

EUGENE CHARTER

2002

AMENDMENTS

<u>Election Date</u>	<u>Section</u>	<u>Action</u>
May 20, 1980	Section 51	Added
November 6, 1984	Section 52	Added
March 26, 1991	Section 53	Added
November 5, 1996	Section 54	Added
May 16, 2000	Section 18	Amended
	Section 44	Amended
November 5, 2002	Section 1	Amended
	Section 7	Amended
	Section 8	Amended
	Section 9	Amended
	Section 11	Amended
	Section 13	Amended
	Section 14	Amended
	Section 15	Amended
	Section 16	Amended
	Section 17	Amended
	Section 18	Amended
	Section 20	Amended
	Section 23	Amended
	Section 24	Amended
	Section 25	Amended
	Section 26	Amended
	Section 28	Amended
	Section 29	Amended
	Section 31	Amended
	Section 32	Amended
	Section 32-A	Added
	Section 33	Amended
	Section 34	Amended
	Section 35	Amended
	Section 37	Amended
	Section 40	Amended
	Section 42	Amended
	Section 43	Amended
	Section 45	Amended
	Section 48	Amended
	Section 49	Amended
	Section 50	Amended
	Section 51	Repealed
	Section 52	Amended
	Section 53	Repealed
	Section 54	Amended
November 8, 2005	Section 15-A	Added
November 4, 2008	Section 15-A	Amended

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Chapter I

Introductory Provisions

- Section 1. Title. This revision may be referred to as the Eugene Charter of 2002.
- Section 2. Corporate Name and Capacity. The inhabitants of the City of Eugene are hereby constituted a municipal corporation by the name of the City of Eugene and by that name have perpetual succession and may sue and be sued in all courts of justice.
- Section 3. Boundaries. The city includes all territory encompassed by its boundaries as they exist when this revision of the charter is adopted or as they are subsequently modified in accordance with state law. The repository of city records shall include at least two copies of this charter each containing an accurate, up-to-date description of the boundaries. The copies and description shall be available for public inspection during regular office hours.

Chapter II

Powers

- Section 4. Vesting, Grant, and Construction of Powers.
- (1) Except as this charter provides to the contrary, all power of the city is vested in the city council, the representative legislative body of the city.
- (2) The city has all powers that the constitution or laws of the United States or of this state expressly or impliedly grant or allow cities, as fully as if this charter specifically stated each of those powers.
- (3) In this charter no mention of a particular power may be construed to be exclusive or to restrict the scope of the powers that the city would have if the particular power were not mentioned. The charter shall be liberally construed, to the end that the city have all powers necessary or convenient for the conduct of its affairs, including all powers that cities may assume under state laws or the provisions of the state constitution regarding municipal home rule.

Chapter III

City Council and Mayor

- Section 5. Council - Membership. Eight councilors constitute the council of the city.

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Section 6. Council - Election. The councilors shall be elected by wards for four years, one-half each two years. Each councilor shall hold office until his or her successor is elected and qualified.

Section 7. Mayor - Election. A mayor shall be elected in 2004 and every fourth year thereafter for a term of four years, and shall serve until his or her successor is elected and qualified.

Section 8. Council - Qualifications. During a councilor's term, the councilor shall reside in the ward from which the councilor was elected or to which he or she was appointed. In addition, to be elected or appointed as a councilor, a person must meet the qualifications described in Section 19.

Section 9. Council - Meetings. The council shall prescribe the time and place of its regular meetings, at least one of which shall be held each month. The mayor or three councilors may call special meetings of the council in a manner prescribed by ordinance.

Section 10. Council - Quorum. A majority of the members of the council constitute a quorum for the transaction of council business, except that a lesser number may meet and compel the attendance of absent members. A quorum may also compel the attendance of absent members.

Section 11. Council - Journal. The council shall keep minutes of its proceedings and at the request of any two of its members shall record in the minutes the yeas and nays upon any question before the council.

Section 12. Mayor - Functions. The mayor may call special meetings of the council and shall preside at council meetings, but may not vote on matters before the council, except in case of a tie, when he or she shall cast the deciding vote. The mayor shall, at least once each year, state to the council the condition of the city and recommend such measures for the peace, health, improvement, and prosperity of the city as he or she deems expedient.

Section 13. Council - President.

(1) Each year, at the first regular meeting of the council, or as soon as practicable, the council shall choose by ballot one of its members to serve as council president.

(2) The council president shall preside at council meetings when the mayor is absent.

(3) The council president shall function as mayor, with the powers and subject to the limitations of the office of mayor when the mayor:

(a) is absent from the city on leave granted by the council;

(b) has been absent from the city for 30 days or more; or

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(c) has been physically unable to function as mayor for 30 days or more.

Section 14. Council - Ethics and Conflicts of Interest.

(1) The purpose of city government is to serve the public. City officials shall treat their office as a public trust. The city's powers and resources shall be used for the benefit of the public rather than for any official's personal benefit. City officials shall afford even-handed consideration and treatment to all citizens.

(2) The council shall, by ordinance, enact a code of ethics applicable to the mayor, councilors, the city manager, and any others designated by council. At a minimum, the code shall provide that any official subject to the code must disclose the reason for any potential or actual conflict of interest and may not discuss, debate or vote as a public official on any matter in which the official has an actual conflict of interest.

(3) No elected city official shall discuss, debate or vote as a public official on any decision regarding a contract, the expenses of which are to be paid with city funds, if any of the following persons has a financial interest in the contract: the official; the official's spouse or domestic partner; or the parent, sibling or child of the elected official, the official's spouse or the official's domestic partner. In addition, no elected city official shall discuss, debate or vote on any such decision if the official knows that the official's business associate has a financial interest in the contract. For purposes of this provision, "financial interest" includes any reasonable, objective expectation of financial gain or avoidance of financial detriment.

(4) The council shall define by ordinance the terms "domestic partner" and "business associate" for purposes of subsection (3) of this section.

(5) Any contract with respect to which an elected official violates subsection (3) of this section is voidable at the discretion of the council.

(6) Any elected official who violates the code of ethics adopted pursuant to subsection (2) or the prohibitions of subsection (3) of this section may be removed from his or her position upon a finding by the council that the official committed the violation intentionally and for the purpose of obtaining or maintaining a personal financial benefit for, or avoiding a financial detriment to, any of the persons listed in subsection (3) of this section.

Section 15. Council - Immunity. No member of the council or the mayor may be held liable, or questioned in any other place, for words uttered in debate in the council.

Section 15-A. External Review of Police.

(1) The city council shall hire, supervise and specify the salary of an independent police auditor to oversee investigations of complaints involving police employees. Notwithstanding section 16 of this charter, the city council shall authorize the auditor to: (a) receive, classify and route complaints about sworn police officers and civilian police employees; (b) contract with persons or entities to perform outside investigations of such complaints; (c) monitor the city's internal investigations, including but not limited to access to all evidence developed as part of the investigation and participation in investigative interviews related to such complaints, and require the city to undertake additional investigation; (d) make recommendations

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to the city manager or designee following the investigation; (e) prepare reports on complaint trends and police practices in general; and (f) act as a liaison to and provide staff support for the civilian review board.

(2) The city council shall appoint a civilian review board of not more than seven members to review investigations of complaints involving sworn police officers. Notwithstanding section 16 of this charter, the city council shall authorize the civilian review board to: (a) review the completed investigation and adjudication of complaints filed against sworn police officers; (b) require that the city re-open an investigation; (c) provide comments on an investigation, including recommendations to the independent police auditor, city manager or designee about the investigation; (d) review trends and statistics of complaints against sworn police officers and civilian employees, and provide reports and recommendations to the city council; and (e) oversee and evaluate the work of the independent police auditor.

Chapter IV

City Manager

Section 16. City Manager.

(1) (a) The city council shall appoint a city manager and fix his or her compensation and conditions of employment.

(b) If the office of manager becomes vacant, the mayor shall appoint a manager pro tem. The manager pro tem shall have all functions of the manager, but may appoint or dismiss a department head only with the approval of the council. The term of office of a manager pro tem ends when a city manager takes office.

(c) The manager shall be the administrative head of the city and be chosen solely on the basis of executive and administrative qualifications.

(d) The manager and such other appointed officers as the council designates may sit with the council but have no vote therein. The manager may take part in the discussion of all matters coming before the council.

(e) No councilor nor the mayor may in any manner, directly or indirectly, by suggestion or otherwise, attempt to influence the manager in the making of any appointment or any removal of city personnel or in the purchase of supplies, nor may any councilor or the mayor exact any promise relative to any appointment by a city manager or discuss, directly or indirectly, with the manager or any candidate for the office of manager any appointment by the manager. Violation of this section forfeits the office of the violating elected officer, who may be removed by the council or any court of competent jurisdiction. The mayor and council may, however, in open council session, discuss with or suggest to the manager anything pertaining to city affairs and in executive session discuss matters pertaining to collective bargaining.

(2) The city manager shall:

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- (a) propose the budget;
- (b) make all purchases;
- (c) appoint and remove all employees except as otherwise specified in this charter. After accepting the resignation of, appointing, or dismissing a department director, the city manager shall explain to the council the reasons for the action taken. Unless prohibited by law, the reports required by this subsection may be made to the council in executive session;
- (d) enforce all ordinances;
- (e) act as business agent for the council for the sale of real estate and other matters relating to franchises, leases, and other business and property transactions;
- (f) prepare and furnish all reports requested by the council;
- (g) perform such other duties as the council directs; and
- (h) organize and, as he or she deems necessary, disband and reorganize the various city departments.

(3) The offices of the manager and department heads may be filled by candidates from outside the city, but during their tenure in those offices, all persons hereafter appointed to them shall reside in the city. All employees appointed by the manager shall reside in the city during their tenure of position, except as the council authorizes the manager to prescribe to the contrary and the manager does so.

(4) The duties of all administrative employees shall be assigned to them by the manager, and they shall be responsible and accountable to the manager.

(5) The powers herein granted to the manager are exclusive.

(6) The manager may be removed with or without cause at any time by the council after six months tenure.

(7) The Eugene Water & Electric Board and its employees are excluded from the operation of this section.

Chapter V

Municipal Court

Section 17. Judges, Powers, Procedures.

(1) The city council may appoint one or more municipal judges, for terms and at salaries it specifies. A municipal judge shall hold court in the city at such a place as the council directs. The court shall be known as the Municipal Court.

(2) The court may impose sanctions on any person who violates a city ordinance within the court's jurisdiction, issue process for the arrest of any person accused of any such violation, commit such a person to imprisonment or admit the person to bail pending trial, issue subpoenas to compel witnesses to appear and testify on the trial of any cause before the court, enforce obedience to the subpoenas, and issue process necessary to carry into effect the judgment of the court.

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(3) All proceedings in the municipal court shall be governed by the general laws of the state governing justices of the peace and justice courts, except as city ordinance prescribes to the contrary. In civil and criminal matters, a municipal judge has the jurisdiction and authority prescribed by city ordinance, subject to the general laws of the state.

Chapter VI

Municipal Officers and Employees in General

Section 18. Compensation.

(1) Beginning on July 1, 2001, the mayor shall receive a stipend of \$1,500 per month and the city councilors shall receive a stipend of \$1,000 per month.

(2) At the beginning of each fiscal year thereafter, the stipends authorized above shall be adjusted by a percentage increase or decrease equal to that during the previous calendar year of the Consumer Price Index (CPI) for the Portland, Oregon area, or its successor. If that Index ceases to exist, another consumer price index representing substantially the Eugene area shall be used. In any case, if a consumer price index covering the Eugene area is developed, that index shall be used in place of the Portland CPI.

(3) The stipends above are in addition to, and not in lieu of, reimbursement for actual official expenses incurred.

(4) The mayor and councilors shall receive no fringe benefits except those required by state law, but the mayor and councilors may purchase health insurance from the city health insurance plan.

(5) The compensation of other appointed officers shall be prescribed by council.

Section 19. Qualifications. No person may hold an elective city office unless a legal elector under the laws and constitution of the state, a resident of the city for one year immediately before being elected or appointed to the office, and unless, if elected, receiving a majority of the votes cast for candidates for the office at the election at which the office is filled. The city council shall provide for such election by majority vote.

Section 20. Election. Immediately after the votes at any municipal election have been canvassed, the city manager or designee shall issue a certificate of election to each person declared by the canvassers to have been elected. The certificate shall be prima facie evidence of the facts therein stated, but the city council shall be the judge of the election and qualifications of the mayor and councilors, and in case of a contest between two or more persons claiming to be mayor or councilor, shall determine the contest.

Section 21. Terms. The term of office of a person elected shall commence on the first Monday in January following the election.

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Section 22. Oath or Affirmation. All elective officers, the municipal judges, and the city manager, before entering upon the duties of their offices, shall subscribe and file with the head of the department in charge of city records an oath or affirmation of office. The oath shall read: "I, _____, do solemnly swear that I will support the constitution of the United States and of the State of Oregon, and that I will, to the best of my ability, faithfully perform the duties of during my continuance therein, so help me God." If the person affirms, instead of the last clause of the oath, there shall be stated: "And this I do affirm under the pains and penalties of perjury."

Section 23. Vacancies: Occupancy. The office of mayor or office of city councilor becomes vacant:

(a) Upon the incumbent's:

1. Death;
2. Adjudicated incompetence;
3. Recall from office;
4. Resignation from office.

(b) Upon declaration by the council of the vacancy in case of the incumbent's:

1. Failure, following election or appointment to the office, to qualify for the office within ten days after the time for his or her term of office to begin;
2. Absence from the city for 30 days without the council's consent or from all meetings of the council within a 30-day period, without the council's consent;
3. If a councilor, ceasing to reside in the ward from which elected; if the mayor, ceasing to reside in the city;
4. Ceasing to be qualified elector under state law; or
5. After election, conviction of an offense pertaining to the office.

Section 24. Vacancies - Filling.

(1) The Eugene Water & Electric Board shall fill a vacancy on the board by appointment within ninety days after the vacancy occurs.

(2) The council shall fill a vacancy in any other elective city office by appointment within ninety days after the vacancy occurs. A person so appointed shall hold office until the successor to the office is duly elected and qualifies therefor.

(3) If the position of a city councilor or mayor becomes vacant more than 100 calendar days prior to the May election of any year, an election to fill that vacancy shall be conducted in the same year. If the position of city councilor or mayor becomes vacant less than 100 days prior to the May election of any year, the election to fill that vacancy shall be conducted the next year. If a candidate for election to a vacated position achieves a majority of all votes cast for that position in the May election, that candidate shall assume office the following July 1, notwithstanding Section 21 of this charter. The term of office of any person

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elected to fill a vacancy shall expire when the term of the vacated position expires.

Section 25. Collective Bargaining.

(1) City employees shall have the right to self-organization; to form, join, and assist labor organizations; and to bargain collectively through representatives of their own choosing with respect to wages, hours, and other terms and conditions of employment.

(2) The city manager shall bargain collectively on behalf of the city council with the representatives of city employees in an appropriate bargaining unit upon request of their certified bargaining agent.

(3) The council shall prescribe by ordinance collective bargaining procedures to protect the city, the employees, and the public in general. In so doing, the council shall provide for:

- (a) impartial ordinance administration and enforcement of the ordinance;
- (b) resolution of interest-impasse disputes;
- (c) as to employees who are employed in police or fire service, a binding award by a neutral third party resolving an interest-impasse dispute;
- (d) equal sharing of neutral third-party costs by parties to an interest-impasse dispute;
- (e) employee rights;
- (f) employer rights; and
- (g) procedural finality that does not obstruct funding of collective bargaining agreements.

Section 26. Liability for Unauthorized Expenditures.

(1) It is unlawful for any city official or employee to expend or approve the expenditure or diversion of any moneys held by the city in excess of the amounts authorized by law or for any unauthorized purpose.

(2) Any city official or employee who knowingly or with gross negligence participates in an unlawful expenditure or diversion of moneys, as described in subsection (1) of this section, is guilty of malfeasance in office and may be removed from office pursuant to procedures provided by law.

(3) Any person who, in good faith and for valuable consideration, holds evidence of debt by the city that is void because it was unlawfully issued, shall have a right of action against the responsible city official or employee personally to recover on the evidence of debt, if the official or employee is guilty of malfeasance in office.

(4) In case of any unlawful expenditure or diversion of moneys, as described in subsection (1) of this section, any qualified elector or taxpayer of the city shall have a right of action against the responsible city official or employee personally to recover the amount unlawfully spent or diverted, with interest, for the benefit of the city, if the official or employee is guilty of malfeasance in office.

Chapter VII

Ordinances

Section 27. Ordaining Clause. The ordaining clause of an ordinance shall read: "The City of Eugene does ordain as follows:"

Section 28. Adoption of Ordinances.

(1) At any meeting, the city council may direct the city manager to prepare an ordinance, or the city manager may suggest an ordinance, for consideration at a subsequent meeting. At least ten working days prior to the council meeting at which the proposed ordinance is to be considered, notice of the proposed ordinance shall be published in a newspaper of general circulation in the city and the notice and text of the ordinance shall be posted on the city's web site. The notice shall include the title of the proposed ordinance and the date, time and place of the council meeting and shall state that copies of the ordinance are posted on the web site and available at the city manager's office.

(2) There shall be a public hearing on an ordinance prior to its adoption.

(3) Except as provided in this subsection, an ordinance shall not be adopted unless it has been considered by the council during at least two meetings. With the unanimous consent of the council, the council may consider and enact an ordinance at a single meeting if the council does not amend the ordinance in a manner that modifies its substantive effect. Nothing in this section requires the council to consider an ordinance at more than two meetings prior to its adoption.

(4) In case of an emergency, the ordinance shall state in a separate section the description of the emergency and a finding as to why the emergency cannot be adequately addressed by the established process in section 28(1). With the unanimous consent of the councilors present, the council may adopt an ordinance to address the emergency with such abbreviated notice of the ordinance and council meeting as the council finds to be practicable under the circumstances.

Section 29. Attestation and Approval. Upon the adoption of an ordinance it shall be submitted to the mayor. If the mayor approves the ordinance, the mayor shall endorse the approval thereon with the date of the approval and sign the ordinance officially.

Section 30. Veto. If not approving an ordinance so submitted, the mayor shall, within ten days after receiving it, return it to the manager, with the reasons for not approving it. If not so returned in ten days, the ordinance shall have legal effect as if so approved.

Section 31. Overriding of Veto. At the first meeting of the council after the mayor returns an ordinance not so approved, the city manager shall present the ordinance to the council with the objections of the mayor. The ordinance shall then be put upon adoption again, and if two-thirds of all members of the council vote in favor of the ordinance, it takes effect in

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accordance with Section 32 of this charter.

Section 32. Effective Date of Ordinances.

(1) Except as provided in subsection (2) of this section, an ordinance takes effect 30 days after its adoption by the council and approval by the mayor or passage over the mayor's veto, or at a later date specified in the ordinance.

(2) With the affirmative vote of two-thirds of the members of the council, the council may provide for an ordinance to take effect immediately upon adoption by the council and approval by the mayor or passage over the mayor's veto, or at some other date less than 30 days after adoption, if the council determines that the earlier effective date is necessary to serve an important public purpose. An ordinance with an effective date of less than 30 days after adoption must include a separate section stating specifically why the earlier effective date is necessary.

Section 32-A. Ordinances Adopted by Initiative. In addition to the rights of electors to initiate ordinances pursuant to Article IV, section 1(5) of the Oregon Constitution, city electors may initiate a "protected" ordinance. A protected ordinance may be amended or repealed only by another initiative, council referral, or by unanimous vote of councilors present and voting at a council meeting. The chief petitioners for a protected ordinance shall include with the prospective petition, a statement declaring whether the ordinance is proposed as a regular ordinance or a protected ordinance. A petition for a protected ordinance and any qualified ballot measure for a protected ordinance shall state that it is proposed as a protected ordinance and shall explain the limitations on its repeal or amendment.

Chapter VIII

Elections

Section 33. Wards. The council shall divide the city into wards and redefine the boundaries thereof as necessary to accord persons in the city the equal protection of the laws. No person may vote at a city election in a ward other than that in which he or she resides.

Section 34. Voters' Qualifications. No person may vote in a city election unless the person is a qualified voter of the state, and has resided in the city for the length of time that state law requires a person to reside in the state to vote in a state election. No person may vote for an officer to be elected under this charter by ward unless the person has resided in the ward for the same length time required in the preceding sentence for a person to vote in a city election.

Section 35. Notice. The city manager or designee shall distribute information regarding officers to be elected and measures to be submitted ten days prior to the distribution of ballots. The notice shall also state the ballot drop sites.

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Section 36. Nomination. Nomination of a candidate for an elective city office shall be by petition, in a manner prescribed by ordinance.

Chapter IX

Public Improvements

Section 37. Procedure. The procedure for making, altering, vacating, or abandoning a public improvement shall be governed by general ordinance or, to the extent not so governed, by the applicable general laws of the state, except that if a remonstrance is filed against improvement or repair of a street or alley and is signed by the owners of a majority of the parcels that would be assessed for the repair or improvement, no contract for the improvement or repairs may be let until the city council reconsiders the necessity of the improvement or repair. If, after the reconsideration, two-thirds of all councilors vote for the improvement or repair, contracts for the improvement or repair may be let as if no remonstrance had been filed.

Section 38. Assessments. The procedure for levying, collecting, and enforcing the payment of special assessments for public improvements or other services to be charged against real property shall be governed by general ordinance.

Section 39. Amendments. The general ordinances mentioned in Sections 37 and 38 of this charter may be amended only by the affirmative vote of two-thirds of the members of the city council. Such an amendment may not take effect for six months after the council adopts it and may not apply to an improvement authorized by the council before the effective date of the amendment.

Section 40. Liens. The docket of city liens is a public writing, and the original or a certified copy of any matter authorized to be entered in the docket shall have the force and effect of a judgment. When the council has authorized an improvement, and an assessment for it is entered in the city's lien docket, the assessment becomes a lien against the property so assessed. The lien has priority over all other liens and encumbrances upon the property and may be enforced in the manner authorized by the city council.

Section 41. Freeways.

(1) No freeway or throughway, as defined by ORS 374.010 or 377.710(12), may be constructed by the city, nor may the city enter into any agreement approving or facilitating construction of such a freeway or throughway, unless the route of the freeway or throughway is first approved by a majority of the voting electors of the city in a city election conducted in accordance with law and unless the agreement is entered into within a time specified by the measure submitted to the voters for their approval.

(2) The city may, however, without such prior approval, prepare preliminary

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plans and specifications and statements of impact, including plans, specifications, and statements of impact necessary for obtaining financial assistance for the freeway or throughway, all of which shall be available to the public at the city hall prior to the election on the route of the freeway or throughway.

(3) Prior to the election, a map and a description of the proposed route and of intersections of other thoroughfares therewith and a notice of the election, shall be published once a week for four consecutive weeks in the newspaper with the largest general circulation published in the city.

Section 42. Skinner's Butte Park. The property commonly know as the "Butte Property," with boundaries as described in a charter amendment adopted by the voters of the city April 5, 1915, is hereby dedicated to the public forever as a public park.

Chapter X

Public Utilities

Section 43. Franchises.

(1) The city council may grant a franchise or amendment thereto only by ordinance. Before adopting any such ordinance the council shall publish notice of its intention to do so in a manner authorized by Section 28 of this charter. Any applicant for such a franchise shall pay in advance the expenses of publishing the notice. Any franchise granted by the council shall assure adequate service to city residents and shall require the franchisee to pay the city adequate compensation in the form of a percentage of the gross income from the franchise, or in an alternative form acceptable to the council, in amounts sufficient to cover present value and future development of the franchise.

(2) In the acquisition by the city of any public utility the price to be paid by the city shall exclude the value of any franchise granted by the city and connected with the utility. All ordinances granting franchises shall do so subject to the provisions of this section.

(3) The council may not grant an exclusive citywide franchise to haul solid waste.

Section 44. Eugene Water & Electric Board - Functions - Membership.

(1) The power of the city to generate, collect, and distribute electricity, steam, and other kinds of physical energy is hereby vested in the Eugene Water & Electric Board (the Board).

The Board is further authorized to provide advanced telecommunications capability and associated services including, but not limited to, voice, video, data, internet and telecommunications services. Nothing in the previous sentence divests the City Council of any authority, including but not limited to (a) providing the same or similar types of services, or (b)

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exercising any regulatory, taxing or other power over telecommunications and related services whether provided by the Board or another entity.

(2) The board is composed of five electors of the city, who shall serve without pay and whose terms of office and election shall be prescribed by the city council by ordinance.

(3) The board shall maintain and operate the water utility and the electric utility of the city, subject to control by the council of extension of water service.

(4) The 1976 rates of payments on account of either utility to the city in lieu of taxes shall continue until changed by agreement between the board and the council.

(5) The council may require the board to bill and collect the city service charges for collecting and disposing of liquid and solid wastes.

(6) The income of the utilities and the operation, maintenance, and improvement of them are under the control of the board, subject to limitations imposed by or under this charter and the rights of holders of outstanding bonds issued to finance either utility. The board shall so keep the funds of each utility as at all times to show the true cost of that utility and its yearly operation, the amount of outstanding bonds and current bills of the utility, and the disposition of the revenues of the utility, and shall make annual reports to the council and whatever other reports the council requires.

Section 45. Eugene Water & Electric Board - Short Terms Loans.

(1) The Eugene Water & Electric Board may borrow under short term loans or other evidence of indebtedness of a duration of less than one year, and at such rates of interest and terms of repayment as in the judgment of the board is expedient for the use of the board in the conduct and maintenance of the water, electric and telecommunications utilities of the city, provided that the total amount of such indebtedness of the board not at any one time exceed five percent of the board's retained earnings at that time. Proceeds from any one borrowing may be used only in the conduct and maintenance of a single utility, and only revenues from that utility may be pledged or used to pay the principal, interest and costs associated with the borrowing.

(2) To secure the payment of any such loan the board may pledge as collateral such assets under the control of the board as are available therefor and as the board deems it expedient so to pledge.

(3) The indebtedness authorized by this section is in addition to all other indebtedness authorized for the city.

Chapter XI

Indebtedness

Section 46. Limits.

(1) Indebtedness of the city may not exceed the limits on city indebtedness under state law.

(2) Approval by the voters of city indebtedness need not be in the form of a charter amendment.

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Section 47. Terms, Proceeds, and Retirement of Bonds. Bonds issued by the city as evidence of indebtedness shall include such terms, the proceeds from sale of the bonds shall be kept, invested, disbursed, and accounted for in such a manner, and the indebtedness shall be retired in such a manner as the city council prescribes. The prescription may not be changed for a particular bond after it is issued.

Chapter XII

Miscellaneous Provisions

Section 48. Presumption of Validity of City Action. In every proceeding in any court concerning the exercise or enforcement by the city or any of its officers or employees or agencies of any power by this act given to the city or any of its officers or employees or agencies, all acts by the city or any of its officers, employees or agencies shall be presumed to be valid, and no error or omission in any such act invalidates it, unless the person attacking it alleges and proves that he or she has been misled by the error or omission to his or her damage; and the court shall disregard every error or omission which does not affect a substantial right of the person. Any action by this charter committed to the discretion of the council, when taken, shall be final and shall not be reviewed or called into question elsewhere.

Section 49. Scrivener's Errors; Renumbering of Sections. By ordinance, the council may correct scrivener's errors and may re-number and change the sequence of sections in this charter.

Section 50. Effective Date of Revision. The 2002 amendments to this revised charter take effect on December 5, 2002.

Chapter XIII

Amendments

Section 52. Amendment II

(1) Trees (a living, standing, woody plant having a trunk 25 inches in circumference at a point 4 ½ feet above mean ground level at the base of the trunk) of at least fifty years of age within publicly owned rights of way for streets, roads, freeways, throughways, and thoroughfares and within those portions of the city which were in the incorporated boundaries of the city as of January 1, 1915, shall be designated historic street trees and recognized as objects of high historic value and significance in the history of the city and deserving of maintenance and protection.

(2) No street, road, freeway, throughway, or thoroughfare may be widened by

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the city, nor may the city enter into any agreement approving or facilitating the widening of such street, road, freeway, throughway, or thoroughfare if such widening will result in the removal of any historic street tree unless the widening is first approved by a majority of the voting electors of the city in a city election conducted in accordance with law and unless the agreement is entered into within a time specified by the measure approved by the voters.

(3) The city may, however, without prior approval, assist in the preparation of preliminary plans and specifications, and statements of impact necessary for obtaining financial assistance for the street, road, freeway, throughway, or thoroughfare widening, all of which shall be available to the public at the city hall prior to the election on the street, road, freeway, throughway, or thoroughfare widening which would result in the removal of historic street trees.

(4) Prior to the election, a map and description of the proposed widening and removal of historic street trees shall be published at least once a week for four (4) consecutive weeks, in the newspaper with the largest general circulation published in the city.

(5) Street, road, or thoroughfare widening projects confined to intersections only, and intended to improve those intersections shall be exempt from the requirement for approval by the voting electors of the city for the removal of historic street trees.

(6) In the event an historic street tree is to be removed in order to widen a street, road, freeway, throughway, or thoroughfare, the city, if it is the governmental unit implementing the project, shall allocate a portion of the project budget to a fund dedicated to helping maintain the city's remaining historic street trees. If a governmental unit other than the city is implementing the widening project, the city may not enter into any agreement approving or facilitating said widening project unless the implementing governmental unit agrees to allocate a portion of the project's budget to a fund dedicated to helping maintain the city's remaining historic street trees.

(7) Any officer or employee of the city or of any public utility may act to remove an historic street tree if necessary to remove or alleviate an immediate danger to life or property; to restore utility service; to reopen a public thoroughfare to traffic; or to remove obstructions to the view of vehicular operators at intersections.

(8) An emergency is hereby declared to exist and this charter amendment, being enacted by the city in the exercise of its police power for the purpose of meeting such emergency, and for the immediate preservation of the public peace, health, and safety, shall take effect immediately upon approval by the electors of the city of Eugene and shall supersede any and all actions of the city authorizing, approving, or facilitating the widening of any street, road, freeway, throughway, or thoroughfare which would result in the removal of any historic street tree.

Section 54. Amendment IV

The City of Eugene Charter is hereby amended as follows:

ARTICLE I - FINDINGS AND STATEMENT OF LOCAL PROBLEM

Section 1 The people of Eugene do hereby find that:

- A. exposure to toxic chemicals can damage human health and the environment; and

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- B. citizens have a fundamental right to know the identity and amounts of toxic chemicals that are released into the workplaces, air, water, soil, and environment of their community.

ARTICLE II – SCOPE

Section 2.1. Facilities covered by this Section.

- A. Except as exempted in Section 2.2, this Section shall apply to facilities within the City of Eugene that are:
 - 1. within the Standard Industrial Code categories #20 - #39, inclusively as listed in *Standard Industrial Classification Manual* (Office of Management and Budget, 1987);
 - 2. solid waste incinerators that accept infectious waste; and
 - 3. hazardous waste disposal incinerators.

Section 2.2. Facilities exempted by this Section. This Section shall not apply to:

- A. state and federal facilities; and
- B. public educational institutions.

ARTICLE III - DEFINITIONS

Section 3 As used in this Section, the following definitions shall apply:

- A. "Extremely hazardous substance" means all substances listed in Section 302 of the Emergency Planning and Community Right-To-Know Act (42 USC 11002) as of the effective date of this Section. If a substance is added to or removed from the federal list of reportable substances under section 302 of 42 USC 11002, the Toxics Board may recommend to the City Council that the substance be added to or removed from the definition of "extremely hazardous substance" in this Section. The council may remove a substance from the definition only if the Toxics Board has recommended its removal.
- B. "CAS number" means the identification number assigned to a substance by the Chemical Abstract Service.
- C. "Chemical Name" means the scientific designation of a substance in accordance with the nomenclature system developed by the Chemical Abstract Service.
- D. "Facility" means all buildings, equipment, structures and other stationary items that are located and operated on a single site or on contiguous or adjacent sites and that are owned or operated by the same person(s) and relate to a common product or service.
- E. "Hazardous substance" means:
 - 1. any substance listed or described, as of the effective date of this Section, on any of the following lists of chemicals regulated or identified as of concern:

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- (a) Section 112(b) of the Clean Air Act(CAA) as amended in 1990 (Hazardous Air Pollutants); 42 USC 7412(b);
 - (b) Section 602(b) of the CAA (Class II ozone depleting substances); 42 USC 7671a.(b);
 - (c) Section 307(a) of the Clean Water Act (CWA) (Priority Pollutant List); 33 USC 1317(a);
 - (d) U.S. Environmental Protection Agency Active Ingredients, including Special Review, Canceled/Denied or Suspended, and Restricted Use Pesticides, pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA; 7 USC 136 et seq.);
 - (e) U.S. Environmental Protection Agency List 1 Inert Ingredients of Pesticides ("Inerts of Toxicological Concern"), pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA; 7 USC 136 et seq.);
 - (f) Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); 42 USC 9602;
 - (g) Section 3001 of the Resource Conservation and Recovery Act (RCRA; 42 USC 6921) and chemicals listed at 40 CFR 261.33 (e) and Appendix VIII.
2. any substance which, if it were in a container, would possess the characteristics of a hazardous waste, as defined in 40 CFR 261.20 through §261.24, authorized by RCRA;
 3. radioactive waste and material as defined in ORS 469.300 and radioactive substance as defined in ORS 453.005;
 4. any substance, regardless of quantity, required to be reported pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA); 42 USC 11002; or
 5. If a substance is added to or removed from the lists described in Article III, Section 3 E.1. or E.4. of this Section, the Toxics Board may recommend to the city council that the substance be added to or removed from the definition of "hazardous substance" in this Section. The council may remove a substance from the definition only if the Toxics Board has recommended its removal.
- F. "Hazardous substance user" means: the owner and/or operator of a commercial or public facility that is stationary within the boundaries of the City of Eugene and that:
1. has a total input of more than 2,640 pounds of hazardous substances during a calendar year;
 2. employs ten or more full-time equivalent employees;
 3. is not exempted pursuant to Section 2 .2.
- G. "Input" means the sum of the following categories of each hazardous substance:
1. inventory at the facility at the beginning of the accounting period;

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2. waste stored at the facility at the beginning of the accounting period;
 3. quantity produced at the facility; and
 4. quantity brought to the facility.
- H. "Materials balance" means an accounting of the flow of individual hazardous substances into a facility, through its processes, and into its products and wastes such that inputs equal outputs of each hazardous substance to the accuracy of the smallest accounting units (Article III(K)) for each hazardous or extremely hazardous substance.
- I. "Output" means the sum of the following categories of each hazardous substance:
1. quantity chemically altered in the facility's processes;
 2. quantity shipped from the facility in product;
 3. quantity transferred away from the facility as waste;
 4. waste stored at the facility at the end of the accounting period;
 5. quantity emitted to the air;
 6. quantity discharged into publicly treated sewage;
 7. quantity released into surface waters ;
 8. quantity eliminated through treatment at the facility;
 9. quantity eliminated through energy recovery at the facility;
 10. quantity disposed on-site; and
 11. inventory at the facility at the end of the accounting period.
- J. "Person" means an individual, corporation, partnership, trust, association, the City of Eugene, or any officer, agent, or employee thereof.
- K. "Smallest accounting unit" means 2.2 pounds of a hazardous substance; 0.022 pounds of an extremely hazardous substance.
- L. "Trade secret information" means information which is exempted from disclosure as a trade secret pursuant to any Federal or State law including but not limited to 42 U.S.C. 11042(b) of the Federal Emergency Planning and Community Right to Know Act.

ARTICLE IV - RESOLUTION

- Section 4 Be it resolved and ordained by the people of Eugene that: all hazardous substance users in Eugene shall file an annual, public, materials balance report listing inputs and outputs of all hazardous substances obtained, used, or generated.

ARTICLE V - HAZARDOUS SUBSTANCES PUBLIC REPORTING

- Section 5.1 Materials balance reporting
- A. Materials balance reports shall indicate the weight in pounds of hazardous substances in each of the categories enumerated in Article III(G) and III(I).
 - B. Each hazardous substance shall be designated by full chemical name and CAS number.

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- C. All materials balance reports shall be filed electronically on forms provided by the Toxics Board as defined in Section 6.1 of this Section. These completed forms shall be compatible with the Eugene Public Library's computer system. These forms, common to all reporting entities, shall be in an easily understood format for both the reporting entity and the public.
- D. An authorized representative of the reporting facility shall file a signed declaration with the Toxics Board certifying that the facility has filed the report and that it is accurate and complete.
- E. The materials balance reports shall be filed by April 1 of each year for the previous calendar year.
- F. The repository for all materials balance reports shall be the Eugene Public Library, where they shall be readily accessible by the public for seven years after reporting. Reports older than seven years shall be archived by the City Records Office.

Section 5.2 Reporting related to trade secret chemicals.

- A. If a claim of trade secrecy is made by any hazardous substance user for one or more hazardous substances, that user must:
 - 1. file with the Office of the Fire Marshal a notarized report documenting that the hazardous substance is comprised of a substance which satisfies all conditions of the definition of trade secret information as found in Article III(L). A separate report must be filed for each trade secret chemical. The notarized report shall be on file with the Fire Marshal prior to commencement of procurement or production of each trade secret chemical.
 - 2. file with the Toxics Board, on a form provided by the Toxics Board, notification of each trade secret report filed with the Office of the Fire Marshal.
 - 3. file with the Toxics Board, on a form provided by the Toxics Board, an aggregate materials balance account for all trade secret hazardous substances, if trade secrecy is claimed for more than one hazardous substance by any hazardous substance user. This report shall be filed by April 1 of each year.
 - 4. file with the Toxics Board, prior to April 1 of each year, an annual, public report prepared by a qualified independent auditor, on a form supplied by the Toxics Board, which reports:
 - (a) whether the hazardous substance user has taken and is taking the greatest possible precautions in its use of each trade secret hazardous substances; and
 - (b) whether or not there are, for each trade secret chemical, technological options available for using alternative processes or chemicals that likely are more protective of

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workers, the community, and natural resources.

- B. The repository for the annual public reports on use and alternatives to use of trade secret chemicals shall be the Eugene Public Library, where the reports shall be readily accessible for seven years after reporting. These completed forms shall be readable by the Eugene Public Library's computer system. Reports older than seven years shall be archived by the City Records Office.

ARTICLE VI - ADMINISTRATION OF HAZARDOUS SUBSTANCE REPORTING

Section 6.1 Appointment of the Toxics Board

- A. The City Council shall appoint a Toxics Board of seven people to enforce and implement this Section.
 - 1. Three members shall be appointed who are employed by or are agents of "persons" required to report under this Section.
 - 2. Three members shall be appointed who are not employed by or are not agents of "persons" required to report under this Section, and who have a demonstrable record of advocating for the public's right-to-know.
 - 3. One member shall be nominated by a two-thirds majority of the six appointed members.
- B. Any vacancies in the membership of the Toxics Board shall be filled, so as to maintain the balance set forth in Section 6.1(A), within two months of the creation of a vacancy.
- C. Term of Office:
 - 1. The term of office shall be three years, except that two members, one from Section 6.1(A)(1) and one from Section 6.1(A)(2), of the first Toxics Board shall be appointed to serve a first term of one year; three members, one each from Section 6.1(A)(1), 6.1(A)(2) and 6.1(A)(3) shall be appointed to serve a first term of two years; and two members, one from Section 6.1(A)(1) and 6.1(A)(2), shall be appointed to serve a first term of three years. No member shall serve more than two consecutive terms.
 - 2. Beginning in 2003, the terms of members of the Toxics Board shall conform to those of the standing committees to the City Council as defined by and set in the City Code.

Section 6.2 Responsibilities of the Toxics Board

- A. The Toxics Board shall, within three months of appointment of the sixth member, supply forms for materials balance reports and audits of precautions taken during use and alternatives to use of chemicals for which the trade secrecy reporting exemption has been invoked.
- B. The Toxics Board shall annually:
 - 1. recommend the fee structure necessary to implement this Section;

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2. establish the qualifications necessary for a person to independently audit precautions used with trade secret chemicals, and independently audit the existence of technological alternatives that likely would be more protective of the environment, as required in Section 5.2(A)(4); and
 3. file a public report on the effectiveness of implementation of this Section, and any recommendations for improved implementation of this Section.
- C. By May 1 of each year, the Toxics Board shall report to the Fire Marshal the names of any hazardous users in non-compliance with the requirement to file materials balance reports.
- D. The Toxics Board shall cause to be published a notice listing the names of non-complying entities in a daily newspaper with general circulation in the city of Eugene by June 1 of each year.
- E. The office of the City Fire Marshal shall investigate all credible evidence that hazardous materials balance reports or trade secret chemical reports are not being filed in compliance with this Section.
- F. The office of the City Fire Marshal shall audit the accuracy of the reporting processes of each hazardous substance user in an order such that all hazardous substance users are audited in a random order at least once every three years. Companies to be audited shall be given an advance audit notification of no more than one month.
- G. The Toxics Board shall certify the qualifications of independent auditors who will audit the precautions used by hazardous substance users with trade secret chemicals and the technological options available for more protective alternatives. Documentation for certification of the qualifications of each auditor shall be public information.
- H. For the purposes of complying with Section 5.2(A)(4), hazardous substance users may hire only independent auditors certified by the Toxics Board pursuant to Section 6.2(G).

Section 6.3 Responsibilities of the City Manager
The City Manager shall consult with the Toxics Board in order to jointly determine the appropriate support services that shall be provided to the Toxics Board by City employees for the implementation of this Section. As set forth in Article VII(A), the cost of these support services shall be paid by fees collected pursuant to this Section.

ARTICLE VII - FEES

Section 7 A. Each hazardous substance user shall pay an annual fee to the City of Eugene, sufficient to jointly cover the implementation of this Section, including expenses incurred by the Eugene Public Library, Fire Marshal, City of Eugene and the Toxics Board.

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- B. In order that this Section be self-supporting through hazardous substance user fees, the fee amounts shall be recommended annually by the Toxics Board and approved and amended as necessary by the Eugene City Council.
- C. All fees due under this Section shall be paid by May 1 of each calendar year.
- D. The operational budget for implementing this Section prior to the first collection of fees as set forth in Article VII shall be paid for out of City of Eugene general funds. The operational budget thereafter shall be funded wholly by hazardous substance user fees.

ARTICLE VIII - ENFORCEMENT

Section 8.1

Toxics Board enforcement and judicial review

- A. In the event of noncompliance, the Toxics Board shall have the authority to enforce the reporting requirements of this Section and impose penalties as set forth in Section 8.2.
- B. Any person may appeal a Toxics Board decision to the Circuit Court of Lane County, pursuant to the procedures providing for a writ of review (ORS 34.010) or a writ of mandamus (ORS 34.105).

Section 8.2

Penalties

- A. Any hazardous substance user or person who violates this Section shall be subject to a penalty not less than \$250 per day and not greater than the maximum penalty allowed by state law.
- B. Each day that a violation continues shall be considered a separate violation subject to civil penalties. A violation occurs when a regulated entity fails to file a complete and correct report on or before the day the filing of a report is required.
- C. In determining the appropriate amount of the penalty, the following shall be considered:
 - 1. the likelihood at the time of the noncompliance that harm would arise from the violator's noncompliance;
 - 2. the degree of the violator's awareness of that likelihood;
 - 3. the profits reasonably related to the violator's non-compliance;
 - 4. the duration of the non-compliance and any concealment of it;
 - 5. the attitude and conduct of the violator upon discovery of the concealment;
 - 6. the number of previous violations by the specific violator of this Section;
 - 7. the financial condition of the violator;
 - 8. the total deterrent effect upon the specific violator at issue and other potential violators; and
 - 9. other penalties paid by the specific violator for the specific violations at issue.

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- D. Any penalties imposed under this Section or Section 8.3 shall be paid to the City of Eugene for use in implementing this Section.
- E. If a hazardous substance user repeatedly violates this Section in a fashion contrary to the public interest, the City Manager shall order that hazardous substance user to cease and desist using hazardous substances in the City of Eugene.
- F. Nothing in this Section is intended to restrict or limit any other enforcement remedies available, at law or in equity, arising out of the same circumstances upon which an alleged violation of the Section may be based.

Section 8.3 Citizen enforcement.

- A. Any person may petition to the Toxics Board on her/his own behalf against a hazardous substance user or person for failure to comply with any of the terms of this Section. The Toxics Board shall set forth procedures by which persons may petition the Toxics Board.
- B. The Toxics Board must issue a decision in response to a petition within 45 days of receiving the petition. If the Toxics Board fails to issue a decision within 45 days, the petition shall be deemed denied on the 45th day for the purpose of exhaustion of remedies and may be judicially reviewed pursuant to Section 8.1(B).
- C. The petitioner must notify the Toxics Board and alleged violator ten days prior to seeking judicial review, except that such action may be brought immediately after such notification in the case of an action under this Section respecting an emergency posing a significant risk to the well-being of workers, people present in the community, or any species of fish or wildlife or plants.
- D. No action may be commenced under paragraph A of this Section if the City of Eugene has commenced an action to impose a penalty pursuant to Section 8.2 and is pursuing a prompt resolution of that action.

ARTICLE IX - EXCLUSIONS

- Section 9 A. Nothing in this Section is intended to apply to the government of the United States or to the government of the State of Oregon, or to the agencies or political subdivisions of either government.
- B. Nothing in this Section is intended to restrict, impede, or otherwise interfere with the exercise of rights guaranteed by the United States Constitution or the Constitution of the State of Oregon.

ARTICLE X - IMPLEMENTATION

Section 10 Insofar as it is reasonable and practicable to so assume, the provisions of this Section are intended to be self-executing. In every other case, however, and any other provision of the Eugene City Charter or the ordinances of the City of Eugene notwithstanding, the City

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Council shall, upon recommendation of the Toxics Board and without unreasonable delay, enact reasonable ordinances necessary and proper for carrying into execution the provisions of this Section.

ARTICLE XI - SEVERABILITY

Section 11 If any section, subsection, paragraph, phrase or word (hereafter the parts) of this Section shall be held to be unconstitutional, void, or illegal, either on its face or as applied, this shall not affect the applicability, constitutionality, or legality of any other parts hereof; and to that end, the parts of the Section are intended to be severable. It is hereby declared to be the intent of this Section that the same would have been adopted had such unlawful or unconstitutional provisions, if any, not been included herein.

ARTICLE XII - EFFECTIVE DATE

Section 12 This Section shall be in full force and effect 31 days following passage.

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