

Representative Wayne A. Harper proposes the following substitute bill:

MUNICIPAL GOVERNMENT AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies provisions relating to municipal government.

Highlighted Provisions:

This bill:

- ▶ reduces the number of copies of an ordinance, code, or book relating to building or safety standards, municipal functions, administration, control, or regulations that a city clerk is required to maintain from three to one;
- ▶ eliminates provisions that specify the type of governing body that a city or town must have;
- ▶ eliminates some optional forms of municipal government and related provisions and makes conforming changes;
- ▶ modifies optional forms of municipal government and makes conforming changes;
- ▶ narrows the application of moderate income housing plan requirements to cities of the first, second, and third class; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

- 28 **10-2-112**, as last amended by Chapter 292, Laws of Utah 2003
- 29 **10-2-114**, as last amended by Chapter 292, Laws of Utah 2003
- 30 **10-2-303**, as last amended by Chapter 17, Laws of Utah 1999
- 31 **10-2-411**, as last amended by Chapter 206, Laws of Utah 2001
- 32 **10-3-101**, as enacted by Chapter 48, Laws of Utah 1977
- 33 **10-3-106**, as last amended by Chapter 1, Laws of Utah 2000
- 34 **10-3-205**, as last amended by Chapter 292, Laws of Utah 2003
- 35 **10-3-206**, as enacted by Chapter 48, Laws of Utah 1977
- 36 **10-3-504**, as last amended by Chapter 292, Laws of Utah 2003
- 37 **10-3-507**, as last amended by Chapter 292, Laws of Utah 2003
- 38 **10-3-711**, as last amended by Chapter 84, Laws of Utah 1997
- 39 **10-3-1203**, as last amended by Chapter 178, Laws of Utah 2001
- 40 **10-3-1208**, as last amended by Chapter 292, Laws of Utah 2003
- 41 **10-9-307**, as last amended by Chapter 292, Laws of Utah 2003

42 REPEALS:

- 43 **10-3-103**, as last amended by Chapter 17, Laws of Utah 1999
- 44 **10-3-104**, as last amended by Chapter 17, Laws of Utah 1999
- 45 **10-3-105**, as last amended by Chapter 292, Laws of Utah 2003
- 46 **10-3-203**, as last amended by Chapter 278, Laws of Utah 1997
- 47 **10-3-204**, as last amended by Chapter 278, Laws of Utah 1997
- 48 **10-3-401**, as enacted by Chapter 48, Laws of Utah 1977
- 49 **10-3-402**, as last amended by Chapter 292, Laws of Utah 2003
- 50 **10-3-1209**, as last amended by Chapter 178, Laws of Utah 2001

52 *Be it enacted by the Legislature of the state of Utah:*

53 Section 1. Section **10-2-112** is amended to read:

54 **10-2-112. Ballot used at the incorporation election.**

55 (1) The ballot at the incorporation election under Subsection 10-2-111(1) shall pose the
56 incorporation question substantially as follows:

57 Shall the area described as (insert a description of the proposed city) be incorporated as
58 the city of (insert the proposed name of the proposed city)?

59 (2) The ballot shall provide a space for the voter to answer yes or no to the question in
60 Subsection (1).

61 (3) (a) The ballot at the incorporation election shall also pose the question relating to
62 the form of government substantially as follows:

63 If the above incorporation proposal passes, under what form of municipal government
64 shall (insert the name of the proposed city) operate? Vote for one:

65 Five-member City [~~(insert "Commission" for a city of the first or second class or~~
66 ~~"]Council[" for a city of the third, fourth, or fifth class)~~] form

67 Six-member City Council form

68 Council-Mayor form

69 Council-Manager form.

70 (b) The ballot shall provide a space for the voter to vote for one form of government.

71 (4) (a) The ballot at the incorporation election shall also pose the question of whether
72 to elect city [~~commission or~~] council members by district substantially as follows:

73 If the above incorporation proposal passes, shall members of the city [~~(insert~~
74 ~~"commission" or "~~]council[~~," as the case may be)~~] of (insert the name of the proposed city) be
75 elected by district?

76 (b) The ballot shall provide a space for the voter to answer yes or no to the question in
77 Subsection (4)(a).

78 Section 2. Section **10-2-114** is amended to read:

79 **10-2-114. Determination of number of commission or council members --**

80 **Determination of election districts -- Hearings and notice.**

81 (1) If the incorporation proposal passes, the petition sponsors shall, within 25 days of
82 the canvass of the election under Section 10-2-111:

83 (a) if the voters at the incorporation election choose either the council-mayor or the
84 council-manager form of government, determine the number of [~~commission or~~] council
85 members that will constitute the [~~commission or~~] council of the future city;

86 (b) if the voters at the incorporation election vote to elect [~~commission or~~] council
87 members by district, determine the number of [~~commission or~~] council members to be elected

88 by district and draw the boundaries of those districts, which shall be substantially equal in
89 population;

90 (c) determine the initial terms of the mayor and members of the city [~~commission or~~]
91 council so that:

92 (i) the mayor and approximately half the members of the city [~~commission or~~] council
93 are elected to serve an initial term, of no less than one year, that allows their successors to serve
94 a full four-year term that coincides with the schedule established in [~~Subsection 10-3-203(1)~~
95 ~~for a first class city, Subsection 10-3-204(1) for a second class city, and~~] Subsection
96 10-3-205(1) [~~for a third, fourth, or fifth class city~~]; and

97 (ii) the remaining members of the city [~~commission or~~] council are elected to serve an
98 initial term, of no less than one year, that allows their successors to serve a full four-year term
99 that coincides with the schedule established in [~~Subsection 10-3-203(2) for a first class city,~~
100 ~~Subsection 10-3-204(2) for a second class city, and~~] Subsection 10-3-205(2) [~~for a third,~~
101 ~~fourth, or fifth class city~~]; and

102 (d) submit in writing to the county legislative body the results of the sponsors'
103 determinations under Subsections (1)(a), (b), and (c).

104 (2) (a) Before making a determination under Subsection (1)(a), (b), or (c), the petition
105 sponsors shall hold a public hearing within the future city on the applicable issues under
106 Subsections (1)(a), (b), and (c).

107 (b) (i) The petition sponsors shall publish notice of the public hearing under Subsection
108 (2)(a) in a newspaper of general circulation within the future city at least once a week for two
109 successive weeks before the hearing.

110 (ii) The last publication of notice under Subsection (2)(b)(i) shall be at least three days
111 before the public hearing under Subsection (2)(a).

112 (c) (i) If there is no newspaper of general circulation within the future city, the petition
113 sponsors shall post at least one notice of the hearing per 1,000 population in conspicuous
114 places within the future city that are most likely to give notice of the hearing to the residents of
115 the future city.

116 (ii) The petition sponsors shall post the notices under Subsection (2)(c)(i) at least seven
117 days before the hearing under Subsection (2)(a).

118 Section 3. Section **10-2-303** is amended to read:

119 **10-2-303. Effect of change in class.**

120 (1) (a) If a municipality changes from one class to another:

121 [~~(a)~~] (i) all property, property rights, and other rights that belonged to or were vested in
122 the municipality at the time of the change shall belong to and be vested in it after the change;123 [~~(b)~~] (ii) no contract, claim, or right of the municipality or demand or liability against it
124 shall be altered or affected in any way by the change;125 [~~(c)~~] (iii) each ordinance, order, and resolution in force in the municipality when it
126 changes classes shall, to the extent that it is not inconsistent with law, not be affected by the
127 change and shall remain in effect until repealed or amended;128 [~~(d)~~] (iv) the change shall not affect the identity of the municipality;129 [~~(e)~~] (v) each municipal officer in office at the time of the change shall continue as an
130 officer until that officer's term expires and a successor is duly elected and qualified; and131 [~~(f)~~] (vi) [~~notwithstanding Sections 10-3-103, 10-3-104, and 10-3-105,]~~ except as
132 provided in Subsection (1)(b), the municipality maintains after the change in class the same
133 form of government that it had immediately before the change.134 (b) (i) If a town operating under a five-member council form of government changes
135 classes to a fifth class city, its form of government shall, upon issuance of the lieutenant
136 governor's certificate under Section 10-2-302, change to a six-member council form.137 (ii) As soon as practicable after the change in form of government under Subsection
138 (1)(b)(i), the governing body shall appoint a sixth council member to serve until a successor is
139 elected at the next municipal general election at which the mayor is not subject to election.140 (2) (a) A change in class does not affect an action at law, prosecution, business, or
141 work of the municipality changing classes, and proceedings shall continue and may be
142 conducted and proceed as if no change in class had occurred.143 (b) Notwithstanding Subsection (2)(a), if the law applicable to a municipality under the
144 new class provides the municipality a different remedy with respect to a right that it possessed
145 at the time of the change, the remedy shall be cumulative to the remedy applicable before the
146 change in class.147 Section 4. Section **10-2-411** is amended to read:148 **10-2-411. Disqualification of commission member -- Alternate member.**

149 (1) A member of the boundary commission is disqualified with respect to a protest

150 before the commission if that member owns property:

151 (a) for a proposed annexation of an area located within a county of the first class:

152 (i) within the area proposed for annexation in a petition that is the subject of the
153 protest; or

154 (ii) that is in the unincorporated area within 1/2 mile of the area proposed for
155 annexation in a petition that is the subject of a protest under Subsection 10-2-407(1)(a)[~~(i)(D)~~]
156 (ii); or

157 (b) for a proposed annexation of an area located in a specified county, within the area
158 proposed for annexation.

159 (2) If a member is disqualified under Subsection (1), the body that appointed the
160 disqualified member shall appoint an alternate member to serve on the commission for
161 purposes of the protest as to which the member is disqualified.

162 Section 5. Section **10-3-101** is amended to read:

163 **10-3-101. Governing body -- Legislative and executive powers.**

164 (1) (a) Each municipality, except a municipality operating under a council-mayor form
165 of government, shall have a governing body [which] that consists of:

166 (i) in a five-member council form of government, five council members, of which one
167 is a mayor, who shall vote as a member of the governing body and who exercises ceremonial
168 and administrative functions, and four are council members;

169 (ii) in a six-member council form of government, six council members, of which one is
170 a mayor, who shall vote only in the case of a tie or in the appointment or dismissal of a city
171 manager under Section 10-3-830 and who exercises ceremonial and administrative functions,
172 and five are council members; and

173 (iii) in a council-manager form of government, a council of five or seven members,
174 who shall appoint a manager.

175 (b) Each governing body under Subsection (1)(a) shall exercise the legislative and
176 executive powers of the municipality [unless the municipality is organized with separate
177 executive and legislative branches of municipal government].

178 (2) The government of a municipality operating under the council-mayor form of
179 government is vested in two separate, independent, and equal branches of municipal
180 government consisting of:

181 (a) the mayor, who exercises executive powers and, under the mayor's supervision, the
182 administrative departments and officers; and

183 (b) a council of five or seven members, who exercise the legislative powers.

184 Section 6. Section **10-3-106** is amended to read:

185 **10-3-106. Governing body in towns.**

186 [~~The governing body of~~] Unless it has adopted another form of government under Part
187 12, Alternate Forms of Municipal Government Act, each town [that has not adopted an
188 optional form of government under Part 12, Alternative Forms of Municipal Government Act,
189 shall be a council of five persons one of whom shall be the mayor and the remaining four shall
190 be council members] shall operate under a five-member council form of government.

191 Section 7. Section **10-3-205** is amended to read:

192 **10-3-205. Election of officers in municipalities operating under a city council**
193 **form of government.**

194 In each [~~city of the third, fourth, or fifth class~~] municipality operating under a
195 five-member or six-member city council form of government, the election and terms of office
196 shall be as follows:

197 (1) The offices of mayor and [~~two~~] approximately half the council members shall be
198 filled in municipal elections held in 1977. The terms shall be for four years. These offices
199 shall be filled every four years in municipal elections.

200 (2) The offices of the [~~other three~~] remaining council members shall be filled in a
201 municipal election held in 1979. The terms shall be for four years. These offices shall be filled
202 every four years in municipal elections.

203 Section 8. Section **10-3-206** is amended to read:

204 **10-3-206. Election of officers in towns operating under a five-member council**
205 **form of government.**

206 In [~~towns~~] a town operating under the five-member council form of government, the
207 election and terms of office of the officers shall be as follows:

208 (1) The offices of mayor and two [~~councilmen~~] council members shall be filled in
209 municipal elections held in 1977. The terms shall be for four years. These offices shall be filled
210 every four years in municipal elections.

211 (2) The offices of the other two [~~councilmen~~] council members shall be filled in a

212 municipal election held in 1979. The terms shall be for four years. These offices shall be filled
213 every four years in municipal elections.

214 (3) The offices shall be filled in at-large elections which shall be held at the time and in
215 the manner provided for electing municipal officers.

216 Section 9. Section **10-3-504** is amended to read:

217 **10-3-504. Quorum defined.**

218 (1) The number of members of the governing body necessary to constitute a quorum
219 is[;]:

220 (a) in[:(1) a city of the first class,] a municipality operating under a five-member or
221 six-member city council form of government or a five-member council-manager form of
222 government, three or more; or

223 (b) in a seven-member council-manager form of government, four or more.

224 (2) The number of members of the legislative body of a municipality operating under a
225 council-mayor form of government necessary to constitute a quorum is:

226 (a) for a five-member council-mayor form, three; and

227 (b) for a seven-member council-mayor form, four.

228 [~~(2) a city of the second class, two or more;~~]

229 [~~(3) a city of the third, fourth, or fifth class, three or more;~~]

230 [~~(4) a town, three or more.~~]

231 Section 10. Section **10-3-507** is amended to read:

232 **10-3-507. Minimum vote required.**

233 (1) (a) The minimum number of yes votes required to pass any ordinance[;] or
234 resolution, or to take any action by the governing body, unless otherwise prescribed by law,
235 shall be a majority of the members of the quorum, but [~~shall~~] may never be less than:

236 [~~(a)~~] (i) for a municipality operating under a five-member or six-member council form
237 of government or a five-member council-manager form of government, three [~~in a city of the~~
238 ~~first class]; or~~

239 (ii) for a municipality operating under a seven-member council-manager form of
240 government, four.

241 (b) The minimum number of yes votes requires to pass an ordinance or resolution or to
242 take an action by the legislative body of a municipality operating under a council-mayor form

243 of government, unless otherwise prescribed by law, shall be a majority of the members of the
 244 quorum, but may never be less than:

245 (i) for a five-member council-mayor form, three; and

246 (ii) for a seven-member council-mayor form, four.

247 [~~(b) two in a city of the second class;~~]

248 [~~(c) three in a city of the third, fourth, or fifth class; and~~]

249 [~~(d) three in a town.~~]

250 (2) Any ordinance, resolution, or motion of the governing body having fewer favorable
 251 votes than required in this section shall be considered defeated and invalid, except a meeting
 252 may be adjourned to a specific time by a majority vote of the governing body even though such
 253 majority vote is less than that required in this section.

254 (3) A majority of the members of the governing body, regardless of number, may fill
 255 any vacancy in the governing body.

256 Section 11. Section **10-3-711** is amended to read:

257 **10-3-711. Publication and posting of ordinances.**

258 (1) Before an ordinance may take effect, the legislative body of each municipality
 259 adopting an ordinance, except an ordinance enacted under Section 10-3-706, 10-3-707,
 260 10-3-708, 10-3-709, or 10-3-710, shall:

261 (a) deposit a copy of the ordinance in the office of the municipal recorder; and

262 (b) (i) publish a short summary of the ordinance at least once:

263 (A) in a newspaper published within the municipality; or

264 (B) if there is no newspaper published within the municipality, in a newspaper of
 265 general circulation within the municipality; or

266 (ii) post a complete copy of the ordinance:

267 (A) for a city of the first class, in nine public places within the city; or

268 (B) for any other municipality, in three public places within the municipality.

269 (2) (a) Any ordinance, code, or book, other than the state code, relating to building or
 270 safety standards, municipal functions, administration, control, or regulations, may be adopted
 271 and shall take effect without further publication or posting, if reference is made to the code or
 272 book and at least [~~three copies for cities or at least~~] one copy [~~for towns have~~] has been filed
 273 for use and examination by the public in the office of the recorder or clerk of the city or town

274 prior to the adoption of the ordinance by the governing body.

275 (b) Any state law relating to building or safety standards, municipal functions,
276 administration, control, or regulations, may be adopted and shall take effect without further
277 publication or posting if reference is made to the state code.

278 (c) The ordinance adopting the code or book shall be published in the manner provided
279 in this section.

280 Section 12. Section **10-3-1203** is amended to read:

281 **10-3-1203. Election requirements and procedure for organization under optional**
282 **form of government.**

283 (1) Except as provided in Subsection 10-2-303(1)(b), each municipality retains the
284 form of government under which it is operating unless it changes its form as provided in this
285 part.

286 [~~1~~] (2) [~~A~~] Regardless of its class under Section 10-2-301, a municipality may
287 reorganize [~~under any form of municipal government~~] as provided [~~for~~] in this part [~~or under~~
288 Section 10-3-103, 10-3-104, 10-3-105, or 10-3-106, regardless of the city's class under Section
289 10-2-301.] and may choose as a form of government:

290 (a) a five-member council form;

291 (b) a six-member council form;

292 (c) a council-mayor form; or

293 (d) a council-manager form.

294 [~~2~~] (3) Reorganization under Subsection [~~1~~] (2) shall be by approval of a majority
295 of registered voters of the municipality voting in a special election held for that purpose.

296 [~~3~~] (4) (a) The proposal may be entered on the ballot by resolution passed by the
297 governing body of the municipality or by initiative as provided for in Title 20A, Chapter 7, Part
298 5, Local Initiatives - Procedures.

299 (b) The resolution or petition shall state the number, method of election, and initial
300 terms of council members and shall specify the boundaries of districts substantially equal in
301 population if some or all council members are to be chosen from these districts.

302 [~~4~~] (5) (a) The proposal shall be voted upon at a special election to be held not more
303 than twelve months after the resolution is passed or after receipt of a valid initiative petition.

304 (b) The special election shall be held at least 90 days before or after regular municipal

305 elections.

306 (c) The ballot for the special election to adopt or reject one of the forms of municipal
307 government shall be in substantially the following form:

308	<hr/>	
309	Shall (name of municipality), Utah, adopt	Yes
310	the (council-mayor) (council-manager)	
311	(five-member [commission] <u>council</u>) [(three-member commission)	
312	(six-member council) [(five-member council)] form of	
313	municipal government?	No
314	<hr/>	

315 Section 13. Section **10-3-1208** is amended to read:

316 **10-3-1208. Election of officers -- When new government operative --**

317 **Compensation of officials without position in new government.**

318 Upon approval of an optional form of government by a municipality pursuant to this
319 part, election of officers shall be held in the municipality on the Tuesday next following the
320 first Monday in November following approval of the optional form, or on the same day in the
321 year next following, whichever day falls in an odd-numbered year. The new government shall
322 become effective at 12 noon on the first Monday of January following the election of officers.
323 Elected officials of the municipality whose positions would no longer exist as a result of the
324 adoption of a form of government provided for in this part shall be paid at the same rate until
325 the date on which their terms would have expired, if they hold no municipal office in the new
326 government for which they are regularly compensated. At their option, former [~~commissioners~~
327 ~~of a first and second class city,~~] council members [~~of third, fourth, or fifth class city, or board~~
328 ~~members of a town~~] may serve as one of the council members for the remainder of their term.

329 Section 14. Section **10-9-307** is amended to read:

330 **10-9-307. Plans for moderate income housing.**

331 (1) The availability of moderate income housing is an issue of statewide concern. To
332 this end:

333 (a) municipalities should afford a reasonable opportunity for a variety of housing,
334 including moderate income housing, to meet the needs of people desiring to live there; and

335 (b) moderate income housing should be encouraged to allow persons with moderate

336 incomes to benefit from and to fully participate in all aspects of neighborhood and community
337 life.

338 (2) As used in this section:

339 (a) "Moderate income housing" means housing occupied or reserved for occupancy by
340 households with a gross household income equal to or less than 80% of the median gross
341 income of the metropolitan statistical area for households of the same size.

342 (b) "Plan for moderate income housing" or "plan" means a written document adopted
343 by a municipal legislative body that includes:

344 (i) an estimate of the existing supply of moderate income housing located within the
345 municipality;

346 (ii) an estimate of the need for moderate income housing in the municipality for the
347 next five years as revised annually;

348 (iii) a survey of total residential zoning;

349 (iv) an evaluation of how existing zoning densities affect opportunities for moderate
350 income housing; and

351 (v) a description of the municipality's program to encourage an adequate supply of
352 moderate income housing.

353 (3) [~~Before December 31, 1998, each municipal~~] The legislative body of each city of
354 the first, second, or third class shall, as part of its general plan, adopt a plan for moderate
355 income housing within that municipality.

356 (4) A plan may provide moderate income housing by any means or combination of
357 techniques which provide a realistic opportunity to meet estimated needs. The plan may include
358 an analysis of why the means or techniques selected provide a realistic opportunity to meet the
359 objectives of this section. Such techniques may include:

360 (a) rezoning for densities necessary to assure the economic viability of inclusionary
361 developments, either through mandatory set asides or density bonuses;

362 (b) infrastructure expansion and rehabilitation that will facilitate the construction of
363 moderate income housing;

364 (c) rehabilitation of existing uninhabitable housing stock;

365 (d) consideration of waiving construction related fees generally imposed by the
366 municipality;

367 (e) utilization of state or federal funds or tax incentives to promote the construction of
368 moderate income housing;

369 (f) utilization of programs offered by the Utah Housing Corporation within that
370 agency's funding capacity; and

371 (g) utilization of affordable housing programs administered by the Department of
372 Community and Economic Development.

373 (5) (a) After adoption of a plan for moderate income housing under Subsection (3), the
374 legislative body of each city [~~that is located within a county of the first or second class and of~~
375 ~~each other city~~] of the first, second, or third[~~, or fourth~~] class shall annually:

376 (i) review the plan and its implementation; and

377 (ii) prepare a report setting forth the findings of the review.

378 (b) Each report under Subsection (5)(a)(ii) shall include a description of:

379 (i) efforts made by the municipality to reduce, mitigate, or eliminate local regulatory
380 barriers to moderate income housing;

381 (ii) actions taken by the municipality to encourage preservation of existing moderate
382 income housing and development of new moderate income housing;

383 (iii) progress made within the municipality to provide moderate income housing, as
384 measured by permits issued for new units of moderate income housing; and

385 (iv) efforts made by the municipality to coordinate moderate income housing plans and
386 actions with neighboring municipalities.

387 (c) The legislative body of each city [~~that is located within a county of the first or~~
388 ~~second class and of each other city~~] of the first, second, or third[~~, or fourth~~] class shall send a
389 copy of the report under Subsection (5)(a)(ii) to the Department of Community and Economic
390 Development and the association of governments in which the municipality is located.

391 **Section 15. Repealer.**

392 This bill repeals:

393 **Section 10-3-103, Governing body in cities of the first class.**

394 **Section 10-3-104, Governing body in cities of the second class.**

395 **Section 10-3-105, Governing body in cities of the third, fourth, and fifth class.**

396 **Section 10-3-203, Election of officers in cities of the first class.**

397 **Section 10-3-204, Election of officers in cities of the second class.**

398 Section **10-3-401**, Mayor as a voting member of governing body.

399 Section **10-3-402**, Mayor in third, fourth, or fifth class city -- Mayor may not vote

400 -- **Exceptions.**

401 Section **10-3-1209**, Optional forms defined.