

## Overview of Colorado Municipal Home Rule

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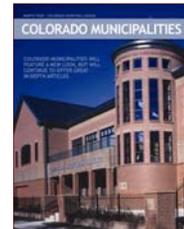
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Your source for advocacy, information and training.

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

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## Information

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



## COLORADO MUNICIPAL LEAGUE MEMBERSHIP

### Interesting Facts

265 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 8 (Town of Lakeside) to 605,000 (City & County of Denver).

All 100 home rule municipalities in Colorado are members.

## Training



CML offers affordable training opportunities on cutting-edge topics.

- In-Person Workshops and Webinar Presentations
- 90<sup>th</sup> Annual CML Conference will be June 19-22 in Breckenridge

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

## Advocacy

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

### During the 2012 session of the General Assembly:

- 71% of the bills CML supported were enacted into law
- 95% of opposed bills were killed, vetoed or amended so CML dropped opposition

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.

## 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 *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.

## 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.

## 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 30 nor more than 185 days after publication of the notice

## 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.

## 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:**
  - Provisions governing initiative and referendum of measures
  - Provisions governing recall of officers
- **Other examples of charter provisions**
  - Prefatory synopsis
  - Provisions continuing, amending or repealing existing ordinances
  - 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

- 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!**

## Considerations in Drafting a Charter

- Tight timeline, so the commission must act expeditiously in the 180 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.

## 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

## 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.

## 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

## 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**

## 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

Growth in Home Rule Municipalities: 1920-2009  
Prepared by CML, August 2009

	1920	1930	1940	1950	1960	1970	1980	1990	2000	2007	2009*
State Population	599,191	1,036,791	1,123,296	1,326,271	1,771,158	2,224,610	2,907,856	3,304,042	4,301,261	4,919,884	
Municipal Population	566,802	641,847	722,237	888,269	1,212,609	1,696,548	2,120,347	2,383,045	2,125,839	3,567,867	
% of State Population in Municipalities	94.6%	61.97%	64.30%	67.03%	68.46%	74.46%	72.92%	72.13%	49.42%	72.52%	
Home Rule Municipal Population	368,302	418,867	466,637	610,252	875,871	1,301,488	1,757,578	2,132,834	2,764,817	3,225,203	
% of State Population in Home Rule Municipalities	61.5%	40.42%	41.54%	46.05%	48.45%	58.50%	60.44%	64.55%	64.27%	65.56%	
% of Municipal Population in Home Rule Municipalities	64.99%	65.23%	64.61%	68.70%	72.23%	78.57%	82.89%	85.50%	88.45%	90.40%	
Number of Home Rule Municipalities	9	10	10	13	22	38	58	68	80	94	100

\* population data not available for 2009

## 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

## 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