

## Overview of Colorado Municipal Home Rule

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## Municipal Home Rule in Colorado

- Municipalities lacking home rule status are limited to exercising those powers that have been granted by state statute

1902 - Citizens in cities of the first and second class may adopt home rule under amendment to the Colorado Constitution

1912 - Section 6 of Article XX specifically enumerated various municipal home rule powers with a "catch-all" paragraph

1970 - Section 9 extended the right to adopt home rule to the citizens of every municipality

- Article XX of the Colorado Constitution reserves both *structural* and *functional* home rule powers to municipalities and "the full right of self government in local and municipal matters" to citizens

## General Arguments For Home Rule

- Article XX of the Colorado Constitution grants both general and specific powers to home rule municipalities
- Provides greater flexibility to solve local problems because municipalities are less constrained by state requirements
- Allows quicker response time to emergency situations as there is no need to wait for the entire state legislative process
- Home rule municipalities are not required to follow state statutes in matters of *local and municipal concern* and therefore enjoy freedom from state interference regarding local and municipal matters

## General Arguments For Home Rule

- Allows municipalities to legislate with confidence on any and all matters of local concern
  - Authority granted by state statutes is sometimes ambiguous.
- Enhances citizen control, interest, involvement and pride in their municipal government
- The embodiment of the principle that the best government is the one that is the closest to the people

## General Arguments Against Home Rule

- Restrictive charters may limit the potential flexibility of home rule
- Dissatisfied citizens may adopt binding charter amendments, i.e. amendments which cannot be changed or repealed by the governing body without a subsequent vote of the people
- Legal uncertainties may arise when the municipality legislates in a relatively new area; the ultimate determination of whether a matter is truly of "local concern" requires an ad hoc determination in court

## General Arguments Against Home Rule

- Costs for adopting a home rule charter can burden the municipality
  - attorney's or other consultant's fees, expenses incurred from publication requirements, election costs, etc.
- A change in the status quo may create unnecessary risks in a community that is satisfied operating under existing statutes
- Unless restricted by the charter, a home rule municipality has the potential to exercise more governmental powers than are available to statutory municipalities, which some local citizens may see as a disadvantage

## Timeline for Home Rule Election

- Within 180 days of its election, the charter commission shall submit to the governing body a proposed charter
- Within 30 days after the date that the charter commission submits the proposed charter to it, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved
- The election shall not be held less than 60 nor more than 185 days after publication of the notice

## Drafting a Home Rule Charter

**Under Colorado law, the charter is principally an instrument of limitation in Colorado.**

**The charter sets forth the basic:**

- (1) structure and organization of government;
- (2) procedures to be followed by municipal government in the conduct of its business;
- (3) powers of municipal officials and agencies, including any limitations.

**It is not necessary for the charter to spell out the details of municipal operations**

- Details can be left to the city council.
- State law applies in the absence of a charter or ordinance provision.

**Charters are not easily or readily amended; consequently, great care must go into their drafting and unnecessary details and verbiage should be avoided.**

## Contents of a Municipal Charter

- **Mandatory provisions:**
  - Initiative and referendum of measures
  - Recall of officers
  - Provisions continuing, amending, or repealing existing ordinances
  - Prefatory synopsis
- **Other examples of charter provisions**
  - Form of government – allocation of legislative and administrative powers
  - Qualifications, terms of office, number of councilmembers and method of election
  - Election procedures
  - Administrative organization
  - Boards and commissions
  - Procedures for passage of ordinances, resolutions and motions
  - Personnel, merit or civil service system
  - Legal and judicial affairs
  - Budget control and financing
  - Municipal borrowing
  - Eminent domain
- **Borrowing provisions from other charters is helpful and time saving, but be wary of using charters from Colorado municipalities that were adopted years ago, guard against lifting unnecessary detail from other charters and be aware that charter provisions borrowed from the municipalities may not be relevant or appropriate for your community.**

## Considerations in Drafting a Charter

- Be aware of the tight timeline
- Research and organize resource information beforehand
- Use your staff or consultant extensively and effectively
- Obtain competent legal advice
- Provide adequate opportunity for citizen input before finalized decisions
- Charter commissions may adopt an organization similar to their existing organization
- Think long term

## Considerations in Drafting a Charter

- Define which actions must be by ordinance as opposed to resolution or motion and the procedures applicable to enactment of ordinances. Make clear who votes and how many votes are necessary for the council to act
- Include fundamental and priority features, leaving other provisions to subsequent action by city council and staff. Leave the elected officials with sufficient flexibility to act and be responsive
- Cross-reference state statute where appropriate, such as municipal election procedures
- Financing provisions, such as municipal bonding and use of local improvement districts, are important
- Be careful about including unnecessary provisions sought by special interests

## Considerations in Drafting a Charter

- A good process can facilitate drafting of a good charter and enhance chances for its approval by the citizens
- Constructive debate can be healthy – remember the debate which was carried out at the Constitutional Convention in Philadelphia.
- **Work as a team!**

## Authority and Flexibility Afforded to Home Rule Municipalities

- **Form of Government:**
  - City manager who answers to council, strong mayor - weak council, or strong council - weak mayor system
  - Clear authority to adopt the council/manager form of government
- **Elected Officials**
  - Clarification of powers for mayor, council, manager, other officers, and boards and commissions
  - Disqualifying circumstances, grounds and procedures for discipline, or removal from office
  - Minimum age requirements

## Authority and Flexibility Afforded to Home Rule Municipalities

- **Elective Offices**
  - Number and types of offices, the date when newly elected officials take office, and provide flexibility for being elected at-large, by districts and redistricting
  - Modify or eliminate term limits for mayor and council
- **Elections**
  - Regular election dates and times other than the dates required by statute
  - Flexibility for special election dates
  - Procedures for initiative, referendum and recall
  - Expand the right to vote in municipal elections
  - Expand certain citizen powers, like initiative, referendum and recall

## Authority and Flexibility Afforded to Home Rule Municipalities

- **Procedures**
  - Enactment of local ordinances to expedite consideration and effective dates, such as one-reading procedure for emergency ordinances in cities
  - Option to delegate decisions to administrative staff
  - Repeal or modify statutory provisions governing bidding and awarding of public projects and disposal of public property
  - Establish local zoning, subdivision and other land use procedures which are different from those applicable to statutory municipalities
  - Provide council procedures and bind elected officials to them

## Authority and Flexibility Afforded to Home Rule Municipalities

- **Finances**
  - Collection and enforcement of local sales/use taxes
  - Broader or narrower sales and use tax base
  - Additional types of excise taxes: admissions, entertainment, tourism, and lodgers' taxes
  - Clarify, simplify, or otherwise revise procedures for budget and appropriation and municipal enterprises
  - Authorize refunds and exemptions not authorized by state law
  - Increase general obligation bond authority and streamline requirements for issuance of bonds
  - Facilitate formation of special improvement districts and expand purposes for which they can be formed
- **Home rule does not exempt municipalities from TABOR requirements.**

## Authority and Flexibility Afforded to Home Rule Municipalities -

- **Miscellaneous Powers**
  - Alternative procedures for management and operation of municipal utilities
  - Terms and conditions of municipal employment
  - Broaden municipal court jurisdiction
  - Provide additional tools for economic development
  - Clarify authority for or expand the types of services which the municipality can provide
  - Set forth more specific ethics and conflict of interest rules

## Decisions To Be Made By Trustees/Council

- **Size of the Charter Commission**
  - If your municipal population is over 2,000, then the commission may be composed of 9 to 21 members (must be an odd-number)
  - If your municipal population is under 2,000, then the commission shall be composed of 9 members
- **Date & time that the charter commission meets**
  - Eligibility to serve on the charter commission shall extend to all registered electors of the municipality
  - The commission may employ a staff; consult and retain experts.
- **Calendar for placing a home rule initiative on the ballot**

## Growth in Home Rule Municipalities

- **Most Colorado residents benefit from home rule**
- **Number of Colorado home rule cities and towns**
  - 1940 – 10
  - 1960 – 22
  - 1980 – 56
  - 2000 – 80
  - 2018 – 101
- **93% of municipal residents in home rule cities/towns**
- **69% of Colorado residents in home rule cities/towns**

The screenshot shows the CML website with the following content:

- CML Publications**
  - History of Home Rule
  - Overview of Municipal Home Rule
  - Home Rule Handbook
- Other Resources**
  - Bullet Point Overview of Home Rule
- Training Materials**
  - 2012-05-01 Overview of Colorado Municipal Home Rule

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## Resources at the League

- **Matrix of Home Rule Charters publication**
- **Home Rule Handbook publication**
- **Copies of every home rule charter**
- **Sample educational materials to distribute to citizens**

## Questions

Feel free to contact Sam Mamet via e-mail at [smamet@cml.org](mailto:smamet@cml.org) and via phone at (303) 831-6411