

OPTIONAL CITY GOVERNMENT LAW

[HISTORY: Adopted by the City Council of the City of Binghamton 10-5-1970 (Part B of the 1970 Code). Amendments noted where applicable.]

ARTICLE I, Title; Definitions; Application; General Provisions

§ G-1. Short title.

This act may be known and cited as "The Optional City Government Law."

§ G-2. Definitions.

As used in this act, the following terms shall have the meanings indicated:

CHARTER -- Includes all provisions of local or special law applicable to the city. (Laws 1935, Ch. 407, § 2)

CITY -- Includes all cities in the State of New York.

COMMISSIONER OF ELECTIONS -- Includes those officers who have similar powers and duties in counties where no commissioners of election are appointed.

GENERAL CITY ELECTION -- An election at which the final selection is made of a City officer.

§ G-3. Applicability.

Any city which shall adopt, in the manner hereinafter prescribed, one of the methods of government provided in this chapter shall thereafter be governed by the provisions hereof.

§ G-4. Continuance of existing legislative powers of city.

None of the legislative powers of a city shall be abridged or impaired by the provisions of this act, but all such legislative powers are hereby devolved upon and shall be possessed and exercised by such body as shall be the legislative body of the city under the provisions hereof.

§ G-5. Effect of act upon other powers of city.

The existing corporate powers of a city shall not be construed to have been abridged or impaired by the provisions of this act, but the same shall be exercised as herein provided.

§ G-6. Effect of act upon duties and liabilities of city.

Nothing in this act shall be construed to in any way impair or affect any duty or liability now imposed by law upon a city.

§ G-7. Existing ordinances and other legislation continued.

All ordinances, resolutions, orders or other regulations of a city, or any authorized body or official thereof, existing at the time the provisions of this act shall become applicable to the city, and not inconsistent with the provisions hereof, shall continue in full force and effect until repealed, modified or otherwise superseded.

§ G-8. Existing laws continued.

Except insofar as any of its provisions shall be inconsistent with this act, the Charter of the city, and all special or general laws applicable thereto, shall continue in full force and effect, until and unless superseded by the passing of ordinances regulating the matters therein provided for; but to the extent that any provisions thereof shall be inconsistent with this act, the same are hereby superseded.

§ G-9. Effect of act upon powers, duties, election, appointment of supervisors.

Nothing in this act contained shall effect the powers, duties, manner of election or appointment of supervisors.

§ G-10. Effect of act upon determination of questions by popular vote.

Nothing in this act shall be construed as superseding or repealing any provision of law requiring any matter to be submitted to the vote of the electors or taxpayers, or permitting the City Council to so submit any matter or question.

§ G-11. Number of inhabitants of a city, how determined.

For the purposes of this act the number of inhabitants of a city shall be deemed to be the number as ascertained by the latest state census or United States census, whichever shall be later.

ARTICLE II, Adoption of Simplified Form of Government

§ G-12. Preparation and presentation of petition.

After June 30, 1917, a petition may be presented at any time to the Common Council of the city, in the form, and signed and certified as provided in the next section. The petition shall be presented by filing the same with the City Clerk. It shall be signed by qualified electors of the city to a number at least equal to 10% of the number of votes cast therein at the general election preceding the presentation of the petition in a city where less than 100,000 votes were so cast. In other cities it shall require a petition signed by qualified electors of the city to the number of 50% of the number of such votes. (Laws 1916, Ch. 156, § 1; Laws 1935, Ch. 407, § 3)

§ G-13. Form of petition.

The petition shall be in substantially the following form:

- A. To the Common Council of the city of _____: We, the undersigned, qualified electors of this city, respectfully petition your honorable body to cause to be submitted to a vote the following question: Shall the city of _____ adopt the simplified form of government defined as plan (insert A, B, C, D, E, F, or G, as desired by petitioners), and consisting of (describe particular plan briefly, as "government by limited council with division of administrative duties," or "government by limited council, with city manager," or "government by separate legislative and executive departments with five councilmen elected at large," et cetera) according to the provisions of chapter _____ of the laws of (insert chapter number and year of passage of this act), known as "The Optional City Government Law." (In a city of less than 25,000 inhabitants, if the plan specified in the foregoing question is plan A, plan B or plan D, such petition shall also contain the following additional questions:
- B. Shall the council under said plan be composed of five members, including the mayor? (The words "including the mayor" shall be omitted in the case of plan D.)
- C. Shall the council under said plan be composed of three members, including the mayor? (The words "including the mayor" shall be omitted in the case of plan D.)

(Signature of elector) (Residence, by street and number)

_____	_____
_____	_____
_____	_____

The execution of the petition by an elector shall be acknowledged by him, or it may be proved by the oath of a witness who shall swear that he knows the elector and that the petition was signed by the elector in the presence of the witness. The petition may be in the form of separate sheets, each sheet containing at the top thereof the petition as above set forth, and when bound together and offered for filing these shall be deemed to constitute one petition.

§ G-14. Summary proceeding to review sufficiency of petition.

Such a petition, which complies with the requirements of this article both as to form and number of signers and manner of execution, shall be accepted as prima facie sufficient. The supreme court, or any justice thereof within the judicial district, or the county judge of the county wherein the city is located, shall have summary jurisdiction upon complaint of an elector, to determine the sufficiency of the petition, and the genuineness of the signatures thereon and the qualifications of the electors signing the same, and may make such order in the premises as justice may require; but such summary proceeding shall be instituted within 10 days after presentation of the petition.

§ G-15. Submission of questions at general city election.

Within five days after the petition shall have been filed with him, the City Clerk shall transmit a certified copy thereof to the commissioner of elections (except that the signatures upon the petition, and the acknowledgment or proof thereof need not be copied, but in place thereof the City Clerk shall state the number of signatures of electors thereon). If the petition shall have been filed with the City Clerk (or, in case a summary proceeding has been instituted, a final order thereon has been made in favor of the sufficiency of the petition) not more than three months and not less than one month prior to a general city election the commissioner of elections shall cause the question or questions proposed by the petition to be duly submitted to a vote of the electors of the city at such general city election.

§ G-16. Submission of questions at special election.

If a petition is not filed (or a final order made) so as to permit the questions to be submitted at a general city election, within the provisions of the preceding section, the Common Council shall at its next regular meeting succeeding the presentation of the petition designate a day for the holding of a special election to ascertain the will of the electors regarding the questions, which day shall not be less than one month nor more than two months thereafter; except that no such special election shall be held in either the months of July or August, and the Common Council shall instead thereof name a day in September. The provisions of the election law, governing the registration of voters, equipment of polling places, furnishing of supplies, voting, and canvass of return of votes, at an election other than a general election, shall apply to such special election. The Common Council is hereby authorized to appropriate and expend from monies raised by taxation, the necessary expense of such special election; and if monies shall not be available for that purpose, to borrow on temporary loan, the amount necessary therefor; and to raise the amount of the principal and interest thereof by tax in the same manner as other city expenses.

§ G-17. Publication of notice and conduct of election.

The City Clerk shall give notice of the submission of the questions by forthwith posting in at least four public places in the city notice of the filing of the petition and the character of the questions to be submitted, and the commissioner of elections shall during the four weeks next preceding the election publish notice of the submission of the questions in the same manner as is required in the case of the submission of a special question to the electors of the city. Whenever the questions shall be submitted at a special election, the election officers who shall have been appointed to serve at the general city election next succeeding, or if none shall have been appointed then those election officers who were appointed to serve at the last election held in the city, shall serve within their districts at such special election, and shall receive the same compensation. The polling places shall be the same as were designated for the holding of the preceding general city election, and the commissioner of elections shall furnish for use therein the same equipment as at a general city election, so far as the same may be necessary.

§ G-18. Form of ballot; voting machines.

- A. The general form of ballot shall conform as nearly as may be to the requirements of Section 332 of the Election Law. In a city of less than 25,000 inhabitants, if the plan to be submitted is plan A, plan

B or plan D, there shall be printed at the left of questions two and three only one voting square for each of said questions, and at the left of each of said voting squares shall be printed the word "Yes" and there shall be printed on the stub at the top of the ballot above the directions to the voters prescribed in Section 332 of the Election Law, the following direction:

"Vote on question one, and on question two OR question three."

"Do NOT vote on BOTH question two AND question three."

- B. In case voting machines are in use in the city, they shall be used at the special election.

§ G-19. Submission of but one plan at an election.

The question of the adoption of not more than one plan may be submitted at an election. If pending the determination of the question or questions proposed by a petition already filed, another petition presenting the question of the adoption of a different plan shall be presented, no action whatever shall be taken upon the later petition until after the submission to a vote of the question or questions proposed by the earlier petition. Should the result of such vote be adverse thereto, proceedings shall then be had upon the later petition as though the same had been presented upon the day such vote was cast.

§ G-20. Effect of adoption of plan.

If a majority of the total number of votes cast for and against its adoption, at a special or general city election upon the adoption of one of the plans of government provided for in this act, shall be in favor of its adoption, the provisions of this act, so far as applicable to the form of government under the plan adopted by the city, shall supersede the provisions of the Charter and of the general and special laws relating thereto and inconsistent herewith, but not, however, until officers provided for under such plan shall have been duly elected and their terms of office shall have commenced. The officers provided for under the plan so adopted shall be elected in accordance with the provisions of this chapter relating to such plan, at the general city election next succeeding the adoption of such plan, and their terms of office shall commence on the first day of the second calendar month next succeeding their election, and thereupon the term of office of each elected officer of the city then in office, excepting the officers provided for in §§ G-34 and G-35 of this chapter, shall expire. In a city of less than 25,000 inhabitants, if the plan so adopted is plan A, plan B or plan D, if the number of voters voting "Yes" on question number two is greater than or equal to the number of voters voting "Yes" on question number three, the council shall be composed of five members. If the number of voters voting "Yes" on question number three is greater than the number of voters voting "Yes" on question number two, the council shall be composed of three members. If a voter shall vote "Yes" on both questions two and three, his ballot shall not thereby be invalidated, but his vote shall not be counted as a vote on either of said questions two and three.

§ G-21. Effect of rejection of plan.

Should a majority of the votes so cast be against the adoption of the plan proposed no petition proposing the same plan shall be presented within one year thereafter; but a petition proposing the adoption of one of the other plans provided for in this act may be presented at any time thereafter, and proceedings thereon shall be had as though no prior petition under this act had been presented.

§ G-22. Continuance of plan when adopted.

- A. Should any one of the plans of government provided for in this act be adopted, the same shall continue in force and effect for the period of at least four years after the commencement of the terms of office of the officials elected thereunder, and no petition proposing a different plan shall be presented during a period of three years and six months after such adoption.
- B. In a city of less than 25,000 inhabitants, which has adopted plan A, plan B or plan D, the question, whether the council of said city under said plan shall be changed from a council composed of five

members to a council composed of three members or vice versa, may, at any time after the expiration of the said period of four years, be presented and voted upon in like manner, as herein prescribed for presenting and voting upon the question of the adoption of a different plan.

§ G-23. Duty of City Clerk on adoption of plan.

It shall be the duty of the City Clerk of any city adopting any one of the plans herein provided for, within 30 days after the election at which such plan is adopted, to prepare a complete record of all the proceedings had in regard thereto, which shall include the original affidavits of the publication of the notice of the election, with copies of the notice as published, attached, a specimen of the ballots used at the election, and a certified copy of the canvass of the votes cast at such election, and to transmit such record to the office of the Secretary of State, where it shall be kept as a public record. It shall be the duty of the Secretary of State to cause to be published separately under an appropriate heading, in the appendix of the session laws of each year, the names of the cities which have accepted any of the plans of government provided for in this act, with a statement of the plan adopted and the date of adoption, and such statement so published shall be conclusive evidence of such adoption.

ARTICLE III, General Provisions Applicable to Each Method of Government

§ G-24. Application of sections of this article.

Unless otherwise especially provided, the sections contained in this article shall apply to the plans of government defined in this act as Plan A, B, C, D, E, F and G.

§ G-25. Exercise of legislative powers by council.

Except as in this section especially regulated, the legislative powers of the council of the city may be exercised as provided by ordinance or rule adopted by it.

- A. Each member of the council shall have the right to vote on any question coming before it; a majority of the council shall constitute a quorum, and the affirmative vote of a majority of all the members of the council shall be necessary to adopt any motion, resolution or ordinance.
- B. The time and place of regular meetings of the council shall be fixed by ordinance; special meetings may be called by any member on three days' notice, specifying the object of the meeting. All legislative sessions shall be open to the public, and every matter coming before the council for disposition shall be put to a vote whereon the ayes and nays shall be called and recorded. A full and accurate journal of the proceedings of the council shall be kept and shall be open to the inspection of any elector of the city.
- C. The council shall appoint a City Clerk, who shall have such powers and perform such duties as the council may from time to time prescribe, in addition to such duties as may be prescribed by law; the City Clerk shall keep the minutes of the meetings of the council. (Laws 1936, Ch. 270, § 1; L.L. No. 1-1950, § 1)

§ G-26. Effect upon provisions of existing law of adoption of ordinance regulating subject matter thereof.

Until superseded as herein provided, all provisions of law regulating the exercise of the powers and the performance of the duties of officers and employees of any city shall continue in full force and effect. The council under any one of the plans of government defined in this act as plan A, B, C, D, E, or F shall have power, subject to the provisions of this act, to confer by ordinance upon any officer or employee of the city any powers, or to impose upon any such officer or employee any duties, theretofore conferred or imposed upon any officer or employee by provision of law, and such powers or duties shall thereupon devolve upon or be discharged by such officer or employee upon whom the same shall have been so conferred or imposed; but the provisions of law regulating the exercise of such powers or the performance of such duties shall,

subject to being superseded as herein provided, continue in force and apply to the exercise or performance thereof by the officer or employee upon whom such powers or duties are conferred or imposed, and whenever by any such ordinance all the powers and duties of any appointive officer or employee of the city are conferred or imposed upon one or more other officers or employees, such ordinance may abolish the office or employment held by the officer or employee whose powers and duties shall have ceased, and thereupon the term of office or employment of such officer or employee shall expire. The council under any one of the plans of government defined in this act as plan A, B, C, D, E, or F shall, subject to the provisions of this act, have power to regulate by ordinance the exercise of any power and the performance of any duty by any officer or employee of the city; and upon the passing of any such ordinance every provision of the charter or of the Second Class Cities Law, applicable to such city, regulating the matters, or any of them, provided for in such ordinance, shall cease to have any force or effect in such city. But nothing herein contained shall be deemed to authorize the repeal or superseding of any provisions of law regulating the manner in which, or the conditions subject to which, franchises may be granted, or city real estate leased or sold, or municipal indebtedness incurred in any city, except to the extent of transferring powers or duties relating thereto to officers or employees of the city; and nothing herein contained shall be deemed to authorize the repeal or superseding of any provision of law requiring any matter to be submitted to the vote of the electors or taxpayers.

§ G-27. Terms of office of mayor and council.

- A. The terms of office of the mayor and members of the council under plan A, B, C, D, E, or F, shall be four years; provided, however, that the terms of the members, other than the mayor, composing the council first to be elected hereunder shall be as follows:
- B. If the number of the Council be a number equally divisible by two (excluding the Mayor where he is a member of the Council), the terms of the 1/2 receiving the highest number of votes shall be four years, and the terms of the remaining 1/2 shall be two years; should the number of the Councilmen be a number not equally divisible by two then the terms of the 1/2 receiving the lowest number of votes plus the Councilman receiving the next highest number of votes shall be two years, and the terms of the remaining Councilmen shall be four years. The salary of a Mayor or of a Councilman not be increased during his term of office.

§ G-28. Vacancies in office of mayor or council.

If under plan A, B, C, D, E, or F, a vacancy exists or occurs in the office of mayor or councilman, the council shall appoint a qualified person to fill such vacancy until the first day of January following the next general city election, at which a successor shall be elected for the full unexpired term.

§ G-29. Penalties for misconduct of council members.

The members of the council shall be subject to all the penalties for nonperformance or malfeasance in office imposed upon common councils, aldermen or councilmen, under the charter or the general laws of the state.

§ G-30. Qualifications and disabilities of mayor and council.

No person shall be eligible to the office of mayor or councilman who shall not at the time of his nomination be a citizen of the United States and a resident of the city. The acceptance by the mayor or any member of the council of any other civil office shall operate to vacate his office as mayor or councilman. Neither the mayor, nor any councilman, shall be or become in any way directly or indirectly interested in any contract to which the city is a party; a violation hereof shall render any such contract absolutely void.

§ G-31. Power of investigation of mayor or council.

The council, or the mayor, shall have the power to inquire into any matter relating to the affairs of the city, to compel by subpoena the attendance of witnesses and the production of books and papers material to any such inquiry, to administer oaths to witnesses and to examine them and such books and papers.

§ G-32. Assessment of property for purposes of general taxation and local improvements. [Amended 1-22-08 by Ord. No. 3-2008]

§ G-33. Election, appointment of judicial officers.

The city judge or judges, and justices of the peace and other judicial officers if any within the city, shall continue to be elected as heretofore, but if by the Charter or by general law such judge or judges are appointive they shall continue to be appointed, by the council elected under plans A, B, and C, or by the mayor elected under plans D, E and F, and for such terms as are now fixed.

§ G-34. Effect of act upon Board of Education.

Nothing in this act shall be construed as affecting the provisions of the charter, or the general law, relating to boards of education, their powers and duties, and the control of the schools and the funds pertaining thereto. Boards of education shall continue to be elected or appointed within the city as provided by law.

§ G-35. Civil service.

All appointments, promotions removals and changes in status in the civil service of the city shall be made in accordance with the provisions of the Civil Service Law. The legislative employees of the city shall be the city clerk and sergeant-at-arms of the council.

§ G-36. Civil service commissioners; appointment, terms, filling of vacancies, restrictions, removal.

Subject to the provisions of the Civil Service Law, the Council under plans A, B and C, and the mayor under plans D, E and F, shall appoint three persons as civil service commissioners to serve for two, four and six years respectively. Each alternate year thereafter there shall be appointed one person as the successor of the commissioner whose term expires, to serve for six years. Any vacancy shall be filled for the unexpired term in the same manner as an original appointment. No more than two members of the commission shall be adherents of the same political party, and no member shall hold any other public office to which a salary is attached. A commissioner may be removed during his term of office by the unanimous vote of the council, and upon stating in writing the reasons for removal, and after allowing him opportunity of making an explanation.

§ G-37. Administration of pension and other special funds.

Where the administration of pension, or other special funds, not essential to the ordinary functions of city government, is entrusted by the charter to a definitely constituted body, such funds shall continue to be so administered. Where the administration is committed to city officers, they shall continue to be administered by officers performing like functions, if they exist, or if not by the council. The council shall have power to create special funds and to fix rules for their administration.

§ G-38. Temporary appointment in case of disability of city officer.

Whenever any councilman shall be temporarily unable for any cause to perform the duties of his office for two consecutive meetings, the council may, at the next regular meeting, by majority vote of the entire council, appoint one of its members of the same political party as the disabled councilman, to exercise his powers and perform his duties as a member of any committee or committees, during such disability. The appointed member shall not have the right, however, to vote for the absent member on any matters coming before the council, during such disability. Should an appointive officer of the city be temporarily unable for any cause to perform his duties, the council or the mayor, having the power of original appointment, may make a temporary appointment of some person to act until such official shall resume his duties. (L.L. No. 3-1960, § 1)

§ G-39. Access to records of city offices.

The mayor, and any councilman, shall have access to all records, books, documents and other papers in any city department or office, at any time.

§ G-40. General powers of the mayor.

In addition to the powers conferred upon the mayor under either plan A, B, C, D, E, or F, the mayor shall have the custody of the seal of the city, and shall authenticate the acts of the council and all instruments and papers authorized so to be authenticated; in cases where the mayor is authorized by law to sit with the supervisors as a commissioner of charities, he shall continue so to act. In addition the mayor shall possess and exercise such other powers and perform such duties as are now conferred or imposed by law upon the mayor of the city, if not inconsistent with the provisions of this chapter. The mayor shall have charge of all civic functions, celebrations, receptions and courtesies, shall sign all contracts of every kind and nature to which the city is a party, and shall perform such other ministerial functions as the council may from time to time direct.

ARTICLE IV, Legislative Department Consisting of Five Councilmen

§ G-41. Definitions.

The method of city government provided for in this title is defined as plan D.

§ G-42. Application of title.

Upon the adoption by a city of plan D in the method prescribed by this act, such plan shall become operative as provided in § G-20 hereof, and its powers of government shall be exercised as in this title provided.

§ G-43. The mayor.

There shall be a mayor elected at large, who shall be the chief executive officer of the city; he shall maintain peace and good order, and enforce the laws and ordinances therein; he shall see that the duties of the various city officers are faithfully performed. He may appoint all officers of the city who are required by law or by the ordinances to be appointed.

§ G-44. Legislative powers of the city.

The legislative powers of the city shall be vested in a council which shall consist of five persons, elected at large except that in a city of less than 25,000 inhabitants it shall consist of five persons or of three persons as determined by the vote thereon as prescribed in § G-20 hereof. One of its members shall be elected by the Council as its president, to preside over its meetings for one year.

§ G-45. Approval by mayor. [Amended 3-18-2012 by L.L. No. 12-1]

Every ordinance or resolution of the Council shall be presented to the mayor before it shall be of any force or effect. If he approves it, he shall sign it, but if he disapproves he shall return it with his objections to the City Clerk who shall lay it before the council at its next meeting. The council shall enter the objections upon its journal, and proceed to reconsider the ordinance or resolution so disapproved. If upon such reconsideration two-thirds of the members of council (five of seven) shall vote in favor of such ordinance or resolution, the same shall become of force. If any ordinance or resolution is not returned by the mayor disapproved by him within 10 days after its presentation to him, it shall be of force.

§ G-46. Executive and administrative powers.

The executive and administrative powers of the city shall be vested in the mayor and such other officers as shall be elected or appointed pursuant to this act.

§ G-47. Appointive officers of the city.

The council shall by ordinance designate the officers and employees deemed by it necessary for the proper and efficient administration of the city affairs, such ordinance shall also fix their general duties and the salary or compensation to be paid. (L.L. No. 3-1991, § 3)

§ G-48. Acting mayor.

If the mayor shall be unable to perform the duties of his office, in consequence of sickness or temporary absence, he may designate a member of the council to act in his place, and the councilman so designated shall perform the duties of the mayor until the mayor shall resume them. While performing such duties, the councilman shall not act as a member of the Council. (L.L. No. 3-1991, § 3)

ARTICLE V, Legislative Department Consisting of Councilmen Elected by District

§ G-49. Definition and character of plan.

- A. The method of city government provided for in this title is defined as plan F, and upon the adoption by a city of plan F in the method prescribed by this act such plan shall become operative as provided in § G-20 hereof, and its powers of government shall be exercised as in this article provided.
- B. The provisions of §§ G-43 through G-48, inclusive, of Article IV shall apply to plan F, and the plan shall be similar in all respects to plan D, except that the council shall consist of as many members as there are wards in the city, and one councilman shall be elected from each ward.

ARTICLE VI, Saving Clause; Miscellaneous Provisions

§ G-50. Saving clause.

The adoption by a city of a plan of government under the provisions of this act shall not affect the validity of any proceeding or matter pending at the time of such adoption, which shall have been duly taken or begun by the city or its proper department or officer, but the same may be continued and completed as though originally begun under any prior proceedings taken in conformity with the provisions of this act. The adoption by a city of any plan of government under this act shall not affect any action or proceeding duly begun by or against the city, and pending at the time of the adoption of such plan.

§ G-51. When act to take effect.

This act shall take effect on July 15, 1914.