

# Overview of Colorado Municipal Home Rule

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Colorado Municipal League



*The Voice of Colorado's Cities and Towns*

Your source for advocacy, information and training.

The views expressed at this forum are those solely of the presenter, and  
any legal advice should be obtained by appropriate legal counsel

Prepared in April 2009

# COLORADO MUNICIPAL LEAGUE MEMBERSHIP

## **Interesting Facts**

262 of Colorado's 271 incorporated municipalities are members of CML

(97.8% of all municipalities are members of CML.)

Member municipalities range in population from 20 (Town of Lakeside) to nearly 600,000 (City & County of Denver).

All 98 home rule municipalities in Colorado are members.

# Advocacy

*CML is your voice at the state and federal governments.*

**During the 2008 session of the General Assembly:**

- 83% of the bills CML supported were enacted into law
- 90% of opposed bills were killed, vetoed or amended so CML dropped opposition

**2008-2009 Policy Statement**

**The League participates as amicus curiae, or “a friend of the court,” when cities and towns have major litigation on appeal that impacts all municipalities.**

***CML Update*** - a broadcast email sent out periodically by CML to members to keep you updated on state legislation, training events, and other resources of municipal interest. To sign up, simply fill out form and return to CML.

# Information

CML periodicals and the CML website [www.cml.org](http://www.cml.org)  
keep members informed.



**CML**  
COLORADO MUNICIPAL LEAGUE  
The Voice of Government Officers and Citizens

## NEWSLETTER

VOL. NO. MONTH DAY, 2007

THE CML NEWSLETTER WILL CONTINUE TO PROVIDE TIMELY INFORMATION

**HOPE VI IS SET TO EXPIRE AT THE END OF THIS SEPTEMBER. THIS PROGRAM'S FIVE COMPETITIVE GRANTS TO MUNICIPAL AND OTHER PUBLIC HOUSING AGENCIES FOR THE REMOVAL, REHABILITATION AND CONSTRUCTION OF PUBLIC HOUSING UNITS. THERE IS MOVEMENT ON THE ISSUE IN BOTH THE HOUSE AND SENATE AND DIFFERENCES WILL BE RECKED OUT IN A CONFERENCE COMMITTEE.**

**COLLECTIVE BARGAINING**  
H.R. 310 would mandate public employee collective bargaining. Colorado Reps. Pfeiffer and Hahn listed are co-sponsors of the bill.

**AT THE HOUSE FINANCIAL SERVICES COMMITTEE, WHICH HAS OVERSIGHT OF HUD PROGRAMS IN THE HOUSE, IS THE PRIME SPONSOR OF THE BILL. IT WAS INITIALLY REQUESTED BY NLC. COLORADO REP. ED PATRICK IS A MEMBER OF THE COMMITTEE.**

**IN MID-JUNE, HUD ISSUED PUBLIC HOUSING AGENCIES WITH 2007 HOUSING CHOICE RENEWAL FUNDING, AND IT WILL BE AN AVERAGE 5 PERCENT INCREASE OVER LAST YEAR'S AMOUNT. ADDED TO THAT:**

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**JUST AS GOV. DENNIS RIBBI HAS ESTABLISHED A STATEWIDE COMMISSION TO LOOK AT TRANSPORTATION AND TRAVEL NEEDS, SO HAS THE CONGRESS. THE NATIONAL SURFACE TRANSPORTATION POLICY AND REVENUE STUDY COMMISSION HAS BEEN MEETING TO DISCUSS POLICY OPTIONS FOR FINANCING THE FUTURE OF THE NATION'S TRANSPORTATION NETWORK. STATE AND LOCAL LEADERS ARE REPRESENTED ON THE COMMISSION.**

**FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION PENDING**  
The House Transportation Committee, which Colorado Rep. John Salazar is a member, has been marking up a bill, H.R. 2031, to reauthorize the FAA. The bill includes an increase in the passenger facility charge ceiling to \$7, as well as nearly \$4 billion for the Airport Improvement Program.


**BY SAM MAMEC, EXECUTIVE DIRECTOR**  
THE U.S. CONGRESS IS ON SUMMER RECESS AND WILL RETURN AFTER LABOR DAY; HOWEVER, A NUMBER OF ISSUES AFFECTING CITIES AND TOWNS ARE BEING CONSIDERED.

**THIS IS A GREAT TIME TO CONTACT YOUR REPRESENTATIVE FOR A VISIT. MANY ARE TRAVELING TO DIFFERENT VENUES THROUGHOUT COLORADO AND WOULD ENJOY A MEETING WITH MUNICIPAL LEADERS. IF YOU DON'T KNOW HOW TO GET IN TOUCH WITH ANY MEMBER, CALL THE LEAGUE AT 303-631-6411.**

**HERE IS A SUMMARY OF A BUSINESS OF MUNICIPAL INTEREST, COURTESY OF THE NATIONAL LEAGUE OF CITIES OFFICE OF FEDERAL RELATIONS:**

**AFFORDABLE HOUSING**  
H.R. 3555 establishes an affordable housing trust fund intended to provide more than \$1 billion annually for the production, preservation and rehabilitation of 1.5 million affordable homes over the next 10 years. Well over half the funds will go directly to cities. Rep. Barney Frank, D-Ill., and Rep.

**INSIDE THIS ISSUE: OUR NEWSLETTER WILL ALSO OFFER REGISTRATION FOR ALL CML TRAINING OPPORTUNITIES - AND MORE!**



MONTH YEAR • COLORADO MUNICIPAL LEAGUE

## COLORADO MUNICIPALITIES

COLORADO MUNICIPALITIES WILL FEATURE A NEW LOOK, BUT WILL CONTINUE TO OFFER GREAT IN-DEPTH ARTICLES.

# Training



CML offers affordable training opportunities on cutting-edge topics.

In-Person Workshops and 1 Hour Internet Presentations (also known as “webinars”)

*“The class was super! I will be encouraging our elected officials and staff to take future classes.”*

*“The value of this workshop is incredible. Strategic Leadership is always a timely subject and something we deal with in our everyday activities of city leadership.”*

# Municipal Home Rule in Colorado

- Dillon's Rule historically views municipalities as "creatures of the state," dependent upon the state for their creation and for their continued existence. As such, municipalities lacking home rule status are limited to exercising those powers that have been granted by the state and subject to those provisions and limitations that have been imposed by the state.
- In 1902, an amendment to the Colorado Constitution provided the right to citizens in cities of the first and second class to adopt home rule, and in 1912, supporters of home rule initiated a clarifying and strengthening amendment that rewrote Section 6 of Article XX to specifically enumerate various municipal home rule powers with a powerful "catch-all" paragraph.
- Another important home rule amendment was approved by voters in 1970 which added a new Section 9 to Article XX to extend the right to adopt home rule to the citizens of each municipality, regardless of population or when incorporated.
- 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, providing them greater flexibility when seeking solutions to local problems.
- These powers allow home rule municipalities to shape such solutions to fit local needs, without involving the state legislature or being subjected to undesirable limitations imposed statewide. Home rule allows municipalities to respond more quickly to changed circumstances or emergency situations by allowing legislative solutions at the local level through ordinances or charter amendments, rather than waiting for action by the state legislature.
- 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

- The express and implied enabling authority granted to municipalities in state statutes is sometimes ambiguous; home rule allows the municipality to act with greater assurance that its actions are properly authorized, especially if the charter reserves to the municipality authority to legislate on any and all matters of local concern.
- By empowering local citizens more directly, home rule enhances citizen control, interest, involvement and pride in their municipal government.
- Home rule is the embodiment of the principle that the best government is the one that is the closest to the people.

## General Arguments *Against* Home Rule

- If a restrictive charter is adopted, the potential flexibility offered by home rule may be lost.
- Once adopted, the charter may serve as a vehicle for dissatisfied citizens to further limit the authority of the municipality in general and elected officials in particular through the adoption of binding charter amendments, i.e. amendments which cannot be changed or repealed by the governing body without a subsequent vote of the people.
- The lack of definite limits on home rule powers may constitute a disadvantage to a municipality by creating legal uncertainty 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

- The process of adopting a home rule charter involves some costs to the municipality – attorney’s or other consultant’s fees, expenses incurred from publication requirements, election costs, etc. can be a burden on the municipality.
- The prospect of an existing municipality adopting a home rule charter requires some change from the status quo along with the need to debate potentially volatile issues related to the structure and powers of the municipality, and therefore may be perceived as creating 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 120 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 30 nor more than 120 days after publication of the notice

# Drafting a Home Rule Charter

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

- Sets forth the basic structure and organization of government, basic procedures to be followed by municipal government in the conduct of its business, basic powers of municipal officials and agencies, including any limitations thereon.
- Not necessary for the charter to spell out the details of municipal operations
  - Details can be left to the city council to deal with from time-to-time.
  - 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:**
  - Prefatory synopsis
  - Provisions governing initiative, referendum and recall
  - Provisions continuing, amending or repealing existing ordinances
- **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

- Tight timeline, so the commission must act expeditiously in the 120 days they are granted
- Use your staff or consultant extensively and effectively; obtain competent legal advice.
- Provide adequate opportunity for citizen input before decisions are finalized.
- Ordinarily, charter commissions adopt an organization similar to their existing organization.
- In drafting a charter, take the long view.

# Considerations in Drafting a Charter

- The charter should spell out 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.
- Effort should be concentrated on including in the charter fundamental and priority features, leaving other provisions to subsequent action by city council and staff to be modified from time-to-time as needs arise and conditions change. 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

- The process followed is very important. 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 - Organization & Structure

- Form of Government: city manager who answers to council, strong mayor - weak council, or strong council - weak mayor system
- Disqualifying circumstances for elected officials as well as grounds and procedures for discipline or removal from office
- Expand or contract the number and types of elective offices, specify the date when newly elected officials take office, and provide flexibility for being elected at-large, by districts and redistricting
- Specify a minimum age for elected officials
- Provide flexibility and clarification regarding powers of mayor, council, manager, other officers and boards and commissions.
- Provide clear authority to adopt the council/manager form of government
- Modify or eliminate term limits for mayor and council

# Authority and Flexibility Afforded to Home Rule Municipalities - Elections

- Establish regular election dates and times other than the dates required by statute
- Provide flexibility for special election dates
- Modify election requirements, including 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

- Modify requirements for enactment of local ordinances to expedite consideration and effective dates, such as one-reading procedure for emergency ordinances in cities
- Resolve legal doubt or strengthen the argument that the city by charter or ordinance may 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

- Allow city/town collection and enforcement of local sales/use taxes
- Allow broader or narrower sales and use tax base
- Allow 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 requirements of TABOR

# Authority and Flexibility Afforded to Home Rule Municipalities - Miscellaneous Powers

- Establish alternative procedures for management and operation of municipal utilities
- Impose terms and conditions of municipal employment and broader authority with respect to civil service or other personnel systems
- Broaden jurisdiction of municipal court
- 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 The Town Board

- **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**

# Resources at the League

- **Matrix of Home Rule Charters (2008) publication**
- **Overview of Municipal Home Rule (2006) publication**
- **Home Rule Handbook (1999) publication**
- **Copies of every home rule charter**
- **Sample educational materials to distribute to citizens**

# Questions

**Feel free to contact me or Rachel Allen via e-mail at [smamet@cml.org](mailto:smamet@cml.org) or [rallen@cml.org](mailto:rallen@cml.org) and via phone at (303) 831-6411 or (866) 578-0936 toll free**