

MULTNOMAH COUNTY CHARTER, Vol. 1, Bk. 2
-Representation

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REPRESENTATION

Studies in County Government

ILLUSTRATIVE PROVISIONS FOR HOME-RULE CHARTERS FOR OREGON COUNTIES:

REPRESENTATION

The constitutional authorization for county home rule in Oregon requires that a county charter "prescribe the organization of the county government" and "provide," subject to certain limitations irrelevant here, "such officers as the county deems necessary."¹ This requirement clearly allows a county under home rule a wide latitude in according the people of the county representation in the governing body of the county.

In the contriving of a system of county home rule no question is more important than the question of how this representation shall be accorded. This question involves many subsidiary questions, including the following:

1. How many members shall the governing body include, and on the basis of what factors shall their number be determined?
 - a. Area of the county? (The larger the territory of a county, the larger perhaps should be the membership of its governing body.)
 - b. Population of the county? (The larger the population of a county, the larger perhaps should be the membership of its governing body.)
 - c. Topography of the county? (Whether or not a county is divided into sections by mountains, streams, and other topographical features may bear on what the size of its governing body should be.)
 - d. Number and size of geographical communities in the county? (If a county has, for example, five main geographical communities, that number may be a persuasive reason for deciding that the governing body of the county should have five members.)
 - e. The extent to which the county is metropolitan? (This question is closely related to the questions above regarding population and communities. The more metropolitan a county is, the larger perhaps should its governing body be.)
 - f. The functions of the county governing body under home rule? (If the governing body is to have administrative responsibilities as well as legislative power, it perhaps should be kept smaller than if it is to be solely a policy-making body.)
 - g. Size of present county governing body? (The size of the governing body that a county has just before assuming home rule may have, politically at least, an important bearing on what the size of the governing body should be under home rule.)
2. How shall the members of a county governing body be elected?
 - a. By districts? (Election by districts is virtually the universal pattern in many states.)

¹Oregon Constitution, article VI, section 10 (1960).

- b. At large? (Election at large is virtually the universal pattern in other states, including Oregon.)
 - c. By a combination of the two? (Sometimes the combination is urged for purposes of avoiding both the sectionalism that may result from election by districts and the lack of sectional and other minority representation that may result from elections at large.)
 - d. On a nonpartisan basis? (There is in the United States, of course, a long tradition of nonpartisan local elections. Nonpartisanship in these elections has, however, had its critics.)
 - e. On a partisan basis? (Nonpartisanship has been less popular in counties than in other types of local governmental unit.)
3. How shall candidates for elective positions in the county governing body be nominated?
- a. By districts? (Election by district is usually accompanied by nomination by district.)
 - b. At large? (Candidates elected at large are quite universally nominated at large. Candidates elected by district are sometimes nominated at large, for purposes of minimizing the sectionalism that is regarded as tending to result from election by districts.)
 - c. By petition? (The nominating petition subscribed by a specified number of voters is a common device for nominating candidates for local governmental offices.)
 - d. By caucus? (The caucus or convention is a common device for nominating candidates for local governmental office. It has traditionally been a partisan meeting, but in Oregon at least it has sometimes been a nonpartisan nominating device.)
 - e. By simple filing or declaration of candidacy? (This quite common device is ordinarily the simplest method of becoming a candidate for an elective public office. To prevent indiscriminate filing it is sometimes required that a filing be accompanied by a specified fee or that the candidate make a deposit returnable in the event that he receives a specified percentage of the votes at the election where he stands for nomination.)
4. Shall the political subdivisions in a county--that is, its cities and special districts--be represented as such in the governing body of the county? (The governing bodies of Michigan counties, for example, are made up of representatives of the municipalities and organized townships in the counties. The Michigan pattern could not readily be followed in Oregon, because this state has no townships organized as units of government. But the Michigan pattern suggests that in the working out of the structure of government of a home-rule county, some consideration be given to affording the local governmental units in the county direct representation on the governing body of the county.)
- a. Are the local governmental units in a county so interrelated to one another and to the county that it would be advisable for them to have formal

¹ Michigan, State University, College of Business and Public Service, Bureau of Social and Political Research, The County Board of Supervisors, p. 6 (1959).

representation in the governing body of the county? (The greater this interrelationship, the more certainly may the answer to this question be yes.)

- b. What bearing does the increasing resemblance between county functions and city functions have on the question whether cities ought to be represented as such on county governing bodies? (This increasing resemblance has been noted by a number of students of county government in academic and governmental circles. The resemblance is clearest in "urban" and metropolitan counties.)
5. How long shall the term of office of a member of a county governing body normally run? (The term quite universally runs two, four, or six years. The objective of popular control of government is commonly advanced as a reason for saying that election of public officers not be too infrequent--specifically, that an elective public officer stand for election at least once every six years. Two-year terms for elective officers are widely regarded--and with reason--as serving the cause of popular control. They involve some danger, however, of excessively long ballots and of such a rapid turnover in officialdom that experienced office holders become too rare. Two-year terms for elective offices also involve the danger that some of the most competent potential office holders will avoid seeking office because they will not undergo an election campaign every two years. Perhaps for these reasons, four-year terms for members of county governing bodies appear to be the most common throughout the country.)
6. Shall the terms of office of members of a county governing body overlap? (The most common argument for this overlapping is that it insures experienced membership for the governing body. The overlapping may detract from popular control, but this disadvantage does not appear to be regarded as outweighing the advantage of keeping one or more experienced members in the governing body.)
7. How shall vacancies in the county governing body be filled?
- a. By appointment? (This is the most common mode of filling the vacancies.)
- b. By election? (This mode is less common, but some provision for it may be desirable.)
- c. If appointment, appointment by whom? (Sometimes vacancies in county posts are filled by the governor, sometimes by the county governing body itself.)
8. To what extent shall representation in the county governing body be augmented by means of administrative and advisory boards and commissions to which residents of the county are appointed? (In local government generally the administrative and the advisory board or commission is a common device for "keeping government close to the people." The members of such boards and commissions are usually appointed, and with good reason. Popular election of them would admittedly afford the electorate a direct voice in who these members should be, but it would so lengthen the ballot and so divide and complicate responsibility for policy-making and administration that paradoxically it would tend to decrease rather than increase popular control of the government of the county.)
9. To what extent shall representation in the county governing body be augmented by means of direct popular election of administrative officers? (Whether administrative officers should be elected or appointed is a controversial question.)

Election of them is commonly urged for purposes of insuring that local government remain representative of its constituents. Appointment is commonly urged as the superior mode of insuring competence on the part of persons in administrative positions. Appointment is also commonly urged as conducive to simplicity of governmental structure and to good co-ordination of the functions of the county.)

10. What compensation shall the members of a county governing body receive for their services? (The answer to this question will turn largely on their number, on the nature of their responsibilities, particularly on whether their responsibilities are administrative as well as legislative, and on the amount of time they are to devote to those responsibilities.)

It is not feasible here to attempt either to answer these questions for any particular county or to illustrate by suggested charter provisions all the arrangements for representation that may deserve consideration in the drafting of a particular county charter. It is feasible, though, by means of the questions listed above and by means of the illustrative charter provisions set forth below, to point out alternatives in the drafting of county charters that deserve consideration, to illustrate the alternatives with examples of charter provisions, and thereby to elicit a more thorough exploration of the alternatives than would ordinarily be undertaken in the absence of the questions and illustrative provisions.

Present Oregon System: Nomination and Election at Large

One common plan of representation calls for members of county governing bodies to be elected at large for overlapping terms, as are the members of the present county courts and boards of county commissioners in Oregon. In most Oregon counties a county judge is elected every six years and a county commissioner is elected every two years for a four-year term. In each of the other counties two county commissioners are elected every four years, and a single such commissioner is elected during alternate even-numbered years. Each of these county officers is nominated and elected at large and, except for the county judge, holds office for four years. Whatever election by districts is effected in Oregon counties--the practice is said to prevail in at least one county--is effected only on the basis of informal political "gentlemen's agreements."

Under a home-rule charter an Oregon county may continue its present legal arrangement for nominating and electing the members of its governing body. The continuation may be provided for in full detail in the charter. The charter may, on the other hand, effect the continuation by a mere reference to the pertinent provisions in the constitution and laws of the state. The following illustrative section makes such a reference:

Section ____. BOARD OF COUNTY COMMISSIONERS. The board of county commissioners shall consist of the number of commissioners for the county provided for by the constitution and laws of the state as they now read or are from time to time amended. Each of the commissioners shall be designated in the manner, and hold office for the term, that is likewise provided for him.

If it is desired under county home rule that the county governing body continue under the name "county court," the section may read as follows:

Section ____. COUNTY COURT. The county court shall consist of the officers provided for it by the constitution and laws of the state as

they now read or are from time to time amended. Each of the officers shall be designated in the manner, and hold office for the term, that is likewise provided for him.

Either of these suggested sections would keep the county governing body in what is sometimes called "dynamic conformity" with the state law. If what is sometimes called "static conformity" is instead desired--in other words, if it is desired that the governing body be continued as at present, irrespective of subsequent changes in the state constitution and laws, the section may be changed accordingly. It may read, for example, with reference to a board of commissioners:

Section ____. BOARD OF COUNTY COMMISSIONERS. The board of county commissioners shall consist of three commissioners, each designated in the manner, and holding office for the term, provided for him at present by the constitution and laws of the state.

Or the section may read, with reference to a county court:

Section ____. COUNTY COURT. The county court shall consist of a county judge and two county commissioners, each designated in the manner, and holding office for the term, provided for him at present by the constitution and laws of the state.

Nomination and Election at Large, With Overlapping Terms

In many Oregon cities approximately half the city council is elected every general November election for four-year terms. A county that desires a similar system of representation may effect it by adopting a charter with one of the two following illustrative sections. The first contemplates an elected county executive similar to a "strong" mayor in a city--that is, a municipal administrative system in which a mayor is clearly the central and dominant figure. The second contemplates an appointed county executive or some other system of administration without the counterpart of a "strong" mayor:

Section ____. COUNTY COUNCIL.

- (1) The county council shall consist of the county executive and six councilmen, all elected from the county at large for four-year terms, except as this charter provides to the contrary.
- (2) At the first general November election after this charter takes effect and at the general election each fourth year thereafter the qualified voters of the county shall elect a county executive. The candidate for the office who receives the highest number of votes cast at the election for any candidate for the office shall, except as this charter provides to the contrary, hold the office--
 - (a) for the four calendar years immediately ensuing the election and
 - (b) until the time that his successor to the office qualifies for it.
- (3) At the first general November election after this charter takes effect the voters shall elect six councilmen.
 - (a) Each of the three candidates for positions in the council

who receive the three highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position in the council--

- (i) for the four calendar years immediately ensuing the election and
- (ii) until the time that his successor to the office qualifies for it.

(b) Each of the three candidates for positions in the council who receive the next three highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position in the council--

- (i) for the two calendar years immediately ensuing the election and
- (ii) until the time that his successor to the office qualifies for it.

(4) At each general election after the first the voters shall elect three councilmen. Each of the three candidates for positions in the council who receive the three highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position in the council--

- (a) for the four calendar years immediately ensuing the election and
- (b) until the time that his successor to the office qualifies for it.

Section ____ . COUNTY COUNCIL.

- (1) The county council shall consist of seven councilmen, all elected from the county at large for four-year terms, except as this charter provides to the contrary.
- (2) At the first general election after this charter takes effect the voters shall elect seven councilmen.
 - (a) Each of the three candidates for positions in the council who receive the three highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position in the council--
 - (i) for the four calendar years immediately ensuing the election and
 - (ii) until the time that his successor to the office qualifies for it.
 - (b) Each of the four candidates for positions in the council who receive the next four highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position in the council--
 - (i) for the two calendar years immediately ensuing the election and

- (ii) until the time that his successor to the office qualifies for it.
- (3) At each general election after the first the voters shall elect four councilmen.
 - (a) Each of the three candidates for positions in the council who receive the three highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position in the council--
 - (i) for the four calendar years immediately ensuing the election and
 - (ii) until the time that his successor to the office qualifies for it.
 - (b) The candidate for a position in the council who receives the fourth highest number of votes cast at the election for the positions shall, except as this charter provides to the contrary, hold his position in the council--
 - (i) for the two calendar years immediately ensuing the election and
 - (ii) until the time that his successor to it qualifies for it.
- (4) At its first regular meeting of each odd-numbered year the council shall designate one of its members president of the council. The president shall, except as this charter provides to the contrary, hold the office--
 - (a) for two years and
 - (b) until his successor to it qualifies for it.

Under the second of these two illustrative sections, which is intended to be especially adaptable for a county that desires to adopt a council-manager form of government, the electorate of the county would elect a majority of the members of the county council every general November election. Under the first of the two sections the electorate would elect the majority every other November election.

Nomination and Election at Large, Without Overlapping Terms

In either of the arrangements just illustrated it is possible to eliminate the overlapping of terms of office. This change may be effected as follows with reference to the first arrangement--and by a corresponding change with reference to the second arrangement:

Section ____. COUNTY COUNCIL.

- (1) The county council shall consist of the county executive and six councilmen, all elected from the county at large for four-year terms, except as this charter provides to the contrary.
- (2) At the first general November election after this charter takes effect and at the general election each fourth year thereafter, the qualified voters of the county shall elect a county executive. The candidate for the office who receives the highest

number of votes cast at the election for any candidate for the office shall, except as this charter provides to the contrary, hold the office--

- (a) for the four calendar years immediately ensuing the election and
 - (b) until the time that his successor to the office qualifies for it.
- (3) At the first general November election after this charter takes effect and at the general November election each fourth year thereafter the voters shall elect six councilmen. Each of the six candidates for positions in the council who receive the six highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position in the council--
- (a) for the four calendar years immediately ensuing the election and
 - (b) until the time that his successor to the office qualifies for it.

Cumulative Voting

One of the political goals widely accepted in the United States is that representative governing bodies reflect with some approximation the political complexion of their constituencies. In keeping with this goal, there may be a desire that in a system of representation such as the three just illustrated, certain geographical areas or certain groups with common economic and social interests but with only the voting strength of a minority be assured representation in the county governing body by someone from the particular area or group. What is known as "cumulative" voting has sometimes been resorted to for this purpose, most notably in the election of members of the lower house in the legislature of the state of Illinois.¹ The following charter provision illustrates this variation from normal voting in a county where three councilmen are elected at large at a single election:

Section ____. CUMULATIVE VOTING. In voting for councilmen a voter may at a single election cast--

- (1) one vote for each of three candidates for positions in the council,
- (2) one vote for one and two votes for another such candidate, or
- (3) three votes for a single such candidate.

The ballot at the election shall explain these alternatives.

Proportional Representation

A more refined arrangement for assuring that the political complexion of a representative governing body approximate the political complexion of its constituency is the system of proportional representation achieved by what is known as "the single transferable vote." This system of representation may be provided for a county or a part thereof in which several representatives are simultaneously elected at large. The article on "Nominations and Elections" in the Model City Charter of the National Municipal League² and the charter proposed for the purpose of consolidating

¹For a description and an analysis of Illinois' experience with cumulative voting see George S. Blair, Cumulative Voting: An Effective Electoral Device in Illinois Politics (Illinois Studies in the Social Sciences, volume 45), pp. xi, 45, Urbana: University of Illinois Press, 1960.

²National Municipal League, Model City Charter, secs. 156-65 (5th ed. 1941).

the cities of Marshfield and North Bend¹ illustrate in full detail how to establish proportional representation.

Nomination and Election by Districts

In many states, the county governing body is nominated and elected by districts. The following illustrative section provides for nomination and election of such a governing body by districts:

Section ____. COUNTY COUNCIL.

- (1) The county council shall consist of five councilmen--
 - (a) nominated and elected by districts and
 - (b) each residing in the district in which he is elected.

- (2) The county is hereby divided into council districts numbered and bounded as follows:
 - (a) Council District No. 1: set forth boundaries.
 - (b) Council District No. 2: set forth boundaries.
 - (c) Council District No. 3: set forth boundaries.
 - (d) Council District No. 4: set forth boundaries.
 - (e) Council District No. 5: set forth boundaries.

- (3) At the first general November election after this charter takes effect the voters of each council district shall elect a councilman to represent that district in the council. The candidate at the election who receives the highest number of votes legally cast for any candidate for the position shall receive a certificate of election to the position. His term of office for the position shall begin the first of the ensuing calendar year and, except as this charter provides to the contrary--
 - (a) in an odd-numbered district shall continue for four years and
 - (b) in an even-numbered district shall continue for two yearsand until his successor to the office qualifies for it.

- (4) At each general November election--
 - (a) which is a presidential election the voters of each even-numbered district and
 - (b) which is not a presidential election the voters of each odd-numbered districtshall elect a councilman to represent that district in the council. The candidate who receives the highest number of votes cast for any candidate for the position shall receive a certificate of election to the position. His term of office for the position shall begin the first of the ensuing calendar year and,

¹ Oregon, University, Bureau of Municipal Research and Service, Charter for the Proposed City of Coos Bay, secs. 45-53 (1943).

except as this charter provides to the contrary, shall continue--

- (a) for four years and
- (b) until his successor to the office qualifies for it.

(5) The mode of nominating a candidate for a position in the council shall be to file with the county clerk--

- (a) not earlier than 120 days and
- (b) not later than 70 days

before the election at which he seeks to be elected to the position, a nominating petition signed by--

- (a) not fewer than 20 and
- (b) not more than 35

legal voters of the district in which he resides at the time of the filing. For all councilmen nominated after the first councilmen elected pursuant to this charter take office, the form of nominating petition shall be whatever form the council prescribes.

Nomination by District, Election at Large

In local government the election of members of governing bodies by districts is commonly frowned upon as productive of a sectionalism that stands in the way of an over-all view of local governmental problems. Long ago it was said, for example, with reference to the township as "a unit of representation upon the county board of supervisors":

"Township representation is analogous to the principle of ward representation, an urban practice now on the decline. Ward representation in cities produced large and unwieldy councils and small caliber members, limited in outlook to the four corners of their individual wards. The same arguments apply against electing representatives to county boards from townships. The result is large and unwieldy county boards and small caliber members limited in outlook to the four corners of their individual townships."¹

Implicit in this point of view is the argument that election of the members of a county governing body at large is conducive to their viewing the governmental affairs of the county from the standpoint of the entire county.

Yet election at large increases the chances that the governing body of the county will represent only the dominant political force in the county. Particular sections of the county may be unwilling to run the risk of having no resident representative in the governing body. They may be apprehensive that in a system of election at large all members of the governing body would reside elsewhere, that sectionalism would nevertheless prevail, and that therefore sections of the county where no member of the governing body resided would be slighted. To allay this fear and at the same time to avoid the sectionalism of election by districts, it is frequently provided that members of local governmental governing bodies be nominated by districts but elected at large. Quite universally implicit in this arrangement, although not necessarily inherent in it, is a requirement that such a member reside in the district in which he is nominated.

¹

Arthur W. Bromage, American County Government, pp. 237-38 (1933).

In the state of Washington members of county governing bodies are nominated by districts and elected at large.¹ The following illustrative section for a county charter provides for such nomination and election:

Section ____ . COUNTY COUNCIL.

- (1) The county council shall consist of five councilmen--
 - (a) nominated by districts,
 - (b) elected at large, and
 - (c) each residing in the district in which he is nominated.

- (2) The county is hereby divided into council districts numbered and bounded as follows:
 - (a) Council District No. 1: [set forth boundaries].
 - (b) Council District No. 2: [set forth boundaries].
 - (c) Council District No. 3: [set forth boundaries].
 - (d) Council District No. 4: [set forth boundaries].
 - (e) Council District No. 5: [set forth boundaries].

- (3) The mode of nominating a candidate for a position in the council shall be to file with the county clerk--
 - (a) not earlier than 120 days and
 - (b) not later than 70 daysbefore the election at which he seeks to be elected to the position, a nominating petition signed by--
 - (a) not fewer than 20 and
 - (b) not more than 35legal voters of the district in which he resides at the time of the filing. For all candidates for positions in the council who are nominated after the first councilmen elected pursuant to this charter take office, the form of nominating petition shall be whatever form the council prescribes.

- (4) At the first general November election after this charter takes effect the voters of the county shall elect five councilmen. Of the candidates for a position in the council who are nominated--
 - (a) in an odd-numbered council district--
 - (i) the candidate who receives the highest number of votes cast at the election for any such candidate nominated in that district shall receive a certificate of election to the position and
 - (ii) his term of office for the position shall begin the first of the ensuing calendar year and, except as this charter provides to the contrary,

¹Washington State Association of County Commissioners, County Government in Washington State, p. 28 (1957).

continue for four years and until his successor to the office qualifies for it;

and

(b) in an even-numbered district---

(i) the candidate who receives the highest number of votes cast at the election for any such candidate nominated in that district shall receive a certificate of election to the position and

(ii) his term of office for the position shall begin the first of the ensuing calendar year and, except as this charter provides to the contrary, continue for two years and until his successor to the office qualifies for it.

(5) The legal voters of the county shall---

(a) at a general November election which is a presidential election, elect two councilmen from among the candidates nominated in even-numbered districts; and

(b) at a general November election which is not a presidential election, elect three councilmen from among the candidates nominated in odd-numbered districts.

Of the candidates for a position in the council who are nominated in a council district---

(a) the candidate who receives the highest number of votes cast at the election for any such candidate nominated in that district shall receive a certificate of election to the position and

(b) his term of office for the position shall begin the first of the ensuing calendar year and, except as this charter provides to the contrary, continue---

(i) for four years and

(ii) until his successor to the office qualifies for it.

(6) The office of a councilman---

(a) nominated in a council district and

(b) elected to the council in conformity with this charter shall become vacant as soon as the councilman takes up residence outside the district.

Re-apportionment of Districts

If members of county governing bodies are elected by districts, and perhaps even if they are merely nominated by districts, it seems imperative that some provision be made for modifying the boundaries of the districts from time to time in accordance with changes in population. The following illustrative charter section sets forth but one re-apportionment plan of many that are conceivable:

Section ____ . RE-APPORTIONMENT OF COUNCIL DISTRICTS.

(1) The policy of the county regarding the size of council districts is that in population they vary by not more than ten per cent.

(2) In the event that any official Federal or state census enumeration indicates that the population of any council district in

the county is less than 80 per cent of the population of any other such district,---

- (a) the county council shall modify the boundaries of any two or more of the districts in such a manner as to effectuate the policy enunciated in this section and
 - (b) in the event that the council fails for three months to make the change, its powers under this charter, other than the powers necessary to make the change, shall, except as this charter provides to the contrary, be suspended until the change is made.
- (3) No election shall be necessary to give legal effect to the change, unless by petition the change is subjected to the referendum, in which event the powers of the council shall not be suspended between--
- (a) the time the council makes the change and
 - (b) the time the voters of the county vote on it.

In the event a majority of the voters who vote upon the change approve it, it shall take effect at once. If the majority rejects the change, the powers of the council shall not be suspended under this section--

- (a) for an additional three months and
- (b) during whatever additional time is required for a county-wide vote on the change of district boundaries that the council makes during the three months.

The powers of the council shall not be suspended under this section during such additional--

- (a) periods of three months and
- (b) referendum time

as are necessary to bring the council district boundaries into conformity with the policy of the county regarding the size of the districts.

- (4) The council may from time to time change the boundaries of one or more council districts in such a manner that the population of no such district becomes less than 90 per cent of the population of another such district. Such a change shall take effect immediately upon being made, unless by petition it is subjected to the referendum, in which event it may take effect only upon being ratified by a majority of the voters who vote upon it.

Representation on Basis of Existing Units of Local Government

In Michigan the governing body of a county consists of representatives directly designated by the municipalities and townships in the county.¹ In Dade County, Florida, any city 60,000 or more in population is entitled as such to one representative in the county governing body.² The Michigan and Dade County plans suggest generally that representation on a county governing body may be based at

¹ Michigan, State University, College of Business and Public Service, Bureau of Social and Political Research, The County Board of Supervisors, p. 6 (1959).

² Toulmin, "Charter Ratified for Dade County," National Municipal Review 46(6): 305, June 1957.

least in part on existing units of local government within a county. The illustrative charter section that follows provides for a combination of representation of certain incorporated cities as such and of representation of unincorporated territory by means of districts:

Section ____. COUNTY COUNCIL.

- (1) The county council shall consist of one councilman from each council district in the county.
- (2) Each incorporated city which at the beginning of a year immediately after a year of a presidential election has a population of 3,000 or more according to the latest official Federal or state census report or estimate shall constitute, and for four years continue to constitute, a council district.
- (3) The territory--
 - (a) inside the county but
 - (b) outside its incorporated cities with populations of 3,000 or moreshall comprise three council districts with names and boundaries as follows or as hereafter modified pursuant to law:
 - (a) Council District No. 1: [set forth boundaries].
 - (b) Council District No. 2: [set forth boundaries].
 - (c) Council District No. 3: [set forth boundaries].

By the consent of three-fourths of its members the council may from time to time--

- (a) prescribe additional names for these three districts and
- (b) prescribe new boundaries for them.

Any such boundary shall become effective at the beginning of the next year immediately after a year of a presidential election, unless by referendum petition the boundary is subjected to a county-wide vote, in which event the boundary may become effective only when approved by a majority of the voters that vote on it.

- (4) Unless the charter of a city requires a different mode of designating the councilman to represent the city on the county council, the mode for designating that officer shall be for the governing body of the city by majority vote of all its members to designate--
 - (a) one of its members or
 - (b) some other resident of the cityso to represent it. The term of office of a councilman so designated shall be whatever term suits the designating council.
- (5) The mode of designating a councilman to represent an unincorporated council district in the county council shall be for the legal voters of the district to nominate and elect the councilman in the following manner and subject to the following conditions:

- (a) A councilman representing an unincorporated council district in the county council may be such only while residing in the district.
- (b) In an unincorporated council district groups that consist of--
 - (i) not fewer than 20 nor
 - (ii) more than 35
 legal voters of the district may--
 - (i) not earlier than 120 nor
 - (ii) later than 70
 days before an election at which a councilman for the district is to be elected, each file with the county clerk a petition nominating a candidate for the office of councilman for the district. The names of all such candidates for whom such petitions are thus filed shall be entered on the ballot used for voting at the election.
- (c) At each general November election that is not a presidential election the legal voters of each unincorporated council district shall elect a councilman to represent that district in the council. At the election the candidate who receives the highest number of votes cast for any of the candidates for the position shall receive a certificate of election to the position.
- (d) The term of office of the successful candidate shall--
 - (i) begin the first of the ensuing calendar year and,
 - (ii) except as this charter provides to the contrary, continue for four years and until his successor to the office qualifies for it.
- (e) For all councilmen nominated after the first councilmen elected pursuant to this charter take office, the form of nominating petition shall be whatever form the council prescribes.
- (f) The number of votes that a councilman has on matters before the council shall be determined--
 - (i) on the basis of the population of the council district that he represents as indicated by the latest Federal or state census report or estimate and
 - (ii) in accordance to the following table:

<u>Population</u>	<u>Votes</u>
- 2,000	1
2,001 - 5,000	2
5,001 - 10,000	3
10,001 - 25,000	4
25,001 - 50,000	5
50,001 -	6

The provision that the voting power of a representative be weighted on the basis of the population of his constituency is included, first, for the purpose of minimizing problems of re-apportionment to reflect changes in the population of council districts and, second, in recognition of the fact that the constituting of certain incorporated cities as council districts precludes a policy of making all council districts approximately equal in population.

An alternative to this provision for weighted voting would be a provision that the number of representatives from a council district or a city depend on the population of the district or city. The figures in the right-hand column above might, in other words, specify the number of representatives a council district or city should have on the basis of its population. In Michigan a similar plan is followed:

"Under Section 7 of Article VIII of the Constitution, the board of supervisors consists of one supervisor from each organized township and such representatives of the cities situated within the county as may be provided for by law. The legislature has determined that the number of supervisors or representatives from each city is to be as follows:

Population		Number of Supervisors
Less than	750	1
751	to 3,000	2
3,001	to 4,000	3
4,001	to 9,000	4
9,001	to 25,000	5
25,001	to 35,000	6
35,001	to 49,000	7
49,001	to 65,000	8
65,001	to 80,000	10
80,001	to 100,000	12

For cities from 100,001 to 500,000 population, there is one additional representative for each additional 10,000 population or fraction thereof."¹

Partisanship and Nonpartisanship

The foregoing illustrative provisions are adapted more to nonpartisanship than to partisanship in the nomination and election of members of county governing bodies. The provisions can be modified and supplemented so as explicitly to require either partisanship or nonpartisanship. Traditionally nonpartisanship in local government has not been as strong in counties as in municipalities and school districts. Whether partisanship or nonpartisanship in local elections is the more in keeping with basic objectives of good government in a representative democracy is a question that has generated considerable controversy during recent years.

Partisanship in the nomination and election of elective officers in a home-rule county may be provided for by making clear that candidates for elective county offices may be nominated in accordance with certain provisions of the state law regarding nominations by primary election. The state election law provides, for example, that by petition "any registered elector may become a candidate" for the nomination of his political party "for any office for which he is eligible."²

¹ Michigan, State University, College of Business and Public Service, Bureau of Social and Political Research, The County Board of Supervisors, p. 6 (1959).
²ORS 249.020 (1959).

The section goes on to provide:

"All nominating petitions . . . pertaining to candidates for county offices . . . shall be filed with the county clerk."

Subsequent sections set forth requirements for the petition.¹ By mere reference a county home-rule charter may make all these statutory provisions applicable in the county operating under the charter. It is doubtful that the provisions apply by their own force to such a county, because the county home-rule amendment in the state constitution requires a county home-rule charter to "provide directly, or by its authority, for the . . . election . . . of such officers as the county deems necessary."²

If it is desired that under county home rule elective county officers be nominable and electable solely on a partisan basis, the limitation may be given legal effect by a referential provision in the charter reading as follows:

Section ____. PARTISAN NOMINATION AND ELECTION OF OFFICERS. Candidates for elective offices of the county may be nominated and elected only in the modes authorized by present or future election laws of the state for nominating and electing candidates of political parties for the offices.

If it is desired, on the other hand, that elective county officers be nominable and electable either on a partisan or a nonpartisan basis, the option may be given legal effect by a referential provision in the charter reading as follows:

Section ____. NOMINATION AND ELECTION OF OFFICERS. Candidates for elective offices of the county may be nominated and elected in any mode authorized by present or future election laws of the state for nominating and electing candidates for such offices.

If it is desired that only present state election laws, and no future one, govern the mode of nominating and electing candidates for elective county offices, the limitation may be effected simply by deleting from the two immediately preceding referential provisions their references to future state laws.

If assurance is desired that other provisions above for nominating and electing officers be followed only in a nonpartisan manner, the assurance may be had, insofar as it may readily be had through legal restriction, by a section reading as follows:

Section ____. NONPARTISANSHIP IN NOMINATIONS AND ELECTIONS.

- (1) No petition filed for the purpose of nominating a candidate for an elective office of the county may carry--
 - (a) the name of a political party or
 - (b) any other symbol identifying--
 - (i) the petition,
 - (ii) any of its signers, or
 - (iii) the candidatewith a political party.
- (2) No ballot used to elect a candidate to an elective office of the county may carry any indication of the candidate's--
 - (a) affiliation with or
 - (b) preference forany political party.

¹ORS 249.031 and 249.041 (1959).

²Oregon Constitution, article VI, section 10 (1960).

Filling of Vacancies

The foregoing provisions say nothing about how vacancies in county governing bodies are to be filled. The filling of vacancies in county offices has sometimes been a function of the governor of the state and, in Oregon at least, more frequently a function of the county court. In cities, the filling of vacancies in office, even vacancies in the city council itself, has frequently been a function of the council. Of these traditions, the municipal and the prevalent Oregon practice seem the most consistent with the basic objectives of home rule in local governmental affairs.

Compensation

One of the main complaints against county government in the United States has been that county officers' salaries have been too much subject to control by state legislatures. The constitutional authorization for county home rule in Oregon was quite obviously drawn with an eye to this complaint. The authorization requires a county charter to "provide directly, or by its authority, for the . . . compensation . . . of such officers as the county deems necessary."

What compensation the members of a county governing body should receive is a question that cannot be answered in the abstract with any specific figure or formula. The circumstances that bear on the question vary too greatly to allow any such answer.

There appears to be, however, widespread enough agreement on certain suggestions about compensation for members of the governing bodies of local governmental units to justify applying the suggestions here to county governing bodies.

1. The compensation of a member of a county governing body may be determined in part on the basis of the amount of time he is required to devote to his office. If the office is a full-time office, the compensation for filling it will ordinarily be greater than if it is merely a part-time office.
2. There appears to be widespread sentiment that if a position in a county governing body is a full-time office, it should pay well enough to attract to it persons of undisputed competence and devotion to the public interest. Modest salaries, it is widely believed, are too likely to attract only mediocre persons.
3. There appears to be widespread sentiment also that if a position in a county governing body is a part-time office, it may be advisable to ask the officeholder to fill the office as a public service, without remuneration for the service and with only reimbursement for expense to which he is put in serving in the governing body. To this end he may be reimbursed for necessary travel expenses and may be paid a certain sum per day on the theory that the per diem simply reimburses him for loss due to time that he takes away from his ordinary pursuits and for extra expense that he incurs in them because of the time that he devotes to his office. One implication of this compensation is that it is not so much a salary or wage for public service as a mere reimbursement for personal expense incurred in providing an essentially gratuitous public service. It appears advisable to impose an annual or monthly limit on compensation allowed per diem in order to prevent abuse of the privilege of drawing it. For purposes of administrative convenience the compensation may well be made payable only quarterly.
4. It is widely believed to be inadvisable to prescribe officers' salaries in charters. There is a great deal of precedent, of course, for the practice. Fluctuating economic and other conditions have, however, produced so much dissatisfaction with the fixing of salaries in charters that the practice is now in considerable disrepute.

5. It is sometimes desired that some limitation be placed on the power of a governing body to increase the compensation of its own members. To this end a county charter may include the following provision:

Section ____. COMPENSATION. . . . No increase in the compensation of members of the county council shall take effect, however, until the first day of the odd-numbered year following the first general November election after the increase is ordered.

Under the Local Budget Law county salaries can be fixed most conveniently and simply by the regular budget-making process. That law specifically provides for the annual budget to include salaries among the estimated expenditures.¹ To this end a county charter may provide--the provision deals with all county officers and employes:

Section ____. COMPENSATION. The salary or wage of a county officer or employe shall be whatever amount the county council fixes.

If it is desired that members of a county governing body receive no salary for their services as such, the charter of the county may, of course, include a prohibition to that effect.

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NOTE: Additional information relating to representation under county home rule is contained in the following documents which have been reproduced by the Bureau of Municipal Research and Service:

1. The Legislative Body in County Government, prepared by the Cleveland Bureau of Governmental Research.
2. Representation in Metropolitan Government with Federal Features, an excerpt from a preliminary draft of a University of California study of metropolitan federalism.

Bureau of Municipal Research and Service
University of Oregon
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¹ORS 294.325 (1959).