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MODEL CHARTER FOR OREGON COUNTIES

BUREAU OF GOVERNMENTAL RESEARCH AND SERVICE
University of Oregon

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FOREWORD

This model county charter is offered as a point of departure for Oregon county charter committees and other persons undertaking to draft county charters or amendments to be submitted to county voters. It will be useful only if its provisions are carefully reviewed and adapted to the particular needs and preferences of individual counties. It is not a "model" in the sense of a blueprint to be followed literally. Rather its provisions are intended to provide a check list of points to be considered and a set of suggestions as to ways in which local charter drafters' objectives might be expressed effectively and without undue verbosity or ambiguity.

Research and drafting for this model charter was the primary responsibility of Orval Etter, Associate Professor of Public Affairs in the School of Community Service and Public Affairs and Legal Consultant in the Bureau of Governmental Research and Service, University of Oregon. Several Oregon officials reviewed and commented on sections of the charter, and their cooperation is acknowledged with appreciation.

Respectfully submitted,

Kenneth C. Tollenaar,
Director

Table 1

STATUS OF COUNTY HOME RULE IN OREGON
As of November 1990

County	Ever Had a Charter Committee	Ever Had a Charter Election	Election Results[1] First	Second	Third	Date of Approval	Repeal Elections	Current Status
Baker	No	No	–	–	–	–	–	Inactive
Benton	Yes	Yes	F	P	–	11/72	No	Operating under charter
Clackamas	Yes	No[2]	–	–	–	–	–	Inactive
Clatsop	Yes	Yes	F	F	P	5/88	Yes (F)	Operating under charter
Columbia	Yes	Yes	F	–	–	–	–	Inactive
Coos	Yes	No[3]	–	–	–	–	–	Inactive
Crook	Yes	Yes	F	–	–	–	–	Inactive
Curry	Yes	No[3]	–	–	–	–	–	Inactive
Deschutes	Yes	Yes	F	F	F	–	–	Inactive
Douglas	No	Yes[4]	F	F	F	–	–	Inactive
Gilliam	No	No	–	–	–	–	–	Inactive
Grant	No	No	–	–	–	–	–	Inactive
Harney	No	No	–	–	–	–	–	Inactive
Hood River	Yes	Yes	F	P	–	5/64	No	Operating under charter
Jackson	Yes	Yes	F	F	P	11/78	No	Operating under charter
Jefferson	No	No	–	–	–	–	–	Inactive
Josephine	Yes	Yes	P	–	–	11/80	Yes (F)	Operating under charter
Klamath	No	No	–	–	–	–	–	Inactive
Lake	No	No	–	–	–	–	–	Inactive
Lane	Yes	Yes	P	–	–	5/62	Yes (F)	Operating under charter
Lincoln	Yes	Yes	F	F	–	–	–	Inactive
Linn	Yes	Yes	F	–	–	–	–	Inactive
Malheur	No	No	–	–	–	–	–	Inactive
Marion	Yes	Yes	F	F	F	–	–	Inactive
Morrow	No	No	–	–	–	–	–	Inactive
Multnomah	Yes	Yes	P	–	–	5/66	Yes (F)	Operating under charter
Polk	Yes	No[3]	–	–	–	–	–	Inactive
Sherman	Yes	Yes	F	–	–	–	–	Inactive
Tillamook	Yes	Yes	F	F	–	–	–	Inactive
Umatilla	Yes	Yes	F	F	–	–	–	Inactive
Union	Yes	Yes	F	–	–	–	–	Inactive
Wallowa	No	No	–	–	–	–	–	Inactive
Wasco	Yes	Yes	F	–	–	–	–	Inactive
Washington	Yes	Yes	P	–	–	11/62	Yes (F)	Operating under charter
Wheeler	Yes	No[3]	–	–	–	–	–	Inactive
Yamhill	Yes	Yes	F	–	–	–	–	Inactive

[1]F = Failed; P = Passed.
[2]First and second charter committees disbanded before submitting charter.
[3]Charter committee disbanded before submitting charter.
[4]Charter submitted by initiative petition; no charter committee.

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INTRODUCTION

Background of Oregon County Home Rule

Origin of County Home Rule

Although the movement for county home rule in Oregon has a long history,[1] the constitutional amendment which provides for county home rule charters was not enacted until 1958. The amendment had been submitted to the voters by the 1957 Oregon legislature upon recommendation of the 1955-57 Interim Committee on Local Government. The following excerpt from a staff document used by the Committee reflects the reasoning upon which the proposal was based:

> The problem of county government has assumed increased significance in recent years because of the rapid expansion of urban areas beyond corporate limits, bringing with it needs and demands for new services. This problem has two important aspects. First, counties are slow to respond to changing conditions because they must rely on specific statutory authority for each new program or activity. Although the legislature has been sympathetic to county problems, seeking new authorization is a cumbersome and time-consuming process which sometimes bogs down with sectional, rural/urban, and other differences. Second, no central direction or coordination of county government is possible due to the independence of the various elected county officials. The county "governing body" has little control over the assessor, clerk, sheriff, and other county officials. Even the legislature is powerless to act since many of these positions are established as elective offices in the state constitution.[2]

Provisions of the Home Rule Amendment

The 1958 amendment addressed these concerns by allowing the voters of any county to adopt a county charter. Under the amendment, a charter can "provide for the exercise by the county of authority over matters of county concern," and is required to "prescribe the organization of the county government." County officers operating under a charter are required to "exercise all the powers and perform all the duties" imposed upon counties as agencies of the state, but by adopting a charter the

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1. See Orval Etter, "County Home Rule in Oregon," 46 Oregon Law Review, April 1967, pp. 252-8.

2. Oregon Legislative Interim Committee on Local Government, "Plan for County Home Rule," (mimeographed), Salem, 1956, p. 2.

the voters can transfer from the state legislature to local officials the power to act with respect to "matters of county concern."[1]

The terms of the county home rule amendment are broad and general, and they leave unanswered many questions about the scope of powers available to charter counties in Oregon. However, during the nearly 20 years since adoption of the amendment, there have been numerous legal rulings on specific questions. A significant interpretation came in 1971, when the Court of Appeals held that a county with a general grant of powers in its charter could regulate solid waste collection and disposal even though at the time its regulations were adopted there was no state enabling legislation authorizing it to do so.[2]

In the same case, the Court noted "that with reference to matters of local concern, the authority of a county under a home rule charter may be as broad as that of a city."[3]

By linking the interpretation of county home rule to that of city home rule, the Court opened the door for application of a substantial body of legal doctrine and precedent. For example, a leading city home rule case, State ex rel Heinig v. City of Milwaukie, 231 Or. 473 (1962), apparently is applicable to county home rule. This case, as modified and re-interpreted in several subsequent cases, established the principle that in the event of conflict between state and local legislation, the local legislation prevails if the subject matter of the enactment is a matter of predominantly local concern. The Heinig doctrine is currently under review by the Oregon Supreme Court, however, as a result of several recent legal challenges.[4]

Action Taken under the Amendment

Since adoption of the county home rule amendment, 22 of Oregon's 36 counties have appointed a charter committee at one time or another, and 18 counties have voted on a total of 26 proposed charters. This activity has resulted in charter adoptions in five counties--Lane, Washington, Hood River, Multnomah and Benton. No county has repealed its charter once adopted, although there have been three proposed charter repeal votes and most of the charter counties have approved amendments from time to time. A summary of county charter activity is presented in Table 1.

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1. The text of the 1958 county home rule amendment and the enabling legislation enacted in 1959 are reproduced in the Appendix.
2. Schmidt v. Masters, 7 Or. App. 421 (1971).
3. Id., at 428.
4. City of Hermiston v. ERB, 27 Or. App. 755 (1976); State ex rel Haley v. City of Troutdale, 28 Or. App. 93 (1977); and City of La Grande v. ERB, 28 Or. App. 9 (1977). Petitions for review allowed May 24, 1977, 278 Or. 393 (1977).

Table 1

STATUS OF COUNTY HOME RULE IN OREGON
as of July 1977

County	Ever had a Charter Committee	Ever had a Charter Election	Election* Results First	Election* Results Second	Date of Approval	Charter Repeal Elections	Current Status
Baker	No	No	--	--	--	--	Inactive
Benton	Yes	Yes	F	P	11/72	No	Operating under charter
Clackamas	Yes	No[1]	--	--	--	--	Inactive
Clatsop	Yes	Yes	F	--	--	--	Inactive
Columbia	Yes	Yes	F	--	--	--	Inactive
Coos	Yes	No[1]	--	--	--	--	Inactive
Crook	Yes	Yes	F	--	--	--	Inactive
Curry	No	No	--	--	--	--	Inactive
Deschutes	Yes	Yes	F	F	--	--	Inactive
Douglas	No	Yes[2]	F	F	--	--	Inactive
Gilliam	No	No	--	--	--	--	Inactive
Grant	No	No	--	--	--	--	Inactive
Harney	No	No	--	--	--	--	Inactive
Hood River	Yes	Yes	F	P	5/64	No	Operating under charter
Jackson	Yes	Yes	F	F	--	--	New committee active; possible vote in 1978
Jefferson	No	No	--	--	--	--	Inactive
Josephine	No	No	--	--	--	--	Inactive
Klamath	No	No	--	--	--	--	Inactive
Lake	No	No	--	--	--	--	Inactive
Lane	Yes	Yes	P	--	5/62	Yes (F)	Operating under charter
Lincoln	Yes	No	--	--	--	--	Committee currently active
Linn	Yes	Yes	F	--	--	--	Inactive
Malheur	No	No	--	--	--	--	Inactive
Marion	Yes	Yes	F	F	--	--	Inactive
Morrow	No	No	--	--	--	--	Inactive
Multnomah	Yes	Yes	P	--	5/66	Yes (F)	Operating under charter
Polk	Yes	No[1]	--	--	--	--	Inactive
Sherman	Yes	Yes	F	--	--	--	Inactive
Tillamook	Yes	Yes	F	F	--	--	Inactive
Umatilla	Yes	Yes	F	F	--	--	Inactive
Union	No	No	--	--	--	--	Inactive
Wallowa	No	No	--	--	--	--	Inactive
Wasco	Yes	Yes	F	--	--	--	Inactive
Washington	Yes	Yes	P	--	11/62	Yes (F)	Operating under charter
Wheeler	Yes	No[1]	--	--	--	--	Inactive
Yamhill	Yes	Yes	F	--	--	--	Inactive

* F = Failed; P = Passed

1. Charter committee disbanded before submitting charter.
2. Charter submitted by initiative petition; no charter committee.

Comments on the Model Charter

Basic Features

This model charter, like the Bureau's model charters for cities,[1] is based on the assumption that charters should be as brief and simple as possible, leaving maximum flexibility to elected public officials to act on the complex and ever-changing problems faced by local governments. A few basic procedures, such as the ordinance making procedure, are written into the charter, but most procedural matters would be handled by ordinance or resolution under this charter.

The model suggests alternative provisions for four different types of central administrative organization: board of commissioners as a plural executive (the system provided under general law), county administrative officer, county manager, and elected county executive. The "county administrative officer" provisions are written into the text of the model, but appropriate alternative sections are presented in the footnotes for each of the other forms. The model provides for the appointment of all county department heads and other administrative officials, as contrasted with the traditional county government practice of electing several administrative officials.

Finally, the model accepts home rule responsibility and authority in the broadest possible terms through the "general grant of powers" similar to that which has been written into four of the five Oregon county charters and most Oregon city charters adopted during the past 40 years. The general grant has been an effective means of establishing basic local government powers, as contrasted with the effort made in some charters to enumerate specifically each power the local government is permitted to exercise. The enumeration of powers leads to uncertainty in borderline cases and appears to invite litigation, as well as frequent amendments to the charter.

Comparison with ORS 203.030 to 203.065

The 1973 Oregon legislature enacted a statute, now codified as ORS 203.030 to 203.065, delegating legislative power to all counties in terms virtually identical to those of the general grant of powers. The statute provides a procedure for adopting county ordinances and requires a referendum on any measure imposing a tax or providing for a tax exemption. County ordinances adopted under the statutory authority which are "in exercise of the police power" do not apply inside cities unless the city consents, and the statute includes a special provision for the initiative and referendum to be exercised by voters of a county's unincorporated area only.

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1. Bureau of Municipal Research and Service, University of Oregon, Model Charter for Oregon Cities, (3rd rev.) 1967. The model charter for cities is published in two versions: one for the mayor-council form of government and one for the council-manager form.

Since the legislature extended this broad ordinance making authority to all counties, those interested in county home rule occasionally have asked whether there is any longer any advantage in adopting a charter. The following points can be made in response to this question.

1. The powers made available to counties under ORS 203.030 to 203.065 can be changed at any legislative session, without further action by the voters of the state or any county. Therefore, continuity of county home rule is more certain under a charter than under the statute.

2. Although the statute does not expressly prohibit county action to revise the organization structure, it was intended to extend only to the power to enact local legislation and not to county organizational matters. In any event, the statute could not empower a county to take action contrary to the state constitution, which requires election of certain county administrative officers. Counties exercising charter authority, on the other hand, may effect reorganizations involving these officers because the power to do so is derived from the county home rule constitutional amendment.[1]

3. Rules of statutory construction favoring specificity over generality might be applied so as to interpret the phrase, "matters of county concern" as it appears in ORS 203.035 more narrowly than the same phrase as it appears in Article VI, Section 10 of the state constitution. Such rules might be applied to require county conformity to a specific state statute even though the county had a conflicting ordinance enacted pursuant to the general authorization in ORS 203.035. Such an ordinance, if adopted under charter authority, could prevail over the statute under the Heinig doctrine cited above.

In summary, it appears that substantial local autonomy is available to counties under ORS 203.030 to 203.065, but that an even greater amount of home rule can be obtained by adopting a charter.

Comparison with AOC Pilot Charter

A special committee of county judges and commissioners was appointed by the Association of Oregon Counties in 1964 to draft charter provisions which could be used for the guidance of county charter committees. The work of this committee resulted in publication of the AOC

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1. See 30 Opinions of the Attorney General 388, March 1962.

"Pilot Charter" in 1966. The "Pilot Charter" has been useful to several charter committees, and a number of its provisions have been included in the charters submitted to county voters during the past decade. Work on the Bureau's model charter was started with the idea of updating the AOC pilot charter and revising it in the light of county experience. This model follows the same general format as the AOC model and both the Bureau and AOC charters use the general grant of powers. The Bureau model differs from the AOC charter, however, in the following respects:

1. This model includes four alternative approaches to the organization of the central administrative authority, while the AOC Pilot Charter provided only for the board of county commissioners-plural executive form.

2. This model includes alternative provisions for electing the board of commissioners by district, while the AOC charter provided only for at-large election.

3. This model leaves county departmental organization in the hands of the board of commissioners, while the AOC charter enumerated a specific departmental structure the county was required to maintain.

4. This model omits provisions of the AOC charter covering the establishment of local service districts. Experience since publication of the AOC charter has indicated that home rule counties have greater flexibility in providing services to sub-county areas under the state county service district statute (ORS Chapter 451) than they could provide themselves under charter authority.

5. This model also omits provisions of the AOC charter relating to county indebtedness since the constitutional and statutory provisions for county bonding can be utilized by charter counties and there has been little or no departure from them in the adopted charters. Only two of the five adopted charters mention indebtedness: Washington mentions bonding as one specific power included within the general grant and requires a popular vote to approve bond issues; while Multnomah requires adherence to state law for general obligation bonding and requires voter approval for revenue bonding. Neither charter establishes a debt limit or a procedure for issuing bonds, and presumably both counties would follow state law with respect to these matters.

Although fewer than one out of five county charters submitted to the electorate have been adopted, there continues to be strong interest in county home rule. This is true even in counties which have voted against it: eight of the 18 counties which have voted on charters have done so twice, and a third charter committee is currently operating in Jackson County. The following model charter is offered in anticipation that interest and activity in Oregon county home rule will continue at a high level in the future.

PREAMBLE[1]

We, the people of _____ County, Oregon,[2] in recognition of the dual role of the county as an agency of the state[3] and as a unit of local government,[4] and in order to avail ourselves of self-determination[5] in county affairs[6] to the fullest extent now or hereafter granted or allowed by the constitutions and laws of the United States and the State of Oregon, by this charter confer upon the county the following powers,[7] subject it to the following restrictions, and prescribe for it the following procedures and governmental structure.[8]

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1. A preamble is not a legally necessary part of a county charter. A county charter is, however, in essence a county constitution (see Paulsen v. City of Portland, 149 U.S. 30, 38 (1893) (a city charter is a city constitution); 2 McQuillin, Municipal Corporations (3d ed. rev. 1966) 614-15 ("municipal charters are sometimes mentioned as constitutions, that is, fundamental or organic laws of municipal corporations"); 37 Opinions of the Attorney General 280, 282 (1974) ("a charter is the constitution, in a sense, of a home rule county when it comes to matters of predominantly local concern"). Constitutions traditionally have preambles (e.g., United States Constitution, Oregon Constitution). Numerous county charters have preambles (e.g., Lane County Charter (1962), Washington County Charter (1962, 1966, 1970), Multnomah County Charter (1966), Benton County Charter (1972), Hood River County Charter (1976), Baltimore (Maryland) County Charter (1956)). This preamble would confer no power, but it would reinforce the general grant of powers to the county (Section 2-1, infra), would help identify the charter as a constitution for the county, and would help indicate the philosophy of government upon which the charter was based.

2. This opening phrase emphasizes that a county charter comes from the people of the county, not the state legislature. Under the county home rule amendment to the state constitution, it is county voters who "adopt, amend, revise or repeal a county charter" (Oregon Constitution, Article VI, Section 10 (1958, 1960)). The legislature simply prescribes procedure for doing so. (Ibid.; ORS 203.710 to 203.810, chapter 254)

3. The county, in Oregon as elsewhere, has traditionally been an agency of the state, probably more so than any other type of local governmental unit and certainly more so than the city (see O. Etter, "County Home Rule in Oregon," 46 Oregon Law Review 251, 273-74,

279-81 (1967), and cases there cited; cf. 25 Opinions of the Attorney General 311, 312 (1951)). This subordinate status for even the home rule county in Oregon is implicit in the requirement by the county home rule amendment that the officers of such a county "among them exercise all the powers and perform all the duties...now or hereafter...granted to or imposed upon any county officer" "by the Constitution or laws of the state" (Oregon Constitution, Article VI, Section 10 (1958, 1960) (emphasis supplied).

This requirement has led the Attorney General to characterize county home rule in Oregon as "limited" home rule (29 Opinions of the Attorney General 136, 141 (1959)). That characterization should not be misunderstood, however, to imply that municipal home rule or some other kind of home rule is "unlimited." For example, one of the home rule amendments makes it explicit that municipal home rule is subject to "the constitution and criminal laws of the state" (Oregon Constitution, Article XI, Section 2 (1906, 1910). Also, under Oregon case law a city is subject to control by the state legislature in matters of predominantly statewide concern (State ex rel. Heinig v. City of Milwaukie, 231 Or. 473, 373 P.2d 680 (1962); Boyle v. City of Bend, 234 Or. 91, 98, 380 P.2d 625 (1963)).

4. A unit of local government, as defined in studies of the numbers of such units in Oregon, has the following characteristics:

> "(1) Its own separate continuing governmental organization.
> "(2) A governing body with authority to provide, year after year, some governmental or quasi-governmental service on its own responsibility and subject to its own control.
> "(3) A governing body independent of other governments and not a mere board handling some function of government on behalf of, or as a department of, another local corporation.
> "(4) Area....
> "(5) Power to raise revenue by taxation, by special assessment, or by fixing rates for services rendered." (University of Oregon, Bureau of Municipal Research and Service, The Units of Government in Oregon, 1961 (1962) 1)

A similar definition of "a government" appears in the federal Census of Governments (United States Bureau of the Census, 1972 Census of Governments, Vol. 1, Governmental Organization (1973) 13 ("To be counted as a government, an entity must...[have] Existence as an organized entity, governmental character, and substantial autonomy")).

The term "local governmental unit" apparently has not been judicially defined in this state. The Oregon legislature has defined it, not in terms of general characteristics like those indicated in the quotations above, but in terms of types of public corporations that the concept

encompasses (ORS 190.310(2) and 459.005(6)). Both statutory definitions include counties in the lists of governmental units.

5. This phrase regarding self-determination would explicitly express the desire for home rule, in keeping with the long-standing comprehensive definition of home rule as "broadly...including all forms of local or regional self-determination" (W. Munro, "Home Rule," 7 Encyclopedia of Social Sciences 434 (1932)).

6. This phrase about county affairs is based on the authorization in the county home rule amendment, "A county charter may provide for the exercise by the county of authority over matters of county concern" (Oregon Constitution, Article VI, Section 10 (1958, 1960)). A century of legal and other discourse about municipal home rule, particularly about the difference between local and statewide affairs where municipal legislation has conflicted with state law, has made the phrase "matters of concern" and the word "affair" quite synonymous in home rule contexts.

7. This phrase about powers is also based on the authorization just quoted. Notwithstanding discourse indicating that the county home rule amendment "grants" power to counties (e.g., Allison v. Washington County, 24 Or. App. 571, 581, 548 P.2d 188, 194 (1976); 29 Opinions of the Attorney General 183, 184 (1959); 33 id. 173, 175 (1967); 33 id. 238, 241 (1967)), home rule powers come to a chartered county through a two-phase process. The quoted authorization constitutes a "continuous offer" by the voters of the state to the voters of a county "of authority over matters of county concern." The voters of the county accept this offer, in whole or in part, when they adopt a charter that confers on the county powers to deal with "matters of county concern." This analysis is based on decisions by the Oregon Supreme Court regarding municipal home rule (O. Etter, op. cit., 261-62) and on statements by the Oregon Court of Appeals regarding county home rule (Schmidt v. Masters, 7 Or. App. 421, 427, 490 P.2d 1029, 1082 (1971); Allison v. Washington County, 24 Or. App. 571, 581, 548 P.2d 188, 194 (1976)).

8. Under the county home rule amendment the governmental structure of a home rule county is, to paraphrase a long-standing concept of municipal home rule, a matter of purely county concern. The amendment says: "A county charter shall prescribe the organization of the county government and shall provide directly, or by its authority, for the number, election or appointment, qualifications, tenure, compensation, powers and duties of such officers as the county deems necessary" (Oregon Constitution, Article VI, Section 10). The immediately following sentence in the amendment makes clear that the powers and duties of county officers under the state constitution and laws are to be "distributed by the county charter or by its authority" (ibid.).

Chapter I

PRELIMINARIES

Section 1-1. NAME. The name of the county as it operates under this charter continues to be _____ County.[1]

Section 1-2. NATURE AND LEGAL CAPACITY. Under this charter the county continues to be an agency of the state[2] and a body politic and corporate.[3]

Section 1-3. BOUNDARIES.[4] Under this charter the boundaries of the county are its boundaries as prescribed by state law[5] at the time this charter fully takes effect or as modified in accordance with state law[6] after that time.

Section 1-4. COUNTY SEAT. The county seat of the county continues to be in the city of _____.[7]

Section 1-5. FORM OF GOVERNMENT.[8] The governmental structure of the county consists of

(1) a board of ____[9] commissioners, who
  (a) constitute the legislative[10] and principal policy-making[11] agency of the county and
  (b) oversee the administration of the affairs of the county;[12]
(2) the office of county administrative officer, who
  (a) is appointed by the board to organize and direct the administration of the affairs of the county and
  (b) is responsible to the board for that administration;[13]
(3) whatever other county administrative and advisory offices and agencies and whatever administrative positions are continued or established[14] by or under this charter.[15]

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1. For a county that intends, as usual, no change in name upon assuming home rule, this section is legally unnecessary. Corporate charters, however, traditionally name the corporations to which they are granted.

Could a charter for a county change the name of the county? The question may be an idle one, because no Oregon county charter, adopted or merely proposed, has attempted such a change of name.

The answer to the question probably is yes, so long as the new name was not the same as that of an already existing Oregon county or not so like that name as to create confusion. In Oregon numerous city charters have changed the names of cities, usually from "Town of _____" to "City of ____." What name the voters of a county preferred for the county would seem to be a matter predominantly of concern to them and not to the state at large, certainly so long as the name did not create confusion with the name of another county. State legislation to prevent such confusion would seem to be a matter of predominantly statewide concern.

If by this section the voters of a county sought to change the name of the county, the section might well read:

> Section 1-1. NAME. The name of _____ County is hereby changed from _____ to _____ County.

The change of name should be accompanied by a corresponding change in the Preamble to the charter. To consummate the change and minimize confusion in state law and elsewhere, the state legislature would need to substitute the new name of the county for the old at all places in the state statutes where the old name appeared (e.g., in ORS, chapter 201), and state administrative agencies would need to do the same in administrative rules and regulations that named the county.

2. For a brief discussion of the county as an agency of the state, see Preamble, note 3, supra.

3. A county that adopted this charter would be, both before and after the adoption, a corporate governmental unit. The state statute governing "general law" (Allison v. Washington County, 24 Or. App. 571, 581, 548 P.2d 188, 194 (1976); 37 Opinions of the Attorney General 543, 544 (1975)) or "non-home rule" (34 id. A-29 (1970); 35 id. A-44 (1972); 36 id. A-37 (1974); 37 id. 543, 544 (1975)) counties in Oregon--all Oregon counties are "general law" or "non-home rule" counties until they assume home rule--provides that a county is "a body politic and corporate" (ORS 203.010). The quoted phrase means that a county is a corporate entity for governmental purposes (11 Corpus Juris Secumdum 379-80 (1938)), a public corporation (ORS 536.210(2); Cook v. Port of Portland, 20 Or. 580, 583-86, 27 P. 263, 264, 13 L.R.A. 533 (1891)), and a municipal corporation or quasi-municipal corporation (ibid.; O. Etter, op. cit., 273-74; ORS 294.311(17)). Nothing in county home rule would appear to rob a county of its corporate character when it assumed home rule. Its adoption of a charter would seem, indeed, to reaffirm its corporate status, inasmuch as the entities that are granted charters are traditionally corporations. This section is intended, moreover, to make explicit that a county that adopted the charter would continue to have its pre-existing corporate and governmental character as fully as under general law.

4. It is not legally necessary that a section like this appear in a county charter, because a county has boundaries under state law before assuming

home rule and because the assumption of home rule does not change those boundaries--indeed, under present law cannot change them (this section, notes 2 and 3, infra). City charters, however, traditionally define city boundaries or, as in most city charters adopted recently, refer to the boundaries and require that up-to-date statements of them be kept available for public perusal (cf. University of Oregon, Bureau of Municipal Research and Service, Model Charter for Oregon Cities (1959, 1967) Section 2).

5. Statutes presently specify boundaries for all Oregon counties (ORS 201.010 to 201.360).

6. The Oregon legislature has power to modify the boundaries of counties directly (Baker County v. Benson, 40 Or. 207, 222, 66 P. 315, 321 (1901); 25 Opinions of the Attorney General 175 (1951); 32 id. 143 (1965); 34 id. 356, 361-62 (1968)). It has done so on numerous occasions (e.g., transferred area from Union County to Baker County (Oregon Laws 1901, p. 435, cited in Baker County v. Benson, 40 Or. 201, 209, 66 P. 815, 816 (1901); from Columbia County to Multnomah County (34 Opinions of the Attorney General 356, 361 (1968), and from Lincoln County to Benton County (34 id. 356, 362 (1968)). The legislature can, according to the Attorney General, modify even the boundaries of home rule counties (32 id. 143, 144 (1965); 34 id. 356, 362 (1968)). The legislature has prescribed general procedures for changing county boundaries in general by popular vote (ORS 202.020 to 202.190).

   Changes in county boundaries appear to be matters of predominantly state concern. The county is an agency of the state in a quite special way (Preamble, note 3, supra). The state has an interest in seeing that all territory in the state is included in one county or another. Except for county boundaries that coincide with changes in the boundaries of the state, all changes in the boundaries of one county necessarily involve changes in the boundaries of at lease one other county. A change in county boundaries is therefore a matter of concern to more than one county--in other words, is a matter of state concern. Power to change the boundaries of a county, even a home rule county, therefore resides in the state legislature, although at least one contrary legal opinion has been expressed with reference to home rule counties (letter, Legislative Counsel Committee, November 27, 1961, cited in B. Lamb and K. Martin, "Constitutional and Statutory Provisions Relating to Local Government Reorganization," Memorandum to Tri-County Local Government Commission, June 15, 1976).

7. The location and relocation of a county seat appears to be a matter of county concern and therefore appears to be accomplishable by charter. Case law on use of the initiative to relocate county seats supports this view. In Jefferson County sixty years ago a proposal to relocate the county seat of the county was submitted by initiative petition. The question arose whether the number of signatures

required on the petition was governed by a 1903 statute on county seats for new counties or by the 1906 constitutional amendment reserving to voters the powers of the initiative and referendum and by the 1907 legislation implementing the amendment. In upholding the relocation and in holding the amendment and the 1907 legislation to be controlling, the court said: "The lawful act of the people of a county changing their county seat is local legislation within the purview of...[the amendment]" (Barber v. Johnson, 86 Or. 390, 397, 167 P. 800, 802, 167 P. 1183 (1917)). In Jackson County half a century ago an initiative petition proposing relocation of the county seat of that county was submitted to the county clerk. Under one statute the petition did not carry a legally sufficient number of signatures to authorize placing the proposal on the ballot. Under other legislation the number of signatures was sufficient. The Oregon Supreme Court upheld the petition. Apparently no one raised any question about the proposal being local legislation appropriate for being effected by the initiative (Briggs v. Stevens, 119 Or. 138, 248 P. 169 (1926)). More than twenty years ago relocation of the county seat of Lincoln County was accomplished by an initiative measure. The measure provided for explicit repeal of law to the contrary. The measure was challenged on procedural grounds. Again, apparently no one raised any question about relocation of a county seat being an improper subject for an initiative measure (Kosydar v. Collins, 201 Or. 271, 270 P.2d 132 (1954)). The lack of objection to the two measures as improper in substance carries an implication that the location of a county seat is a matter of county concern. To be sustained as initiative measures, the measures had to be "local" or "municipal" legislation for the affected "municipality"--that is, county. The court so characterized the corresponding measure in Jefferson County.

The Oregon Revised Statutes prescribe the county seat of only one county, Jackson County (ORS 203.020). "A county seat," the Oregon Supreme Court said sixty years ago, "is ordinarily fixed by the act of the legislature" (Barber v. Johnson, 86 Or. 390, 397, 167 P. 800, 802, 167 P. 1183 (1917); cf. McWhirter v. Brainard, 5 Or. 426, 429 (1875) ("the Legislature cannot delegate to the people of any county the power to locate a county seat" but could let the voters of Union County choose by majority vote a county seat from five places nominated by the legislature)). That statement appears, however, in an opinion upholding a change of county seat effected by an initiative under a state statute. Throughout Oregon history there has been a very considerable tradition of county seats being designated at least in part by county governing bodies and county electorates (see Oregon Laws 1853, p. 512; Oregon Laws 1968, p. 59, upheld in Simpson v. Baily, 3 Or. 515 (1869) and quoted in Calder v. Orr, 105 Or. 223, 229, 209 P. 479, 481 (1922); Oregon Laws 1872, p. 29 discussed in McWhirter v. Brainard, 5 Or. 426 (1875); Oregon Laws 1889, p. 82; Oregon Laws 1903, p. 165; Oregon Laws 1913, Chapter 10, Section 6; Oregon Laws 1917, p. 59; ORS 202.120(1); Briggs v. Stevens, 119 Or. 138, 248 P. 169 (1926); Kosydar v. Collins, 201 Or. 271, 270 P.2d 132 (1954); cf. Oregon Laws 1927,

Chapter 34, and Cameron v. Stevens, 121 Or. 538, 256 P. 395 (1927), both involving statutory relocation of the county seat of Jackson County). That tradition is a potent reason for regarding relocation of a county seat as a matter of county concern.

8. Legally and structurally the charter of a county need not, in order to be a complete document, have a section such as this summarizing and introducing the governmental structure of the county. Such a section, however, affords a useful introduction to the basic framework of the government of a county and helps clarify the basic functions of county officers and agencies.

9. Oregon counties have traditionally had three-member governing bodies (see Oregon Constitution, Article VII (original), Section 12; ORS 203.224-203.240). Lane and Benton counties, upon assuming home rule, have continued that tradition (Lane County Charter (1962), Section 7; Benton County Charter (1972), Section 7), although the Lane County Charter was amended in 1976 to provide for five commissioners (Section 7). Washington, Multnomah and Hood River counties have established five-member governing bodies (Washington County Charter (1962, 1966, 1970), Section 30(a); Multnomah County Charter (1966), Section 3.10; Hood River County Charter (1964, 1976), Article I, Section 1). Three-member governing bodies are traditional for counties in Washington (5 Remington's Revised Statutes of Washington, Annotated 736 (1932); Revised Code of Washington, Annotated (1966), Section 36.32.010), five-member in California (California Government Code (1968), Section 25000). Most counties in the United States have either three- or five-member governing bodies (United States Bureau of the Census, Popularly Elected Officials of State and Local Governments (1968), Table 15), particularly so-called "commission form" county governments (G. Blair, American Local Government 180 (1964); H. Duncombe, County Government in America 42 (1966)).

   Whatever number of members is specified for a board of county commissioners, odd numbers offer the advantage that they are less conducive than even numbers to tie votes on issues before the board.

10. Section 2-3, infra.

11. As applied to a board of county commissioners that has over-all management of or responsibility for the administration of county affairs, this phrase reflects the fact that policy making and administration are not such mutually exclusive functions as "conventional wisdom" once believed. Administrators, it is now widely recognized, do make policy. Nonetheless policy making, particularly "basic" policy making, normally resides more in the representative governing body of the county than in any other county agency or in any particular county officer. Hence the characterization of the board of county commissioners as the principal policy making agency of the county.

12. For a county with an elective county executive this subparagraph should be deleted. The subparagraph applies to the other three administrative forms suggested in this charter, but with different implications for each. For each of the other three, this phrase makes clear that the board has ultimate responsibility for both policy and administration, even though there is a separation of functions to a greater or lesser degree under each form. The least degree of separation of functions occurs if the board itself takes full operative responsibility for administration, with or without an administrative assistant. A somewhat greater separation occurs under the county administrative officer form. An even greater separation occurs under the county manager form. Under the elective county executive form there would be not only a separation of functions but also a separation of powers, similar to that in the state and federal governments, and this phrase, "oversee the administration of the affairs of the county") should therefore be omitted from subsection (1) of Section 1-5.

13. If it is desired that the board of county commissioners itself retain the administrative function with or without an administrative assistant, paragraph (2) should be omitted. If it is desired that the county have a county manager form of government, paragraph (2) may read:

(2) the office of county manager, who

(a) is appointed by the board to organize and direct the administration of the affairs of the county and
(b) is responsible to the board for that administration;

If it is desired that the county have an elective county administrative officer, paragraph (2) may read:

(2) the office of county executive, who

(a) is elected by the county at large,
(b) is the chief administrative officer of the county, and
(c) oversees the administration of the affairs of the county.

14. Under the county home rule amendment to the state constitution a county charter may directly establish or provide for establishing new administrative and advisory offices and agencies and new administrative positions in the governmental structure of the county. Such new offices or agencies may replace those previously established by or under state law. If, however, a function of the previously established office or agency is one required of the county by state law, the charter or the county governing body must provide for the replacing of the office or agency to continue the function or else make some other provision for continuation of the function. The charter may, on the other hand, simply continue with no change of function an office or agency already established by or under state law and functioning by mandate or authority of state law. In the continued state of the office or agency, however, the legal basis for the existence and functioning of the office or

agency is fundamentally the charter, because in county home rule county governmental structure is prescribed or provided for by the county charter.

15. This introductory summary and, indeed, the entire charter assume that the courts are not part of county governmental structure. The omission of provisions regarding the judiciary, in the face of provisions for a county legislative and county administrative structure, may seem anomalous. The courts for which counties are responsible are, however, state agencies more than county agencies. The constitutional exclusion of certain judicial matters from the scope of county charters (Oregon Constitution, Article VI, Section 10 (1958, 1960)) indicates that courts associated with counties are state institutions more than county institutions (cf. J. Barnett, "A County Home Rule Constitutional Amendment," 8 Oregon Law Review 343, 345 (1929) ("'county officers,' performing as they do 'state' functions, are of course, 'in a sense,' 'state officers'")).

Chapter II

POWERS

Section 2-1. GENERAL GRANT OF POWERS. Except as this charter provides to the contrary,[1] the county has authority over matters of county concern[2] to the fullest extent now or hereafter granted or allowed[3] by the constitutions and laws of the United States and the State of Oregon, as fully as though each power comprised in that authority were specified in this charter.[4]

Section 2-2. CONSTRUCTION OF POWERS. In this charter no mention of a specific power is exclusive or restricts the authority that the county would have if the specific power were not mentioned.[5] The charter shall be liberally construed,[6] to the end that, within the limits imposed by the charter or the constitution or laws of the United States or the State of Oregon, the county have all powers necessary or convenient for the conduct of its affairs, including all powers that counties may now or hereafter assume under the home rule provisions of the constitution and laws of Oregon.[7] The powers are continuing powers.[8]

Section 2-3. VESTING OF POWERS. Except as this charter or the initiative and referendum provisions of the constitution and laws of the State of Oregon prescribe to the contrary,[9]

(1) the legislative power of the county is vested in, and is exercisable only by, the board of county commissioners,[10] and

(2) all other powers of the county[11] are vested in the board[12] and are exercisable only by it or by persons acting under its authority.[13]

---

1. Examples of provisions "to the contrary," which limit the powers of the county under the charter, are the sections prescribing procedure for the board of county commissioners (Section 3-4), prescribing the procedure for adopting ordinances (Section 3-5), prohibiting certain types of discrimination in employment (Section 5-5), and requiring establishment of a merit system (Section 5-7).

2. The phrase "authority over matters of county concern" is based on the second sentence of the county home rule amendment in the state

constitution (Oregon Constitution, Article VI, Section 10). That sentence, which says that a county charter "may provide for exercise by the county of authority over matters of county concern," constitutes "a continuous offer" by the voters of the state to the voters of counties of "the whole sum of intramural authority" over matters of county concern (Preamble, note 7, supra). By adopting a charter with this grant of powers, the voters of a county would, except as the charter provided to the contrary, accept this constitutional offer completely.

3. The verb "allowed" is used here to augment the powers that the county would have under the charter if the verb "granted" were not so supplemented. The United States Constitution does not grant powers to local government. Within the limitations of that constitution, however, local government is allowed a very broad range of powers. The Oregon Constitution, particularly the county home rule amendment, does not grant counties powers so much as it offers powers for acceptance. The acceptance consummates the delegation--effects the grant (Preamble, note 7, supra). Because the terms of the amendment constitute the offer that effects a grant only when accepted, it is advisable not to rely solely on the verb "granted" to confer upon the county the full range of home rule powers that are possible under the constitution.

4. This general grant of powers is patterned closely on the general grant of powers that is a central feature of the Model Charter for Oregon Cities (University of Oregon, Bureau of Municipal Research and Service, Model Charter for Oregon Cities (1947, 1951, 1959, 1967), Section 3). Very similar grants of power appear in virtually every city charter adopted in Oregon since 1930. More than a hundred such grants are now operative in Oregon cities. Such grants also appear in the charters of Lane, Benton, Washington and Multnomah counties.

   In contrast, the two charters adopted by the voters of Hood River County state:

   > "The Board of Commissioners shall have all the jurisdiction and powers which now or which hereafter may be granted to it by the Constitution of the State of Oregon, by this Charter, or by the laws of the State of Oregon" (Hood River County Charter (1964, 1976), Article II, Section 1) (emphasis supplied).

5. Local government charters have traditionally been subject to strict construction. In many instances they have consequently been regarded as not conferring certain powers that had been assumed to have been so conferred or had been regarded as desirable for the proper functioning of local government. One rule of strict or at least restrictive construction is the rule traditionally expressed by the Latin maxim, "Inclusio unius est exclusio alterius" (the inclusion of one is the exclusion of another). The purpose of this first sentence of this

section is to make the rule inapplicable to the grant of powers in this charter.

6. For a century or more local government charters have commonly been subject to a rule of strict construction known as Dillon's Rule. This rule, as stated by John F. Dillon, one-time Chief Justice of the Supreme Court of Iowa and during the latter part of his life the preeminent authority on the law of municipal corporations in the United States, reads:

> "It is a general and undisputed proposition of law that [449] a municipal corporation possesses and can exercise the following powers and no other: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared object and purposes of the corporation,--not simply convenient, but indispensable. Any fair, reasonable, substantial [450] doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied" (1 Dillon, Municipal Corporations (5th ed. 1911) 448-50)(emphasis supplied).

The requirement of liberal construction in this second sentence of this section is intended to negate Dillon's Rule insofar as that rule might apply to this charter.

7. The part of this sentence after the first clause is intended to reinforce the general grant of powers in Section 2-1 of the charter.

8. Sometimes powers granted in local government charters are regarded as exhausted once they are used. This final sentence is intended to prevent that construction of any power granted by this charter.

9. In Oregon the legislative power of a local governmental legislative body is qualified by the constitutional reservation of the powers of the initiative and referendum to local electorates (Oregon Constitution, Article IV, Section 1(5) (1968)). The referendum may not be invoked against emergency measures (Multnomah County v. Mittleman, 24 Or. App. 237, 239, 545 P.2d 622, 624 (1976), reversed on other grounds, 275 Or. 545, 552 P.2d 242 (1976); see Oregon Constitution, Article IV, Sections 1 (1902, 1954, 1968), 1a (1906, converted into 1(5), 1968), and 28; State v. Campbell, 265 Or. 82, 89-90, 506 P.2d 163, 166 (1973) ("we...assume that the 1968 amendment has made no substantial change in the authority of the legislature in connection with the initiative and referendum")).

10. The restriction of legislative power, other than the initiative and referendum, to the board of county commissioners makes it the exclusive representative legislative body of the county. The restriction is in keeping with the general principle that a legislative

body may not contract or legislate away its legislative power (2 McQuillin, Municipal Corporations (3d ed. rev. 1966) 839-40; 4 id. (3d ed. rev. 1968) 474, 477). The restriction of the legislative function to the board does not, however, preclude the board's delegating rule making power to an administrative officer or agency responsible to the board, provided the delegation is effected in accordance with standards that have become traditional in administrative law.

11. "...the functions of a municipal legislative body fall into the following categories: legislative, administrative, fiscal, investigative and judicial or quasi-judicial." (4 id. 475).

12. The final part of this section is intended to make clear where a power of the county resides in the event that that power is not vested clearly by some other provision in the charter. This final part, in other words, vests residuary powers of the county in the board (cf. 4 id. 475 ("All of the corporate and political powers of the city or town, unless lodged elsewhere, are construed as being vested in the legislative body")).

13. The final part of the section is also intended to make clear that nonlegislative powers of the board may be delegated to other officers and agencies. This clarity is desirable in view of the questions that sometimes arise as to whether certain powers of an agency like the board are delegable. If a power of the county exists under the charter but the charter does not elsewhere make clear who or what may exercise the power, under this final part the board may exercise the power or may delegate it to some other county officer or agency. This provision for exercise or delegation is responsive, as is the provision for residuary powers, to the mandate in the county home rule amendment that all powers and duties of county officers under state law be "distributed" in a home rule county "by the county charter or by its authority" (Oregon Constitution, Article VI, Section 10 (1958, 1960)).

Chapter III

LEGISLATION AND BASIC POLICY MAKING

Section 3-1. BOARD OF COUNTY COMMISSIONERS.[1] The governing body of the county[2] is the board of _____[3] county commissioners,[4] who shall be nominated and elected from the county at large.[5]

Section 3-2. TERMS OF OFFICE.

(1) Except commissioners initially elected under this charter for shorter terms[6] or appointed to fill vacancies on the board of county commissioners, and except the county judge,[7] the term of office of a county commissioner begins the first January 1 after the commissioner is elected to the office and continues four years and until the succeeding commissioner qualifies for the office.[8]

(2) The term of office of a county judge begins the first January 1 after the judge is elected to the office and continues six years[9] and until a succeeding judge qualifies for the office.[8] This subsection is repealed upon abolition of the office of county judge in accordance with Section 3-1(2) of this charter.[10]

Section 3-3. BOARD PRESIDENT. At its first regular meeting each year the board of county commissioners shall designate one of its members board president for the year.[11] The president shall

(1) preside over board meetings,

(2) preserve order at the meetings,

(3) enforce the rules of the board, and

(4) have whatever additional functions the board prescribes consistently with this charter.

Section 3-4. BOARD PROCEDURE.

(1) By general ordinance[12] the board of county commissioners shall prescribe rules governing its meetings, procedures, and members as such. The rules shall specify times and at least one place for the board's regular meetings.

(2) A notice stating the time, place and tentative agenda of a

regular meeting of the board shall be posted at least 48 hours before the meeting in a conspicuous place at the courthouse. Copies of that notice shall be available upon request throughout that time at the courthouse during regular office hours.[13] At the meeting the board may change the agenda.[14]

(3) A special board meeting may be held on call of the president[15] or two other commissioners, provided written notice of the meeting is delivered eight hours or more before the meeting at the residence or place of business of each commissioner to whom the call is issued. By unanimous consent of the board, such a meeting may be held at any time without that notice.[16]

(4) All board meetings shall be public, except as state law provides to the contrary.[17]

(5) The board shall keep a journal of its proceedings. The ayes and nays on adoption of ordinances shall be entered in the journal. The ayes and nays on other matters before the board shall be entered in the journal upon the request of any board member at the time the matter is the subject of a board vote.[18] The journal shall be open to the public at board meetings and during regular office hours at the courthouse.[19]

(6) A majority of the incumbent members of the board constitute a quorum for its business,[20] whether or not any such member is disqualified from voting on a particular matter before the board. Board action may be taken only by the affirmative vote[21] of a majority of those members of a quorum who are qualified to vote on the action.

Section 3-5. ORDINANCES.

(1) An ordinance may embrace but one subject and matters properly connected therewith. The title of the ordinance shall express the subject.[22]

(2) The ordaining clause of an ordinance shall read:

(a) In case of adoption by the board of county commissioners alone, "The Board of County Commissioners of _____ County ordains as follows:"

(b) In case of adoption or ratification by the voters of the county, "The People of _____ County ordain as follows:"[23]

(3) A county commissioner may introduce an ordinance to the board. The ordinance, unless an emergency ordinance, may be introduced only at a meeting the agenda for which lists the title of the ordinance and is publicized in accordance with Section 3-4 of this charter. An emergency ordinance may be so introduced without being so listed or publicized.

(4) Except as subsection (5) of this section allows immediate adoption of emergency ordinances and as subsection (6) of this section allows ordinances to be read by title only, every ordinance introduced to the board shall, before being adopted by the board, be read fully and distinctly in public meeting of the board on two days at least seven days apart.[24]

(5) Except as subsection (6) of this section allows reading by title only, an ordinance necessary to meet an emergency may, upon being read first in full and then by title, be adopted at a single meeting of the board by unanimous vote of all commissioners present provided they constitute a quorum.

(6) A reading required by subsection (4) or (5) of this section may be by title only:

(a) if no commissioner present requests that the ordinance be read in full; or

(b) if for seven days immediately before the first reading of the ordinance:

(i) a copy of the ordinance is provided each commissioner and

(ii) copies are available for public inspection at the courthouse during regular office hours;

and

(c) if:

(i) throughout the seven days, notice of the availability of the copies is given by written notice posted at the courthouse and at two other public places in the county or

(ii) during the seven days, the notice is published at least once in a newspaper of general circulation in the county.[25]

(7) Within three days after the board adopts an ordinance, the person who presides and the person who serves as recording secretary at the meeting at which the ordinance is adopted shall sign the ordinance and indicate its date of adoption.[26]

(8) An ordinance adopted in accordance with this section, if not an emergency ordinance, takes effect the thirtieth day after its adoption, unless it prescribes a later effective date or is referred to the voters of the county for their approval. An ordinance so referred takes effect only upon being approved by a majority of the voters who vote on the ordinance. An emergency ordinance may take effect immediately upon being adopted.[27]

---

1. County governing bodies in Oregon are increasingly known as boards of county commissioners. Throughout the history of the state the state constitution has provided for both county courts and boards of county commissioners (Oregon Constitution, Article VII (original), Section 12). For many decades the legislature apparently denominated county governing bodies "county courts" more than "boards of county commissioners." Recent decades have seen a series of legislative acts that provide specifically or generally for the judicial functions of county judges to be transferred to primarily judicial courts and for county courts accordingly to be renamed "boards of county commissioners" (e.g., ORS 203.210 (1959) (Multnomah County), 203.219 and 203.220 (1959) (Lane County), 203.224 (Clackamas County), 203.229 (Douglas County), 203.230 and 203.240 (general); compare ORS 203.120, 203.125, 203.130, 203.170 and 203.190, all referring to county courts only and all enacted prior to 1953, with 203.110, 203.121, 203.122, 203.123, 203.124 and 203.127, all referring to boards of county commissioners as well as county courts and all enacted or amended since 1953).

   Of particular relevance to this trend, in the context of county home rule, is the 1959 statutory provision that, in a county whose charter provides for such a transfer:

   > "(1) All judicial jurisdiction, authority, powers, functions and duties of the county courts and the judges thereof, except the jurisdiction, authority, powers, functions and duties exercisable in the transaction of county business, are transferred to the circuit courts and the judges thereof: . . . .
   >
   > (e) In any county for which a county charter providing for such transfer is adopted under ORS 203.710 to 203.790" (ORS 3.130).

2. The voters of a county are, more than any other group or entity, the ultimate governing body of the county. They have power to adopt, amend, revise and repeal a charter for the county (Oregon Constitution, Article VI, Section 10 (1958, 1960); ORS 203.710 to 203.790). They have initiative and referendum powers regarding legislation of or for the county (id., Article IV, Section 1 (1902, 1906, 1968), with subsection (5) (1968) as Section 1a (1906); Article VI, Section 10 (1958, 1960); ORS 203.780, 254.310). They have power to elect and recall county officers (Oregon Constitution, Article II, Section 18 (1908, 1926); Article VI, Section 10 (1958, 1960)). Most acts to govern the county, however, are acts by a body representative of the voters, a body that under this charter would be the board of county commissioners. Usually the phrase "governing body" means, in contexts of local government, some such representative body, not the electorate itself.

3. See Section 1-5, note 2, supra. The number specified here should be the number specified in Section 1-5(1).

4. For a county with a county judge to be retained under the charter, this section may read:

> Section 3-1. BOARD OF COUNTY COMMISSIONERS
>
> (1) Except as subsection (2) of this section provides to the contrary, the governing body of the county is the board of three county commissioners, one of whom is the county judge and all of whom shall be nominated and elected from the county at large.
>
> (2) The office of county judge established under state law for this county continues under this charter until expiration of the county judge's term of office during which the state legislature removes all judicial functions from the office. When that term expires, the office is abolished, and the board of county commissioners consists of three commissioners.

If, on the other hand, the county desires, upon adopting a charter, to effect at once the transfer of judicial functions to the circuit court, Section 3-1 may read:

> Section 3-1. BOARD OF COUNTY COMMISSIONERS. All judicial jurisdiction, authority, powers, functions and duties of the county court and county judge, except the jurisdiction, authority, powers, functions, and duties exercisable in the transaction of county business, are hereby transferred to the circuit court in the county and to the judges of that court, and the governing body of the county is transformed from a county court to a board of ____ county commissioners,

who shall be nominated and elected from the county at large.

Regarding the trend to transfer judicial functions from the office of county judge, see this section, note 1, supra.

5. Nomination and election of county commissioners at large is traditional in Oregon. Under state law they apparently have always been so nominated and elected (see Oregon Constitution, Article VII (original), Sections 11 and 12; ORS 204.005; 6 Oregon Compiled Laws Annotated (1940), Section 87-201). Four of Oregon's five county charters have departed from that tradition, two by amendment in 1976. The Benton County Charter alone continues the tradition under home rule; under that charter, three commissioners are elected at large (Benton County Charter (1972), Section 7(2)). For 14 years the Lane County Charter continued the tradition in exactly the same way (Lane County Charter (1962), Section 4(2)). In 1976, however, the charter was amended to increase the number of commissioners from three to five and to have all five elected by district (id. (1976), Section 11). For ten years the Multnomah County Charter continued the tradition of election at large, but for five commissioners (Multnomah County Charter (1966), Section 3.20(1)). In 1976, however, the charter was amended to provide for all five of the commissioners to be elected by district. The Washington County Charter has always provided for electing two commissioners at large and three by district (Washington County Charter (1962, 1965, 1970), Sections 30 and 84). The first charter for Hood River County provided for commissioners to be nominated by district and elected at large (Hood River County Charter (1964), Article I, Sections I and IV). The second charter for the county provides for the chairman of the board of county commissioners to be nominated and elected at large and for the other four commissioners to be nominated and elected by district (Hood River County Charter (1976), Article I, Section I).

   This historical record reveals an unbroken pattern, under both general law and home rule, of commissioners in three-commissioner counties being elected at large and a consistent pattern in five-commissioner counties, except Multnomah County, of at least some nomination or election of commissioners by district.

   The tradition of nomination and election at large would have been abandoned further if a number of proposed Oregon county charters providing for nomination or election by district had been adopted (Columbia County Charter Committee, Columbia County Charter (1974), Section 9; Marion County Charter Committee, Marion County Charter (1964), Section 11 (commissioners other than chairman to be elected by district); Sherman County Charter Committee, Sherman County Charter (1962), Section 9; Tillamook County Home Rule Committee, Tillamook County Charter (1966), Section 9; cf. Crook County Charter Committee, Crook County Charter (1970), Section 4.08 (nomination by district, election at large); Deschutes County Charter Committee, Charter of Deschutes County, Oregon (1968), Section 13 (six commissioners to be nominated by district, one to be nominated at large,

and all to be elected at large); Umatilla County Charter Committee, Umatilla County Charter (1974), Section 10 (nomination by district, election at large)). All these charters proposed five- or seven-member governing bodies.

For a county with commissioners to be nominated and elected by district rather than at large, Section 3-1 of the county charter may read:

Section 3-1. BOARD OF COUNTY COMMISSIONERS

(1) The governing body of the county is the board of _____ county commissioners, who shall be nominated and elected by districts established by ordinance within ___ days after the first effective date of this charter.

(2) If an official federal census indicates that disparity of population among the districts has become so great as to deny any person the equal protection of the laws, the board of county commissioners shall, within six months after the census is made public, change the boundaries of the districts so that the disparity does not deny any person that protection. If the board does not do so, the county officer in charge of administering elections shall do so.

If it desired that the charter specify the initial areas for the districts, subsection (1) may read:

(1)(a) The governing body of the county is the board of ___ county commissioners, who shall be nominated and elected by districts as follows:

(i) In 19__ and every fourth year thereafter, from District No. 1, which consists of the following precincts: _____.

(ii) In 19__ and every fourth year thereafter, from District No. 2, which consists of the following precincts: _____.

(iii) In 19__ and every fourth year thereafter, from District No. 3, which consists of the following precincts: _____.

(iv) In 19__ and every fourth year thereafter, from District No. 4, which consists of the following precincts: _____.

(v) In 19__ and every fourth year thereafter, from District No. 5, which consists of the following precincts: _____.

(b) If the boundaries of precincts are changed after this charter is adopted, the county officer in charge of administering elections shall assign the changed precincts to commissioner districts in such a way as not to deny any person the equal protection of the laws.

This alternate subsection assumes a membership of five for the board. If the membership is three, seven, or some other number, the section should be contracted or expanded accordingly.

This alternative subsection also assumes that if, as usual, staggered terms are desired for commissioners, a transitional section will make necessary provision for initial elections and terms of office, so that the plan envisaged by the subsection can become operative in due course. To provide such staggered terms, paragraphs (i), (ii) and (iii) normally specify one even-numbered year and paragraphs (iv) and (v) the next even-numbered year.

The area for a commissioner district can be specified in various ways. One is to state its boundaries in terms of metes and bounds--the sort of statement popularly, although somewhat inaccurately, known as a "legal description." Such a statement is, however, commonly quite complicated, highly susceptible to error, and exceedingly difficult for the public to comprehend. In Lane County a proposal to establish commissioner districts has stated the areas of each in terms of state legislative representative districts and the interstate highway. Statement of the areas of commissioner districts in terms of precincts offers the combined advantage of simplicity, intelligibility for the public, and convenience in the administration of elections. Generally precincts may not contain more than 750 voters (ORS 246.410(1)).

Districting a county for purposes of electing county commissioners needs to honor the requirement of constitutional law commonly referred to as "one man, one vote." This requirement is one feature of the requirement of equal protection of the laws under the Fourteenth Amendment to the United States Constitution. The initial specification of the areas of the districts in the county needs to be in accordance with "one man, one vote," and provision needs to be made to change the boundaries of the districts in the event that changes in population cause the initial specification of areas to deny equal protection of the laws. Hence subsection (2) of the alternative section. The subsection would afford the board of county commissioners an opportunity to change the boundaries in accordance with the requirement of "one man, one vote." If the board did not seize the opportunity, the chief county elections administrator would have the duty so to change them. This duty could be enforced by a writ of mandamus (ORS 34.110).

Finally, subparagraph (b) of alternative subsection (1) immediately above requires the county clerk or other elections official to assign precincts to commissioner districts when precinct boundaries are changed between federal census times. See ORS 246.410.

If it is desired that the board of county commissioners be nominated by district but elected at large, the alternative section may begin as follows and then continue with the wording suggested above for establishing commissioner districts:

Section 3-1. BOARD OF COUNTY COMMISSIONERS.

(1) The governing body of the county is the board of _____ county commissioners, who shall be elected at large after being nominated by districts established by ordinance within _____ days after the first effective date of this charter.

(2) Within six months after an official federal census indicates that the boundaries of two or more of the districts deny any person the equal protection of the laws, the board of county commissioners shall change the boundaries so that they do not deny any person that protection. If the board does not do so within that time, within 30 days thereafter the county officer in charge of administration of elections shall do so.

From a constitutional standpoint the second subsection in this version of Section 3-1 is probably unnecessary. The courts appear never to have held that "one man, one vote" applies to a system of nomination by district and election at large. The United States Supreme Court has held, indeed, that a system of representation in which, of eleven representatives elected at large in a city, seven must reside in particular districts, does not deny equal protection of the laws even though the disparity of population among the districts is as great as thirty to one (Dusch v. Davis, 387 U.S. 114 (1967)). Retention of the subsection may be advisable, however, for reasons of public policy.

If the second subsection is not included in the section, the first part of the section should not be a subsection.

6. In the transition from operation under general law to operation under charters, some counties have simply provided for incumbent commissioners to serve out the terms of office to which they have been elected prior to adoption of the charters. If a county adopting this charter did so, this clause might be unnecessary. If, however, the charter increased the number of commissioners and these commissioners were to serve four-year staggered terms of office, provision for some two-year or other short terms of office would probably be necessary.

7. This phrase is unnecessary, of course, in a county that has no county judge when adopting a charter.

8. From a strictly legal standpoint, this phrase about continuing in office until a successor qualifies for the office is probably unnecessary, in view of the provision in the state constitution for

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Retention of the second subsection may be advisable for reasons of public policy. However, from a constitutional standpoint, it is probably unnecessary. The courts appear never to have held that "one person, one vote" applies to a system of nomination by district and election at large. The United States Supreme Court has held that a system of representation in which, of eleven representatives elected at large in a city, seven must reside in particular districts, does not deny equal protection of the laws even though the disparity of population among the districts is as great as thirty to one (Dusch v. Davis, 387 U.S. 114 (1967)). However, if the nomination districts were created so as to minimize or cancel out the voting strength of identifiable racial or political elements, constitutional challenges may still be made.

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8. From a strictly legal standpoint, this phrase about continuing in office until a successor qualifies for the office is probably unnecessary, in view of the provision in the state constitution for

officers to hold their offices, except in certain situations irrelevant here, until their successors qualify for the offices (Oregon Constitution, Article XV, Section 1 (1970)).

Applicability of the provision to offices in home rule counties is not, however, entirely clear, because of the provision in the county home rule amendment for county charters to provide for "tenure" for county officers (id., Article VI, Section 10 (1958, 1960)). Inclusion of the phrases about succeeding officers seems advisable from both legal and practical political standpoints, in order to make clear that no gaps would occur under the charter in terms of elective county offices.

9. "The judges of the...courts shall be elected by the legal voters...of their respective districts for a term of six years...." (id., Article VII (amended), Section 1 (1910)).

10. This subsection is unnecessary, of course, for a county that has no county judge when adopting a charter. If the subsection is included in the charter, the version of Section 3-1 that appears first in footnote 4 to Section 3-1 needs to be included in the charter because only that version contains a second subsection.

11. In counties having county judges with judicial functions, it is traditional for the judges to preside at meetings of the county governing bodies. In such a county this first sentence should be expanded to read:

> "The county judge shall preside at meetings of the board of county commissioners. After abolition of the office of county judge in accordance with Section 3-1(2) of this charter, the board shall designate one of its members at its first regular meeting each year to serve as board president for the year."

In keeping with this expansion, the second sentence of the section should begin,

> "The judge or president shall ...."

12. The requirement that the board's rules of procedure be prescribed by general ordinance is intended to safeguard against sudden changes of the rules by special ordinance to cope with special situations. The general ordinance would be subject, of course, to normal processes of amendment.

13. These requirements of notice of meetings are quite traditional in local government, but they have been supplemented by the 1973 statute on public meetings (ORS 192.610 to 192.710) and therefore are perhaps no longer necessary. There is reason to question whether that statute applies to a home rule county in particulars regarding which legislation of the county provides to the contrary. Be that as it may, the part of the statute most pertinent to this subsection reads:

> The governing body...shall...give public notice, reasonably calculated to give actual notice to interested persons, of the time and place for holding regular meetings. If an executive session only will be held, the notice shall be given to the members of the governing body, and to the general public, stating the specific provision of law authorizing the executive session (ORS 192.640).

These requirements apply to boards of county commissioners, certainly in the absence of county legislation to the contrary (ORS 192.610). The legislature can, of course, change the requirements. Perhaps for this reason it would be desirable to retain the charter requirements.

14. The statute on public meetings imposes no control on the agenda for such meetings, except for a few controls regarding the agenda of executive sessions (ORS 192.660).

15. If the county judge for a county was retained after the charter for the county took full effect, the first clause of this subsection should read:

> "A special board meeting may be held on call of the county judge or board president or of two other commissioners...."

16. These requirements for special meetings are also quite traditional in local government, but they also may no longer be necessary because of the 1973 statute on public meetings (ORS 192.610 to 192.710). The most pertinent part of that statute reads:

> "No special meeting shall be held without at least 24 hours' notice to the members of the governing body and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances." (ORS 192.640)

In some particulars the statutory requirements are the more rigorous, in some particulars the less. The statutory requirements can be changed by the legislature, the charter requirements could not. Whether the charter requirements should be retained is therefore a matter for local decision.

17. The 1973 statute on public meetings requires:

> "(1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.
>
> "(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as othersise provided by ORS 192.610 to 192.690." (ORS 192.630)

The exception referred to is the provision for executive sessions (ORS 192.660). This subsection would therefore leave the determination of matters that can be discussed and decided in closed or executive sessions to the state legislature.

18. This requirement regarding a journal of local governmental proceedings is traditional. It is now supplemented, and perhaps rendered unnecessary, by the requirement of the 1973 public meeting statute that reads:

> "(1) The governing body...shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed...and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:
>
> (a) All members of the governing body present;
> (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
> (c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;
> (d) The substance of any discussion on any matter.
>
> "(2) Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with ORS 192.660."

19. This requirement of public access to the journal is now supplemented, and perhaps rendered unnecessary, by the provision in the state law on public records that reads:

> "Every person has a right to inspect any public record of a public body...,except as otherwise expressly provided by ORS 192.500." (ORS 192.420)

In implementation of this right, the law requires custodians of public records to afford reasonable opportunities for public inspection of the records (ORS 192.430). Examples of documents excepted from the right to public inspection, some on a qualified basis and some on an absolute basis, are papers pertaining to litigation in the courts, documents containing trade secrets, personal communications, certain papers related to correction of convicted criminals, and certain confidential papers (ORS 192.500).

20. This is the usual rule regarding a quorum. In computing a quorum,

vacant board offices would not be considered.

21. The requirement of an affirmative vote is intended to nulify the general rule that abstention from voting in a deliberative body implies consent to the decision by the majority of those who do vote.

22. This restriction is based on similar restrictions in many state constitutions. Oregon's reads:

> Every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. (Oregon Constitution, Article IV, Section 20)

The restriction applies to initiative ordinances (see State ex rel. Gibson v. Richardson, 48 Or. 309, 319, 85 P. 225, 229 (1906); State v. Runyon, 62 Or. 246, 254, 124 P. 259, 262 (1912); 42 American Jurisprudence (2d ed. 1969) 654, 674-75 (all dealing with state legislation)).

23. This alternative specification of ordaining clauses implies that an ordinance adopted first by the county commissioners and then by the voters will initially have the first ordaining clause and then the second. An ordinance proposed by initiative petition would have only the second clause. An ordinance adopted by only the commissioners would have only the first.

24. For a board of county commissioners that met only once a week or only once during a longer period of time, this requirement would mean that normally two weeks would be required for adoption of an ordinance.

25. This provision for avoiding the reading of ordinances in full is patterned on the state statute that grants general ordinance making power to counties (ORS 203.055) and on the Model Charter for Oregon Cities (University of Oregon, Bureau of Municipal Research and Service, Model Charter for Oregon Cities (1959, 1967), Section 35).

26. These signatures would serve only to authenticate the ordinance; neither would indicate approval by the signer.

27. The Oregon Supreme Court has held that a tax ordinance adopted by the board of county commissioners of a home rule county may not carry an emergency clause and is therefore subject in every instance to the referendum (Multnomah County v. Mittleman, 275 Or. 545, 552 P.2d 242 (1976), reversing 24 Or. App. 237, 545 P.2d 622 (1976)).

Chapter IV

ADMINISTRATION

Section 4-1. ADMINISTRATIVE RESPONSIBILITIES.[1] The board of county commissioners is responsible to the people of the county for the proper administration of the affairs of the county, but administration is the function

(1) of the chief administrative officer of the county, who is responsible to the board for proper exercise of that function and for carrying out the policies of the board and

(2) of the other administrative personnel of the county, who are responsible to the board or to the county administrative officer as the board directs, for proper conduct of their administrative activities.

Section 4-2. COUNTY ADMINISTRATIVE OFFICER.

(1) The board of county commissioners shall appoint a county administrative officer to serve at the pleasure of the board. Except as otherwise provided in this charter, the duties and responsibilities of the county administrative officer shall be fixed by the board.

(2) The county administrative officer shall have prior education or experience in public or business administration. The board shall select the county administrative officer on the basis of his or her qualifications, but the position of county administrative officer shall be exempt from the merit system.[2]

(3) The county administrative officer need not be a resident of the county at the time of appointment, but shall become a resident within a reasonable time after accepting the appointment.

Section 4-3. OTHER ADMINISTRATIVE PERSONNEL. Other administrative personnel of the county shall be appointed[3] by the board of county commissioners or by the county administrative officer with the consent of the board of county commissioners,[4] as the board directs, to offices and positions established by the board or by its authority.[5] Each such apointee is responsible to the board or to the county administrative officer, as the board directs,[6] for proper discharge of that appointee's functions.[7]

Section 4-4. ADMINISTRATIVE STRUCTURE. The structure of the administrative branch of the county government shall be prescribed consistently with this charter, by the board of county commissioners or by its authority.[8] The board or, by its authority, the county administrative officer may establish, reorganize, unify, and abolish administrative departments[9] and prescribe their functions and the function of offices and positions within the departments.[10]

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1. For a county desiring that the board of county commissioners itself retain responsibility for the administrative function, this section may read:

> Section 4-1. ADMINISTRATIVE RESPONSIBILITY. The board of county commissioners is responsible to the people of the county for the proper administration of the affairs of the county. The board itself may carry on and may delegate administrative functions consistently with this charter.

Under this section there would be no separation of legislative and administrative functions, except as the board of county commissioners effected that separation. The section would allow the board to be the principal administrative as well as the principal legislative body of the county. Such a combination would not run counter to the federal and state constitutional requirements of separation of powers; those requirements do not apply to local government (16 American Jurisprudence (2d ed. 1956) 451; 16 Corpus Juris Secundum (1956) 489); 36 Opinions of the Attorney General 381, 383 (1973), citing Ray v. Davis, 249 Or. 1, 6-7, 436 P.2d 741 (1968); 37 Opinions of the Attorney General 554, 563 (1975) (discusses extensively, on basis of court decisions in other states, application of separation of powers to local government).

For a county desiring an elective county executive, comparable to a "strong mayor" in city government, this section may read:

> Section 4-1. ADMINISTRATIVE RESPONSIBILITIES.
>
> (1) The county executive is responsible to the people of the county for proper administration of the affairs of the county and for executing the ordinances of the county.
>
> (2) The other administrative personnel of the county are responsible to the county executive for proper conduct of their administrative activities.

For a county desiring a county manager, this section may read:

Section 4-1. ADMINISTRATIVE RESPONSIBILITIES. The board of county commissioners is responsible to the people of the county for the proper administration of the affairs of the county, but administration is the function

(1) of the county manager, who is responsible to the board for proper exercise of that function and for carrying out the policies of the board and

(2) of the other administrative personnel of the county, who are responsible to the manager for proper conduct of their administrative activities.

2. For a county desiring that the board of county commissioners have a participating and not merely overseeing role in the county administration and that the board have the option of delegating some of its administrative functions to an aide, Section 4-2 may read:

Section 4-2. ADMINISTRATIVE ASSISTANT. The board of county commissioners may appoint an administrative assistant, who need not reside in the county when so appointed but while occupying the office shall so reside. The assistant shall have prior education or experience in public or business administration but may not be subjected to any county civil service or merit system requirement. The assistant shall be responsible to the board for proper administration of whatever county affairs the board specifies.

This authorization would allow the board the option of appointing or not appointing an administrative assistant. The authorization is therefore consistent with that version of Section 4-1 that would allow a comingling of legislation and administration in the board.

For a county desiring a county manager, this section may read:

Section 4-2. COUNTY MANAGER.

(1) The board of county commissioners shall appoint a county manager to serve at the pleasure of the board.

(2) The manager is the head of the administrative branch of the county government and is responsible to the board for proper administration of the affairs of the county and for carrying out the policies of the board.

(3) The manager shall have prior education or experience in public or business administration. The board shall select the manager on the basis of his or

her qualifications, but the position of manager shall be exempt from the merit system.

(4) The manager need not be a resident of the county at the time of appointment, but shall become a resident within a reasonable time after accepting the appointment.

(5) The manager shall:

(a) Attend all board meetings except when excused by the board, and participate in the board's deliberations, but not vote on matters before the board;

(b) Submit an annual report on the affairs of the county and otherwise keep the board informed about the affairs and needs of the county;

(c) Appoint, transfer and remove all county department heads and other administrative personnel and have general supervision over them;

(d) See that county ordinances are enforced and that the terms of all county franchises, leases, contracts, permits and licenses are observed.

(e) Prepare the annual budget estimates to submit to the county budget committee, including the manager's recommendations as to proposed expenditures and the revenue necessary to balance the budget;

(f) Have charge of all county purchases and custody and management of all county property and facilities; and

(g) Perform such other duties and exercise such other responsibilities as may be necessary and appropriate to the manager's function as the head of county administration.

(6) In case of the manager's absence from the county, temporary disability to act as manager, discharge by the board, or resignation, the board shall appoint a manager pro tem. The manager pro tem possesses the powers and duties of the manager. No manager pro tem, however, may appoint, transfer or remove county personnel without the consent of the board. No manager pro tem may hold his office for more than four months, and no appointment of a manager pro tem may be renewed.

(7) Any county commissioner may request and shall be entitled to receive from the manager information regarding any matter of county administration, and the board may in open session discuss with or suggest to the manager anything pertinent to the administration of the affairs of the county, except that matters regarding the acquisition and disposal of real property and litigation to which the county is a party may be discussed with the manager in executive session.

(8) No county commissioner may influence or attempt to influence the manager in the making of a specific appointment or removal of any person in the service of the county or in the making of any purchase, or attempt to obtain from any candidate for manager a promise regarding an appointment or removal of any person in the service of the county, or discuss with the manager a specific appointment or removal of any such person. The office of a commissioner who does so is forfeited. Neither the manager nor any person in the employ of the county may contribute or solicit funds to support the nomination or election of any candidate for elective county office.

For a county desiring a system of centralized county administration with an elective head comparable to the mayor in the "strong mayor" form of city government, Section 4-2 may read:

Section 4-2. COUNTY EXECUTIVE. The county executive

(1) Is the head of the administrative branch of the county government and the chief executive of the county;

(2) Shall be elected at the general November election in 19__ and every fourth year thereafter for a four-year term beginning January 1 immediately after the election; and

(3) Is not a member of the board of county commissioners but may sit with the board, participate in its deliberations, and introduce ordinances and resolutions for its adoption.

If it was desired that the county executive be a member of the board of county commissioners, it would probably be desired that the executive chair the meetings of the board. To those ends the final subsection of Section 4-2 may read:

(3) Shall chair meetings of the board of county commissioners as a member and as presiding officer of the board.

All of the foregoing versions of Section 4-2 would be conducive to a system of centralized, simplified county administration. The lack of such administration has long been widely regarded as the principal deficiency of county government in the United States.

3. This provision for administrative personnel to be appointed rather than elected is based on the widespread criticism that one of the most prevalent deficiencies in county government in the United States is the election of a considerable number of coordinate administrative officers. These officers commonly are the clerk, treasurer, assessor,

sheriff and surveyor, and sometimes the recorder. Election of the coroner, formerly common in Oregon, no longer takes place here.

Such officers, according to this long-standing criticism, need to be persons of professional or technical competence in public administration or in such functions as management of records, accounting, investment, law enforcement, appraising the value of property, and surveying. Popular election is not a very dependable process for choosing among candidates on the basis of these competencies. Popular election of these officers, the criticism continues, produces a set of administrators who, because of their independence from each other, can hardly be brought together into a coordinated, efficient administrative team.

Appointment of these administrators or their counterparts under home rule is seen as conducive to better selection of the administrators in the first place and to better organization and coordination of their functions once they have assumed office. To the objection that appointment of these administrators deprives voters of an important right to vote, the answer is that voters can exercise more effective control by watching the performance of a few elective policy makers and holding them responsible for the performance of administrative, professional and technical personnel.

4. This provision for appointments to be made by or with the consent of the board differentiates the county administrative officer in the specific sense used here from the county manager, whose appointments of subordinate administrative personnel traditionally do not require consent of the county governing body (see note 5, infra concerning the county manager).

5. This sentence is based on the premise that whether or not a subordinate administrative office or position should exist in the governmental structure of a county is commonly a matter of basic policy that ought to be determined by the county governing body. If the number of such offices and positions in a county is large, however, or if an office or position is low in the administrative hierarchy of the county, the governing body may prefer to delegate to the person in immediate charge of county administration the decision as to whether certain offices and positions should be established or continued.

   There is, indeed, an increasing tradition in governmental operations in the United States that allows the administration latitude to establish offices and positions unless the legislature objects. Precedents for this latitude can be found in the federal government. In this tradition, additional administrative posts can be established by direct administrative fiat. Under this provision for delegating the authority to create additional administrative posts, legislation by the board could make clear that the person exercising the delegated authority had the board's consent in advance unless the board took specific action to the contrary regarding particular posts.

6. The centralization of administrative responsibility that critics of traditional county government have long said is one of its principal needs will be achieved only to the extent that the board delegates supervisory authority to the administrative officer under this section.

7. For a county in which the board of county commissioners actively participates in and does not simply oversee the county administration, Section 4-3 may read:

> Section 4-3. OTHER ADMINISTRATIVE PERSONNEL. Other administrative personnel of the county may be appointed by the board of county commissioners to offices and positions established by the board or by its authority.

For a county with a county manager, this section may read:

> Section 4-3. OTHER ADMINISTRATIVE PERSONNEL. Other administrative personnel of the county shall be appointed by the county manager to offices and positions established by the board of county commissioners or by the county manager with the board's consent. Each such appointee is responsible to the county manager for proper discharge of that appointee's administrative functions.

The provision for appointments to be made by the county manager alone, with no necessity to obtain the board's approval of them, differentiates the county manager from the county administrative officer in the specific sense in which that term is commonly used in county government. Appointments by the county administrative officer are commonly made only with the consent of the board or are formally made by the board on recommendation of the county administrative officer, but appointments by the county manager are commonly made solely by the manager. This arrangement, while vesting greater power in the manager than in the county administrative officer, pins more clearly and more inescapably on the manager the responsibility for appointing and retaining only persons of competence and integrity.

For a county with an elective county executive, Section 4-3 may read:

> Section 4-3. OTHER ADMINISTRATIVE PERSONNEL. Other administrative personnel of the county shall be appointed by the county executive to offices and positions established by the board of county commissioners or by its authority. Each such appointee is responsible to the county executive for proper discharge of that appointee's functions.

Under this section, the county executive would appoint administrative personnel by sole fiat, without having to get the approval of the board of county commissioners. The section would therefore vest great power in the executive. If this concentration of power seemed excessive, it would be pertinent to note that the section would fix on the executive the undivided, inescapable responsibility for those appointments. As an elective officer, the county executive, if abusing the power of appointment, could be defeated at the next regular election for filling the office or meanwhile could be recalled. This responsibility would be a basic safeguard against abuse of the sole appointing power. This responsibility would be effected, moreover, in a simpler organizational structure than would exist if the appointments could take effect only with the approval of the board of county commissioners.

If it were insisted, on the other hand, that the traditional principle of checks and balances be applied, the principle could be so applied by requiring that the county executive's appointments receive the approval of the board before taking effect. A similar check-and-balance would place the power of appointment in the board, but limit it to nominees by the county executive. A serious question regarding either arrangement would be whether the complicated relationships and divided responsibility resulting from the check-and-balance would not more than offset the advantage of simplicity and undivided responsibility that would reside in the county executive's sole appointing power.

In all the preceding versions of Section 4-3, reference is made to "offices and positions." The reason is that the law commonly differentiates the public office from the mere public position. The differentiation is often difficult to make, and the standards for the differentiation are numerous and complicated enough to make it inappropriate to set them forth here. Reference to both offices and positions is advisable in any version of the section, in order to insure that the appointing power conferred by the section is adequate.

8. This provision is based on the premise that the administrative structure of the county government is a matter of basic legislative policy to be determined, insofar as the charter does not determine it, by the board of county commissioners or under the board's control. The board may prefer to delegate this determination at least in part to the county administrative officer, manager or executive, especially if the county is large or if the administrator has extensive training and experience in governmental operations.

9. In some county charters it has been deemed advisable, for informational and political reasons, to specify the departments the county is to have when the county assumes home rule and to prescribe the functions of each department as it assumes operations. If this detail is included in the charter, it is advisable to retain a general authorization for the board to adjust the administrative structure

as the county gains experience with home rule or as new conditions make changes in the initial administrative structure desirable.

Sections 19-22 of the Lane County Charter illustrates such an original specification with authorization for subsequent adjustment:

> Section 19. ADMINISTRATIVE DEPARTMENTS.
>
> (1) For purposes of carrying out the policies of the county and administering its affairs, the following administrative departments are hereby established and shall, except as the board of county commissioners prescribes to the contrary within the limitations of this charter, have the following functions:
>
> (a) the department of finance and auditing which shall have the functions of the county treasurer under state law and the functions of the county clerk under state law that are not allocated to the department of records and elections;
>
> (b) the department of records and elections, which shall have the functions of the county clerk under state law regarding elections, recording, filing, and the courts;
>
> (c) the department of health and sanitation, which shall have the functions prescribed by state law for the county health officer, the county sanitarian, and the county board of health;
>
> (d) the department of public works, which shall have the functions of the county surveyor and the county engineer under state law and all road and highway functions of the county;
>
> (e) the department of public safety, which shall have the functions of the constable and the sheriff under state law, except the functions of the sheriff regarding the collection of taxes;
>
> (f) the department of assessment and taxation, which shall have the functions of the assessor under state law and the functions of the sheriff under state law that pertain to the collection of taxes;
>
> (g) the department of general administration, which shall have whatever functions the board of county commissioners prescribes for it.

(2) On or before January 1, 1964 the board of county commissioners shall take whatever action is necessary to place in operation the departments established by this section.

Section 20. ELECTIVE ADMINISTRATIVE OFFICERS.

(1) The elective administrative officers of the county shall include, in addition to the county commissioners, the sheriff and the assessor.

(2) The sheriff shall have charge of the department of public safety, and the assessor shall have charge of the department of assessment and taxation. The term of office for the sheriff and assessor shall be four years.

Section 21. APPOINTIVE ADMINISTRATIVE OFFICERS AND EMPLOYEES. Except as this charter provides to the contrary,

(1) each administrative department of the county shall include whatever offices and positions the board of county commissioners establishes in the department;

(2) all administrative officers and employees of the county other than elective administrative officers shall be appointed by the board or pursuant to its authority;

(3) the functions of each administrative officer and employee of the county shall be whatever functions the board of county commissioners prescribes for him.

Section 22. CHANGES IN ADMINISTRATIVE DEPARTMENTS.

(1) Except as this charter provides to the contrary, the board of county commissioners may

(a) establish additional administrative departments,

(b) combine any two or more administrative departments into a single such department,

(c) separate departments so combined,

(d) abolish any administrative department, and

(e) prescribe the functions of any such department.

(2) Any action

(a) to combine the department of public safety or the department of assessment and taxation with each other or with another administrative department of the county,

(b) to abolish either department, or

(c) to take from either any of its functions

may have no legal effect until approved either

(a) by the head of the department or

(b) by the legal voters of the county at a regular or special county election.

(3) A function of a county officer or agency

(a) prescribed by state law but

(b) not allocated to any county officer or agency by this charter

shall be allocated to whatever department of the county the board of county commissioners determines.

10. In a county in which the board of county commissioners retains the administrative function itself, the phrase "county administrative officer" should, of course, be deleted, along with the phrase "or by its authority."

In a county with a county manager, the phrase "county administrative officer" in Section 4-4 should be replaced by the phrase "county manager." This section might be expanded to read:

> Section 4-4. ADMINISTRATIVE STRUCTURE. The structure of the administrative branch of the county government shall be prescribed, consistently with the charter, by the county manager with the consent of the board of county commissioners. With the consent of the board the county manager may establish, reorganize, unify, and abolish administrative departments and prescribe their functions and the functions of offices and positions within the departments.

If the county has an elective county executive, Section 4-4 may read:

> Section 4-4. ADMINISTRATIVE STRUCTURE. The structure of the administrative branch of the county government shall be that prescribed, consistently with this charter, by the county executive with the consent of the board of county commissioners. With the consent of the board the county executive may establish, reorganize, unify, and abolish administrative departments and prescribe their functions and the functions of offices and positions within the departments.

This version of Section 4-4 is based on the premise that, although the existence of county administrative offices and positions is a

matter of basic legislative policy to be determined by the board of county commissioners, and although the interrelationships of these offices and positions--that is, the county administrative structure--is a proper legislative matter, in county government that has an elective county executive the organization of the offices and positions into an effective administrative structure is a function in which the executive ought to have a voice and is a function in which that officer normally may take the principal initiative. This section therefore would, in this version, accord both the executive and the governing body a voice--the governing body the ultimate voice--in what the administrative structure should be.

Chapter V

PERSONNEL

Section 5-1. QUALIFICATIONS.[1]

(1) An elective officer of the county
   (a) shall be a legal voter of the state[2] and
   (b) shall have resided in the county six months immediately before assuming office.[3]

(2) Appointive personnel of the county shall have whatever qualifications the board of county commissioners prescribes or authorizes.

Section 5-2. NOMINATION AND ELECTION.[4] Except the first commissioners elected under this charter,[5] the manner of nominating and electing candidates for elective county offices shall be the manner prescribed by state law.[6]

Section 5-3. VACANCIES IN OFFICE.[7]

(1) A county office becomes vacant
   (a) for any cause prescribed by state law for county offices[8] or
   (b) on account of absence of its incumbent from the county or from the duties of the office for 60 consecutive days without the consent of the board of county commissioners.[9]

(2) The board may prescribe additional causes of vacancies in appointive offices.

(3) A vacancy in an elective county office shall be filled in the manner prescribed by state law.[10]

Section 5-4. RECALL. An elective officer of the county may be recalled in the manner, and with the effect, now or hereafter prescribed by the constitution and laws of the state.[11]

Section 5-5. NONDISCRIMINATION. The appointment and tenure

(1) of county administrative personnel shall be without regard to political affiliation or preference, religion, race, nationality, ethnic background, or sex;[12] and

(2) of county department heads without regard to civil service or merit system requirements of the county.[13]

Section 5-6. COMPENSATION.[14] The compensation of personnel in the service of the county shall be fixed by the board of county commissioners, except that commissioners' salaries shall be fixed annually by the public members of the budget committee.[15]

Section 5-7. MERIT SYSTEM.

(1) Within one year after this charter takes effect the board of county commissioners shall establish by ordinance a merit system[16] for personnel in the service of the county. In the system every county office and position shall be in the classified or unclassified service.[17] Selection, transfer, promotion, demotion, suspension, lay-off, and dismissal of persons in the classified service shall be solely on the basis of merit and fitness, the needs of the county,[18] and the finances of the county.[19]

(2) The unclassified service includes

(a) Elective officers,
(b) Heads of departments,
(c) The county administrative officer,[20] and
(d) Whatever other offices and positions the ordinance specifies.

(3) A person elected or appointed to an office or position in the unclassified service after having gained permanent status in the classified service shall, when the person's incumbency in the unclassified office or position ends, be restored to the classified service without loss of classified status.

(4) The board shall maintain a compensation plan setting forth rates and ranges of compensation for each class of position in the classified service.

(5) The board shall adopt personnel rules prescribing standards and procedures for employment within the classified service.

---

1. The county home rule constitutional amendment requires a county charter to "provide directly, or by its authority, for the...qualifications...of such officers as the county deems necessary" (Oregon Constitution, Article VI, Section 10 (1958, 1960)). The requirement is now qualified by the 1972 and 1974 amendments that authorize the state legislature to prescribe qualifications for sheriffs and assessors (id., Article VI, Section 8 (1972, 1974)). Whether the requirement is qualified by the pre-existing authorization for the state legislature to prescribe the qualifications of surveyors is not clear (ibid.).

2. To qualify as a legal voter of the state, a person must be a United States citizen, 18 years of age or older, a resident of the state for six months, and registered to vote. (Id., Article II, Section 2 (1974))

3. The amount of time during which prior residence may be required as a qualification for office holding is constitutionally limited. Bureau of Governmental Research and Service, University of Oregon, "Are Candidate Residency Requirements Valid?" Answers to Recent Inquiries, No. 52 (1975)) Outside California, that time appears to be one year or less (ibid.).

4. The county home rule constitutional amendment requires that a county charter "provide directly, or by its authority, for the...election or appointment...of such officers as the county deems necessary" (Oregon Constitution, Article VI, Section 10 (1958, 1960)).

5. If the charter does not change the number of commissioners or their terms of office, this exception is unnecessary. If the charter does effect such a change, transitional provisions for moving from general law status to home rule status or from one home rule arrangement to another are necessary. Such provisions commonly call for temporary deviation from permanent practices prescribed by the charter.

   If the charter provides for an elective county executive, this exception may need to refer to that officer.

6. Under state law, candidates for offices of county commissioner may be nominated by primary election (ORS 249.020 to 249.060, 249.210 to

249.271, and 249.310 to 249.450) or by certificate of nomination (ORS 249.710, 249.780, and 249.860), a device particularly suitable for nonpartisan nomination. Election of county officers takes place in November of even-numbered years at general elections (ORS Chapter 250).

Because this reference to state law is general, the reference would make applicable to the adopting county future amendments in that law governing the nomination and election of elective county officers (Seale v. McKennon, 215 Or. 562, 572, 336 P.2d 340, 345 (1959)).

This section of the charter says nothing about whether nominations are to be partisan or nonpartisan. The silence is conductive to most nominations being partisan, because the great majority of nominations under state law, being made at primary elections, are partisan. This prospect is the greater because of the long tradition of partisanship in county elections.

The charter could, of course, affirmatively call for nomination and election of county officers to be partisan, but, to achieve partisanship in election of officers under county home rule, the affirmative provision would not be necessary. Such a provision, moreover, would run counter to the long tradition in Oregon of allowing independent candidacies for county offices.

Nonpartisan nomination and election of county commissioners would make it logical for nomination to be effected simply by petition. To this end Section 5-2 might read:

> Section 5-2. NOMINATION AND ELECTION. Nomination of a candidate for an elective county office shall be by petition signed by 100 legal voters of the county and submitted to the officer in charge of county elections at least 70 days before the election at which the office is to be filled. No person may sign more than one petition pertaining to a single office to be filled at a single election. Election of a candidate so nominated shall be in the manner prescribed by state law for electing candidates to county offices.

In a county with a small population, the number of signatures required on a nominating petition might need to be reduced to 50 or 25.

Alternate section 5-2, immediately above, would not prevent election by a mere plurality if three or more candidates are on the ballot. If the county desires to require that candidates receive a majority of the votes cast, the section could read:

> Section 5-2. NOMINATION AND ELECTION. Nomination of a candidate for an elective county office shall be by petition signed by 100 legal voters of the county and submitted to the officer in charge of county elections at least 70 days before the election at which the office is to be filled. No person may sign more than one petition pertaining to a single office to be filled at a

single election. Election of a candidate so nominated shall be in the manner prescribed by state law for electing candidates to county offices, except that such a candidate, in order to be elected, shall receive a majority of the votes cast at an election for the candidates for the office that the candidate seeks. If no candidate at the election receives that majority, the board of county commissioners shall cause an election to be held in the county within 35 days after the earlier election. At the later election the candidates for the office shall be the two candidates who receive the two highest numbers of votes cast for such candidates at the earlier election. Of the two, the one who receives the greater number of votes at the later election is the one elected to the office.

A prohibition of partisanship in nominations and elections could be effected by supplementing Section 5-2, in the version last set forth above, with a sentence reading:

> No petition for nominating or ballot for electing a county officer, and no material officially duplicated and circulated for publicizing a candidacy for a county office, may indicate the candidate's affiliation with, preference for, or support by a political party.

A county interested in nonpartisanship for nominations and elections may wish to make applicable to the county, with appropriate adaptations, the procedure prescribed by state law for nominations for elective offices in cities that are not required by law to hold primary elections (ORS 221.190). That statute reads:

> (1) The local voters of each city may make nominations for all municipal elective offices to be filled. In a city not required by law to hold a primary election for municipal offices, all nominations for elective offices within the city may be made in any of the following ways:
>
> (a) By any regularly called convention of delegates representing the several wards of the city.
>
> (b) By any convention of voters met for such purpose in any ward of the city making ward nominations.
>
> (c) By any convention of voters met in city convention and representing the several wards in the city.

(d) By certificates of nomination signed by at least 25 voters in each ward in case of ward nominations or by at least 25 voters of the city in case of nominations at large.

(2) In any event, a certificate of nomination shall be made out and signed by at least 25 voters of the city and filed with the appropriate city officer on or before the 10th day preceding the day of any regular election, to entitle the names of candidates nominated to be placed upon the ballot.

7. This section, together with other features of this charter, would respond to the mandate in the county home rule amendment that a county charter "provide directly, or by its authority, for the...tenure...of such officers as the county deems necessary" (Oregon Constitution, Article VI, Section 10 (1958, 1960)).

8. State law (ORS 236.010) prescribes as follows a number of causes of vacancy in public offices, including county offices:

(1) An office shall become vacant before the expiration of the term if:

(a) The incumbent dies, resigns or is removed.

(b) The incumbent ceases to be an inhabitant of the district, county or city for which he was elected or appointed, or within which the duties of his office are required to be discharged.

(c) The incumbent is convicted of an infamous crime, or any offense involving the violation of his oath.

(d) The incumbent refuses or neglects to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law.

(e) The election or appointment of the incumbent is declared void by a competent tribunal.

(f) The incumbent is found to be a mentally diseased person by the decision of a competent tribunal.

(g) The incumbent ceases to possess any other qualification required for election or appointment to such office.

(2) The provisions of paragraph (b) of subsection (1) of this section shall not apply

where residence within the district, county or city for which he was elected or appointed is not required for such election or appointment.

Because this reference to state law is general, the references would make applicable to the adopting county future amendments to ORS 236.010 and any other state statute that prescribed causes of vacancies in county offices (Seale v. McKennon, 215 Or. 562, 572, 336 P.2d 340, 345 (1959)).

9. This paragraph would allow the board of county commissioners broad latitude to effectuate a vacancy in a county office because of prolonged disabling illness of the incumbent. By consenting to absence from duty beyond a period of 60 days, the board could avoid the vacancy. By withholding such consent, the board could effectually bring about the vacancy.

10. "When there is a vacancy in...any county...office, some suitable person shall be appointed by the...board of county commissioners to perform the duties of the office until the vacancy is regularly supplied as provided by law." (ORS 236.210)

To this general provision there is an exception for appointment by the Governor and by the appointee of the Governor to fill vacancies on three-member boards of county commissioners in situations where two or three of the offices on the board become vacant at the same time. (ORS 236.225)

"(1) There shall be elected at the general election...:
(f) A county commissioner to succeed any commissioner whose term of office expires the following January; and in any county where there is a vacancy...in the office of county commissioner, there shall be elected an additional commissioner to fill the vacancy." (ORS 204.005)

These provisions imply that what may be called a "short term" election to fill a vacancy on a board of county commissioners would be required in a situation where such a vacancy occurred soon after a commissioner took office. Under these provisions, an appointed county commissioner could not hold office as an appointee for more than two years and a few months.

11. The state constitution has for almost seventy years provided for popular recall of elective officers and prescribed in considerable detail the procedure for the recall (Oregon Constitution, Article II, Section 19 (1908, 1926)). Whether these terms of the constitution apply to elective officers of counties that operate under home rule is not clear, because the county home rule amendment says that a county charter "shall provide directly, or by its authority, for the ...election or appointment...[and] tenure...of such officers as the county deems necessary" (id., Article Vi, Section 10 (1958, 1960)).

Section 5-4 of the charter would clarify the law; it would make clear that in a county having this section in its charter, elective county officers would be subject to the recall. The generality of the reference would make applicable to the county future amendments to the state constitution and laws governing the recall (Seale v. McKennon, 215 Or. 562, 572, 336 P.2d 340, 345 (1959)).

12. Under the Equal Protection Clause in the Fourteenth Amendment to the United States Constitution, neither states nor their political subdivisions--the county is such a subdivision--may deny to any person the equal protection of the laws (United States Constitution, Amendment 14, Section 1 (1968)). Because of the manner in which the courts have brought the requirement of equal protection to bear on discrimination based on religion, race, nationality, ethnic background and sex, this subsection of Section 5-5 may be largely unnecessary from a strictly legal standpoint. Prohibitions such as this have become traditional, however, in legislation controlling public employment.

13. Section 5-7 of this charter would require the county adopting the charter to set up a merit system of county employment.

14. The county home rule constitutional amendment requires a county charter to "provide directly, or by its authority, for the...compensation ...of such officers as the county deems necessary" (Oregon Constitution, Article VI, Section 10 (1958, 1960)).

15. An alternative provision for commissioners' salaries would be an exception that no increase in such a salary take effect until the next January 1 after the next general November election after the increase is approved. This exception would give the voters of the county an opportunity to turn out of office at a regular election one or more commissioners who voted to increase commissioners' salaries in an amount displeasing to the voters.

    In any event it would seem inadvisable to specify maximum commissioners' salaries in fixed dollar amounts. Once such a maximum was fixed, it probably would be exceedingly difficult to change. Washington County's efforts to increase commissioners' salaries beyond $1,800 per year, a limit fixed in 1962, have uniformly failed.

16. This subsection mandates, it is important to note, a "merit system," not a "civil service" system. The latter usually has a more or less autonomous commission that exercises quasi-legislative, administrative, and quasi-judicial functions, all intended to bring persons into public service, govern their status in that service, and separate them from that service exclusively on the basis of competence and faithfulness of service. It has been found possible to achieve these

objectives without the cumbersomeness of the commission and without the divided responsibility that the operations of the commission have often posed. The advent of collective bargaining complicates the problems that arise out of that divided responsibility.

17. The words "classified" and "unclassified" are here "words of art," technical terms with special meanings in the context of personnel administration. Positions in the unclassified service include those of greatest responsibility, which therefore need to be appointive by chief elective or chief appointive officials on a basis that insures responsiveness to those officials. The unclassified service also includes positions of a temporary, professional, or other character for which merit system procedures would be inappropriate.

18. This phrase would allow the county effectually to terminate a public function and not be compelled to continue on the payroll persons who have been engaged in a function no longer needed.

19. This phrase would allow the county to adjust its payroll downward in the event it found itself in financial straits.

20. If the county had a county manager, the name of that officer should be substituted here for "county administrative officer." Additional positions, including the position of administrative assistant if any, could be placed in the unclassified service by ordinance.

Chapter VI

MISCELLANEOUS PROVISIONS

Section 6-1. INITIATIVE AND REFERENDUM. Except as county ordinance prescribes to the contrary, the manner of exercising the initiative and referendum with reference to a county proposition, including an amendment, revision, or repeal of this charter, shall be the manner prescribed by the constitution and laws of the state for doing so.[1]

---

1. This section is included in the charter in response to the mandate in the county home rule enabling statute that reads:

> "The charter, or legislation passed by the county pursuant thereto, shall provide a method whereby the legal voters of the county, by majority vote of such voters voting thereon at any legally called election, may amend, revise or repeal the charter." (ORS 203.720)

The statute goes on to say:

> "The county charter and legislative provisions relating to the amendment, revision or repeal of the charter are deemed to be matters of county concern and shall prevail over any conflicting provisions of ORS 203.710 to 203.790 and other state statutes unless otherwise specifically provided by conflicting state statutes first effective after January 1, 1961." (ibid.)

The voters of a county may exercise the initiative and referendum on a manifold basis. The state constitution, after reserving the powers of the initiative and referendum to the voters of the state, provides:

> "The initiative and referendum powers reserved to the people ...are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district. The manner of exercising those powers shall be provided by general laws...." (Oregon Constitution, Article IV, Section 1(5) (1968)).

Within the meaning of this subsection, a county is a municipality or district (Schubel v. Olcott, 70 Or. 503, 120 P. 375 (1912); Rose v. Port of Portland, 82 Or. 541, 162 P. 498 (1917); Carriker v. Lake County, 89 Or. 240, 171 P. 407 (1918)).

In response to the mandate in the second sentence of the paragraph

just quoted, the initiative and referendum law says:

> "The people of every county are authorized to enact, amend or repeal all local laws for their county by the initiative and referendum process. The procedure to be followed is provided by ORS 254.030, 254.042, 254,060, 254.070, 254.090 -254.170, 254.320, 254.330, 254.330, 254.410, 255.430 and 255.440..., except that the cost of paper, printing, binding and distributing of measures and arguments in the voters' pamphlet shall be paid for by the persons or organizations filing arguments and the county in as nearly as possible the same manner as provided in ORS 254.130 with respect to municipal measures." (ORS 254.310)

The county home rule amendment, without any apparent necessity of doing so, in view of the subsection just quoted from the constitution, concludes by saying:

> "The initiative and referendum powers reserved to the people by this Constitution hereby are further reserved to the legal voters of every county relative to the adoption, amendment, revision or repeal of a county charter and to legislation passed by counties which have adopted such a charter." (Oregon Constitution, Article VI, Section 10 (1958, 1960))

Further in the same vein, the county home rule enabling statute says:

> "The legal voters of any county, by majority vote of such voters voting thereon at any legally called election, may adopt, amend, revise or repeal a county charter." (ORS 203.720)

Later the statute spells out at greater length, as follows, initiative and referendum procedure for counties, making clear that under home rule a county may deviate from the state prescribed procedure:

> "(1) This section...describes the manner by which the initiative and referendum powers reserved to the legal voters of every county relative to the adoption, amendment, revision or repeal of a county charter and to legislation passed by counties which have adopted such a charter may be exercised. ...
>
> "(2) In all counties which do not provide by county legislation for the manner of exercising the initiative and referendum powers reserved by the Oregon Constitution to the people, as to their county legislation, the duties required of the Secretary of State by ORS 254.030, 254.042, 254.060 to 254.100, 254.110 to 254.170, 255.410 to 255.430 and 255.440, as to state legislation, shall be performed as to such county legislation by the county clerk, or the official whose functions and duties include the conduct of

elections. The duties required of the Governor shall be performed by the county judge or chairman of the board of county commissioners as to such county legislation. The duties required by ORS 254.030, 254.042, 254.060, 254.070, 254.090 to 254.170, 255.410, 255.430 and 255.440 of the Attorney General shall be performed by the district attorney as to such county legislation. ORS 254.030, 254.042, 254.060 to 254.100, 254.110 to 254.170, 255.410 to 255.430 and 255.440 shall apply in every county in all matters concerning the operation of the initiative and referendum in its county legislation, on which the county has not made or does not make conflicting provisions.

"(3) The printing and binding of measures and arguments in county legislation shall be paid for by the county in like manner as payment is provided for by the state as to state legislation by ORS 255.410, 255.430 and 255.440. The printing shall be done in the same manner that other county printing is done. Not less than 15 days before the election at which the measures are to be voted upon, the county clerk shall cause copies of the voters' pamphlets containing such measures to be distributed in such a manner that a copy is available to each registered elector in the county.

"(4) Arguments supporting or opposing county legislation shall be filed with the county clerk in conformance with the requirements of ORS 255.415.

"(5) It is intended to make the procedure in the county legislation, as nearly as practicable, the same as the initiative and referendum procedure for measures relating to the people of the state at large; and, to this end, for the purpose of computing the required number of signatures on petitions to initiate or refer county legislation, the provisions of section 1, Article IV, Oregon Constitution, as to percentages of the legal voters of the state, shall be the percentages as to the legal voters of a county, with the county charter being considered the same as the state Constitution."

Under this final paragraph, the procedure for adopting, amending, revising, or repealing a charter is more rigorous than the procedure for exercising the initiative and referendum with reference to county ordinances.

The mention in the final paragraph of percentages of voters required to sign initiative and referendum petitions may raise the question whether a county can by its own legislation require higher percentages. The answer appears to be no. One reason is that to allow

higher percentages to be prescribed locally would open the door to effectual denial of the initiative and referendum. The general initiative and referendum amendment allows higher percentages for cities (Oregon Constitution, Article IV, Section 1(5) (1968)). For counties, however, the constitutionally prescribed percentages for signatures on petitions are features of the substantive rights of the initiative and referendum and are not procedural features modifiable by counties. Under the initiative and referendum amendment to the state constitution, a petition proposing a referendum on a statute must be signed by four per cent, an initiative petition proposing a statute must be signed by six per cent, and an initiative petition proposing a constitutional amendment must be signed by eight per cent "of the total number of votes cast for all candidates for Governor at the election at which a Governor was elected for four years next preceding the filing of the petition." (Id., Article IV, Section 1(2-3).) For state measures, "votes cast" here means votes cast in the state. For county measures, "votes cast" here means votes cast in the county.

Presumably an initiative petition to repeal a county charter would need to be signed by the eight per cent. The constitution says nothing, at least nothing explicit, about the number of signatures necessary on an initiative petition to repeal the constitution. Repeal of a county charter appears to correspond, however, to constitutional amendment or revision. Hence the inference that an initiative repeal petition, in order to have its intended effect, must be signed by a number of voters equal to eight per cent "of the total number of votes cast [in the county] for all candidates for Governor at the election at which a Governor was elected for four years next preceding the filing of the petition." By county ordinance this percentage could be reduced.

Chapter VII

TRANSITION

Section 7-1. EFFECTIVE DATE. This charter takes effect the first Monday after January 1, 19__.[1]

Section 7-2. CONTINUITY

(1) The taking effect of this charter causes no break in the existence or legal status of the county.

(2) All rights, claims, causes of action, contracts, and legal and administrative proceedings of the county that exist just before the charter takes full[2] effect continue unimpaired by the charter after it takes full[2] effect. Each shall then be in the charge of the officer or agency designated by the charter or by its authority to have charge of it.

(3) All county legislation, orders, rules, and regulations that are in force just before this charter takes full[2] effect remain in force after that time, insofar as consistent with the charter, without change until amended or repealed.

(4) A county commissioner who is in office when this charter takes full[2] effect may continue in office for the term for which then elected.[3]

(5) The terms of office of other elective administrative officers of the county, except the county judge,[4] who are in office when this charter takes full[2] effect continue for one year thereafter, but the functions of these officers during that time are whatever functions the board of county commissioners prescribes.

(6) The county judge who is in office when this charter takes full[2] effect may continue in office for the term

for which then elected and, while so continuing, shall serve as one of the county commissioners and chair the proceedings of the board.[5]

---

1. If a special election or a preliminary election at the same time as a general election is needed to elect officers necessary for the plan of government for which the charter provides, two effective dates for the charter may be necessary. If so, this section may read:

   Section 7-1. EFFECTIVE DATES. To the extent necessary for electing on _____, 19__, the first commissioner to be elected under this charter, the charter takes effect _____, 19__. For all other purposes the charter takes effect _____, 19__.

2. If the charter took full effect at once and therefore had only one effective date, the word "full" should be omitted.

3. This subsection assumes that commissioners elected before the final effective date of the charter for terms of office continuing after that date would be allowed to serve the full terms for which elected. If previous sections of the charter provided a plan for the county governing body that necessitated earlier termination of these terms of office, this subsection should be modified accordingly.

4. If the county had no county judge after the charter was adopted, this exception would be unnecessary.

5. This subsection would be used only if the county had a county judge with judicial functions that were to continue under the charter. If these functions were terminated earlier but the judge continued in office under the charter, or if the functions were being terminated as the charter took full effect, the section should read:

   (6) The county judge who is in office when this charter takes full effect may continue in office as a county commissioner for the term for which elected as judge.

APPENDIX

- COUNTY HOME RULE AMENDMENT
- COUNTY HOME RULE ENABLING LEGISLATION

APPENDIX

COUNTY HOME RULE AMENDMENT

(Section 10, Article VI, Constitution of Oregon)

Section 10. The Legislative Assembly shall provide by law a method whereby the legal voters of any county, by majority vote of such voters voting thereon at any legally called election, may adopt, amend, revise or repeal a county charter. A county charter may provide for the exercise by the county of authority over matters of county concern. Local improvements shall be financed only by taxes, assessments or charges imposed on benefitted property, unless otherwise provided by law or charter. A county charter shall prescribe the organization of the county government and shall provide directly, or by its authority, for the number, election or appointment, qualifications, tenure, compensation, powers and duties of such officers as the county deems necessary. Such officers shall among them exercise all the powers and perform all the duties, as distributed by the county charter or by its authority, now or hereafter, by the Constitution or laws of this state, granted to or imposed upon any county officer. Except as expressly provided by general law, a county charter shall not affect the selection, tenure, compensation, powers or duties prescribed by law for judges in their judicial capacity, for justices of the peace or for district attorneys. The initiative and referendum powers reserved to the people by this Constitution hereby are further reserved to the legal voters of every county relative to the adoption, amendment, revision or repeal of a county charter and to legislation passed by counties which have adopted such a charter.

COUNTY HOME RULE ENABLING LEGISLATION

(ORS 203.710 to 203.790)

203.710 Performance of functions by officers designated by county law; definition. (1) The designation of county officers to perform functions under ORS 203.710 to 203.790 extends to those officers who, under a county charter or legislation enacted pursuant thereto, may be designated to perform the same functions.

(2) References to the county court in ORS 203.710 to 203.790 include the board of county commissioners.

(3) As used in ORS 203.710 to 203.790, unless the context requires otherwise, "legally called election" means any primary or general election held throughout the county.

203.720 Voters of county may adopt, amend, revise or repeal county charter; certain provisions, deemed matters of county concern, to prevail over state law. The legal voters of any county, by majority

vote of such voters voting thereon at any legally called election, may adopt, amend, revise or repeal a county charter. The charter, or legislation passed by the county pursuant thereto, shall provide a method whereby the legal voters of the county, by majority vote of such voters voting thereon at any legally called election, may amend, revise or repeal the charter. The county charter and legislative provisions relating to the amendment, revision or repeal of the charter are deemed to be matters of county concern and shall prevail over any conflicting provisions of ORS 203.710 to 203.790 and other state statutes unless otherwise specifically provided by conflicting state statutes first effective after January 1, 1961.
[1959 c.527 s.2]

203.730 Charter committee appointed after filing of resolution or petition; sufficiency of petition; notice to persons entitled to make appointments to committee. (1) A county charter may be proposed by a committee appointed after the filing with the county clerk of:

(a) A resolution requesting appointment of the committee, adopted by a majority of the county court; or

(b) A petition requesting appointment of the committee, signed by such number of legal voters of the county as is equal to at least five percent of the whole number of votes cast within the county for that position of judge of the Supreme Court for which the greatest number of votes was cast within the county at the last preceding election for judge of the Supreme Court. The petition shall be substantially in such form as the county clerk may prescribe.

(2) The county clerk, within five days after the filing of the resolution of the county court, shall give written notice thereof to those persons entitled to participate in the appointment of a member of the committee.

(3) Upon the filing with the county clerk of a petition requesting the appointment of a committee, the county clerk shall, within 15 days after the filing of the petition, verify the signatures in the manner provided in ORS 254.042 and certify to the county court his findings as to the sufficiency of such petition. If the petition is found to be sufficient, the county clerk immediately shall give written notice thereof to those persons entitled to participate in the appointment of a member of the committee.
[1959 c.527 ss.3, 4; 1973 c.255 s.1]

203.740 Charter committee and members; appointment, qualifications, vacancies, terms, organization, meetings. (1) Within 60 days after the county clerk finds that a petition for the appointment of a committee is sufficient, or within 60 days after the county court has filed with the county clerk its resolution requesting that a committee be appointed, a committee shall be appointed as provided in this section. Only one committee is to be in existence at any given period of time.

(2) (a) In all counties in which representative subdistricts do not exist, (i) a majority of the county court is entitled to appoint four members of the committee; (ii) a majority of the State Senators and State Representatives then representing the county is entitled to appoint four additional members; and (iii) a majority, consisting of at least five, of those persons appointed under (i) and (ii) of this paragraph is entitled to appoint one additional member.

(b) In all counties in which representative subdistricts exist, (i) a majority of the county court is entitled to appoint four members of the committee; (ii) a majority of the State Representatives then representing each representative subdistrict is entitled to appoint an additional member; and (iii) a majority of the State Senators then representing the county is entitled to appoint two additional members.

(c) If, within 45 days after the terms of committee members begin to run as provided in subsection (4) of this section, an appointing authority has not made the appointment or appointments it is entitled to make, the county clerk shall call a meeting of those persons constituting the appointing authority by giving written notice to each of them, specifying the purpose of the meeting and

the time and place thereof. The time of the meeting shall be set within 15 days of the expiration of the 45-day period.

(3) All members of the committee must be legal voters of the county; and no member shall be engaged, directly or indirectly, in any business with the county which is inconsistent with the conscientious performance of his duties as a member of the committee. An initial appointment, or an appointment to fill a vacancy, is made by delivering to the county clerk written notice of the name and address of the person appointed, signed by the person duly authorized to act for the appointing authority. No member of an appointive authority may serve as a member of such committee. If an appointing authority fails to make such an initial appointment within 60 days after the terms of committee members begin to run as provided in subsection (4) of this section, the county court shall make the appointment within 10 days after the expiration of the 60-day period.

(4) The terms of committee members run either from the date the county court receives the certification from the county clerk that the petition requesting the appointment of the committee is sufficient or from the date the county court files its resolution requesting appointment of the committee, as the case may be. The terms expire on the day of the election at which the committee's proposed charter is voted upon or within two years from the date the terms began, whichever is the sooner, unless, in the case where a proposed charter is not submitted at an election held within such two-year period, the county court by resolution filed with the county clerk before the expiration of the terms extends them until the day of the election on the proposed charter or for another two years, whichever is the sooner. Any vacancy occurring on the committee, in a position for which an initial appointment has been made, shall be filled by appointment for the unexpired term by the appointing authority which was entitled to make the initial appointment of the member whose position is vacant or, if such appointing authority fails to make the appointment within 10 days after the vacancy occurs, by the county court.

(5) Not later than 80 days after the terms of committee members begin to run as provided in subsection (4) of this section, the members of the committee shall meet and organize. A majority of the committee constitutes a quorum for the transaction of business. The committee may adopt such rules as it deems necessary for its operation. However, the committee may not prohibit the public from attending any of its meetings.
[1959 c.527 s.5]

203.750 County funds for charter committee; committee staff; county officials to cooperate. (1) Notwithstanding ORS 294.305 to 294.520, if the county court is notified of the sufficiency of a petition requesting the appointment of a committee, or if it files its resolution requesting the appointment of a committee, the county, acting through the county court, shall cause to be made available from funds of the county an amount equal at least to one cent per registered elector of the county or $500, whichever amount is greater, for the purpose of paying the expenses of the committee in the preparation of the charter. Members of the committee shall serve without pay. The committee, within the limit of funds available to it, may employ such persons, or contract for their services, as it may deem necessary to aid it in the performance of its functions. Persons employed by the committee are exempt from civil service. The county, acting through the county court, shall cause to be furnished free of charge to the committee adequate office space and, notwithstanding ORS 294.305 to 294.520, may cause money, in addition to the required minimum amount, to be appropriated for the committee. The committee shall submit to the county court a budget covering estimates of its expenditures. With respect to expenditures in excess of the minimum amount of money required to be made available, the budget as approved or revised and approved by the county court shall represent the authorized limits of the committee's expenditures. Any balance remaining unexpended shall be transferred to the general fund of the county unless other provisions were made at the time of the appropriation to the

committee. The county treasurer is authorized to disburse funds of the committee on its order.

(2) The committee may conduct interviews and make investigations which to it seem necessary in order to draft a charter; and, to the fullest extent practicable, county officials and employes shall cooperate with the committee and provide it with information, advice and assistance.
[1959 c.527 s.6]

203.760 Submission of proposed charter, after public hearing, to voters; approval of conflicting charters. (1) The committee shall submit its proposed charter to the county clerk not less than 90 days prior to the election at which the proposed charter is to be voted upon. Before the proposed charter is submitted to the county clerk, the committee shall conduct at least one public hearing thereon. After the proposed charter is so submitted to the county clerk, those persons required by ORS 203.780 to act in the exercise of the referendum powers relative to the adoption of a county charter shall act in the same manner with respect to the charter proposed by the committee unless such action is not required in cases where they or others are acting under ORS 203.790. The charter proposed by the committee shall take effect on the day fixed therein if approved by majority vote of the legal voters of the county voting thereon.

(2) If two or more conflicting county charters are approved at the same election, the one receiving the greatest number of affirmative votes shall be adopted.
[1959 c.527 s.7]

203.770 Copies of charters and amendments, revisions and repeals thereof; location and judicial notice of. (1) Duplicate certificates shall be made, setting forth the county charter adopted and a statement of its ratification, signed by the officers or members of the body canvassing election returns. One of such certified copies shall be deposited in the office of the Secretary of State, the other shall be kept as a permanent record of the county. All courts shall take judicial notice of either copy.

(2) This section shall also apply to any amendment, revision or repeal of the county charter.

203.780 Initiative and referendum powers with respect to county charter and legislation. (1) This section, pursuant to section 10, Article VI, Oregon Constitution, describes the manner by which the initiative and referendum powers reserved to the legal voters of every county relative to the adoption, amendment, revision or repeal of a county charter and to legislation passed by counties which have adopted such a charter may be exercised. For the purposes of this section "county legislation" means the adoption, amendment, revision or repeal of a county charter and legislation passed by counties which have adopted such a charter.

(2) In all counties which do not provide by county legislation for the manner of exercising the initiative and referendum powers reserved by the Oregon Constitution to the people, as to their county legislation, the duties required of the Secretary of State by ORS 254.030, 254.042, 254.060 to 254.100, 254.110 to 254.170 and 255.410 to 255.430 and 255.440, as to state legislation, shall be performed as to such county legislation by the county clerk, or the county official whose functions and duties include the conduct of elections. The duties required of the Governor shall be performed by the county judge or chairman of the board of county commissioners as to such county legislation. The duties required by ORS 254.030, 254.042, 254.060, 254.070, 254.090 to 254.170 and 255.410, 255.430 and 255.440 of the Attorney General shall be performed by the district attorney as to such county legislation. ORS 254.030, 254.042, 254.060 to 254.100, 254.110 to 254.170 and 255.410 to 255.430 and 255.440 shall apply in every county in all matters concerning the operation of the initiative and referendum in its county legislation, on which the county has not made or does not make conflicting provisions.

(3) The printing and binding of measures and arguments in county legislation shall be paid for by the county in like manner as payment is provided for by the state as to state legislation by ORS 255.410, 255.430 and 255.440. The printing shall be done in the same manner that other county printing is done. Not less than 15 days before the election at which the measures are to be voted upon, the county clerk shall cause copies of the voters' pamphlets containing

such measures to be distributed in such a manner that a copy is available to each registered elector in the county.

(4) Arguments supporting or opposing county legislation shall be filed with the county clerk in conformance with the requirements of ORS 255.415.

(5) It is intended to make the procedure in the county legislation, as nearly as practicable, the same as the initiative and referendum procedure for measures relating to the people of the state at large; and, to this end, for the purpose of computing the required number of signatures on petitions to initiate or refer county legislation, the provisions of section 1, Article IV, Oregon Constitution, as to percentages of the legal voters of the state, shall be the percentages as to the legal voters of a county, with the county charter being considered the same as the state Constitution.

203.790 Publication of proposed charters in voters' pamphlets. (1) Subject to and in accordance with any applicable election law, the Secretary of State may provide for, and may promulgate such rules and regulations as he considers necessary to provide for the publication, and payment therefor, of proposed county charters, including arguments for and against, in the voters' pamphlets distributed to the county as provided by ORS 255.061 or 255.241.

(2) Publication, under this section, of a proposed county charter and any arguments is an alternative to the publication thereof required by ORS 203.760 or 203.780.

203.810 (1) As used in this section:

(a) "County law" means a county charter adopted pursuant to ORS 203.710 to 203.790 and legislation passed by a charter county or any ordinance enacted by a general law county.

(b) "County offense" means any crime or offense defined or made punishable by county law.

(2) Except as may be provided otherwise by county law:

(a) The justice courts, district court, if any, and circuit court for a county have jurisdiction of county offenses to the same extent as such courts have jurisdiction of crimes or offenses defined or made punishable by state law, as determined by the maximum punishment which may be imposed therefor.

(b) The district attorney shall prosecute county offenses unless he elects, subject to the approval of the county governing body, to have the prosecution of such offenses conducted by a county counsel appointed pursuant to ORS 203.121.

(c) The practice and procedure as to the prosecution, trial and punishment of county offenses shall be be the same as in the case of similar crimes or offenses defined or make punishable by state law.

[as amended by A-Eng. SB 460, 1977 session]