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**OFFICE OF THE CITY ATTORNEY**

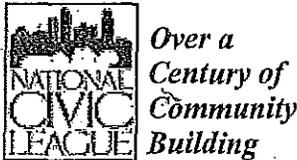
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**MEMORANDUM**

**TO:** 2011 Charter Review Committee  
**FROM:** David E. Kahn, City Attorney  
Jennifer Woodworth, Administrative Aide  
**DATE:** March 4, 2011  
**RE:** National Civic League Model City Charter

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A committee member recently inquired about the National Civic League Model City Charter Revision Project and asked the City Attorney's Office to look into whether there was an updated edition of the Model City Charter. The Model City Charter was published in its eighth edition in 2003, and it has not been revised since then. The model presents two alternatives for choosing the mayor without stating a preference: direct election of the mayor by the voters and election by and from the council. Additionally the National Civic League copyrighted an Opinion Memo in 2005 analyzing the options of election of mayor by and from Council vs. direct election at-large of mayor. A copy of this opinion memo is attached.



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### Model City Charter Revision Project - Eighth Edition

#### Option Memo

**Issue:** Election of Mayor By and From Council vs. Direct Election At-Large of Mayor

**Seventh Edition:** Sec. 2.03 of the 7th Edition of the Model City Charter contains two alternatives for the election of the mayor. Alternative I states "at each regular election a mayor shall be elected for a term of \_\_\_\_ [the same terms as other council members] years." Alternative II provides that "the city council shall elect from among its members officers of the city who shall have the titles of mayor and deputy mayor, each of whom shall serve at the pleasure of council." The Commentary on sec. 2.03 says the model expresses no preference between the two alternatives: "The Model provides two alternative methods for electing the mayor. Which one is used will depend on local preference and tradition." The lack of preference between the two methods marked a change from the 6th edition, which recommended that the council choose the mayor, while presenting the direct election at-large form as an alternative.

The Commentary on sec. 2.03 goes on to discuss the pros and cons of each alternative. With respect to the direct election form, it says "more than half of the cities operating with the council-manager form use the direct election alternative (Alternative I). In many cities, particularly the larger ones, it is believed that this method increases the potential for mayoral leadership by giving the mayor a city-wide popular support base. This is particularly important when all or most of the council members are elected from districts. A disadvantage of this method is the possibility that the mayor will be at variance with the council majority on some important issues."

In reference to council-chosen mayor, the Commentary says "in many other cities it is felt that local policy leadership can best function through a cohesive team of council members which chooses its leaders as mayor. In those cities, Alternative II, election of the mayor by and from the council, is used and the possibility of conflict between the mayor and the council majority is avoided. However, cities using this method should avoid particular practices which diminish the prospect of effective leadership. For example, rotation of the office of mayor among members may preclude the emergence of a respected leader who will be able to acquire experience and increase his or her competence in the exercise of leadership skills. It may result in the reality that the true leader of the council is not the mayor, a situation which may wrongly be interpreted as one of inside dealing and secret manipulation. An awkward alternative is to automatically designate the mayor as the council member who receives the largest number of votes. In councils elected from districts, council selection of the mayor presents the mayor with conflicting roles - district and citywide."

**Analysis of Commentary:** The arguments set forth in the commentary may be refined along the following lines:

With respect to the direct election form, more than half of the cities

operating with the council-manager form use the direct election alternative (Alternative I). This method focuses attention on a city-wide choice between alternative policy approaches for the city that tend to be obscured across multiple at-large and/or district council campaigns. The clear articulation of policy options for the city as a whole is particularly important when all or most of the council members are elected from districts. Media coverage of the mayoral race tends to be higher than is coverage of other races and there may be a higher level of voter awareness of issues that results from the direct election of mayors. The consequence of these phenomena is to increase the potential for mayoral leadership by giving the mayor a city-wide endorsement of his or her platform and by generating a popular support base. A disadvantage of this method is the possibility that the mayor will be at variance with the council majority on most important issues(1). Mayors must work to win the continuing support of other council members and not presume that an electoral "mandate" will produce support from them.

In specifying Alternative II, it may be preferable to provide for annual election of the mayor and mayor pro tem with the option of reelection. This seems more consistent with the logic of the original commentary, as reflected in this slightly revised version:

An alternate position is that local policy leadership can best function through a cohesive team of council members chaired by a mayor that it chooses. Election of the mayor by and from the council reduces the likelihood of conflict between the mayor and the council majority. The council majority is able to select the person whom it feels is best able to lead it. However, cities using this method should avoid particular practices that diminish the prospect of effective leadership. Having the mayor serve at the pleasure of the council as opposed to a one-year renewable term could diminish the likelihood that the mayor would take any stand opposed by the majority. Rotation of the office of mayor among members shifts the office regardless of capability or support from other members of the council, limits the amount of experience the mayor can acquire, and precludes increasing his or her competence in the exercise of leadership skills over an extended period of time. An awkward alternative that can lead to extensive infighting on the council is to automatically designate the mayor as the council member who receives the largest number of votes in the general election. Since all members elected could have been mayor with more votes, they may begin jockeying for position to improve their standing in the next election. In addition, those designing a charter should consider the potential contradiction between electing all council members from districts and council selection of the mayor. This combination makes the mayor responsible to the entire electorate but accountable only to the voters of one district.

The question then becomes whether a directly elected mayor or a council-chosen mayor is more likely to promote effective leadership by the mayor and council. There are clear advantages and disadvantages with each approach as noted in the Commentary. Although a mayor with a city-wide voter support may be better able to effectively lead a council, he or she has no more power to do so and may go a separate way rather than focusing on pulling the council together. The council-chosen mayor have internal support but typically has not had the opportunity to present a mayoral platform to the voters. If the issue is one of council dysfunction or weakness, the cure could lie in finding new ways - structural or other - to make council a more effective legislative body that go beyond whether the mayor is chosen by the people or by council.

**Three Options:** The Committee should adopt one of the following positions by the end

of the December 7th meeting:

- A. The Model Charter shall continue to present both alternatives without expressing a preference. The Commentary remains accurate today.
- B. The Model Charter shall continue to present both alternatives without expressing a preference. The Commentary needs revision, the extent of which will be decided upon at the Dec. 7th meeting.
- C. The Model Charter should state a preference for one of the alternatives. The Commentary needs to be revised accordingly.

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(1) Presumably, this discrepancy will be reconciled in the next election by change of either mayor or members of the council.

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