intensity for the area covered by the comprehensive plan.

In appropriate communities, the land use element must also provide protection of the quality and quantity of ground water used for public water supplies and review the drainage, flooding, and storm water run-off in the area and nearby jurisdictions, providing guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound.

- b. The *circulation element* shows the general location and alignment of existing and proposed major thoroughfares, transportation routes, and terminal facilities, all of which should be correlated with the land use element of the plan.

### 2. Optional Elements – RCW 35A.63.062

The comprehensive plan may include any or all of the following optional elements:

- a. A conservation element for the conservation, development, and utilization of natural resources;

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<sup>236</sup>RCW 35A.63.040.

<sup>237</sup>RCW 35A.63.060.

<sup>238</sup>Comprehensive plan information for cities planning under the Growth Management Act is found in Section C, below.

- b. An open space, park, and recreation element;
- c. A transportation element, showing a comprehensive system of surface, air, and water transportation routes and facilities;
- d. A public-use element, showing general locations, designs, and arrangements of public buildings and uses;
- e. A public utilities element, showing general plans for public and franchised services and facilities;
- f. A redevelopment or renewal element, showing plans for the redevelopment or renewal of slum and blighted areas;
- g. An urban design element for general organization of the physical parts of the urban landscape;
- h. Other elements dealing with subjects that relate to the development of the municipality or are essential or desirable to coordinate public services and programs; and
- i. A solar energy element for encouragement and protection of access to direct sunlight for solar energy systems.

### **3. Notice and Hearing – RCW 35A.63.070**

After preparing the comprehensive plan, the planning agency must hold at least one public hearing on the comprehensive plan. Notice of the time, place, and purpose of the public hearing is to be given by at least one publication in a newspaper of general circulation in the code city at least ten days prior to the date of the hearing.

### **4. Forwarding to City Legislative Body – RCW 35A.63.071**

Once the hearing or hearings on the comprehensive plan are completed, and the planning agency makes such changes in the plans as it deems necessary, the agency transmits a copy of its recommendations for the plan to the city council through the city's chief administrative officer, who acknowledges receipt and directs the clerk to certify the date of receipt.

### **5. Approval by City Legislative Body – RCW 35A.63.072**

Within 60 days of receiving the proposed comprehensive plan, the city council must consider it at a public meeting. The council then approves, disapproves, or modifies the comprehensive plan, or refers it back to the planning agency for further proceedings. In the latter event, the city council must specify the time within which the planning agency must report its findings and recommendations on the matters referred to it to the city council. An affirmative vote of at least a majority of the total members of the council is required for the adoption of a resolution to approve the comprehensive plan or its parts. Then the plan is filed with an appropriate city official and becomes available for public inspection.

## 6. Amendments and Modifications – RCW 35A.63.073

All amendments, modifications, or alterations in the comprehensive plan are to be processed in the same manner as required for adoption of the initial plan.

## 7. Effect of Approval by City Legislative Body – RCW 35A.63.080

Once approved by the city council, the comprehensive plan serves as a basic source of reference for future legislative and administrative action. Note, however, that it is not to be construed as a regulation of property rights or land uses. No procedural irregularity or informality in the consideration, hearing, and development of the comprehensive plan or any of its elements affects the validity of any zoning ordinance or amendment enacted by a city after approval of the comprehensive plan.

The comprehensive plan must be consulted prior to the establishment, improvement, abandonment, or vacation of any street, park, public way, public building, or public structure. No dedication of any street or other area for public use may be accepted by the city council until its location, character, extent, or effect has been considered by the planning agency with reference to the comprehensive plan. The city council must specify the time within which the planning agency is to report its recommendation on these matters.

## 8. Implementation of Comprehensive Plan – RCW 35A.63.100

In developing the city and in regulating the use of land within it, the city council may implement the comprehensive plan or parts of the plan by ordinance or other action to such extent it deems necessary or appropriate. Ordinances or other action may provide for:

- a. Adoption of an official map and regulations designating locations and requirements for streets, parks, public buildings, and other public facilities, and protection of such sites against encroachment by buildings and other physical structures;
- b. A zoning ordinance;<sup>239</sup>
- c. A subdivision ordinance providing for the adoption of design standards, requirements, regulations, and procedures for the subdivision of land into two or more parcels of land including, but not limited to, the approval of plats, dedications, acquisitions, improvements, and reservation of sites for public use;<sup>240</sup>
- d. Scheduling public improvements on the basis of recommended priorities over a period of years, subject to periodic review; and

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<sup>239</sup>No zoning ordinance, or amendment, may be enacted by the city legislative body without at least one public hearing, notice of which is to be given as provided in RCW 35A.63.070. The hearing may be held before the planning agency or the board of adjustment or such other body as the city legislative body designates.

<sup>240</sup>See RCW 58.10.040 and Ch. 58.17 RCW.

- e. Such other matters as authorized by law or as the city council deems necessary or appropriate to effectuate the goals and objectives of the comprehensive plan.

## 9. Development Regulations – Consistency with Comprehensive Plan – RCW 35A.63.105

All code cities, including those that are not required to plan under the Growth Management Act, are required to make their development regulations consistent with their city's comprehensive plan.<sup>241</sup> Development regulations mean any controls placed on development or land use activity, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances.<sup>242</sup>

## C. The Comprehensive Plan for Cities Required to Plan under the Growth Management Act (RCW 36.70A.040)

The comprehensive plan of a city required to plan under the Growth Management Act must follow the provisions set out in Ch. 36.70A. RCW.

### 1. Mandatory Elements – RCW 36.70A.070

The comprehensive plan is to consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan must be an internally consistent document and all elements must be consistent with the future land use map. The plan must be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan is to include a plan, scheme, or design for each of the following:

- a. A **land use element** designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element must also include population densities, building intensities, and estimates of future population growth. It must provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, it must review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.
- b. A **housing element** which insures the vitality and character of established residential neighborhoods that: (1) includes an inventory and analysis of existing and projected housing needs; (2) includes a statement of goals, policies, and objectives for the preservation, improvement, and development of housing; (3) identifies sufficient land for housing, including, but not limited to,

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<sup>241</sup>RCW 35A.63.105.

<sup>242</sup>RCW 36.70A.030(8); all cities are required to adopt a short subdivision procedure under Ch. 58.17 RCW.

government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (4) makes adequate provisions for existing and projected needs of all economic segments of the community.

- c. **A *capital facilities plan element*** consisting of: (1) an inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (2) a forecast of the future needs for such capital facilities; (3) the proposed locations and capacities of expanded or new capital facilities; (4) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (5) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan with the capital facilities plan element are coordinated and consistent.
- d. **A *utilities element*** consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.
- e. **A *transportation element*** that implements and is consistent with the land use element. The transportation element must include the following sub-elements:
  - (1) *Land use assumptions used in estimating travel;*
  - (2) *Facilities and services needs, including:*
    - (a) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning;
    - (b) Level of service standards for all arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;
    - (c) Specific actions and requirements for bringing into compliance any facilities or services that are below an established level of service standard;
    - (d) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;
    - (e) Identification of system expansion needs and transportation system management needs to meet current and future demands;
  - (3) *Finance, including:*
    - (a) An analysis of funding capability to judge needs against probable funding resources;

- (b) A multi-year financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which are to serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities;
- (c) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;
- (4) *Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;*
- (5) *Demand-management strategies;*
- (6) *Pedestrian and bicycle component.*

After adoption of the comprehensive plan, cities must adopt and enforce ordinances that prohibit development approval if the development causes the level of service on a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of the transportation element, "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

The described transportation element and the six-year plans required by RCW 35.77.010 must be consistent.

- f. Special protections for general aviation facilities from encroachment of incompatible land uses were added as a necessary element in 1996 (RCW 36.70A.070 and RCW 36.70.547). When a general aviation airport is located within a city, the comprehensive plan and development regulations must discourage the siting of incompatible uses adjacent to the airport. The procedures for accomplishing this goal are set out in RCW 36.70.547.

## 2. Optional Elements – RCW 36.70A.080

The comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction including, but not limited to:

- a. Conservation;
- b. Solar energy; and
- c. Recreation.

If appropriate, the comprehensive plan may include subarea plans, each of which is consistent with the comprehensive plan.

### **3. Coordination Requirements – RCW 36.70A.100**

The comprehensive plan must be coordinated with and consistent with the comprehensive plans adopted by other counties or cities with which the city has, in part, common borders or related regional issues.

### **4. State Agency Compliance – RCW 36.70A.103**

State agencies are required to comply with local comprehensive plans and development regulations which are adopted according to the Growth Management Act.

### **5. Transmittal of Comprehensive Plans and Development Regulations to the State – RCW 36.70A.106**

Every city which proposes adoption of a comprehensive plan or development regulations under Ch. 36.70A RCW is required to notify the Department of Community, Trade and Economic Development (CTED) of its intent to adopt such plan or regulations at least 60 days prior to final adoption. State agencies including the CTED may provide comments to the city on the proposed comprehensive plan, or proposed development regulations, during the public review process prior to adoption.

Every city planning under Ch. 36.70A RCW is required to transmit a complete and accurate copy of its comprehensive plan or development regulations to CTED within ten days after final adoption.

Any amendments for permanent changes to a comprehensive plan or development regulation that are proposed by a city to its adopted plan or regulations must be submitted to CTED in the same manner as initial plans and development regulations.

### **6. Urban Growth Areas – RCW 36.70A.110**

Counties that are required to plan under the Growth Management Act are to designate urban growth areas and any cities located within those counties must be included within an urban growth area. An urban growth area may include territory located outside of a city only if the territory already is characterized by urban growth. Counties must attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If an agreement is not reached, the county must justify in writing why it designated the area as an urban growth area. A city may formally object to CTED about the designation of the county's urban growth area within which it is located, and CTED will attempt to resolve the conflicts.

Generally, cities are expected to provide urban governmental services, but are not to extend or expand into rural areas except in the limited circumstances outlined in the statute.<sup>243</sup>

Code cities located in counties in which urban growth areas have been designated may not annex territory beyond an urban growth area.<sup>244</sup>

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<sup>243</sup> RCW 36.70A.110(4).

<sup>244</sup> RCW 35A.14.005.

## **7. Planning Activities and Capital Budget Decisions are to be Implemented in Accordance with the Comprehensive Plan – RCW 36.70A.120**

Cities must perform their activities and make capital budget decisions in conformity with their comprehensive plans.

## **8. Amendments to Comprehensive Plans – RCW 36.70A.130**

Comprehensive land use plans and development regulations are intended to be subject to ongoing evaluation and review by the city. Amendments or revisions must conform to the requirements of Ch. 36.70A RCW, and any changes to development regulations are to be consistent with and implement the comprehensive plan.

Cities must establish and broadly disseminate to the public a public participation program identifying procedures under which proposed amendments or revisions to the comprehensive plan will be considered by the city, no more frequently than once every year with the following exceptions:

- the initial adoption of a subarea plan;
- the adoption or amendment of a shoreline master program under the procedures in Ch. 90.58 RCW; and
- the amendment of the capital facilities element of the comprehensive plan that occurs concurrently with the adoption or amendment of the city budget.

Proposals are to be considered concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation, a city may adopt amendments or revisions to its comprehensive plan that conform with Ch. 36.70A RCW whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court.

At least every ten years, when counties review their designated urban growth areas and the densities permitted within both the incorporated and unincorporated portions of each urban growth area, each city located within an urban growth area must review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, must be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period.<sup>245</sup>

## **9. Requirements for Public Participation**

Every city that plans under Ch. 36.70A RCW is required to establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations

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<sup>245</sup>RCW 36.70A.130(3).

implementing such plans. The procedures for implementing the program are set forth in RCW 36.70A.140.

#### **10. Identification of Lands Useful for Public Purposes – RCW 36.70A.150**

Cities are required to identify lands useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses. Counties and cities are to work together with the state to identify areas of shared need for public facilities, and jurisdictions within counties are to prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed.

The respective capital acquisition budgets for each jurisdiction must reflect the jointly agreed upon priorities and time schedules.

#### **11. Identification of Open Space Corridors – RCW 36.70A.160**

Cities are required to identify open space corridors within and between urban growth areas. These are to include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor does not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands and requirements for acquisition are set forth in RCW 36.70A.160.

#### **12. Designation of Natural Resource Lands and Critical Areas – RCW 36.70A.170**

Each city must designate:

- a. Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;
- b. Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;
- c. Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and
- d. Critical areas.

In making these required designations, cities are to consider the guidelines established pursuant to RCW 36.70A.050.

#### **13. Siting of Essential Public Facilities – RCW 36.70A.200**

The comprehensive plan of a city planning under the GMA is to include a process for identifying and siting essential public facilities. These include facilities which are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities.

## D. The Board of Adjustment

Under RCW 35A.63.110, a code city which has created a planning agency and has 2,500 inhabitants or more *must* create, by ordinance, a board of adjustment. A code city which has created a planning agency and has a population of less than 2,500 inhabitants *may* similarly create a board of adjustment. In those cities where no board of adjustment has been created, the city legislative body hears and decides items listed in subsections 1 through 3, below.

No member of the board of adjustment may be a member of the planning agency or the city legislative body. Subject to conditions, safeguards, and procedures provided by ordinance, the board of adjustment may be empowered to hear and decide:

1. **Appeals from orders, recommendations, permits, decisions, or determinations made by a code city official in the administration or enforcement of the planning and zoning provisions of the code, or any ordinances adopted pursuant to such provisions;**
2. **Applications for variances from the terms of the zoning ordinance, the official map ordinance, or other land use regulatory ordinances under procedures and conditions prescribed by city ordinance which, among other things, must provide that no application for a variance may be granted unless the board of adjustment finds:**
  - a. The variance does not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located;
  - b. The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and
  - c. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.
3. **Applications for conditional-use permits, unless such applications are to be heard and decided by the planning agency. A conditional use means a use listed among those classified in any given zone, but permitted to locate only after review as provided in the code in accordance with standards and criteria set out in the zoning ordinance; and**
4. **Such other quasi-judicial and administrative determinations as may be delegated by ordinance.**

In deciding any of the matters referred above, the board of adjustment must issue a written report giving the reasons for its decisions.

Although RCW 35A.63.110 sets out a process for appeal of board of adjustment decisions, it conflicts with the 1995 Land Use Petition Act (LUPA), in which the

legislature created a new, uniform process for review of all land use decisions. This process, which is codified in Ch. 36.70C RCW, not only replaces the writ of review process, but is intended to be the “exclusive means of judicial review” for legal challenges to land use decisions. RCW 36.70C.020(1) defines a land use decision to include applications for all project permits or other approvals required by law before real property may be improved, developed, modified, sold, transferred or used. Appeals must be filed within 21 days of the date the decision was issued, and the procedure outlined in RCW 36.70C.040 must be carefully followed.

As is discussed later, if, pursuant to RCW 35A.63.170, the council of a code city vests a hearing examiner with authority to hear and decide variances, the provisions of RCW 35A.63.110, which make it mandatory for a code city to provide for a board of adjustment, do not apply.

#### **E. Administration and Enforcement (RCW 35A.63.120)**

By ordinance, the city council may assign administrative and enforcement responsibilities (other than those set out in RCW 35A.63.110) to departments, boards, officials, employees, or agents.

#### **F. Provisions Inconsistent with Charters (RCW 35A.63.130)**

To the extent the provisions of an *existing charter* of a municipality are inconsistent with the code provisions, a code city may exercise the authority or any part thereof granted by the code notwithstanding the inconsistent provision of an *existing charter*.

#### **G. Duties and Responsibilities Imposed by Other Acts (RCW 35A.63.140)**

Any duties and responsibilities which by statutes other than the code provisions are imposed upon a planning commission (i.e., RCW 58.16.030) may be performed by the planning agency.

#### **H. Family Day-Care Provider's Home Facilities May Not Be Prohibited in Residential or Commercial Areas (RCW 35A.63.215)**

A code city may not prohibit the use of a residential dwelling, located in an area zoned for residential or commercial use, from being used as a family day-care provider's home facility. A city may require that the facility conform with all building, fire, safety, health code, and business licensing requirements; conform to lot size, building size, setbacks, and lot coverage standards; be certified by the state department of early learning as providing a safe passenger loading area; include signage that conforms to applicable regulations; and limit hours of operations to facilitate neighborhood compatibility. Cities may also require that written notice be given to adjoining property owners of the intent to locate and maintain such a facility.

#### **I. Moratoria, Interim Zoning Controls (RCW 35A.63.220)**

Code cities may adopt a moratorium or interim zoning ordinance by following the provisions outlined in RCW 35A.63.220. These require that a hearing be held and findings of fact be adopted that justify the action. Once adopted, the moratorium or interim zoning ordinance may be effective for not longer than six months, but may be effective for up to

one year if a work plan is developed. Renewals are allowed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

#### **J. Accessory Apartments (RCW 35A.63.230)**

Code cities that plan under Ch. 35A.63 RCW are required to comply with RCW 43.63A.215(3) regarding the development and placement of accessory apartments.

#### **K. Treatment of Residential Structures Occupied by Persons with Handicaps (RCW 35A.63.240)**

Cities may not treat a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. "Handicaps" are as defined in the federal Fair Housing Amendments Act of 1988.

#### **L. Construction**

RCW 35A.63.160 provides that the Optional Municipal Code provisions are intended to implement and preserve to code cities all powers authorized by Article XI, Section 11 of the state constitution. Code cities may exercise their constitutionally-granted power to plan for and to make and enforce within their limits all such local police, sanitary and other regulations in the manner provided by local charter or ordinances.

However, once any city has elected to plan and zone pursuant to the statutes governing that city, the city may be required to conform with these statutes.<sup>246</sup>

#### **M. The Hearing Examiner System (RCW 35A.63.170)**

##### **1. Creation, Designation of Powers and Duties**

As an alternative to the provisions of the Optional Municipal Code establishing the powers and duties of the planning commission [agency] to hear and report on any proposal to amend a zoning ordinance, the city's legislative body may adopt by ordinance a hearing examiner system. The legislative body prescribes the procedures to be followed by the hearing examiner.

A hearing examiner may hear and decide applications for amending the zoning ordinance (if the proposed amendment would not have "general applicability") and, if authorized, applications for conditional uses, variances or any other class of applications for or pertaining to land uses. If the hearing examiner is given the authority to hear and decide variances, the provisions of RCW 35A.63.110, relating to the board of adjustment, are no longer applicable.

##### **2. Legal Effect of Decisions – RCW 35A.63.170(2)**

A hearing examiner's decisions, depending upon the nature of the issue being decided and the powers and duties granted by the legislative body, may have one of two effects:

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<sup>246</sup>See *Lauterbach v. Centralia*, 49 Wn.2d 550, 304 P.2d 656 (1956).

- a. The decision may be given the effect of a recommendation to the legislative body; or
- b. The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body.

### 3. Decisions of Hearing Examiner – RCW 35A.63.170(3)

The hearing examiner's decisions must be in writing and must include findings and conclusions, based upon the record, to support the decision. The findings and conclusions are to set out the manner in which the decision follows and conforms to the city's comprehensive plan and development regulations. Each final decision, unless a longer period is mutually agreed upon, is to be rendered within ten working days following conclusion of all testimony and hearings.

## Chapter IX

# Municipal Courts

### I. Establishment of Court Systems

#### A. Independent Municipal Court (Ch. 3.50 RCW)

A code city with a population of less than 400,000 may operate an independent municipal court under Ch. 3.50 RCW.<sup>247</sup> Under this type of system, a city has total control over the operation of its court,<sup>248</sup> is responsible for paying the operating costs of the court, and receives the appropriate fine revenues.

#### B. Municipal Department as Part of a County District Court (Ch. 3.46 RCW)

Under Ch. 3.46 RCW, a code city with a population of less than 400,000 may continue to operate a court as a municipal department in the county district court in the county within which the city is located, if the department was in existence prior to July 1, 2008.<sup>249</sup> Although the city pays virtually all of the costs of operating the municipal department, this type of court is not an independent court like one established under Ch. 3.50 RCW.

#### C. Municipal Court Operated Pursuant to an Interlocal Agreement (Ch. 39.34 RCW)

A third municipal court alternative for a code city is to contract with another city which operates a municipal court, or with the county which operates the county district court. The authority for such contracts is found in the provisions of Ch. 39.34 RCW, the Interlocal Cooperation Act. Under an interlocal agreement, cities and towns are responsible for all costs involving misdemeanor and gross misdemeanor offenses for adults referred from law enforcement agencies in their jurisdiction.<sup>250</sup>

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<sup>247</sup>RCW 3.50.007. Note that cities with a population in excess of 400,000 operate their courts under Ch. 35.20 RCW. No other municipal court system is authorized.

<sup>248</sup>See AGO 1991, No. 13 at 3.

<sup>249</sup>RCW 3.50.007.

<sup>250</sup>RCW 39.34.180.

## II. Operation of an Independent Municipal Court under Ch. 3.50 RCW

A municipal court is governed by Ch. 3.50 RCW, which establishes the following procedures.

### A. Establishment of Court (RCW 3.50.060)

Any city or town that establishes a municipal court under this statute must do so by December 1st so that the court can begin operation on January 1st of the following year. The court must be established by ordinance.

### B. Selection of Judicial Officers

#### 1. Qualifications<sup>251</sup>

A municipal judge must be a citizen of the United States and of the State of Washington and be admitted to practice law before the courts of record of this state. In cities with a population of less than 5,000,<sup>252</sup> a person other than an attorney may be appointed judge, if he or she has taken and passed a qualifying exam by January 1, 2003. A municipal court judge need not be a resident of the city in which the court is created, but must be a resident of the county in which the city is located.<sup>253</sup>

#### 2. Appointment or Election

Judicial positions and full-time equivalent municipal court judgeships must filled by election. RCW 3.50.055 eliminates the option cities once had to appoint municipal judges for any full-time equivalent position or for any additional judicial position that constitutes more than half of a full-time equivalent position.<sup>254</sup>

In appointing a person to fill a part-time municipal court judgeship, the appointment by the mayor or chief administrative officer is subject to council confirmation if the council has been given the general power of confirmation over mayoral appointments.<sup>255</sup>

Before entering into the duties of office, a judge is required to take an oath set out by RCW 3.50.097.

The judicial term commences on January 1, 1986, and on January 1st of every fourth year thereafter.<sup>256</sup>

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<sup>251</sup>RCW 3.50.040.

<sup>252</sup>*Ibid.*

<sup>253</sup>RCW 3.50.057.

<sup>254</sup>As defined in RCW 3.50.055, a full-time equivalent judicial position is 35 or more hours per week of compensated time.

<sup>255</sup>RCW 3.50.040.

<sup>256</sup>*Ibid.*

### 3. Salary and Other Expenses<sup>257</sup>

The salary of a municipal judge is fixed by ordinance. The judge's salary, salaries of court employees and the cost of all dockets, forms, books of record, furnishings, and a suitable place for holding court are paid entirely out of city funds.

### 4. Judges Pro Tempore

The presiding municipal court judge may appoint a judge pro tempore to act in the event of the absence or disability of the regular judge. The qualifications of a judge pro tempore must be the same as for judges as provided under RCW 3.50.040 except that a judge pro tempore is not required to be a resident of the city or county in which the municipal court is located. Judges pro tempore have all of the powers of an appointed or elected judge. Before entering on his or her duties, each judge pro tempore must take, subscribe, and file an oath as is taken by a duly appointed or elected judge. Such pro tempore judges receive such compensation as fixed by ordinance. RCW 3.50.090.

### 5. Court Vacancies

Vacancies due to death, disability, or resignation of a municipal court judge are filled by the mayor for the remainder of the unexpired term. See RCW 3.50.093.

### 6. Removal from Office

A municipal court judge may be removed from office only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering the judge incapable of performing the duties of the office. See RCW 3.50.095.

## C. Jurisdiction of Court<sup>258</sup>

A municipal court has *exclusive* original jurisdiction over traffic infractions and criminal violations arising under city ordinances. It also has original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures prescribed by city ordinance or state statute. A court may forfeit cash bail or bail bonds and hear and determine all causes, civil and criminal, arising under city ordinance. A person convicted of violating a criminal provision may be punished by a fine not to exceed \$5,000 or by a jail term not to exceed one year, or by both a fine and jail term.<sup>259</sup> Upon conviction, the court has jurisdiction to place a defendant on probation, or suspend or defer his or her sentence. See RCW 3.50.320-.340.

## D. Right to Jury Trial<sup>260</sup>

Jury trials are allowed in all criminal cases, unless waived by the defendant, but are not

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<sup>257</sup>RCW 3.50.080.

<sup>258</sup>RCW 3.50.020.

<sup>259</sup>RCW 3.50.440.

<sup>260</sup>RCW 3.50.135.

available for traffic infractions. In a *civil* action, either the plaintiff or the defendant may demand a jury.

### E. Pleadings, Practice and Procedure

Generally, the pleadings, practice and procedures for municipal courts are set out in RCW 3.50.135 through 3.50.440. Cases not governed by statutes or rules specifically applicable to municipal court are governed "insofar as applicable" by the statutes and rules applicable to district courts.<sup>261</sup>

### F. Termination of Court Services or Repeal of Criminal Ordinances

Cities are no longer able to terminate their municipal courts or repeal their criminal codes without first entering into an agreement for payment of criminal justice costs with the county in which they are located. Cities must agree to pay for the increased costs associated with the county's assumption of cases previously handled by a city. This also applies to termination of a municipal court by a city that has entered into agreements with other cities that have terminated their municipal courts.<sup>262</sup>

### G. Waiting Period for Establishing a New Municipal Court

Any city that terminates a municipal court established under Ch.3.50 RCW may not establish a new court under Ch. 3.50 RCW until at least 10 years have elapsed from the date of termination.<sup>263</sup>

### H. Dispute Resolution Centers

Cities are authorized to create "dispute resolution centers," allowing persons a forum in which they can resolve disputes in an informal setting.<sup>264</sup>

## III. Operation of a Municipal Department under Ch. 3.46 RCW

As an alternative to creating an independent municipal court under Ch.3.50 RCW, any class of city may *continue to operate* a municipal department as part of a county district court under the procedures outlined in Ch. 3.46 RCW, if it was operating a municipal department prior to July 1, 2008. These municipal departments hear cases arising under city ordinances, but they are a part of the larger district court system established in each county.<sup>265</sup> Such municipal departments operate according to the statutes in existence before the adoption of chapter 227, Laws of 2008.

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<sup>261</sup>RCW 3.50.450.

<sup>262</sup>RCW 39.34.180, RCW 3.50.800-.805 and RCW 35A.11.200; see also *Whatcom County v. Bellingham*, 128 Wn.2d 537 (1996), in which the court stated that a "repeal in its entirety" of a city criminal code could reasonably be interpreted to mean a deliberate shift of criminal justice costs to the county.

<sup>263</sup>RCW 3.50.810.

<sup>264</sup>Ch. 7.75 RCW.

<sup>265</sup>RCW 3.46.030; AGO 1991, No. 13 at 2.

## Chapter X

# Elections in Code Cities

Elections in code cities are governed, for the most part, by the provisions of Title 29A RCW and Ch. 35A.29 RCW.

### I. Election of Officers

#### A. Registrar and Supervisor of Elections

The county auditor is the “chief registrar” and “supervisor of primaries and elections” for every precinct in the county, including those located in cities and towns. The auditor appoints city or town clerks as assistants in registering city and town residents.<sup>266</sup>

### II. Preparation for Elections

#### A. Times for Elections

##### 1. General Elections

City (general) elections for the selection of officers or for the approval or rejection of any measure are to be held on the first Tuesday after the first Monday in November in odd-numbered years, subject to several exceptions.<sup>267</sup> The only exception of significance to cities is the recall of officers; a recall election can be held as a special election.<sup>268</sup>

##### 2. Special Elections

The city council may, by resolution, request that the county auditor conduct a special election to be held on any of the following days: (a) second Tuesday in February in odd-numbered years; (b) fourth Tuesday in April; (c) third Tuesday in May for tax levies

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<sup>266</sup>RCW 29A.04.025 and RCW 29A.08.105.

<sup>267</sup>RCW 29A.04.321 and 29A.04.330.

<sup>268</sup>RCW 29A.56.210 and 29A.04.330.

that failed previously in that calendar year and new bond issues; (d) the day of the primary election (see RCW 29A.04.311); or (e) at the general election, the first Tuesday after the first Monday in November.<sup>269</sup>

## **B. Payment of the Costs of an Election (RCW 29A.04.410)**

Cities bear the entire cost of an election called by the city council "on an isolated date" and must bear a proportionate share of the cost of any election held in conjunction with other elections.

## **C. Declaration of Candidacy**

Declarations of candidacy for officers to be voted upon at a municipal general election are to be filed no earlier than the first Monday in June and no later than the following Friday in the year in which the office is scheduled to be voted upon.<sup>270</sup> The declarations must be in a form adopted by the secretary of state consistent with RCW 29A.24.031 and are to be filed with the county auditor.<sup>271</sup>

The first election of officers following reorganization as a noncharter code city is to be held in accordance with the provisions of RCW 35A.02.05 - .055.

## **D. Ballot Title**

Ballot titles, on a proposition to be submitted to the voters, are prepared by the city attorney.<sup>272</sup>

RCW 29A.36.071 requires the ballot title to be a concise statement, posed as a question, setting out the essential features of the issue and not exceeding 75 words. Any person who has filed any local question and who is dissatisfied with the ballot title prepared by the city attorney may appeal the wording within ten days from the filing of the ballot title to the superior court of the county in which the question is to appear on the ballot.<sup>273</sup>

## **E. Notice of Election (RCW 29A.52.351)**

Notice of a municipal election held in a code city must be given by the county auditor or other officer conducting the election in at least one newspaper publication, not more than ten nor less than three days prior to the election. The notice must contain the title of each office to be filled, the names and addresses of each candidate in alphabetical order without party designation, along with the ballot titles to be voted upon, the day and hours during which polls will be open, and the addresses of each polling place and each precinct.

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<sup>269</sup>RCW 29A.04.330.

<sup>270</sup>RCW 29A.24.050.

<sup>271</sup>RCW 29A.24.070.

<sup>272</sup>RCW 35A.29.120 and RCW 29A.36.071.

<sup>273</sup>RCW 35A.29.130 and 29A.36.090

The notice of election for any city seeking to become a noncharter code city is to be governed by Ch. 35A.02 RCW.

### **III. Conduct of Election**

#### **A. Elections Are to Be Nonpartisan**

All code city primaries and elections are nonpartisan regardless of the form of government of the code city.<sup>274</sup>

#### **B. Election by Wards**

At any time (except within three months prior to a municipal general election), the city council of a noncharter code city may divide the city into wards (or change the boundaries of existing wards) as provided in Ch. 29A.76 RCW. Representation of each ward on the city council is to be in proportion to the ward's population, as nearly as is practicable. That is, if there are five council positions and the city is divided into five wards, each ward should be defined to include approximately one-fifth of the city's entire population. If a city is divided into wards, candidates are only eligible for office if they reside in the ward for which they are elected.<sup>275</sup>

#### **C. Assumption of Office**

Unless otherwise provided, the terms of persons elected to office are to begin immediately after December 31st, following the election. The oath of office may be taken up to ten days prior to the scheduled date of assuming office or at the last regular meeting of the council held before the winner is to assume office.<sup>276</sup>

Persons elected to less than a full term are to assume office as soon as the election returns have been certified. They become qualified according to the terms of RCW 29A.04.133 (results certified, certificate issued, bond posted, and oath or affirmation taken), unless otherwise provided.<sup>277</sup> The oath or affirmation is filed with the county auditor.<sup>278</sup>

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<sup>274</sup>RCW 29A.52.210 and 29A.52.231.

<sup>275</sup>RCW 35A.12.180 and 35A.13.220.

<sup>276</sup>RCW 29A.20.030 and 29A.20.040.

<sup>277</sup>RCW 29A.20.030.

<sup>278</sup>RCW 35A.12.080 and 35A.13.160.

# **Appendices**

# Petition for Election

to

The City of \_\_\_\_\_, Washington

TO: The City Legislative Body of the City of \_\_\_\_\_:

We, the undersigned, being qualified electors of the City of \_\_\_\_\_, do hereby petition that the City adopt the classification of noncharter code city pursuant to Section 35A.02.060 and that it (a) retain the plan of government under which it is presently organized;<sup>1</sup> to wit, the \_\_\_\_\_ plan; (b) retain the same general plan of government under which it is presently organized: to wit, the \_\_\_\_\_ plan; or (c) reorganize the plan of government under which it operates from that of \_\_\_\_\_ to that of \_\_\_\_\_.

This petition specifically prays:

1. That the city clerk file with the legislative body of the city a certificate of sufficiency of this petition as determined by Section 35A.01.040 RCW.
2. That the city legislative body submit the proposal to reclassify the city as a noncharter code city to be organized under the \_\_\_\_\_ plan of government at the next general municipal election or at a special election, if a general municipal election is not held within one hundred eighty (180) days of the date of certification of the sufficiency of this petition.
3. That the city attorney prepare a ballot title as provided by RCW 35A.29.120.
4. That a notice of this election be published at least once a week for two weeks prior to the date of election in one or more newspapers of general circulation within this city, as is required by RCW 35A.02.100.

This page is one of a number of identical pages forming one petition seeking adoption of the classification of noncharter code city for the City of \_\_\_\_\_, Washington and organization of its form of government under the \_\_\_\_\_ plan, as above stated, and may be filed with other pages containing additional signatures.

The undersigned have read the above text and prayer and consent to the filing of other pages thereof to be considered as a part of this petition.

Date \_\_\_\_\_ Signature \_\_\_\_\_ Address \_\_\_\_\_

## WARNING

Every person who signs this petition with any other than his true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he is not a legal voter, or signs a petition when he is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

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<sup>1</sup>Certain problems and confusion may arise if a municipality reclassifies as a code city and retains its Title 35 RCW form of government. See discussion set out in Chapter 2, Section II.B.3 of this handbook.

# Resolution No. \_\_\_\_\_

A RESOLUTION declaring the intention of the City (or Town) Council to adopt for the City of \_\_\_\_\_ the classification of noncharter code city, to be governed by the provisions of Title 35A, Revised Code of Washington.

WHEREAS, a majority of the City Council of the City of \_\_\_\_\_ has determined that it would serve the best interests and general welfare of the City to change the classification of the City to that of noncharter code city pursuant to the provisions of RCW 35A.02.030; NOW, Therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_ AS FOLLOWS:

Section 1. The City Council does hereby declare its intention to adopt for the City of \_\_\_\_\_ the classification of "noncharter code city."

Section 2. That it is the intention of the City Council ((a) to retain the plan of government under which it is presently organized, to wit: the \_\_\_\_\_ plan; (b) to retain the same general plan of government under which it is currently organized, to wit: \_\_\_\_\_, but to be governed by \_\_\_\_\_ [Ch. 35A.12 RCW (Mayor-Council) or Ch. 35A.13 RCW (Council-Manager)] of the Optional Municipal Code; or (c) to reorganize the plan of government under which it operates from the \_\_\_\_\_ plan to that of \_\_\_\_\_).

Section 3. That the city clerk is hereby authorized and directed to publish this resolution at least once within ten days of the resolution's passage.

Section 4. That if no timely and sufficient referendum petition has been filed, as is provided for in Section 35A.02.035 RCW, within ninety (90) days of the first publication of this resolution, excluding the date of first publication, the City Council shall by ordinance adopt for the City of \_\_\_\_\_ the classification of "noncharter code city" under the \_\_\_\_\_ plan of government.

PASSED by majority vote of the members of the City Council this \_\_ day of \_\_\_\_\_, 19\_\_, and signed in authentication of its passage this \_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

# Ordinance No. \_\_\_\_\_

AN ORDINANCE adopting for the City (or Town) of \_\_\_\_\_, the classification of noncharter code city pursuant to the Optional Municipal Code of the State of Washington, Ch. 35A.02 RCW.

WHEREAS, the City Council by Resolution No. \_\_ passed \_\_\_\_\_, 19 \_\_, declared its intention to adopt for the City of \_\_\_\_\_ the classification of noncharter code city ((a) retaining the \_\_\_\_\_ plan of government under which it is now operating; or (b) reorganizing its plan of government to be that of \_\_\_\_\_; and

WHEREAS, said resolution was duly published in \_\_\_\_\_, a newspaper of general circulation within the City of \_\_\_\_\_, on \_\_, 19 \_\_, and

WHEREAS, A period not less than ninety (90) days from the date of said resolution's publication, excluding the date of the first publication, has elapsed and no timely and sufficient referendum petition has been filed, pursuant to Section 35A.02.035 RCW; and

WHEREAS, the City Council now desires to effect the intent expressed in said Resolution No. \_\_\_\_\_ by enacting an ordinance adopting for the City the classification of noncharter code city in the manner hereinafter provided; NOW, Therefore,

THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_ DO ORDAIN AS FOLLOWS:

Section 1. There is hereby adopted for the City of \_\_\_\_\_, Washington, the classification of noncharter code city (a) retaining the \_\_\_\_\_ plan of government under which the City of \_\_\_\_\_ is currently operating; (b) retaining the same general plan of government under which the City of \_\_\_\_\_ is currently organized but governed according to \_\_\_\_\_ [Ch. 35A.12 RCW (Mayor-Council) or Ch. 35A.13 RCW (Council-Manager)] of the Optional Municipal Code; or (c) reorganizing the plan of government under which it will operate to be that of \_\_\_\_\_, pursuant to Ch. 35A. \_\_ RCW).

Section 2. That the city clerk is hereby authorized and directed to forward to the secretary of state a certified copy of this ordinance for filing pursuant to Section 35A.02.040 RCW.

Section 3. This ordinance shall take effect five (5) days from and after its passage, approval, and publication as provided by law.

PASSED the City Council this \_\_ day of \_\_\_\_\_, 19 \_\_, and signed by me in open session in authentication of its passage this \_\_ day of \_\_\_\_\_, 19 \_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

# Voter Requirements

The Washington State Constitution, Article VI, Section 1, as last amended by Amendment 63, provides in part that to qualify as an elector<sup>1</sup> entitled to vote at all elections in the State of Washington, a person must:

1. Be a citizen of the United States;
2. Be 18 years of age or older; and
3. Have been a resident<sup>2</sup> in the state, county, and precinct at least 30 days immediately preceding the election.<sup>3</sup>

In the general election of 1974 the voters approved SJR 143, (Amendment 63 to the Washington State Constitution), which amended the Washington State Constitution to bring voter requirements into agreement with the 26th Amendment to the United States Constitution and with U.S. Congressional actions concerning voting. The 26th Amendment provides that those persons 18 years of age and older will not be denied the right to vote, or have that right abridged, on account of age. In the Voting Rights Act of 1965 (42 U.S.C. Sec. 1971(a)), Congress effectively prohibited the use of literacy tests to determine voter eligibility and this action was affirmed in *South Carolina v. Katzenback*, 383 U.S. 301 (1966), and in *Oregon v. Mitchell*, 400 U.S. 112 (1970). Therefore, the Washington constitutional provision requiring that voters be able to read and speak the English language was removed.

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<sup>1</sup>A distinction was drawn in an Attorney General's Letter Opinion, AGLO 1974 No. 55, dated May 10, 1974, between a qualified elector and a qualified voter. A qualified elector need not be registered to vote whereas a qualified voter must be actually registered.

<sup>2</sup>RCW 29.01.140 provides as follows:

'Residence' for the purpose of registering and voting means a person's permanent address where he physically resides and maintains his abode; *Provided*, That no person gains residence by reason of his presence or loses his residence by reason of his absence:

- (1) While employed in the civil or military service of the state or of the United States,
- (2) While engaged in the navigation of the waters of this state or of the United States or the high seas;
- (3) While a student at any institution of learning; and
- (4) While confined in any public prison.

Absence from the state on business shall not affect the question of residence of any person unless the right to vote has been claimed or exercised elsewhere.

<sup>3</sup>The one year and 90-day durational residence requirements that were specified in Article VI, Section 1, as amended by Amendment 5 of the Washington State Constitution have been held to violate the equal protection clause of the Fourteenth Amendment of the United States Constitution, citing *Dunn v. Blumstein*, 405 U.S. 330, 31 L. Ed.2d 274, 92 S. Ct. 995 (1972), and *Moen v. Erlandson*, 80 Wn.2d 755, 757, 498 P.2d 849 (1972). In this case the court observed that durational residence voting requirements of more than 30 days cannot be constitutionally sustained unless it can be clearly demonstrated that they are required by a compelling state interest. See also *Marston v. Lewis*, 410 U.S. 679, 35 L. Ed.2d 627, 93 S. Ct. 1211 (1973), and *Burns v. Fortson*, 410 U.S. 686, 35 L. Ed.2d 633, 93 S. Ct. 1209 (1973).

# Sample Resolution Establishing Rules of Conduct for Council Meetings

## Resolution No. \_\_\_\_\_

A RESOLUTION to establish rules of conduct for Council Meetings.<sup>1</sup>

WHEREAS a predetermined order of procedure for city council meetings will be the most expedient means of conducting council meetings, and

WHEREAS such order of procedure will avoid confusion and aid in the expeditious handling of business,

THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_ DOES RESOLVE AS FOLLOWS:

Section 1. The order of procedure herein contained shall govern deliberations and meetings of the Council of the City of \_\_\_\_\_, Washington.

Section 2. Regular meetings of the Council shall be held as provided for by ordinance.

Section 3. Special meetings may be called at any time by the Council on notice to each member twenty-four (24) hours before the time specified for the proposed meeting. *Provided, however,* that no ordinance shall be passed, or contract let or entered into, or bill for the payment of money allowed, at any special meeting.

Section 4. At all meetings of the Council, a majority of the councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.<sup>2</sup>

Section 5. All meetings of the Council shall be presided over by the mayor, or, in his or her absence, by the mayor pro tempore. If the clerk is absent from a council meeting, the mayor or mayor pro tempore shall appoint one of the members of the Council as clerk pro tempore. The appointment of a councilmember as mayor pro tempore or as a clerk pro tempore shall not in any way abridge his or her right to vote upon all questions coming before the Council.<sup>3</sup>

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<sup>1</sup>For Commission code cities, substitute "Commission" for "Council" wherever appropriate.

<sup>2</sup>In Commission code cities, Section 4 should be worded to conform with RCW 35.17.180 as follows: "At all meetings of the Commission, two members shall constitute a quorum for the transaction of business, and the affirmative vote of at least two members shall be necessary to adopt any motion, resolution, ordinance, or course of action."

<sup>3</sup>In Commission code cities, Section 5 should be worded to conform with the Commission Enabling Act as follows: "All meetings of the Commission shall be presided over by the Mayor, or, in his or her absence, by the Commissioner of Finance and Accounting." A city clerk shall be appointed by a majority vote of the Commission.

Section 6. The order of business shall be as follows:

1. Call to order.
2. Roll call.
3. Reading and approval of the minutes of the previous meeting.
4. Hearings on petitions, applications, complaints, appeals, communications, etc.
5. Considerations of bids, L.I.D.'s, and related matters.
6. Reports of standing committees.
7. Reports of special committees.
8. Reports of city officers.
9. Auditing of accounts.
10. Resolutions, ordinances, orders, and other business.
11. Adjournment.

Section 7. No member shall speak more than twice on the same subject without permission of the presiding officer.

Section 8. No person, not a member of the Council, shall be allowed to address the same while in session without the permission of the presiding officer.

Section 9. Every officer, whose duty it is to report at the regular meetings of the Council, shall, in default thereof, be fined at the discretion of the Council.

Section 10. Motions shall be reduced to writing when required by the presiding officer of the Council or any member of the Council. All resolutions and ordinances shall be in writing.

Section 11. Motions to reconsider must be by a member who voted with the majority, and at the same or next succeeding meeting of the Council.

Section 12. The clerk shall keep a correct journal of all proceedings and at the desire of any member the ayes and nays shall be taken on any question and entered in the journal.<sup>4</sup>

Section 13. All questions of order shall be decided by the presiding officer of the Council with the right of appeal to the Council by any member.

Section 14. The presiding officer of the Council may, at his or her discretion, call any member to take the chair, to allow him or her to address the Council, make a motion, or discuss any other matter at issue.

Section 15. Motions to lay any matter on the table shall be first in order; and on all questions, the last amendment, the most distant day, and the largest sum shall be put first.

Section 16. Each member present must vote on all questions put to the Council, except as to matters with respect to which such councilmember has a disqualifying interest.

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<sup>4</sup>In Commission code cities, in order to conform with RCW 35.17.180, Section 12 should be worded as follows: "The clerk shall keep a correct journal of all proceedings and the ayes and nays taken on all questions shall be entered in the journal."

Section 17. All regular meetings of the Council shall be public and no ordinance, resolution, rule, regulation, order, or directive shall be adopted except in a regular meeting open to the public, the date of which is fixed by law or rule; but executive sessions, from which the public is excluded, may be held for purposes other than the final adoption of an ordinance, resolution, rule, regulation, order, or directive.

Section 18. A motion for adjournment shall always be in order.

Section 19. The rules of the Council may be altered, amended, or temporarily suspended by a vote of two-thirds of the members present.

Section 20. The chair of each respective committee, or the councilmember acting for the chair, shall submit or make all reports to the Council when so requested by the presiding officer or any member of the Council.

Section 21. The clerk, engineer, attorney, and chief of police, and such other officers or employees of the City of \_\_\_\_\_ shall, when requested, attend all meetings of the Council and shall remain in the council room for such length of time as the Council may direct.<sup>5</sup>

Section 22. It shall be the duty of the presiding officer of the council meeting to:

1. Call the meeting to order.
2. Keep the meeting to its order of business.
3. State each motion and require a second to that motion before permitting discussion.
4. Handle discussion in an orderly way:
  - a. Give every councilmember who wishes an opportunity to speak.
  - b. Permit audience participation at appropriate times.
  - c. Keep all speakers to the rules and to the questions.
  - d. Give pro and con speakers alternating opportunities to speak.
5. Put motions to a vote and announce the outcome.
6. Suggest but not make motions for adjournment.
7. Appoint committees when authorized to do so.

Section 23. *Roberts Rules of Order, Newly Revised*, shall govern the deliberations of the Council except when in conflict with any of the foregoing rules.

This resolution adopted this \_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

<sup>5</sup>In council-manager cities, Section 21 should read, "The city-manager, attorney, and such other officers or employees. . . ."