CHARTER ORDINANCE NO. 27

A CHARTER ORDINANCE EXEMPTING THE CITY OF COFFEYVILLE, KANSAS, FROM THE PROVISIONS OF L. 2015, CH. 88, SEC. 11, RELATING TO THE CITY MANAGER FORM OF GOVERNMENT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COFFEYVILLE, KANSAS:

WHEREAS, on the 19th day of March, 1963, the citizens of the City of Coffeyville, Kansas, adopted by a majority vote the commission-manager form of government;

WHEREAS, the Kansas Legislature passed L. 2015, ch. 88 (H.B. 2104), which amended and transferred the statutory provisions for the commission-manager form of government, and L. 2015, ch. 88, sec. 8(a) states that a city shall continue to operate under its current form of government if established at an election until such time that the city's form of government is changed;

WHEREAS, the statutory provisions for the commission-manager form of government have been recodified in L. 2015, ch. 88, sec. 11;

WHEREAS, L. 2015, ch. 88, sec. 8(b) states that all existing ordinances and charter ordinances relating to a city's form of government shall remain in effect until amended or repealed by such city;

WHEREAS, the City of Coffeyville, Kansas, wishes to exempt itself from provisions within L. 2015, ch. 88, sec. 11.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COFFEYVILLE, KANSAS:

Section 1. The City of Coffeyville, Kansas, by the power vested in it by Article 12, Section 5 of the Kansas Constitution hereby elects to and does exempt itself and make inapplicable to it the provisions of L. 2015 ch. 88 sec. 11 that apply to this city, but are parts of enactments which do not apply uniformly to all cities.

Section 2. The City of Coffeyville, Kansas, continues to operate under the commission-manager form of government and pursuant to all existing ordinances and charter ordinances relating to its form of government.

Section 3. Those governing body positions with terms that would have expired in April 2017, shall expire on the second Tuesday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms that

would have expired in April 2019, shall expire on the second Tuesday in January of 2020, when the city officials elected in the November 2019 general election take office.

Section 4. The governing body shall consist of five (5) commissioners to be elected to terms as set forth herein. The commissioners shall be residents and qualified electors of the City of Coffeyville, Kansas. General elections shall take place on the Tuesday succeeding the first Monday in November of odd-numbered years for all such governing body positions whose terms have expired. At each regular city election, there shall be elected two (2) commissioners for a four-year term and one (1) commissioner for a two-year term. The candidates receiving the largest and second largest number of votes shall be elected for four-year terms, and the candidate receiving the third largest number of votes shall be elected for a two-year term. Newly elected commissioners shall take office on the second Tuesday in January of the year following the election.

Section 5. In accordance with K.S.A. 25–205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or a declaration of candidacy, accompanied by any fee required by law. The nomination petition must be signed by not less than two percent (2%) of the qualified electors of the City of Coffeyville.

Section 6. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 7. This Charter Ordinance shall take effect 61 days after the final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided by Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case this charter Ordinance shall become effective upon approval by the majority of the electors voting thereon.

Passed by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, this 9th day of February, 2016.

_____

Christopher V. Williams, Mayor

Attest:

_____

Cindy Price, City Clerk

AN ANALYSIS OF H.B. 2104 (2015): CHANGING THE TIMING OF CITY ELECTONS

Produced by the League of Kansas Municipalities

INDEX

Title **Pg.**

An Overview of HB 2104 (2015)..... 1

An Analysis of the New Governing Body Vacancy Filling Process..... 7

Adjusting to Changes to the City Manager Plan Act 10

Appendices **Pg.**

Flow Chart: Sample Ordinance Index..... 15

Sample Charter Ordinance 1: Mayor/Council Cities of 3rd Class……. 16

Sample Charter Ordinance 2: Mayor/Council Cities of 2nd Class..... 19

Sample Charter Ordinance 3: Commission Cities 22

Sample Charter Ordinance 4: City Manager Plan Cities..... 25

Sample Charter Ordinance 5: Governing Body Vacancy Filling Process 28

Sample Ordinance 1: Mayor/Council Cities of 3rd Class……. 29

Sample Ordinance 2: Commission Cities……. 30

Sample Ordinance 3: City Manager Plan Cities……. 31

An Overview of H.B. 2104 (2015)

By Mike Koss

This year, the Kansas Legislature passed H.B. 2104 (the Act), which moved city elections from April of odd-years to November of odd-years. This article attempts to provide guidance on what cities should do to comply with the Act and how to adjust for the timing changes.

Timing, Terms, and Primary Elections

Three subsections of the Act authorize cities to continue using numerous combinations of staggered or non-staggered terms:

- L. 2015, ch. 88, sec. 7(c) **requires** that cities establish by ordinance the terms of office of their elected officials;
- L. 2015, ch. 88, sec. 9(c)(2) allows governing bodies to establish by ordinance terms of two, three, or four years; and
- L. 2015, ch. 88, sec. 7(h) allows cities to hold elections in November of even-numbered years for the purposes of staggering elections or to establish three-year terms of office.

Whatever election cycles a city establishes, terms of office must now begin on the second Monday in January following the certification of the election.[i] Previous language from K.S.A. 25-2120 stated that these terms began at the "first regular meeting of the governing body following certification of the election results." If your city has incorporated this statutory language into an ordinance, that ordinance should be changed to reflect the new commencement date. Since commencement is now tied to a specific date rather than a meeting, it may also be appropriate for cities to amend their regular meeting ordinance. Creating an additional regular meeting on the second Monday in January following certification of an election would allow all newly elected officials to take their oaths of office on the day that their terms begin. Alternatively, cities could call a special meeting on that date, specifically for newly elected officials to take their seats.

Many cities of the second and third class have chartered out of K.S.A. 14-201, K.S.A. 14-1204, K.S.A. 15-201, and K.S.A. 15-1302 to change the length or stagger the terms of their governing body.[ii] Cities do not need to change these charter ordinances unless they specifically reference an April election. If the charter ordinance does reference April, the city should amend it to reflect the November election date. Cities of the first class should also amend their ordinances to reflect this change. For cities that do not have any ordinance or charter ordinance establishing the terms of office for their governing body members, the Act **requires** the city to adopt an ordinance establishing terms.[iii] The League has developed several model ordinances for this purpose, which you can view at http://www.lkm.org/resources/ordinances/elections .

Many cities have passed charter ordinances exempting themselves from the provisions of K.S.A. 25-2107 in order to hold elections in April of even-years. Because the filing deadline for city elections has been moved from February to June and the *2015 Composite Listing of New, Amended and Repealed Statutes* issued by the Office of Revisor lists the effective date for all sections of H.B. 2104 as July 1, 2015, it is the League's opinion that there is no statutory authority for the April 2016 elections to take

place.[iv] However, the Secretary of State's office has indicated that it will use the authority granted to it in L. 2015, ch. 88, sec. 15(d) to authorize April 2016 elections and establish rules for those elections. It is the League's opinion that, once adopted, these rules will provide sufficient authority for the April 2016 elections to take place. Instead of going forward with April 2016 elections, cities can also pass an ordinance establishing a new election cycle using either odd-year or a combination of odd and even-year November elections.[v] For cities with odd-year elections, that have also adopted ordinances incorporating the old April odd-year election language in K.S.A. 25-2107, these ordinances should be amended to reflect the changes to the statute.

The Act authorizes cities to hold partisan elections after passing an ordinary ordinance. However, the Hatch Act and Department of Defense Directive 1344.10 prohibit federal employees and active duty military officers from running for partisan offices. Changing to partisan elections would also affect a city's primary election process. Any city considering holding partisan elections is encouraged to call the League to discuss these issues.

Transitions

Once a city establishes terms, it needs to consider how current office-holders will transition their terms to the new election cycle. The Act only contains one section controlling term transitions. L. 2015, ch. 88, sec. 7(a) states that terms that would have ended in April 2017 will now end in January 2018, when the officials elected in the November 2017 general election take office.[vi] The Act does not address the transition for city officials whose terms end in April 2016, 2018, or 2019.

There may not be legislation to address this issue, so cities with terms ending in April 2016 that no longer want to hold spring elections may want to use the authority in L. 2015, ch. 88, sec. 7(c) to pass an ordinance extending those terms to January 2017 (if the city wants to initiate a November even-year election cycle) or January 2018 (if the city wants to move those terms to a November odd-year election cycle).[vii] This extension should be included in the same ordinance that establishes or amends the terms of office of the elected officials. As an alternative, cities currently on an April even-year cycle that are considering a 20 month extension to get on a November odd-year cycle could authorize by ordinance a November 2016 election for a one or three year term.

Cities could also choose not to address transitions, and the current office-holders would continue in office until the next election for that office.[viii] *Murray v. Payne*, 137 Kan. 685 (1933), explains that, where the legislature has changed municipal terms of office so that there is an interim period between when one term was to end and the new term is to begin, the current office-holders continue in office until the newly-elected officials take office. Therefore, if no action is taken regarding the extension of terms for elected officials whose terms were to end in April 2016, those officials will continue in office until the term commences for the next person elected to that position (the commencement date would be determined by the city's ordinance). The same rule applies to officials whose terms end in 2018 or 2019 – an ordinance can be passed extending their terms, or the city can do nothing, and the officials will continue in office until the term commences for the next person elected to that office.

Some officials have expressed concern that action taken by officials during these interim transition periods will not be binding, which could expose cities to potential litigation from parties seeking to invalidate governing body actions during this period. Luckily, the Kansas Supreme Court has already addressed this issue. In *Hale v. Bischoff*, 53 Kan. 301 (1894), the Court stated that, "[a]n officer whose official term has expired, but who remains in possession of the office, having full control thereof and exercising the functions of the same, is an officer de facto, and all of his acts, within the limits of his official power, are valid as respects the public and third persons." Therefore, cities should not worry that action taken during these interim periods could be invalidated by subsequent litigation.

Appointment Deadlines

Several city officials have pointed out that the new term commencement dates no longer correspond to appointment dates for city officers. However, only mayor-council cities of the third class are required to make appointments during a specific month. K.S.A. 15-204 states that appointments for these cities are to be made, "at the first regular meeting in May of each year…." For cities that have chartered out of this statute, it may be advisable to amend the charter ordinance so that the appointment date is the first regular meeting in February (or whatever month the council chooses). For mayor-council cities of the third class that have not chartered out of K.S.A. 15-204, or do not plan on doing so, appointments should continue to take place at the first regular meeting in May.

For mayor-council cities of the second class, and commission cities of the second and third class, state statutes do not designate a specific month for appointments; they only designate that the terms of appointed officers be for one year.[ix] However, since those appointments likely have taken place during meetings in April or May in the past (depending on the city's ordinance), without action, new officials who take office in January would now have to wait three to four months to vote on renewing the city appointee's one-year terms. Any cities that have not chartered out of these statutes may want to consider amending their ordinances so that appointments take place at a regular meeting in February (or whatever month works best for the city). Once that change is made, the end of the current appointee's one-year terms in April or May can simply be ignored, so those officials continue in office as "holdovers" until the next, newly-established February appointment meeting. Cities of the first class that have not chartered out of K.S.A. 13-527 must establish terms of city officers by ordinance, so they may need to consider a similar ordinance amendment and transition process.

Filing Deadlines and Requirements

The Act also contains numerous changes to candidate filing requirements. L. 2015, ch. 88, sec. 15(b) indicates that the candidate filing deadline for city offices is June 1. The Act also made changes to the notification of vacant offices, candidate filing fees, where candidates must file for office, and nominating petition requirements. City clerks must now inform the county election officer of all city offices to be voted on at the next election not later than May 1 of every year that the city has an election.[x] Also, the filing fee for city office is now $20 for all sizes of cities.[xi] Additionally, candidates elected at large may no longer file through the city clerk's office - candidate filings must take place at

the county election office.[xii] Finally, these cities must establish by ordinance the number of qualified electors of the city that must sign a nomination petition.[xiii] The League has developed model ordinances that satisfy this requirement.[xiv] Because of the increased filing fee for cities of the second and third class, the League encourages cities to create a low threshold for nomination petitions, so that potential candidates have a cost-effective means of filing for city office.

City Manager Form of Government

To move elections to November for all cities, the legislature repealed what was commonly known as the City Manager Plan Act (the CMPA), which 55 cities had used to adopt the city manager form of government. City managers and city attorney's across the state expressed alarm at the repeal of these statutes, and the potential to use ordinary ordinances to overturn voter-approved adoptions of the CMPA for those city governments. The League responded by introducing an amendment recodifying the core parts of the CMPA, and retaining the continued operation of the CMPA for those cities that had adopted it. In L. 2015, ch. 88, sec. 8(a), the League amendment establishes that cities shall continue to operate under current forms of government adopted via an election (which is how cities were required to adopt the CMPA). In L. 2015, ch. 88, sec. 9(a), our amendment makes a city's ability to adopt a new form of government with an ordinance subject to the recodified version of the CMPA, which continues to require an election for adoption. Finally, L. 2015, ch. 88, sec.'s 10 through 12 contain the new language of the uniform CMPA, including provisions requiring that its abandonment can only occur via an election. For these reasons, it is the League's opinion that cities that have adopted the city manager form of government by election now operate under the provisions in L. 2015, ch. 88, sec.'s 10 through 12. If a city desires, it may affirm this fact by stating as much in an ordinary ordinance. The League has developed a model ordinance for this purpose, which includes additional provisions the city may need to replace the repealed statutes.[xv]

The savings clause in L. 2015, ch. 88, sec. 8 for existing forms of government also applies to all existing charter ordinances related to a city's form of government. Therefore, it the League's opinion that cities that have adopted the CMPA via election, but have chartered out of some of its provisions, continue to operate under L. 2015, ch. 88, sec.'s 10 through 12, and those sections are supplemented by the city's charter ordinances relating to its form of government.

Filling Governing Body Vacancies

The Act also creates new rules for filling governing body vacancies. The intent of L. 2015, ch. 88, sec. 71 is to require cities to hold special elections to fill vacancies in the governing body if those vacancies are not filled within 60 days. However, these sections conflict with a number of current statutes, and there are numerous ways to interpret their effect. L. 2015, ch. 88, sec. 71 requires vacancies in the governing body be filled by a majority vote of its remaining members if a city does not have a policy to fill governing body vacancies. This directly conflicts with K.S.A. 15-201, which requires that mayors in mayor-council cities of the third class fill vacancies with the consent of the council. The League has identified two different ways[xvi] to interpret L. 2015, ch. 88, sec. 71:

- Treat this section as a separate, standalone vacancy-filling process, which would allow cities to choose to use it OR choose to use the city's own vacancy-filling process or the statutory process for its respective class and form of city. If the city chooses the latter, it could ignore the special election requirement for vacancies not filled within 60 days; OR
- Read L. 2015, ch. 88, sec. 71 together with existing vacancy-filling statutes. Under this interpretation, cities may fill their vacancies using their own procedure for filling vacancies (or, if none, a majority of the remaining governing body members), and if the vacancy isn't filled after 60 days, a special election must be held to fill it.

The League anticipates that L. 2015, ch. 88, sec. 71 will be codified in a non-uniform article of the statute books, and we encourage cities to consider chartering out of its requirements.

Conclusion

Ending 154 years of spring elections will be a cumbersome process for many cities, but the legislature has created several mechanisms to deal with the move to November. We hope this article provides useful guidance for your city's transition, but if you have any questions, please do not hesitate to contact the League or your city attorney.

Footnotes

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[i] L. 2015, ch. 88, sec. 57.
[ii] For example, to lengthen terms from two to four years, with three council members elected in one year and two council members and the mayor elected two years later.
[iii] L. 2015, ch. 88, sec. 7(c).
[iv] *Also see Bigs v. City of Wichita*, 271 Kan. 455 (2001) (discussing the Legislature's ability to make a nonuniform state law uniform by amending the nonuniform provision, and that any charter ordinances opting out of those statute are repealed).
[v] It is highly questionable whether this section authorizes cities to have exclusively even-year elections. Although L. 2015, ch. 88, sec. 7(h) authorizes even-year elections for the purpose of staggering elections, an argument could be made that an odd-year election must be part of that staggered cycle.
[vi] *See generally Murray v. Payne*, 137 Kan. 685 (1933) (discussing the Legislature's power to require incumbent city officials holding four-year terms of office to continue in office until the next city election).
[vii] *See generally Molinari v. Bloomberg*, 564 F.3d 587 (2d Cir. 2009) (discussing the authority of municipalities to extend the terms of sitting elected officials).
[viii] *But see Wilson v. Clark*, 63 Kan. 505 (1901), indicating that cities may have Home Rule authority to declare offices with interim terms as vacant.
[ix] *See* K.S.A. 14-201, K.S.A. 14-1501 and K.S.A. 15-1601.
[x] L. 2015, ch. 88, sec. 56.
[xi] L. 2015, ch. 88, sec. 7(f); L. 2015, ch. 88, sec. 29(i).
[xii] L. 2015, ch. 88, sec. 53(a).
[xiii] L. 2015, ch. 88, sec. 53(b).
[xiv] http://www.lkm.org/resources/ordinances/elections
[xv] http://www.lkm.org/resources/ordinances/elections
[xvi] For another interpretation, see page 8 of this document.

An Analysis of the New Governing Body Vacancy Filling Process

By Nicole Proulx Aiken

Since the legislative session ended, League staff has fielded numerous questions concerning moving elections to the fall, the effects of the property tax lid, and implementing new sign regulations. An issue not garnishing as much attention, but still important, is the new governing body vacancy filling process found in L. 2015, ch. 88, sec. 71.[i] This article discusses the different approaches cities can take to address this new law.

L. 2015, ch. 88, sec. 71 establishes new rules for filling governing body vacancies. Under the law, cities that have a governing body vacancy filling process may continue to follow their procedure. If the city fails to fill the vacancy within 60 days, however, the city must conduct a special election. For cities that do not have a local process for filling governing body vacancies, the law requires that the remaining members of the governing body – including the mayor – appoint the new member by a majority vote. If the remaining members of the governing body fail to make an appointment within 60 days of the vacancy, the city must conduct a special election.

While the new law seems straightforward, it conflicts with several statutes that provide procedures for filling governing body vacancies depending on the class of the city and/or the city's form of government. [See K.S.A. 12-10a04 (modified mayor-council form of government); K.S.A. 13-513 (city of the first class, mayor-council form of government); K.S.A. 14-204 (city of the second class, mayor-council form of government); K.S.A. 14-308 (city of the second class, mayor-council form of government); K.S.A. 14-1305 (city of the second class, commission form of government); K.S.A. 15-201 (city of the third class, mayor-council form of government); K.S.A. 15-311 (city of the third class, mayor-council form of government); and K.S.A. 15-1405 (city of the third class, mayor-commission form of government)] L. 2015, ch. 88, sec. 71 did not repeal these statutes, which means cities can interpret the new law in many ways:

1. Cities can follow the new law or follow the statute that applies to their class and/or form of government. If a city has chartered out of the statute that applies to their class and/or form of government, (example: a city of the third class with a council form of government that chartered out of K.S.A. 15-201) the city can choose to follow the new law or its charter ordinance;

2. Cities can read the new law together with the existing vacancy filling statutes. Under this interpretation, cities may fill their vacancies using the procedure outlined in the statute (or respective charter ordinance) that applies to their class and/or form of government. The city would then hold a special election if it could not fill the vacancy within 60 days. Please note, however, this may lead to absurd results especially in cities of the second and third class with commission forms of governments. These cities are already required to fill a governing body vacancy within 10 days; or

3. Cities can take the position that the new law conflicts so much with other vacancy filling statutes that it takes precedence. In that case, the city would follow the new law.

The city manager form of government adds another layer of complexity. The legislature recodified the city manager form of government statutes in the same legislation as the new governing body vacancy filling process. While the legislature retained the city manager form of government, it repealed K.S.A. 12-1036d, which provided the governing body vacancy filling process for that form of government. Because the legislature repealed this statute, cities with the city manager form of government that were following K.S.A. 12-1036d must abide by the new law.

What should cities do?

The purpose behind L. 2015, ch. 88, sec. 71 is to ensure cities fill governing body vacancies in a timely manner so citizens are properly represented in their communities. The League agrees that this is an important policy concern and advises cities to fill governing body vacancies as soon as possible. Nevertheless, because the application of L. 2015, ch. 88, sec. 71 causes significant confusion, the League recommends every city charter out of the new law. In July, the Office of Revisor of Statutes provided a composite listing of the new, repealed, and amended statutes from the 2015 legislative session. According to the list, the new governing body vacancy filling process will be in K.S.A. Supp. 12-104a. The League has always believed that cities – following the constitutional home rule authority approved by Kansas voters in 1960 – may charter out of most statutes in Chapter 12, because the enactment is nonuniform. Thus, it is the League's opinion that cities can and should charter out of this new law. Unless a city desires to put its vacancy-filling process in a charter ordinance, the League recommends cities simply exempt themselves from the law. In summary, while the League believes it is important for every city to fill a governing body vacancy as soon as possible, because of the ongoing confusion of L. 2015, ch. 88, sec. 71, the League recommends every city charter out of the new law.

Footnotes

[i] The legislature also changed the governing body vacancy filling processes established in K.S.A. 12-344 and K.S.A. 2014 Supp. 12-363, which respectively apply only to the Unified Government of Wyandotte County and the Unified Government of Greeley County. (See L. 2015, ch. 88, sec. 72-73)

Adjusting to Changes to the City Manager Plan Act

By Mike Koss

This year, the state legislature passed H.B. 2104, which moved city elections from the spring to the fall. One aspect of the legislation that has received less attention than the timing change is the repeal and recodification of the City Manager Plan Act statutes. (K.S.A. 12-1001 *et seq.*) This article analyzes the history of those statutes, the effect of their recodification, and provides guidance to cities that have adopted the Act.

History: The Old City Manager Plan Act

Prior to this session, Kansas laws contained three basic variations of the city manager plan: the commission-manager (K.S.A. 12-1001 *et seq.*), council-manager (K.S.A. 12-1029 *et seq.*), and mayor-council-manager (K.S.A. 12-1021 *et seq.*). These statutes, also known as the City Manager Plan Act (CMPA), were examples of local option statutes. For these types of statutes, if a majority of the qualified electors of a city vote to adopt the statutory provisions, the city government becomes subject to their rules.[1] The rules for the structure of the government in each city adopting the CMPA varied based on the city's population.[2] Today, there are 55 Kansas cities that have adopted these statutes (hereafter, "adopting cities"). Once adopted, the only way to opt out of the CMPA was by holding an election on the question of abandonment.

The CMPA statutes were enacted about forty years before Kansas cities were granted Constitutional Home Rule, when municipalities were only authorized to use forms of government in state statutes. After Constitutional Home Rule was adopted by Kansas voters, because the CMPA was part of nonuniform enactment, many adopting cities began altering the statutory provisions controlling their form of government. For example, in Overland Park, citizens had adopted the CMPA prior to Constitutional Home Rule, and the Act required that the governing body for cities of its size consist of a mayor, two councilmembers elected by the city as a whole, and four councilmembers elected by districts.[3] Once Constitutional Home Rule came into effect, Overland Park passed a number of charter ordinances relating to its governing body's composition, finally settling on a mayor elected by the city as a whole and twelve council members elected by wards. Alternatively, other cities continued to use the CMPA's statutory provisions, and chose not to pass charter ordinances altering them. For example, in Salina, the only reference the city has to the composition of its governing body is in City Code Section 2-36, which states that, "[t]he electors of the city adopted the city manager plan of government on February 1, 1921." K.S.A. 12-1005d, which was part of the old CMPA, required adopting cities that attained a population of more than 18,000 but less than 65,000 in 1933[4] to be governed by a board of five commissioners. Because Salina met those qualifications, and never chartered out of K.S.A. 12-1005d, they have had a five member commission for over eighty years. The difference between Overland Park and Salina illustrates the distinguishing characteristic between the two major categories of adopting cities – those that exercised Home

Rule authority to opt out of the CMPA's provisions, and those that continued using a majority of its provisions.

Why Repeal the Old City Manager Plan Act?

The legislature's decision to repeal the CMPA this session had nothing to do with the actual substance of those statutes. The Act was repealed because it contained numerous election provisions that were incompatible with the initial goal of moving city elections to the fall. In the first draft of the bill, the CMPA was going to be replaced with statutes authorizing any city to adopt any form of government via ordinance. However, many city managers and city attorneys interpreted this as authorizing a simple majority of governing body members to abandon the city manager form of government. Previously, the CMPA could only be abandoned by citizen election, and many felt the will of the residents in adopting cities should be protected. Therefore, the League introduced an amendment for this purpose, and that amendment was part of the bill that was eventually passed by the legislature.

The Substance and Implications of the Recodified City Manager Plan Act

The League amendment accomplished its primary goals of retaining a version of the CMPA, maintaining the continued operation of the city manager form of government in adopting cities, and requiring that abandonment of the CMPA be accomplished by election rather than a simple ordinance.[5] Therefore, cities like Salina that have adopted a form of government requiring them to have five commissioners continue to operate under the new CMPA statutes, and maintain their five commissioner governing body. Cities like Overland Park that have passed charter ordinances relating to the composition of their governing body continue to operate under those charter ordinances.

However, very few of the operational provisions that existed in the old CMPA (e.g. how to fill governing body vacancies, meeting rules, etc.) were replaced in the new statutes.[6] The League has always believed that, where there was a conflict between the CMPA provisions and the statutes for the city's class and form (e.g. the number of governing body members), the CMPA provisions prevailed; but where the CMPA was silent (e.g. special meeting rules), the statutory provisions corresponding to the city's class and form controlled.[7] However, in the new CMPA, L. 2015, ch. 88, sec. 11(b) requires cities to establish governmental rules by a majority vote of the governing body.[8] Most adopting cities should not worry about this issue, since the vast majority have already passed charter ordinances establishing their own rules. However, adopting cities that have not passed charter ordinances relating to specific form of government rules that were addressed in the old CMPA, no longer have statutory provisions controlling these issues. Therefore, it is the League's opinion that the rules in these cities are either established by the statutory provisions corresponding to the city's class and form, or new rules may be established by a majority vote of the governing body. Below are some of the issues

addressed in the old CMPA, that are not addressed or are changed in the new CMPA, and that should be reviewed by adopting cities.

1. **Number of offices**. As discussed, the existing structure of the governing body in adopting cities remains in place because it is part of the "form of government" adopted via election. In adopting cities, the governing body's composition continues until changed by charter ordinance or election. However, adopting cities that have not addressed their governing body's make-up with charter ordinances should consider affirming their council or commission's composition with a simple ordinance.[9] This will provide clarity to elected officials, staff, and citizens.

2. **Governing body vacancies**. Because governing body vacancies are not part of city's "form of government," adopting cities do not necessarily continue to use the rules contained in the old CMPA statues. Vacancy filling is now either controlled by the rules for their city's class and form, a charter ordinance addressing the issue, or cities can establish their own rules by a majority vote of the governing body. However, to add complexity to the issue, L. 2015, ch. 88, sec. 71 states that, if the city does not have a governing body vacancy filling process, a majority of the entire governing body is responsible for filling those vacancies. If those vacancies remain unfilled after 60 days, the city is required to hold a special election for the vacant office.

3. **Terms of office and wards.** Several sections of H.B. 2104 require cities to establish their governing body member's terms of office by ordinance.[10] Cities must pass an ordinance outlining these terms, and any necessary transitions that need to take place to comply with the Act.[11] L. 2015, ch. 88, sec. 9(c)(3) also authorizes cities to establish by ordinance governing body elections by ward or district, and adopting cities that use wards should outline their ward system in an ordinance. Adopting cities do not need to include these provisions if they already have ordinances or charter ordinances establishing ward or district elections.

4. **Powers of the mayor.** The CMPA statutes addressing the powers of the mayor were replaced by L. 2015, ch. 88, sec. 11(a), which states that, "[t]he governing body shall establish by ordinance the qualifications, oath and powers and duties and terms of office of the governing body." Since there are no rules regarding mayoral powers within the new CMPA, adopting cities should either pass an ordinance affirming that the statutes for their class and form of city control the issue, or pass an ordinance by a majority vote of the entire governing body that includes provisions for mayoral powers.

5. **Meetings.** Since cities are already required to establish by ordinance when their regular meetings are held, the repeal of the old CMPA statutes should not affect regular meeting rules. However, H.B. 2104 also repealed the special meeting requirements in the CMPA, and a number of adopting cities relied on those rules. Therefore, those cities should either pass an ordinance affirming that the statutes for their class and form of city control

special meeting rules, or consider passing an ordinance by a majority vote of the entire governing body that includes rules for calling special meetings.

6. **City Manager position.** Despite the recodified CMPA's silence on many of the aforementioned issues, it does address the selection, powers, and responsibilities of the city manager.[12] In addition, L. 2015, ch. 88, sec. 9(c)(4) authorizes the governing body to supplement and clarify these statutory provisions.

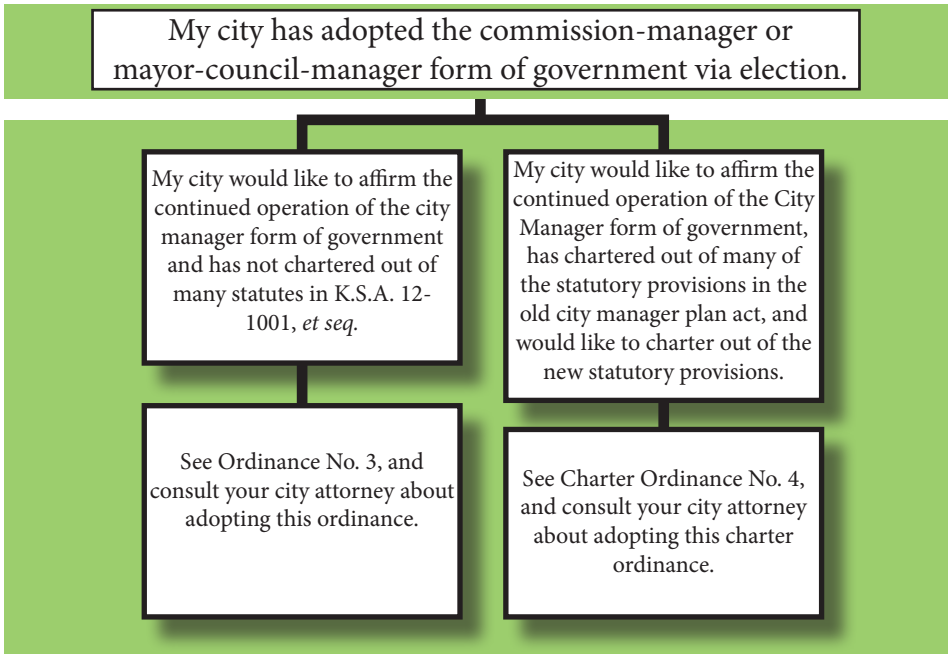
Resources and Potential Actions to Take

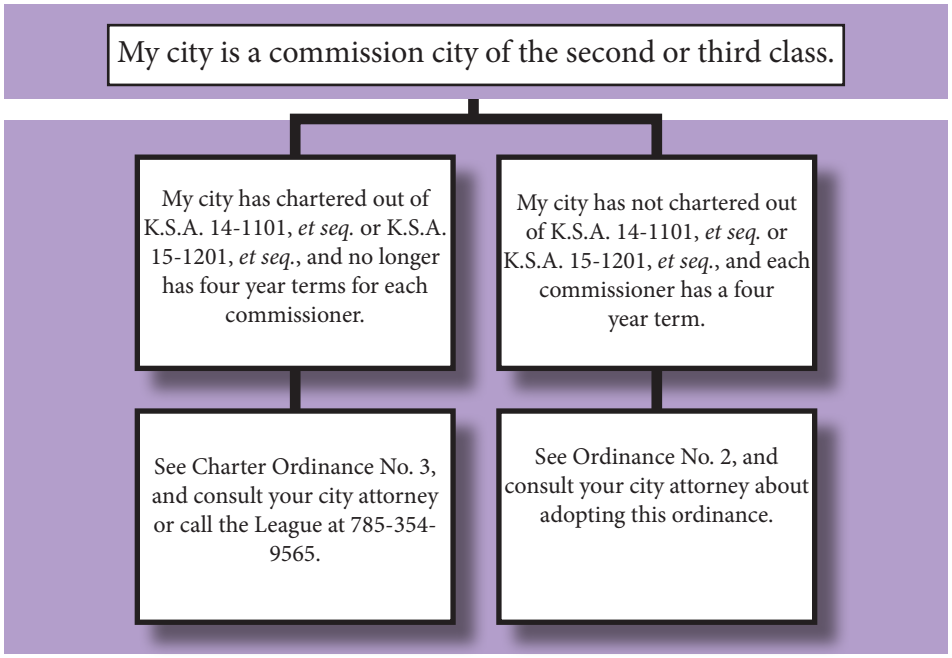
The analysis and guidance in this article only applies to cities that have adopted the CMPA. The League has developed two model ordinances to help adopting cities adjust to the changes to the CMPA – one for cities that have chartered out of many of old Act's provisions (e.g. Overland Park), and one for cities that have not (e.g. Salina). Both of those ordinances, and a flow chart explaining which cities should adopt which ordinance, can be found at http://www.lkm.org/resources/ordinances/elections.

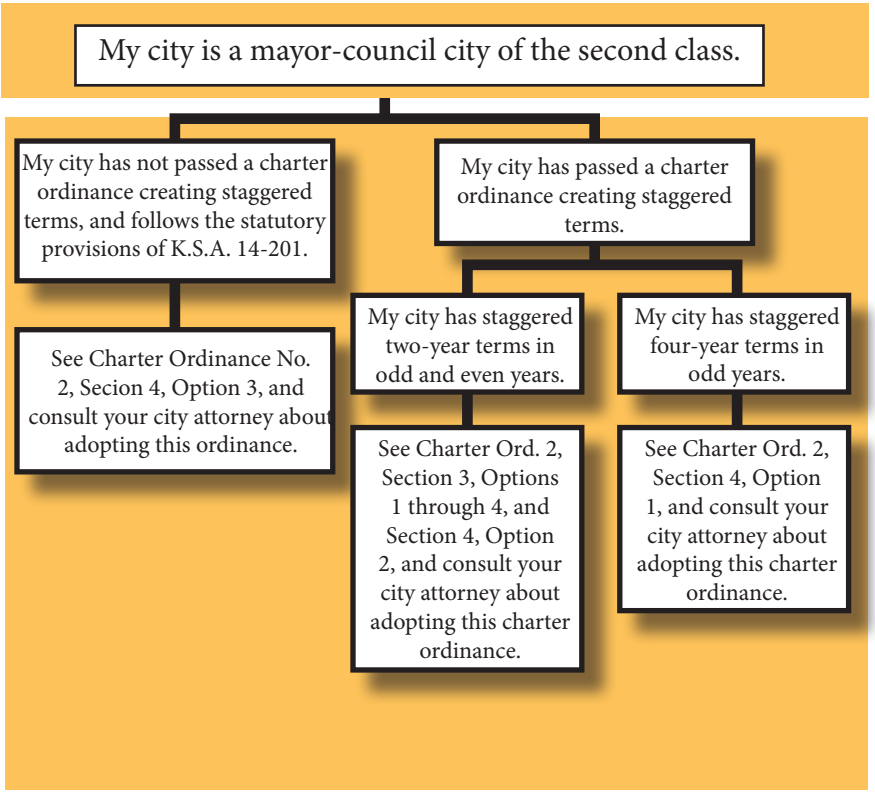
Footnotes

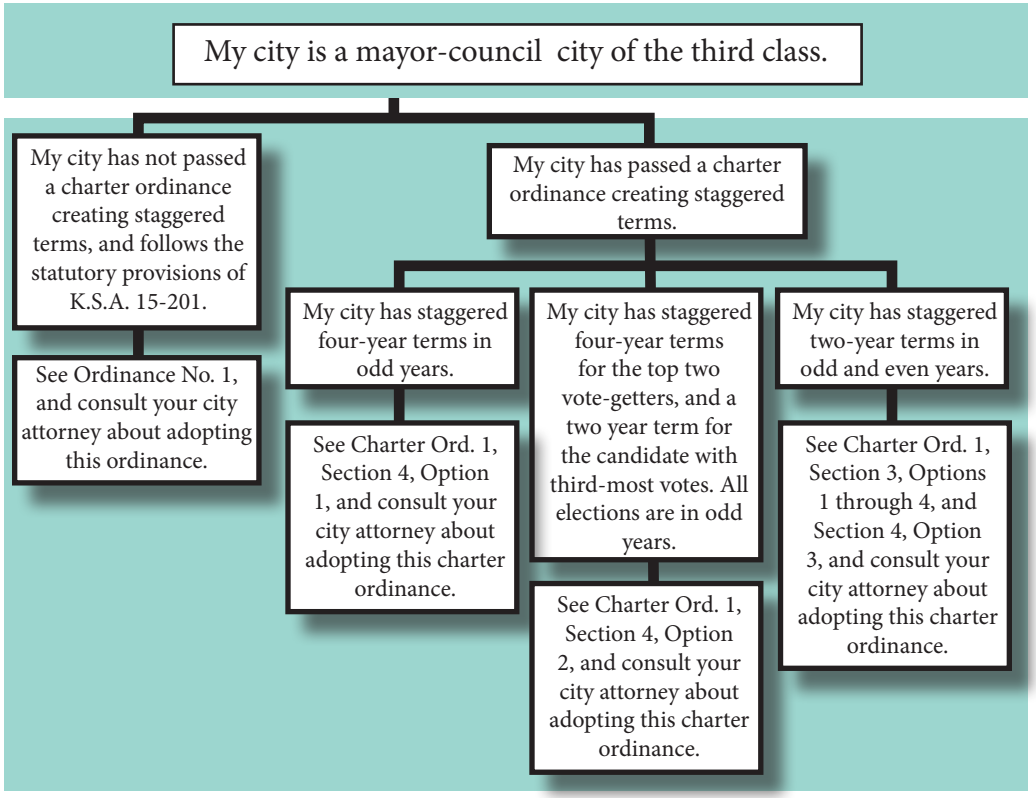
[1] Cities could call for an election to adopt the CMPA either by having the governing body pass a resolution or by citizen petition.
[2] Some of these form of government rules included the city manager's authority and responsibilities; the number of elected officials, their terms, their salaries, and whether the elections were by district; how governing body vacancies were filled; the powers of the mayor; meeting rules; the powers of the governing body and its members; and the responsibilities of administrative departments.
[3] K.S.A. 12-1036b (repealed 2015).
[4] Salina's population in 1930 was 20,155.
[5] The League's amendment included language stating that cities continue to operate under their current form of government if established at an election, and that all existing ordinances and charter ordinances relating to a city's form of government remain in effect until amended or repealed. According to Black's Law Dictionary (9th ed. 2009), "form" is defined as "[t]he outer shape or structure of something," so the phrase, "form of government," ostensibly implicates the composition of the governing body. For all cities that have adopted the CMPA, L. 2015, ch. 88, sec. 12 requires that abandonment of the form of government be accomplished via an election.
[6] Instead, L. 2015, ch. 88, sec. 9(c) and sec. 11(a) state that governing bodies shall establish by ordinance the qualifications, oath, powers, duties, and terms of office of the governing body; the election by ward or district of members of the governing body; the administrative departments of the city; and other matters deemed appropriate by the governing body.
[7] *But see Piper v. City of Wichita*, 174 Kan. 590, 601, (1953) ("The city manager statute provides a comprehensive and all-inclusive form of government for cities that adopt it. It fully covers the field. In the absence of direct legislative mandate this court will not deprive the city manager of any power or relieve him from any responsibility the statute places on him."
[8] The term "governing body" includes the mayor.
[9] Since the CMPA statutes outlining the governing body composition for adopting cities have been repealed, the only statutory reference that exists are the statutes that correspond to the city's form and class. To avoid confusion, cities should pass an ordinance affirming that the existing governing body make-up, not other statutory provisions, determine the current structure of the governing body.
[10] L. 2015, ch. 88, sec. 7(c); L. 2015, ch. 88, sec. 9(c)(2).
[11] The League has created several sample ordinances and charter ordinances to assist cities with this requirement, which can be found at http://www.lkm.org/resources/ordinances/elections. Also included in these sample ordinances are optional sections to establish wards.
[12] L. 2015, ch. 88, sec. 11 requires that the governing body (which includes the mayor) appoint a city manager to be responsible for the administration and affairs of the city; affirms the at-will nature of the position, stating that the city manager serves at the pleasure of the governing body; and outlines several city manager responsibilities, including that all laws and ordinances be enforced by the position, that the manager appoint and remove all heads of departments and all subordinate officers and employees of the city, and that all appointments made by the manager be based on merit and fitness alone. Notably absent in the new CMPA is language from the old statutes stating that no member of the governing body shall directly interfere with the conduct of any department, except at the express direction of the governing body.

Flow Charts: Sample Ordinances for Dealing with the Transition to November Elections









KEY

Note

Choice

EDITOR'S NOTE: This sample charter ordinance transitioning the city election cycles to November is intended for mayor-council cities of the third class that have chartered out of K.S.A. 15-201 to stagger their elections. This ordinance SHOULD NOT be adopted without first conferring with your city attorney.

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE EXEMPTING THE CITY OF _____, KANSAS, FROM THE PROVISIONS OF K.S.A. 15-201, RELATING TO THE ELECTION OF OFFICERS, THEIR TERMS OF OFFICE, TRANSITIONS TO NOVEMBER ELECTIONS, THE FILLING OF GOVERNING BODY VACANCIES, AND NOMINATION PETITIONS; AND, PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND REPEALING CHARTER ORDINANCE NO. ____.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____, KANSAS:

Section 1. The City of _____, Kansas, by the power vested in it by Article 12, Section 5 of the Kansas Constitution hereby elects to and does exempt itself and make inapplicable to it the provisions of K.S.A. 15-201, which applies to this city, but is part of an enactment which does not apply uniformly to all cities.

Section 2. The governing body shall consist of a mayor and five council members to be elected to terms as set forth herein. The mayor and council members shall be residents and qualified electors of the City of _____, Kansas.

Section 3. Those governing body positions with terms expiring in April 2017, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms expiring in April 2019, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office. **[INSERT APPROPRIATE OPTION]**

[EDITOR'S NOTE: THE OPTIONS BELOW ARE FOR CITIES THAT HAVE HELD ELECTIONS IN APRIL OF EVEN YEARS. IF THE CITY ALSO HELD ODD YEAR ELECTIONS, IT SHOULD ALSO ADOPT THE PARAGRAPH ABOVE. THESE OPTIONS CORRESPOND TO OPTION 3 IN SECTION 3.]

OPTION 1: [FOR CITIES WITH APRIL EVEN YEAR ELECTIONS THAT WISH TO TRANSITION THOSE OFFICIALS TO A NOVEMBER EVEN YEAR CYCLE]
Those governing body positions with terms expiring in April 2016, shall expire on the second Monday in January of 2017, when the city officials elected in the November 2016 general election take office. Those governing body positions with terms expiring in April 2018, shall expire on the second Monday in January of 2019, when the city officials elected in the November 2018 general election take office.

OPTION 2: [FOR CITIES WITH APRIL EVEN YEAR ELECTIONS THAT WISH TO TRANSITION THOSE OFFICIALS TO A NOVEMBER ODD YEAR CYCLE. AS AN ALTERNATIVE TO EXTENDING THESE TERMS, CITIES MAY CHOOSE TO HOLD AN ELECTION IN NOVEMBER 2016 FOR A ONE YEAR OR THREE YEAR TERM.]

Those governing body positions with terms expiring in April 2016, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms expiring in April 2018, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

OPTION 3: [FOR CITIES THAT INTEND TO HOLD APRIL 2016 ELECTIONS AND TRANSITION THOSE TERMS TO A NOVEMBER EVEN YEAR CYCLE]

Those governing body positions with terms expiring in April 2016, shall expire when the city officials elected in the April 2016 general election take office. The terms of the officials elected in the April 2016 election shall expire on the second Monday in January of 2019, when the city officials elected in the November 2018 general election take office.

OPTION 4: [FOR CITIES THAT INTEND TO HOLD APRIL 2016 ELECTIONS AND TRANSITION THOSE TERMS TO A NOVEMBER ODD YEAR CYCLE]

Those governing body positions with terms expiring in April 2016, shall expire when the city officials elected in the April 2016 general election take office. The terms of the officials elected in the April 2016 election shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

Section 4. [INSERT APPROPRIATE OPTION]

OPTION 1: [FOR CITIES WITH STAGGERED FOUR-YEAR TERMS IN ODD YEARS]

General elections shall take place on the Tuesday succeeding the first Monday in November 2017. Succeeding elections will be held every two years for all such governing body positions whose terms have expired. A mayor and two council members shall be elected at one election, and the remaining three council members shall be elected at the succeeding election. The mayor and all council members shall have four year terms.

OPTION 2: [STAGGERED FOUR-YEAR TERMS FOR TOP TWO VOTE-GETTERS, TWO YEAR TERM CANDIDATE WITH THIRD-MOST VOTES, EACH IN ODD YEARS]

General elections shall take place on the Tuesday succeeding the first Monday in November 2017. Succeeding elections will be held every two years for all such governing body positions whose terms have expired. The mayor shall have a **(two) OR (four)** year term. At succeeding regular city elections there shall be elected two council members for a four-year term and one council member for a two-year term. The candidates receiving the largest and second largest number of votes shall be elected for four-year terms, and the candidate receiving the third largest number of votes shall be elected for a two-year term.

OPTION 3: [FOR CITIES WITH STAGGERED TWO-YEAR TERMS IN ODD AND EVEN YEARS]

General elections shall take place on the Tuesday succeeding the first Monday in November 2016. Succeeding elections will be held every year for all such governing body positions whose terms have expired. A mayor and two council members shall be elected at one election, and the remaining three

council members shall be elected at the succeeding election. The mayor and all council members shall have two year terms.

Section 5. In case of a vacancy in the council occurring by reason of resignation, death, or removal from office or from the city, the mayor, by and with the advice and consent of the remaining council members, shall appoint an elector to fill the vacancy until the next election for that office. In case any person elected as a council member neglects or refuses to qualify within 30 days after election, the council member shall be deemed to have refused to accept the office and a vacancy shall exist. The mayor may, with the consent of the remaining council members, appoint a suitable elector to fill the vacancy.

[EDITOR'S NOTE: Rather than incorporating section 6 into a charter ordinance, it may also be adopted with by ordinary ordinance.]

Section 6. In case of a vacancy in the office of mayor, the president of the council shall become mayor until the next regular election for that office and a vacancy shall occur in the office of the council member becoming mayor.

Section 7. In accordance with K.S.A. 25–205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or a declaration of candidacy, accompanied by any fee required by law. The nomination petition must be signed by _____ of the qualified electors of the City of _____.

Section 8. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 9. This Charter Ordinance shall take effect 61 days after the final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided by Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective upon approval by the majority of the electors voting thereon.

Passed by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, this _____ day of _____, 20___.

_____
Mayor

Attest:

_____
City Clerk
[SEAL]

KEY

Note

Choice

EDITOR'S NOTE: This sample charter ordinance transitioning the city election cycles to November is intended for mayor-council cities of the second class. Both cities that have chartered out of certain statutes to stagger their elections, and those that HAVE NOT chartered out to establish staggered terms, should consider adopting this ordinance. This ordinance SHOULD NOT be adopted without first conferring with your city attorney.

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE EXEMPTING THE CITY OF _____, KANSAS, FROM THE PROVISIONS OF (K.S.A. 14-103) AND/OR (K.S.A. 14-201) AND/OR (K.S.A. 14-204), RELATING TO THE ELECTION OF OFFICERS, THEIR TERMS OF OFFICE, TRANSITIONS TO NOVEMBER ELECTIONS, THE APPOINTMENT OF OFFICERS, AND NOMINATION PETITIONS; AND, PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND REPEALING CHARTER ORDINANCE NO. ____.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____, KANSAS:

Section 1. The City of _____, Kansas, by the power vested in it by Article 12, Section 5 of the Kansas Constitution hereby elects to and does exempt itself and make inapplicable to it the provisions of **(K.S.A. 14-103) AND/OR (K.S.A. 14-201) AND/OR (K.S.A. 14-204)**, that apply to this city, but are parts of enactments which do not apply uniformly to all cities.

Section 2. (a) The governing body shall consist of a mayor and **[4-12]** council members to be elected to terms as set forth herein. The mayor and council members shall be residents and qualified electors of the City of _____, Kansas.

(b) The governing body of the city may, by ordinance, divide the city into wards and precincts, establish the boundaries thereof, and number the same. No ordinance redefining wards and precincts shall become effective less than 30 days prior to the next regular city election.

Section 3. Those governing body positions with terms expiring in April 2017, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms expiring in April 2019, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office. **[INSERT APPROPRIATE OPTION]**

[EDITOR'S NOTE: THE OPTIONS BELOW ARE FOR CITIES THAT HAVE HELD ELECTIONS IN APRIL OF EVEN YEARS. IF THE CITY ALSO HELD ODD YEAR ELECTIONS, IT SHOULD ALSO ADOPT THE PARAGRAPH ABOVE. THE OPTIONS BELOW CORRESPOND TO OPTION 2 IN SECTION 3.]

OPTION 1: [FOR CITIES WITH APRIL EVEN YEAR ELECTIONS THAT WISH TO TRANSITION THOSE OFFICIALS TO A NOVEMBER EVEN YEAR CYCLE]

Those governing body positions with terms expiring in April 2016, shall expire on the second Monday in January of 2017, when the city officials elected in the November 2016 general election take office. Those governing body positions with terms expiring in April 2018, shall expire on the second Monday in January of 2019, when the city officials elected in the November 2018 general election take office.

OPTION 2: [FOR CITIES WITH APRIL EVEN YEAR ELECTIONS THAT WISH TO TRANSITION THOSE OFFICIALS TO A NOVEMBER ODD YEAR CYCLE. AS AN ALTERNATIVE TO EXTENDING THESE TERMS, CITIES MAY CHOOSE TO HOLD AN ELECTION IN NOVEMBER 2016 FOR A ONE OR THREE YEAR TERM.]
Those governing body positions with terms expiring in April 2016, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms expiring in April 2018, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

OPTION 3: [FOR CITIES THAT INTEND TO HOLD APRIL 2016 ELECTIONS AND TRANSITION THOSE TERMS TO A NOVEMBER EVEN YEAR CYCLE]
Those governing body positions with terms expiring in April 2016, shall expire when the city officials elected in the April 2016 general election take office. The terms of the officials elected in the April 2016 election shall expire on the second Monday in January of 2019, when the city officials elected in the November 2018 general election take office.

OPTION 4: [FOR CITIES THAT INTEND TO HOLD APRIL 2016 ELECTIONS AND TRANSITION THOSE TERMS TO A NOVEMBER ODD YEAR CYCLE]
Those governing body positions with terms expiring in April 2016, shall expire when the city officials elected in the April 2016 general election take office. The terms of the officials elected in the April 2016 election shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

Section 4. [INSERT APPROPRIATE OPTION]

OPTION 1: [FOR CITIES WITH STAGGERED FOUR-YEAR TERMS IN ODD-YEARS]
A general election of city officers take place on the Tuesday succeeding the first Monday in November 2017. Succeeding elections will be held every two years for all such governing body positions whose terms have expired. One council member from each ward shall be elected at one election, and the other council member from that ward shall be elected at the succeeding election. The council members shall have four year terms. The Mayor shall have a **(two) OR (four)** year term.

OPTION 2: [FOR CITIES WITH STAGGERED TWO-YEAR TERMS IN ODD AND EVEN YEARS]
A general election of city officers take place on the Tuesday succeeding the first Monday in November 2016. Succeeding elections will be held every year for all such governing body positions whose terms have expired. One council member from each ward shall be elected at one election, and the other council member from that ward shall be elected at the succeeding election. The council members shall have two year terms. The Mayor shall have a **(two) OR (four)** year term.

OPTION 3: [FOR CITIES WITH UNSTAGGERED TWO-YEAR TERMS IN ODD-YEARS, THAT FOLLOW THE STATUTORY PROCESS IN K.S.A. 14-201]

A general election of city officers take place on the Tuesday succeeding the first Monday in November 2017. Succeeding elections will be held every two years for all such governing body positions whose terms have expired. The mayor and council members **(and city treasurer)** shall hold their offices for a term of two years.

Section 5. The mayor shall appoint, by and with the consent of the council, a municipal judge of the municipal court, a chief of police, city clerk, city attorney, and any other officers deemed necessary. Any officers appointed and confirmed shall hold an initial term of office of not to exceed one year and until their successors are appointed and qualified. Any officers who are reappointed shall hold their offices for a term of one year and until their successors are appointed and qualified. The council shall by ordinance specify the duties and compensation of the office holders, and by ordinance may abolish any office created by the council whenever deemed expedient.

[EDITOR'S NOTE: RATHER THAN INCORPORATING SECTION 6 INTO A CHARTER ORDINANCE, IT MAY ALSO BE ADOPTED BY ORDINARY ORDINANCE.]

Section 6. In accordance with K.S.A. 25–205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or a declaration of candidacy, accompanied by any fee required by law. The nomination petition must be signed by _____ of the qualified electors of the City of _____.

Section 7. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 8. This Charter Ordinance shall take effect 61 days after the final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided by Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case this charter Ordinance shall become effective upon approval by the majority of the electors voting thereon.

Passed by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, this _____ day of _____, 20___.

_____
Mayor

Attest:

_____
City Clerk
[SEAL]

KEY

Note

Choice

EDITOR'S NOTE: This sample charter ordinance is intended for commission cities of the second and third class that have elected to charter out of certain provisions of K.S.A. 14-1101, *et seq*., or K.S.A. 15-1201, *et seq.*, generally to alter the number of commissioners on the governing body or to change the election cycle. This ordinance should not be adopted without first conferring with your city attorney.

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE EXEMPTING THE CITY OF _____, KANSAS, FROM THE PROVISIONS OF (K.S.A. 14-1204) OR (K.S.A. 15-1302), RELATING TO THE ELECTION OF OFFICERS, THEIR TERMS OF OFFICE, TRANSITIONS TO NOVEMBER ELECTIONS, THE FILLING OF GOVERNING BODY VACANCIES, AND NOMINATION PETITIONS; AND, PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND REPEALING CHARTER ORDINANCE NO. ____.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____, KANSAS:

Section 1. (a) The governing body consists of a mayor and **(two) OR (four)** commissioners. The mayor and commissioners shall be residents and qualified electors of the City of _____, Kansas.

(b) Those positions that would have expired in April 2017, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. Those positions that would have expired in April 2019, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office. **[INSERT APPROPRIATE OPTION]**

[EDITOR'S NOTE: THE OPTIONS BELOW ARE FOR CITIES THAT HAVE HELD ELECTIONS IN APRIL OF EVEN YEARS IN ADDITION TO ODD YEAR ELECTIONS. THESE OPTIONS CORRESPOND TO OPTIONS 1 AND 3 IN SECTION 2.]

OPTION 1: [FOR CITIES WITH APRIL EVEN YEAR ELECTIONS THAT WISH TO TRANSITION THOSE OFFICIALS TO A NOVEMBER EVEN YEAR CYCLE]

Those governing body positions with terms expiring in April 2016, shall expire on the second Monday in January of 2017, when the city officials elected in the November 2016 general election take office. Those governing body positions with terms expiring in April 2018, shall expire on the second Monday in January of 2019, when the city officials elected in the November 2018 general election take office.

OPTION 2: [FOR CITIES WITH APRIL EVEN YEAR ELECTIONS THAT WISH TO TRANSITION THOSE OFFICIALS TO A NOVEMBER ODD YEAR CYCLE. AS AN ALTERNATIVE TO EXTENDING THESE TERMS, CITIES MAY CHOOSE TO HOLD AN ELECTION IN NOVEMBER 2016 FOR A ONE YEAR OR THREE YEAR TERM.]

Those governing body positions with terms expiring in April 2016, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms expiring in April 2018, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

OPTION 3: [FOR CITIES THAT INTEND TO HOLD APRIL 2016 ELECTIONS AND TRANSITION THOSE TERMS TO A NOVEMBER EVEN YEAR CYCLE]

Those governing body positions with terms expiring in April 2016, shall expire when the city officials elected in the April 2016 general election take office. The terms of the officials elected in the April 2016 election shall expire on the second Monday in January of 2019, when the city officials elected in the November 2018 general election take office.

OPTION 4: [FOR CITIES THAT INTEND TO HOLD APRIL 2016 ELECTIONS AND TRANSITION THOSE TERMS TO A NOVEMBER ODD YEAR CYCLE]

Those governing body positions with terms expiring in April 2016, shall expire when the city officials elected in the April 2016 general election take office. The terms of the officials elected in the April 2016 election shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

Section 2. [INSERT APPROPRIATE OPTION]

OPTION 1: [FOR CITIES WITH THREE COMMISSIONERS, WITH EACH COMMISSIONER SERVING A THREE YEAR TERM]

A general elections shall take place **(on the first Tuesday in April 2016) OR (on the Tuesday succeeding the first Monday in November 2016)**, and starting in 2017 succeeding elections will be held every year the first Monday in November for each governing body position whose term has expired. One commissioner shall be elected at each election. The mayor and each commissioner shall have three year terms, subject to Section 1 of this charter ordinance.

OPTION 2: [FOR CITIES WITH THREE COMMISSIONERS, WITH A STAGGERED FOUR-YEAR TERM FOR THE TOP TWO VOTE-GETTER, AND A TWO YEAR TERM FOR THE CANDIDATE WITH SECOND-MOST VOTES, WITH ALL ELECTIONS IN ODD YEARS]

General elections shall take place on the Tuesday succeeding the first Monday in November 2017. Succeeding elections will be held every two years for all such governing body positions whose terms have expired. At succeeding regular city elections there shall be elected one commissioner for a four-year term and one commissioner for a two-year term. The candidate receiving the largest number of votes shall be elected for a four-year term, and the candidate receiving the second largest number of votes shall be elected for a two-year term.

OPTION 3: [FOR CITIES WITH FIVE COMMISSIONERS, WITH EACH COMMISSIONER SERVING A THREE YEAR TERM]

A general elections shall take place **(on the first Tuesday in April 2016) OR (on the Tuesday succeeding the first Monday in November 2016)**, and starting in 2017 succeeding elections will be held every year the first Monday in November for each governing body position whose term has expired. Two commissioners shall be elected in **(2016) OR (2017) OR (2018)**, another two commissioners shall be elected in **(2016) OR (2017) OR (2018)**, and one **(commissioner) OR (mayor)** shall be elected in **(2016)**

OR (2017) OR (2018). The mayor and each commissioner shall have three year terms, subject to Section 1 of this charter ordinance.

OPTION 4: [FOR CITIES WITH FIVE COMMISSIONERS, WITH STAGGERED FOUR-YEAR TERMS FOR TOP TWO VOTE-GETTERS, AND A TWO YEAR TERM FOR THE CANDIDATE WITH THIRD-MOST VOTES, WITH ALL ELECTIONS IN ODD YEARS]
General elections shall take place on the Tuesday succeeding the first Monday in November 2017. Succeeding elections will be held every two years for all such governing body positions whose terms have expired. At succeeding regular city elections there shall be elected two commissioners for a four-year term and one commissioner for a two-year term. The candidates receiving the largest and second largest number of votes shall be elected for four-year terms, and the candidate receiving the third largest number of votes shall be elected for a two-year term.

OPTION 5: [FOR CITIES WITH FIVE COMMISSIONERS, WITH STAGGERED TWO-YEAR TERMS IN ODD YEARS] General elections shall take place on the Tuesday succeeding the first Monday in November 2017. Succeeding elections will be held every two years for all such governing body positions whose terms have expired. In 2017, **(one) OR (two)** commissioner(s) shall be elected for a two-year term. In 2019, **(two) OR (one)** commissioner(s) shall be elected for a two-year term.

Section 3. In accordance with K.S.A. 25–205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or a declaration of candidacy, accompanied by any fee required by law. The nomination petition must be signed by _____ of the qualified electors of the City of _____.

Section 4. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 5. This Charter Ordinance shall take effect 61 days after the final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided by Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case this Charter Ordinance shall become effective upon approval by the majority of the electors voting thereon.

Passed by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, this _____ day of _____, 20___.

_____
Mayor

Attest:

_____
City Clerk
[SEAL]

KEY

Note

Choice

EDITOR'S NOTE: This sample charter ordinance is intended for cities that have adopted the city manager plan act by election, have chartered out of many of its provisions, and also want to charter out of provisions within the new city manager plan act. Section's 4 and 5 may be unnecessary if your city has already passed charter ordinances establishing the election cycles and terms for your governing body members. This ordinance SHOULD NOT be adopted without first conferring with your city attorney.

A CHARTER ORDINANCE EXEMPTING THE CITY OF _____, KANSAS, FROM THE PROVISIONS OF L. 2015, CH. 88, SEC. 11, RELATING TO THE CITY MANAGER FORM OF GOVERNMENT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____, KANSAS:

WHEREAS, on the _____ day of _____, _____, the citizens of the City of _____, Kansas, adopted by a majority vote the **(council-manager) OR (commission-manager) OR (mayor-council-manager)** form of government;

WHEREAS, the Kansas Legislature passed L. 2015, ch. 88 (H.B. 2104), which amended and transferred the statutory provisions for the **(council-manager) OR (commission-manager) OR (mayor-council-manager)** form of government, and L. 2015, ch. 88, sec. 8(a) states that a city shall continue to operate under its current form of government if established at an election until such time that the city's form of government is changed;

WHEREAS, the statutory provisions for the **(council-manager) OR (commission-manager) OR (mayor-council-manager)** form of government have been recodified in L. 2015, ch. 88, sec. 11;

WHEREAS, L. 2015, ch. 88, sec. 8(b) states that all existing ordinances and charter ordinances relating to a city's form of government shall remain in effect until amended or repealed by such city;

WHEREAS, the City of _____, Kansas, wishes to exempt itself from provisions within L. 2015, ch. 88, sec. 11.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____, KANSAS:

Section 1. The City of _____, Kansas, by the power vested in it by Article 12, Section 5 of the Kansas Constitution hereby elects to and does exempt itself and make inapplicable to it the provisions of L. 2015 ch. 88 sec. 11 that apply to this city, but are parts of enactments which do not apply uniformly to all cities.

Section 2. The City of _____, Kansas, continues to operate under the **(council-manager) OR (commission-manager) OR (mayor-council-manager)** form of government and pursuant to all existing ordinances and charter ordinances relating to its form of government.

Section 3. Those governing body positions with terms that would have expired in April 2017, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms that would have expired

in April 2019, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office. **[INSERT APPROPRIATE OPTION]**

[EDITOR'S NOTE: THE OPTIONS BELOW ARE FOR CITIES THAT HAVE HELD ELECTIONS IN APRIL OF EVEN YEARS. ONE OPTION SHOULD BE ADOPTED IN ADDITION TO THE PARAGRAPH ABOVE.]

OPTION 1: [FOR CITIES WITH APRIL EVEN YEAR ELECTIONS THAT WISH TO TRANSITION THOSE OFFICIALS TO A NOVEMBER EVEN YEAR CYCLE]
Those governing body positions with terms expiring in April 2016, shall expire on the second Monday in January of 2017, when the city officials elected in the November 2016 general election take office. Those governing body positions with terms expiring in April 2018, shall expire on the second Monday in January of 2019, when the city officials elected in the November 2018 general election take office.

OPTION 2: [FOR CITIES WITH APRIL EVEN YEAR ELECTIONS THAT WISH TO TRANSITION THOSE OFFICIALS TO A NOVEMBER ODD YEAR CYCLE. AS AN ALTERNATIVE TO EXTENDING THESE TERMS, CITIES MAY CHOOSE TO HOLD AN ELECTION IN NOVEMBER 2016 FOR A ONE OR THREE YEAR TERM.]
Those governing body positions with terms expiring in April 2016, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms expiring in April 2018, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

OPTION 3: [FOR CITIES THAT INTEND TO HOLD APRIL 2016 ELECTIONS AND TRANSITION THOSE TERMS TO A NOVEMBER EVEN YEAR CYCLE]
Those governing body positions with terms expiring in April 2016, shall expire when the city officials elected in the April 2016 general election take office. The terms of the officials elected in the April 2016 election shall expire on the second Monday in January of 2019, when the city officials elected in the November 2018 general election take office.

OPTION 4: [FOR CITIES THAT INTEND TO HOLD APRIL 2016 ELECTIONS AND TRANSITION THOSE TERMS TO A NOVEMBER ODD YEAR CYCLE]
Those governing body positions with terms expiring in April 2016, shall expire when the city officials elected in the April 2016 general election take office. The terms of the officials elected in the April 2016 election shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

[EDITOR'S NOTE: Section's 4 and 5 may be unnecessary if your city has already passed charter ordinances establishing the election cycles and terms for your governing body members.]

Section 4. General elections shall take place on the Tuesday succeeding the first Monday in November 2017, and succeeding elections will be held every **(two) OR (four)** years for all such governing body positions whose terms have expired. The governing body shall consist of a **[INSERT YOUR CITY'S COMBINATION OF MAYOR, COUNCILMEMBERS, AND COMMISSIONERS]** to be elected to terms as set

forth herein. The mayor and **(council members) OR (commissioners)** shall be residents and qualified electors of the City of _____, Kansas.

Section 5. [EDITOR'S NOTE: Insert your city's election cycle here. For example, "One council member from each ward shall be elected at one election, and the other council member from that ward shall be elected at the succeeding election. The council members shall have four year terms. The Mayor shall have a four year term." For reference language, please see Section 4 of sample Charter Ordinance No. 1 if you are a mayor-council city, and Section 2 of sample Charter Ordinance No. 3 if you are a commission city: http://www.lkm.org/resources/ordinances/elections]

Section 6. In accordance with K.S.A. 25–205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or a declaration of candidacy, accompanied by any fee required by law. The nomination petition must be signed by _____ of the qualified electors of the City of _____.

Section 7. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 8. This Charter Ordinance shall take effect 61 days after the final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided by Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case this charter Ordinance shall become effective upon approval by the majority of the electors voting thereon.

Passed by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, this _____ day of _____, 20___.

_____
Mayor

Attest:

_____
City Clerk
[SEAL]

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE EXEMPTING THE CITY OF _____ FROM THE PROVISIONS OF L. 2015, CHAPTER 88, SECTION 71, RELATING TO THE FILLING OF GOVERNING BODY VACANCIES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____:

Section 1. The City of _____, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects and does exempt itself and make inapplicable to it L. 2015, Chapter 88, Section 71, relating to the filling of governing body vacancies, which enactment applies to this city, but does not apply uniformly to all cities.

Section 2. This charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

Section 3. This charter ordinance shall take effect 61 days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by the majority of the electors thereon.

Passed by the Governing Body, not less than two-thirds of the members-elect voting in favor thereof, this ____ day of _____, 2015

Attest: _____ _____

City Clerk Mayor

EDITOR'S NOTE: This sample ordinance is intended for mayor-council cities of the third class that have not chartered out of K.S.A. 15-201, and have an election for mayor and each councilmember every two years. This ordinance should not be adopted without first conferring with your city attorney.

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE TERMS OF OFFICE OF ELECTED OFFICERS, THE TRANSITION OF THOSE TERMS TO THE NOVEMBER ELECTION CYCLE, AND NOMINATION PETITION REQUIREMENTS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____, KANSAS:

Section 1. (a) The governing body consists of a mayor and five council members. The mayor and council members shall be residents and qualified electors of the City of _____, Kansas. Every two years an election shall be held for a mayor, and five council members. The mayor and council members shall hold their offices for two years and until their successors are elected and qualified.

(b) Those positions that would have expired in April 2017, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. The position of Mayor which would have expired in April 2017, shall expire on the second Monday in January of 2018, when the Mayor elected in the November 2017 general election takes office.

Section 2. In accordance with K.S.A. 25–205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or a declaration of candidacy, accompanied by any fee required by law. The nomination petition must be signed by _____ of the qualified electors of the City of _____.

Section 3. The ordinance shall take effect and be in full force and effect immediately following its adoption and publication as provided by law.

Passed by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, this _____ day of _____, 20__.

_____
Mayor

Attest:

_____
City Clerk
[SEAL]

KEY

Note

Choice

EDITOR'S NOTE: This sample ordinance is intended for commission cities of the second and third class that have elected to come under the provisions of K.S.A. 14-1101, *et seq.*, or K.S.A. 15-1201, *et seq.*, and have not chartered out of those statutes. This ordinance should not be adopted without first conferring with your city attorney.

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE TERMS OF OFFICE OF ELECTED OFFICERS, THE TRANSITION OF THOSE TERMS TO THE NOVEMBER ELECTION CYCLE, AND NOMINATION PETITION REQUIREMENTS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____, KANSAS:

Section 1. (a) The governing body consists of a mayor and two commissioners. The mayor and commissioners shall be residents and qualified electors of the City of _____, Kansas. Every four years an election shall be held for a mayor and two commissioners. The mayor and commissioners shall hold their offices for four years and until their successors are elected and qualified.

(b) **OPTION 1:** Those positions that would have expired in April 2017, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office.

OPTION 2: Those positions that would have expired in April 2019, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

Section 2. In accordance with K.S.A. 25–205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or a declaration of candidacy, accompanied by any fee required by law. The nomination petition must be signed by _____ of the qualified electors of the City of _____.

Section 3. The ordinance shall take effect and be in full force and effect immediately following its adoption and publication as provided by law.

Passed by the Governing Body, not less than two-thirds of the members elect voting in favor thereof, this _____ day of _____, 20__.

_____
Mayor

Attest:

_____
City Clerk
[SEAL]

KEY

Note

Choice

Sample Ordinance No. 3

EDITOR'S NOTE: This sample ordinance only applies to those cities that have adopted provisions of the City Manager Plan Act, formerly K.S.A. 12-1001, *et seq.* It is intended to affirm the continued operation of the city manager form of government.

ORDINANCE NO. _____

AN ORDINANCE AFFIRMING THE CITY OF _____'S ADOPTION AND CONTINUED OPERATION UNDER THE ***(COUNCIL-MANAGER)* OR (*COMMISSION-MANAGER)* OR (*MAYOR-COUNCIL-MANAGER*)** FORM OF GOVERNMENT

Be it Ordained by the Governing Body of the City of _____, Kansas:

WHEREAS, on the _____ day of _____, _____, the citizens of the City of _____, Kansas, adopted by a majority vote the **(council-manager) OR (commission-manager) OR (mayor-council-manager)** form of government;

WHEREAS, the Kansas Legislature passed L. 2015, ch. 88 (H.B. 2104), which amended and transferred the statutory provisions for the **(council-manager) OR (commission-manager) OR (mayor-council-manager)** form of government, and L. 2015, ch. 88, sec. 8(a) states that a city shall continue to operate under its current form of government if established at an election until such time that the city's form of government is changed;

WHEREAS, the statutory provisions for the **(council-manager) OR (commission-manager) OR (mayor-council-manager)** form of government have been recodified in L. 2015, ch. 88, sec. 10 through 12;

WHEREAS, L. 2015, ch. 88, sec. 8(b) states that all existing ordinances and charter ordinances relating to a city's form of government shall remain in effect until amended or repealed by such city.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____, KANSAS:

Section 1. FORM OF GOVERNMENT. The City of _____, Kansas, continues to operate under the **(council-manager) OR (commission-manager) OR (mayor-council-manager)** form of government, as codified in L. 2015, ch. 88, sec. 10 through 12, and pursuant to all existing ordinances and charter ordinances relating to its form of government.

Section 2. GOVERNING BODY; TRANSITION TO NOVEMBER ELECTIONS. Those governing body positions with terms that would have expired in April 2017, shall expire on the second Monday in January of 2018, when the city officials elected in the November 2017 general election take office. Those governing body positions with terms that would have expired in April 2019, shall expire on the second Monday in January of 2020, when the city officials elected in the November 2019 general election take office.

[EDITOR'S NOTE: Many of the following provisions were addressed in the repealed version of the City Manager Plan Act, and were not explicitly replaced in the substitute statutes. L. 2015, ch. 88, sec. 11(a) of the recodified City Manager Plan Act states that, "[t]he governing body shall establish by ordinance the qualifications, oath and powers and duties and terms of office of the governing body." For this reason, the League recommends cities adopt with an ordinary ordinance language for each issue covered in the following sections. We have included some suggested language for these sections, but each city is encouraged to develop their own. L. 2015, ch. 88, sec. 11(b) requires that any action regarding these provisions be passed by a majority of the governing body.

Section 3. SAME; OFFICES AND ELECTIONS. (a) The governing body shall consist of a **[INSERT YOUR CITY'S COMBINATION OF MAYOR, COUNCILMEMBERS, AND COMMISSIONERS]** to be elected to terms as set forth herein. The mayor and **(council members) OR (commissioners)** shall be residents and qualified electors of the City of _____, Kansas.

(b) General elections shall take place on the Tuesday succeeding the first Monday in November 2017, and succeeding elections will be held every **(two) OR (four)** years for all such governing body positions whose terms have expired.

(c) **[OPTIONAL: This subsection is reserved for cities with wards.]** The governing body of the city may, by ordinance, divide the city into wards and precincts, establish the boundaries thereof, and number the same. No ordinance redefining wards and precincts shall become effective less than 30 days prior to the next regular city election.

(d) In accordance with K.S.A. 25–205, and amendments thereto, any person may become a candidate for city office elected at large by having had filed on their behalf, a nomination petition or a declaration of candidacy, accompanied by any fee required by law. The nomination petition must be signed by _____ of the qualified electors of the City of _____.

Section 4. SAME; TERMS. **[EDITOR'S NOTE: Insert your city's election cycle here. For example, "One council member from each ward shall be elected at one election, and the other council member from that ward shall be elected at the succeeding election. The council members shall have four year terms. The Mayor shall have a four year term." For reference language, please see Section 4 of sample Charter Ordinance No. 1 if you have a mayor-council city, and Section 2 of sample Charter Ordinance No. 3 if you have a commission city: http://www.lkm.org/resources/ordinances/elections]**

[EDITOR'S NOTE: Cities of the first class are not listed as options in the following sections because statutory provisions only exist for mayor-council cities of the first class, not commission cities of the first class, which make up a majority of cities having adopted the City Manager Plan Act. Cities of the first class should review the statutory provisions for cities of the second class and determine whether they would like to adopt those rules or create their own provisions.]

Section 5. SAME; VACANCIES. The laws establishing and relating to the **(commission) OR (mayor-council)** form of government in cities of the **(second) OR (third)** class shall govern the filling of vacancies in the governing body of the City of _____, Kansas. **[EDITOR'S NOTE: Pursuant to L. 2015, ch. 88, sec. 71, cities that do not charter out of that law are required to hold special elections for governing body vacancies not filled within 60 days.]**

Section 6. SAME; OFFICE AND POWERS OF THE MAYOR. The laws establishing and relating to the **(commission) OR (mayor-council)** form of government in cities of the **(second) OR (third)** class shall govern the selection and powers of the mayor for the City of _____, Kansas.

Section 7. SAME; MEETINGS. The laws establishing and relating to the **(commission) OR (mayor-council)** form of government in cities of the **(second) OR (third)** class shall govern the rules for governing body meetings for the City of _____, Kansas.

Section 8. CITY MANAGER. (a) The city governing body shall appoint a city manager to be responsible for the administration and affairs of the city. The city manager shall serve at the pleasure of the governing body.

(b) The city manager shall see that all laws and ordinances are enforced. The city manager shall appoint and remove all heads of departments and all subordinate officers and employees of the city. All appointments shall be made upon merit and fitness alone.

Section 9. PUBLICATION; EFFECTIVE DATE. The ordinance shall take effect and be in full force and effect immediately following its adoption and publication as provided by law.

Passed by the city **(council) OR (commission)** and this _____ day of _____, 20___, and signed by the mayor on the _____ day of _____, 20___.

_____
Mayor

ATTEST:

_____
City Clerk
[SEAL]