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## Preface

This Workbook for Charter Commissioners is the product of the efforts of a committee of the Michigan Association of Municipal Attorneys in cooperation with staff of the Michigan Municipal League, and has involved many individuals who have been active in charter revision work through the years. The particular focus of the Workbook, and much of the material, is drawn from a workshop for charter commissioners held jointly by the Attorneys Association and the League on November 23, 1991.

The format of the Workbook will facilitate periodic amendments, as necessary, and particularly as charter commissioners and others may make suggestions for additional resources.

Michigan municipalities are in a period of charter activism, driven by aging charters which are perhaps not wholly adequate to the times and circumstances at the close of the 20<sup>th</sup> and near the 21<sup>st</sup> century. Approximately 40 cities and villages since 1989 have been through or were at some stage in their charter revision process when this Workbook was prepared.

This current tide of charter revision activity will probably continue into the mid-1990's and possibly longer. From the 1930's through the 1960's most charters were from new municipal incorporations. Records show 33 new incorporations in the 1930's, 33 in the 1950's, and 42 in the 1960's. The charters written and adopted in those years, now anywhere from 40 to 70 years ago, are ready for retirement. So there has been a shift in charter activity as the twentieth century closes from new charters of brand new cities to charter revisions by older cities. This accounts for most of the current charter activity.

Charter revision in these municipalities must take into account the accumulated changes in state legislation and intervening court decisions which have made many charter provisions, once valid in their time, invalid or unenforceable. Many newly elected members of municipal governing bodies, and citizens, have wondered about these "dead letter" charter provisions which seem to be so much excess verbiage. In addition, fundamental economic and population changes in many communities have suggested the need for a fresh look at fundamental governmental arrangements in home rule cities. Charter revision has reduced the number of cities governed by the Fourth Class Cities Act (Act 215, P.A. 1895, as amended) as those communities opt for home rule charters.

The Legislature probably accelerated this trend when it amended the Fourth Class Cities Act in 1976 to declare them all home rule cities (MCL 81.1(c), effective January 1, 1980. The number of cities governed by the Fourth Class Cities Act as the local charter, now stands at seven (2003).

Another reason for charter activity has been the long term trends in village government in Michigan: movement from village to city status, and from general law to home rule village status. Until 1998, when the village of Lake Isabella was incorporated, the number of home rule villages had not changed in a quarter of a century. However, many home rule villages have reincorporated as cities, the Village of Clarkston being the most recent example. Many general law villages have opted for their own charters under the Home Rule Village Act (Act 278, P.A. 1908, as amended), and since 1961, 106 villages have reincorporated as home rule cities with home rule city charters.

Finally, townships have incorporated as cities, adding to the number of municipal incorporations and new city charters in recent years. The cities of Auburn Hills (1983) and Rochester Hills (1984) are most recent examples.

We hope that this Workbook will be a useful general resource for those now serving as elected charter commissioners, as appointed members of charter study groups, and who one day may find themselves on such bodies.

Special recognition and thanks are due to the members of a focus group of charter consultants, municipal attorneys, academicians, charter commissioners, and charter study committee members who contributed no small part to the events, materials, and thinking that went into this Workbook.

#### **1991 Charter Focus Group Members**

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**The Charter Revision Handbook was developed from an MML seminar.  
The presentations have been transcribed as Chapters 2-10.**

Daniel C. Matson, Moderator

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I want to welcome you to what we believe is a Michigan first - a workshop for charter commissioners--a novel event in our state. The origin of this workshop stems from the joint effort of the Michigan Association of Municipal Attorneys and the staff of the Michigan Municipal League. The Municipal Attorneys Association is a chartered section of the League.

There are a number of Michigan communities which are now in the process of revising their charters. By assisting such communities in sharing information about the nature and creation of their fundamental governing documents, the sponsoring organizations are also attempting to fulfill their own purposes.

This workshop is a perception of the future of our communities as viewed through municipal charters. In the 20<sup>th</sup> century Michigan has had the experience of two Constitutions and the Home Rule Cities Act. This legal framework presents dramatic opportunities for municipalities to thrive through self-government, principally by the device of the home rule charter.

We ask you to continually reflect upon how your work as charter commissioners will enhance government in your community in the next century. In your deliberations, please consider what may be essential to good government that may not yet be implemented in your municipality. There will be need for improvement in certain areas which may not have been previously addressed in your existing charters; such as planning for change, continuing education of officials and staff, ethics, out-of-court conflict resolution methods, intergovernmental relations, cultural enhancement, including promotion of the arts, keeping the public informed, and future charter revisions. How creative will you be in this process? What else may your community not presently address that you envision as a present or future need? Should certain of the mentioned items be mandated in the municipal charter? Should they be referred to in a preface or preamble to your charter? Should their benefits be reserved for more casual treatment by future officials?

Your commitment as charter commissioners is evidenced by your sacrifice of much time and sharing of talent, both of which will produce benefits for untold numbers of citizens within your communities. You are not alone in this process.

The participants in this workshop represent much experience. Your presenters today include learned university professors, charter consultants, experienced charter commissioners, municipal attorneys, specialists from the Attorney General's office, Michigan Municipal League support staff, and the substantial resources of the League. The materials that you will receive constitute a unique workbook containing the statutory framework for charters, treatises of Michigan home rule government, on various implementing procedures, and a checklist of what must appear in municipal charters. In addition, a charter data base is being developed by the Michigan Municipal League. All of this effort is for your benefit as you engage in the charter adventure.

### **Home Rule in Michigan**

The doctrine of self-determination, more commonly referred to as "Home Rule" may be defined as the constitutionally-granted prerogative of political subdivisions of the State to have control over and to have full responsibility for governmental matters of purely local concern without interference by the State.

The people of the State of Michigan through the Constitutional Convention of 1908, have conferred such powers on the cities and villages of Michigan. The 45<sup>th</sup> Legislature of the State of Michigan, and subsequent legislatures, in keeping with the spirit of the Constitution, have adopted enabling legislation which has made possible the practical application of "Home Rule." The Constitution of 1963 reaffirms and strengthens the principle of home rule for cities and villages.

Cities and villages of Michigan have fully accepted the responsibilities under such grant of power, and the existence of the doctrine of self-determination has been the largest single factor in bringing about the high standards which prevail today in municipal government in Michigan.

\*Excerpt from Statement of Policy on Home Rule in Michigan, Michigan Municipal League, 1972-73.



## **Constitution of the State of Michigan 1963**

### **Article VII. Sec 22 Local Government**

#### **Charters, Resolutions, Ordinances; Enumeration of Powers**

§22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village theretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

# **Structure of Local Government**

by Member Resource Services

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The present status of cities and villages in Michigan is the result of historical tradition, of the home rule provisions of the Constitutions of 1908 and 1963, of the home rule acts of 1907, and the initiative of individual communities.

During the nineteenth century, the state legislature recognized the need to incorporate the densely settled communities within the basic pattern of counties and townships. The system of local government written into Michigan's 1908 and 1963 constitutions recognized the continuing existence of counties and townships, with the voluntary incorporation of the more densely settled areas as cities and villages. An innovation in the 1908 constitution was a provision for city and village home rule charters – a change which was to have many repercussions.

## **Villages**

The basic difference between a city and a village is that whenever and wherever an area is incorporated as a village, it stays within the township. The villagers participate in township affairs and pay township taxes in addition to having their own village government. Incorporation as a city, however, removes an area from township government. City dwellers participate in county elections and pay county taxes as do villagers but are removed from township units.

Villages in Michigan are organized primarily to establish local regulatory ordinances and to provide local services such as fire and police protection, public works and utilities. Certain of the local duties required by the state are not demanded of the village but are performed by the embracing township including assessing property; collecting taxes for counties and school districts; and administering county, state and national elections.

Most of the villages (213 of 261) are still governed under the General Law Village Act, 1895 PA 3 as amended. Charters for villages are the exception, although any village may adopt a home rule document under 1909 PA 278, the Home Rule Village Act.

## **Cities**

A city, being withdrawn from the township, must perform the basic, state-required duties as well as its own services. In addition to being responsible for assessing property and collecting taxes for county and school purposes, the city also becomes solely responsible for registration of voters and conduct of all elections within its boundaries.

The greater independence of the city, in maintaining local regulations and functions and state-imposed duties in one integrated unit, accounts for the creation of many small cities in Michigan during recent decades. The trend has also developed in villages to seek incorporation as cities whereby they achieve a separation of jurisdiction from the township.

As of January 2003, Michigan had 272 incorporated cities and 261 incorporated villages – a total of 533 municipalities. Of this total number, 312 had adopted home rule charters.

In 1895, adoption of the Fourth Class City Act created two types of cities: those of 3,000 to 10,000 population, which came under the act, and all others which remained “special charter” cities. As of January 2003, all but one of the “special charter” cities have reincorporated as home rule cities. As of January 1, 1980 all fourth class cities became home rule cities by virtue of 1976 PA 334 (see also OAG 5525, 7/13/1979), which continued the Fourth Class City Act as the charter for each former fourth class city until it elects to revise its charter. As of January 2003, seven cities continue to be governed by the Fourth Class City Act.

## **Standards of Incorporation**

For incorporation of a home rule village, a population of 150 is the minimum, but there must be a minimum density of 100 to the square mile. There is no statutory requirement that a village must become a city when it experiences a rapid growth in population. Once incorporated, villages may seek reincorporation as fifth class home rule cities, providing their population is between 750 and 2,000. Alternatively, they may seek reincorporation as home rule cities if their population exceeds 2,000 with a density of 500 per square mile. For many years the Home Rule City Act required 2,000 population and density of 500 per square mile for city incorporation. A 1931 amendment permitted fifth class city incorporation at 750 to 2,000 population with the same 500 per square mile density requirement, but authorized villages within this range to reincorporate as cities regardless of density.

There is no basic difference between a fifth class home rule city and a home rule city, except the population differential and the statutory requirements that fifth class home rule cities hold their elections on an at-large basis. If all the territory of an organized township is included within the boundaries of a village or villages, the village or villages, without boundary changes may be incorporated as a city or cities as provided in 1982 PA 457.

Unincorporated territory may be incorporated as a fifth class home rule city provided the population ranges from 750 to 2,000 and there is a density of 500 persons per square mile. The same density rule applies to the incorporation of territory as a home rule city if the area has a population of more than 2,000. There are no other methods of city incorporation today. A new city must be incorporated under the Home Rule City Act.

### **State Boundary Commission**

Under 1968 PA 191, the State Boundary Commission must approve all petitions for city and village incorporation. The Boundary Commission is composed of three members appointed by the governor. When the commission sits in any county, the three members are joined by two county representatives (one from a township and one from a city), appointed by the probate judge.

In reviewing petitions for incorporation, the Boundary Commission is guided by certain statutory criteria: population; density; land area and uses; valuation; topography and drainage basins; urban growth factors; and business, commercial and industrial development. Additional factors are the need for governmental services; present status of services in the area to be incorporated; future needs; practicability of supplying such services by incorporation; probable effect on the local governmental units remaining; relation of tax increases to benefits; and the financial capability of the proposed municipality (city or village). In other words, the Boundary Commission review centers on the feasibility of the proposed city or village.

After review on the basis of criteria, the Boundary Commission may deny or affirm the petition. (Affirmative action may include some revision of the proposed boundaries on the commission's initiative.) Once the Boundary Commission has issued an order approving incorporation, a petition may be filed for a referendum on the proposal. The referendum permits the voters to accept or reject the incorporation. If incorporation is

approved by the voters, the incorporation may be finally accomplished only through the existing process of drafting and adopting a city or village charter.

### **Home Rule**

Home rule generally refers to the authority of a city or village under a state's constitution and laws to draft and adopt a charter for its own government. This contrasts with legislative establishment of local charters by special act, which results in mandated charters from state capitols. Home rule frees cities and villages to devise forms of government and exercise powers of local self-government under locally prepared charters adopted by local referendum.

Constitutional home rule is self-executing in some states and not so in others. Non-self-executing home rule, which Michigan leaders wrote into the 1908 Constitution, leaves it up to the state legislature to implement the home rule powers. Michigan's legislature did this by enacting the Home Rule City Act and the Home Rule Village Act, both of 1909.

In turning to home rule when it did, Michigan became the seventh state to join in a movement which now includes 37 states. It was more than a national trend which motivated the Michigan Constitutional Convention early in this century. Under the special act system of the nineteenth century, Michigan cities were, according to one observer writing closer to the time, "afflicted by their charters with an assortment of governmental antiquities." Robert T. Crane, *Municipal Home Rule in Michigan*, Proceedings of the Fourth Annual Convention of the Illinois Municipal League (Urbana, 1917), pp.62-65.

The legislature, under Article VII (Sections 21-22) of the 1963 Michigan Constitution, must provide for the incorporation of cities and villages by general law. Such general laws of incorporation must limit their rate of taxation and restrict their borrowing of money and their contracting of debt. The voters of each city and village have power to frame, adopt and amend charters in accordance with these general laws.

Through regularly constituted authority, namely their established representative government, they may pass laws and ordinances pertaining to municipal concerns subject to the constitution and general laws.

By January 2003, 264 cities and 48 villages had adopted home rule charters. The total of 312 charters so adopted makes Michigan one of the leading home rule states in the nation.

### **Charters**

The Michigan Municipal League, versed in the needs of cities and villages, renders informational assistance through its charter inquiry service. A few Michigan attorneys have become specialists in drafting charters. The quality of city and village charters has improved steadily. No longer is it necessary for elected home rule charter commissioners to search for model charters elsewhere, since many good charters exist in Michigan.

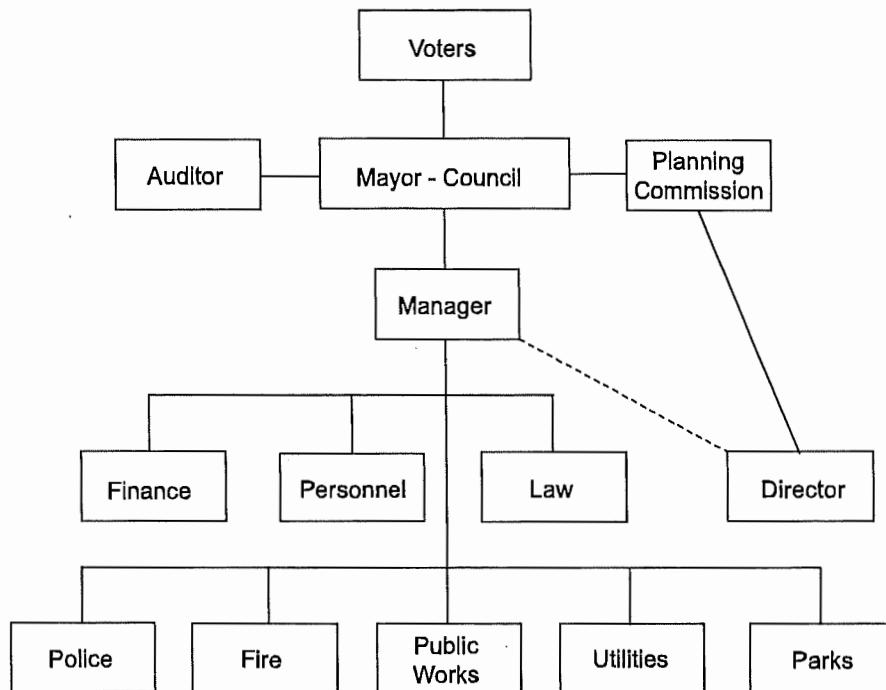
With some exceptions, Michigan charters have been influenced by nationwide trends in municipal practices such as the short ballot, the small council, election of councilmembers at-large, nonpartisan nominations and election of councilmembers. Chief executives of either the appointed kind (a manager) or the elected type (a mayor) are favored. Localities have shown their ingenuity in searching for what is most appropriate to their needs. No longer is the legislature burdened with enacting individual charters. The responsibility lies with locally elected charter commissioners, subject to legal review by the governor under statutory requirements. Since charters must be adopted only by local referendum, the voters themselves make the final determination about the design of their government.

In the process of charter drafting and in the local referendum, civic energies are released. Charter commissioners, elected by their fellow citizens, show themselves to be progressive yet careful when carrying out their trust.

### **Form of Government: Cities Council-Manager Form**

Among Michigan home rule cities, more than 175 use the council-manager form, in which the elected council appoints a professionally trained and experienced manager to administer the day-to-day operations of the city, and to make recommendations to the city council. The council makes all policy decisions, including review, revision and final approval of the proposed annual budget. The council may dismiss the manager (sometimes called city administrator or superintendent) if duties are not being performed satisfactorily.

## Council-Manager Form

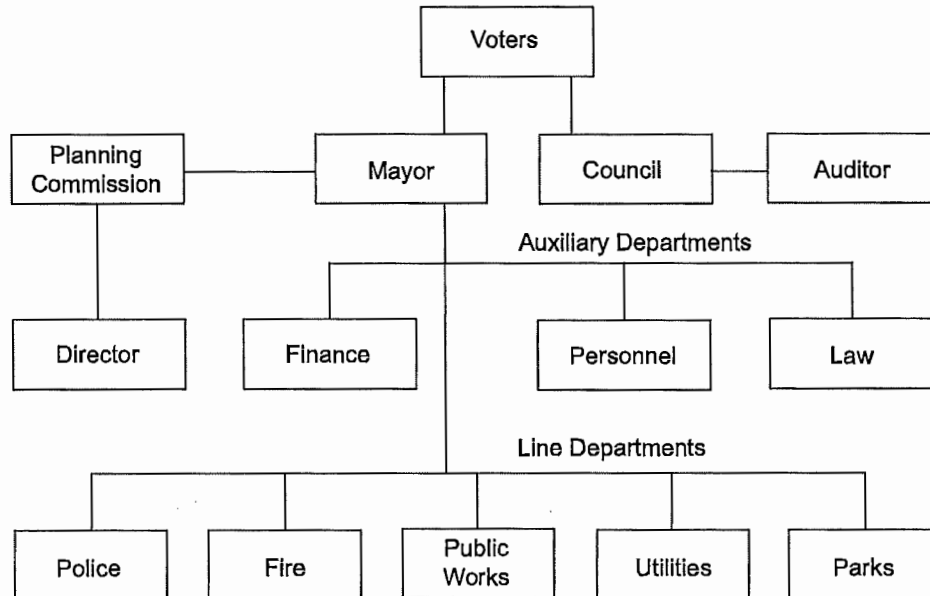


## Mayor-Council Plan

Two forms of the mayor-council plan are used by a number of Michigan home rule cities:

**The “strong” mayor form** is most often found in larger cities where the directly elected mayor, who is not a member of the governing body, appoints and removes the key administrative officials (those who, by charter, report directly to and assist the mayor); often has variations of veto power over council decisions; is usually salaried; and is expected to devote full-time to mayoral duties.

## Strong Mayor Form

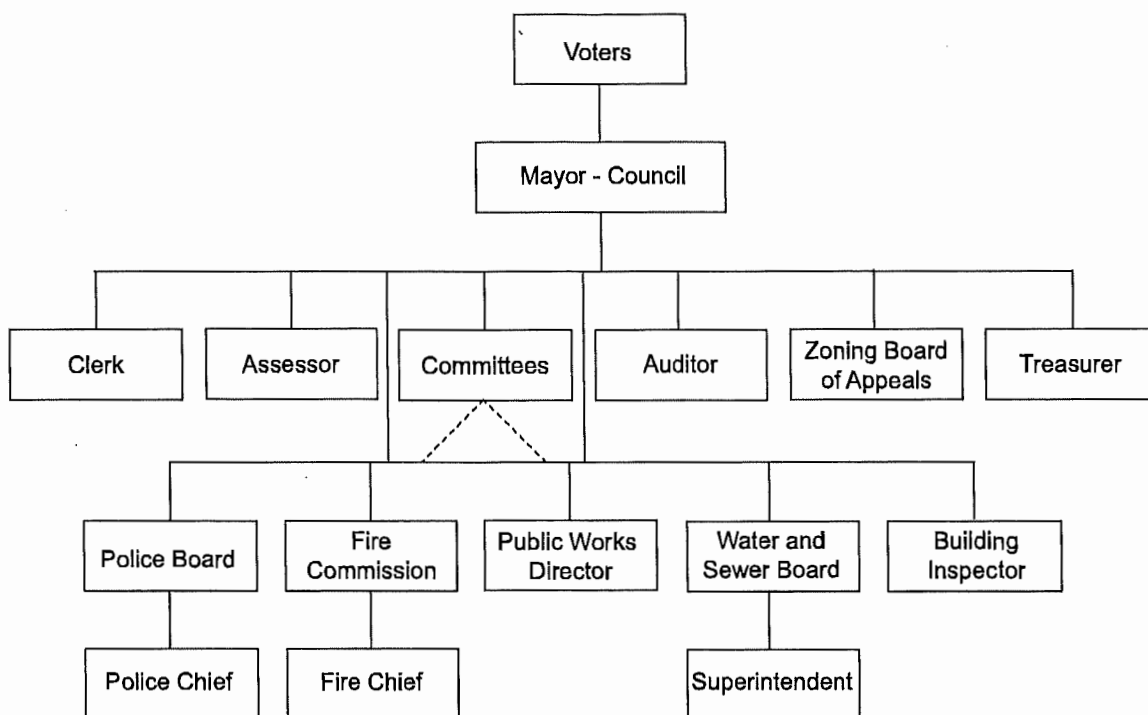


The “weak” mayor form is found generally in smaller cities and villages. The mayor or president is a member of the governing body, chairs council meetings, and normally is the municipality’s chief policy and ceremonial official by virtue of the position of mayor rather than through any specific authority extending beyond that of the councilmembers. The mayor also serves as chief administrative official, although department heads often operate more or less independently with only general coordination.

Under the weak mayor form there is no central administrator by formal title such as city manager. Some smaller cities are fortunate to have key long-serving staff who sense the over-all cooperation needed to accomplish the city’s programs, and informally proceed for the city’s betterment.



### Weak Mayor Form



### Election/Selection of Mayor

Mayors in about half of Michigan's home rule cities are chosen directly by the people, in at-large, city-wide elections (including all strong mayor communities). In the remaining cities the councilmembers typically choose the mayor from among their ranks to serve a one- or two-year term. A trend to call the members of a city's governing body councilmembers rather than commissioners is at least partially to avoid citizen confusion with county commissioners.

City councilmembers and village trustees typically are elected for two-year or four-year terms, about half at each election, to preserve some continuity of personnel, experience and perhaps policy. Often a charter calls for election of half of the council at each election, plus the mayor for a term half as long as the councilmembers, preserving continuity but making possible a shift of majority at any election.

Most Michigan cities have at-large elections for councilmembers, rather than ward elections where voters in each ward (geographic section of the city) elect a councilmember or members. Only a few Michigan cities have partisan elections where major political party labels on the ballot identify candidates.

### **Selection of Administrative Officials**

The trend in Michigan home rule charters is to appoint, rather than elect, administrative officials who must have technical competence. In council-manager cities and villages, the manager appoints and removes department heads, sometimes with – but more often without – council approval, depending on charter requirements. In the weak mayor form, council approval of appointments is generally required.

### **Form of Government: Villages**

Of the 261 villages in Michigan, 48 have home rule charters, and 213 are governed under the General Law Village Act (1895 PA 3). Under that act all of the then existing villages in Michigan were reincorporated and standards were set for future incorporations. The general law village, still the most common by far, has the typical weak mayor-council form of government.

Village presidents in the 213 general law villages are elected at-large, village-wide. The statewide act governing general law villages, Act 3 of 1895, was amended in 1973 to provide for two-year terms for the president and made the village president a full voting member of the village council. In 1974 the act was amended to provide for four-year terms for the six trustees – three of whom are elected biennially, unless a village exempted itself prior to January 1, 1974. General Law Village elections are held on the second Monday in March, in even-numbered years.

The most recent amendments to the General Law Village Act passed in 1998. These included the ability to reduce council from seven to five members, allowed for the appointment of a clerk and treasurer and allowed for nonpartisan elections.

The Home Rule Village Act requires that every village so incorporated provide for the election of a president, clerk and legislative body, and for the election or appointment of such other officers and boards as may be essential. However, the president need not be directly elected by the people but may be elected by the village council. Of the 48 home rule villages only 22 have a village manager position.

The home rule village form of government offers flexibility that is not found in the 1895 General Law Village Act provisions. Home rule village charters in Michigan are as diverse as the communities that adopt them.

### **Interesting Municipal Facts: Who's the oldest? Who's the newest?**

- Sault Ste. Marie is the oldest community, founded in 1641. However, Detroit was the first *incorporated* "town" in 1802 and then as a city in 1815; followed by Monroe in 1837 and Grand Rapids in 1850.
- Grosse Pointe Farms is the only municipality incorporated from a detached territory (from Grosse Pointe Village in 1893).
- Village of Lake Isabella is the most recent incorporation from an unincorporated area, in 1998.
- The most recent incorporation as a city from a GLV is Clarkston, in 1992.
- Brown City changed from a Fourth Class City to a Home Rule City in 1998.
- Mackinac Island is the only special charter city.
- Remaining Fourth class cities  
(population)
  - Beaverton (1,106)
  - Harrisville (514)
  - Omer (337)
  - Rose City (721)
  - Sandusky (2,745)
  - Whittemore (476)
  - Yale (2,063)
- The only city/city/village consolidation in Michigan occurred in 2000 when Iron River, Stambaugh and Mineral Hills merged.

### **Cities Incorporated From Townships**

- Auburn Hills, 1983
- Burton, 1971
- Farmington Hills, 1972 (also included the villages of Quakertown and Woodcreek Farms)
- Livonia, 1950
- Norton Shores, 1967
- Portage, 1963
- Rochester Hills, 1984
- Romulus, 1968
- Southgate, 1958

- Sterling Heights, 1966
- Taylor, 1966
- Warren, 1955 (was a village plus incorporated Warren Township when it became a city)
- Westland, 1964

### **Michigan Population Facts**

**1820: 8,767** (in the Michigan Territory, which included much of Ohio and Indiana)

**1837:** Michigan admitted to the Union as 26<sup>th</sup> state

**1840: 212,267**

**2000: 9,938,444**

### **Michigan Form of Government Facts**

83 Counties

1,115 General law townships

127 Charter townships

264 Home rule cities

7 Fourth class cities

1 Special charter city

213 General law villages

48 Home rule villages

### **Most and Least**

- Tuscola County has the most villages with 10
- Wayne County has the most cities with 33
- Oakland County has the most cities and villages with 39
- Keweenaw, Luce, Montmorency, Ontonagon, and Roscommon Counties each have one incorporated area, a village
- Crawford, Schoolcraft and Alpena counties each have one incorporated area, a city.

Smallest and Biggest		
Villages	2000 Population	County
Forestville	127	Sanilac
Eagle	130	Clinton
Melvin	160	Sanilac
Holly	6,135	Oakland
Milford	6,272	Oakland
Beverly Hills	10,437	Oakland
Cities	2000 Population	County
Lake Angelus	326	Oakland
Gaastra	339	Iron
Whittemore	476	Iosco
Warren	138,247	Macomb
Grand Rapids	197,800	Kent
Detroit	951,270	Wayne

### **Member Resource Services**

The Member Resource Services Department is comprised of many different services of the League, including educational services, publications, web and graphic design, the business partnership program, and information services. This department provides member officials with resources and educational opportunities on a vast array of municipal topics.

# **The Role of a Charter Commission: An Overview**

by Kenneth Verburg

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## **The Role of a Charter Commission: An Overview**

The purpose and role of the charter commission officially is to prepare the first charter or to revise the charter for your city or village so that you may bring it up to date and make it current with current kinds of issues that your community may be dealing with. Over time, communities change. Issues change. Needs change. As a consequence, your charter may need to be revised, depending upon the kinds of issues that surface in your community. It is your job to gather the ideas and information from people in your community, and to put a charter together and to present it to the citizens for a vote.

Your informal responsibilities are somewhat more difficult. First of all, you have the obligation to identify community values regarding the issues that can be addressed by municipal government. Not all of these issues, of course, can be subjected to controls or influenced by the charter. On the other hand, many of them can. So what you need to do as you begin your deliberations, is to think about values -- basically what the community does agree on and what it wants from its community government. Those are not necessarily easy to sort out, because what is likely to occur is that those who have a particular axe to grind are probably the most vocal, and the most articulate about what they want from the charter.

The charter is something like the state constitution. A particular interest group which is able to cement in the new document its values, its point of view, or its preferences will be advantaged for several decades. Chances are, that charter will be in place for some time. It's not easily repealed and the community is going to have to abide by its provisions. Thus, getting a particular position implanted in a state constitution or city charter has a long-lasting value. So the challenge is to try to strike a balance between what the community does agree upon and what it does not agree upon. The extent to which people are articulate may cause you to get a warped sense of what people in the community want. One of your first tasks is to sort out the values and then determine what the community agrees upon and what it does not agree upon in terms of what the community wants.

I think you need to establish a process for citizen education, for stimulating public interest, for generating public participation, and then to create a forum for public comment. Part of your job is to get people to think about the issues facing your community for the next 15-20 years. Identifying these issues and then stimulating the community to think about these issues is particularly important. People with a particular and direct stake in the community's government will be heard from. But there are many others who will not be heard from unless something stimulates them to get actively involved in the process. So you need to find ways to encourage the public, to get them to think about the issues and to decide how they would like you to resolve the issues.

In many of our municipalities today, we're lucky to have 25 percent of eligible voters participating in a general election where a strong campaign and strong candidates running for office stimulate participation. On a charter issue, especially if it is a special election, participation might drop to ten percent. As a consequence, the people who want something from the charter election will vote. That large mass that isn't really tuned in will not get its points across, and is not even likely to be thinking about the kinds of issues that need to be thought about. So you need to find ways to educate and stimulate citizen feedback, and to get people to think about their charter.

Here are some strategies you might consider as ways of stimulating that feedback and of educating people about the importance of the charter. Go early to service clubs, business, community and labor and other community groups, and talk to them about the importance of the charter and of the questions that will be issues, and the duration of those decisions that ultimately will shape the charter.

Involve the media. Make sure that the reporters, radio stations, television stations, if you have a TV station that reports on your community, and newspapers understand your basic approach and the kinds of issues that will arise. Give them plenty of opportunity to write or produce stories about your activity.

Consider conducting some kind of opinion survey, not only for feedback from people, but also as another story for the media to write about. Report the results of the opinion survey back to the people, and share with the community what people are thinking about, at least as we see it. Ask: Is that right? Come and talk to us at public hearings. And then think about holding public hearings in a variety of settings, depending upon the



size of the community. Hold the hearings at your regular meeting place, but also with neighborhood groups and perhaps with organizations to help you make these decisions.

You have a significant task in stimulating interest and thought, and also in educating people. Neil Staebler who was chair of the Democratic Party in Michigan for a long time and who was also our statewide Congressman for two years back in the 1960's, used to talk about politics as being the best show in town. That isn't the case anymore. Participation was considerably higher then. But you are competing today with television. Trying to hold a public hearing when Michigan is playing Ohio State would not be a good idea. You have to think about the kind of competition you face. A lot of that competition is coming over television. However difficult a battle in stimulating interest, it is something you need to put on your agenda and develop a strategy in your community.

Another set of questions you have to deal with is to clarify the reasons for revising the municipal charter. Getting those ideas clear and concise is essential so you can figure out how you want to address those major questions. First, sort out the major issues facing your community. Some of those will have been identified in the campaign for the charter revision commission. Others will be identified by city or village council and perhaps by a few organizations, such as the League of Women Voters who may talk about an outdated charter, and the need to modernize it. Then you have to identify how many people care about a particular issue.

I would guess that most modest sized communities will be dealing with questions like, should we go back to, or should we go to a strong mayor model or what's wrong with your city manager government? Are we able to recruit effective city managers? Or why do we have a divided council that is continually indecisive? Those kinds of questions need to be sorted out. Then you need to think about how to propose a system and a process for making community decisions. I'd like to suggest that, if you have a strong consensus in your community, much of the decision making can be delegated to the professionals in city government and the city council. If you have that broad-based consensus, then the city manager and the other professionals can advise you how to achieve what it is you want to achieve, and the best way to do it.

If, on the other hand, your community is contentious, then I think you need a different set of rules and a different set of processes for dealing with the contention and the division in the community. That brings you to form of government issues, such as mayor versus

the city manager. The International City Management Association at one time held the view managers are not political people. This view has been dropped from the Association code of ethics, but nonetheless, a city manager is most effective in a situation where the community agrees and concurs on what needs to be done. If the community is political and contentious, then it seems to me you need not necessarily go to a mayoral system, but you must find a way for that community to process the political forces. That may mean your community policies are somewhat erratic as various groups gain power and implement their ideas. Such devices as shorter terms give voters more frequent opportunity to elect those who people think will represent them better. You might want voters to elect the mayor at-large, rather than the council. The mayor elected at-large can process the politics of that community into policy decisions until the next election. These kinds of questions revolve around the issue of whether your community has a consensus or whether it's contentious about what the community needs.

#### **The roles of the charter commission members.**

There are a few officers or positions that you ought to fill. You ought to identify, of course, your chairman. That person is going to take a key role in not only making presentations, but providing leadership. It will take a lot of time. So you'll need to think carefully about whom to select for that position.

Then you might want to think about establishing subcommittees or committees to give some focus to various aspects of the process, to make sure, for example, that there is somebody thinking about the public relations, and the political dimensions. The city clerk will probably serve as the secretary for your commission. There may be other kinds of duties that you will identify.

Finally, set up a schedule for your work. You have 90 meeting days. You have more calendar days than 90, but also you will find that your time will slip away from you unless you set out at the front end of your schedule how much time you're going to allow for feedback. You then need to decide how much time to allow to bring the charter into final form. Finally, you need to decide on the style of presentation of the charter. You get three chances for voter approval of the charter over a three-year period.

People have asked me questions about their own communities. Until a few years ago, the City of Niles was a fourth-class city. Basically that meant that a general statute constituted its charter. It is not like a township government, but it's similar in several

respects. That system, for the people who are there, fits like an old shoe. It just feels good. Now you come in with a city manager, you bring in a professional, who begins to articulate needs that you haven't thought about perhaps and solutions that you haven't thought out. That doesn't feel quite as good as before. So you have that kind of old-time structure of government versus a city manager type. Grand Ledge is now beginning to get newcomers into the community. They have different ideas and different expectations about what community government ought to do for them, as opposed to the long-time residents. Now they are getting white-collar professional types moving in, and saying, we want our community government to do something a little different. We think differently about how a government ought to run and be run. Those kinds of values I think are some of the things you need to sort through. You may want to bring in people from neighboring communities to help you identify those issues. You might ask them to come to a public hearing and talk about their experiences. These presentations will help to educate the commission about values and also to identify some of the ways of addressing those differing values.

When you go in a particular direction, you may be reducing the power and clout of some of the old-timer residents. They may sit back and say, "wonderful, let me know how it turns out." That's not quite what you want. You want them to get into harness with you and help bring your city along in its structure and its policies to the point where it can address current and contemporary kinds of issues, rather than keeping it the way they always had it. What was once workable maybe doesn't work anymore. Don't load the agenda with speakers on one side or the other. Take a genuine educational approach and invite people to come in and talk to you from several perspectives on this issue.

If you're going to hold public hearings in communities where the interest is very low, commissioners might have to recruit three or four people to attend those first public hearings to jump-start the process. Chances are, if you hold a public hearing, only one person, or worse yet, nobody may show up. So make sure that you recruit an audience to get some of the juices flowing for dialogue and discussion of the issues.

### **Discussion**

**Question:** From your experience in municipal government and charter revision activities that we're experiencing, what has been the trend? Is there increasing activity or an increasing number of charter revisions throughout the state?

**Answer:** I would suggest that just by the attendance here, that indeed there is interest. As I think about it, it's probably a function of the late '50s and early '60s in many of the places when we had a number of new city formations and now they are thinking about modernizing, of taking some of the more contemporary approaches to their charters. Another reason is that many of our small communities around the state are finding out that they are attractive places where people are moving in and you are getting some feelings of conflict in community values. Somebody comes from a particular kind of community and when they settle in a smaller community, they bring those old expectations with them. That would particularly be the case with northern communities where we have retirees.

**Question:** Is there more activity in older communities versus no growth communities versus growth communities?

**Answer:** I can't give you really much data on that. Just an impression and that is that it's probably 50-50, where older communities are having problems and look to the charter revision approach as a way to deal with those problems. Charter revision may or may not be the solution. And then there is the other type of community where you have new settlers coming in who have different expectations and who are sort of crowding the people that may have dominated politically, or the community politics earlier. That presents the issue of whether charter revision can adjust these differing points of view on what people want from their community.

### **Kenneth VerBurg**

Kenneth VerBurg retired from the position of professor and extension specialist in the Department of Resource Development at Michigan State University in 2000. He specialized in state and local government and is well known in the state for his professional efforts associated with local government in Michigan. He regularly conducted educational programs for local officials and citizens throughout the state. He continues to consult with all types of local governments on strategic planning and other matters. Mr. VerBurg is the author of numerous publications and books. Among them are nationally used college textbooks such as *State and Community Government in a Dynamic Federal System*, now in its 3rd edition, and *American Politicians and Journalists*. Among the state's local officials, he is known for his companion publications on county and township governments, *Managing the Modern Michigan Township* and *Guide to Michigan County Government*. Most recently he has compiled and published the *Michigan Election Manual* and written the *Michigan County Road Commission*. For ten years he also co-authored "The Pros and Cons of Politics," a weekly news column on Michigan politics that appeared in selected Michigan newspapers. He has extensive administrative experience. In 1991 Governor Engler appointed Mr. VerBurg to chair the State Boundary Commission. He continues in that position in 2003.

# **Making the Most of Charter Commission Meetings**

by Robert L. Queller

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## **Making the Most of Charter Commission Meetings**

The topic of making the most of your commission meetings should be very important to you because you are committing a portion of your life to serving as a charter commissioner. The experience can be informative, enjoyable, and satisfying, or it can be boring, aggravating and disappointing. The kind of experience it is will depend on you and your fellow commissioners. It will be what you make of it so you might as well try to make the most of it.

Leaving hearth and home and family and leisure pursuits night after night will become a real chore if you don't find the meetings to be a rewarding experience. I'd like to make some brief general observations about charter commissions and then I'll elaborate on some of those because they will be crucial in making the most of your meetings.

First, probably none of you have ever served on a charter commission before, and most of you will not have served in an elective body before. Second, many of you will not know each other when you are first elected, much less have worked together in a collaborative effort. And third, you likely will not have a common knowledge or understanding of your community and its needs or the role the charter can play in meeting these needs.

There are several essential elements in establishing an effective and productive charter commission. First you need to know upfront what the role of the charter commission is and, equally important, what the role is not. I will emphasize what the role is, not because others have talked about what your role is, which is to draft a proposed charter for the city. But it is not your role to second guess the mayor and council in managing the day-to-day affairs of the city. You are not responsible for the decisions the city must continue to make during your deliberations. You're interested, concerned citizens or you wouldn't have run for the charter commission, but your role as a charter commissioner is to focus on the charter. Don't try to tell the mayor and council how to run the city and don't let them tell you how to run the charter. That doesn't mean you shouldn't solicit their suggestions and listen to their advice along with suggestions and advice from the host of other individuals. But don't let them tell you what to put in the charter and don't

you tell them what to do about running the city. Stay out of their business and keep them out of yours.

If you're going to make the most of your meetings, you first must have a clear and common view of what your mission is.

Second, you need to know how to function as a collegial body that is going to go through a rather lengthy process to arrive at decisions as to what you as a body believe is in the best, long-term interest of the community and that you're willing to recommend to your fellow citizens for their approval. The quotation from the founding fathers about the results of collegial efforts to write, in that case, a constitution is appropriate to write a charter. It isn't going to be perfect, and the essence is going to be give and take among you.

You have to learn to work together, to listen to each other, to respect each others thoughts and feelings, to evaluate carefully each others ideas, and when necessary, to disagree without being disagreeable.

A recent article in the National Civic Review (published by the same organization that writes the model city charter) on collaborative decision-making states that in groups generally, " "I" knowledge plus "you" knowledge does not constitute "we" knowledge. Groups act effectively only on "we" knowledge. That is knowledge obtained together. This accounts for why groups of very capable people can make very bad decisions or why groups with relatively uneducated or poorly trained people can make excellent decisions. The ability to obtain a basic combined understanding through good communication with especially careful listening to each other, can lead to effectiveness without sacrificing individual opinion or criticism." So your common sense of role and purpose and also the leadership you select can play an important role in your functioning effectively as a group. An effective chairperson can keep you on the track both as to the subject and the time schedules. The chairperson can provide leadership which can be critically important in developing a consensus on the issues.

I'd like to talk a little bit more on some of the specifics. As to the meeting schedule, you'll want to pick a regular time and day of the week for your meetings. In most communities it appears that evening meetings work best, in terms of work schedules. That is something that you have to decide on.

You have to decide how frequently you want to meet. That can range from once a week to once a month, and I think Mr. Powell indicated every two weeks seems to work reasonably well.

One thing is, if you hire a consultant, you have to allow sufficient time between meetings for the consultant to do what you're paying him to do, which is to draft your ideas into issues that you can debate. If you meet too frequently, there simply isn't time for the consultant to do that.

You should establish a schedule well in advance. There was some discussion of notice. Try to keep your meetings to no more than two to three hours long. Meetings to 1 a.m. won't impress anybody. They will think you're a bunch of nitwits because you can't get your business done in an orderly sort of way. So try to schedule a meeting for no more than three hours and probably preferably two. And stick to the adjournment time. If the meeting is going to run from 7:30 p.m. to 10:00 p.m., adjourn at 10:00 p.m. and no later.

You are required to have public sessions. You are subject to the Open Meetings Act. But it's very important that you conduct your meetings in public. That doesn't mean that five of you get together at one of your houses and talk about what to put in the charter. That's a clear violation of the Open Meetings Act. It doesn't mean that the chairperson can't go around one by one and visit with the members and solicit their opinions on an important issue. And certainly a quorum of you cannot meet together outside a public meeting.

As to agenda, you should have an agenda for each meeting. It should be mailed in advance. The agenda can be prepared by the chairman or perhaps you want a three-person committee to help prepare the agenda. You could allow a few minutes at the end of each meeting to discuss what's to be on the agenda for the following meeting. But it is important that you have an agenda so that you can keep on track, so that you can notify the public on what's going to be discussed, so that you can invite the appropriate people to appear who are interested in a particular area that you're going to take up.

Apparently experiences differ as to whether or not to have committees. My general preference for a nine-member body is not to have committees because what you're going to end up with is three of the nine with a vested interest in some particular wording on a particular issue. You're better off trying to develop a collective position on



the issue. You might want some committees on non-substantive issues such as the budget, interviewing consultants, publicity at the end, or how to sell the charter. But I think on the substantive issues in the charter, you're better off to meet as a committee of the whole until you get to the end of the process, and then you have to meet more formally.

Don't rush into decisions. Allow plenty of time for hearings, for discussions among yourselves. On the early decisions you make, make them tentative decisions because you may change your mind as the process goes along. You should try to come to resolution on issues as you deal with them in the substantive process, but keep an open mind that you may want to change your minds later and just make these tentative.

After you organize, I think the most important thing to do is to retain a consultant to the commission. This is not a "do it yourself" project. Those things are better done by people who are expert in doing it.

I would spend several meetings simply trying to understand the role of the charter commission, the nature of the charter, the state home rule act. (This process initiated by the Michigan Municipal League and the Michigan Association of Municipal Attorneys should produce something that will be very helpful in that regard for future commissioners.) It's important to get an understanding of the charter process: how to get from here to where you want to be at the end. It's important that you keep that timetable in mind and think through the steps from how to get from today to election day whenever that appears to be feasible.

Develop an understanding of the scope of your work: what areas you're going to have to review, what decisions you're going to have to make. Your consultant can help with this. There are checklists available. I am sure that out of this process, there will be more checklists available. But that would be very helpful to you, to know what it is that you are going to have to decide. If it's something that you don't have to decide, if you want to talk it over more, fine, but try to keep focused on "what decisions do we have to make?" Discussing the new city budget is very interesting, but it's irrelevant to your function as a charter commission.

You must develop an understanding of your present city or village and its strengths and weaknesses with respect to the charter. Hearings can help you accomplish that goal, but

again, you must focus on the relevance of the charter, to whatever the problem might be. If the mayor and council in the strong mayor system are frequently at odds, is that a personality problem, or is it something in the system of checks and balances in the charter that leads to confrontation, and is there something that should be done about it?

Lay out the sequence of tackling the job. What subjects do you want to cover first when you get down to the substantive issues? You might want to start with non-controversial issues first to get accustomed to a collegial decision-making process. Maybe you don't want to first decide on the form of your government because that may be the most controversial. Maybe looking at the election provisions might be less controversial, since much of that is governed by state law anyway. But I think if you start with some easy decisions and get used to working together and making decisions, you'll find that you'll be better able to make the hard decisions that come later. One of the most significant of those clearly is the question of the form of government because many other provisions hinge on whether you have a mayor or a manager form.

As you discuss specific areas of the charter, hold hearings so that interested parties can participate. When you discuss elections, invite the city clerk and the school district if school elections piggyback on city elections. If you're talking about pensions, be sure to invite the city actuary, the pension board, the finance director, representatives of the employee groups, and retirees.

Establish target dates for completing substantive provisions of the charter. But the schedule must be flexible. Don't just let it slide, though. Amend it. If you're not meeting the target date, then just amend your schedule so that you have a new target date to complete it.

Allow adequate time for your decision-making, for the consultant to draft the charter provisions, for review by the Attorney General's office, for any necessary revisions and public hearings on both the proposed and final versions of the charter. You may want to write a brief address to the people, or a commentary to accompany the proposed charter, to have people understand why you did what it is you did. Don't be overwhelmed by the process. Many people have completed it successfully.

### **Robert L. Queller**

Robert L. Queller has been on the staff of the Citizens Research Council of Michigan since 1951. He has served as vice president and president and executive director for that organization since 1979. A graduate of DePaul University and Wayne State University, Mr. Queller is active in several professional organizations, including the Governmental Research Association and the American Society for Public Administration. He serves on the Board of Directors for both organizations. He has done extensive study on the problems of local government and county home rule and served on the staff of the Governor's Study Commission on County Home Rule.

The Citizens Research Council was established in 1916 as a private, non-profit organization which does studies of state and local government in Michigan. Mr. Queller was the fourth executive director of that Council. He is now retired.

# Getting Started

by Sinclair Powell

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## Outline of Presentation

The Charter Commission Begins its work

1. Taking initial organizational steps after the swearing-in
  - A. election of officers
  - B. adoption of rules governing procedures
  - C. providing for keeping a journal (record of proceedings)
  - D. determining frequency of meetings
  - E. other items
2. Consideration of alternative approaches
  - A. major revision of form of government vs. updating
  - B. strengths and weaknesses of alternate forms
  - C. decision on approach and its effect
3. Development of a budget
  - A. help and advice from various sources (other commissions, etc.)
  - B. general factors
  - C. funding sources – non-public
4. Obtaining of professional help
  - A. consulting
  - B. legal
  - C. sources and cost
5. Establishment of goals and objectives, plus an overall timetable
  - A. fixing time for submission of proposed charter to electors (key factors involved)
  - B. allocation of blocks of time for completion of essential activities
6. Fact-gathering process
  - A. interviews – local officials and staff
  - B. local citizen comments

- C. invited speakers and their value
  - D. model charters: charters of other cities; articles in journals
7. Charter preparation period
- A. agendas for meetings
  - B. using outside assistance
  - C. subcommittees
  - D. decision-making
8. Keeping the public informed
- A. importance
  - B. brief look at approaches
  - C. town meetings
9. Summing up
- A. keeping on schedule
  - B. allowing time for Attorney General review, publication, etc.
  - C. periodic written reports covering accomplishments
  - D. final report

## **Getting Started**

In looking at a charter commission's initial efforts, assume that you have been elected as members of the charter revision commission for X City, and you're anxious to get started. What are the steps that you're going to take as you move ahead with your work? First of all, the initial meeting by law must be convened on the second Tuesday following the date of your election. At this meeting, the city clerk will preside briefly and will swear you in. You then will elect your officers, adopt rules governing procedures and arrange to keep a journal of your meetings. The term "keep a journal" means that you will keep written minutes of your meetings as you proceed. I want to emphasize that a good set of minutes will be valuable as you continue your activities over the months ahead and need to check back and see what you've done and why you've done it.

If there is a challenge to the election of any commissioner, you as a body will adjudicate or determine that challenge. If at any time during your activities there is a vacancy due to a member resigning, moving out of the city, etc. – and nearly every charter commission I have worked with has had at least one such occurrence – you have the authority to fill the vacancy. You will establish by law, the time of submission of the proposed charter to the voters.

Next, let's take a look quickly at this body to which you have been elected – the nine-member charter revision commission. In many ways it is very different from a school board or a city council. Yours is a single-purpose body with just one job, not a continuing operation and your life is limited to a maximum of three years. Because of these factors you're really quite different from the other two bodies that I mentioned. A school board or a city council following an election also usually has several members who are carry-overs from previous years. They know the ropes, and through them the new people coming in normally are indoctrinated fairly quickly into what the body is doing. They also have a set of rules and regulations and operating procedures that have been developed over many years, and as a result we can expect a fairly smooth-flowing operation when the body reorganized after an election.

You are very different – you are nine all new people. In the various charter commissions I have worked with, I have not yet seen a single commissioner who served on an earlier charter commission. So in effect you're brand new at the game, and you have to recognize that as you move ahead. Consequently, a good deal of attention needs to be

paid to organization and to the way you're going to operate. What do you do to get started? What kind of decisions are you going to make and how are you going to make them? I think the key initial question that you must deal with as a brand new charter commission is to define the scope of your work. Is your plan, as you see it in the beginning, to merely update, stream-line and improve the existing operation of your city, or will you go beyond that and take a searching look at the present form of government and perhaps change it? I think this is a very important question and the way you resolve it will, as we will see later, determine to quite an extent the scope of your work and the length of time that it may take you to develop a charter.

If you decide that the present form of government may well need changing in the city, what options might you want to consider? Here we should take a moment to look at the history of American cities. In earlier times back in the latter half of the 1800's and the early years of this century, we note that American city government was somewhat disorganized by present day standards. Invariably they were made up of a collection of boards, commissions and other agencies often established by legislative mandates, that performed a great deal of the work of the city government. Usually there was a mayor, but this official often found himself or herself hamstrung by the fact that power was diffused, there was no clear cut organization, and such bodies as police boards, public works boards, public utility boards, and others really exercised much of the authority of the city government. So you did not have a really strong executive in charge but rather a collection of semi-independent boards attempting to operate a city. As the city became larger and its functions expanded it became pretty clear that this was not working too well. So, following World War II, and down to the present time, charter commissions in looking at forms of government more and more have opted for one of two choices, either the strong mayor-council form or the council-manager form. These two in effect, provided certain key items that reformers felt were needed in local government. They featured fairly clear cut meetings of policy determination, and they provided an executive or administrator with authority over just about all city departments.

We may wish to look at this in chart form. In any system of city government, you will have the voters at the top and in a strong mayor-council option, you have the voters electing a mayor and members of the city council. Under the mayor, you have essentially all city operating departments. That individual will be responsible for appointing with or without the consent of council department heads to manage the city operations. Through

these key appointees, the mayor will be responsible for insuring that the activities of the city government are run effectively. The city council will also have a number of functions. First, it will be an oversight body for administration. This means that it can require that the various department heads come in, explain what they are doing and why they are doing it, and the council can comment thereon, or make suggestions to them. The city council also shares policy leadership with the mayor. Council can enact ordinances governing city operations which the mayor may at times choose to veto. The veto may be overridden, usually by an extraordinary majority. The city council will adopt the budget, but the mayor and his staff also have a role here – they will prepare a recommended budget for the council to consider. There are other features which might be discussed, but I think this outlines the general operation of the so-called strong mayor-council form.

The mayor-council form thus is one of the two options. The second would be the council-manager form. In this form the voters elect a body consisting of a mayor and a number of council members. This body collectively appoints a city manager. The manager in turn will be responsible for supervising work of the various city departments. In this type of operation the city manager will develop a proposed budget, and this will be submitted to the council for its consideration. The council then will adopt this budget with or without modifications, and from that set a tax rate for the city. The city manager, having the various departments under his or her control, will be responsible to the council for running an efficient operation.

This is a very quick overview of the two leading forms. There are other options and let me comment very briefly on them. You may have heard of the New England town meeting. I thought it was completely out of the picture but it is not. I spoke recently to a chap who served several years in a New England community as a municipal manager, and in his community the town meeting is held every year and any citizen may attend. The town meeting hears from the manager; if there is a board of selectmen or city council it hears from them; and it can vote on a number of issues. It's a form of direct citizen democracy. The particular chap that I know said that it is a unique experience to have to report in person to several hundred taxpayers of the city! He said he enjoyed it for the several years he was there; he didn't know if he wanted to continue with it for 30-40 years. By and large it has not been adopted across the nation and even in New



England it is tending toward disuse. The big problem is the unwieldiness and problems of a related nature.

There are still other forms. The weak mayor plan continues in use in many American cities. Here you have a mayor who has authority over certain departments; you have other elected officials heading offices who have considerable authority; and as a result, you have some diffusion of responsibility and authority. The weak mayor form probably is on its way out; while it still is in existence in a number of cities, fewer and fewer charter commissions are considering it as a viable option.

Another form which has lost favor is the old commission plan where the voters elected several commissioners and each commissioner headed a municipal department. You'd have a commissioner of police, a commissioner of the treasury, a commissioner of public works, etc. That approach, strong at one time, now has pretty well disappeared from the American scene.

So in effect most charter commissions will consider either the strong mayor-council, or the council-manager forms of government. Let's take a very quick look at the strengths and weaknesses of each of these. With the council-manager form, the advocates will point to the fact that the manager is a professional administrator, usually with prior experience in other cities, who could be expected to produce maximum efficiency and effectiveness from the municipal operations which he or she would direct. I think that has been the strongest argument of that plan.

The critics will say, that's fine, but who in this entire operation is going to provide individual policy leadership? The manager answers to a collective group of people, a city council, since the mayor often is simply one of the council members elected in his or her office by the others. The critics will note sarcastically that under this system numerous people are expected to provide policy leadership, which often means that no one is going to do it. I think that is a valid concern.

The proponents of the council-manager form have attempted to answer this criticism by pointing to the fact that under this system you can have a directly elected mayor rather than have the council elect the mayor from its own body. Under such a slight deviation from the form you do have a mayor who can serve as the spokesperson of the entire city and can propose policies and activities, perhaps independently of the council as a

whole. Critics of the strong mayor-council form will complain that policy leadership is divided under this system between the mayor and the city council, resulting in a real possibility of friction between the two. Each may well feel that since it is directly elected and responsible to the public, it should have a major role in determining overall city policy. The net result may be sharp disputes between the two and sometimes the sabotaging of a program which one may want and the other not. A key argument in favor of the strong mayor-council form is that it does give the public a single person to look to in order to determine whether city government is operating effectively or not. And some will say that having that single strong elected official is good, particularly in a community where politics are played in a vigorous fashion and the community is split among numerous economic and cultural groups.

Let me comment very briefly on a problem common to both forms, the strong mayor and the council-manager, that sometimes tends to inhibit the effective operation of each. One of the questions you invariably will have to face in drafting a charter is this: Since there will be major departments in any city, should the manager or the strong mayor have the authority to appoint department heads without city council approval? I think the general trend at the present time is to answer this in the affirmative; yes, the mayor or manager should have that kind of power. Some will ask, why so? In the federal government, when the President appoints a member of the cabinet, it is subject to the advice and consent of the U.S. Senate. I would like to state that in my judgment this is not the same as city government. The vast policy powers enjoyed by a secretary of state or a secretary of defense in the federal government are very different from the authority exercised by a director of public works or a director of public utilities at the local level. I don't think you can draw a comparison there. At the local level the argument for the letting the executive or the administrator appoint the department heads without the requirement of the council confirmation is very strong. This authority may well be indispensable to effective local government.

That is a birds-eye view of some of the aspects of the two forms that most of you will be reviewing as you move ahead with your work. Now I want to mention again that making the decision on what you will do, whether you will actually change the form or whether you choose merely to streamline an existing method of operations, will affect almost every action you take from there on in. There are a number of specific steps that I want to run through.

You will need to develop a budget to underwrite your activity. The statute is not totally clear in that area. It does speak of the governing body of the municipality providing funds for the charter commission, thus indicating an intent to provide funds even before the election of charter commissioners. Seldom is this step taken. Generally speaking the charter commissions that I have worked with in Michigan and elsewhere early on have had to develop budgets for their activities. What should be included? The budget would need to include, if the commission is to be compensated per meeting attended, funds for payment of the commission members. It must include money for printing and publishing the charter at the end of the commission work. If you plan to utilize consulting and legal help from outside the city government, that clearly will have to be paid for. There may well be other expenses. If you have a secretary doing work for the commission, taking minutes, typing and that sort of thing, independent of the city clerk, you will have to find funds for paying for that service. Basically, in nearly every jurisdiction the cost of the charter commission's work will have to be funded from the municipal budget. In a few large cities there have been cases where foundations interested in seeing a major city develop a more effective form of government, have made funds available, but in the typical smaller city you're not going to find such a source of revenue for your activities. What about civic groups, chambers of commerce, etc.? Might they help fund a charter commission? I have seen very little of this happening in the typical jurisdiction, and I think the typical charter commission would want to be careful in accepting money from any local group that in any way might be considered to have a special interest in the end result.

Early on you're also going to have to deal with the question of obtaining professional help to advise you and work with you in your activities. In practical terms this would mean consulting assistance to aid in looking at the options available and helping draft sections of the proposed charter, plus legal help to make certain that the document meets the various legal requirements of the State of Michigan and any requirements that might come from federal laws as well.

How do you go about this? Essentially I think the typical charter commission, if it is going to hire this kind of help from outside the city, will want to inquire around to determine who has been working with charter commissions throughout the State and what kind of job they have done. The commission then might call in two or three people, interview them, and find out who would best meet their needs. The Michigan Municipal League,

the Citizens Research Council of Michigan, and others have recommended people from time to time for this kind of activity.

I also should mention that charter commissions which are not going to propose a change in the form of government often have found that they can get by with local help. I talked on the telephone recently to two charter commissions that completed their work without making major revisions in their charters – they just streamlined and adjusted a few things – and they were able to get by with help from the local city attorney's office.

One of the key things that I think you must confront early on as a charter commission is the setting of goals and objectives, particularly within a timeframe. I think this is of extreme importance. Perhaps we can briefly sketch the procedure on a chart. If we use a starting point here as the date that you're sworn in and begin operations, and a finishing point when a referendum is held on the charter that you have drafted, we can work between those two points. Let's say you decide that within a year and a quarter or a year and a half after you begin, you would like to schedule an election. You then need to start from the point of the election or referendum and work backward, allowing time for Attorney General review, publication of the charter and that type of thing. You then need to go further back and allow a substantial block of time for the actual development of the charter itself. Then going back even further, you will need another block of time to do your fact finding, your research and meetings with people who can help you.

At this point, I would like to briefly mention the importance of the fact-finding period. You may well find that early in your work you will wish to bring in people who can help you. I'm speaking of persons apart from your consultant and attorney – people who may have served on other charter commissions, people with experience or expertise in city government, who would be willing to come and discuss their views on city government. They may mention things they have found to be important, items they feel ought to be considered for inclusion in a charter. This kind of help can be most valuable. I have urged charter commissions I have worked with to try to use such an approach as much as possible. I once worked with a charter commission chairman who subsequently became an elected mayor. He had invaluable insights into the decisions taken by his charter commission and later how these worked in actual city government. He was very willing to share this information with charter bodies. In addition, I think you certainly will want to invite key people in your local government to come in and be heard as you

undertake your fact-finding activities. They too can think of things of value to tell you; if they are willing to be frank, they can explain what is good about the city government in which they work and what is not so good about it. They can discuss the departmental structure, the reporting of the department heads to the top level; how that is working or how it isn't working. They may have concerns about such aspects of the government as financial controls, whether these are operating smoothly or not operating at all. I think all of this can be of value.

I think also there should be a general invitation of the citizens of the community to come in during this fact-finding period and express any comments they choose to make. You thus are getting a viewpoint of the taxpayers of the city and this can be of real help in your whole operation.

I would want to express a note of caution at this point. I think that it is very important for charter commissions to recognize their function is not to expect to totally reform or revolutionize a city government. Their function basically is to develop a structure of government that can work effectively and help the city attain a smooth running operation. A charter commission is not in any way involved with who gets elected, and that kind of thing – this is not a charter commission concern. You are not there to attempt to reform everything. The voters will play a big role in the process once your charter is adopted. Your function essentially is to provide the best framework of government that can be developed for your community, and leave the rest to the voters.

I'll touch very lightly on the charter preparation period. Obviously there are important steps which can be taken to keep your operation running smoothly. I think the typical charter commission would be well advised to have an agenda for meetings. In this way you can keep your work a little more focused, and evaluate what has and has not been done at each meeting. I have seen an occasion charter commission utilize an ad-hoc subcommittee to study a particular thing and then report back. Generally speaking though, I think it better that practically all the work be done by the full commission at its general meetings. I am not a strong subcommittee person. As you move ahead with your actual development of the charter, it is important that the public be kept informed. This subject is developed much more thoroughly in another section, but I want to mention that it is of real importance and you must keep it in mind at all times. The best charter in the world is of very little value if people in the community don't know what you're doing or

why you are doing it. I think holding town meetings to discuss what you're doing, frequent newspaper articles, and other types of reports are all of importance in letting the public know what you, as their representatives, are up to.

I'd like to sum up very quickly by urging you to try to follow a specific timeframe. You then can check to see whether you are keeping on schedule in your information gathering period, and also if you are on schedule in terms of actual charter development. I think it is important that you make certain that you are moving along in a manner that will get you to where you want to be at the end of a specific time. The function you are carrying on is an important one and one that the public and the community will appreciate.

I have not dealt with another other type of activity which occurs, and that is a charter review committee. There is no specific statutory mandate for this activity so such a body has a quite free scope in terms of what they undertake. Usually the review group is set up by city council, a number of people are appointed to it, and it is authorized to look at a charter and determine what changes it would recommend to the governing body be made. It also drafts language for amendments and this kind of thing. I have not worked with one of these bodies and therefore I only relate to you what the chairpersons of a couple of them have described to me. Their budgets, if they even have one, vary all over the lot. In some instances they are given professional help, and in other cases they do the work entirely through their own body. They can be an effective force in analyzing charters and determining what individual changes might be needed in them.

### **Discussion**

**Question:** Do you have any specific time period for these three phases?

**Answer:** Generally speaking, I would say the typical charter commission should seek to get from the beginning to the submission date in a year and a quarter or a year and a half. I would allow three to four months for the final period of getting necessary Attorney General approval, publication and that type of thing. Probably a minimum of eight months will be needed for the drafting period, and several months more for the fact gathering stage.

**Question:** You mention a year and half for the overall process. You also stated that there is a 90-day period for charter revision commissions. Are the 90-days limited to their being paid, but not the life of the commission?

**Answer:** I should make it clear that the charter commission can continue for as much as three years. It can only be paid for ninety meetings held within that overall time.

**Question:** You mention a point of the charter commission members not being concerned about the elected officials in a reviewed charter, or about city personnel. What about the other side of the coin, the charter revision commission having to deal with elected officials who will be affected by the charter revision?

**Answer:** You are going to be involved with concerns on the part of elected officials, pro and con, relative to what you are doing. There can be no question of that. Once you get into the form of government issue, if you're considering a major change, local elected officials at times may become vocal on the point. Let me just comment briefly on your possible response. I urge you not to get into a fight with local elected officials. I think you should set forth your point of view, and do so vigorously and thoroughly, at public hearings, and in press releases, or otherwise. I would try to avoid any kind of person-to-person argument with a local elected official on that particular point. I just do not think it is productive. If the criticism is sharp, you will need to respond stating your recommendations, and why you are going in a specific direction. But I would do that in neutral language, not in a partisan or bitter fashion. I think you are going to have to deal with it that way. It is not going to be easy at times.

**Question:** Did I hear you say that the budget for this commission would come from the city budget?

**Answer:** The budget for the charter commission in the final analysis would be part of a city budget. Its money would have to come from city funds. Essentially a charter commission, if no provision has been made earlier for funding, has to develop a budget. I think it needs to do so very carefully at the beginning of the activities, get this submitted to the city and obtain approval from the mayor and council. There are problems that can develop. Occasionally a charter commission is going to find that it is spending more than it expected. Can it go back and seek more money? I think it can, yes. There may be objection again on the part of some for the elected officials for granting supplemental

funding, but I do feel a careful explanation of why it is needed should in most cases produce the additional revenue.

**Question:** You mentioned the charter commission that is not changing the form of government. Why couldn't this be done not by a charter commission but by the city council? Do those commissions continue over the long haul? How often do they or should they meet?

**Answer:** Essentially, the first point is one that perhaps I didn't cover. The city council can propose amendments to an existing city charter, and thus make changes to it, subject to voter approval. How often should your charter commission meet to be effective? I have worked with charter commissions that met every week. I have worked with others that met every month. My feeling is that an optimum frequency of meetings is every two weeks. This gives an opportunity to get work done in between the meetings. Now let me again make it clear, the charter commission members in this case would be paid only for one meeting each two weeks. So you're not speaking of payment for every day, the first 90 days, etc. The typical charter commission doesn't hold 90 meetings during the life of its activity. It will not be paid for anything more than the meetings actually held.



### **Sinclair Powell**

Sinclair Powell received his undergraduate degree from Michigan State University and his law degree from Cornell. His career has included city managerships in two municipalities plus urban development directorships in two others. He has been an Ann Arbor-based legal and administrative consultant to city and state governments and non-profit agencies for the past 24 years. He has served as an advisor and consultant to a number of charter commissions, and has undertaken numerous studies of organizational structures of municipal and county governments and state agencies. Mr. Powell taught public administration and urban affairs at several mid-western universities. He is now retired.

# **Critical Decisions for Charter Commissions**

by Dr. Susan Hannah

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## **Outline of Presentation**

1. Guiding Principles
  - A. Democratic values
    1. Popular sovereignty
    2. Limited government
    3. Individual rights
    4. Direct election – representation
    5. Divided power
    6. Responsible involvement
  - B. Effective government
    1. Responsible
    2. Accountable
  - C. Home Rule
    1. Home Rule Act
    2. State powers
    3. Neighboring governments
    4. Local uniqueness
2. Key Decisions
  - A. Structure of government
    1. Council-Manager
    2. Strong Mayor-Council
    3. Weak Mayor-Council
  - B. Officers
    1. Mayor
    2. Council
    3. Clerk
    4. Attorney

5. Treasurer
6. Assessor
7. Board of Review

C. Mayor

1. Selection: director or council election
2. Powers: type of government – strong vs. weak

D. Council

1. Size
2. Election
  - a. partisan vs. nonpartisan
  - b. Wards vs. at-large
  - c. Petition vs. affidavit
  - d. Time – Spring vs. Fall; odd vs. even
  - e. Terms – 2 vs. 4 years; staggered
3. Qualifications
4. Duties
5. Compensation – salary commission option
6. Vacancies – appointment vs. election
7. Recall

E. Other officers

1. Selection
2. Powers

F. Municipal Powers

1. Public peace, etc.
2. Intergovernmental contracts

G. Taxation

1. Subjects
2. Limits
3. Collection

- H. Ordinances
  - 1. Adopting, amending, repealing
  - 2. Publication
  - 3. Initiative and Referendum
- I. Council Sessions
  - 1. Procedures
  - 2. Notice
  - 3. Journal
- J. Budgets
  - 1. System of Accounts
  - 2. Adoption procedure
- K. Special Assessments
- L. Administrative Organization
  - 1. Central authority
  - 2. Powers of manager
  - 3. Departments
  - 4. Administrative Code
- M. Advisory Boards
  - 1. Selection
  - 2. Powers
- 3. New Ideas
  - A. Sunset provisions
  - B. Citizen involvement
  - C. Code of Ethics
  - D. Ombudsman
  - E. Dispute Resolution
  - F. Strategic planning process
  - G. Environmental concerns
  - H. Economic development
  - I. Relations to other units of government

4. Characteristics of a Good Charter
  - A. Simple language
  - B. Logical structure
  - C. Consistent
  - D. Specific references
  - E. Brief
  - F. Gender neutral
  - G. Local "fit"
  - H. Discretion to council
  - I. Room to grow
5. Models
  - A. Model City Charter, 7<sup>th</sup> Edition – National Civic League
  - B. Other Michigan Charters – Michigan Municipal League

# Results of the 1992 Survey of Michigan Charter Commissions

## Characteristics of Charter Commissions

Age	51-60	Median Age
Race	98%	White
Gender	74%	Male
Education	61%	College or more
Occupation	49%	Manager or professional
	28%	Retired
Income	52%	\$41,000 or more
Residents	68%	20 years or more
Activities	66%	Community organizations
	44%	Public board/commission
Party	52%	Republican
	35%	Independent
	11%	Democratic

### How Charter Commissions Work

Procedures	69%	Adopt own
Committees	65%	Committee of the Whole
	34%	Subcommittee
Meetings	47%	Biweekly
	24%	Monthly
	20%	Weekly
Compensation	79%	No compensation
Budget	47%	No budget
	40%	\$5,000 or less
	4%	\$6,000 - \$10,000
	6%	\$11,000 - \$25,000
	3%	\$25,000 or more
Funding	93%	City or village

### **Commission Resources**

Top-ranked Resources	88%	City Attorney
	80%	City Clerical Staff
	50%	City Manager
Research Tasks	46%	Members
	23%	Attorney
Clerical Tasks	55%	City staff
	27%	Members
Drafting	32%	Attorney
	26%	Members
Public Relations	62%	Members
Research Resources	87%	Survey other cities
	85%	Model City Charter
	83%	Mich. Municipal League
Access to Needed Information	74%	Agree



## Public Participation

Public Input	73%	Informal contacts
	55%	Public hearings
	52%	Invited speakers
	33%	Citizen letters
	29%	Citizen phone calls
	25%	Letters to the Editor
Informing the Public	49%	Press releases
	37%	Progress reports
	28%	Radio/TV
	25%	Presentations
Campaign Support	50%	City Council
	35%	City employees
	30%	City officials
	25%	Business/community groups
Participation Index	5.1	Commission #12
	12.3	Commission #15
Public Participation	16%	Satisfactory

### **Cooperation and Conflict**

Commission Work	84%	Good leadership
	77%	Easy to work with
	77%	Easy consensus
	17%	Personal conflicts
	10%	Dissenting reports
	8%	Conflict with community groups
Controversial Topics	37%	Agree
	35%	Disagree
Conflict Index	6.1	Commission #16
	15.2	Commission #12

**Substantive Issues**  
(by percent checked)

Powers of manager	63%
Powers of council	59%
Structure of government	52%
Powers of mayor	46%
Selection of clerk	43%
Residency for elected officials	36%
Employee residency	36%
Length of council terms	35%
Purchasing/bidding	34%
Millage limits	33%

### **Personal Perceptions**

Learned about local government	82%
Opportunity to advance point of view	80%
Met interesting people	78%
Enjoyed developing solutions	77%
Enjoyed public attention	39%
Furthered own political plans	27%
Represented a constituency	25%
Overall evaluation	45% Very positive
	9% Neutral
	4% Negative

### **Dr. Susan Hannah**

**Dr. Susan Hannah** received her BA from Agnes Scott College, has her MA in social science from Harvard University, and her PhD in political science from Michigan State University. She served as associate dean of arts and sciences and assistant vice president for academic affairs at Western Michigan University. Dr. Hannah is associate professor in the school of public affairs and public administration. Currently, Dr. Hannah serves as Vice Chancellor for Academic Affairs at Indiana University-Purdue University Fort Wayne. Her teaching and research publications are in state and local government and in administration, especially in charter development and intergovernmental relations. She has served on five charter review and study committees, chaired two, and advised others.

# **Tapping Appropriate Resources**

by William L. Steude

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## **Tapping Appropriate Resources**

### **1. Michigan Municipal League**

#### **Headquarters Office**

1675 Green Road, P.O. Box 1487, Ann Arbor, MI 48106-1487

Phone: 734-662-3246, 1-800-M-LEAGUE

FAX: 734-662-8083

#### **State and Federal Affairs Office**

320 N. Washington Sq., Ste 110

Lansing, MI 48933-1288

Phone: 517-485-1314

FAX: 517-372-7476

#### **Northern Field Office**

200 Minneapolis Ave

Gladstone MI 49837-1931

Phone: 906-428-0100

FAX: 906-428-0101

#### **Contact staff – Ann Arbor Office:**

William C. Mathewson, General Counsel

Sue Jeffers, Associate General Counsel

Colleen Layton, Director, Member Resource Services

Mary Charles, Information Analyst, Member Resource Services

Kim Cekola, Information Coordinator, Member Resource Services

Marie McKenna, Information Coordinator, Member Resource Services

#### **Municipal Reference Library:**

Charter files

Charter data base

Video library

2. Publications:

Charter Revision & Amendment, Michigan Municipal League, 2002

Organization of City and Village Government in Michigan, Michigan Municipal League, 1993, 2003

Impact of Changing from a Village to a City, Michigan Municipal League, 1993, 2003

The Nature and Purpose of a Home Rule Charter, Citizens Research Council, Michigan Municipal League, the Michigan Association of Municipal Attorneys, 1993

Issue papers

*Michigan Municipal Review*

3. Model Charters

National Civic League, *Model City Charter*, 8<sup>th</sup> Ed. (2003) [www.ncl.org](http://www.ncl.org)

4. Charters from other cities and villages

League files

Charter data base

5. Charter consultants

6. City or village attorney

7. Former charter commissioners

Charter commission survey, 1992

Nearby municipalities

8. Charter Study Committee Reports

9. Charter Commission Records

Retention as public records

Sample rules

Sample minutes

Legislative/local history

10. Legal Materials

Constitution, Article VII, Section 22

Home rule statutes

Other statutes

### **Charter Resource Persons**

The individuals listed in this section have served as elected members of municipal charter commissions and, in most instances, have served as chairs of the commissions in their communities. Each has agreed to be listed as a person whose experience in serving on a charter commission may be useful to newly elected charter commissions. Each has agreed to be available to be called upon to share his other individual and community experiences with charter revision. Each has furnished telephone numbers listed below:

<b>Municipality</b>	<b>Population</b>	<b>Date Revised Charter</b>
Big Rapids	10,849	April, 1992
Coloma	1,595	January, 1994
Hamtramck	22,976	November 2003, (turned down by voters)
Ionia	10,569	November, 1993
Ironwood	6,293	November, 1994
Parchment	1,936	November 7, 1989
Wakefield	2,085	November 4, 1991

### **Contact Persons**

<b>Contact</b>	<b>Address</b>	<b>Phone Number</b>
Big Rapids:		
Charles Matrosic	908 Cherry, Big Rapids, 49307	(H) 231/796-0277 (B) 231/592-2221
Coloma:		
Patricia Beezley	P.O. Box 327, Coloma, 49038	(H) 269/468-3429 (B) 269/468-7212



Hamtramck:

Dave Puls	Unknown	(H) 313-368-0144 (B) 313-369-9800
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Ionia:

Raymond Monte	342 Lafayette St. Ionia, 48836	(H) 616/527-3852
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Ironwood:

Charles Best	101 Morrie St. Ironwood, 49938	(H) 906/932-1615 (B) 906-932-5666
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Parchment:

Daniel DeGraw	830 Parchment Parchment, 49004	(H) 269/391-1801 (B) 269/342-7400
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Wakefield:

Dolores Geroux	1704 Castile Rd. Wakefield, 49968	(H) 906/224-2801 (B) 906/842-3515
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### **Bill Steude**

**Bill Steude** received his law degree from Northwestern University and an MPA from the University of Michigan.

Mr. Stuede was an attorney on the League staff from 1971-97. He served as Secretary-Treasurer of the Michigan Association of Municipal Attorneys and Fund Administrator of the Legal Defense Fund. From 1985 until his retirement in 1997, he served as MML general counsel, and continued to be of counsel to the League until his death in 2001.

Bill Stuede was a friend, mentor and teacher to an entire generation of Michigan lawyers who practice in the field of municipal law.

# Relations with Other Actors

by W. Peter Doren

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## Relations with Other Actors

The people who elected you don't realize the sacrifices along the way. We do because we are in the business of municipal government. Sometimes I just think it needs to be publicly said that it shows a tremendous amount of drive and public spirit for you people to show up here on a Saturday.

I am a lawyer. There are some lawyers in the audience. I will only quote one case. The quotation that I am going to mention is very brief, but I think it has applicability. I was the attorney for the city when we went through our charter revisions and I have got this written down on the inside of my dog-eared copy of Traverse City's charter. This is Justice Campbell writing in 1881 in *Torant v Muskegon*, 47 Mich 115. He said "Verbose charters create mischief by their prolixity." Attorneys hope that the Supreme Court would understand that they too can create mischief by their verbose opinions, but the charter is something that we can control. The briefer the better is the general rule. Obviously the charter revision commission does not act alone. There are relationships the charter commissioners must have or should have with other city officials and other persons. I am not going to talk about the media because others will cover that. But I do want to talk about some of the other players that you have to deal with in your goal to revise the charter.

There are some that are required or that are acknowledged in the statute and some that you just want to do. We'll go through the required ones very quickly. First of all, the city clerk. The city clerk by statute presides at the first meeting and administers the oath of office to members elected and acts as clerk of the commission. The city clerk may be a very political individual in relationship to the charter and have specific ideas about what the charter should say and should not say. Such a person could wisely step down and have another appointed as a special deputy city clerk. I just mention that to show that there is some flexibility. You can have a deputy clerk or you can have special deputy city clerks. You can be as creative as you'd like or as the charter revision commission and your city clerk can agree. If you're in a situation where you have a city clerk who wants

more involvement with the charter revision commission, you can define in the commission rules the degree of involvement of the city clerk as clerk of the commission.

One important thing that the city clerk can do is to identify the past city charters and the history and origins of these older city charter provisions. This can be very enlightening. For example, the current charter of Traverse City describes the jurisdiction of the city by metes, bounds, section lines, etc., extending one statute mile from the shores to Grand Traverse Bay, so that the jurisdiction as defined by the city charter extends out into the water one statute mile. Research traced that back to the original state legislation creating the City of Traverse City in 1895. You could say that the Legislature delegated that authority over the waters to the city, and, since Governors have approved all the revisions of the charter, we could arguably claim jurisdiction over a part of the bay based on that history. We certainly would not want to delete that provision, and indeed we kept it in the proposed revised charter. So the city clerk can helpfully identify the history of our various charter provisions.

The city commission or council by statute has some involvement. The city council must fix the budget and establish the meeting place in advance of the election. While I suspect that may happen in some cases, it is in my experience a rare occurrence.

It is more likely than not that you're going to seek funds from the city council after formation of the charter revision commission, especially funding for hiring experts. Remind the council when you do that, that the charter revision process is mandated by the people who have elected the commission. It is a process started directly by the voters of your city. Use that argument to persuade the council to provide budget support so that you are able to get the expert advice you need.

The statute wisely provides that other city officials are not eligible to serve on the charter revision commission. In Traverse City, we had a mayor and a city commissioner run for charter commission, and resign when they were elected so that they could take office as charter commissioners. However, even though the other city officials cannot serve on the revision commission, the commission is almost entirely dependent upon those individuals for information on what the city is doing and how it could be doing it better and what obstacles might exist to improving city operations in the charter. Despite this basic information dependency, you have to keep independence. That is designed into

the statute by preventing other city officials from being on the charter revision commission. You have to make sure that independence is maintained at all costs.

The Attorney General's office is a key player, one on the major components in the whole revision process. The Attorney General's office should be consulted even before the election for charter revision commissioners. The attorney who is representing the municipality should make specific contact with the Municipal Affairs Division to let them know what is going on and be in constant communication throughout the evolution of the charter language. This takes advantage of the expertise in that office as well as revealing what concerns that office has. My experience has been that the Attorney General's office appreciates the continual contact as opposed to suddenly being sent a document which then must be reviewed and analyzed from the very beginning. The Attorney General really reviews the charter for the Governor. The statute requires the Governor's approval but the Governor's office relies entirely on the Attorney General's office. When you read in the statute that the Governor's approval is necessary, that means the Attorney General's approval, and you should seek that early and often.

These relationships I described previously are all contained to some degree in statute. The other relationships I describe are simply ones that I think you should note. The relationship of the city attorney to the charter revision commission is also very important. The city attorney for your past charter, your existing charter, and for the one you're going to write, is the chief "corrupter" of that document. I am a city attorney and have been for almost 15 years. I have been the chief "corrupter" of the charter of the city of Traverse City since I have been there, and the person who held the job before me was the chief "corrupter" before that. We are constantly asked to look at the document and say what it means. It never ceases to amaze me that the city commission and others blindly accept that opinion. It is sometimes frightening. But in that sense, as interpreter, we are the chief "corrupters" and I want to quote to you from the Anglican Book of Common Prayer, the preface to the First Book of Common Prayer written in 1549. You might want to keep this in mind. "There was never anything by the wit of man so well devised or so sure established which in the continuance of time hath not been corrupted." So what you have in your city charter has been corrupted, because it was created by the wit of man. What you draft will also be corrupted. So try to involve the city attorney as the person who will be most immediately involved with that "corrupted" so that person understands what's going on and you can take advantage of that person's advice.

I have served both as the city attorney and as the attorney for the charter revision commission simultaneously. That does not have to be the case. We are in a more northern area where there are many attorneys, but attorneys involved in different specialties are less available than in other areas of the State. So I served the charter revision commission, and hired other attorneys to do some of the general city work that I was unable to do because of the additional duties. The city attorney can smoke out problems in the existing city charter and can be advantageous to the city if he or she drafts the revised charter when some of those charter provisions are later attacked. It is a good idea to have him or her involved.

The city manager also needs to be involved if you have the city manager form of government. But it depends on the city manager's personality and how the manager interprets his or her subscription to the manager's code of ethics which forbids the manager's involvement in any political or quasi-political activities. The city manager may be very stoic about what is occurring with the charter revision commission, accepting whatever comes about, or he or she may be energetic about what is occurring and try to influence how the charter is drafted. But the charter revision commission officers have to be sensitive to the city manager and involve the manager and develop their own working relationship because the commission is information-dependent upon city department heads who are generally all responsible to the manager.

The city auditor or the firm that does the auditing of city finances, should also be consulted, paid a fee, and be asked for advice. The auditors have looked at your charter and at how it affects the ability to handle and invest money. I found our auditor to be an excellent source of advice.

Other commissions, boards and officials of the city may also be involved to some degree, especially if they are authorized in the current charter. Some officers and boards are based upon charter provision and some are not. If charter-based, of course, they will generally want to be involved and you will need to accommodate them in some fashion.

The last group to be mentioned which deserves a lot of thought are the municipal employee groups. If the goal of the charter revision commission is to make the city more efficient and able to provide more cost effective municipal services, that will impact employee groups. They may also be the most interested group at the public hearings and influential when the time comes for the election to vote on the charter. So they have

to be acknowledged and consensus has to be sought. Try to achieve consensus in a way that does not put you in a negotiating posture, because it is not the charter commission's role to negotiate with employee groups regarding wages, hours, and conditions of employment. That is the role of the city manager and the administration. If you adopt a new charter provision affecting bargainable matters, it may have to be negotiated later. (For example, an employee residency provision in the charter may be nullified by a later collective bargaining agreement.) But if the employee groups through their elected officers or bargaining agents, are brought into the charter revision process, with some involvement in the drafting stages, that will help achieve consensus.

And consensus is, after all, what you are trying to achieve throughout this whole process. You're trying to achieve consensus because no matter how good the charter, if it doesn't pass, then nothing has been changed for the good. I am speaking from experience. The City of Traverse City went through the revision process, put the charter the first time to the people and it was rejected. We modified it, put it to the people a second time and it was rejected. We modified it again and put it to the people who rejected it a third time. We had excellent help through the various advisers we had retained and excellent cooperation from the Attorney General's office. Nevertheless, we had not given any thought to consensus building, to involving any of these groups in the drafting process. When they were involved through the election process, they looked at it as an opportunity for them to reject it and did so.

Of course, while you are busy building consensus, you cannot expect to have perfection in your document, the final product. We have to revisit the fundamental rights, because the wisdom of our constitutional authors is worthwhile looking at. When you are involved in the local charter process you are doing exactly what they did in 1787 and you are faced with exactly the same problems. You can read James Madison in the Federalist Papers and see that he faced the same problems that we faced in Traverse City with our little municipal charter. Alexander Hamilton said, "I never expected to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound as well as the errors and prejudices as of the good sense and wisdom of the individuals of whom they are composed. The compacts which are to embrace 13 distinct states in a common bond of amity and union must necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials?" Don't expect too much. Try to get the best product that you can.

### **W. Peter Doren**

W. Peter Doren has been practicing law since 1973. He has an a.v. Martindale-Hubbell rating and has extensive local government experience.

He was the Senior Assistant Ingham County Corporation counsel before leaving in 1977 to become the City Attorney for Traverse City, which position he has held since then. He has been general counsel for the Traverse City Light and Power Board and Department since its creation in 1979. He was instrumental in the creation of the Traverse City Downtown Development Authority, Grand Traverse Commons Redevelopment Corporation, Traverse Area District Library, Grand Traverse Area Zoological Society, Friends of Con Foster Museum, Cherry Capital Cable Council, Rental Housing Commission, Historic Districts Commission, and many other groups and endeavors which performed or assisted a governmental function. He has represented Grand Traverse County in certain real estate and financial matters and has done legal work for many local townships, villages and cities, as well as the Michigan Municipal League and the Michigan Townships Association.

Mr. Doren has been Chairman of the Public Corporation Law Section of the State Bar of Michigan (1982-83), and a board member of that Section approximately four years prior to being Chairman. The Section is composed of most of the local- government attorneys in the State of Michigan. Mr. Doren has served as President of the Michigan Association of Municipal Attorneys (1985-86) and Chairman of the Michigan Municipal League Legal Defense Fund (1985-86).

The Michigan state courts and the United States District Court for the Western District of Michigan recognize Mr. Doren as an approved mediator for general civil cases. He has lectured at seminars on advanced mediation techniques and has conducted over 100 mediations of litigated cases.



# Publicizing the Work of the Charter Commission

by Thomas M. Donnellan

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## Publicizing the Work of the Charter Commission

Each home rule city or village should put together a charter that reflects the unique needs of that community, otherwise home rule is not working as it was intended. The Charter Commission cannot do its job without the suggestions of its citizens and the citizens cannot make suggestions unless they are kept informed of the proposals the commission has under consideration. This means two way communication. Citizen comment must be allowed at the start of each meeting. This does not slow down the work of the charter commission; this is the work of the charter commission. I recommend, in addition, involving as many citizens on advisory committees as possible. As a demonstration, please mark your preference 1, 2, 3 or 4 to participate in one of these advisory committees. The committee will meet for 10 minutes and then report to the full group.

### Media Committee

Is the chair of the commission the spokesperson for the commission?

Should a commissioner be designated as press person?

Should you send out copies of minutes or prepare news releases with ready made quotes?

Will the media give you the coverage you need?

We must not overlook \_\_\_\_\_

### Publications Committee

Should you print and distribute drafts of proposals?

At what stage in the process? How many copies and to whom?

Do you print and distribute summaries of proposed changes?

How do you "publish" the proposed charter before adoption?

We must not overlook \_\_\_\_\_

### **Liaison with Interested Groups Committee**

How do you approach these groups?

How can you mine their fund of knowledge of what the problems are?

How do you gain their support?

We must not overlook \_\_\_\_\_

### **Citizen Input Committee**

How do you get ordinary citizens to make suggestions?

What about opinion polls?

What about reaction panels?

Is the commission obligated to accept the majority opinion of the citizen group?

What type of background material should be supplied so that the citizen group can make an informed decision?

We must not overlook \_\_\_\_\_

A final note. Like all public bodies in Michigan, the charter commission must comply with the Open Meetings Act and let the public know what it doing. To be successful, the charter commission must let the public know what it is thinking of doing.

In 1787 about 55 people got together in Philadelphia to draft a constitution for the United States. They put it together in about four months and during that time, they kept complete secrecy, with one exception. There was a rumor that was being circulated that they were preparing to offer the throne, the kingship, to one of the members of the royal family in England. The constitutional convention did authorize a statement denouncing that rumor. But that was the only publication of the deliberations of the constitutional convention until the completion of the work. Even at that, the actual proceedings of the convention were not publicized until some 40 years later.

Now, I use that as an example of what we cannot do in today's society. Let me grant you this – that I could accept an argument that we should do that if you can put together a charter commission made up of George Washington, Alexander Hamilton, James Madison, George Mason, and James Wilson, but I don't think you can do that. I think that we're going to have to deal with our present society the way it is and start with the assumption that, that would not be an acceptable way to deal with the process of developing a charter in 1991 or 1992 or thereafter.

If any of you do not believe that in our present society that we live in public life in a fishbowl, then obviously you did not watch the confirmation hearings of Clarence Thomas. I want to talk about a two-way information plan and pick up from the concept of "we" knowledge, which was a phrase that I hadn't come across before. This starts with the election itself, the election of the charter commissioners. For example, there is no particular violation of the open meetings act if the people who are elected and who have not yet taken office, meet together and talk about whatever they want to talk about, because at that time, they are not yet public officials. But I think it is a very, very bad idea. It's not illegal; it's just a bad idea.

Right from the very beginning, you want to make sure that you have a contract with the public, the public at large, the public of your community, that they are going to be involved in your proceedings. That means that all of the meetings would be open to the public and the news media with very limited exceptions, and there would be public comments at every meeting of the commission. There should be coverage of the meetings of the committees and subcommittees by what we generally refer to as media, although I hate the word. By that, we mean nowadays radio and television – that's the ordinary commercial stations, the public broadcasting stations, the cable access

stations, the local newspapers including the specialized newspapers, the union newspapers, the minority group newspapers, community newspapers, newsletters put out by banks, and downtown development associations. All of those organizations should be supplied with some form of information. The type of information they should be supplied with depends upon what it is they want and what they want to publish. Anything they are willing to publish of yours, you should try to get them to publish.

The principal daily newspaper is extremely important. We were fortunate in Flint in 1974 that the Flint Journal assigned a full-time reporter to the charter commission. This was not because the charter commission was big news, but because the newspaper had decided that it was important to them to have a high degree of publicity for the charter commission. The paper was eager to see the City adopt a new charter.

The reporter assigned to it was a law student who did an excellent job of reporting on the work of the charter commission. In fact, his first story was a story criticizing the hiring of the attorney for the charter commission, myself, which I respected because he had a number of questions he didn't get answered the way he thought they should be answered. I point that out simply to show that he was not a tame reporter. The fact that he was providing an extra effort and tried to make sure that there was a lot coverage in the paper about the work of the charter commission did not make him someone who was under the control of the charter commission. He did an independent job as a news reporter, but he covered it in detail because the newspaper wanted him to cover it in detail.

In order to gain that type of coverage, you're going to have to meet with the local paper and try to work out some understanding. Use whatever influence you can have on the newspaper, because the simple fact that someone is assigned to cover a particular activity does not mean that person either has an interest or a background in what they are going to cover. Quite frankly, if they don't have those things, then the type of coverage and the type of story might become more of an embarrassment than a help to the commission in trying to explain its work to the public.

In addition, it is your responsibility to contact neighborhood groups. Have meetings in different portions of the community. Distinct neighborhoods: at the Northend Senior Citizens Center, the Westside Neighborhood Center, the J. Danforth Quayle Junior High School.

There should be an agenda for those meetings in which there would be some presentation of some proposals that the charter commission is considering. But what you really want out of that meeting is the public input --the public getting up and stating something as to what they think they want from their city government. Try to get them to commit themselves in some way. Have some short evaluation form for the people to fill out. Now these are people who simply drift in off the street, so the type of evaluation that they would be willing to fill out should be fairly short. I am going to cover something similar to that in a few minutes, but this is a simplified evaluation simply to get people to express an opinion. Because I can tell you if people express an opinion at all, it's easier for you to get them to swing around to support whatever different proposition, if it is different, that the charter commission comes up with, than it is to get them to move to a position when they never expressed anything at all before. Committing themselves and thinking about it and saying something means that at least they are involved. Just like the salesman who will say anything to get your interest, and once he has your interest, then he can start negotiating. But until he has your interest, there is just a wall between the salesman and the customer. And you are selling something.

I believe in the New Testament where it tells you about the rich man who had a wedding feast and no one showed up. He directed the servants to go out into the highways and byways and make them come in. I think you have to do this. People don't necessarily show up to deal with governmental questions. But they will respond to a kind of a draft -- if they are drafted by people who they feel some obligation to. You should try to get every public official to nominate one, two, three, four, five citizens to serve on a charter advisory committee. Every public interest group that has some interest or involvement should be required or told they have to nominate several people. The charter commissioners themselves should recruit influential citizens and put together a total group of about 100-150 people so that you can put together a panel which will eventually turn out to number something in the range of 75. You have to expect at least half the people who agree to serve will find some reason not to be available on whatever date that you set.

This, of course, is in addition to the other suggestion that was made for contacting certain people in the drafting process. People who are told that they are being involved or being asked about the proposed language of a certain section are going to feel more involved than if they just get it presented to them together with 75 other people. What you

want the group to do when they get together as a reaction panel is to make decisions on proposals.

I have a form prepared that shows some of the things we would try to do. This is my two-way information plan. I would ask them to rate the various provisions, give it a "2", "1", "0", "-1", "-2". "2" would be strongly support, "1" would be support, "0" would be neither support nor opposed, "-1" would be opposed, and "-2" would be strongly opposed. Actually you want to discover the strong reactions. Strongly opposed is very, very important – much more than the weight that we give it. We are not interested particularly in a numerical summary. We want to know which are the flashpoints in the charter proposal.

There was a mention of opinion polling. I am not a particular fan of opinion polling in something like this, because, once again, you have to go out of your way to get people to think about the topic and to give their opinion. The subject has what the pollsters call soft opinions; very susceptible to change, very susceptible to the way it is presented, so mere opinion polling of a particular charter section or particular form of government by itself may not give you useful information. It also gives the impression to the public that you are only interested in finding out which way the wind blows and then preparing the charter to conform to that. You can also put these forms in the newspapers and solicit people to fill them out and indicate their belief. Once again, this is not an opinion polling. This is people coming in and writing something down, and taking a detailed analysis, trying to tell you what they think of the particular proposals. Whatever it is that you put together, whatever it is that you send out, you should follow the rule that is called KISS, Keep it simple, stupid. It is necessary to almost any presentation to try to make sure that the people are not bogged down with extraneous material and can focus on the material that you want to present to them. You do want to have vigorous debate at actual live sessions, because they're the most useful when people persuade themselves and start coming together with that "we" knowledge that we were talking about. Certainly you do want to encourage people, if they can't be present, to fill out one of these forms and to give their opinion in writing.

At some point you're going to have at least partial drafts for distribution to various interested persons including the charter advisory committees. After you rework those drafts, you're going to present a final charter and you're going to send it to the Governor.

I believe that you should print up handouts containing the entire charter equal to about one-third or slightly more of the likely voters. That's quite a few charters. But the statute, section 23 of the home rule cities act, does indicate that the issue of publication is up to the charter commission and I think those documents are very useful in promoting the charter.

During the period of time that you are waiting for the action of the Attorney General's office, it would be a good idea to use that time in planning for the future and also in preparing a running commentary to describe how the charter will work. There are many things that people want to see in writing that probably are not a good idea to put in the charter. Some of those things can be accomplished by putting them in some form of commentary.

The people who put together this program did a very good thing in distinguishing between the material that I would cover and the question of the campaign activity. Let me just mention in terms of the campaign activity that the campaign people should be separate from the charter commission, although obviously the people who have put together the charter will be interested in the campaign. But the purpose of having an independent campaign committee would be to have an objective view on what's necessary to sell the charter.

Let me go back over what we covered from my summary.

This is a form of planning guide. First, you would define the problem. Second, you would state what outcome you want. Third, you'd have to list the activities that would have to take place to do that, and you'd have to assign responsibilities. At this point I'd like to make a recommendation to do something that not too many charter commissions do. Right from the beginning, assign someone the responsibility of being a public information officer of some kind. You don't have to use that phrase. But as I have described to you in my outline, that is the activity that you want to accomplish. You want to have a two-way communication with the people, and in order to do that, you want to have somebody who is responsible for that, no matter what you call that person.

The fourth is some type of feedback system. I mentioned the charter advisory committee. You could have whatever system you want, but you have to have some type of feedback system other than getting voted down at the polls. Finally, you'll have to

have some type of policy statement describing to the public what it is you are doing. Anytime you are communicating with the public, you should state in writing in a clear form what it is you are trying to do.

In summary, develop a two-way information plan.

1. Plan to integrate all the publicity with the actual work of the commission. Budget for it. Have somebody who is some type of public information officer, no matter what you call that person.
2. Do everything in public and try to get the maximum coverage of what you do.
3. Reach out and appear to reach out to every group and individual in the community.
4. Form some type of impact panel. I suggest calling it a charter advisory committee. It sounds good. I have seen that title come up over and over again. People I have never heard of, have come up with some public office, and it says: (I see on their resume) that they were on the Flint Charter Advisory Committee.
5. Provide copies of the charter.
6. Campaign committee should be a separate activity and should be run independently of the charter commission.

### **Discussion**

**Question:** How have you seen in practice the advocacy process in terms of this charter advisory committee, particularly with regard to people like elected officials?

**Answer:** Elected officials tend to shy away from being just a member of the charter advisory committee. Some will. Some people like to express themselves.

But you will not have the entire city council participating. They want to be removed and have you come to them as the city council. One or two of them might show up, but they would be willing to designate their supporters and people who feel the same way they do, to participate, and to bring those ideas out. It does work very well because by having such large numbers, you reduce the chances of anybody being overwhelmed by one influential or persuasive person. If anybody can swing 75 people, then maybe they have good ideas. With a smaller group, then the prestige and influence of the person who is



doing the talking might be greater. Of course, that person doesn't necessarily reflect the interest of the electorate as a whole. You're lessening the impact of individuals and increasing the chances that you're hearing the voice of the voters themselves. There's no guarantee of that because most voters are simply not interested at all.

**Question:** What if you have a very serious objection to a part of the revised charter that might jeopardize the whole thing? Has anybody experienced where there might be alternative proposals on the charter revision ballot, so that you have a basic charter revision but with some alternative proposals for the voters to choose from?

**Answer:** Yes, Detroit tried it on two issues, including the question of the make-up of the city council. The charter as a whole was defeated. But they took the majority view when they went back. They took the majority view on that position and did not give alternatives the second time. They figured that the majority view was the one that would still be the majority view on the second vote on the charter revision. It has been tried. It does create uncertainty and that's the only draw back I would see. It would have to be a very, very strong issue in order to have a separate vote on it, because any confusion like that draws down the entire charter.

**Question:** We have had in the past a proposal on the ballot on a two year/four year term. The four-year term was always defeated. In our revision process now, we're getting back to the four year term in the charter. If that is a weak point, is a separate proposal for two year or four-year term (which would not alter the whole charter) in the charter revision a good idea?

**Answer:** The question was, do we give an option in the charter for a two year term or a four year term? I'd be very hesitant, because the people who don't like politicians staying in for a full four years would vote against the entire charter just in case that would pass. You have to decide in advance how powerful that sentiment is and whether it countervails your desire to have a more stable government. It's a dangerous thing to do.

**Question:** Are you aware of any charters with term limit provisions that have legal impediments to it?

**Answer:** I'm not aware of any legal impediments to the term "limit". I think there are some charters with term limits. I just can't think of any.

**Comment:** In Marquette if you serve two full terms, you have to be out for two years before you can run again.

**Question:** What percentage of proposed charters pass on the first time around?

**Answer:** I think more charters pass the first time, than pass the second or third time. If it doesn't pass the first time, there is a very good chance that it won't pass the other times, either.

**Sinclair Powell:** About two-thirds to three-quarters of charters submitted to the voters pass on the first go round. I would agree that if it doesn't pass, then the chances are cut way, way down on the next.

**Question:** If it doesn't pass on the first, you have to wait two years?

**Answer:** No. That is the limit on charter amendments. You have three shots in three years, whichever comes first. If you use up the three years and don't take the three shots, you're finished, and if you take three shots in less than three years, you're finished, if it doesn't pass. If it does pass, you're finished anyway.

### **Thomas M. Donnellan**

Thomas M. Donnellan has had a richly diverse experience having served as judge of the 68<sup>th</sup> District Court in Flint, from 1983 to 1990, as chief judge 1984 to 1987, and as an instructor in the paralegal program at Mott Community College. When in private practice from 1971 to 1983, he drafted new charters for Flint and the City of Lansing. His practice is principally municipal and administrative law. Prior to private practice, he served as executive director and attorney for the Genesee County legal services program. Among many community activities, he has served as president of the Urban League of Flint, chair of the Flint Civil Service Commission, and has headed the legal aid society and the criminal justice study committee for Genesee County. He is a graduate of Queens College of the City University of New York and Fordham University School of Law. He is currently working under contract with the Flint office of the City Attorney.

# **The Attorney General's Role in Charter Review and Approval**

by Milton I. Firestone and George M. Elworth

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## **State review of proposed charters**

1. Requirement for gubernatorial approval
  - A. Home Rule City Act, Sec 22, MCL 117.22; MSA 5.2101
  - B. Home Rule Village Act, Sec 18, CL 78.18; MSA 5.1528
2. Referral of proposed charters to Attorney General's Office by the Governor's Office.
  - A. Certified copy of charter as adopted by Charter Commission
  - B. Certified resolution of adoption by Charter Commission
  - C. Certified copy of current charter
3. Allowance of time for review
  - A. Election on proposed charter is scheduled by Charter Commission. HRCA, Sec 20; MCL 117.20; MSA 5.2099
  - B. Consider discussing issues with Attorney General's Office during drafting state
  - C. Charters, if any, being used as models for proposed charter
4. Review process
  - A. Consultation with Elections Bureau, Michigan Department of State
  - B. Consultation with other divisions in the Michigan Department of Attorney General
  - C. Letter to Governor
5. Determination by Governor of approval or disapproval
  - A. Governor's Legal Counsel
  - B. Letter from Governor
    1. Conditional approval
    2. Unconditional approval
6. "Subject to" items in proposed charter on which conditional recommendation of approval may be based:
  - A. Mandatory charter provisions. HRCA, Sec 3, MCL 117.3; MSA 5.2073

- B. Prohibited charter provisions. HRCA, Sec 5, CL 117.5; MSA 5.2084
  - C. Conflicts with state law. HRCA, Sec 36, CL 117.36; MSA 5.2116
7. Follow-up revisions by Charter Commission
- A. Certified revision
  - B. Certified resolution of adoption
  - C. Marked copy showing additions and deletions
8. Topics of concern
- A. Open Meetings Act, 1976 PA 267, as amended, MCL 15.261 et seq; MSA 4.1800(11) et seq, and HRCA, Sec 3(1), CL 117.3(1); MSA 5.2073(1)
  - B. Freedom of Information Act, 1976 PA 422, as amended, MCL 15.231 et seq; MSA 4.1801(1), et seq; and HRCA, Sec 3(1), MCL 117.3(1); MSA 5.2073(1)
  - C. Odd-year election law, 1970 PA 239, MCL 168.644a et seq; MSA 6a.1644(1) et seq.
  - D. Publication of all ordinances before becoming effective. HRCA, Sec 3(k), MCL 117.3(k); MSA 5.2073(k)
  - E. Budgeting, accounting and auditing. HRCA, Sec 3(n), MCL 117.3(n); MSA 5.2073(n), and MCL 141.421 et seq; MSA 5.32228(21) et seq.
9. Ballot language
- A. Attorney General review of ballot language. HRCA, Secs 21 and 23, MCL 117.31 and 117.23; MSA 5.2100 and 5.2102
  - B. Sample ballot question for charter revision is set forth in HRCA, Sec 23, MCL 117.23; MSA 5.2101

**Milt Firestone:**

We are extremely pleased to be able to discuss with you the role of the Attorney General in this process of dealing with city charters and village charters. We think we have a very user friendly approach to the question of dealing with charters and charter amendments. The Attorney General, Mr. Frank Kelly, was city attorney in Alpena. He has a keen interest in the role of cities in the government, as a government agency. Our role in the Attorney General's office is partly dictated by statute and partly dictated by the fact the Governor refers matters to us. When you present a charter or charter amendments to the Governor for review under the statute, that review is carried out primarily by our office in addressing the legal issues that may exist. The Governor may discuss the political issues. But my experience in state government has been that the Governor refrains from dealing with political issues and does address the legal issues. That has been true with Governor Romney, with Governor Milliken, with Governor Blanchard and now with Governor Engler. My understanding is that it is true through most of the history of the state with most of the review that has taken place.

What do we look for in a charter that comes in? We are essentially looking for its compliance with any constitutional concept, with any statutory requirement, and with its effect on other bodies of the law. As you know, the Home Rule City Act, Section 36, says that no provision of any city charter shall conflict with, or contravene, the provision of any general law of the state. It is therefore important that we take a look at the problems so that when you do have the charter or charter amendment in effect, you are less likely to run into the problems of conflict with state law. The constitution really leaves to the Legislature the direction for city charter, the formation of city charters and the powers of cities to act. The Home Rule City Act is in place and its intent is to make sure that, as to local issues, the city charter will prevail and, as to matters in which the state legislature has dealt with the problem, that the charter will not conflict with those provisions.

Essentially when we receive the charter or charter amendment, we take a look at whether or not it complies with the mandatory provisions of the Home Rule City Act and whether there is some provision that is prohibited by the Act. Section 3 of the Home Rule City Act says: each city charter must include these items and then it lists them. In this section is a checklist that is pretty much the checklist that we use in the attorney General's Office to ascertain that all of the mandatory provisions of the Home Rule City Act have been complied with.

In addition, we look at Section 5 of the Home Rule City Act, which deals with the things that are prohibited. That section says: no city shall, and then it lists a variety of things that are prohibited to the city.

Section 4 consists of a number of subsections of state law which authorizes a whole host of permissible activities by cities.

There are also some traditions of historical rights and actions of cities included within the scope of local law. Municipal law really stems from the Roman idea of a particular law that relates to the people in Rome and then there is the Empire law which applies to everybody else.

The proposed local charter cannot conflict with such state law as the election law, municipal finance, budgeting and accounting, open meetings, freedom of information, taxation and a whole host of other state statutes. Basically the charter should be consistent with these laws. Charter provisions may be amended or nullified by state law, but essentially we attempt to address these questions and reduce the problems that you will encounter as you move toward implementing the charter or charter amendment.

How do proposed charters and charter amendments come to us? They come to us either because the statute says the Governor shall review, or they come to us because we are told that the Attorney General should look at a question involving a proposed charter amendment.

Within my knowledge, Douglas Clapperton was the first assistant attorney general who handled this charter review assignment. Following him, Maxine Boord Virtue headed the division and the people in the division did the review. I followed her and have been the division head and have overseen this and in my time, there have been a number of attorneys who have participated in this activity. At this point George Elworth, who is the first assistant in my division, handles this assignment. He is quite open to discussing issues with you. I don't know that we can always give a direct answer and certainly we have the duty that we have to the Governor in representing what the law is. But basically if we can understand your concept, we can deal with or suggest to you how to address the issue. I'd like to turn it over to my colleague, George Elworth, to discuss the detailed problems that we have encountered.

**George Elworth:**

The question was raised a little earlier as to the volume of activity in this area. In preparation for a meeting on this topic earlier this year, I collected some statistics on the number of charter amendments, and the number of charter revision and new charters that have been reviewed by the office over the last few years. On the average over the last 15 years, the Attorney General's office has reviewed approximately 10 charters per year. The office has also reviewed approximately 100 charter amendments each year. In the last five years, charter amendment activity has been along the general annual average. However, the number of proposed charters, charter revision and new charters has been substantially lower. I don't know the reason for that, and there may be some demand for new charters or charter revision, but in the last five years, our experience has been that there has been a significant decline in the number of charters proposed to the Governor for review.

Let me describe in general terms the process of review. The initial step is for the proposed charter to be submitted to the Governor. It has been the Governor's practice to send the proposed charter to the Attorney General for his review and his recommendation. That review takes place principally in the division of municipal and military affairs. As part of that review, we work very closely with the election bureau of the Michigan Department of State because of its expertise in election law. I would suggest that the elections provision of the charter is one of the most technically complicated areas that need to be coordinated with other units of government, including the elections division. The odd year election law is a statute that we continually refer to and try to re-educate ourselves on, which I would suggest you review as you go through the charter revision process, as to what the experience has been in your municipality under that legislation. You may find it helpful to consult with the elections division in that area, and you may also find it helpful to consult with other divisions of state government, such as the Department of Treasury on accounting and auditing issues and on questions involving municipal finance and the issuing of bonds and notes.

Once the review has been completed, the next step would be to submit a recommendation to the Governor that he approve the charter or that he reject it or that he approve it subject to certain changes or clarification being made in the charter. We may also make certain suggestions that the charter commission may wish to take into account.



The Governor reviews the recommendation of the Attorney General's office and then communicates his determination to the local charter commission. If the charter has been approved, the charter commission at that point would take the necessary steps to arrange for the election.

If the commission is advised by the Governor that he is approving the proposed charter subject to certain changes or clarifications, at that point the charter commission would consider the requirements of the Governor and take whatever action that was indicated. In that context, it is very helpful to us upon resubmission of the charter, that we receive not only the certified copies of the proposed charter, but also a marked copy which indicates where the changes have been made, so that we can expedite our review.

It would also be helpful for us to, at the onset, to have from the city a copy of the current charter, so that we can see what changes are being made, and what provisions are being retained. We would also suggest that careful attention be paid to scheduling issues. Most charters will provide for a transition schedule, which may be particularly important in terms of the terms of office. As you know, or as you learn, there is a requirement that a charter cannot lengthen or shorten the terms of existing offices. It is also helpful to consider whether you want to specify an effective date for a new charter, or simply leave it to the statute to provide that.

On the subject of charter amendments, we would suggest that among the things that we need to look at when those amendments are submitted to the Attorney General are: (1) that the ballot questions are objective, i.e., that they don't either argue for or against the proposition; (2) that the questions are limited to the 100-word limitation including any statement of purpose; (3) that the questions have been properly adopted; (4) that they are timely, i.e. at least 60 days prior to the day of the election; (5) that in some cases you may need to coordinate with the city and county clerks because you may have the questions adopted even sooner than that to meet ballot printing requirements; and (6) that there are provisions for questions being submitted by initiative as well.

Your particular current charter as it exists today may have specific provisions about how the charter may be amended. If that is the case, in addition to looking at the statutory provisions on charter amendments, you may need to consult your charter as well. (The statute provides: "unless otherwise specified in the charter, the amendment process shall be as follows."

There are other provisions for villages and we do review both proposed charters for villages and village charter amendments. Many of those provisions are outlined in your materials today, but I do want to note that is an area we work in as well.

### **Discussion**

**Question:** What is the most important issue in your review of the charter?

**Answer:** I think that the biggest problem that we have are instances where the mandatory provisions of section 3 of the Home Rule City Act have not been addressed. Charters which have made no provision for nominations for officers, or which have made no specific declarations as to the open meeting and public information requirements—things of that sort.

**Question:** Currently, what is the length of time that can be expected between submission to the Governor's office and a response back to the commission?

**Answer:** To my knowledge we have been able to accommodate the timing requirements of municipalities. If you have an election scheduled somewhere down the road and we know that, we will make every effort to accommodate that. In terms of planning, we would suggest that you allow from 60 to 90 days for that review process to take place at the state level, and then perhaps some additional time, depending on what your expectations would be for additional changes or modifications in the charter before it is submitted to the voters.

**Question:** Are cities free to experiment with charter revision, i.e., is it better to invent the wheel, or re-spoke the old wheel from the standpoint of the Attorney General's office, in dealing with a charter revision?

**Answer:** Generally, yes. Cities are free to experiment as much as statutes will let them, with regard to local government. We try very diligently not to inject our particular feelings toward new ideas. What we are looking for is that there be no conflict between the proposed charter and existing statutes.

**Question:** Could you comment on the idea of options in charter revisions where you have alternative provisions?

**Answer:** I think that came about by an amendment that we legislated when Detroit made its last charter revision. The Detroit charter commission wanted to present alternatives, but at the time, the statute did not permit it. The Home Rule City Act was amended to authorize alternative provisions to be presented to the voters so that, if there is strong feeling within the community going in both directions, you can pose alternative provisions to the electorate. If you do that, it would seem to me that you could clearly identify an issue that can go either way in the proposed charter, so that when the election is held to adopt the charter, the charter doesn't have to be revised and voted on again to provide the alternative to the provision that the voters rejected.

**Question:** If the Attorney General's office finds a provision in the proposed charter to be objectionable, would they identify the issue, what the problem is, and give the commission a chance to correct it, or does the Attorney General send the whole package back and the commission has to start all over again, from scratch?

**Answer:** Essentially we do send a letter to the Governor, with copies to the clerk of the municipality involved, indicating what our review discloses and what recommendations we made to the Governor. Most of the time, municipalities will adjust before the Governor issues a response to the municipality. Many times, because attorneys or consultants or members of the commission contact our office, we can indicate to them what might be done to correct an issue, it is something that we can simply tell them very quickly. On the other hand, many times, because of the complexity of the documents and the importance of timing, we do it through letter, which lets everybody know. Depending upon the timing, you can schedule the election when you want it, if you allow sufficient time.

In the case of charter revisions, I don't know of any charter commission which has proceeded to make changes without waiting for the formal letter of the Governor. (We may have given to the municipality some of the reactions we have had and some of the ideas, and some of the indications we have had as to what we could recommend.) On the other hand, for charter amendments, there are many instances where the municipality will see the problem that we have identified and they will have already dealt with the problem before the Attorney General has reached the stage of making recommendations to the Governor.

We have no pre-clearance procedure. Our practice is to look at the certified copy of whatever is adopted and rule on that. But that doesn't mean that we can't be consulted informally from time to time. The Attorney General's office is not in a position to be an advisor to a charter commission or to a city. I think the city attorney or the attorney for the charter commission is in the best position to give that kind of advice. But we are available to discuss the issues. We are available to give you ideas based upon what we have seen over the years and we're glad to share that experience.

**Question:** In the beginning of your presentation you indicated that usually it is on the basis of the legal issues that the Governor may reject the new or revised charter. Seldom will he reject a charter because of political issues. But in the statute, MCL 117.22, the charter commission by a two-thirds vote has the right to overrule the Governor's objection. It would seem to me that it would be foolish for any charter commission to exercise that authority if the issue is legal and non-political. In reality, if it is not the norm for the Governor to deal with political issues of a proposed charter, why would a charter revision commission override the Governor's objections?

**Answer:** Generally we do not find municipalities acting inconsistently with the Governor's recommendation. They do have the right to do so. By and large, municipalities want to have something that is strong for their charter and for their government. We want something strong for them as well. So that what is done in fact is to bring it into compliance. Or it may be that they would have an idea that had not been considered and they would raise that question. There are a very, very few instances, I think, over the years in my experience, that municipalities have acted inconsistently with the recommendations of the Governor.

In many of our letters you will find comment to the Governor that, while there may be a legal objection, the law is such that it has to be put on the ballot.

### **Milton I. Firestone**

Milton I. Firestone, a graduate of Wayne State University Law School, was admitted to practice in 1953. His professional work has included private practice in municipal law and municipal law practice in the Livonia City Attorney's office. He joined the State Attorney General's office as assistant attorney general in 1965 and now heads the municipal affairs and finance division. He also served as adjunct professor of municipal finance at Cooley Law School. Mr. Firestone is now retired.

### **George M. Elworth**

George M. Elworth is the Assistant in Charge of the Freedom of Information and Municipal Affairs Division (FOIMA) of the Michigan Department of Attorney General. He joined the Department of Attorney General in 1974. He has served as the First Assistant of both the State Affairs Division (1977-1979) and the Municipal and Military Affairs Division (1980-1997). He was a member of the litigation unit of the Executive Division during 1979.

Current assignments include matters involving the state's Freedom of Information Act and Open Meetings Act, as well as local governmental issues involved in the review of proposed charters, charter amendments, and interlocal agreements. The division advises the State Boundary Commission which regulates most municipal annexations and incorporations. The division also works on assignments related to the activities of the Department of Military and Veterans Affairs and the Michigan National Guard, including contracts with the U.S. Department of Defense and the administration of veterans homes in Grand Rapids and Marquette. He has represented the State of Michigan and its agencies in litigation involving constitutional issues, contractual and financial responsibilities, administrative law, and intergovernmental relations.

He serves as the designated representative of the Attorney General on three retirement boards: the State Employees Retirement Board, the State Police Retirement Board, and the Judges Retirement Board.

He has an AB in History from Stanford University (1964) and a JD cum laude from The University of Michigan Law School (1969).

He was a lieutenant in the United States Army Reserve (Quartermaster Corps) from 1964 to 1966. He was assigned to the 8<sup>th</sup> Army in South Korea and the 5<sup>th</sup> Infantry Division (Mechanized) at Fort Carson, Colorado.

He began his legal career with the Atlanta Legal Aid Society in 1969-1970 as the recipient of a Reginald Heber Smith fellowship. He spent the next four years as an associate attorney with the law firm of Lord, Bissell and Brook in Chicago.

George and his wife, Marilyn Weyhing Elworth, live in East Lansing. They have three sons – two who graduated from law school in 2003 and a third who is in college.

He is a member of the publications committee of the Public Corporation Law Section of the State Bar of Michigan.

# **What Do You Do When the Draft is Done?**

## **The Politics of Selling the Charter and the Campaign for Approval**

by Thomas Dudenhofer, Chair, Stanton Charter Commission

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### **What Do You Do When the Draft is Done?**

#### **The Politics of Selling the Charter and the Campaign for Approval**

We are a very small community and I am speaking pretty much as a lay person to share some things that perhaps would apply to a larger community or something you can gain from it for your community.

The information sheet "Communicating For Passage: Charter Revisions" states some of the ideas that I used in following through on the process of charter revision in our community. I need to give you a little bit of background. Stanton is a very small community and very resistive to change. I should maybe say somewhat resistive to change. There are outspoken individuals in a community our size that have a great sense of the negative and we failed at a charter revision in 1975. Now that doesn't sound recent perhaps to many of you, but in our community, 1975 is recent. So there had been a lot of hesitation to even start the process of a charter revision. After hearing a number of people complain about the fact that our city was forced to govern under the Fourth Class City Act Charter because we had no locally adopted charter whatsoever, then a few of us got together and agreed to begin to work on the commission.

I think that the process of seeing something like this pass, begins early on. The following are important to the process of passage. First, be able to clearly state the need for the new charter. Work at writing out statements that are uncomplicated and address the needs felt by the community. I don't want to offend any attorneys, but there was a tendency on the part of attorneys to not communicate with people who are not. I think it is good for other people to be there to say, "Now how could we say that again?" I had one gentleman who took what we would write out down to the restaurant. There was a table at the restaurant where people came for breakfast at different times. He would read that to that bunch once in a while. You'd hear all kinds of very strange things, and he would bring back a few of those comments. That would give us a sense of how people

were reacting to the phrases we were using. We continued to ask for feedback from everybody on the charter revision commission in order to try to understand how people were thinking about this whole process. Remember they were suspicious of it to begin with.

Second, invite the media to cover the process at least once. In our area we felt privileged to have the media cover our process. We did find one of the reporters was interested, and we tried to communicate with him on what we were doing. He could come in and talk, ask questions and that helped us a lot.

Third, we asked for areas of disagreement. This is where I saw a lot of hesitation on our commission. One of you were talking about a questionnaire where you would identify areas where people strongly disagreed. That is something that if you have the courage to do, is one of the best things to do early on. You kind of hesitate to do that, so ask, "What don't you like?" Then hold back, listen, and sure enough, people speak out. You have to address those issues right up front and in a non-confrontational way. Try not to call them a jerk and things like that, because it does tend to alienate people when it comes time to vote on the charter. Sometimes those comments come out at some meetings, or even off the cuff and usually, there is a reporter around to hear what you say.

Fourth, we constantly publicized the steps that we were to follow, including the steps for acceptance after we had the document written. We had to submit our charter twice to the Attorney General to resolve problems of clarification. Each time we did that, I called the newspaper reporter and said, we just got a letter back from the Attorney General's office and we've got to do such and such. He asked me to explain to him what it was. I tried, and he would write out what I said, and then we would watch for the reaction on that. When it came time for the voters to vote on the charter, we emphasized voting – not just voting yes. It seemed to raise the level of credibility with a lot of people in the community. As individuals got together, we even bought some ads that said, "Just get out and vote."

You also suggested that you designate a separate committee for the campaign. There weren't that many of us. That is, our charter commission, after we had the charter accepted, asked whether we could do a little of this promotional work ourselves, and we were advised that we could, and we did. We undertook this campaign role mostly



because we felt we were so close to the issue that we could address some of the questions.

We also did the other things that are the regular things you would do for any campaign. Writing letters to the editor, or whatever communicates to the largest number of voters in your community. I really think the one thing that went the furthest in our community was the restaurants. We got people to go into these restaurants and sit down and have breakfast and listen to the talk and bring up the charter. We were able to do a lot that way.

### **W. Peter Doren, City Attorney, Traverse City**

I think the experience in Traverse City was fairly typical in the sense that there was a study committee first appointed to look at the existing city charter to determine whether it should be amended or should be revised. That ad hoc committee of citizens recommended numerous changes in the charter—not specific language to be enacted, but numerous problem areas in the existing city charter were identified. Because there were so many amendments that were needed, the committee recommended the charter be revised, so as to develop one total document, of one style, and without possibly conflicting provisions if some amendments were enacted and some were not. The vote to revise the charter was overwhelmingly favorable. The charter commissioners were elected, if I recall correctly, at the same election. They began their work.

There had been many, many complaints over the years about the city charter. There were boards in the charter with no function, such as the library board, which had been replaced by a district library. Many sections which had been repealed by state law prompted people to continually ask why we weren't following. And we'd have to say it was superseded by the state law.

The accounting practices were being ignored in some cases, such as a ceiling of \$5,000 on the emergency reserve fund for the utilities. We were just in constant violation of the city charter. It came to a head when a constable, a former police officer, was elected under an old charter provision and marched into city hall demanding that the city buy him a gun, and started driving around town with "constable" on the side of his car, closely pursued by plaintiffs' attorneys waving civil rights complaints that they were ready to file for wrongful arrest, etc.

The committee was formed and identified lots wrong with the charter. Everything seemed to be going very successfully. There was no public relations effort. There was no survey. Both those are all excellent ideas.

The proposed new charter was exactly the high road that the charter commission wanted. There was no compromise in it. It had everything that the commission felt was the best. It was defeated and then another election was held on a revised charger with compromises, but that one was defeated. Then essentially, the same revised charter was submitted the third time at a November election, when more people would be voting to increase the possibility that it would be passed, but it was defeated a third time. So I am here to confirm the wisdom of some of the things that have been said about the value of public relations, of the surveys, and other matters during the course of your charter proceedings.

### **Discussion**

**Question:** Was it defeated because of the lack of public relations, or was it defeated because of the political nature of the city? Speaking from my standpoint, and we have already been threatened by the mayor, we've already been threatened by the city clerk, by the chairman of the commission, and a few others who don't like certain things in the charter. Is that the reason for your defeat?

**Answer:** Certainly the first time it was. I think that's normally what you'd attribute it to. But after all the changes were made, so that those provisions which had provoked opposition were eliminated or modified to a great degree, it still lost and it's very difficult for me to say why. But I think it's clear that when opposition died down, the revised charter had become "dirtied" in the eyes of the electorate. Although there was nothing in it for anyone to question, there was nothing in it to excite anyone to really grab on to and say, yes, this is why we should adopt it. So there was no energy and no enthusiasm for trying to get it passed and a lot of that negative sentiment just followed it throughout the whole process. We have since that time gone the amendment route and every amendment passed, except one, in probably the last four elections. There were at least two and sometimes three amendments on the ballot in those elections. All but one passed. That one that didn't pass was an interfund transfer proposal which is really of no consequence. It's hard for me to say why that one did not pass.

### **Thomas Dudenhofer**

Thomas Dudenhofer chaired the Stanton Charter Commission. He is married, father of four teenagers and he is the senior pastor of the First Baptist Church in Stanton.

### **W. Peter Doren**

W. Peter Doren has been practicing law since 1973. He has an a.v. Martindale-Hubbell rating and has extensive local government experience.

He was the Senior Assistant Ingham County Corporation counsel before leaving in 1977 to become the City Attorney for the City of Traverse City, which position he has held since then. He has been general counsel for the Traverse City Light and Power Board and Department since its creation in 1979. He was instrumental in the creation of the Traverse City Downtown Development Authority, Grand Traverse Commons Redevelopment Corporation, Traverse Area District Library, Grand Traverse Area Zoological Society, Friends of Con Foster Museum, Cherry Capital Cable Council, Rental Housing Commission, Historic Districts Commission, and many other groups and endeavors which performed or assisted a governmental function. He has represented Grand Traverse County in certain real estate and financial matters and has done legal work for many local townships, villages and cities, as well as the Michigan Municipal League and the Michigan Townships Association.

Mr. Doren has been Chairman of the Public Corporation Law Section of the State Bar of Michigan (1982-83), and a board member of that Section approximately four years prior to being Chairman. The Section is composed of most of the local- government attorneys in the State of Michigan. Mr. Doren has served as President of the Michigan Association of Municipal Attorneys (1985-86) and Chairman of the Michigan Municipal League Legal Defense Fund (1985-86).

The Michigan state courts and the United States District Court for the Western District of Michigan recognize Mr. Doren as an approved mediator for general civil cases. He has lectured at seminars on advanced mediation techniques and has conducted over 100 mediations of litigated cases.

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# **Charter Revision and Amendment for Home Rule Cities and Villages**

by Daniel C. Matson

## **Background for Change**

Michigan cities and villages exist within a framework that is part of a greater system of state and federal law. The system is described in governing documents which fit into a hierarchy of importance and must be kept current. Constitutions, statutes and charters are primary examples of these documents.

Most Michigan cities are incorporated under the Home Rule City Act, 1909 PA 279 (HRCA) (MCL 117.1 et seq.). Home rule villages are created through the Home Rule Village Act, 1909 PA 278 (HRVA) (MCL 78.1 et seq.) The HRCA and HRVA are statutes that were authorized by the Michigan Constitution of 1908, and currently by Article VII, Section 22, of the Michigan Constitution of 1963.

Locally, the city or village charter is the principal governing document. This article addresses existing charters of home rule cities and villages. As each community changes in various ways over time, its charter has to change with it. The same is true at the state and federal levels. The U.S. Constitution has been amended 27 times to date. Michigan has had four constitutions and numerous amendments. Statutes are being enacted and amended constantly.

When a charter becomes outdated it hinders the ability of local government to serve properly. A charter that is no longer current is one with provisions that are illegal, obsolete or missing. Changes are needed to correct misleading, unreliable or unresponsive charters.

## **Illegal Charter Provisions**

Charter provisions may be preempted by other law. No provision of any city or village charter shall conflict with or contravene the provisions of any general law of the state (MCL 117.36; 78.27). Other instances of illegality result when a court declares them so.

### **Obsolete Charter Provisions**

The mere passage of time contributes to charter obsolescence.

Provisions that once made sense in the history of a community may later be irrelevant or too restrictive. Certain dollar limitations for expenditures, titles of municipal officers and departments, and descriptions of functions are some of them. Archaic charter language, or charters dominated by male pronouns, also contribute to examples of obsolescence. One charter provision may be in conflict with another, leading to confusion of interpretation.

### **Omitted Charter Provisions**

Does the charter claim all powers allowed by law or does it unduly limit their exercise?

The HRCA and HRV provide in similar language that each city or village charter may provide “for the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers are expressly enumerated or not; for any act to advance the interests of the city or village, the good government and prosperity of the municipality and its inhabitants and to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state” (MCL 117.4j(3); 78.24(m)).

The HRVA permits a village to adopt as part of its charter any chapter, act or section of state statutes not inconsistent with the act, which relates to the powers or government of villages generally (MCL 78.25).

The HRCA and HRVA prescribe certain charter content. Essential provisions are mandated. Others are permissive. Still other provisions are prohibited, or are further restricted.

### **Room for Improvement**

With decades of experience under municipal home rule, generations of citizens have come to view home rule as deserving of the public trust, as reflected increasingly in modern charter language.

Does the community want or need more innovative charter provisions than presently exist? It is possible to guide local officials, officers and employees in their various functions by specific creative charter authorizations declared to be in the public interest. Examples are continual planning for change, providing continuing education at all levels of civic participation, improving intergovernmental relationships, employing alternative dispute resolution methods, conserving resources, both human and environmental, keeping the public informed of vital concerns, enhancing cultural qualities, and promoting ethical standards and behavior.

Examination of the local charter for practical use should also raise the following questions:

- I. Is it organized in logical sequence?
- II. Does it define key terms?
- III. Is the language clear and understandable?
- IV. Are provisions easy to locate when needed?
- V. Does it have an index?
- VI. Is it preceded by a meaningful preamble and historic statement?

### **To Revise or to Amend**

The two forms of legally authorized changes are by revision or amendment of the charter.

The home rule acts allow communities to make substantial or nominal changes in their charters by different routes. Charter revision implies re-examination of the entire document and that it may be recreated without obligation to maintain the form, scheme, or structure of the former charter. Amendment implies that the general plan and scope of the former will be maintained, with corrections to better accomplish its purpose. Revision suggests fundamental change, while amendment is a correction of detail, according to the Michigan Supreme Court.

A change in the form of government will require charter revision and not merely amendment. What constitutes such a change may require in-depth study. Legal advice should be sought if that question arises.

### **Charter Revision**

Revision of city charters may be initiated by a resolution adopted by 3/5 of the legislative body or by petition signed by at least five percent of the registered voters, unless the present charter provides otherwise. In any case, the decision to revise is for the electors to approve or reject. They must also select a nine member charter commission to revise the charter, none of whom may be an elected or appointed city officer or employee. Both matters may be voted upon at the same or separate elections. An advisory vote may also be taken on the question of a change in the form of government.

The initiation of a home rule village charter revision requires a 2/3 approval vote by the legislative body, or by electors' petition of at least 20 percent of the total vote cast for president (village) at the last preceding election, unless otherwise provided by charter. The village charter commission consists of five elected members.

The municipal legislative body determines the place of meeting, the compensation of charter commission members, and provides funds for expenses and ballots.

The city charter commission convenes on the second Tuesday after the election. The city clerk presides at the first meeting. The clerk administers oaths of office and acts as the clerk of the commission.

The village charter commission convenes within ten days after its election, and frames a charter within 60 days thereafter.

The city and village charter commissions assess the qualifications of their members, choose their officers, determine their rules of proceeding, keep a journal, and fill their vacancies. City charter commission members are compensated for attending a maximum of 90 meetings (one per day). A majority of city charter commission members constitute a quorum. Three or more village charter commission members are a quorum. Commission sessions are public.



It is generally advisable for a city charter commission to engage a legal consultant experienced in these matters as there are numerous legal issues at stake. The county prosecutor is required by statute to advise village charter commissions.

A proposed revised charter is submitted to the governor for approval. The attorney general reviews it and advises the governor regarding its legality. The governor signs the charter if approved; otherwise the charter is returned to the charter commission with a commentary of recommended corrections.

An approved proposed city charter is to be published in full as prescribed by the charter commission. The attorney general's position is that publication is to be in a newspaper in general circulation within the community, which is the statutorily required method of publication of village charters.

The adoption of the revised charter is for the electorate to decide by a simple majority of those voting on the question. Specific provisions for a city charter may also be decided as separate ballot propositions. The ballot questions are to be approved for clarity and impartiality by the attorney general. The ballot contains voting instructions and explains the effect of each proposal.

If a proposed city charter revision is rejected, the charter commission reconvenes and determines whether to take no further action or to proceed with a further revision. If no action is taken, the city charter commission ceases to exist. Proposed revised city charters may be submitted to electors by a charter commission three times within a three-year period. A new proposal to revise a charter may be voted upon at any time after termination of the charter commission.

A proposed revised village charter must be filed with the village clerk not less than 90 days before the election. A revision may be submitted to the electors only once in two years.

### **Charter Amendment**

Amendment of a city charter may be proposed by 3/5 of the members of the legislative body, or by an initiatory petition of electors. If proposed by the legislative body, the proposal is submitted to the electors at the next municipal or general state election, or

special election held in the city not less than 60 days after it is proposed. In the case of petitions, the election is to occur not less than 90 days following their filing.

A village charter amendment may be submitted to the electors by a 2/3 vote of the legislative body or petitioned for by not less than 20 percent of the number of electors voting for president at the last election.

The governor is presented with the proposed amendment of a city or village charter for approval, and signs it if approved. If not approved, it is returned to the legislative body with stated objections for reconsideration. If 2/3 of the members agree to pass it, it is submitted to the electors. If the amendment was initiated by petition, it is submitted to electors notwithstanding the objections.

An amendment to a village charter is submitted to electors at the next general or special election. An amendment originated by the legislative body is published and remains on the table for 30 days before action on it is taken. The form of a proposed amendment to appear on the ballot is determined by resolution of the legislative body, unless provided for in the initiatory petition. Publication is made in a newspaper published or circulating in the village at least once, not less than two weeks, nor more than four weeks before the election.

Proposed amendments are to be published in full with existing charter provisions to be altered or abrogated by them. The purpose of a city charter amendment is designated on the ballot in not more than 100 words, exclusive of caption. The statement of purpose must be true and impartial so as to create no prejudice for or against the amendment. The attorney general examines it for compliance before its printing. The amendment is conspicuously posted in full in each polling place. The form of the proposed amendment is determined by resolution of the legislative body unless provided for in the initiatory petition. In the latter case the legislative body may add an explanatory caption.

A proposed amendment is confined to one subject. If a subject embraces more than one related proposition, each of them must be separately stated to allow an elector to vote for or against each proposition.

A majority vote of electors voting on the question is required to pass an amendment.

A failed proposed amendment to a city charter may not be resubmitted for two years.

### **Legal References**

The sections of the Home Rule City Act that directly relate to charter revision are 18, 19, 20, 22, 23, 24, 26, and 28. Those that govern amendment are 21, 22, 23, 24, 25, 26, and 28. The corresponding sections of the Home Rule Village Act are 14, 15, 18, 19, 20, 21, and 26 for revision and 17, 18, 19, 20, and 21 for amendment.

The remaining provisions of each of the acts, respectively, must be referred to in considering changes to a city or village charter. Certain features of each municipal charter are mandatory and are not subject to exclusion. Others as noted above are permissive or restrictive and deliberate consideration is to be given to them. Constitutional provisions and a host of statutory laws also bear upon what may appear in charters, and to what extent and content.

Courts have interpreted the validity of various charter provisions and the statutes that dictate their use. The Michigan attorney general has also rendered opinions, when requested, for guidance in areas of specific legal concern.

All sources of law that bear upon charter issues need to be consulted in any effort to reform charters, to achieve the desired benefit to the communities served by them.

### **Charter Revision Strategies**

To do justice to the charter revision process, it is well to project an 18-month time frame after the election of the charter commission in order to complete the task. Each commission will set its own pace. It should meet regularly and assign a chapter of the charter at a time to be considered at a subsequent meeting or meetings. The review of each provision should be by all members so that each participant has a grasp of the issues involved. The entire charter document is subject to revision and improvement. Officeholders are to be consulted for views regarding the effect of current charter provisions upon their duties and performances.

It is well for the commission members to wrestle with and to dispose of the most volatile issues first and to resolve them expeditiously and to then close ranks. The charter commission must present to the public a unified approach and avoid divisions caused by single or limited issue positions, which tend to discourage voters and lead to defeat of the product of countless hours of study, debate and drafting. It is also well to have one

person draft all segments of the document, to preserve continuity of style and form. Until the commission approves a final version, each draft should be regarded as tentative to allow the entire work product to evolve into a cohesive whole.

The election cycle is a foremost consideration in the timing of charter submission to the electorate. To achieve timely completion of the charter is to also allow sufficient opportunity for review by the attorney general on behalf of the governor. It is prudent and a courtesy to those offices to request their optimum timing in advance. The review of total charter language is given expert, in-depth analysis by the highly experienced assistant attorney general in charge of that service. The reviewer may need to refer various articles of the charter to other state agencies for inspection. Further consideration must be given to the prospect that added time will be needed for adjustment if objections are raised.

Revised charters and amended charter provisions approved by the electorate with the vote for and against are filed in duplicate with the county clerk and the secretary of state, within 30 days after the vote is taken. They become effective upon filing, unless a different effective date is specified in the document, in the case of a city charter.

### **Conclusion**

The service performed for the community by the members of a charter commission is immeasurable and has its own reward. It is a significant honor to participate in the creation of the document that most directly affects the quality of local government and the well-being of its citizens.

# So You Want a New Charter

by Arthur W. Bromage, Professor of Political Science, University of Michigan

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Among the states of the Union, some 25 of them have home rule constitutional provisions which permit local drafting and adopting of city charters.<sup>1</sup> Under these circumstances, the community becomes the tailor shop to design, cut and adapt a charter for the local body politic. Fitting a charter to a particular city or village is often the task of locally elected charter commissioners, aided and advised by citizens, consultants, lawyers and, last but not least, interest groups.

If as a citizen you are involved in such a process, various arguments, concepts, and counter-views will be thrown at you. Unless you use some frame of reference to sort out the propositions, you may well be confused. What I have to say herein, won't be the last word, but is designed to be a series of first words as you approach the task.

## As to Form

Can you approach the question of form of government for your community with an open mind? You may be urged to write a strong-mayor or a council-manager charter. Both sides will want to sell you on the inherent values of one system or the other. You will have to listen patiently to many arguments which overstate the case. Listen patiently, but remember that no system has built-in operating features which will prove out in every city or village. You must estimate how the political dynamics of any plan are likely to work out in *your* specific city or village.

The key to the strong-mayor system is a directly elected mayor with responsibility for leadership in community programs and for supervision of administrators. The council is predominately a legislative body without direct authority over administrators.

The mayoral system is sometimes defined as either weak-mayor, strong-mayor, or strong-mayor-administrator. The weak-mayor plan developed early in the nineteenth century. Under this concept councils confirmed mayoral appointment of administrators and often exerted some supervision over administrators through council committees. As mayors developed sole responsibility under charters to appoint and remove department heads and to exert an influence over policy through the executive budget, they became

known as strong mayors. In this century, the development of chief administrative officers to assist strong mayors led to the strong-mayor-administrator scheme.

Proponents of the strong-mayor plan (with or without a general administrator under the mayor) often argue that this is more apt to produce dynamic political leadership in cities of more than 500,000 population or in lesser sized cities. The theory is that the elected, independent mayor leads in policy and controls the administrative bureaucracy.

Philadelphia is one city where a managing director assists the mayor in supervising a large number of operating departments. New Orleans is another example, because a chief administrative officer serves under the mayor.

To the contrary, the council-manager plan provides topside for a political, collegial responsibility with the mayor within the council. Most charters accord to the mayor under this system a role as presiding officer, a first among equals. The general manager is responsible to the council, and administrators of city departments are subordinate to the manager. For larger cities the issue is whether this kind of pluralism at the top is satisfactory in terms of political leadership.

To avoid fuzziness in charter drafting, a charter commission should devote its initial work to a firm decision on the form of government to be used. Without such a decision on the part of the charter commission, it is virtually impossible for a consultant to advise or a lawyer to draft the provisions as a city council and the working executive.

To illustrate the problem, let us assume that the charter commission makes a preliminary decision to prepare a council-manager charter. Many important collateral decisions follow. First among these is the scheme of political representation which has many facets: size of council, methods of nomination and election, terms of councilmen, salary or honorarium. Second is the question of how the mayor is to be selected whether by direct election, selection by his colleagues, or some other process and his role as chairman of the council. Third comes the city manager where models and actual charters have established well-known norms as to his duties and responsibilities. Fourth is the necessity of spelling out clearly the powers and procedures of the city council as a decision-making body with power to appoint and remove the manager. In a fifth phase come thorny problems as to how much detail a charter should contain as to departmental organization, fiscal agencies, personnel administration, planning and line departments, such as police, fire, public works, and public utilities.

If in the course of drafting a council-manager charter, the charter commission reverses its initial decision and orders a strong-mayor draft, months of effort will be wasted. The job then becomes one of junking much of what has been done, and in effect, starting all over again. The design of the council and of the working executives are so different under the two systems that the basic concepts and drafts as to council-manager simply will not fit the strong-mayor form.

### **Council-Manager Concepts**

The nub of the council-manager plan lies in the small council, serving as a collegial body. The mayor, whether selected by his colleagues or elected separately, serves as the chairman of the group. His role is one of political leadership rather than executive power. Council-manager cities over 5,000 divide rather evenly between those selecting the mayor by and from the council and those directly electing the mayor. A few city charters provide that the individual receiving the highest number of votes in the council election becomes the mayor.

A small council of five, seven, or nine is common practice for council-manager systems. Seven is an adequate number and overlapping tenure has merit, especially in association with a four-year term. One possible way to assure the election of a majority of councilmen every two years is popularly known as "low man on the totem pole." Of the four council members elected, the one with the smallest number of votes gets only a two-year term, rather than the standard one of four.

The emphasis, in my view, can well be placed on the election of council members at large. For many cities the nonpartisan ballot has also proved workable. If it is necessary to introduce a district system of election, consideration of alternatives such as election of some by districts and others at large is then in order.

The targets in composition of the council are nomination and election at large, nonpartisan ballot, overlapping tenure, four-year terms except for the low man on the totem pole, seven councilmen and keeping the mayor, however selected, as chairman of the council.

The management doctrine as to managerial duties is more settled than the political issues of electing councils and selecting mayors. Charters give evidence of similarity in

defining executive management but diversity in schemes of political representation. However structured, a council becomes a forum for formal decision making and takes the responsibility for appointing and removing managers.

Policy and management tend to run together in practice no matter how defined in theory or allocated by charter chapters. The duties of managers are perceived in terms of general supervision of the administration and of the enforcement of laws and ordinances. A key responsibility which inevitably brings managers into policy is the preparation of the annual budget and annual capital improvement program for council action. In administrative management, the source of managerial power is the capacity to appoint and remove department heads and other key subordinates. Liaison with the council involves regular reports on city operations and financial conditions, an annual report, and attendance at council meetings with authority to speak. Finally, managers are usually vested with responsibility to carry out all other duties specified by charter or prescribed by council. Most of these managerial powers and responsibilities are customarily incorporated in charter language.

No charter can define precisely the intricate teamwork which must exist between a manager and council in order to promote good practice in policy making and administration. However, precision in spelling out the office of manager will clarify the key administrator's responsibility over administration and suggest his potential role in policy making.

A charter must give a manager supporting arms for the executive tasks to be performed. He needs a well defined and integrated finance department to deal with budget preparation, accounting and pre-auditing, treasury management and property tax assessments. Either through a division within the finance department or a separate unit under his control, the manager will carry out the purchasing function. There is much to be said for bringing the city's law department under managerial control. Personnel administration is another key facet of management. The personnel officer likewise is logically part of the management team, although there may well be an advisory personnel board in a semi-independent status. For the bulk of employees a merit system is properly spelled out in general terms in the charter. Even the planning director in modern management concept must be closely related to the manager rather than



responsible to a semi-autonomous planning commission. Managers have developed as a profession and their organization is the International City Managers' Association.<sup>2</sup>

### **Strong-Mayor Concepts**

For a variety of reasons, some charter commissions conclude that the council-manager system is not the best choice for their city. Since the weak-mayor plan and government by commission are rarely recommended today, the alternative is most likely to be strong-mayor. A decision in favor of a strong-mayor charter brings into play another series of concepts.

The directly elected strong mayor is designed to lead in policy and to be responsible for executive supervision over departments. In many respects he performs a role similar to managers in policy formulation and control over the administrative mechanism. But, as a direct representative of the voters, he is usually free to disagree sharply with the city council, to veto ordinances and resolutions, and to hold himself responsible directly to the voters for the adequacy of administrative operations. In other words, he is a servant of the people, not of the council, and possesses with the council a co-equal mandate from the voters.

There is more to this system than the office of strong-mayor. The charter commission must have some reasonable estimate that candidates will be available in the community, either on a partisan or nonpartisan basis, to devote full time energies to the job of being a strong mayor. The mayor's salary should be geared to a full-time position, unless the commission decides to create a post of chief administrative officer under the mayor. The CAO will then be a full-time officer whose principal duty will be that of assisting the mayor in administrative management of city departments. He may also aid the mayor with the executive budget and formulation of overall policy to be presented to council.

Under the strong-mayor or strong-mayor-administrator plan, many of the executive duties assigned to city managers are properly centered in the mayor's office. They may be exercised by the mayor alone or by the mayor assisted by a CAO. Since in other than great cities it is sometimes difficult to get candidates for a full-time mayoral office, much can be said for creating a CAO in conjunction with a strong mayor.<sup>3</sup>

Once a charter commission has decided for a strong-mayor system, the council can be more freely designed than under the council-manager plan. The latter calls for the council to be a small "board of directors." But the strong-mayor system can presumably use a larger council with many variations in systems of nomination and election. This is not to say that any old kind of design can be used for the council under the strong-mayor system. But size, system of election, whether at large or by districts, type of ballot, and other features do not have to conform to a small group of directors. However designed, the council will be matched by a powerful directly elected executive who will hold direct powers in the areas of policy and administrative operations. The council will no longer be the sole mechanism for policy and leadership.

No one can do more than advise a charter commission whether the strong-mayor or council-manager system is to be preferred in a given community. The ultimate decision properly belongs to the charter commissioners.

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- 1 Authorities by no means agree on a list of home rule states. My preference is for a basic list of twenty-five constitutional home rule states: Alaska, Arizona, California, Colorado, Hawaii, Louisiana, Kansas, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, West Virginia and Wisconsin.

This does not tell the whole story. Nevada has never passed any implementing legislation. On the other hand, Connecticut without specific constitutional language has had a viable legislative home rule system since 1957. New Jersey is sometimes cited as a home rule state, because of its optional laws (alternative forms and sub-options) which permit local discretion in adaptation. Although Virginia is primarily an optional charter state, statutory procedures permit a local commission to prepare a draft charter, obtain local approval, and then request legislative enactment. Under limited constitutional language (1945) Georgia permitted a form of home rule in 1951. But the State Supreme court invalidated the legislation in 1953. A new constitutional provision pertaining to "local self-government" was ratified in 1954, but has not been implemented. All this helps to explain the variations in the many lists of constitutional home rule states.

- 2 Information about the council-manager plan can be obtained from the International City Managers' Association, 777 N. Capitol St. NE, Washington, DC. The Model City Charter, is a council-manager charter. This is published by the National Civic League, 1445 Market St. Suite 300, Denver, Colorado 80202-1717, and is not in its 8<sup>th</sup> edition (2003). It provides alternative methods for the selection of councils and mayors under the council-manager system, defines managerial powers, and articulates the administrative system under the manager.
- 3 There is no model strong-mayor administrator charter comparable to the Model City Charter (council-manager). The 6<sup>th</sup> edition of the Model City Charter, pp. 73ff., briefly sets forth the principles of the mayor-CAO plan. The origin of the strong-mayor-administrator system is usually dated by the San Francisco charter of 1931. More recent illustrative models from the 1950's are: Los Angeles, Newark, New York, New Orleans, and Philadelphia. By way of caution, the CAO system is only a general term, and each city vests differing powers and duties in the CAO. For example, New Orleans has a CAO (under the Mayor) who spans most of the administrative mechanism; Philadelphia uses a "managing director" to supervise the line (operating) departments; and Newark employs a business administrator with formal powers as to budget personnel, and purchasing.

# **The Nature and Purpose of a Home Rule Charter**

by David Morris, Attorney, Kalamazoo, Michigan, March 1971

Revised and Updated by William L. Steude, General Counsel, Michigan Municipal League and Daniel C. Matson, City Attorney, DeWitt, Michigan

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## **Preface**

The original paper, "The Nature and Purpose of a Home Rule Charter," was prepared in 1971 by David Morris, Attorney, Kalamazoo, Michigan. This paper was updated and revised by William L. Steude, former General Counsel, Michigan Municipal League, and by Daniel C. Matson, City Attorney, DeWitt, Michigan and past president of the Michigan Association of Municipal Attorneys. A four-page staff summary of this paper (Report No. 310-03) was released in July 1993 by the Citizens Research Council as part of the Detroit City Charter Revision series.

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## **Introduction**

It is usually a novel experience for everyone when a new elected charter commission first convenes to prepare a charter for a home rule city. Elected at-large from a nonpartisan ballot, many have had no experience at all with the conduct of city governments while others may have touched limited aspects of city functions.

The challenge interests a broad cross-section of the entire citizenry, especially the news media, chambers of commerce, labor unions, women's groups, and students. Their ideas and attitudes influence the drafting process as well as the final vote adopting or rejecting the charter.

It's a large order: framing a charter designed to provide the mechanism for accomplishing the myriad tasks assigned to city officials to govern the community; deciding what governmental structure will exercise those powers; and, determining how the mechanism can be kept both responsible and responsive to the citizens it is to serve. Home rule gives the citizenry the right to form its own city government, and the opportunity to innovate and invent in a search for the best. The citizenry frames its own local government.

Comprehending in depth the assigned duties of cities staggers the mind. There are the vital functions of the clerk and election officials, the treasurer, assessor, accountant, auditor, purchasing agent and personnel director. Cities are expected to serve the needs of their citizens in many diverse but traditional ways: fire protection, police services, environmental protection, street and sidewalk construction and maintenance, storm water drainage and clean up, sewage collection and treatment, water supply parks, recreation facilities and programs, cemeteries, street lighting, bus and subway transportation, airports, distribution of electricity and gas, bridges and tunnels, freeways. You name it.

Cities are expected to provide increasingly effective social and regulatory services, frequently touching the lives of many of its individual citizens: zoning, planning, law enforcement, non-discrimination against minorities, housing, health and welfare, traffic engineering, emergency preparedness, housing and building codes, waste disposal and incineration, to start the list.

The city is being pressed into leadership in solving a broad spectrum of social problems, such as serving the needs of the under-privileged of all ages, races and conditions, fostering job opportunities, combating drug abuse, accommodating protest groups of every type, assuring fair housing and nondiscrimination practices, solving complex pollution and environmental problems, and so on almost endlessly.

And, as emphasized by the writers of the *Model City Charter*, (Seventh Edition, 1989, page xxv, Copyrighted, 1989, National Civic League. Used with permission.) another problem of overriding importance is how the city fits into the general framework of government: "Few if any functions of government today are the absolute preserve of a city. Aspects of virtually all functions are distributed among all levels of government and frequently among several local units. . . Charter commissions must look beyond the legal and geographical jurisdiction of the municipality. The effectiveness of local political leadership may well be judged ultimately by its capacity to mesh municipal programs with those of other jurisdictions."

It's a large order: to formulate this mechanism, and an ever larger one to participate in its execution once it's adopted! The charter commissioners will have to determine which of the available municipal powers will be given to their officials, what structure and form will best cope with the traditional, as well as the new and future needs of the community, provide a workable relationship with other governments, and especially respond to the wishes and encourage the involvement of all the citizens. As it writes, the commission will want to promote citizen understanding of the objectives in anticipation of their duty to ratify or reject the finished document by their votes.

### **History**

The word "charter" has a long history, including the Great Charter, or Magna Carta, of 1215, through the charters given the English colonies in America and the trading companies. It would serve no useful purpose for the present paper to examine this interesting history.

Suffice it to say that a city charter is a basic law formulating the government for a city that, within the limitations of the state constitution and legislative enactments, establishes the framework of government, defines powers and duties, and identifies the rights and responsibilities of a city in fulfilling the needs of its citizens.

During the nineteenth century city charters took the form of general or special acts dictated from a distant legislature. These charters fixed the forms of city government and granted only such powers to local bodies as were expressly enumerated therein or necessarily implied. This is sometimes known as “Judge Dillon’s rule” and contemplated that the city was a mere political subdivision of the state and, regardless of the city’s needs, it could exercise only such powers as were expressly granted.

At the start of the twentieth century great economic changes were bringing even greater social changes. Together these placed new and heavy burdens on the cities. Large numbers of the rural population moved into the cities at the very time great waves of immigrants arrived. Cities experienced great growth and a great need for many new services, but with populations still inexperienced in complex governmental forms. As the industrial-economic-social revolution roared on, it is no wonder that governmental conditions in cities became chaotic. Bossism, patronage, spoils, the ward heelers – they all appeared to be commonplace necessary evils. Even graft was common, and largely unchecked. “You can’t beat city hall” was more than a cute saying. It was a brutal fact.

### **Home Rule**

Thus was the stage set for municipal reform and the concept of “home rule” for cities came to flower. It was reasoned that the vices of the past might be corrected or reduced if the local populace could frame its own charter, determine how best to secure representation on the city council, provide its own means for selecting the mayor and the administrators of the city activities, define the powers that might be exercised, adopt nonpartisan at-large elections if it wished, and establish its own accounting and auditing controls. There would be no harm in trying.

Reform groups took up the fight. All about them they saw the industrial revolution going on apace. With all its faults, it was getting the job done it was assigned to do: produce the goods, make the profit. Its major tool was the corporation, with its widespread stockholders, its board of directors, its efficient and imaginative president, and its talented staff and organization. No two corporations were exactly alike. Their boards differed in number and composition, as well as frequency of meetings. Some had only one place of business, others had many. Some were large, some small. Some had many officers, others but few. The corporation was a flexible tool for accomplishing an endless variety of complex objectives.



Perhaps it might also do the job for cities and other local governments. You would start with a charter, like a set of by-laws, tailored to local desires and needs. The council could be like a board of directors: policy-makers, legislators. The mayor or manager could be like a president: a professional administrator. All sorts of checks and balances could be introduced. Management would be somewhat removed from the politics of ownership, but it would have to be responsive – through direction of a board.

The principle of municipal home rule was apparently first enumerated in the constitution of Missouri in 1875. It quickly spread to other states.

The Michigan Constitution of 1908 included the following language:

Article VIII, Section 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state.

This provision was hailed as a major accomplishment by establishing “home rule” for cities and villages in Michigan. In the “Address to the People,” prepared by the Constitutional Convention of 1907, the following appears:

The purpose is to invest the legislature with power to enact into law such broad general principles relative to organization and administration as are or may be common to all cities and all villages, each city being left to frame, adopt and amend those charter provisions which have reference to their local concerns. The most prominent reasons offered for this change are that each municipality is the best judge of its local needs and the best able to provide for its local necessities; that inasmuch as special charters and their amendments are now of local origin, the state legislature will become much more efficient and its terms much shorter if the labor of passing upon the great mass of detail incident to municipal affairs is taken from that body and given into the hands of the people primarily interested.

After approval of the constitution by the voters, the legislature adopted Act 279 of 1909, the well-known Home Rule Cities Act (along with one for villages), to enable the citizens of Michigan cities to frame, adopt, and amend their own charters within the extensive ground rules established by that act. It later added a declaration approving the essence of home rule:

Each city may in its charter provide for the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city the good government and prosperity of the municipality and its inhabitants, and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state. MCL 117.4j, MSA 5.2083(3).

The courts appeared to drop the Dillon rule which held a city to be a political subdivision with restricted enumerated powers. Early cases declared that since the purpose of the home rule act was to give cities a large measure of home rule, it should be construed liberally, and in the home rule spirit.

In one case, the Supreme Court of Michigan declared that a city with a home rule charter might enact and put into its charter any provision limited to purely municipal governments which it might deem proper, so long as such provision did not run contrary to the constitution or any general statute. In 1912 the Michigan Supreme Court declared:

The framers of the constitution (of 1908), in departing from the old order of things and providing for what is popularly known as 'home rule' or 'freeholder's charters', thereby granting autonomy to municipalities, did not deem it wise to make the constitutional provision on the subject self-executing, but required a preliminary, general law to be passed, outlining and defining the course to be followed, within certain limits, delineating the sphere of municipal action in comprehensive terms. The new system is one of general grant of rights and powers, subject only to certain enumerated restrictions, instead of the former method of only granting enumerated rights and powers definitely specified. We must assume the

act was passed with that intent and construe it accordingly. (Gallup v  
Saginaw, 170 Mich 195, 199)

The court noted that the constitution granted authority to cities to pass all laws relating to its municipal concerns. The legislature was mandated to “abdicate its unlimited power to interfere in strictly local affairs” and to prescribe a sphere of municipal action, in local legislation and management, into which it should not intrude.

The Michigan Constitution of 1963 adopted much of the home rule provision of the 1908 constitution verbatim and then added the following language: “No enumeration of powers granted to . . . cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.” It then added frosting to the cake for home rule advocates with this language: “The provisions of this constitution and laws concerning counties, townships, cities and villages shall be liberally construed in their favor.”

### **Erosion of the Home Rule Principle**

A word of caution must be inserted at this point. There have been unfortunate reversions to the limitations of Dillon’s rule through the years. There have been occasional references in court decisions to “mere political subdivisions” with only such powers as the state has granted. The greatest erosion to the home rule concept, however, has come from the legislature. Over the years the legislature has superimposed state requirements over such subjects as governing public meetings, public access to public records, conflicts of interest by public officials, political rights of public employees, mandatory collective bargaining and compulsory arbitration of police and fire labor disputes, and thereby has entirely or substantially preempted local home rule authority in those areas. In other areas, such as the power to borrow money, conduct elections and maintain roads, local authority has been subjected to rigid state standards.

Every year the erosion grows as bills are introduced which would diminish home rule discretion by prohibiting what a city might otherwise opt to permit, or by permitting what a city might otherwise wish to prohibit. Examples are the local regulation of firearms, the regulation of home occupations, the location of child day care facilities, adult foster care and group homes, the regulation of mobile home parks and mobile homes, the prohibition of local residency restrictions on police, fire, and other public employees.

Major state restrictions on local taxing and spending power have been legislated or imposed by the statewide electorate: uniform budgeting, accounting, auditing requirements and procedures, exemptions from, and limitations on the property tax, and suspension of the broad home rule excise taxing power.

The home rule concept has to be jealously guarded, exercised, and nurtured with devotion if it is to remain healthy and meaningful.

Home rule cities themselves have been partly responsible for this erosion of home rule principles. When in doubt about a given power, like “boulevard lighting,” they have run to the legislature for an amendment spelling it out, thus dodging possible litigation. The incorporation and annexation provisions have been amended so often as to render them confusing and complex. Many other statutes are expressly limited to “cities over one million population,” solely to grant some power to Detroit, and thus infer that it is not extended to others. Many of these laws also supersede charter provisions, thus avoiding the necessity of selling a local charter amendment to the local electorate.

Home rule depends upon legislative and local restraint and municipal resistance to the power of the legislature to delimit home rule by general law.

Unfunded state and federal mandates have become major forces eroding home rule. These are statutes and administrative regulations that impose un-reimbursed costs upon local budgets to comply with judicially enforceable deadlines, standards, and expenditures. Mandates account for major cost increases in personnel and public services like water, sewer, and solid waste disposal arising from federal and state environmental laws, regulations, and orders. Cities might be able to cope with any single mandate one at a time. But their cumulative cost is preempting and diminishing resources, distorting local spending priorities, and having a significant impact upon local government energy, time, morale, and on the local property tax base.

### **Home Rule Act Reviewed**

Essentially, home rule is the right of the people of the city to set up and change their own governmental structure. This is done through a written charter framed by an elected charter commission and adopted by the people by referendum. The Home Rule Act fixes the procedures and establishes the ground rules within which charters are developed.

The oft-amended act then proceeds to establish long lists of mandatory, permissive, and prohibited powers and functions.

The act makes it mandatory that each city be a body corporate, have a legislative body, a mayor and a clerk, treasurer, assessor, and board of review. The legislative body may be elected at-large, by ward, or a combination of the two. The mayor may be selected by the people or by the legislative body. Other officials of the city may be elected or be appointed by the mayor, manager, or council as provided in the charter. Elections may be partisan or nonpartisan and nominations may be provided by primary election, petition or convention. The charter shall spell out the qualifications, duties and compensation of the officers of the city. A tax limitation as high as \$20 per thousand of state equalized valuation (20 mills) may be provided. Provisions must be made for the taxing procedure and for the protection of the public peace, health and safety of persons and properties. Ordinance adoption procedure must be established. All sessions of the legislative body and all records of the municipality are subject to public meeting and public records requirements. A journal shall be kept in the English language and a uniform system of accounts must be established.

The permissive charter provisions are quite extensive. They include the power to borrow money; provide for streets, sewers and water works, lighting and utilities; assessing the cost of public improvements; public buildings; condemnation; and many other municipal activities such as zoning; regulation of trades, gas stations and billboards; initiative, referendum, and recall; civil service; rapid transit systems; city departments, and municipal powers.

The prohibited powers are then discussed in the Home Rule Act. No city may exceed the tax limits established by law or the charter, call more than two special elections a year, sell certain land or issue certain bonds except by a vote of the people, or repudiate any of its debts. There are also other limitations.

Complex and "abstruse" provisions establish the ground rules of incorporating, consolidating and annexing by cities, detaching therefrom or vacating an incorporation. The State Boundary Commission, under other legislation, governs new incorporations, annexations, and consolidations.

Other sections of the Home Rule Act relate to the activities of a charter commission and the adoption or amendment of the charter, initiative petitions, reapportionment, the powers of police officers, and the acquisition of property.

### **The Nature of a Home Rule Charter**

As we have seen, the city charter, adopted by the people themselves, constitutes the fundamental law for the city until amended or replaced. It must cover all of the mandatory requirements with express provisions. It should cover the permissive powers desired either expressly or by necessary inference. It should be written with clarity and precision. Nothing is more frustrating than to find, several years after a charter has been adopted that it contains inconsistent provisions, unworkable procedures, or fuzzy language.

Particularly the functions and responsibilities of the leading officials should be delineated with care, so that they will be known to the officials and citizens alike, and responsibilities can be fixed. Every official carrying responsibility should be given adequate power to fulfill the expectation of the citizenry with regard to that responsibility. Power must match duty at every juncture in the performance of municipal functions.

Mere language may not prevent, but it can reduce the probability of the spectacle of leading local officials heading on collision courses or being at cross-purposes with each other. If they do, the blame is easier to identify and isolate.

The charter will have to establish, first, the basic form of government which the city shall have. The duties of the legislative body, mayor, and of the chief administrative officer or manager, if those positions are provided for in the charter, will have to be defined. Basic questions cluster around issues of how to structure the governing body: Will elections be conducted at-large or by districts or wards? Will they be partisan or nonpartisan? Will nominations be by petition, primary or conventions? How long will the terms be and will they be staggered? Will terms of office be limited? How many on the council? What will be the procedure for adopting ordinances and when will they take effect?

Most Michigan charters contain at least ten or twelve chapters covering the following subjects: Incorporation and powers, elections, the legislative body, legislation, administration, general finances, budgets and contracts, taxation, special assessments,

borrowing, utilities, miscellaneous provisions, and a transition schedule. There may be other chapters especially addressed to matters of prime local concern which it is desired to install permanently in the charter rather than leaving to ordinance or contract treatment, such as: a hospital, museum, art center, library, pension system, civil service, electric or water distribution facility, transportation system, and so on.

### **Charter Commission Procedures**

The elected charter commission, of course, constitutes the vehicle by which the people undertake the writing of a document for the permanent provision of their own local government. Its membership is of obvious significance. As the session gets down to business, it may be found that the voters have already assisted in writing the charter by selecting members of similar views. If so, difficult issues will already be settled, such as the form of government to be selected, the elections provisions, the extent of powers, and so on.

Here, too, is an opportunity for the people, singly and in groups, to make their views known to a body which can do something about them. While the commissioners exchange their own beliefs, the voters can advance their ideas, orally or in writing, to all or some of the commissioners. In this way, the process of charter writing can become excitingly responsive.

One possible alternative should not be overlooked: The charter amendment process. The basic problems experienced by a municipality may prove to be in one or more areas of consideration which can be corrected logically by one or two charter amendments. It is far simpler, particularly if the city council is agreeable, to submit one or more amendments for consideration by the electorate and it is less expensive. A three-fifths vote of council members-elect on an amendment resolution will place such a question on the ballot; otherwise a petition signed by five percent of the registered voters may propose an amendment.

### **Form of Government**

Of the several forms of city government which have been devised in times past, it appears clear now that two basic forms are being considered for a city, irrespective of size: the strong mayor and the council-manager forms of municipal government. We will

not burden this paper with a discussion of other forms which have largely disappeared, such as the weak mayor and commissioner types of government.

### **Strong Mayor**

The strong mayor system of local government contemplates the direct at-large election of a mayor with responsibility for political, policy, and administrative leadership. In its pure form, the council will be largely a law-making body with its major continuing influence over administration limited to the budget adopting process. Since election procedures cannot assure and seldom produce a mayor with all of the remarkable qualities required by this form of local government, the charter frequently empowers the mayor to appoint a chief administrative officer or business manager to administer day-to-day operations of the city government and supervise its various departments. A strong mayor is usually given the power to appoint department heads without council confirmation, prepare the budget for submission to the council, and provide policy leadership generally. The mayor is usually given veto power over council ordinances and sometimes other action, but the council may override the veto by a special majority.

Such a mayor will have the power base of an at-large election from the entire community, which at least equals the power base of anyone on the council. The mayor's office will be the focal point for promotions and protests by interest groups and the complaints by individual citizens alike.

Among the advantages cited by proponents of this form are the strong political leadership it provides, the efficiency of centralized power, and the responsiveness of the mayor to the public will. Among the disadvantages are the dangers inherent in one-person rule, leading to bossism, patronage, spoils and other classic evils, the fact that a strong mayor is not necessarily an efficient administrator, and the heavy burden it places upon a single individual. Most cities in the United States over about 500,000 appear to favor the strong mayor form of government in one or another of its many variations.

### **Council-Manager**

In the council-manager form of government, the council plays a much more prominent role. It is not only the law-making body, but it is also the focal point for policy-making and political leadership. It is the forum in which these needs are provided. In its pure form,



the role of the mayor is greatly reduced. The mayor is selected by the council itself, "one among equals," having a voice and a vote, but no veto, and acting as chair of the council and executive head of the city government for ceremonial purposes. The mayor may or may not be given the power to appoint the manager, and the city boards and committees, usually subject to confirmation of the council. Administration of council policies and budgets will be left to the care of a qualified, professional city manager with experience and expertise in municipal administration. The manager will select and may dismiss, with or without council approval, the department heads and other important officers of the city administration so that they will report and be responsible (and responsive) to the manager. The professional manager will carefully avoid over-participating in political issues, but will share a partnership role with the council as far as basic policy-making is concerned. The charter will usually contain express limitation on interference by council members or the mayor with any administrative function under the manager's supervision.

While the strong mayor will probably be compensated on a full-time, full-energy basis, the mayor and council in a manager city will probably receive no more than nominal compensation. The advantages of the council-manager form cited by its proponents include the claim that the job gets done in an efficient businesslike manner, political influence on employees and programs is reduced, and professionalism encourages services and improvements on a need rather than a political basis. The disadvantages cited by opponents are: the manager is not necessarily responsive to the public desires, and political leadership is discouraged and dispersed.

### **Hybrids**

There are many options open to a charter commission, even though it may seem that the restrictions imposed on local government by legislation in the Home Rule Cities Act and other statutes are maddeningly needless and frustrating. One of these options, of course, is the opportunity to attempt to "blend the best of both" the above forms of government.

However, this almost always proves to be a difficult task. Invariably the lines of authority become confused and fuzzy, and opportunities multiply to cross over from policy to administrative activities or the reverse. Even in a council-manager form of government, no mayor is really "weak," but frequently devotes substantial time to the activities of the

office, even though the compensation is nominal. Such mayors must be astute and well grounded in the distinctions of the two offices to avoid interfering with the management prerogatives vested in a city manager.

Likewise, a strong mayor who does not have the special qualities required of such an officer may leave a void which invites participation and leadership on the part of the council members or department heads whose stature and influence are well established. Thus, this is one of the areas in which any mixing of the two lines of responsibility and authority must be most carefully delineated, if attempted at all.

It has been generally understood that cities are not fettered by the separation of powers doctrine. That doctrine, as expressed by the 1963 Michigan Constitution, divides the powers of government into legislative, executive, and judicial branches and prohibits the exercise by one branch of the powers belonging to another branch. The doctrine is an inherent part of the state and national governments and is intended as a constitutional set of checks and balances on the states and federal government as sovereign powers. Local units of government are not sovereign, but creatures of state government, and, as such, subject to other constitutional and statutory limitations on local government power. It would seem that the separation of powers is not essential at the local level, unless the local electorate chooses to adopt a charter with some such provision. The council-manager form of government implicitly recognizes this difference by subordinating the appointing executive to the appointing legislative body.

### **The Question of City Power**

There are two very real alternative approaches to charter drafting: whether the people and their charter commission wish to consider the charter in the light of a grant of powers to the city governments or in the light of a limitation on powers of the city government.

These two concepts may be employed generally throughout the charter or in specific areas of concern. The powers it may exercise may be listed in detail, suggesting that all other powers are denied, as will be discussed later. Or a specific area may be isolated for restricted treatment, such as taxation, special assessments, borrowing, initiative and referendum and so on. Thus, any particular power or powers may be made easy to exercise or difficult to exercise. Checks and balances may be kept to a minimum or may

be extensively used in many different proceedings. A vote of the people may be required before significant projects are undertaken, or such decisions may be left to the mayor or council.

For charter purposes, of course, power and its exercise is an enduring thing. Many officials of varying talents and dedications will hold the various offices throughout the probable history of a given charter. And conditions will surely change in significant ways during that period. The racial balance of a community, its economic conditions, the average age of its citizens, their educational level, and the land use of large areas will probably go through many changes. While some citizens will feel that powers should be granted to cope with these unknowns, others will feel powers should be limited to prevent possible abuses through the years.

### **Defining the Scope of Powers**

In defining the powers of both the city at-large and the individuals within the structure, the charter commission will have to consider one of the most complicated and unsettled issues confronting such commissions in Michigan at the present time. This is the principle that "inclusio unius est exclusio alterius," namely, the inclusion of one is the exclusion of others.

Some charters contain numerous recitations of specific powers which shall be exercised by the mayors, councils and managers involved, pursuant to a revived Dillon rule concept. Thus, it is inferred that activities not listed are intentionally "excluded" or prohibited. Other charters rely upon a general home rule statement to the effect that the city is vested with and may exercise any and all powers which cities now or may hereafter be required or permitted to exercise or to provide for in their charters as fully and completely as though said powers were specifically enumerated therein.

Through the years, the Michigan Supreme Court has established a reasonably good record of supporting the home rule concept in spite of a few deflections in which Judge Dillon's rule has been recited with approval. The main line of comments from the court has supported the thesis that local government may still exercise all powers necessary, or expedient for its purposes, so long as state preemptions are not invaded.

In recent years the cities of Michigan have been encouraged by court judgments to engage in off-street parking, transportation systems, solid waste disposal, and other activities, without express reference thereto in their charters.

As years pass and conditions change, the most comprehensive listing of powers will probably overlook some newly developed need of a dynamic city. Since many unforeseeable demands may lie ahead for the average city of Michigan, it is essential that it rely heavily upon general powers and the "liberal construction" rule in the state constitution.

### **Use of Ordinances to Implement Charter Provisions**

A charter commission can avoid a lot of work and make the charter shorter and more flexible by simply directing the use of ordinance procedures in a wide variety of situations. A charter amendment takes a vote of the people, whereas the council has the power to amend an ordinance. Thus, needlessly detailed provisions in the charter become "cemented in."

On the other hand, this may be the exact result the citizens and commissioners desire. They may want to prevent political tampering with a pension program, a hospital, library, museum, or some other locally favored activity.

A compromise between the two extremes may be affected by covering the subject in general terms in the charter, perhaps inserting guidelines in some detail, but leaving the greater detail to be established by ordinance. This approach is used increasingly in such matters as special assessments, for instance.

We have referred repeatedly to "changing conditions." A good illustration is the grant, by state law, of collective bargaining powers to local government employees. Some cities have found that charter civil service provisions have been superseded by provisions of a collective bargaining agreement dealing with subjects within the scope of bargaining for wages, hours, and conditions of employment. Under public employment labor relations law, such a contract provision prevails over a conflicting charter provision.

### **Timing of Elections, Budgets, Taxes and Contracts**

In the drafting of any charter, there is a particularly complex problem relating to the timing of various activities involved in meeting the needs of the people. We allude to the timing of elections, budgets, taxes and improvements. It is usually desirable to have the elections conform to a schedule which will permit the taking of office in adequate time for a thoughtful consideration of the new budget, reflecting possible new policies, the imposition of taxes supporting that budget, and the resulting construction year in which capital improvements may be financed, contracted, undertaken and accomplished.

It is doubtful if any charter achieves perfect timing in this regard. In our temperature zone, construction of improvements such as sewers, paving and the like are limited to the months of April through October. Much groundwork must be done prior to those months in budgets, taxes, engineering, special assessments, and borrowing to support such programs. Then contracts must be arranged. Meanwhile, the election process is conducted in such a way that newly elected officials may or may not be entitled and empowered to bring their judgments to bear upon projects which are already under way. This subject must be given careful consideration by any charter commission in an effort to make the timing of these various events as appropriate to the needs of the community as is possible.

### **State Review of Charter**

The charter commission has the power to call an election at which the charter is to be submitted to the voters. It must be submitted to the governor for review, whose approval, however, is not required to make the charter valid if adopted by the people of a city. Nevertheless, such approval is usually highly desirable from a political point of view.

While the law does not direct it, the governor invariably submits the charter to the attorney general for review and recommendations. This tradition results in a written opinion from the attorney general's office to the governor. The governor approves and signs the charter or returns it to the commission with objections. Although the act is not explicit, presumably the commission can call off the election or go ahead with it. Usually the time is rather short, and the election is held. If the charter is approved by the voters, it stands as a valid charter until otherwise ruled by the courts.

If the charter is rejected, the Home Rule Act permits the charter commission to reconvene, make such changes in the draft as it desires, and resubmit it to the voters.

### **Transition**

Naturally, provision must be made in a proposed charter for an orderly transition from the present to the proposed government. This usually appears in a final transition chapter which contains only features of temporary significance. For instance, an election of the entire proposed council and official family can be arranged to take place concurrently with the vote on the proposed charter, conditioned upon the latter's acceptance.

If the election of officers is deferred to a later time, the date of the primary, if any, and the general election should be identified, along with the date on which the new officials take office and the previous government is terminated. Some of the previous officers may be held over for a time to accommodate a staggered-term arrangement. Here, too, timing becomes an important factor and should be given careful consideration.

Provision must be made, either in this transition chapter or elsewhere, for the continuance of ordinances, pending causes, boards and commissions, transfer of property, and the rights and duties of the city at the time the new government takes over.

### **Conclusion**

We have undertaken here only a bird's eye view of the nature and purpose of a home rule city charter. We could expand upon almost every sentence and phrase which has been written. Space and patience dictate otherwise.

The charter commissioners should not think their work is done when the draft is completed. They must now see that the electors are fully informed so that they can make an intelligent decision. They should actively support it during the campaign, explaining the advantages to be gained from their work. Assuming a take-it or leave-it attitude will almost certainly result in rejection of their long and tedious labor.

The commission may submit to the voters up to three versions within the three- year period following their election to office. They can make revisions on items which may have been the cause of the rejection of their earlier draft. Thus, a give-and-take process

can occur between the citizens and commissioners as together they strive to agree upon an acceptable document capable of meeting the needs of the people. That is the essence of home rule.

# **General Subject Areas of a Charter**

## Chapter

### Preamble

- 1 Names and Boundaries
- 2 Definitions and General Provisions
3. Municipal Powers
4. Elections
5. General Provisions Regarding Officers and Personnel of the City
6. Plan of Government
7. The Council: Procedure and Miscellaneous Powers and Duties
8. Legislation (Bylaws, Ordinances and Resolutions)
9. General Finance (Budget Control, Borrowing Power and Audit)
10. Taxation (Exemptions, Assessment Rolls, Board of Review and Limitations)
11. Special Assessments
12. Purchasing (Contracts & Leases)
- 13 Municipal-Owned Utilities
14. Public Utility Franchises
15. Miscellaneous
16. Schedule
17. Resolution of Adoption



# Mandatory Charter Provisions of the Home Rule City Act

## Mandatory Provisions in Proposed \_\_\_\_\_ Charter

Following in the first column is the section number and brief description of the mandatory provisions for city charters contained in the Home Rule City Act, MCL 117.1 et seq; MSA 5.2071 et seq. In the second column is the section number of the proposed charter in which this mandatory provision is contained.

Home Rule City Act	Charter
Sec. 3(a): Election of Mayor	_____
Election of Council	_____
Election of Clerk	_____
Selection of Treasurer	_____
Selection of Assessor	_____
Selection of Board of Review	_____
Selection of other officers	_____
Sec 3(b): Nomination of elective officers	_____
Sec 3(c): Time, manner and means of elections and registration	_____
Sec 3(d) Qualifications, duties, compensation of officers	

Officers	Qualifications	Duties	Compensation
Council	_____	_____	_____
Mayor	_____	_____	_____
Clerk	_____	_____	_____
Treasurer	_____	_____	_____
Attorney	_____	_____	_____
Assessor	_____	_____	_____
Others	_____	_____	_____

Sec. 3(e):	Establishment of wards	_____
Sec. 3(f):	Subjects of taxation	_____
Sec. 3(g):	Annual tax levy and limit	_____
Sec. 3(h):	Annual appropriation	_____
Sec. 3(i):	Levy, collection, etc., of state, county and school taxes	_____
Sec. 3(j):	Public peace, health, etc.	_____
Sec. 3(k)	Adopting ordinances	_____
	Continuing ordinances	_____
	Amending ordinances	_____
	Repealing ordinances	_____
	Publication of ordinances	_____
Sec. 3(l):	Legislative sessions public	_____
	Records public	_____
Sec. 3(m):	Legislative journal English	_____
Sec. 3(n):	Uniform system of accounts	_____

## **Municipal Report**

### **Organization of City and Village Government in Michigan**

This Municipal Report examines the organization of city and village government in Michigan, forms of government and the development of local home rule. It also contains appendices showing types of incorporation and forms of government of all cities and villages in Michigan.

*Systems of Government for Michigan Municipalities*, by the late Arthur W Bromage, Professor Emeritus of Political Science, University of Michigan, explains the various structural forms of government available to cities and villages. The minimum area and population standards for each classification are detailed. The chief characteristics of each organizational form and other municipal practices in Michigan are related to nationwide historic trends.

Caution should be taken in using statistical information in this report. Incorporation and form of government changes number upward to a dozen a year. The statistical information, therefore, is accurate as of November 2003.

#### **Systems of Government for Michigan Municipalities, by Arthur W. Bromage<sup>1</sup>**

The present status of cities and villages in Michigan is the result of historical tradition, of the home rule provisions of the Constitutions of 1908 and 1963, of the home rule acts of 1909, and the initiative of individual communities.

During the nineteenth century, the State Legislature recognized the need to incorporate by special acts the densely settled communities within the basic pattern of counties and townships. The system of local government written into Michigan's 1908 and 1963 Constitutions recognized the continuing existence of counties and townships, with the voluntary incorporation of the more densely settled areas as cities and villages. An

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<sup>1</sup> Article by the late Arthur W. Bromage, Professor Emeritus of Political Science, the University of Michigan. Revised by the League's general counsel William L Steude in 1994. Updated November 2003.

innovation in the 1908 Constitution was a provision for city and village home rule charters – a change which was to have many repercussions.

### **Village**

The basic difference between a city and a village is that whenever and wherever an area is incorporated as a village, it stays within the township. The villagers participate in township affairs and pay township taxes in addition to having their own village government. Incorporation as a city, however, removes an area from township government. City dwellers participate in county elections and pay county taxes as do villagers but are removed from township units.

Villages in Michigan are organized primarily to establish local regulatory ordinances and to provide local services such as fire and police protection, public works and utilities. Certain of the local duties required by the state are not demanded of the village but are performed by the embracing township including assessing property; collecting taxes for counties and school districts; and administering county, state and national elections.

Most of the villages (213 of 261) are still governed under the general village law. Charters for villages are the exception, although any village may adopt a home rule document under 1909 PA 278, as amended, which is a companion to the 1909 Home Rule City Act (1909 PA 279). No special act villages exist, because the General Law Village Act of 1895 brought all then existing villages under its provisions. General law villages may make amendments to their basic law by home rule village act procedures. Such amendments, however, may not extend to a change in the form of government.

### **City**

A city, being withdrawn from the township, must provide the basic, state-required duties as well as its own services. In addition to being responsible for assessing property and collecting taxes for county and school purposes, the city also becomes solely responsible for registration of voters and conduct of all elections within its boundaries.

The greater independence of the city, in maintaining local regulations and functions and state-imposed duties in one integrated unit, accounts for the creation of many small cities in Michigan during recent decades. The trend has also developed in villages to

seek incorporation as cities whereby they achieve a separation of jurisdiction from the township.<sup>2</sup>

In November 2003, Michigan had 272 incorporated cities and 261 incorporated villages - a total of 533 municipalities. Of this total number, 312 had adopted home rule charters.

In 1895, adoption of the Fourth Class City Act created two types of cities: those of 3,000 to 10,000 population, which came under the Act, and all others which remained "special charter" cities. At the present time all but one of the "special charter" cities have reincorporated as home rule cities. As of January 1, 1980 all fourth class cities became home rule cities by virtue of 1976 PA 334 (see also OAG 5525, 7/13/1979), which continued the Fourth Class City Act as the charter for each former Fourth Class city until it elects to revise its charter. Currently, seven cities continue to be governed by the Fourth Class City Act.

### **Standards of Incorporation**

For incorporation of a home rule village, a population of 150 is the minimum, but there must be a minimum density of 100 to the square mile. There is no statutory requirement that a village must become a city when it experiences a rapid growth in population. Once incorporated, villages may seek reincorporation as fifth class home rule cities, providing their population is between 750 and 2,000. Alternatively, they may seek reincorporation as home rule cities if their population exceeds 2,000 with a density of 500 per square mile. For many years the Home Rule City Act required 2,000 population and density of 500 per square mile for city incorporation. A 1931 amendment permitted fifth class city incorporation at 750 to 2,000 population with the same 500 per square mile density, but authorized villages within this range to reincorporate as cities regardless of density.

There is no basic difference between a fifth class home rule city and a home rule city, except the population differential and the statutory requirements that fifth class home rule cities hold their elections on an at-large basis. If all the territory of an organized township is included within the boundaries of a village or villages, the village or villages,

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<sup>2</sup> Michigan Municipal League, Municipal Report, *Impact of Changing From a Village to a City* (Michigan Municipal League, 1994, Revised)

without boundary changes may be incorporated as a city or cities as provided in 1982 PA 457.

Unincorporated territory may be incorporated as a fifth class home rule city provided the population ranges from 750 to 2,000 and there is a density of 500 persons per square mile. The same density rule applies to the incorporation of territory as a home rule city if the area has a population of more than 2,000. There are no other methods of city incorporation today. A new city must be incorporated under the Home Rule City Act.

### **State Boundary Commission**

Under 1968 PA 191, the State Boundary Commission must approve all petitions for city and village incorporation. The Boundary Commission is composed of three members appointed by the Governor. When the Commission sits in any county, the three members are joined by two county representatives (one from a township and one from a city), appointed by the probate judge.

In reviewing petitions for incorporation, the Boundary Commission is guided by certain statutory criteria: population; density; land area and uses; valuation; topography and drainage basins; urban growth factors; and business, commercial and industrial development. Additional factors are the need for governmental services; present status of services in the area to be incorporated; future needs; practicability of supplying such services by incorporation; probable effect on the local governmental units remaining; relation of tax increases to benefits; and the financial capability of the proposed municipality (city or village). In other words, Boundary Commission review centers on the feasibility of the proposed city or village.

After review on the basis of criteria, the Boundary Commission may deny or affirm the petition. (Affirmative action may include some revision of the proposed boundaries on the Commission's initiative.) Once the Boundary Commission has issued an order approving incorporation, a petition may be filed for a referendum on the proposal. The referendum permits the voters to accept or reject the incorporation. If incorporation is

approved by the voters, the incorporation may be finally accomplished only through the existing process of drafting and adopting a city or village charter.<sup>3</sup>

### **Home Rule**

Home rule generally refers to the authority of a city or village under a state's constitution and laws to draft and adopt a charter for its own government. This contrasts with legislative establishment of local charters by special act, which results in mandated charters from state capitols. Home rule frees cities and villages to devise forms of government and exercise powers of local self-government under locally prepared charters adopted by local referendum.

Constitutional home rule is self-executing in some states and not so in others. Non-self-executing home rule, which Michigan wrote into its 1908 Constitution, leaves it up to the state Legislature to implement the home rule powers. Michigan's Legislature did this by enacting the Home Rule Act for Cities and the Home Rule Act for Villages, both of 1909.

In turning to home rule when it did, Michigan became the seventh state to join in a movement which now includes 37 states. It was more than a national trend which motivated the Michigan Constitutional Convention early in this century. Under the special act system of the nineteenth century, Michigan cities were, according to one observer writing closer to the time, "afflicted by their charters with an assortment of governmental antiquities."<sup>4</sup>

The Legislature, under Article VII (Sections 21-22) of the 1963 Michigan Constitution, must provide for the incorporation of cities and villages by general law. Such general

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<sup>3</sup> 1970 PA 219 provides that all annexation proposals, as well as proposed incorporations and consolidations, also come before the State Boundary Commission. For further information, contact the State Boundary Commission at 116 W Allegan, Lansing MI 48933.

<sup>4</sup> Robert T. Crane, *Municipal Home Rule in Michigan*, Proceedings of the Fourth Annual Convention of the Illinois Municipal League (Urbana, 1917), pp.62-65.

laws of incorporation must limit their rate of taxation and restrict their borrowing of money and their contracting of debt. The voters of each city and village have power to frame, adopt and amend charters in accordance with these general laws. Through regularly constituted authority, namely their established representative government, they may pass laws and ordinances pertaining to municipal concerns subject to the Constitution and general laws.

By November 2003, 264 cities and 48 villages had adopted home rule charters. The total of 312 charters so adopted makes Michigan one of the leading home rule states in the nation.

### **Charters**

The Michigan Municipal League, versed in the needs of cities and villages, renders informational assistance through its charter inquiry service. A few Michigan attorneys have become specialists in drafting charters. The quality of city and village charters has improved steadily. No longer is it necessary for elected home rule charter commissioners to search for "model" charters elsewhere, since many good charters exist in Michigan itself.<sup>5</sup>

With some exceptions, Michigan charters have been influenced by nationwide trends in municipal practices such as the short ballot, the small council, election of council members-at-large, nonpartisan nominations and election of council members. Chief executives of either the appointed kind (a manager) or the elected type (a mayor) are favored. Localities have shown their ingenuity in searching for what is most appropriate to their needs. No longer is the Legislature burdened with enacting individual charters. The responsibility lies with locally elected charter commissioners, subject to legal review by the Governor under statutory requirements. Since charters must be adopted only by local referendum, the voters themselves make the final determination about the design of their government.

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<sup>5</sup> For Michigan, classification as a home rule state, see Arthur W. Bromage, "The Home Rule Puzzle," *National Municipal Review* XLVI, pp118-123, 130 (March, 1957).



In the process of charter drafting and in the local referendum, civic energies have been released. Charter commissioners, elected by their fellow citizens, have shown themselves progressive yet careful when carrying out their trust.

### **Form of Government: Cities**

Michigan cities have used all major forms of government: weak mayor and council, strong mayor and council, commission, and council-manager. During the nineteenth century, special act charters were frequently of the weak mayor-council plan, as was the Fourth Class City Act of 1895. This form of government was exemplified by an elected mayor with limited administrative authority, election of councilmembers on a ward system, partisan elections, elected administrative officials and administrative boards to supervise city departmental operations.

By November 2003, 264 Michigan cities had home rule charters drafted by locally elected charter commissions and adopted by local referendum.

In 89 home rule cities, variations of the mayor-council system predominated. With the coming of home rule, experimentation began with the commission plan in the Battle Creek Charter of 1915, and with the strong mayor system in the Detroit Charter of 1918. Major Michigan cities were quick to draft and adopt council-manager charters in Jackson (1915), in Grand Rapids (1917) and in Kalamazoo (1918). As in many other states, Michigan cities experimented with government by commission earlier in the 20<sup>th</sup> century, but the movement was halted as council-manager charters became popular. Michigan has among its home rule cities a few examples of the strong mayor plan, exemplified by the charters of Detroit and Dearborn. The latter is an unusual example of a home rule charter which provides for a very complete integration of the administrative hierarchy under an elected mayor. The Dearborn charter (1942) gives the mayor a pervasive authority to appoint and remove administrative officers, a veto power, an executive budget in terms of preparation and control and other means of executive leadership and administrative supervision.

The City of Flint, with a population of 124,943, is the only large Michigan city to follow the lead of certain other large cities - San Francisco, New Orleans, Philadelphia, and New York City - in providing some kind of chief administrative officer under a strong mayor. Detroit is more appropriately classified as strong mayor in type, such as

Cleveland, Denver and Omaha. The strong mayor charter in Detroit does not provide for any form of chief administrative officer under the mayor. Yet experimentation has begun on a moderate scale in Michigan with providing some form of assistance to mayors apart from the departmental level.

### **Form of Government: Villages**

Of the 261 villages in Michigan, 48 had home rule charters by November 2003, and 213 were governed under the general law (1895) pertaining to villages. Under that act all of the then existing villages in Michigan were reincorporated and standards were set for future incorporations. The general law village, still the most common by far, has the typical weak mayor-council form of government.

In the general law village the chief executive, known as a president, comes closest in formal powers to a weak mayor. The president serves as a member of the council and as its presiding officer. With the consent of the council he/she appoints a street administrator, and such other officers as the council may establish. Comprising the council itself are six trustees besides the president. Three trustees are elected annually to serve for two-year terms, and a president is elected annually. A recent election option has been given to villages providing a change to either three trustees to be elected every biennial election with a term of four years or the election of all six trustees every biennial election with a term of two years. The form of the ballot is partisan, but in most village contests this does not lead to intense partisan activity. This will change with the enactment of the Election Consolidation Act, 298 PA 2003 when all village elections will be non-partisan. Other directly elected officers are the clerk and treasurer. Appointed and ex officio boards can include the boards of registration, election commissioners, election inspectors and cemetery trustees.

### **1998 Revisions to the GLV Act**

Public Acts 254 and 255 were signed into law by the Governor on July 7, 1998, revising the General Law Village (GLV) Act which has governed villages since 1895. The GLV Act is still the statutory charter for 213 villages. The new act is basically a rewrite of language rather than an expansion of authority. It does not change the authority of a village to make changes by charter amendment initiated by either the council or by petition of the voters. Furthermore, the act explicitly confirms the power of a village to

amend the GLV Act locally as provided by the Home Rule Village Act. The most significant changes to the act are that by ordinance (Sample ordinances are included in the appendix of this handbook.) a village council may:

1. reduce the number of trustees from six to four,
2. change from an elected to an appointed clerk, or treasurer, or both, and
3. provide for non-partisan elections (which will no longer be necessary after December 31, 2004, due to the Election Consolidation Act.)

An ordinance making any such change in the council's size, or appointment of elected administrative officials, or partisan elections requires a two-thirds vote of the council. The amendment is effective 45 days after its adoption, subject to a referendum by village voters if a petition is signed by 10 percent of the registered voters within that 45-day period. The council's authority to make such changes by ordinance, subject to the referendum, parallels the council's existing authority to provide for a village manager by ordinance, subject to voter referendum.

The Home Rule Village Act requires that every village so incorporated provide for the election of a president, clerk and legislative body, and for the election or appointment of such other officers and boards as may be essential. However, the president need not be directly elected by the people but may be elected by the village council. Of the 48 home rule villages, 19 have a village manager position.

The home rule village form of government offers flexibility that is not found in the 1895 statewide General Law Village Act provisions. Home rule village charters in Michigan are as diverse as the communities that adopt them. For example:

Almont has a council of seven. Four councilmembers are elected at each regular village election. The three candidates receiving the highest number of votes are elected for three years and the candidate receiving the fourth highest number of votes is elected for two years. The council elects a president and appoints a village manager.

Cement City has a council of five. At each regular village election three councilmembers are elected. The two candidates receiving the highest number of votes are elected for four years and the candidate receiving the third highest number of votes is elected for two years.

Hopkins has a board of trustees of six. Trustees are elected to two-year terms of office. The president, clerk, treasurer and assessor are all elected to one-year terms of office.

Lake Orion has a village manager elected by the council on the basis of training and ability. The manager holds office at the pleasure of the council.

Milford has a village manager who is the chief administrative officer of the village. The manager is charged with the responsibility of supervising and managing all the services of the village and with the responsibility for enforcing the ordinances of the village, the village charter and applicable state laws.

Oxford has a village manager who is the chief administrative officer for the village. The manager prepares the budget of the village for consideration by the council. He/she has the right to take part in the discussion of all matters coming before the council but has no vote.

## Appendix A

### Incorporation Status for 272 Cities and 261 Villages (as of November 2003)

Population Range	Number in Range	Cities			Villages	
		Home Rule	Home Rule Fourth Class City Act	Special Charter	Home Rule	General Law
Over 50,000	25	25				
25,000-50,000	20	20				
10,000-24,999	44	43			1	
5,000-9,999	53	51			2	
2,000-4,999	113	79	2		9	25
750-1,999	140	46	1		11	83
Under 750	138	8	4	1	25	105
<b>Total</b>	<b>533</b>	<b>265</b>	<b>7</b>	<b>1</b>	<b>48</b>	<b>213</b>

## Appendix B

### Home Rule Cities in Michigan (as of November 2003)

	Population		Population		Population
Adrian	21,574 *	Coopersville	3,910 *	Grandville	16,263 *
Albion	9,144 *	Corunna	3,381 *	Grant	881 *
Algonac	4,613 *	Croswell	2,467 *	Grayling	1,952 *
Allegan	4,838 *	Crystal Falls	1,791 *	Greenville	7,935 *
Allen Park	29,376 *	Davison	5,536 *	Grosse Pointe	5,670 *
Alma	9,275 *	Dearborn	97,775	Grosse Pointe Farms	9,764 *
Alpena	11,304 *	Dearborn Heights	58,264	Grosse Pointe Park	12,443 *
Ann Arbor	114,024 *	Detroit	951,270	Grosse Pointe Woods	17,080 *
Auburn	2,011 *	DeWitt	4,702 *	Hamtramck	22,976
Auburn Hills	19,837 *	Dowagiac	6,147 *	Hancock	4,323 *
AuGres	1,028 *	Durand	3,933 *	Harbor Beach	1,837 *
Bad Axe	3,462 *	East Grand Rapids	10,764 *	Harbor Springs	1,567 *
Bangor	1,933 *	East Jordan	2,507 *	Harper Woods	14,254 *
Battle Creek	53,364 *	East Lansing	46,525 *	Harrison	2,108
Bay City	36,817 *	East Tawas	2,951 *	Harrisville	514
Beaverton	1,106 *	Eastpointe	34,077 *	Hart	1,950 *
Belding	5,877 *	Eaton Rapids	5,330 *	Hartford	2,476 *
Belleville	3,997 *	Ecorse	11,229	Hastings	7,095 *
Benton Harbor	11,812 *	Escanaba	13,140 *	Hazel Park	18,963 *
Berkley	15,531 *	Essexville	3,766 *	Highland Park	16,746 *
Bessemer	2,148 *	Evart	1,738 *	Hillsdale	8,233 *
Big Rapids	10,849 *	Farmington	10,423 *	Holland	35,048 *
Birmingham	19,291 *	Farmington Hills	82,111 *	Houghton	7,010 *
Bloomfield Hills	3,940 *	Fennville	1,459	Howell	9,232 *
Boyne City	3,503 *	Fenton	10,582 *	Hudson	2,499 *
Bridgman	2,428 *	Ferndale	22,105 *	Hudsonville	7,160 *
Brighton	6,701 *	Ferrysburg	3,040 *	Huntington Woods	6,151 *
Bronson	2,421 *	Flat Rock	8,488	Imlay City	3,869 *
Brown City	1,334 *	Flint	124,943 *	Inkster	30,115 *
Buchanan	4,681 *	Flushing	8,348 *	Ionia	10,569 *
Burton	30,308	Frankenmuth	4,838 *	Iron Mountain	8,154 *
Cadillac	10,000 *	Frankfort	1,513 *	Iron River	3,386 *
Carson City	1,190 *	Fraser	15,297 *	Ironwood	6,293 *
Caspian	997 *	Fremont	4,224 *	Ishpeming	6,686 *
Cedar Springs	3,112 *	Gaastra	339 *	Ithaca	3,098 *
Center Line	8,531 *	Galesburg	1,988	Jackson	36,316 *
Charlevoix	2,994 *	Garden City	30,047 *	Kalamazoo	77,145 *
Charlotte	8,389 *	Gaylord	3,681 *	Keego Harbor	2,769 *
Cheboygan	5,295 *	Gibraltar	4,264 *	Kentwood	45,255
Clare	3,173 *	Gladstone	5,032 *	Kingsford	5,549 *
Clarkston	962 *	Gladwin	3,001 *	Laingsburg	1,223
Clawson	12,732 *	Gobles	815	Lake Angelus	326
Clio	2,483 *	Grand Blanc	8,242 *	Lake City	923 *
Coldwater	12,967 *	Grand Haven	11,168 *	Lansing	119,128
Coleman	1,296	Grand Ledge	7,813 *	Lapeer	9,072 *
Coloma	1,595	Grand Rapids	197,800 *	Lathrup Village	4,236 *

Leslie	2,044 *	Oak Park	29,793 *	Sault Ste Marie	16,542 *
Lincoln Park	40,008	Olivet	1,758	Scottville	1,266 *
Linden	2,861 *	Omer	337	South Haven	5,021 *
Litchfield	1,458 *	Onaway	993 *	South Lyon	10,036 *
Livonia	100,545 *	Orchard Lake Village	2,215	Southfield	78,296 *
Lowell	4,013 *	Otsego	3,933 *	Southgate	30,136 *
Ludington	8,357 *	Owosso	15,713 *	Springfield	5,189 *
Luna Pier	1,483 *	Parchment	1,936 *	Standish	1,581 *
Mackinac Island	523 *	Perry	2,065	Stanton	1,504
Madison Heights	31,101 *	Petersburg	1,157	Stephenson	875
Manistee	6,586 *	Petoskey	6,080 *	Sterling Heights	124,471 *
Manistique	3,583 *	Pinconning	1,386 *	Sturgis	11,285 *
Manton	1,221 *	Plainwell	3,933 *	Swartz Creek	5,102 *
Marine City	4,652 *	Pleasant Ridge	2,594 *	Sylvan Lake	1,735 *
Marlette	2,104 *	Plymouth	9,022 *	Tawas City	2,005 *
Marquette	19,661 *	Pontiac	66,337	Taylor	65,868
Marshall	7,459 *	Port Huron	32,338 *	Tecumseh	8,574 *
Marysville	9,684 *	Portage	44,897 *	Three Rivers	7,328 *
Mason	6,714 *	Portland	3,789 *	Traverse City	14,532 *
McBain	584	Pottersville	2,168 *	Trenton	19,584 *
Melvindale	10,735 *	Reading	1,134 *	Troy	80,959 *
Memphis	1,129	Reed City	2,430 *	Utica	4,577
Menominee	9,131 *	Richmond	4,897 *	Vassar	2,823 *
Midland	41,685 *	River Rouge	9,917	Wakefield	2,085 *
Milan	4,775 *	Riverview	13,272 *	Walker	21,842 *
Monroe	22,076 *	Rochester	10,467 *	Walled Lake	6,713 *
Montague	2,407 *	Rochester Hills	68,825 *	Warren	138,247
Montrose	1,619 *	Rockford	4,626 *	Watervliet	1,843 *
Morenci	2,398 *	Rockwood	3,442 *	Wayland	3,939 *
Mount Clemens	17,312 *	Rogers City	3,322 *	Wayne	19,051 *
Mount Morris	3,194 *	Romulus	22,979	West Branch	1,926 *
Mount Pleasant	25,946 *	Roosevelt Park	3,890 *	Westland	86,602
Munising	2,539 *	Rose City	721	White Cloud	1,420 *
Muskegon	40,105 *	Roseville	48,129 *	Whitehall	2,884 *
Muskegon Heights	12,049 *	Royal Oak	60,062 *	Whittemore	476
Negaunee	4,576 *	Saginaw	61,799 *	Williamston	3,441 *
New Baltimore	7,405	Saint Clair	5,802 *	Wixom	13,263 *
New Buffalo	2,200 *	Saint Clair Shores	63,096 *	Woodhaven	12,530 *
Newaygo	1,670 *	Saint Ignace	2,678 *	Wyandotte	28,006 *
Niles	12,204 *	Saint Johns	7,485 *	Wyoming	69,368 *
North Muskegon	4,031 *	Saint Joseph	8,789 *	Yale	2,063 *
Northville	6,459 *	Saint Louis	4,494 *	Ypsilanti	22,362 *
Norton Shores	22,527 *	Saline	8,034 *	Zeeland	5,805 *
Norway	2,959 *	Sandusky	2,745 *	Zilwaukee	1,799 *
Novi	47,386 *	Saugatuck	1,065 *		

\* Home Rule City with a manager, superintendent or supervisor position

## Appendix D

### Home Rule Cities with Fourth Class City Act Charters (as of November 2003)

	Population
Beaverton	1,106
Harrisville	514
Omer	337
Rose City	721
Sandusky	2,745
Whittemore	476
Yale	2,063

### Special Charter City

Mackinac Island	523
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**Note:** All of the above communities operate under a mayor-council form of government unless indicated.